EXPLANATORY MEMORANDUM TO

THE LOCAL GOVERNMENT (STRUCTURAL AND BOUNDARY CHANGES) (SUPPLEMENTARY PROVISION AND MISCELLANEOUS AMENDMENTS) ORDER 2019

2019 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.

2. Purpose of the instrument

2.1 This Order provides for incidental, consequential, transitional and supplementary arrangements in consequence of specific orders made by the Secretary of State under section 7 ("section 7 orders") and section 10 ("section 10 orders") of the Local Government and Public Involvement in Health Act 2007 ("the 2007 Act"). This Order makes provisions specific to the new single-tier councils of Bournemouth, Christchurch and Poole, and Dorset, and to the new merged councils of East Suffolk and Somerset West and Taunton, so that there is a smooth transition from the predecessor councils (the councils that will be abolished on the reorganisation date) to the successor council (the new council that is being created for that area), and for continuing effective local government in the area.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 This entire instrument applies to England only because the instrument is entirely concerned with local government areas in England.

3.3 The instrument does not have any minor or consequential effects outside England.

3.4 In the view of the Department, for the purposes of Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, 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 and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament and 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 local government is a devolved matter in Northern Ireland, Scotland and Wales. This instrument is made under section 7 and

section 10 of the 2007 Act, which provides for local government structural and boundary changes in England only.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is set out in Section 3 under "Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)".

5. European Convention on Human Rights

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

"In my view the provisions of the Local Government (Structural and Boundary Changes) (Supplementary Provision and Miscellaneous Amendments) Order 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 Part 1 of the 2007 Act provides for the making of local government structural and boundary changes in England. Section 7 orders may make provision for re-structuring of an area in which there are two tiers of local government and the establishment of single tier local government in that area; and section 10 orders may make provision for the alteration of a local government area boundary, the abolition of an existing local government area, the winding up and dissolution of the council for the area and the creation of a new local government area and council.

6.2 Legislation has been made for reorganisation of local government in Dorset and the creation of two new councils on 1 April 2019 under a section 7 order. The Bournemouth, Dorset and Poole (Structural Changes) Order 2018[1] provides for the abolition of the former local government areas and councils and the establishment of a new unitary council for the Boroughs of Bournemouth, Christchurch and Poole, and another unitary council for the rest of the County of Dorset.

6.3 Section 10 orders have been made abolishing a number of existing districts and their councils in Suffolk and Somerset and establishing new merged district council areas due to take effect on 1st April 2019, including:

- The East Suffolk (Local Government Changes) Order 2018 (S.I. 2018/640)[2] abolishes Suffolk Coastal and Waveney District Councils and creates East Suffolk Council; and
- The Somerset West and Taunton (Local Government Changes) Order 2018 (S.I. 2018/649)[3] abolishes West Somerset District Council and Taunton Deane Borough Council and creates Somerset West and Taunton Council.

6.4 In addition, the West Suffolk (Local Government Changes) Order 2018 (S.I. 2018/639) abolishes Forest Heath District Council and St Edmundsbury Borough

[1] http://www.legislation.gov.uk/uksi/2018/648/contents/made
[2] http://www.legislation.gov.uk/uksi/2018/640/contents/made
[3] http://www.legislation.gov.uk/uksi/2018/649/contents/made

Council and creates West Suffolk Council; officers of these Councils have confirmed that no area-specific provision for West Suffolk is required in this Order.

6.5 Further details about these section 7 and section 10 orders can be found in the Explanatory Memorandums that accompany those orders.

6.6 The power to make a section 7 or 10 order includes the power to make incidental, consequential, transitional and supplementary provision (section 13(1) of the 2007 Act). Section 13(3) of the 2007 Act provides that the incidental, consequential, transitional and supplementary provision which may be included in an order under section 7 or 10 may relate either to other provisions of the order or to a previous order under section 7 or 10.

6.7 Section 13(2) specifies that the power under section 13(1) of the 2007 Act is to be read with section 15, which sets out the type of provision which can be made by way of incidental, consequential, transitional and supplementary provision. The type of provision referred to in section 15(1) includes: provision with respect to the transfer of pensions (15(1)(d)); provision with respect to the areas of jurisdiction of the coroner, lord lieutenant and high sheriff (15(1)(g)); and provision with respect to charter trustees (15(1)(i)). Section 240(10) of the 2007 Act also provides that an order made under that Act may make different provision for different cases.

6.8 The power to make a section 7 or 10 order also includes the power to make provision for or with respect to any of the matters set out in section 11(4) of the 2007 Act. The matters listed in section 11(4) include: the name of any local authority (11(4)(b)); electoral matters within the meaning of section 12 of the 2007 Act (11(4)(d)); the establishment or membership of public bodies in any area affected by the order and the election of members of such bodies (11(4)(e)); and the abolition or establishment, or the restriction or extension of the jurisdiction of any public body in any area affected by the order (11(4)(f)).

6.9 Section 240(6) provides that orders under section 7 or 10 are subject to the draft affirmative procedure.

6.10 This Order is made under sections 7, 10, 11 and 13 of the 2007 Act to make provision for incidental, consequential, transitional and supplementary arrangements in consequence of orders made under sections 7 and 10 of the 2007 Act, specific to the new councils of Bournemouth, Christchurch and Poole, Dorset, East Suffolk and Somerset West and Taunton.

