EXPLANATORY MEMORANDUM TO

THE EAST SUFFOLK (MODIFICATION OF BOUNDARY CHANGE ENACTMENTS) REGULATIONS 2018

2018 No. [XXXX]

AND

THE EAST SUFFOLK (LOCAL GOVERNMENT CHANGES) ORDER 2018

2018 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

1.3 Attached to this memorandum is a report required by section 15(12) and (13) of the Cities and Local Government Devolution Act 2016 on the East Suffolk (Modification of Boundary Change Enactments) Regulations 2018.

2. Purpose of the instrument

2.1 These instruments provide for the abolition of Suffolk Coastal and Waveney districts and their district councils and the creation of a new East Suffolk district and East Suffolk district council which covers the same contiguous, geographic area.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This is the first use of section 15 of the Cities and Local Government Devolution Act 2016.

Other matters of interest to the House of Commons

3.2 The instruments apply only to England.

3.3 The instruments apply only to England as they are entirely concerned with local government areas in England. The instruments do not give rise to minor or consequential effects outside England.

3.4 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter; or the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament; or the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.

3.5 The Department has reached this view because it considers that the primary purposes of the provisions in these instruments relate to local government which is within the devolved legislative competence of the Scottish Parliament, the Northern Ireland Assembly and the National Assembly for Wales.

4. Legislative Context

4.1 This memorandum details two statutory instruments. The first, the East Suffolk (Modification of Boundary Change Enactments) Regulations 2018, varies the Local Government and Public Involvement in Health Act 2007 Act ("the 2007 Act") in its application to Waveney and Suffolk Coastal district councils. The second, the East Suffolk (Local Government Changes) Order 2018, establishes the new non-metropolitan district and council.

The East Suffolk (Modification of Boundary Change Enactments) Regulations 2018

4.2 Part 1 of the 2007 Act provides for structural and boundary change of local government areas and councils. Section 8 of the 2007 Act provides that the Local Government Boundary Commission ("the Commission") may, either on their own initiative or at the request of the Secretary of State or a local authority, conduct a review of one or more local government areas. Where they have conducted a review under this section the Commission may recommend to the Secretary of State such boundary change as in consequence of the review seems to them desirable. "Boundary change" means the alteration of a local government area boundary; the abolition of a local government area or the constitution of a new local government area (or any combination of these). No recommendation may be made under section 8 which recommends some form of structural change (i.e. the creation of a single tier of local government in an area which previously had two tiers). Structural change is provided for in sections 1 to 7 of the 2007 Act.

4.3 Section 10 of the 2007 Act gives the Secretary of State power, by order, to make boundary changes to a local government area following a review by the Local Government Boundary Commission. The detail of what a section 10 order can include is set out in sections 11 and 12. A section 10 order can, for example, create a new local government area or abolish an existing one; move the boundary of any local government area; create a new council for the area or abolish an existing one and provide for a new name. A section 10 order can also make provision for "electoral matters" which, for example, includes the total number of members (councillors) of the authority; the number and boundaries of electoral areas and the number of councillors to be returned by each area. A section 10 order can also include transitional provision allowing, for example, for the appointment by the Secretary of State of members of an existing local authority to be members of a new local authority for a transitional period.

4.4 Section 15 of the Cities and Local Government Devolution Act 2016 ("the 2016 Act") provides that the Secretary of State may by regulations (subject to the affirmative resolution procedure) make provision about the structural and boundary arrangements in relation to local authorities under Part 1 of the 2007 Act. In particular, by making provision as to how Part 1 of the 2007 Act is to apply in relation to particular cases (including by disapplying the application of Part 1 or applying it subject to any variations that are specified in the regulations).

4.5 Regulations under this section, so far as including structural or boundary provision in relation to a non-unitary district council area, may be made if at least one relevant local authority consents (i.e. one of the councils whose area falls within the area concerned) . This consent requirement expires at the end of 31st March 2019 (but without affecting any regulations already made under this section by virtue of subsection (5)). After that date, the exercise of powers under section 1 will require the consent of all relevant authorities in the area in question.

4.6 These regulations made under section 15 of the 2016 Act would provide that Part 1 of the 2007 Act is to be varied in its application to the case of Suffolk Coastal and Waveney so that those councils can make proposals for boundary change in their area to the Secretary of State rather than to the Local Government Boundary Commission and allowing the Secretary of State to implement those proposals by order under section 10 of the 2007 Act.

The East Suffolk (Local Government Changes) Order 2018

4.7 This Order is made in exercise of the powers conferred by sections 10, 11, 12 and 13 of the 2007 Act. It implements the proposal made under the 2007 Act that there should be a new non-metropolitan district council for East Suffolk.

4.8 Section 14 of the 2007 Act enables the Secretary of State, by regulations of general application, to make incidental, consequential, transitional and supplementary provision to give full effect to these local government changes. The Secretary of State intends to exercise his powers under this section to, among other things, make provision for transferring functions, property, rights and liabilities to the new council, as well as providing for transitional provisions relating to financial matters.

