EXPLANATORY MEMORANDUM TO

THE CUMBRIA (CHANGES TO YEARS OF ELECTIONS) ORDER 2021

2021 No. 174

THE NORTH YORKSHIRE (CHANGES TO YEARS OF ELECTIONS) ORDER 2021

2021 No. 175

AND

THE SOMERSET (CHANGE TO YEAR OF ELECTION) ORDER 2021

2021 No. 176

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 These three Orders change to 2022 the year of the scheduled 2021 elections of county and district councillors in the local government areas of Cumbria, Carlisle and South Lakeland; North Yorkshire and Craven; and Somerset respectively.

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 As the instruments are subject to the negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

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

4.2 The territorial application of each instrument is England.

5. European Convention on Human Rights

5.1 As the instruments are subject to the negative resolution procedure and do not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Part 4 of the Local Government Act 2000 ("the 2000 Act") concerns elections of councillors to local authorities in England and Wales. Section 85 provides for three options for schemes of ordinary elections of councillors. The options are: (i) elections of all councillors in a given year and every fourth year thereafter ("whole council elections"); (ii) elections in a given year and every second year thereafter of half of the councillors ("elections by halves"); and (iii) elections in a given year and every year thereafter (except every fourth year) of one third of the councillors ("elections by thirds"). Section 87 confers a power on the Secretary of State to change by order the years in which the ordinary elections of councillors of a specified local authority are to be held, but which does not change the scheme of elections. An order may include provision to secure the retirement of councillors at different times from those at which they would otherwise have retired but may not change the scheme of elections of the authority. Section 105 of the 2000 Act provides that an order may make incidental, consequential, transitional or supplemental provision which the Secretary of State considers necessary or expedient, which includes the power to apply an enactment with or without modifications.

6.2 Part 1 of the Local Government and Public Involvement in Health Act 2007 ("the 2007 Act") concerns structural and boundary change of local government areas in England. Chapter 1 concerns structural change from two tiers of local government in an area to a single tier (from a county council and district councils for an area to a single unitary authority, commonly known as "unitarisation"). Section 2 provides for the Secretary of State to invite any principal authority (county council or district council in England) to submit a proposal for a single tier of local government. Section 7 confers a power on the Secretary of State to implement a proposal for unitarisation of an area which has been made by one or more of the principal authorities in the area. An order under section 7 is subject to the affirmative resolution procedure in both Houses of Parliament. Proposals for single tier local government have been made by a number of the principal authorities in each of the local government areas of Cumbria, North Yorkshire and Somerset in response to invitations from the Secretary of State to submit such proposals.

6.3 Section 60 of the Coronavirus Act 2020 Act ("the 2020 Act") provided for the postponement to 6 May 2021 of ordinary elections of councillors for any local government area in England which were due to be held on 7 May 2020. Section 61 of the 2020 Act provides power to make regulations to postpone to 6 May 2021 elections of a councillor for any local government area in England to fill a casual vacancy which would otherwise be held before that date. The Local Government and Police and Crime Commissioner (Coronavirus) (Postponement of Elections and Referendums) (England and Wales) Regulations 2020 (S.I. 2020/395) ("the 2020 Regulations") were made to postpone such by-elections and other local polls to 6 May 2021. These three Orders include consequential provision modifying the application of Article 5 of the 2020 Regulations so that by-elections to the relevant councils (listed at paragraph 7.7 of this explanatory memorandum) which have been postponed to the ordinary day of elections in 2021 take place on that day.

7. Policy background

What is being done and why?

7.1 On 9 October 2020 the Secretary of State issued invitations[1] to principal authorities in Cumbria, North Yorkshire and Somerset, including associated existing unitary authorities, to submit proposals for unitary local government. In a Written Ministerial Statement[2] issued on 12 October 2020, the Secretary of State set out that councils in these areas had requested such invitations and had been developing ideas about restructuring local government in their areas for some time and that it was right that they should now have the opportunity to take their local discussions to a conclusion, and if they wished, make proposals for unitary reform. On 9 December 2020, proposals for unitary local government were received from the principal authorities in each area.

