EXPLANATORY MEMORANDUM TO

THE LOCAL GOVERNMENT (STRUCTURAL CHANGES) (MISCELLANEOUS AMENDMENTS AND OTHER PROVISION) ORDER 2009

2009 No. [XXXX]

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) (Miscellaneous Amendments and Other Provision) Order 2009 ("the Miscellaneous Order") amends, and makes further provision in relation to orders made under section 7 of the Local Government and Public Involvement in Health Act 2007 ("section 7 orders"). These section 7 orders establish single tier local government in those areas for which an order is made. There is a single tier of local government where there is a sole principal authority for the area ("a single tier council"). The section 7 orders provide for a specified reorganisation date on which one or more of the functions of existing councils are transferred to the new single tier council, and these existing councils may be abolished. Districts of counties may also be abolished on the reorganisation date. The Miscellaneous Order makes provision to ensure that matters relevant to councils which will be abolished on the reorganisation date ("predecessor councils") and to the single tier councils that will succeed them ("successor councils") are resolved.

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 a section 7 order to implement the proposal with or without modification.

4.2. Seven section 7 orders have been made to date, as follows:

1. Five orders providing for the existing county council for an area to be established as a single tier council (Cornwall (SI 2008/491)('the Cornwall Order'); County Durham (SI 2008/493)('the County Durham Order'); Northumberland (SI 2008/494) ('the Northumberland Order'); Shropshire (SI 2008/492) ('the Shropshire Order'); and Wiltshire (SI 2008/490) ('the Wiltshire Order').

2. Two further orders, one providing for the establishment of two new single tier district councils for Cheshire (SI 2008/634) ('the Cheshire Order'); and one providing for the existing Bedford Borough Council to be established as a single tier council and for a new single tier council for Central Bedfordshire (SI 2008/907) ('the Bedfordshire Order')).

4.3. Further details about the section 7 orders made to date 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. The term 'single tier council' is the term used to describe what is commonly known as a unitary council, and reflects the 2007 Act's description of unitary local government as "a single tier of local government" (section 1(2) 2007 Act,).

4.4. The power to make a section 7 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 may relate either to other provisions of the order or to a previous order under section 7.

4.5. 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(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 sheriff (15(1)(g)); and provision with respect to charter trustees (15(1)(i)). 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)).

[1] The Explanatory Memorandum for the five county Orders can be found at: http://www.opsi.gov.uk/si/si2008/draft/em/ukdsiem_9780110808154_en.pdf. The Memorandum for Cheshire is at http://www.opsi.gov.uk/si/si2008/em/uksiem_20080634_en.pdf, and for Bedfordshire at http://www.opsi.gov.uk/si/si2008/em/uksiem_20080907_en.pdf

4.6. The power to make a section 7 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)).

4.7. Part 2 of the Miscellaneous Order amends the Bedfordshire Order which establishes the Central Bedfordshire Council as a shadow authority for the period ending on the fourth day after the ordinary day of election of councillors in 2009 ('the shadow period'). Article 16 of the Bedfordshire Order requires the shadow authority to create a leader and cabinet executive within the meaning of Part 2 of the Local Government Act 2000 (the "2000 Act"). The members of the shadow authority (from which the executive is appointed) are councillors of Mid Bedfordshire and South Bedfordshire district councils, and councillors of Bedfordshire County Council for the electoral divisions which are not Bedford electoral divisions (defined in article 2 of the Bedfordshire Order). These councils are abolished on the reorganisation date. The Miscellaneous Provisions Order makes provision to ensure that members of the executive can continue as such (for the purposes of Part 2 of the Local Government Act 2000) until the end of the shadow period, notwithstanding that the authorities from which they were appointed cease to exist before that date. The Miscellaneous Order also amends the electoral arrangements for parish councils set out in the Bedfordshire Order so as to ensure that parish election cycles in Bedfordshire are properly synchronised with the election cycles for the Bedford Borough and Central Bedfordshire councils.

