

2008 No. 493

LOCAL GOVERNMENT, ENGLAND

The County Durham (Structural Change) Order 2008

Made - - - - *25th February 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(a), that there should be a single tier of local government for the county of County Durham.

That proposal was made by Durham 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(b) (except the authority which made it); and
- (b) other persons the Secretary of State considered appropriate.

In accordance with section 240(6) of the Local Government and Public Involvement in Health Act 2007, a draft of this Order was laid before, and approved by, both Houses of Parliament.

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:

PART 1

GENERAL

Citation and commencement

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

(a) 2007 c.28. See section 21(3) as to proposals made in response to pre-commencement invitations, and section 23(3).
(b) See section 7(4) as to authorities "affected by" a proposal for the purposes of that section.

Interpretation

2. 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 County Durham council(a);

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

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

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

“the 2008 election” means the election required by article 13(1) to be held in 2008;

“the 2008 election day” means the ordinary day of election of councillors(c) in 2008;

“the County Durham council” means the council of the county of County Durham;

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

“the first transitional period” means the period beginning on the date on which this Order comes into force and ending on the fourth day after the 2008 election day;

“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);

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

“the second transitional period” means the period beginning on the fourth day after the 2008 election day and ending on 1st April 2009.

PART 2

ESTABLISHMENT OF SINGLE TIER LOCAL GOVERNMENT IN COUNTY DURHAM

Single tier local government in County Durham

3.—(1) On and after 1st April 2009 the County Durham council shall be the sole principal authority for County Durham.

(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 County Durham; and the name of that new district shall be County Durham.

Abolition of districts and winding up and dissolution of district councils

4. On 1st April 2009—

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

(i) the borough of Sedgefield,

(ii) the city of Durham,

(iii) the district of Chester-Le-Street,

(iv) the district of Derwentside,

(v) the district of Easington,

(vi) the district of Teesdale, and

(a) 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 County Durham council.

(b) 1972 c.70.

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

- (vii) the district of Wear Valley; and
- (b) the following councils shall be wound up and dissolved—
 - (i) Sedgefield Borough Council,
 - (ii) Durham City Council,
 - (iii) Chester-Le-Street District Council,
 - (iv) Derwentside District Council,
 - (v) Easington District Council,
 - (vi) Teesdale District Council, and
 - (vii) Wear Valley District Council.

Cessation of term of office of district councillors

5. 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

Main transitional function and Implementation Executive

6.—(1) On the coming into force of this Order there shall be added to the functions of the County Durham council the function, which is to be exercisable only during the first and second transitional periods, 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) Throughout the first transitional period, section 15 of the 2000 Act (discharge of functions: leader and cabinet executive) shall have effect in relation to the County Durham 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 County Durham (Structural Change) Order 2008,”.

(3) The County Durham council’s executive arrangements shall provide for the discharge of the main transitional function and the article 7 functions to be the responsibility, throughout the first transitional period, 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 throughout the first transitional period to, or in relation to, the Implementation Executive subject only to paragraphs (5), (6) and (8) to (10) 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 County Durham Council,
- (b) nine other persons nominated by that Council who are for the time being members of that Council,
- (c) one other person nominated by that Council who is for the time being a Conservative Party member of that Council, and

(d) seven persons nominated by the district councils, each of whom is nominated by one of the district councils and is for the time being a member of the council by which he is nominated (whether or not he is for the time being the leader of that council's executive).

(6) In making the nominations referred to in paragraph (5)(b) and (d), the County Durham council and the district councils shall, to the extent that it is practicable to do so, secure that at all times the Conservative Party, the Labour Party and the Liberal Democrats are each represented on the Implementation Executive by at least one member.

(7) It shall be the duty of the County Durham 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 County Durham council's executive; and that person shall preside at all meetings of the Implementation Executive at which he is present.

(9) 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 Executive) having one vote.

(10) In the case of an equality of votes, the person presiding at the meeting (whether or not the leader of the Executive) shall have a casting vote, in addition to any other vote the person may have.

Other transitional functions

7.—(1) The other transitional functions referred to in article 6(2)(b), which are to be exercisable only during the first and second transitional periods, are—

- (a) such executive and non-executive functions of the County Durham 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,
- (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)(a),
- (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

8.—(1) The discharge of the main transitional function and the article 7 functions shall be a responsibility, throughout the first transitional period, of the Implementation Executive, and shall not, during that period, be a responsibility of the executive of the County Durham 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 during the first transitional period 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.

(a) 1978 c.30.

(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 during the first transitional period 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 during the first transitional period in relation to any matter that is—

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

(5) 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 County Durham (Structural Change) Order 2008”.

(6) At any time during the first transitional period, the County Durham 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 County Durham council and the district councils before the end of the first transitional period—

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

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

9.—(1) During the first transitional period, 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 County Durham 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 County Durham council to the Secretary of State in support of its proposal for single tier local government in County Durham 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(a).

(3) The Implementation Executive may, by written notice to—

- (a) the proper officer of the County Durham 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 County Durham council or the district council concerned (as the case may be) for the purpose of receiving such notices.

Implementation Team

10.—(1) Not later than 21 days after the coming into force of this Order the Implementation Executive shall form a team of officers (“the Implementation Team”) for the purposes of—

- (a) during the first transitional period, assisting the Implementation Executive in the discharge of the main transitional function and the article 7 functions; and
- (b) during the second transitional period, assisting the executive of the County Durham council in the discharge of those functions.

