EXPLANATORY MEMORANDUM TO

THE SOMERSET WEST AND TAUNTON (MODIFICATION OF BOUNDARY CHANGE ENACTMENTS) REGULATIONS 2018

2018 No. 638

AND

THE SOMERSET WEST AND TAUNTON (LOCAL GOVERNMENT CHANGES) ORDER 2018

2018 No. 649

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.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

1.3 For the Somerset West and Taunton (Modification of Boundary Change Enactments) Regulations 2018 a report is required by section 15(12) and (13) of the Cities and Local Government Devolution Act 2016, and this is published alongside this memorandum.

2. Purpose of the instrument

2.1 These instruments provide for the abolition of West Somerset and Taunton Deane districts and their district and borough councils respectively, and the creation of a new Somerset West and Taunton district and Somerset West and Taunton District Council which covers the same contiguous geographic area.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 The instruments apply only to England.

3.3 The instruments apply only to England as they are entirely concerned with local government areas in England. The instruments do not give rise to minor or consequential effects outside England.

3.4 In the view of the Department, for the purposes of House of Commons Standing Order 83P 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; or the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament; or the National

Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.

3.5 The Department has reached this view because it considers that the primary purposes of the provisions in these instruments relate to local government which is within the devolved legislative competence of the Scottish Parliament, the Northern Ireland Assembly and the National Assembly for Wales.

4. Legislative Context

4.1 This memorandum details two statutory instruments. The first, the Somerset West and Taunton (Modification of Boundary Change Enactments) Regulations 2018, varies the Local Government and Public Involvement in Health Act 2007 ("the 2007 Act") in application to West Somerset District Council and Taunton Deane Borough Council. The second, the Somerset West and Taunton (Local Government Changes) Order 2018, establishes the new non-metropolitan district and district council.

The Somerset West and Taunton (Modification of Boundary Change Enactments) Regulations 2018

4.2 Part 1 of the 2007 Act provides for structural and boundary change of local government areas and councils in England. Section 8 of the 2007 Act provides that the Local Government Boundary Commission ("the Commission") may, either on their own initiative or at the request of the Secretary of State or a local authority, conduct a review of one or more local government areas. Where they have conducted a review under this section the Commission may recommend to the Secretary of State such boundary change as in consequence of the review seems to them desirable. "Boundary change" means the alteration of a local government area boundary; the abolition of a local government area or the constitution of a new local government area (or any combination of these). No recommendation may be made under section 8 which recommends some form of structural change (i.e. the creation of a single tier of local government in an area which previously had two tiers). Structural change is provided for in sections 1 to 7 of the 2007 Act.

4.3 Section 10 of the 2007 Act gives the Secretary of State power, by order (subject to the affirmative resolution procedure), to make boundary changes to a local government area following a review by the Commission. The detail of what a section 10 order can include is set out in sections 11 and 12. A section 10 order can, for example, create a new local government area or abolish an existing one; move the boundary of any local government area; create a new council for the area; or abolish an existing one and provide for a new name. A section 10 order can also make provision for "electoral matters" which, for example, includes the total number of members (councillors) of the authority; the number and boundaries of electoral areas and the number of councillors to be returned by each area. A section 10 order can also include transitional provision allowing, for example, for the appointment by the Secretary of State of members of an existing local authority to be members of a new local authority for a transitional period.

4.4 Section 15 of the Cities and Local Government Devolution Act 2016 ("the 2016 Act") provides that the Secretary of State may by regulations (subject to the affirmative resolution procedure) make provision about the structural and boundary arrangements in relation to local authorities under Part 1 of the 2007 Act. In particular, by making provision as to how Part 1 of the 2007 Act is to apply in relation to particular cases

(including by disapplying the application of Part 1 or applying it subject to any variations that are specified in the regulations).

4.5 Regulations under this section, including structural or boundary provision in relation to a non-unitary district council area, may be made if at least one relevant local authority consents (i.e. one of the councils whose area falls within the area concerned). This consent requirement expires at the end of 31st March 2019 (but without affecting any regulations already made under this section by virtue of subsection (5)). After that date, the exercise of powers under section 15 will require the consent of all relevant authorities in the area in question.