4.8. Part 2 of the Miscellaneous Order also makes provision about the application of section 2(3) of the Local Government Act 1972 in relation to some of the areas affected by the section 7 orders. Section 2(3) of the Local Government Act 1972 (the "1972 Act") provides that the council for a non metropolitan county shall be a body corporate by the name "The County Council" with the addition of the name of the particular county area. The Miscellaneous Order amends the section 7 orders relating to the areas where the existing county council is established as a single tier council (Cornwall, Northumberland, Shropshire, Wiltshire and County Durham), so as to provide that the council for the county for any of these areas may pass a resolution that the word 'County' should be omitted from its name, and where this occurs, section 2(3) of the 1972 Act will not apply.

4.9. Part 3 and Schedule 1 of the Miscellaneous Order make provision in relation to ceremonial issues, including the creation of Charter Trustees for the cities of Chester and Durham and the towns of Crewe and Macclesfield and the historic area of Ellesmere Port. This is required because the section 7 orders relating to these areas (the County Durham Order and the

Cheshire Order), abolish a number of local government areas with which currently historic and ceremonial rights and privileges are associated. The Miscellaneous Order makes provision for the appointment of charter trustees as appropriate bodies in which such historic rights and privileges may vest. The transfer of historic rights and privileges to charter trustees will be made in subsequent regulations of general application. Special provision is made in the Miscellaneous Order about the charter rights to hold markets in Chester City, which will not vest in the charter trustees appointed for that area, but will vest in the Cheshire West and Chester Council.

4.10. Part 3 of the Miscellaneous Order also provides for the retention of the ceremonial counties of Cheshire and Bedfordshire by amending the Lieutenancies Act 1997 and the Sheriffs Act 1887 to update the definition of counties for the purposes of these Acts.

4.11. Part 4 of the Miscellaneous Order makes provision about pension funds. The Superannuation Act 1972 enables the Secretary of State to make provision about pensions, allowances or gratuities which may be paid to persons employed in local government service. As a result of regulations made under this power, Bedfordshire County Council and Cheshire County Council both maintain pension funds. As these authorities are being abolished, the Miscellaneous Provisions Order makes provision to vest the funds maintained by these authorities in the appropriate successor councils.

4.12. Part 5 of the Miscellaneous Order makes provision about Port Health Authorities in the areas affected by the section 7 orders. Part 1 of the Public Health (Control of Disease) Act 1984 ("the 1984 Act") gives the Secretary of State power, by Order, to designate an area as a port health district. The Secretary of State is also permitted to either constitute one 'riparian' authority as port health authority for the district, or to constitute a joint board consisting of two or more 'riparian' authorities to be the port health authority for that district. As a consequence of the section 7 orders made by the Secretary of State, a number of existing Port Health Authority Orders need to be amended, to reflect the new local authority arrangements for these areas. The Miscellaneous Order amends the Manchester Port Health Authority Order 1977 (S.I. No.1460), The Plymouth Port Health Authority Order 1977 (S.I. No.1457), The River Blyth Port Health Authority Order 1977 (S.I. No.1459), The Falmouth & Truro Port Health Authority Order 1988 (S.I. No.2075), The Fowey Port Health Authority Order 1979 (S.I. No.1085) and the Penwith Port Health Authority Order 1980 (S.I. No.1330).

4.13. Part 6 of the Miscellaneous Order makes provision about Conservation Boards and National Park Authorities. The Countryside and Rights of Way Act 2000 ("CROW") permits local authorities to apply to the Secretary of State for permission to set up a Conservation Board to manage an Area of Outstanding Natural Beauty (AONB) covering several local authority areas. The National Parks and Access to the Countryside Act 1949 ("the

1949 Act") and the Environment Act 1995 ("the 1995 Act") make provision for the designation of certain areas as National Parks, and for the appointment of National Park Authorities. The section 7 orders made by the Secretary of State have the effect that orders constituting two of the existing Conservation Boards and two National Park Authorities need to be amended, to reflect the new local authority arrangements for these areas. The Miscellaneous Order makes provision in relation to the areas and membership of the Conservation Boards for the Chilterns AONB and the Cotswolds AONB, by amending the Chilterns Area of Outstanding Natural Beauty (Establishment of Conservation Board) Order 2004 (S.I. No.1778) and the Cotswolds Area of Outstanding Natural Beauty (Establishment of Conservation Board) Order 2004 (S.I. No.1777). The Miscellaneous Provisions Order also makes provision in relation to the New Forest National Park Authority and the Peak District National Park Authority by amending the New Forest National Park Authority (Establishment) Order 2005 (S.I. No.421), and the National Park Authorities (England) Order 1996 (S.I. No.1243) (as amended).