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

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

(4) It shall be the duty of the County Durham council and each of the district councils to cooperate 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 or the executive of the County Durham council may reasonably require.

Dissolution of Implementation Executive, etc and further provisions relevant to transition

11.—(1) The Implementation Executive, any sub-committee of that Executive and any joint committee established as mentioned in article 8(6) shall be dissolved on the fourth day after the 2008 election day.

(2) The discharge of the main transitional function and the article 7 functions in the second transitional period shall be an executive function of the County Durham council (falling to be discharged by that council’s executive in accordance with executive arrangements under the 2000 Act).

(3) Section 15(7) of the 2000 Act shall have effect in relation to the discharge of that executive function as if the reference to an officer of the authority included a reference to an officer of any of the district councils.

(4) Article 9 shall have effect in relation to the second transitional period as if—

- (a) the reference to the first transitional period were a reference to the second transitional period;
- (b) references to the Implementation Executive were references to the County Durham council’s executive; and
- (c) paragraph (3)(a) were omitted.

(a) 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 COUNTY DURHAM COUNCIL AND DISTRICT COUNCILS RELEVANT TO TRANSITION

General transitional duties of County Durham council and district councils

12.—(1) It shall be the duty of the County Durham 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 County Durham 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

County Durham council election in 2008

13.—(1) A whole council election of councillors of the County Durham council shall be held on the 2008 election day, on the ordinary day of election of councillors^(a) in 2013, and every fourth year thereafter.

(2) The term of office of councillors elected to the County Durham council in 2005 or at any subsequent by-election held before the 2008 election day shall end on the fourth day after the 2008 election day.

(3) Notwithstanding section 7(1) of the 1972 Act, the term of office of councillors elected to the County Durham council on the 2008 election day shall be five years, and they shall retire on the fourth day after the ordinary day of election of councillors in 2013.

(4) The person who is for the time being the returning officer for County Durham^(b) shall take such steps as are necessary or appropriate to prepare for the 2008 election and shall, in particular, ensure that all necessary alterations are made in the electoral register.

(5) For the purposes of the 2008 election, an electoral division for which, under the County Durham (Electoral Changes) Order 2005^(c) (“the 2005 Order”), one councillor is returned, shall return two councillors.

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

(b) See section 35 of the Representation of the People Act 1983 (c.2).

(c) S.I. 2005/176.

(6) In paragraph (5) “electoral division” means an electoral division of County Durham established by article 3 of the 2005 Order

Cancellation of parish council elections, etc

14.—(1) 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 in County Durham; and
- (b) the term of office of those parish councillors elected in 2007 or at any subsequent by-election held 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(a).

(2) Elections of parish councillors for every parish in County Durham shall be held on the ordinary day of election of councillors in 2013 and every four years thereafter.

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

John Healey
Minister of State

25th February 2008

Department for Communities and Local Government

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

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 County Durham (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 County Durham council”.

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

Chester-Le-Street District Council,
Derwentside District Council,
Durham City Council,
Easington District Council,
Sedgefield Borough Council,
Teesdale District Council, and
Wear Valley District 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 County Durham 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 County Durham council to arrange for the discharge of its main transitional function by a committee of its executive, to be known as its “Implementation Executive”. This arrangement is to begin when this Order comes into force and end on the fourth day after the ordinary day of election of councillors in 2008 (“the first transitional period”), when councillors newly-elected to the County Durham council come into office. The membership of the Implementation Executive is to be drawn from both the County Durham 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 County Durham council or any of the district councils) the responsibility of the Implementation Executive during the first transitional period (“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 during the first transitional period. 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 the end of the first transitional period, 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 County Durham 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 a report to the County Durham council and the district councils.

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 County Durham council’s response to

the Secretary of State in support of its proposal for single tier local government in County Durham.

Article 10 provides for the establishment of a team of officers drawn from the County Durham council and the district councils to assist the Implementation Executive during the first transitional period and the executive of the County Durham council during the second transitional period (the period beginning at the end of the first transitional period and ending on 1st April 2009).

Article 11 provides for the dissolution of the Implementation Executive, any sub-committee of that Executive and any joint committee established by virtue of article 8(6) at the end of the first transitional period. Thereafter, the discharge of the main transitional function, the article 7 functions, and functions under article 9, become the responsibility of the County Durham council's executive. Provision is also made for that executive to arrange for the discharge of its functions by officers of any of the district councils.

Part 4 of the Order relates to the functions of the County Durham council and the district councils in the period before 1st April 2009. Article 12 requires the County Durham 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 13 requires the holding of a whole council election to the County Durham council in 2008. The election is to be conducted on the basis of the 63 electoral divisions established by article 3 of the County Durham (Electoral Changes) Order 2005 (S.I. 2005/176). Each division is to return two councillors, giving the County Durham council a total of 126 councillors.

Article 14 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 varied to the fourth day after the ordinary day of election of councillors in 2013, when all parishes will hold elections.

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

STATUTORY INSTRUMENTS

2008 No. 493

LOCAL GOVERNMENT, ENGLAND

The County Durham (Structural Change) Order 2008

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