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STATUTORY INSTRUMENTS

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**1996 No. 1865**

**LOCAL GOVERNMENT, ENGLAND AND WALES**

**The Devon (City of Plymouth and Borough of Torbay) (Structural Change) Order 1996**

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|---------------------------------------|---------|-----------------------|
| <i>Made</i>                           | - - - - | <i>18th July 1996</i> |
| <i>Coming into force</i>              |         |                       |
| <i>for the purposes of articles</i>   |         |                       |
| <i>2(2), 4(1), (3) and (4), 7 and</i> |         |                       |
| <i>8</i>                              |         | <i>19th July 1996</i> |
| <i>For all other purposes</i>         |         | <i>1st April 1998</i> |

Whereas the Local Government Commission for England, acting pursuant to section 15(4) of the Local Government Act 1992<sup>(1)</sup>, has submitted to the Secretary of State a report on its review of the county of Devon together with its recommendations:

And whereas the Secretary of State has decided to give effect, with modifications, to the recommendations in respect of the city of Plymouth and the borough of Torbay<sup>(2)</sup>:

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by sections 17<sup>(3)</sup>, 18(3)(a) and 26 of the Local Government Act 1992, and of all other powers enabling him in that behalf, hereby makes the following Order, a draft of which has been laid before, and approved by a resolution of, each House of Parliament:

**PART I**  
**GENERAL**

**Citation and commencement**

**1.** This Order may be cited as the Devon (City of Plymouth and Borough of Torbay) (Structural Change) Order 1996 and shall come into force for the purposes of articles 2(2), 4(1), (3) and (4), 7 and 8 on the day after the day on which it is made and for all other purposes on 1st April 1998.

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<sup>(1)</sup> 1992 c. 19.

<sup>(2)</sup> The non-metropolitan districts of Plymouth and Torbay have been granted the status, respectively, of a city and a borough.

<sup>(3)</sup> Amended by section 39(4) and (5) of the Police and Magistrates' Courts Act 1994 (c. 29).

## Interpretation

### 2.—(1) In this Order—

“the Act” means the Local Government Act 1992;

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

“Devon” means the non-metropolitan county of Devon and “the Devon Council” means the council of that county;

“Plymouth” (except in references to the county of Plymouth) means the city of Plymouth and “the Plymouth Council” means the council of that city;

“the relevant date” means 5th May 1997;

“relevant provision” means a provision in any subordinate legislation made under the Act or made, in connection with the Act or such provision, under any other enactment;

“the reorganisation date” means 1st April 1998;

“subordinate legislation” has the same meaning as in section 21 of the Interpretation Act 1978(5); and

“Torbay” (except in references to the county of Torbay) means the borough of Torbay and “the Torbay Council” means the council of that borough.

(2) The period beginning with the relevant date and ending immediately before the reorganisation date is specified as the preliminary period for the purposes of any statutory instrument made under the Act.

## PART II

### LOCAL GOVERNMENT REORGANISATION IN PLYMOUTH AND TORBAY

#### Structural change

3. Subject to the following provisions of this Part and to any other relevant provision, the functions of the Devon Council in relation to Plymouth and Torbay shall be transferred to the Plymouth Council and the Torbay Council respectively.

#### Fire services

### 4.—(1) In this article—

“the 1947 Act” means the Fire Services Act 1947(6); and

“the relevant area” means the area comprising Devon (as constituted on and after the reorganisation date), Plymouth and Torbay.

(2) Plymouth and Torbay shall, subject to any combination scheme under the 1947 Act, each become the area of a fire authority for the purposes of that Act.

(3) For the purposes of the making of a combination scheme with respect to the relevant area before the reorganisation date in accordance with section 10 of the 1947 Act (power to make schemes in advance of alterations to local government areas), section 5(2) of that Act shall have effect, in relation to that area, as if—

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(4) 1972 c. 70.

(5) 1978 c. 30.

(6) 1947 c. 41; section 10 of this Act is amended by paragraph 2 of Schedule 3 to the Local Government Act 1992.

- (a) in paragraphs (a) and (d) of that subsection, for “the constituent authorities”, wherever those words occur, there were substituted “the council of the county of Devon”; and
- (b) in paragraphs (e) and (f) of that subsection, for “any of the constituent authorities” there were substituted “the council of the county of Devon”.

(4) Section 10 of the 1947 Act shall have effect, in relation to the relevant area, as if after the word “but” there were inserted the words “, except so far as it relates to the constitution of an authority as the fire authority for the combined area constituted by the scheme and the performance by that authority of any functions necessary for bringing the scheme into full operation on that date,”.

### **Planning functions**

5.—(1) The structure plan applying immediately before the reorganisation date to Devon, and any proposals prepared before that date for the alteration or replacement of that plan, shall be treated as if they had been prepared jointly by the Devon Council, the Plymouth Council and the Torbay Council; and section 50 of the Town and Country Planning Act 1990(7) (“the 1990 Act”) shall apply accordingly.