4.14. Part 7 of the Miscellaneous Order contains provisions amending primary legislation. These provisions amend Acts which use local authority boundaries to define geographical areas. These definitions need to be amended to reflect the changes to local authority areas made by the section 7 orders. Amendments are made to the Agricultural Wages Act 1948, the Regional Development Agencies Act 1998 and the European Parliamentary Elections Act 2002.

4.15. Part 7 also makes provision about the Scotland Act 1998 (River Tweed) Order 2006 (S.I. No.2913). The Scotland Act enables Her Majesty by Order in Council to make provision for or in connection with the conservation, management and exploitation of fish in the Border rivers. In pursuance of these powers, the Scotland Act 1998 (River Tweed) Order 2006 ("the 2006 Order") establishes the River Tweed Commission to regulate salmon fishing in the River Tweed. The 2006 Order provides for the appointment of commissioners by specified local authorities, including Berwick-upon-Tweed Borough Council. Berwick-upon-Tweed Borough Council is abolished by the Northumberland Order and the Miscellaneous Provisions Order makes provision so that commissioners appointed by Berwick-upon-Tweed Borough Council are replaced by commissioners appointed by the Northumberland Council.

4.16. Finally, Part 7 also designates Central Bedfordshire Council as the "relevant council" within the meaning of section 1(1A) of the Coroners Act 1988 for the coroner's district of Bedfordshire and Luton. This is a consequence of the dissolution of Bedfordshire County Council, which was the relevant council immediately before 1st April 2009. A relevant council is responsible for appointing coroners and has other functions connected with coroners under the 1988 Act.

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) (Miscellaneous Amendments and Other Provision) Order 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 provision for the implementation of local government structural and boundary change. Between February and March 2008, seven orders under section 7 of the 2007 Act came into force, implementing from 1st April 2009 a single tier of local government in the county areas of Bedfordshire, Cheshire, Cornwall, Durham, Northumberland, Shropshire and Wiltshire. As set out at paragraph 2.3 above, a successor council which will become a single tier council on the reorganisation date may be either an existing district or county council or a newly constituted shadow council. As the Explanatory Memoranda to these orders explained, they also made provision for arrangements affecting the implementation of this structural change. This included making provision about the executive arrangements of the successor councils (i.e. about who has responsibility for implementation of the structural change by that council), and as to the joint teams of council officers supporting these executives.

7.3. The Miscellaneous Order provides for matters that relevant to predecessor councils and their related successor councils, in particular the membership of certain public bodies, to be resolved through changes to legislative provisions about the membership of such bodies. It also makes some amendments to the structural change orders, deals with certain ceremonial matters, and makes amendments to primary legislation which are consequential to the changes to local government structures being made by the section 7 orders that have been made to date.

Miscellaneous Order: details of the provisions

Part 2 - Amendments to Orders

7.4. The shadow executive appointed in accordance with the Bedfordshire Order has been leading preparations for the new single tier council for Central Bedfordshire. It is sensible that that body continues to lead the new council until the first election. Article 2(2) of the Miscellaneous Order therefore amends the Bedfordshire Order so that the shadow executive shall be the new single tier council's executive for the purposes of Part 2 of the 2000 Act until the fourth day after the 2009 election. It also makes provision so that if anyone ceases to be a member of that executive they can be replaced by another member of the Central Bedfordshire Council.

