EXPLANATORY MEMORANDUM TO

THE LOCAL GOVERNMENT (STRUCTURAL CHANGES) (AREAS AND MEMBERSHIP OF PUBLIC BODIES IN BEDFORDSHIRE AND CHESHIRE) ORDER 2008

2008 No. Communities and Local Government

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of instrument

2.1. The Local Government (Structural Changes) (Areas and Membership of Public Bodies in Bedfordshire and Cheshire) Order 2008 ("the Public Bodies Order") provides for changes to the names and boundaries of the constituent local authority areas which make up the areas of fire and rescue authorities, police authorities and valuation tribunals in Bedfordshire and Cheshire, and to the membership of those public bodies. These changes are incidental, consequential, transitional and supplementary on orders made under section 7 of the Local Government and Public Involvement in Health Act 2007 ("the 2007 Act") establishing a single tier of local government for these areas. There is a single tier of local government where there is a sole principal authority for an area (a "single tier council").

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. None.

4. Legislative Context

4.1. Part 1 of the 2007 Act provides for the establishment of a single tier of local government for areas in England. There is a single tier of local government for an area if there is either a county council and no district councils for that area, or a district council and no county council for that area (section 1(2) of the 2007 Act). Where the Secretary of State has received a proposal that there should be a single tier of local government for an area, she may make an order under section 7 of the 2007 Act ("a section 7 order") to implement the proposal with or without modification.

4.2. The power to make a section 7 order 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 establishment or membership of public bodies in any area affected by the order and the election of members of such bodies; the abolition or establishment, or the restriction or extension, of the jurisdiction of any public body in or over

any part of any area affected by the order; and the boundary of any police area in England (see paragraphs (e) to (g) of section 11(4)).

4.3. It also 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 may relate either to other provisions of the order or to a previous order under section 7.

4.4. 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 (section 13(2)). The type of provision referred to in section 15 includes provision "with respect to the functions, areas of jurisdiction and costs and expenses of any public body…" (paragraph (g)). Section 15(2) provides that an order under section 7 may for any incidental, consequential, transitional or supplementary purpose modify, exclude or apply (with or without modifications) any enactment, and repeal or revoke any enactment with or without savings. The 2007 Act also provides that an order made under that Act may make different provision for different cases (section 240(10)).

4.5. The making of a section 7 order to implement a proposal for a single tier of local government may have implications for other public bodies in the affected area. The geographical area for which a public body is responsible is often defined by reference to local government areas, and therefore changes to local government areas may require amendments to the area of the public body. Furthermore, the members of some public bodies are appointed by local authorities, and therefore changes to those authorities may require amendments to the membership of the public body.

4.6. To date, the Secretary of State has made seven section 7 orders. The Public Bodies Order makes provision in relation to the areas and membership of public bodies in two of the areas for which section 7 orders have been made. The relevant orders are the Bedfordshire (Structural Changes) Order 2008 (S.I. 2008/907) ("the Bedfordshire Order") and the Cheshire (Structural Changes) Order 2008 (S.I. 2008/634) ("the Cheshire Order").

4.7. Part 2 and Schedules 1 and 2 of the Public Bodies Order make provision in relation to public bodies in Bedfordshire. Articles 3 to 5 of the Bedfordshire Order provide that on 1st April 2009, the county of Bedfordshire and the districts of Mid-Bedfordshire and South Bedfordshire will be abolished, and their councils wound up. The existing district council of Bedford Borough will become the sole principal authority for its area, and a new district council, Central Bedfordshire District Council, will become the sole principal authority for its area. These changes require amendments to statutory provisions defining the areas of the Bedfordshire and Luton Combined Fire Authority, Bedfordshire Police Authority, and

Bedfordshire Valuation Tribunal, as well as amendments to provisions about the appointment of members to those bodies.

4.8. Part 3 and Schedules 1 and 2 of the Public Bodies Order make provision in relation to public bodies in Cheshire. Articles 3 to 5 of the Cheshire Order provide that on 1st April 2009, the county of Cheshire and all of its districts will be abolished and the county council and district councils will be wound up. In their place there will be two new districts, Cheshire East, and Cheshire West and Chester, each with a single tier council. These changes require amendments to statutory provisions which define the areas of the Cheshire Fire Authority, the Cheshire Police Authority, and the Cheshire Valuation Tribunal, as well as amendments to provisions about the appointment of members to those bodies.

4.9. Further details about the Bedfordshire Order and the Cheshire Order can be found in the Explanatory Memoranda which were laid alongside the draft orders[1]. In this document 'single tier council(s)' has the same meaning as 'unitary council(s)' in the Explanatory Memoranda previously laid alongside those orders.