7.2 The councils in Cumbria submitted a total of four proposals offering different single-tier arrangements of local government. The county council proposes a single unitary council over the current county footprint. Eden and Carlisle City councils propose two unitary councils splitting the current county area into a north council (Allerdale, Carlisle and Eden) and a south council (Copeland, South Lakeland and Barrow). Allerdale and Copeland district councils propose two unitary councils splitting the current county area into a West council (Copeland, Allerdale and Carlisle) and an East council (Barrow, South Lakeland and Eden). Barrow and South Lakeland district councils, with the support of Lancaster City Council (in Lancashire), propose two unitary councils: the Bay council (Barrow, South Lakeland and Lancaster City) and North Cumbria (Carlisle, Eden, Copeland and Allerdale).

7.3 The Secretary of State has received two proposals for unitary local government in North Yorkshire. The county council proposes a single council for the area of the current county council. Six of the seven districts (all bar Hambleton) propose two unitaries covering the east (Ryedale, Scarborough, Selby and the current unitary of the City of York) and the west (Craven, Hambleton, Harrogate and Richmondshire).

7.4 The Secretary of State has received two proposals for unitary local government in Somerset. The county council proposes a single council for the area of the current county council and the four district councils propose two unitary councils: Western Somerset (Somerset West and Taunton and Sedgemoor) and Eastern Somerset (Mendip and South Somerset).

7.5 Before implementing any proposal, section 7 of the 2007 Act requires the Secretary of State to first consult every authority affected by the proposal (except the authority or authorities which made it) and such other persons as he considers appropriate. Consultations on all proposals received are being undertaken over the period Monday 22 February to Monday 19 April. Following the conclusion of the consultations, the Secretary of State will carefully consider the consultation responses along with all other representations he has received and all relevant information available to him. He will assess the proposals on the basis of the criteria for establishing unitary authorities set out in the invitations, namely that if a unitary proposal is to be implemented it must be likely to improve local government and service delivery in the area,

[1] https://www.gov.uk/government/publications/invitations-to-submit-proposals-for-unitary-local-government-in-cumbria-north-yorkshire-and-somerset

[2] https://questions-statements.parliament.uk/written-statements/detail/2020-10-12/hcws502

command a good deal of local support overall across the area, and lead to unitary authorities covering a credible geography.

7.6 Previously when the Secretary of State has been considering proposals for unitary government from principal authorities in an area, or has decided to implement such a proposal (subject to Parliamentary agreement), he has postponed local elections due to take place in that area[3]. Rescheduling local elections avoids confusing the electorate who would otherwise be asked to vote for councils a short time after being consulted on proposals which, if implemented, would result in the abolition of those councils; rescheduling elections also avoids members being elected to serve for short terms (at most two years, where a shadow authority is established). These Orders are made without prejudice to any subsequent decisions on the unitary proposals under consideration.

7.7 The principal authority elections due to take place on 6 May 2021 in the three areas are: in Cumbria, Cumbria county council where whole council elections are scheduled for 6 May 2021 and Carlisle and South Lakeland district councils where elections for one third of the councils' seats have been postponed from May 2020; in North Yorkshire, North Yorkshire county council where whole council elections are scheduled for 6 May 2021 and Craven district council where elections for one third of the council's seats have been postponed from May 2020; and in Somerset, Somerset county council where whole council elections are scheduled for 6 May 2021. There are no ordinary elections due to take place to the other principal authorities in the three county areas, or to the City of York council (included in the North Yorkshire district councils' proposal) or to Lancaster City council (included in the proposal from Barrow and South Lakeland). There are elections on 6 May 2021 to Lancashire county council which we do not propose to reschedule as, if implemented, the Barrow and South Lakeland proposal would not involve the abolition of Lancashire county council.

7.8 In the Written Ministerial Statement of 12 October 2020, the Secretary of State said, "I recognise that when making proposals councils may request that the May 2021 local elections in the area are postponed. Such postponement of local elections where unitarisation is under consideration is precedented, and I will carefully consider any such request." Representations received by the Secretary of State seeking and opposing rescheduling of the May 2021 local elections are set out in section 10 (consultation outcome) of this explanatory memorandum.