7.5. Article 26 of the Bedfordshire Order deals with parish councils elections in Bedfordshire and seeks to synchronise parish council election cycles with the election cycles for the Bedford Borough and Central Bedfordshire councils. It therefore cancels some parish elections that were due to be held in 2008 and extends the terms of those parish councillors to 2009. It then provides that that the term of parish councillors elected in 2009 shall end in 2011, with a new election and that subsequently elections for parish councils are held every four years afterwards. Further changes to parish electoral cycles needed to be made to ensure all parish elections are fully synchronised with those of the new single tier council (i.e. electing in 2009, 2011, and every four years thereafter). Article 2(3) makes provision accordingly.

7.6. The Government has been clear throughout the process of local government restructuring that although the new single tier county councils will remain the same legal entity, there should be no question of the old county council simply 'taking over' the old district councils. The newly single tier council will hold fresh elections, and staff from all of the existing councils in the area will transfer to it, with many senior appointments being subject to open competition. The single tier council will be responsible for implementing proposals for new leadership arrangements and new approaches to neighbourhood engagement. In order to reflect their new role, some of the successor councils which are county councils would like to adopt new name styles, in particular by dropping the "county" part of their name (e.g. so that "Wiltshire County Council" could become the "Wiltshire Council"). In order for the new single tier councils to be able to do this, articles 3 to 7 of the Miscellaneous Order amend the various section 7 orders, inserting a provision which modifies the application of section 2(3) of the 1972 Act, so that, if they wish, the new single tier councils can legally and formally style themselves without "county" in their name. The Government considers that such provision is not necessary in relation to the new single tier councils that are district councils as district councils are able to seek borough status (a status not open to county councils) by presenting a petition to Her Majesty under section 245 of the 1972 Act.

Part 3 Ceremonial Arrangements

7.7. Following local government reorganisation under Part 1 of the 2007 Act, the historic and ceremonial rights, privileges and traditions ("historic rights") associated with the areas covered by predecessor councils will be lost on the reorganisation date when those areas and the associated councils are abolished unless there is an existing local government body for the relevant area, such as a parish council, to which they can be transferred. For example, a district authority may have a borough or city charter granting historic rights, such as the right to have a mayor, on the residents of a defined geographical area. The historic rights conferred by that charter will be lost to the area when the area and associated council is abolished. In order to avoid that situation arising, where it is not possible to transfer such rights to an existing local government body, an incorporated body can be established to protect and preserve historic rights associated with the area for local residents. Charter trustees were created for similar purposes after both the 1974 reorganisation of local government (see section 246(4) of the 1972 Act) and the reorganisation of local government structures in some areas introduced under the Local Government Act 1992.

7.8. Chester and Durham City for example, have a long tradition of self-governance; however both Chester City Council and Durham City Council are abolished by the Cheshire and Durham Orders. Article 8 aims to protect and preserve such historic rights – ones that predate 1974 (when the current structures of local government were established) by the establishment of charter trustees for the abolished council or for a town in the area – i.e. a part of the predecessor council area that more closely reflects the historic governance of the area, enabling historic rights to continue.

7.9. The areas selected for the establishment of the charter trustees have been agreed by both the predecessor and successor councils as no other suitable local government body recipient exists to which those historic rights associated with those areas can be transferred. We have therefore agreed to the creation of charter trustees for the cities of Chester and Durham, for the towns of Crewe and Macclesfield (both have borough charters dating back to 1877 and 1261 respectively) and for Ellesmere Port (which had a borough charter in 1955 – some ceremonial property will go to Neston Parish Council). This will ensure that the historic traditions associated with those areas can be preserved and protected for local residents.

7.10. In most cases the creation of charter trustees is a temporary arrangement put in place solely to preserve historic rights locally (and not create a break in those traditions) until such times as a parish or parishes can be created to which those historic rights can be transferred (charter trustees are not, for example, to be established in Northumberland as the historic rights associated with Blyth Valley District will be transferred to 3 new parishes being created on 1 April 2009). Once that happens, charter trustees are dissolved by virtue of the Local Government (Parishes and Parish Councils) (England) Regulations 2008 (S.I. No. 2008/625).

