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Draft Order laid before Parliament under section 240(6) of the Local Government and Public Involvement in Health Act 2007, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2008 No.

LOCAL GOVERNMENT, ENGLAND

The Cornwall (Structural Change) Order 2008

Made - - - - 2008

Coming into force in accordance with article 1

This Order implements, without modification, a proposal, submitted to the Secretary of State for Communities and Local Government under section 2 of the Local Government and Public Involvement in Health Act 2007(1), that there should be a single tier of local government for the county of Cornwall.

That proposal was made by Cornwall County Council.

The Secretary of State did not make a request under section 4 of the Local Government and Public Involvement in Health Act 2007 (request for Boundary Committee for England's advice).

Before making the Order the Secretary of State consulted the following about the proposal—

- (a) every authority affected by the proposal(2) (except the authority which made it); and
- (b) other persons the Secretary of State considered appropriate.

The Secretary of State for Communities and Local Government makes this Order in the exercise of the powers conferred by sections 7, 11, 12 and 13 of the Local Government and Public Involvement in Health Act 2007:

(1) 2007 c.28. See section 21(3) as to proposals made in response to pre-commencement invitations, and section 23(3).

(2) See section 7(4) as to authorities "affected by" a proposal for the purposes of that section.

PART 1

GENERAL

Citation and commencement

2. This Order may be cited as the Cornwall (Structural Change) Order 2008 and shall come into force on the day after that on which it is made.

Interpretation

3. In this Order—

“the 2007 Act” means the Local Government and Public Involvement in Health Act 2007;

“the 2000 Act” means the Local Government Act 2000 as it has effect in relation to the Cornwall council(3);

“the 1972 Act” means the Local Government Act 1972(4);

“article 7 functions” means the functions referred to in article 7;

“Cornwall”, except in the definition of “the Cornwall council” and the second mention of those words in article 3(2), means the county of Cornwall;

“the 2009 election day” means the ordinary day of election of councillors(5) in 2009;

“the Cornwall council” means the council of the county of Cornwall;

“the district councils” means the councils specified in article 4(b);

“the Implementation Executive” means the committee established (whether before or after the coming into force of this Order) for the purposes of article 6(3); and

“the main transitional function” has the meaning given by article 6(1).

PART 2

ESTABLISHMENT OF SINGLE TIER LOCAL GOVERNMENT IN CORNWALL

Single tier local government in Cornwall

4.—(1) On and after 1st April 2009 the Cornwall council shall be the sole principal authority for Cornwall.

(2) For the purposes of enactments relating to local government, there shall be a new district, whose area shall be co-terminous with that of Cornwall; and the name of that new district shall be Cornwall.

Abolition of districts and winding up and dissolution of district councils

5. On 1st April 2009—

(a) the following local government areas shall be abolished—

(i) the borough of Restormel,

(3) 2000 c.22. Relevant amendments are made by Part 3 of the Local Government and Public Involvement in Health Act 2007, but see paragraph 2 of Schedule 4 to that Act for transitional provisions relevant to the Cornwall council.

(4) 1972 c.70.

(5) See section 37 of the Representation of the People Act 1983 (c.2).

- (ii) the district of Caradon,
 - (iii) the district of Carrick,
 - (iv) the district of Kerrier,
 - (v) the district of North Cornwall, and
 - (vi) the district of Penwith; and
- (b) the following councils shall be wound up and dissolved—
- (i) Caradon District Council,
 - (ii) Carrick District Council,
 - (iii) Kerrier District Council,
 - (iv) North Cornwall District Council,
 - (v) Penwith District Council, and
 - (vi) Restormel Borough Council.

Cessation of term of office of district councillors

6. Every person who holds office as a councillor of one of the district councils immediately before 1st April 2009 shall cease to hold office on that date.

PART 3

TRANSITIONAL FUNCTIONS AND THEIR DISCHARGE

Transitional functions of the Cornwall council and establishment of Implementation Executive

7.—(1) On the coming into force of this Order there shall be added to the functions of the Cornwall council the function, which is to be exercisable only during the transitional period ending on the fourth day after the 2009 election day, of preparing for and facilitating the economic, effective, efficient and timely transfer of the district councils' functions, property, rights and liabilities (“the main transitional function”).