5. Extent and Territorial Application

5.1 The instruments extend to England and Wales.

5.2 The territorial application of these instruments is set out in Section 3 under "Other matters of interest to the House of Commons".

6. European Convention on Human Rights

6.1 Rishi Sunak, Parliamentary Under Secretary of State at the Ministry for Housing, Communities and Local Government, has made the following statement regarding Human Rights:

"In my view the provisions of The East Suffolk (Modification of Boundary Change Enactments) Regulations 2018 and The East Suffolk (Local Government Changes) Order 2018 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The Government made a manifesto commitment to support those authorities that wish to combine to serve their communities better, and the Ministry of Housing, Communities and Local Government is committed to consider unitarisation and mergers between councils when requested.

7.2 The Government set out the criteria against which merger proposals would be considered in a Written Ministerial Statement on 7 November 20171. These are that:

- the proposal is likely to improve local government in the area (by improving service delivery, giving greater value for money, yielding cost savings, providing stronger strategic and local leadership, and/or delivering more sustainable structures);
- the proposal commands local support, in particular that the merger is proposed by all councils which are to be merged and there is evidence of a good deal of local support; and
- the proposed merged area is a credible geography, consisting of two or more existing local government areas that are adjacent, and which, if established, would not pose an obstacle to locally-led proposals for authorities to combine to serve their communities better and would facilitate joint working between local authorities.

7.3 Suffolk Coastal and Waveney developed and consulted on a proposal, which they submitted to the Secretary of State on 3 February 2017. The Secretary of State considered the proposals put forward by the two councils and, on 7 November 2017, announced that he was "minded-to" implement the proposal. There then followed a period for representations, which lasted until 8 January 2018. After carefully considering all the material and representations he received, the Secretary of State concluded that the criteria outlined above are likely to be fully met.

7.4 Pursuant to the statutory framework described in Section 4 above, the Secretary of State must give full consideration to proposals received from local authorities that wish to restructure how they are organised. These regulations are made under provisions introduced into the 2016 Act enabling regulations to be made to streamline the processes for local government reorganisation, including unitarisation, council mergers and boundary changes, for which provision is made in the 2007 Act.

The East Suffolk (Modification of Boundary Change Enactments) Regulations 2018

7.5 These Regulations modify provisions related to boundary changes in the Local Government and Public Involvement in Health Act 2007 as they apply to East Suffolk.

7.6 To implement the proposal in a timely manner, regulations are made under section 15 of the 2016 Act which provide that Part 1 of the 2007 Act is to be varied in its application to the case of Suffolk Coastal and Waveney so that the Secretary of State is able to act upon a submission from the local areas regarding re-organisation of the local boundaries whilst still maintaining the ability for the Local Government Boundary Commission for England to carry out an electoral review of the area.

7.7 Regulation 3 modifies certain provisions of Part 1 of the Local Government and Public Involvement in Health Act 2007 for the purposes of boundary changes of the local government areas of Suffolk Coastal and Waveney. Section 8 of the 2007 Act is modified to allow for a proposal for boundary changes affecting its area to be made by a relevant local authority without the requirement of a review or recommendation from the Local Government Boundary Commission for England.

[1] https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2017-11-07/HCWS232/

7.8 Regulation 4 provides for the relevant provisions of the 2007 Act as modified by these Regulations to apply to the implementation of a proposal made before the coming into force of these Regulations.

7.9 Regulation 5 provides for the expiry of these Regulations at the end of March 2020. This is to allow for sufficient time should the need arise for a further Order under Section 10 of the 2007 Act to be made, in order to give full effect to the proposal.

The East Suffolk (Local Government Changes) Order 2018

7.10 This Order establishes a new non-metropolitan district, East Suffolk, in the county of Suffolk; establishes East Suffolk Council as the district council for East Suffolk and abolishes Suffolk Coastal and Waveney districts and their councils.

7.11 The Order provides for the establishment of a shadow authority before East Suffolk Council takes on full responsibility for local government matters on 1st April 2019 with members appointed from the existing councils; for the creation of a shadow executive and for the creation of a Central Implementation Team to support the executive. The shadow authority and shadow executive are tasked with making all necessary preparations in advance of 1st April 2019 (including preparing and keeping under review an implementation plan and appointment of key officers); the costs of the shadow authority and shadow executive are to be met by the existing district councils.

7.12 Part 4 of the Order deals with electoral matters including provision that a whole council election of councillors of East Suffolk Council is to take place on the ordinary day of election in 2019 and in every fourth year thereafter. Once the Order is made, the Local Government Boundary Commission for England will be invited to review the wards in time for the elections in 2019. This would supersede the electoral arrangements in the Order.

7.13 Part 5 of the Order imposes general transitional duties on the existing district councils, in particular to cooperate with each other and the shadow authority and shadow executive.