7.11. Members of Charter trustees are drawn from those members of the new single tier council who represent the electoral areas to which the historic rights attach and which will comprise the charter trustee area (listed in Schedule 1). We intend to make provision in general regulations, amongst other things, for the election of the Mayor, the appointment of other Charter Trustees and local officers of dignity as necessary, the holding of meetings, and for the holding of historic and ceremonial property such as the charters, insignia and plate of the predecessor area.

7.12. Whilst the structural change orders of Cheshire and Bedfordshire abolish the administrative county and its council and replace them with new single tier councils for administrative purposes it is not the intention to abolish the ceremonial and traditional counties. To ensure that they are preserved the Miscellaneous Order amends the descriptions of the counties for and in the Lieutenancies Act 1997 and the Sheriffs Act 1887.

Part 4 Pension Funds in Bedfordshire and Cheshire

7.13. Articles 11 and 12 provide for the vesting of local government pension funds in the two areas, Cheshire and Bedfordshire, where, by virtue of a section 7 order, the pension fund administering authority – in these cases, the county council – is to be dissolved on the reorganisation date. Cheshire County Council and Bedfordshire County Council are currently responsible for maintaining the local government pension fund on behalf of all authorities in their respective areas by virtue of regulations made under section 7 of the Superannuation Act 1972.

7.14. Article 11 provides that, with respect to the pension fund maintained by Bedfordshire County Council, this shall be transferred, along with all its property, rights and liabilities, to the single tier council of Bedford Borough, which shall, on and after the reorganisation date, become the pension fund administering authority for the Bedfordshire area under the regulations made under section 7 of the Superannuation Act 1972 (The Local Government Pension Scheme (Administration) (Amendment) Regulations 2008 (S.I. No. 3245)).

7.15. Article 12 provides that, with respect to the pension fund maintained by Cheshire County Council, this shall be transferred, along with all its property, rights and liabilities, to the new single tier council of Cheshire West and Chester, which shall, on and after the reorganisation date, become the pension fund administering authority for the Cheshire area under the regulations made under section 7 of the Superannuation Act 1972 (The Local Government Pension Scheme (Administration) (Amendment) Regulations 2008).

Part 5 Port Health Authorities

7.16. As a result of section 7 orders, changes need to be made to several orders establishing port health authorities so that these port health authorities reflect the new local government arrangements in these areas:-

7.16.1. Article 14 provides for the new single tier council for Cheshire West and Chester to appoint 2 members to the Manchester Port Health Authority joint board, replacing the members appointed by the predecessor councils of Ellesmere Port and Neston Borough and Vale Royal Borough from the reorganisation date.

7.16.2. Article 15 provides for the new single tier council for Cornwall to become a riparian authority for the Plymouth Port Health Authority, removing the reference to predecessor council for Caradon District.

7.16.3. Article 16 provides for the new single tier council for Northumberland to become the sole riparian authority for the River Blyth Port Health Authority, removing references to the joint board formed by the predecessor councils for Blyth Valley Borough and Wansbeck District.

7.16.4. Articles 17, 18 and 19 provide for the new single tier council in Cornwall to become the sole riparian authority for Falmouth & Truro, Fowey and Penwith Port Health Authorities, removing references to the predecessor council for Penwith District and references to the joint boards formed by the predecessor councils for Carrick and Kerrier Districts in relation to the Falmouth & Truro Port Health Authority and the predecessor councils for Restormel Borough and Caradon District with regard to Fowey Port Health Authority.

Part 6 Conservation Boards and National Park Authorities

7.17. As a result of section 7 orders, changes need to be made to several orders establishing national park authorities and AONB conservation boards so that these bodies reflect the new local government arrangements in these areas:-

7.17.1. Article 20 provides for the new single tier council for Central Bedfordshire to appoint a member to the Chiltern AONB Conservation Board in place of the member appointed by the predecessor council for Bedfordshire County and reduces the overall membership of the body to 27 following the dissolving of Mid Bedfordshire and South Bedfordshire District Councils from 1 April 2009.

7.17.2. Article 21 provides for the new single tier council for Wiltshire to appoint a member to the Cotswolds AONB Conservation Board. It removes references to the predecessor councils for North Wiltshire and West Wiltshire Districts and provides for a reduction in the specified number of Board members to reflect the reduction in the number of specified local authorities.