4.6 These regulations made under section 15 of the 2016 Act would provide that Part 1 of the 2007 Act is to be varied in its application to the case of West Somerset and Taunton Deane so that those councils can make proposals for boundary change in their area to the Secretary of State rather than to the Local Government Boundary Commission and allow the Secretary of State to implement those proposals by order under section 10 of the 2007 Act.

The Somerset West and Taunton (Local Government Changes) Order 2018

4.7 This Order is made in exercise of the powers conferred by sections 10, 11, 12 and 13 of the 2007 Act. It implements the proposal made under the 2007 Act (as modified by the Regulations) that there should be a new non-metropolitan district council for Somerset West and Taunton.

4.8 Section 14 of the 2007 Act enables the Secretary of State, by regulations of general application, to make incidental, consequential, transitional and supplementary provision to give full effect to these local government changes. The Secretary of State intends to exercise his powers under this section to, among other things, make provision for transferring functions, property, rights and liabilities to the new council, as well as providing for transitional provisions relating to financial matters.

5. Extent and Territorial Application

5.1 The instruments extend to England and Wales.

5.2 The territorial application of these instruments is set out in Section 3 under "Other matters of interest to the House of Commons".

6. European Convention on Human Rights

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

"In my view the provisions of The Somerset West and Taunton (Modification of Boundary Change Enactments) Regulations 2018 and The Somerset West and Taunton (Local Government Changes) Order 2018 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The Government made a manifesto commitment to support those authorities that wish to combine to serve their communities better, and the Ministry of Housing,

Communities and Local Government is committed to consider locally-led proposals for unitarisation and mergers between councils when requested.

7.2 The Government set out the criteria against which merger proposals would be considered in a Written Ministerial Statement on 7 November 2017[1]. These are that:

- the proposal is likely to improve local government in the area (by improving service delivery, giving greater value for money, yielding cost savings, providing stronger strategic and local leadership, and/or delivering more sustainable structures);
- the proposal commands local support, in particular that the merger is proposed by all councils which are to be merged and there is evidence of a good deal of local support; and
- the proposed merged area is a credible geography, consisting of two or more existing local government areas that are adjacent, and which, if established, would not pose an obstacle to locally-led proposals for authorities to combine to serve their communities better and would facilitate joint working between local authorities.

7.3 West Somerset District Council and Taunton Deane Borough Council developed and consulted on a proposal, which they submitted to the Secretary of State on 27 March 2017. The Secretary of State considered the proposal put forward by the two councils and, on 30 November 2017[2], announced that he was "minded-to" implement the proposal. There then followed a period for representations, which lasted until 19 January 2018. After carefully considering all the material and representations he received, the Secretary of State concluded that the criteria outlined above are likely to be fully met and that, subject to Parliamentary approval, the proposal should be implemented. The Secretary of State announced his decision to Parliament on 22 March 2018[3].

7.4 Pursuant to the statutory framework described in Section 4 above, the Secretary of State must give full consideration to proposals received from local authorities that wish to restructure how they are organised. These Regulations are made under provisions of the 2016 Act enabling regulations to be made to streamline the processes for local government reorganisation, including unitarisation, council mergers and boundary changes, for which provision is made in the 2007 Act.

<u>The Somerset West and Taunton (Modification of Boundary Change Enactments) Regulations 2018</u>

7.5 These Regulations modify provisions related to boundary changes in the Local Government and Public Involvement in Health Act 2007 as they apply to West Somerset District Council and Taunton Deane Borough Council.

7.6 To implement the proposal in a timely manner, regulations are made under section 15 of the 2016 Act which provides that Part 1 of the 2007 Act is to be varied in its application to the case of West Somerset and Taunton Deane, so that the Secretary of

[1] https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2017-11-07/HCWS232/
[2] http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2017-11-30/HCWS294/
[3] http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-03-22/HCWS578/

State is able to act upon a submission from the local areas regarding reorganisation of the local boundaries, whilst still maintaining the ability for the Local Government Boundary Commission to carry out an electoral review of the area.