5. Territorial Extent and Application

5.1. This instrument applies to England.

6. European Convention on Human Rights

6.1. The Minister for Local Government has made the following statement regarding Human Rights:

In my view the provisions of the Local Government (Structural Changes) (Areas and Membership of Public Bodies in Bedfordshire and Cheshire) Order 2008 are compatible with the Convention rights.

7. Policy background

7.1. The Local Government White Paper, *Strong and Prosperous Communities,* published on 26th October 2006, explained the Government's intention to give councils in local government areas where both county and district councils exercise local government functions an opportunity to make proposals for the establishment of single tier councils. In accordance with this policy, the Government published alongside the White Paper the *Invitation to Councils in England*, which invited councils to submit proposals for unitary structures.

7.2. Following the publication of the White Paper and the Invitation, on 12th December 2006 the Local Government and Public Involvement in Health Bill was introduced into Parliament. Part 1 of the Bill, now the 2007 Act, makes

[1] The Explanatory Memorandum for Cheshire is at http://www.opsi.gov.uk/si/si2008/em/uksiem_20080634_en.pdf, and the Memorandum for Bedfordshire is at http://www.opsi.gov.uk/si/si2008/em/uksiem_20080907_en.pdf.

provision for the implementation of local government structural and boundary change. The Bedfordshire Order and the Cheshire Order were made under section 7(1)(a) of Part 1 of the 2007 Act.

7.3. The Public Bodies Order provides for changes to the names and boundaries of the constituent local authority areas which make up the areas of fire and rescue authorities, police authorities and valuation tribunals, and to their membership, in consequence of local government restructuring in Bedfordshire and Cheshire. In areas with both county and district councils, the areas of these bodies are defined by reference to the county area, and their members are appointed by the county councils. However, the Bedfordshire Order and the Cheshire Order each provide for the abolition of the existing county and its council, and the establishment of two single tier district councils, and consequently changes are required to the statutory provisions about the areas and membership of such bodies.

7.4. The Department is bringing forward the Public Bodies Order now, so that if it is approved by Parliament, representatives of the new single tier councils in Bedfordshire and Cheshire (see paragraphs 7.6 and 7.9) can attend those meetings of their area's Fire and Rescue Authority and Police Authority at which the Authority's budget for 2009/10 will be considered and decided. Fire and Rescue Authorities and Police Authorities are required by the Local Government Finance Act 1992 to make their budget calculations and issue their precepts before 1st March in the financial year preceding that for which it is issued (but is not invalid merely because it is issued on or after that date). However, the Department is aware that amendments are likely to be required to the membership of some National Park Authorities, Area of Outstanding Natural Beauty Conservation boards, and Port Health Authorities, as well as to the River Tweed Authority, in consequence of restructuring in Bedfordshire and Cheshire and other areas of England, and intends to take forward any such amendments in a later order, once it is clear exactly what amendments are required.

Public Bodies Order: details of the provisions

Fire and Rescue Authorities

7.5. Articles 2 and 5 provide for the new single tier councils for Bedfordshire and Cheshire respectively to become constituent authorities of the fire and rescue authorities for their area from 1 April 2009. As such, they will have the power to appoint members to those authorities.

7.6. Paragraphs 1 and 2 of Schedule 1 to the Public Bodies Order make transitional provision for the new single tier councils to appoint representatives to the fire and rescue authorities during a transitional period. Those representatives will become members of the fire and rescue authorities on 1st April 2009. The transitional period begins on the day that the Public Bodies Order comes into force and ends immediately before 1st April 2009. Paragraph 3 of Schedule 1 makes provision about the status of such representatives in the transitional period. In particular, during the transitional

period, representatives of the new single tier councils in Bedfordshire and Cheshire can attend meetings of their fire and rescue authority but cannot vote at those meetings, and the fire and rescue authority must have regard to the views of the representatives in relation to the issue of its precept and the calculation of its budget requirement. These provisions ensure that the new single tier councils are involved, through their representatives, in the decisions taken by fire and rescue authorities that will affect the new councils.

Police Authorities

7.7. Articles 3 and 6 of the Public Bodies Order amend the constituent areas of the Bedfordshire Police Authority and the Cheshire Police Authority respectively. The effect of these amendments is to ensure that from 1st April 2009 the new single tier councils for Bedfordshire and Cheshire can appoint members to the joint committees which appoint police authority members.