7.17.3. Article 22 provides for new single tier council for Wiltshire to appoint two members to the board of the New Forest National Park Authority from the reorganisation date; it also removes reference to the predecessor council for Salisbury District.

7.17.4. Article 23 provides for the new single tier council for Cheshire East to appoint one member to the Peak District National Park Authority from the reorganisation date; it also removes references to the predecessor councils for Cheshire County and Macclesfield Borough and makes provision for High Peak Borough Council to appoint an additional member to the Authority board from 1 April 2009.

Part 7 Miscellaneous Amendments

7.18. Articles 24, 25 and 26 provide for references to the predecessor councils in the Agricultural Wages Act 1948, the Regional Development Agencies Act 1998 and the European Parliamentary Elections Act 2002 to be replaced by the names of the successor councils in Bedfordshire and Cheshire.

7.19. Article 27 provides for the new single tier council for Northumberland to appoint 9 members to the River Tweed Commission and removes references in the Amendment of Scotland Act 1998 (River Tweed) Order to the predecessor council for Berwick-upon-Tweed District. It also includes provision to prevent an overall increase in commissioner numbers.

7.20. Article 28 provides for Central Bedfordshire Council to become the relevant council for the coroner's district of Bedfordshire and Luton, following the dissolution of Bedfordshire County Council. Article 29 omits article 2(2) of the Bedfordshire (Coroners) Order 1997; that provision had designated the council of the county of Bedfordshire as the relevant council and is no longer needed.

8. Consultation outcome

Discussions with Stakeholders

8.1. The Government has previously consulted on the making of structural changes to local government in accordance with the statutory requirement in section 7(3) of the 2007 Act, details of which can be found in the Explanatory Memoranda laid with the Structural Change Orders for the restructuring areas.

8.2. In view of the technical nature of the detailed changes to be addressed by the Miscellaneous Order, the Department has worked throughout the process closely with stakeholders 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 101 and 102 of that Paper outlined the possible implications of local government reorganisation for the membership of national park authorities. Chapter 7 of that document contained proposals for dealing with ceremonial arrangements.

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 Miscellaneous 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 a draft of the Miscellaneous Order.

Amendments to section 7 orders

8.5. The changes that are made to the Bedfordshire Order by the Miscellaneous Order are in direct response to requests from the Central Bedfordshire Council which asked the Department to provide legal certainty as to the executive arrangements that would apply after the reorganisation date and before the June 2009 election, and to make further provision so that all parish council elections would be synchronised with those of the new single tier council.

8.6. Similarly, the successor councils that are county councils asked for provision to be made so that they could legally style themselves without the word "county" in their name. This was important to ensure that the new council really was perceived as a new council by residents and it would go a long way to ensuring that relationships between officers and members of predecessor councils which have inevitably been strained by the reorganisation process could be rebuilt without the feeling that one council had "taken over" another.

Ceremonial Arrangements

8.7. Discussions and correspondence have also taken place with lead officers of both the predecessor and successor councils on ceremonial issues. The establishment of Charter Trustees and the areas they cover have been agreed with predecessor councils and with the Chief Executives and lead officers of the successor councils at various points in the drafting process. Both the predecessor and successor councils are content with the establishment of charter trustees as provided for in the Miscellaneous Order.

8.8. The Department also agrees with representations it has received from the Association of Charter Trustees that it is preferable to protect historic rights

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

by transferring them to parish (town) councils if that is possible and relevant, especially given the limited role of charter trustees (whose main function is to protect ceremonial arrangements). However, this has not proved possible in every case. For the future the creation of new parishes is a matter for local authorities under the provisions of the 2007 Act.