7.7 Regulation 3 modifies certain provisions of Part 1 of the Local Government and Public Involvement in Health Act 2007 for the purposes of boundary change of the local government areas of West Somerset and Taunton Deane. Section 8 of the 2007 Act is modified to allow for a proposal for boundary change affecting its area to be made by a relevant local authority without the requirement of a review or recommendation from the Local Government Boundary Commission.

7.8 Regulation 4 provides for the relevant provisions of the 2007 Act as modified by these Regulations to apply to the implementation of a proposal made before the coming into force of these Regulations.

7.9 Regulation 5 provides for the expiry of these Regulations at the end of March 2020. This is to allow for sufficient time should the need arise for a further Order under section 10 of the 2007 Act to be made, in order to give full effect to the proposal.

The Somerset West and Taunton (Local Government Changes) Order 2018

7.10 This Order establishes a new non-metropolitan district, Somerset West and Taunton, in the county of Somerset; establishes Somerset West and Taunton Council as the district council for Somerset West and Taunton and abolishes West Somerset District and Taunton Deane Borough and their councils.

7.11 The Order provides for the establishment of a shadow authority before Somerset West and Taunton Council takes on full responsibility for local government matters on 1 April 2019, with members appointed from the existing councils; for the creation of a shadow executive; and for the creation of a Central Implementation Team to support the executive. The shadow authority and shadow executive are tasked with making all necessary preparations in advance of 1 April 2019 (including preparing and keeping under review an implementation plan and appointment of key officers); the costs of the shadow authority and shadow executive are to be met by the existing district councils.

7.12 Part 4 of the Order deals with electoral matters including provision that a whole council election of councillors of Somerset West and Taunton Council is to take place on the ordinary day of election in 2019 and in every fourth year thereafter. Once the Order is made, the Local Government Boundary Commission for England will be invited to review the wards in time for the elections in 2019. This would supersede the electoral arrangements in the Order.

7.13 Part 5 of the Order imposes general transitional duties on the existing district councils, in particular to cooperate with each other and the shadow authority and shadow executive.

7.14 The Schedule sets out electoral wards for Somerset West and Taunton and provides for a total of 58 councillors. The wards have been constructed using a mixture of existing wards and electoral divisions with the aim of delivering, as closely as possible, electoral equality. These will be used for the 2019 elections only if the Commission has not been able to complete their electoral review of the new Somerset West and Taunton area.

8. Consultation outcome

Consultation before initial decision

8.1 Following the decision of the councils to proceed in principle with the proposal to merge, the councils undertook a programme of engagement designed to gather the views of a broad range of people, bodies and organisations within both Taunton Deane and West Somerset. These included residents, business, key partners, precepting authorities, the charitable and voluntary sector, local members of parliament and town and parish councils.

8.2 The consultation was publicised in a number of ways including via the Somerset County Council newspaper 'Your Somerset', sent to 63,000 homes throughout West Somerset and Taunton Deane, in the local press, through letters to key stakeholders, through newsletters to each of Taunton Deane Borough Council's housing tenants, through social media, via the councils' websites and through poster displays in key locations. A dedicated website (yournewcouncil.org) was created containing background information and an online questionnaire, with paper versions of each also made available. A series of eight public road-shows were held to encourage participation and allow those uncomfortable with, or unable to use, the internet to get involved. The road-shows were held at locations throughout the Taunton Deane and West Somerset area to encourage engagement, and events were run on a Saturday to ensure those who were working on weekdays could attend. Nine specially arranged meetings with representatives of town and parish councils (and community groups for the unparished area) also took place to capture further opinion, and to stimulate interest and debate.

8.3 Before the start of the consultation, between 7 and 12 December 2016, a statistically representative random sample of 512 Taunton Deane and West Somerset residents (aged 18 or over) was polled by telephone by Populus Data Solutions to establish awareness of the proposal and of the financial position of both of the councils. The December poll established that 58 per cent of residents polled were already aware of the financial challenges facing both councils. It further established that 53 per cent of those polled were aware of the proposal to create a new council for West Somerset and Taunton Deane. This was followed by a further telephone poll toward the close of the consultation, which was conducted between 20 and 26 February 2017. The February poll was used to measure the effectiveness of the communication and publicity about the proposal during the consultation.This poll demonstrated a significant increase in residents' levels of awareness of both the councils' financial challenges (awareness rose from 58% to 67%) and of the new council proposal (awareness rose from 53% to 61%).