7.8. Schedule 2 of the Public Bodies Order makes transitional provision in relation the appointment of members of police authorities in Bedfordshire and Cheshire. Paragraph 1 of Schedule 2 of the Public Bodies Order provides that the councils which will be relevant councils in Bedfordshire and Cheshire from 1st April 2009 must establish a joint committee in accordance with the Police Authority Regulations 2008 (S.I. 2008/630) ("the Police Regulations 2008") within 14 days of Schedule 2 to the Public Bodies Order coming into force. Paragraph 2 of Schedule 2 provides that each joint committee must appoint representatives of the new single tier councils who will become members of the police authority for that area from 1st April 2009. Those appointments must be made in accordance with the requirements of the Police Regulations 2008.

7.9. Paragraph 3 of Schedule 2 makes provision about the status of the representatives during the transitional period after Schedule 2 comes into force but before 1st April 2009. During the transitional period, representatives of the new single tier councils in Bedfordshire and Cheshire can attend meetings of the police authority for their area but cannot vote at those meetings, and the police authority must have regard to the views of the representatives in relation to the issue of its precept and the calculation of its budget requirement. In addition, it must have regard to their views in relation to the preparation of its policing plan.

Valuation Tribunals

7.10. Articles 4 and 7 of the Public Bodies Order amend the Valuation and Community Charge Tribunals Regulations 1989 (S.I.1989/439). The amendments provide for the areas of the Bedfordshire and Cheshire Valuation Tribunals to reflect the areas of the new single tier authorities, and replace references to local authorities which are being abolished with references to the new single tier authorities.

8. Consultation outcome

Discussions with Stakeholders

8.1. The Government has previously consulted on the making of structural changes to local government in Bedfordshire and Cheshire in accordance with the statutory requirement in section 7(3) of the 2007 Act, and details of that consultation can be found in the Explanatory Memoranda laid with the Bedfordshire and Cheshire Orders (see paragraph 4.9).

8.2. In view of the technical nature of the detailed changes to be addressed by the Public Bodies Order, the Department has worked throughout the process very closely with stakeholders in Bedfordshire and Cheshire in developing the Order.

8.3. Prior to this the Department's discussion document "Councils' Proposals for Unitary Local Government: An Approach to Implementation" (published August 2007)[2] set out the Department's initial intentions as to the general approach to implementing proposals for a single tier of local government. Paragraphs 98 to 102 of that Paper outlined the possible implications of local government reorganisation for the membership of police authorities and fire and rescue authorities. At that stage, the main issues identified were:

- in relation to police authorities, whether regulations then being made by the Home Office would require transitional arrangements to allow new single tier councils to be represented on their local police authority prior to the reorganisation date;
- in relation to fire and rescue authorities, that changes to membership were likely to be required in areas where the new single tier council was a district council.

8.4. Since the publication of this discussion document, and in particular since the coming into force of the seven section 7 orders made to date, the changes which the Public Bodies Order provides for have been the subject of extensive and frequent discussions between the Department, other Government Departments, affected public bodies and the Joint Implementation Teams (JITs) for each area (a team formed of senior officers of the affected authorities, and led by the Chief Executive, acting Chief Executive, or lead officer of the new single tier council for an area). Those bodies have had the opportunity to see and comment on drafts of the Public Bodies Order. The Department also wrote to the Valuation Tribunals in Bedfordshire and Cheshire informing them of the changes that are necessary as a result of restructuring; no comments were received.

8.5. In addition ,the Department wrote to Cheshire and Bedfordshire Fire and Rescue Authorities, local MPs, LGA and affected local authorities (Cheshire County Council, Halton Borough Council, Warrington Borough Council, Cheshire West and Chester Council and Cheshire East Council and Bedfordshire County Council, Luton Borough Council, Bedford Borough

[2] http://www.communities.gov.uk/documents/localgovernment/doc/unitarylocalgov.doc.

Council and Central Bedfordshire Council) outlining the proposed changes to the membership of the fire and rescue authorities.

8.6. A similar approach was taken with regard to police authorities. We wrote to Cheshire and Bedfordshire Police Authorities, local MPs, the LGA and affected local authorities (Cheshire County Council, Halton Borough Council, Warrington Borough Council, Cheshire West and Chester Council and Cheshire East Council and Bedfordshire County Council, Luton Borough Council, Bedford Borough Council and Central Bedfordshire Council) outlining the proposed changes to the membership of the police authorities.

8.7. In addition to outlining the proposed changes, the letters informed recipients of how they could comment on the approach proposed. The letter invited comments within a shortened timeframe (4 weeks) as it was considered that there had already been lengthy consultation with stakeholders who had had opportunity to comment on numerous drafts of the Public Bodies Order.