Pension Funds in Bedfordshire and Cheshire

8.9. As noted in the Explanatory Memorandum to The Local Government Pension Scheme (Administration) (Amendment) Regulations 2008 (which made provision as to the future administering authority for the pension funds related to Bedfordshire and Cheshire), but included here for ease:

8.9.1. A consultation on the proposed changes to the LGPS (Administration) (Regulations) 2008 commenced on 19 August 2008 and ceased on 31 October 2008. The consultation included a draft statutory instrument and consultation letter which was sent to the key interested parties: the Chief Executives of Bedfordshire County Council and Cheshire County Council; the Central Bedfordshire Joint Implementation Team (JIT) Leader, Bedford (JIT) Leader, Cheshire West and Chester (JIT) Leader, Cheshire East (JIT) Leader; the Chief Executives of Cornwall County Council, Durham County Council, Northumberland County Council. Shropshire County Council, Wiltshire County Council; District Councils affected by re-organisation, LGPS Pension Fund Managers, Local Government Employer representatives, local government treasurer associations, local government HR professionals, and local authority trades unions.

8.9.2. The slightly shorter period of consultation (11 weeks) was in recognition of the fact that the proposed regulatory changes related only to those local authorities directly affected by the local government reorganisation.

8.9.3. There were 8 consultation responses and there was no opposition to any of the regulatory amendments consulted upon. Consultee respondents supported Bedford Borough Council as the Administering Authority for the former Bedfordshire area, and Cheshire West and Chester for the former Cheshire area.

Public Bodies

8.10. The Department wrote to the relevant stakeholders in relation to the changes to membership of the public bodies affected by the Miscellaneous Order - certain port health authorities ("PHA"), the River Tweed Commission, certain AONB Conservation Boards and certain National Park Authorities. These soundings exercises are explored in more detail below. In addition to outlining the proposed changes, the letters sent to stakeholders 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 consultation with the key stakeholders

who had had opportunity to comment over some time through JIT meetings on proposals to be contained within the Order.

Port Health Authorities

8.11. The Department wrote to all the stakeholders for port health authorities (PHAs) including all relevant councils, MPs, the Association of Port Health Authorities, and the port health authorities themselves. The letter asked for their comments on the proposed approach of amending the Orders establishing the individual PHAs to reflect the changes of riparian[3] authority names, allowing the successor council to appoint members to the joint board where appropriate and in other instances that the successor council would become the sole riparian authority for that port health district.

8.12. The Department received 4 responses in relation to the proposed approach for Manchester PHA i.e. that the successor council take one seat, reducing the overall joint board membership by one seat. The responses received were from the Manchester PHA itself, another from the predecessor council for Vale Royal Borough, a third from Halton Borough Council - another council on Manchester PHA that provides legal support to the PHA, and the fourth response was from the successor council itself. All 4 preferred that the successor council for Cheshire West & Chester appoint 2 members to the PHA, keeping the overall membership at its present level. Following these responses the Department changed the provisions in the Miscellaneous Order to reflect this approach.

8.13. There are four PHAs in Cornwall whose establishment orders needed amending by the Miscellaneous Order, each requiring a different proposed approach. Plymouth PHA required a change of name of riparian authority from a predecessor council to the successor council. This is merely as a reference and has no relevance to the administration of the PHA. For Fowey, Penwith and Falmouth and Truro PHAs, the proposed approach was that the successor council become the sole riparian authority for these PHAs, removing any references to joint boards. In response to the soundings exercise the Department received 3 responses, including 2 from affected PHAs which were supportive of the proposed approach but were keen to retain separation of function from the main Cornwall Council (which was not appropriate given that there will be a single riparian authority). The third response was from the successor council itself.

8.14. In response to the proposed approach for the River Blyth PHA - that the single tier council for Northumberland becomes the sole riparian authority - the Department received 2 responses. One response was from the successor council which wished to ensure that the PHA did not remain a separate body from the council (this is indeed the intention of the provisions and we have clarified this with the council); the other response was from the affected PHA which was supportive of the proposals.

[3] "riparian authority" any local authority whose district, or any part of whose district, forms part of, or abuts on, that port or part of a port or river.

River Tweed Commission

8.15. The changes required regarding the River Tweed Commission were developed in close consultation with the Scotland Office. At an early stage the Scotland Office canvassed opinion from the relevant stakeholders who were supportive of the approach. Once the proposed approach was at a more developed stage, the Department wrote directly, seeking the views of the Scotland Office, Berwick-upon-Tweed Borough Council, Northumberland County Council, the Clerk to the River Tweed Commission, the Marine Directorate of the Scottish Executive, the Cabinet Secretary to the Scottish Parliament, and the relevant MPs. The only response the Department received was from Northumberland County Council which was supportive of the proposed approach.