- (2) In relation to the Plymouth Council or the Torbay Council—
  - (a) section 36(5) of the 1990 Act (which provides that a local plan shall not contain policies in respect of minerals or waste) shall not apply;
  - (b) subsection (1) of section 37 of that Act (minerals local plans) shall have effect as if, after the words “local plan”, there were added the words “or include in their local plan their detailed policies in respect of development consisting of the winning and working of minerals or involving the deposit of mineral waste”; and
  - (c) subsection (2) of section 38 of that Act (waste policies) shall have effect as if, after paragraph (b), there were added the following—
    - “or
    - (b) include their waste policies in their local plan.”

### **Constitution of new counties of Plymouth and Torbay**

6.—(1) Plymouth and Torbay shall cease to form part of Devon.

(2) A new county shall be constituted comprising the area of Plymouth and shall be named the county of Plymouth.

(3) A new county shall be constituted comprising the area of Torbay and shall be named the county of Torbay.

(4) Section 2(1) of the 1972 Act (which provides that every county shall have a council) shall not apply in relation to the counties of Plymouth and Torbay.

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(7) 1990 c. 8. In this Act, sections 36 to 38 were substituted by paragraph 17 of Schedule 4 to the Planning and Compensation Act 1991 (c. 34) and section 50 was amended by paragraph 24 of that Schedule.

## PART III

### TRANSITIONAL PROVISION

#### **Election of councillors in 1997 and subsequent years**

7.—(1) The City of Plymouth (Electoral Arrangements) Order 1978<sup>(8)</sup> and the Borough of Torbay (Electoral Arrangements) Order 1979<sup>(9)</sup> shall have effect subject to the provisions of this article.

(2) Elections of all councillors of the Plymouth Council and the Torbay Council shall be held simultaneously on the ordinary day of election of councillors in 1997, 2000 and 2003 and every fourth year after 2003<sup>(10)</sup>.

(3) The term of office of any councillor so elected shall be, in the case of the councillors elected in 1997 and 2000, three years and, in any other case, four years.

(4) On the fourth day after any such elections—

- (a) the persons who were councillors immediately before those elections shall retire; and
- (b) the newly elected councillors shall come into office.

(5) The Borough of Torbay (Electoral Arrangements) Order 1987<sup>(11)</sup> is hereby revoked.

#### **Suspension of elections and retirement of councillors**

8.—(1) The ordinary election of councillors in 1997 for the electoral divisions of Devon comprised in Plymouth and Torbay<sup>(12)</sup> shall not take place; and any councillor for such a division holding office immediately before the relevant date who would, but for this paragraph, have retired on that date shall, unless he resigns his office or it otherwise becomes vacant, continue to hold office until the reorganisation date.

(2) Section 89 of the 1972 Act (filling of casual vacancies in case of councillors) shall have effect—

- (a) in the case of a casual vacancy occurring in the office of councillor of the Plymouth Council or the Torbay Council before the relevant date, as if the reference in subsection (3) of that section to the day on which the councillor whose office is vacant would regularly have retired were a reference to the relevant date; and
- (b) in the case of a casual vacancy occurring in the office of councillor for any electoral division referred to in paragraph (1) above, as if that reference in that subsection were a reference to the reorganisation date.

(3) The electoral divisions of Devon comprised in Plymouth and Torbay shall cease to be electoral divisions on the reorganisation date.

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<sup>(8)</sup> [S.I.1978/1793](#).

<sup>(9)</sup> [S.I.1979/1496](#).

<sup>(10)</sup> For the ordinary day of election of councillors of local government areas, see section 37 of the Representation of the People Act 1983 (c. 2), amended by section 18(2) of the Representation of the People Act 1985 (c. 50).

<sup>(11)</sup> [S.I.1987/1626](#).

<sup>(12)</sup> The electoral divisions of the county of Devon are constituted by the County of Devon (Electoral Arrangements) Order 1981 ([S.I.1981/1748](#)).

Signed by authority of the Secretary of State

18th July 1996

*David Curry,*  
Minister of State,  
Department of the Environment

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order gives effect to recommendations by the Local Government Commission for England in respect of the structure of local government in the city of Plymouth (“Plymouth”) and the borough of Torbay (“Torbay”).

Article 3 effects two structural changes by providing for the transfer, on 1st April 1998, of the functions of Devon County Council in relation to Plymouth and Torbay to their respective councils.

Article 4 makes provision for the purposes of subordinate legislation which may be made under the Fire Services Act 1947 in respect of fire services.

Article 5 makes provision in relation to the structure plan applying to Devon. It also makes provision to enable the local plan prepared by the councils of Plymouth and Torbay under the Town and Country Planning Act 1990 to contain minerals and waste policies.

Article 6 provides for Plymouth and Torbay to cease to form part of Devon on 1st April 1998 and for new counties of Plymouth and Torbay to be constituted on that date (but without county councils).

Article 7 makes provision for a whole council election in Plymouth and Torbay in 1997, 2000 and 2003 and every fourth year after 2003.

Article 8 makes provision for the suspension of county council elections in 1997 in electoral divisions in Plymouth and Torbay and extends the term of office of councillors for such divisions until 1st April 1998. It also makes provision in respect of casual vacancies in the office of councillor of the local authorities affected by this order.