8.4 Open public consultation ran from 12 December 2016 to 28 February 2017. All interested stakeholders were invited to complete a nine-question questionnaire either via a dedicated website or via paper versions that were made available.

8.5 In response to the consultation there were 76 written and 528 questionnaire responses that displayed a good level of support for the proposal overall.

8.6 Somerset County Council, the two district councils, some town and parish councils, Avon and Somerset Police Authority, and a number of businesses/major employers expressed support for the proposal.

8.7 The most commonly expressed concern about the proposal was around the relative financial positions of the two councils and the belief that residents of Taunton Deane

would be subsidising West Somerset and that as a consequence Taunton Deane residents would be disadvantaged in a variety of ways including having to pay higher Council Tax or receiving a reduced level of service. However, it was made clear in the joint business case submitted to the Secretary of State that both councils stand to make savings and improve their financial sustainability through the merger. Council tax levels in both areas are very similar and no evidence has been presented to suggest that a significant rise is expected if the merger is implemented.

Representations received after initial decision

8.8 After the Secretary of State announced his initial decision that he was minded to implement the proposal, there was a period for representations lasting from 30 November 2017 until 19 January 2018. 251 representations were received. Of these 114 were supportive of the proposal, 14 were neutral and 123 were opposed.

8.9 The county council and all public bodies, for example the local health authority, were either supportive (15 representations) or raised no objections (4 representations). A majority of businesses and voluntary sector organisations were also either supportive (18 representations) or raised no objections (4 representations). The majority of town and parish councils were supportive (10 representations) or neutral (1 representation). 53 members of the public were also supportive of the proposal.

8.10 The majority of negative representations received were from members of the public (99 representations) with a further 15 negative representations coming from local councillors. A recurring theme of the negative representations was an unwillingness among Taunton Deane residents to take on West Somerset as a financially unsustainable council. However the proposal put forward by both councils outlines that the merger would result in increased financial sustainability across the area, for both extant councils. A further common issue in the representations was a concern that residents of West Somerset would not be as fully represented in the local democracy as residents of Taunton. However, should the merger be implemented following Parliamentary approval, the Local Government Boundary Commission is expected to carry out a full electoral review of the whole area to ensure that all communities are properly represented and all votes are worth the same within the local democracy. Moreover, the whole of West Somerset is parished with elected parish councillors representing the local communities. It is also the case that, should the merger be implemented, the new shadow authority will immediately carry out a Community Governance Review to ensure that the currently unparished area of Taunton is parished as soon as possible.

9. Guidance

9.1 The Government continues to work with colleagues in local areas to support their implementation of this council merger. No guidance is therefore necessary to accompany these instruments.

10. Impact

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

10.2 In terms of impact on the public sector, a number of local public bodies, such as NHS providers, housing associations and third sector organisations, have made representations that this council merger would improve local partnership working.

10.3 The councils consider that becoming a single council will secure ongoing savings of £3.1 million per annum; which include an additional £0.5 million of ongoing savings per annum from the current shared working partnership.

10.4 The establishment of a single district council would improve the sustainability of the services that are currently carried out by the two councils individually. The proposal provides the opportunity to bring savings which would allow them to invest in services. It is likely that the establishment of a single district council would help ensure the strong and influential local leadership required to tackle challenges such as an aging population and the need for affordable new homes.

10.5 A full regulatory impact assessment has not been prepared as these instruments will have no impact on the costs of business and the voluntary sector.

11. Regulating small business

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

12. Monitoring & review

12.1 These instruments provide for new governance arrangements in the areas of West Somerset District Council and Taunton Deane Borough Council. The new council – Somerset West and Taunton Council - will be democratically accountable for its performance to its local electorate and subject to the audit and accountability regimes applicable to the generality of local government.

13. Contact

13.1 Rosemary Fletcher at the Ministry of Housing, Communities and Local Government Telephone: 07458124742 or email: Rosemary.Fletcher@communities.gsi.gov.uk can answer any queries regarding these instruments.