EXPLANATORY MEMORANDUM TO

THE NORTHAMPTONSHIRE (STRUCTURAL CHANGES) (SUPPLEMENTARY PROVISION AND AMENDMENT) ORDER 2021

2021 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 a specific order made by the Secretary of State under section 7 ("section 7 order") of the Local Government and Public Involvement in Health Act 2007 ("the 2007 Act"). That Order makes provisions for the new single tier unitary councils called North Northamptonshire Council and West Northamptonshire Council which from 1 April 2021 will be the sole local authorities for the local government areas of North Northamptonshire and West Northamptonshire [1]. This instrument will provide for a smooth transition from the councils that will be abolished on 1 April 2021 to the new councils that are being created. It ensures that necessary technical arrangements around ceremonial matters and local government pension scheme arrangements are in place so that there continues to be effective local government in the new areas.

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 this 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

[1] https://www.legislation.gov.uk/uksi/2020/156/contents/made

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 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 The Minister of State for Regional Growth and Local Government, Luke Hall MP, has made the following statement regarding Human Rights:

"In my view the provisions of The Northamptonshire (Structural Changes) (Supplementary Provision and Amendment) Order 2021 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.

6.2 Legislation has been made for reorganisation of local government in Northamptonshire under a section 7 order. The Northamptonshire (Structural Changes) Order 2020 (SI 2020/156), which was made on 13 February 2020, provides for the abolition of the former local government areas and councils and the creation of two new local government areas and the establishment of two new unitary councils. From 1 April 2021 those will be the sole local authorities for the local government areas of North Northamptonshire (the existing local government areas of Corby, East Northamptonshire, Kettering and Wellingborough) and West Northamptonshire (the existing local government areas of Daventry, Northampton and South Northamptonshire). That order put arrangements in place to prepare for the transition to the new unitary councils, including elections and the establishment of shadow authorities in May 2020.

6.3 That order was amended by regulations made under section 63 of the Coronavirus Act 2020. The Local Government (Coronavirus) (Structural Changes) (Consequential Amendments) (England) Regulations (S.I. 2020/426)[2], which were made on 15 April 2020, made amendments which were necessary as a result of the postponement of all local government elections from 7 May 2020 to 6 May 2021. The planned May 2020 elections would have elected members for the first time to the two shadow authorities in Northamptonshire. In the absence of the May 2020 elections, the Regulations made provision for membership and governance arrangements for the two

[2] https://www.legislation.gov.uk/uksi/2020/426/introduction/made

Northamptonshire authorities until 10 May 2021, that is for the remainder of the shadow period that ends on 1 April 2021, and until the May 2021 elections return members for the two councils.

6.4 The power to make an order under section 7 of the 2007 Act 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.

6.5 Section 15 of the 2007 Act provides that incidental, consequential, transitional or supplementary provision includes the power to modify any enactment.

6.6 Section 240(6) provides that orders under section 7 may not be made unless a draft has been laid and approved by a resolution of each House of Parliament.

7. Policy background

What is being done and why?

7.1 On 1 April 2021 the existing county and district areas in Northamptonshire are to be abolished as local government areas and all eight councils in Northamptonshire are to be wound up and dissolved. They will be replaced by two unitary councils called North Northamptonshire Council and West Northamptonshire Council, which from 1 April 2021 will be the sole local authorities for the new local government areas of North Northamptonshire and West Northamptonshire.

7.2 Regulations of generic application already provide that most functions conferred on the predecessor councils are transferred to the successor councils. This Order makes area-specific provisions for the councils of North Northamptonshire and West Northamptonshire necessary to ensure a smooth transition to the new arrangements from 1 April 2021.

7.3 The Order makes amendments to the Lieutenancies Act 1997 and Sheriffs Act 1887 to insert in the relevant schedule references to the new local government areas of North Northamptonshire and West Northamptonshire in relation to the position of Lord Lieutenant and High Sheriff respectively. This will ensure the continuation of the positions of Lord Lieutenant and High Sheriff in Northamptonshire. There is no change to the boundary of the ceremonial county of Northamptonshire, and there is no change to the functions or jurisdiction of the Lord Lieutenant or High Sheriff of Northamptonshire.

7.4 The Order will ensure that the property, rights, assets and liabilities of the Northamptonshire Pension Fund transfer from Northamptonshire County Council to West Northamptonshire Council, the new administering authority of the pension fund for both of the new councils, all predecessor councils and other employers who participate in the Northamptonshire fund. This will ensure the continuation of the administration of the pension fund and avoid crystallisation of any pension liability. It further provides that the pensions assets and liabilities relating to pensions of the councils which are to be abolished transfer to their new equivalents in proportions determined by West Northamptonshire Council, ensuring that there is clarity on who is taking over the responsibility for funding existing pensions accrued, and preventing exit payments arising under the regulations which would normally be triggered where

an employer leaves the scheme. In coming to a fair determination on these matters, the Order provides that West Northamptonshire Council must take advice from an actuary and consult North Northamptonshire Council.

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 / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument does not consolidate any legislation.

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.[3] However, before deciding to implement the unitary proposal from the Northamptonshire councils the Secretary of State ran a statutory consultation on the Northamptonshire proposal. Full details of these exercises are covered in the Explanatory Memorandum to the Northamptonshire (Structural Changes) Order 2020[4].

10.2 Officials from the Ministry of Housing, Communities and Local Government consulted with officers from the Northamptonshire councils and shadow authorities throughout the shadow period to ensure all necessary provisions are included in the Order.

11. Guidance

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

12. Impact

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

12.2 The impact on the public sector is a simplification to the system of local government in Northamptonshire.

12.3 An 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 reorganisation to create new councils. The new councils will be democratically

[3] https://www.legislation.gov.uk/uksi/2018/930/memorandum/contents
[4] https://www.legislation.gov.uk/uksi/2020/156/memorandum/contents

accountable for their performance to their respective local electorates, 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.

14.2 This Order does not include a statutory review clause.

15. Contact

15.1 Jonathan Scanlan and Michelle Murray at the Ministry of Housing, Communities and Local Government (email: jonathan.scanlan@communities.gov.uk and michelle.murray@communities.gov.uk) 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 Luke Hall MP, Minister for Regional Growth and Local Government at the Ministry of Housing, Communities and Local Government, can confirm that this Explanatory Memorandum meets the required standard.