Conservation Boards and National Park Authorities

8.16. In relation to the membership of the AONB Conservation Boards and National Park Authorities, the Department wrote to all the relevant stakeholders including all the relevant councils, MPs, board members and other interested public bodies such as the National Trust and Campaign to Protect Rural England.

8.17. In relation to the Chilterns AONB Conservation Board the Department received three responses. Two responses were from councils represented on the board (Aylesbury Vale and Chiltern district councils) and the third was from the predecessor council for South Bedfordshire District which was supportive of the changes.

8.18. In respect of the Cotswolds AONB Conservation Board, the Department's initial proposal was for the successor council to assume one seat on the Board, reducing the overall membership by two, thus reducing the local authority appointees below the required 40% level, which in turn would require the Secretary of State appointees on the board to be reduced by one person to comply with the requirements of the CROW Act 2000. In response to this soundings exercise, the Department received 4 responses - from Natural England, the Cotswolds AONB Conservation Board, the predecessor council for North Wiltshire District and the MP for North Wiltshire. The responses showed no clear preference but the successor council (the single tier council for Wiltshire) objected strongly to the proposals in a meeting (and further confirmed by email) when the topic was discussed. As a result we sought the views of stakeholders a second time with the proposal for the new single tier council to take three seats on the board (retaining their current seat and inheriting two seats from the predecessor Wiltshire district councils). Most of the 9 responses received including 5 councils represented on the Board preferred the original proposal. Following this clear indication of preference for the first option, the Government has adopted the proposed approach of the successor council only appointing one member and reducing the overall membership of the Board.

8.19. In respect of the New Forest National Park Authority, the Department received one response from the successor council (Wiltshire Council). The response was supportive of the approach taken in Miscellaneous Order.

8.20. For the Peak District National Park Authority, the Department wrote to stakeholders with the proposed approach that the new unitary Cheshire East Council (the successor council) inherit the seats occupied by the predecessor councils for Macclesfield Borough and Cheshire County and therefore appointing two members to the Authority. The Department received 6 responses, 5 of which were from councils represented on the Authority and one from an MP. All except the response from the predecessor council for Macclesfield Borough were not in favour of this proposed approach but proposed that Cheshire East should take one seat and that the other seat vacated by a predecessor council should be allocated to High Peak Borough Council. As a result we sought the views of stakeholders a second time with this alternative proposal. We received 6 responses to this second consultation, the respondents were predominantly local authorities represented on the Authority, as well as two MPs and the affected National Park Authority. Five of the responses were supportive of the amended proposal and therefore the Government decided to proceed on this basis.

Coroners

8.21. The Ministry of Justice has responsibility for the law and policy on coroners. In the light of the dissolution of Bedfordshire County Council, the Ministry wrote to the Chief Executives of Bedford Borough Council, Central Bedfordshire Shadow Authority, and Luton Borough Council inviting their views on which council should become the relevant council for coroner purposes. The relevant coroners were also consulted. There was unanimous agreement that the Central Bedfordshire Council should be designated as the relevant authority with responsibility for appointing the Bedfordshire and Luton coroner and other functions connected with coroners under the Coroners Act 1988..

9. Guidance

9.1. The Department does not intend to issue any guidance alongside this instrument. This is not considered necessary as the Miscellaneous 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 Miscellaneous Order does not apply to small business.

12. Monitoring and Review

12.1. As described above, the Department continues to maintain a close dialogue and liaison with the JITs. This is centred around monthly meetings, which provide the opportunity for the Department to be kept abreast of the progress being made in each area to implement the transition to the new single tier councils. Any issues relating to this Order will be identified through these channels.

13. Contact

13.1. Terry Willows at the Department for Communities and Local Government, Tel: 020 7944 4086 or e-mail: terry.willows@communities.gsi.gov.uk can answer any queries regarding the instrument.