7.9 In deciding to reschedule the 6 May 2021 local elections to the principal authorities in the three areas, the Secretary of State has carefully considered the views and reasons expressed requesting and opposing rescheduling, (set out in section 10 of this explanatory memorandum) and has had regard both to the importance of local elections as the foundation of our local democracy and ensuring the accountability of councils to local people, and to the risks of continuing with the May 2021 elections in the areas when consultations are taking place on proposals which could, if implemented and approved by Parliament, result in the abolition of those councils. Elections in such circumstances risk confusing voters and would be hard to justify

[3] For example, in Dorset (The Borough of Weymouth and Portland (Change to Year of Election) Order 2018 No. 256), in Buckinghamshire (The Districts of Aylesbury Vale, Chiltern, South Bucks and Wycombe (Changes to Years of Elections) Order 2018 No.1355), and in Northamptonshire (The Northamptonshire (Changes to Years of Elections) Order 2018 No.1324).

where members could be elected to serve shortened terms. However, by-elections to fill casual vacancies on the councils will proceed to ensure that electors in affected wards are fully represented on those councils. Elections for Police and Crime Commissioners will proceed in each area as will elections to local town and parish councils as these councils are not directly affected by the proposals for unitary local government. Previously where proposals for unitarisation have been under consideration and principal council elections in those areas have been postponed, town and parish council elections would have become stand alone and were therefore also postponed on cost grounds. This issue does not arise as all the areas will elect Police and Crime Commissioners in May 2021.

7.10 The Cumbria (Changes to Years of Elections) Order 2021 reschedules the elections to Cumbria county council, Carlisle City council and South Lakeland district council to the ordinary day of election of councillors in 2022. The North Yorkshire (Changes to Years of Elections) Order 2021 reschedules the elections to North Yorkshire county council and Craven district council to the ordinary day of election of councillors in 2022. The Somerset (Change to Year of Election) Order 2021 reschedules the elections to Somerset county council to the ordinary day of election of councillors in 2022. The Orders extend for a year the terms of office of councillors who would otherwise have retired following the May 2021 elections and makes consequential provision to ensure that by-elections to vacant seats will take place.

7.11 If the Secretary of State decides not to implement any of the principal authorities' proposals in an area then the rescheduled elections in that area will take place in May 2022 and then revert to the current electoral cycle. If the Secretary of State decides to implement any of the proposals he has received from the principal authorities in the three areas, and Parliament approves the making of any subsequent Structural Change Order/s under section 7 of the 2007 Act, provision could be made in the Structural Change Order/s relating to the May 2022 elections. Where an Order provides for a new unitary authority to be the sole local authority for its local government area from April 2023, elections could take place in May 2022 either to the continuing authority or to a new shadow authority/ties. Unitarisation can be effected in different ways: an existing authority can continue and assume all of the local government functions in the local government area while the other councils in the area are wound up and abolished; alternatively, all of the existing councils in the area can be wound up and abolished and one or more new unitary authorities created for the area. In the latter case, the new authority/ies may be established in shadow form for a period of time before becoming the sole local authority/ies for their local government area/s. In the case of a continuing authority that is currently a county council, the rescheduled district council elections could be cancelled and in the case of a shadow authority, the rescheduled county and district council elections could be cancelled. In either case the councils whose elections could be cancelled by a Structural Changes Order would cease to exist before the May 2023 local elections take place.

7.12 The schemes of elections in the councils are not affected by these Orders and those councils that elect by thirds or have whole council elections will continue to do so.

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

8.1 These instruments do not relate to withdrawal from the European Union.

9. Consolidation

9.1 These instruments do not consolidate any legislation.

10. Consultation outcome

10.1 There is no statutory duty to consult on whether or not the May 2021 elections in the three areas should be rescheduled. However, in the 12 October Written Ministerial Statement, the Secretary of State noted that such postponement was precedented and said that he would carefully consider any such requests. He received requests to reschedule local elections from principal authorities in each of the three areas and requests not to reschedule the local elections in each area. These requests are set out below.

10.2 Cumbria county council requested the rescheduling of its May 2021 elections; the county council has expressed no preference for treatment of the two district council elections. Carlisle and Eden district councils stated that they "have no problem in principle if the May 2021 elections are postponed": Carlisle City council referred to its recent electoral review, "consequently all City Councillors were newly elected in 2019", and Eden council, which does not have elections in May 2021, requested that by-elections to fill casual vacancies proceed. South Lakeland district council, which also had a recent electoral review with whole council elections in 2018, has requested an exception to any rescheduling to enable the district council elections, by-elections and elections for town and parishes, to proceed in May 2021; the council also resolved to express the view that the county council elections should proceed and to "request MHCLG to consider the timing of any future consultation on proposals for local government reorganisation and potential conflict with purdah restrictions and to exercise their powers with regard to the holding of local elections accordingly". Copeland and Allerdale district councils have "requested postponement until 2023 so no requirement for County Council to continue in any shape or form" but have not expressed a view on the Carlisle and South Lakeland elections. Barrow-in-Furness district council "doesn't seek postponement".