7. Policy background

What is being done and why?

7.1 The Government made a manifesto commitment to support those local authorities that wish to combine to serve their communities better and is committed to consider locally-led proposals from councils that wish to reorganise. This Order applies to local government reorganisation in Bournemouth, Dorset and Poole, for which an order under section 7 was made on 25 May 2018 and came into force on 26 May 2018[4]. It also applies to reorganisation in East Suffolk[5] and Somerset West and Taunton[6]. An order for East Suffolk was made under section 10 on 24 May 2018 coming into force

[4] http://www.legislation.gov.uk/uksi/2018/648/contents/made
[5] http://www.legislation.gov.uk/uksi/2018/640/contents/made
[6] http://www.legislation.gov.uk/uksi/2018/649/contents/made

on 25 May, and for Somerset West and Taunton on 25 May 2018, coming into force on 26 May.

7.2 Part 2 of the Order establishes Charter Trustees for the unparished parts of the Boroughs of Bournemouth, Poole and Taunton, which will be abolished on 1st April 2019, ensuring that any historic rights and privileges associated with local government areas which will be abolished can be maintained in the new unitary and merged areas and vest in the Charter Trustees for the relevant area[7]. The Charter Trustees will be the councillors whose ward or part of their ward is within the charter trustee area set out in the Schedule. Part 2 also makes amendments to the Lieutenancies Act 1997 and Sheriffs Act 1887 to replace references to the local government areas of Dorset, Bournemouth and Poole in the relevant schedules with references to the new local government areas of Bournemouth, Christchurch and Poole, and Dorset in relation to the position of Lords Lieutenant and High Sheriff respectively.

7.3 Part 3 makes provision to ensure that the local government pension fund maintained by Dorset County Council, along with all property, rights and liabilities in respect of the fund will vest in the new Dorset Council for its employees and those of the new Bournemouth, Christchurch and Poole Council, as well as employees of all the other employers in the fund.

7.4 Part 4 makes provisions to amend the Weymouth Port Health Authority Order 2017 (S.I. 2017/558)[8] so that references to the joint board made up of Weymouth and Portland Borough Council, Purbeck District Council and West Dorset District Council refer instead to Dorset Council, which will be the sole authority for the area post re-organisation.

7.5 Part 5 makes provision to amend the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 to replace references to the councils which are to be abolished on 1st April 2019 with the names of the new councils and to make provision for housing revenue account assumed debt and share cap for those new councils for future years, where relevant. The councils in West Suffolk do not have housing revenue accounts, and hence no provision is needed for them.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There are no plans for consolidation.

10. Consultation outcome

10.1 There is no requirement to consult on the preparation of this Order, the provisions of which address supplementary and incidental issues where these are not addressed by existing regulations of generic application under section 14 of the 2007 Act[9].

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[7] The Charter Trustees Regulations 2009 (S.I. 2009/467) make further provision about charter trustees including provision for the transfer of historic rights and ceremonial property to charter trustees and the exercise of those rights: http://www.legislation.gov.uk/uksi/2009/467/contents/made

[8] https://www.legislation.gov.uk/uksi/2017/558/contents/made

[9] See the explanatory memorandums to S.I. 2018/930 http://www.legislation.gov.uk/uksi/2018/930/memorandum/contents and S.I. 2018/1128 http://www.legislation.gov.uk/uksi/2018/1128/memorandum/contents for further information.

However, as this Order relates to the establishment of two new unitary areas and the merger of four district councils to create two new merged district councils, all of the councils in those areas have been closely involved in the development of this Order to ensure that the content will meet their specific needs. Forest Heath District Council and St Edmundsbury Borough Council, which on 1 April 2019 are to be abolished and replaced by a new merged West Suffolk Council, have also been closely involved in the development of the Order and officers in these councils have confirmed that no provisions for the new council of West Suffolk are required in the Order.

10.2 The provisions of the Order have therefore been developed with the full input of the relevant areas.

11. Guidance

11.1 No guidance has been prepared for this instrument. The Department works with and supports these local authorities as they implement governance changes.

12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

12.3 A Regulatory Impact Assessment has not been prepared for this instrument because it does not relate to the activities of businesses, charities or voluntary bodies.

13. Regulating small business

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

14. Monitoring & review

14.1 This instrument makes incidental, consequential, transitional and supplementary provisions for councils to enable the effective implementation of local government restructures or mergers to create new councils. The new council will be democratically accountable for its performance to the local electorate, and subject to the audit and accountability regimes applicable to local government. The Department works with and supports any local authorities as they implement governance changes and will consider the case for special provisions in a further instrument should that be necessary.

14.2 These Regulations do not include a statutory review clause.

15. Contact

15.1 Jonathan Scanlan, telephone: 0303 444 8940, email: jonathan.scanlan@communities.gov.uk and Antonia Holdgate, telephone 0303 444 2643, email: antonia.holdgate@communities.gov.uk at the Ministry of Housing, Communities and Local Government, can be contacted with any queries regarding the instrument.

15.2 Paul Rowsell, Deputy Director and Head of Governance Reform and Democracy Unit, at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rishi Sunak MP, Minister for Local Government, at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.