7.14 The Schedule sets out the electoral wards of East Suffolk. The proposed warding pattern involves wards having no more than 3 members. The wards have been constructed using a mixture of existing wards and electoral divisions with the aim of delivering as close as possible electoral equality, no more than 3 members to any ward and providing for a total of 55 members as reflected in the schedule.

8. Consultation outcome

Consultation before initial decision

8.1 Following the decisions of the councils to proceed in principle with the proposals to merge, the councils undertook a programme of engagement with residents and stakeholders. The engagement programme was comprised of the following activities: an independent, weighted to be representative phone poll; open public consultation, with comments invited via a dedicated email address or by post; press releases and articles in the local press; outreach events with community groups; banners promoting the merger at council offices and libraries, and on-going website and social media promotion.

8.2 Open public consultation ran from 1st November to 12th December 2016. All interested stakeholders were invited to comment on and query the proposal. This was promoted online and through social media (including through a Facebook advert), the local press and emails to all key stakeholders. Responses were invited via a dedicated email address or by post.

8.3 Independent polling organisation ComRes carried out a demographically representative telephone survey of 1,000 residents in Suffolk Coastal and Waveney between 3rd October and 14th October 2016 to gauge public support for the proposal. When asked "In general, to what extent are you favourable or unfavourable towards the proposed creation of a single District-level Council for East Suffolk", 57% of local adults surveyed said they were favourable towards the proposal, compared to 22% who were unfavourable. The use of a demographically representative telephone poll carries some weight as it removes the propensity for consultation responses to be heavily dominated by certain, sometimes self-selecting, groups. This ensures the whole community is represented in the decision making process.

8.4 Of the consultation responses from the public, 114 were against and 17 were in favour. Of the 114 residents who objected, a recurring concern was that a single council covering a larger geographic area would weaken local democracy. There were also concerns around certain areas being under represented. Following the consultation, a 'myth-busting' document was published on the councils' shared website to address the principal concerns raised during the consultation process.

8.5 Information about the proposal was provided to the East Suffolk Partnership Forum (this included a workshop session for delegates), parish and town councils (through the Suffolk Association of Local Councils area forums and briefings), and a 'Community Action Suffolk' (CAS) local group meeting.

8.6 The majority of stakeholders, including Suffolk County Council, the two district councils, some parish councils, the chambers of commerce and the Local Enterprise Partnership all expressed support for the proposal. Letters of support were also received from Mid Suffolk and Babergh Councils and Norfolk County Council.

<u>Representations received after initial decision</u>

8.7 After the Secretary of State announced his initial decision that he was minded to implement the proposal, there was a period for representations lasting from 7th November 2017 until 8th January 2018. 20 representations were received. Of these 17 were supportive of the proposal, one was neutral and two were opposed.

8.8 Those in favour of implementation included the Leaders of both councils, Suffolk County Council, the Leaders of Mid Suffolk and Babergh Councils, two parish councils, and a local MP.

8.9 The 17 supportive representations also included three housing associations, Norse Commercial Services, Community Action Suffolk, Firmstep, Places for People Leisure, Adnams PLC, Suffolk Libraries, East Coast Community Healthcare and the Local Enterprise Partnership. A member of the public also wrote in in support of the merger.

8.10 The two negative representations received were from a member of the public and a local councillor. Though their views were considered, the lack of evidence presented as part of their representations (and the fact that they were in the vast minority) meant that it was not considered that further action on them was necessary.

9. Guidance

9.1 The Government continues to work with colleagues in local areas to support their implementation of this council merger. No guidance is therefore necessary to accompany these instruments.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 In terms of impact on the public sector, a number of local public bodies, such as NHS providers, housing associations and third sector organisations, have made representations that this council merger would improve local partnership working.

10.3 The councils consider that becoming a single council is estimated to generate a further £2.2 million of annual cashable savings, £0.3 million non-cashable savings (for example, efficiency gains and increased capacity released as a result of ending duplication of documentation and meetings), and to protect the shared services savings of £20 million achieved since 2010 across East Suffolk.

10.4 The establishment of a single district council would maintain all the services that are currently carried out by the two councils individually. The proposal provides the opportunity to bring savings which would allow the Council to invest in services. It is envisaged that the establishment of a single district council will help ensure the strong and influential local leadership required to tackle challenges such as an aging population and the need for affordable new homes.

10.5 A full regulatory impact assessment has not been prepared as these instruments will have no impact on the costs of business and the voluntary sector.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 This Order provides for new governance arrangements in the areas of Suffolk Coastal and Waveney district councils. It is for the local area to continue to monitor and evaluate the performance of the new council.

13. Contact

13.1 Rosemary Fletcher at the Ministry of Housing, Communities and Local Government Telephone: 07458 124742 or email: rosemary.fletcher@communities.gsi.gov.uk can answer any queries regarding these instruments.