8.8. The Department received two responses in relation to the membership of the Cheshire Fire Authority. One was from Cheshire Fire Authority itself, and the other from an affected council (Halton Borough Council). Both of the responses were supportive of the proposal. Halton Borough Council also asked us to consider the case for moving Halton Borough into the Merseyside fire area. This amendment is not included within the Public Bodies Order as would not be consequential on restructuring. However the Government is considering the letter in the light of its broader powers relating to fire and rescue authorities.

8.9. The Department did not receive any responses in relation to the membership of Bedfordshire and Luton Combined Fire Authority.

8.10. In relation to the membership of Bedfordshire and Cheshire Police Authorities the Department received six responses. One from the Association of Police Authorities; in relation to Cheshire, responses from Cheshire Police Authority, Halton Borough Council, Warrington Borough Council, and in relation to Bedfordshire, responses from Bedfordshire Police Authority and Bedford Borough Council. Five responses were supportive of the proposal whilst one, from Bedford Borough Council, was neutral.

8.11. Responses from the Association of Police Authorities and Bedfordshire Police Authority enquired as to the ability of existing members to simultaneously hold office during the transitional period, both as a non-voting representative and a voting member of the Police Authority. This situation might arise where, for example, an existing county councillor who is a member of the Police Authority has also been elected to a council which will become the new single tier council on 1st April 2009. Similar concerns were also raised with the Department by councils in Bedfordshire. In response to this concern, express provision is made by paragraph 3(5) of Schedules 1 and 2 for a member of the Bedfordshire or Cheshire Police Authority to simultaneously hold office as a non-voting representative of a new single tier council and a voting member appointed by another council. Similar provision

is made in relation to fire and rescue authorities by paragraph 3(5) of Schedule 1 to the Public Bodies Order.

8.12. The response that was neutral in relation to the provisions in the Public Bodies Order was from the Mayor of Bedford Borough, who argued that he should be a member of the police authority. The Mayor is currently prevented from doing so as the Police Authority Regulations 2008 require police authorities to reflect the overall political balance of the 'relevant' local authorities. It would not be possible to maintain this position for Bedfordshire if the Mayor - who is an Independent and not a member of any one of the political groups - were appointed to the Bedfordshire Police Authority. The policy of allowing elected Mayors to automatically have a place on the Police Authorities was included in the Policing Green Paper earlier this year and Home Office are currently considering its implementation. We are not able to provide for this situation through the Public Bodies Order as we are only able to make changes that are consequential on restructuring and consider that this matter is better addressed alongside the Home Office's Green Paper.

8.13. The Department also received a letter from Halton Borough Council asking us to consider the case for moving Halton Borough out of the Cheshire police area and into Merseyside. This amendment is not included within the Public Bodies Order as it is not related to the restructuring process. However, the Government is considering the letter in the light of its broader powers in relation to police areas.

8.14. The provisions of the Public Bodies Order have been framed having regard to the contributions and comments received from stakeholders during this ongoing dialogue.

9. Guidance

9.1. The Department does not intend to issue any guidance alongside this instrument. This is not considered necessary as the Public Bodies Order is self-explanatory and has been drafted in close consultation with interested parties.

10. Impact

10.1. An Impact Assessment has not been prepared for this instrument. It has no impact on business, charities or voluntary bodies.

10.2. There will be no additional impact on the public sector above that already identified in the Impact Assessments accompanying the seven section 7 orders providing for the creation of the nine new single tier councils, which were based on figures provided by the local authorities in their proposals.

11. Regulating small business

11.1. The Public Bodes Order does not apply to small business.

12. Monitoring and Review

12.1. The implementation of the Public Bodies Order will be monitored through our extensive and frequent discussions the Joint Implementation Teams (JITs) for each area and also through liaison with affected public bodies.

12.2. Successful implementation will be defined, during the transitional period, (the period beginning on the date on which articles 8 and 9 and the Schedules come into force and ending immediately before 1 April 2009), by the establishment of a shadow joint committee, in relation to the Bedfordshire and Cheshire police authorities and the appointment of representatives from the councils concerned as representatives to the Bedfordshire and Luton and Cheshire Fire Authorities.

12.3. Successful implementation will be defined, from 1 April 2009, by the inclusion of representatives of Bedford Borough Council and Central Bedfordshire Council in the Bedfordshire and Luton Combined Fire Authority, the Bedfordshire Police Authority and Bedfordshire Valuation Tribunal and also by the inclusion of representatives of Cheshire East and Cheshire West and Chester in the Cheshire Fire Authority, Cheshire Police Authority and the Cheshire Valuation Tribunal.

12.4. The order is not subject to review as it is time and event specific.

13. Contact

13.1. Joanne Allison at the Department for Communities and Local Government, Tel: 020 7944 4267 or e-mail: joanne.allison@communities.gsi.gov.uk can answer any queries regarding the instrument.