(2) Section 15 of the 2000 Act (discharge of functions: leader and cabinet executive) shall have effect in relation to the Cornwall council and—

- (a) the main transitional function, and
- (b) the other transitional functions referred to in article 7 (“the article 7 functions”),

as if, in subsection (1), after the words “19 or 20,” there were inserted “or under the Cornwall (Structural Change) Order 2008,”.

(3) The Cornwall council's executive arrangements shall provide for the discharge of the main transitional function and the article 7 functions to be the responsibility of a committee of the council's executive, to be known as the Implementation Executive.

(4) Such statutory provisions as apply to, or in relation to, committees of a local authority's executive shall apply to, or in relation to, the Implementation Executive subject only to paragraphs (5), (6) and (8) to (11) of this article and article 8(2) to (4); and for this purpose “statutory provisions” includes —

- (a) any enactment contained in an Act passed after the making of this Order; and

- (b) any instrument made at any time under an enactment (including an enactment contained in an Act passed after the 2007 Act).
- (5) The Implementation Executive shall consist of—
- (a) the person who is for the time being the leader of the Cornwall council’s executive;
 - (b) eleven persons nominated by the Cornwall council, being persons who are for the time being members of that council; and
 - (c) twelve other persons, of whom each of the district councils shall nominate two, being persons who are for the time being members of the council by which they are nominated (whether or not including the leaders for the time being of those councils).
- (6) In making the nominations referred to in paragraph (5)(b) and (c), the Cornwall council and the district councils shall, to the extent that it is practicable to do so, secure that at all times there are on the Implementation Executive—
- (a) four members of the Conservative Party,
 - (b) six persons who are members of no registered party within the meaning of that term in the Political Parties, Elections and Referendums Act 2000⁽⁶⁾,
 - (c) one member of the Labour Party, and
 - (d) thirteen members of the Liberal Democrats.
- (7) It shall be the duty of the Cornwall council and each of the district councils to co-operate in the establishment of the Implementation Executive.
- (8) The leader of the Implementation Executive shall be the person who is for the time being the leader of the Cornwall council’s executive; and that person shall preside at all meetings of the Implementation Executive at which he is present.
- (9) The persons who, immediately before 1st April 2009, are members of the Implementation Executive by virtue of paragraph (5)(c) shall continue as members of the Implementation Executive notwithstanding that they cease on that date to be members of the district councils.
- (10) The Implementation Executive shall regulate its own proceedings, but a question to be decided by the Executive shall, in the first instance, be decided by the majority of those present and voting at the meeting at which the question is put, each member (including the leader of the Implementation Executive) having one vote.
- (11) In the case of an equality of votes, the person presiding at the meeting (whether or not the leader of the Implementation Executive) shall have a casting vote, in addition to any other vote the person may have.

Other transitional functions

- 8.—**(1) The other transitional functions referred to in article 6(2)(b), which are to be exercisable only during the transitional period ending on the fourth day after the 2009 election day, are—
- (a) such executive and non-executive functions of the Cornwall council as exist on the date on which this Order is made; and
 - (b) such other functions (including functions exercisable by all or any of the district councils, and functions conferred on or after that date on local authorities generally or on particular classes of local authority),

as, by any of the means mentioned in paragraph (2), the Secretary of State may specify.

- (2) The means referred to in paragraph (1) are—
- (a) this Order,

⁽⁶⁾ 2000 c.41. See the definition in section 160(1), and Part 2 of the Act.

- (b) a subsequent order made under section 7 of the 2007 Act by virtue of section 14 of the Interpretation Act 1978 (power to amend)(7),
- (c) an order under section 20 of the 2007 Act (correction of orders), and
- (d) regulations under section 14 of the 2007 Act (regulations for supplementing orders).

Discharge of functions by Implementation Executive

9.—(1) The discharge of the main transitional function and the article 7 functions shall be a responsibility of the Implementation Executive, and shall not be a responsibility of the executive of the Cornwall council.

(2) Section 15(7) of the 2000 Act (which enables a committee of a local authority executive to arrange for the discharge of its functions by an officer of the authority) shall have effect in relation to the Implementation Executive as if—

- (a) references to functions included references to responsibilities, and
- (b) the reference to an officer of the authority included a reference to—
 - (i) a sub-committee of the Implementation Executive, and
 - (ii) an officer of any of the district councils.