10.3 North Yorkshire county council has requested the rescheduling of the county council elections but has not requested rescheduling of the Craven district council elections. However, they have stated that it is "essential to postpone these elections in order to enable the public and candidates to understand what they are being elected to, and to avoid the election process being embroiled in local government reform issues".

10.4 The North Yorkshire district councils oppose the rescheduling of the May 2021 elections to North Yorkshire county council and to Craven district council and offer an alternative approach. This approach was based on the assumption that elections to any new unitary authority would be in 2023 whereas in the Government's view such elections are likely to be in 2022 as set out at paragraph 7.11 of this explanatory memorandum. Six of the seven district councils (Craven, Harrogate, Richmondshire, Ryedale, Scarborough and Selby) propose that councillors elected to North Yorkshire county council in May 2021 would serve a two-year term prior to establishment of the unitary authorities (the districts propose a two unitary arrangement including the area of York unitary council), with elections to the new authorities taking place in May 2023. The City of York and five of the seven district councils are next due to have elections in May 2023, so current councillors would complete a full four-year term prior to the first new unitary elections. Craven is the only district council which has elections by thirds and is due to have elections in 2021 and 2022. The district councils

propose that the 2021 elections go ahead with new members serving a two-year term but that the 2022 elections are postponed. Harrogate is due to have its next elections in 2022. It is proposed that these should be postponed with current councillors completing a five-year term prior to new unitary elections in 2023. Hambleton is the only district council in North Yorkshire which did not put forward the proposal and we do not have their views as to whether or not the May 2021 elections should be rescheduled; in any event Hambleton do not have elections in 2021.

10.5 Somerset county council has requested the rescheduling of its elections; there are no district council elections scheduled in Somerset in May 2021. The county council did not provide reasons for requesting the rescheduling in the letter accompanying its proposal. However, at the council meeting where the decision to request rescheduling was made the following three sets of reasons were given. First, that consultation would take place during a part of the pre-election period of sensitivity ("purdah"). Second, should the Secretary of State decide to implement local government reorganisation, and Parliament approve legislation establishing a new unitary council with elections to the new council in the year it is created, then county councillors elected in May 2021 would serve for only one or two years, depending on implementation timescales, before the role is abolished. The council noted that elections in such circumstances risk confusing voters and would involve significant costs (in excess of £1m) that would be hard to justify and could be better used to meet Somerset's priorities. Third, the importance of there being certainty with the Secretary of State as soon as possible in order to allow effective planning if the elections are to go ahead, and effective communications with the public and stakeholders if they are to be deferred.

10.6 The four district councils in Somerset (Mendip, Sedgemoor, Somerset West and Taunton and South Somerset) have written jointly objecting to the rescheduling of the county council elections. They have erroneously assumed that there will be no elections until 2023 following the rescheduling and suggest that since there was a referendum on a single unitary that rejected the proposal in 2007, the county council elections should go ahead as a vote on the single unitary and on the county council performance.

10.7 As set out in section 7 of this Explanatory Memorandum, in reaching his decision to reschedule the principal authority elections in each of the three areas, the Secretary of State has carefully considered the views and reasons expressed by the councils requesting and opposing the rescheduling of local elections in each area.

11. Guidance

11.1 No guidance is necessary to accompany the Orders; the councils concerned have been notified of their making.

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 should be positive as it will save the costs of holding elections for new councillors who could be members of the councils for only one or at most two years.

12.3 An Impact Assessment has not been prepared for this instrument because there is no impact on business, 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 There is no plan to monitor or review this legislation as its purpose is limited to the rescheduling of county and district council elections to May 2022.

15. Contact

15.1 Gemma Penn at the Ministry of Housing, Communities and Local Government; Telephone: 0303 444 3677 or email: gemma.penn@communities.gov.uk can be contacted with any queries regarding the instrument.

15.2 Paul Rowsell, Deputy Director and Head of the 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 of State for Regional Growth and Local Government can confirm that this Explanatory Memorandum meets the required standard.