(3) Section 15(9) of the 2000 Act (which enables a person who has made arrangements for the discharge by another person of any function of his, to discharge that function himself) shall have effect in relation to arrangements made under subsection (7) of that section (as modified by paragraph (2) above) as if —

- (a) references to functions included references to responsibilities, and
- (b) the reference to an officer of the authority included a reference to—
 - (i) a sub-committee of the Implementation Executive, and
 - (ii) an officer of any of the district councils.

(4) Section 21 of the 2000 Act (overview and scrutiny committees) shall not apply on or before 31st March 2009 in relation to any matter—

- (a) that is a responsibility of the Implementation Executive by virtue of paragraph (1), or
- (b) that is the responsibility of that Executive under arrangements made by the Cornwall council under the 2000 Act.

(5) Until 1st April 2009, section 13 of the 2000 Act (functions which are the responsibility of an executive) shall have effect as if, at the end of subsection (10)(c), there were added “or as mentioned in article 8(6) of the Cornwall (Structural Change) Order 2008”.

(6) The Cornwall council and the district councils may discharge jointly under arrangements under section 101(5) of the 1972 Act the functions of—

- (a) reviewing or scrutinising decisions made, or other action taken, by the Implementation Executive in connection with any matter of a description mentioned in paragraph (4); or
- (b) preparing reports for, or making recommendations to, the Implementation Executive in connection with any function or responsibility of that Executive.

(7) Where such arrangements as are mentioned in paragraph (6) are made, the joint committee shall inform the Cornwall council and the district councils at least once in each period of three months beginning with the period ending on 31st March 2008 of—

- (a) the matters that it has considered during the period in question, and
- (b) the conclusions (if any) that it has reached concerning those matters.

(8) The Implementation Executive and any sub-committee of that Executive shall be dissolved on the fourth day after the 2009 election day.

(9) Any joint committee established as mentioned in paragraph (6) shall be dissolved on 1st April 2009.

Implementation Plan and further provisions relevant to discharge of functions by Implementation Executive

10.—(1) The Implementation Executive shall prepare, keep under review, and revise as necessary, an Implementation Plan which shall include—

- (a) such plans and timetables as the Implementation Executive considers necessary to secure the effective, efficient and timely discharge of the main transitional function and the article 7 functions; and
 - (b) such budgets and plans as it considers necessary or desirable to facilitate the economic, effective, efficient and timely discharge of the Cornwall council’s functions on or after 1st April 2009.
- (2) For the purposes of —
- (a) preparing, reviewing and revising the Implementation Plan,
 - (b) discharging the main transitional function and the article 7 functions, and
 - (c) discharging such other functions as may be conferred on it,

the Implementation Executive shall have regard to the information supplied by the Cornwall council to the Secretary of State in support of its proposal for single tier local government in Cornwall and, in particular, to the information supplied in relation to the matters specified in paragraphs 3.6 to 3.11 (strategic leadership, neighbourhood empowerment and value for money services) of the guidance “Invitations to councils in England”, issued by the Secretary of State in October 2006⁽⁸⁾.

- (3) The Implementation Executive may, by written notice to—
- (a) the proper officer of the Cornwall council, or
 - (b) the proper officer of any of the district councils,

require the council referred to in the notice to take such action relevant to the main transitional function or any of the article 7 functions as may be specified in the notice.

(4) In paragraph (3), “the proper officer”, means the officer appointed by the Cornwall council or the district council concerned (as the case may be) for the purpose of receiving such notices.

Implementation Team

11.—(1) Not later than 21 days after the coming into force of this Order the Implementation Executive shall form a team of officers for the purpose of assisting the Executive in the discharge of the main transitional function and the article 7 functions (“the Implementation Team”).

(2) The members of the Implementation Team shall include officers from both the Cornwall council and each of the district councils.

(3) The leader of the Implementation Team shall be an officer of the Cornwall council.

(4) It shall be the duty of the Cornwall council and each of the district councils to co-operate in the formation of the Implementation Team and to release the officers concerned from their normal duties at such times or for such periods as the Implementation Executive may reasonably require.

(8) The guidance was published by the Department for Communities and Local Government. Copies of the guidance may be obtained from Communities and Local Government Publications, PO Box 236, Wetherby, West Yorkshire, LS23 7NB, quoting Product Code 06 LGSRU 04198 (Tel: 08701 226 236; Email: communities@twoten.com or online at www.communities.gov.uk).

PART 4

DUTIES OF THE CORNWALL COUNCIL AND THE DISTRICT COUNCILS RELEVANT TO TRANSITION

General transitional duties of the Cornwall council and the district councils

12.—(1) It shall be the duty of the Cornwall council and the district councils—

- (a) to take, whether alone or in any combination, such steps as may be necessary to prepare for the transfer of the functions, property, rights and liabilities of the district councils;
- (b) to consult and co-operate with each other in order to secure the economic, effective, efficient and timely transfer of those functions, property, rights and liabilities; and
- (c) generally, to exercise their functions so as to further the purposes of this Order.

(2) Without prejudice to the generality of paragraph (1), the Cornwall council and each of the district councils shall provide such information relating to its functions as any other of those councils may reasonably request for the purpose of giving effect to this Order.

(3) Any person authorised in that behalf by the council making the request shall be entitled, at all reasonable times, on producing evidence of his authority (if so required by the council from which the information is sought)—

- (a) to inspect any record belonging to or under the control of the council providing the information and relating to that council or its functions; and
- (b) to take, or be supplied with, a copy of any such record or part of it.

(4) The rights conferred by paragraph (3) include the right to require any record which is not in legible form to be made available in legible form so that the authorised person may inspect or copy it or be supplied with copies.

PART 5

ELECTORAL MATTERS

Cancellation of district council elections in 2008, etc

13.—(1) Notwithstanding section 7(8) and (9) of the 1972 Act (elections of councillors)—

- (a) elections shall not be held in 2008 for the return of councillors to any of the district councils; and
- (b) the term of office of councillors elected to any of the district councils in 2004, 2006 or 2007 shall end on 1st April 2009⁽⁹⁾.

(2) Nothing in section 89 of the 1972 Act (filling of casual vacancies in case of councillors) shall authorise the holding of an election to fill a casual vacancy in the office of councillor of any of the district councils where that vacancy arises after 30th September 2008 and before 1st April 2009.

Cancellation of parish council elections, etc

14.—(1) Notwithstanding section 16(3) of the 1972 Act (election of parish councillors)—

⁽⁹⁾ Under section 7(9) of the Local Government Act 1972, the term of office of councillors of non-metropolitan district councils is four years.

- (a) elections shall not be held in 2008 for the return of councillors to the council of the parish of Ludgvan or Towednack⁽¹⁰⁾;
 - (b) elections of parish councillors for the parishes of Ludgvan and Towednack shall be held on the ordinary day of election of councillors in 2009 and every four years thereafter; and
 - (c) the term of office of councillors elected to those parishes in 2003 or at any subsequent by-election before the ordinary day of election of councillors in 2009, shall end on the fourth day after the ordinary day of election of councillors in 2009⁽¹¹⁾.
- (2) Notwithstanding section 16(3) of the 1972 Act (election of parish councillors)—
- (a) elections shall not be held in 2011 for the return of councillors to the council of any parish within Cornwall;
 - (b) elections of parish councillors for those parishes in which, but for sub-paragraph (a), elections would have been held in 2011 shall be held on the ordinary day of election of councillors in 2013 and every four years thereafter.
 - (c) the term of office of parish councillors elected in 2007 or at any subsequent by-election before the ordinary day of election of councillors in 2013, shall end on the fourth day after the ordinary day of election of councillors in 2013.

PART 6

AMENDMENT OF ORDER

Amendment of Order

15. The District of Penwith (Electoral Changes) Order 2002⁽¹²⁾ is amended by the omission of article 9.

Signed by authority of the Secretary of State for Communities and Local Government

Date

Name
Minister of State
Department for Communities and Local
Government

⁽¹⁰⁾ Elections in those parishes were moved from 2007 to 2008 by the District of Penwith (Electoral Changes) Order 2002 (S.I. 2002/2593).

⁽¹¹⁾ Under section 16(3) of the Local Government Act 1972, the term of office of parish councillors is four years.

⁽¹²⁾ S.I. 2002/2593.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the establishment, on 1st April 2009, of a single tier of local government in the county of Cornwall (article 3). The area of the county remains unchanged. A new district is created, with the same area as the county.

The county will be administered by a county council, referred to in this Order as “the Cornwall council”.

Article 4 of the Order provides for the winding up and dissolution on 1st April 2009 of the district councils in Cornwall:

- Caradon District Council
- Carrick District Council
- Kerrier District Council
- North Cornwall District Council
- Penwith District Council and
- Restormel Borough Council.

Those councils are referred to in this Note and the Order as “the district councils”.

The districts administered by the district councils are also abolished.

The term of office of all district councillors expires on 1st April 2009 (article 5).

In Part 3 of the Order, article 6(1) confers on the Cornwall council the function of preparing for the transfer on 1st April 2009 of the district councils’ functions, property, rights and liabilities (its “main transitional function”).

Article 6(3) requires the Cornwall council to arrange for the discharge of its main transitional function by a committee of its executive, to be known as its “Implementation Executive”. The membership of that Executive is to be drawn from both the Cornwall council and the district councils.

Article 7 enables the Secretary of State, by the making of an order or regulations, to make other functions (including functions of the Cornwall council or any of the district councils) the responsibility of the Implementation Executive during the transitional period ending on the fourth day after the ordinary day of election of councillors in 2009 (“article 7 functions”).

Article 8(1) makes the discharge of the main transitional function and the article 7 functions a responsibility of the Implementation Executive. Article 8(2) and (3) modifies section 15(7) and (9) of the Local Government Act 2000 (“the 2000 Act”) so as to extend the range of arrangements available to the Executive for the discharge of that responsibility. Article 8(4) disapplies, until 1st April 2009 and in relation to the Implementation Executive, section 21 of the 2000 Act, which deals with the overview and scrutiny of decisions of local authorities. Instead, paragraphs (5) and (6) of article 8 enable arrangements to be made by the Cornwall council and the district councils under section 101(5) of the Local Government Act 1972 for the review or scrutiny by a joint committee of decisions or other action taken by the Implementation Executive, and for recommendations or reports to be made to the Executive. Where a joint committee is established, article 8(7) provides for that committee to make quarterly reports to the Cornwall council and the district councils. Article 8(8) provides for the dissolution of the Implementation Executive and any sub-committee of that Executive on the fourth day after the 2009 election day. Article 8(9) provides for the dissolution of any joint committee established by virtue of article 8(6) on 1st April 2009.

Article 9 requires the Implementation Executive to prepare an Implementation Plan which must include budgets, plans and timetables relevant to the process of transition to single tier local government. In discharging the main transitional function and the article 7 functions, the Implementation Executive is required to have regard to the Cornwall council's response to the Secretary of State in support of its proposal for single tier local government in Cornwall.

Article 10 provides for the establishment of a team of officers drawn from the Cornwall council and the district councils to assist the Implementation Executive.

Part 4 of the Order relates to the functions of the Cornwall council and the district councils in the period before 1st April 2009. Article 11 requires the Cornwall council and the district councils to prepare for the transition to single tier local government, to consult and co-operate, to disclose relevant information and, generally, to further the purposes of the Order.

In Part 5 of the Order, article 12 cancels the district council elections that would otherwise have taken place in 2008. The term of office of those district councillors who would have retired after the 2008 election is extended to 1st April 2009. The term of office of district councillors elected in 2004, 2006 or 2007 is varied so as to expire on that date. Any casual vacancies arising after 30th September 2008 and before 1st April 2009 are not to be filled.

Article 13(1) cancels the parish council elections that would otherwise have taken place in 2008 for councillors of the parishes of Ludgvan and Towednack, and provides for those elections to be held in 2009 and every fourth year thereafter. The term of office of the councillors of those parishes (whether elected in 2003 or at subsequent by-elections) is extended to the fourth day after the ordinary day of election of councillors in 2009. Article 13(2) cancels the parish council elections that would otherwise have taken place in 2011. The term of office of parish councillors elected in 2007 or at subsequent by-elections is extended to the fourth day after the ordinary day of election of councillors in 2013, when all parishes will hold elections.

Article 14 makes a consequential amendment to the District of Penwith (Electoral Changes) Order 2002 (S.I. 2002/2593) relevant to elections of parish councillors.

A full impact assessment has been produced for this and other orders that provide for a change to single tier local government. A copy of the assessment has been deposited in the Library of both Houses of Parliament and may be accessed at www.communities.gov.uk