

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. XXXX

LOCAL GOVERNMENT, ENGLAND

The Wiltshire (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 Wiltshire.

That proposal was made by Wiltshire 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:

PART 1

GENERAL

Citation and commencement

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

(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.

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⁽³⁾;
- “the 1972 Act” means the Local Government Act 1972⁽⁴⁾;
- “article 7 functions” means the functions referred to in article 7;
- “the 2009 election day” means the ordinary day of election of councillors⁽⁵⁾ in 2009;
- “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);
- “the main transitional function” has the meaning given by article 6(1);
- “the Wiltshire council” means the council of the county of Wiltshire; and
- “Wiltshire”, except in the definition of “the Wiltshire council” and the second mention in article 3(2), means the county of Wiltshire.

PART 2

ESTABLISHMENT OF SINGLE TIER LOCAL GOVERNMENT IN WILTSHIRE

Single tier local government in Wiltshire

4.—(1) On and after 1st April 2009 the Wiltshire council shall be the sole principal authority for Wiltshire, and there shall be no district councils in Wiltshire.

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

Abolition of districts and winding up and dissolution of district councils

5. On 1st April 2009—

- (a) the following districts shall be abolished—
 - (i) Kennet,
 - (ii) North Wiltshire,
 - (iii) Salisbury, and
 - (iv) West Wiltshire; and
- (b) the following councils shall be wound up and dissolved—
 - (i) Kennet District Council,
 - (ii) North Wiltshire District Council,
 - (iii) Salisbury District Council, and
 - (iv) West Wiltshire District Council.

(3) 2000 c.22.

(4) 1972 c.70.

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

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 Wiltshire 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 Wiltshire council the function, which is to be exercisable only during the transitional period ending on 1st April 2009, 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 Wiltshire 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 Wiltshire (Structural Change) Order 2008,".

(3) The Wiltshire 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, for the time being, is the leader of the Wiltshire council's executive;

(b) eight persons nominated by the Wiltshire council who, for the time being, are members of that council; and

(c) eight other persons, of whom each of the district councils shall nominate two, being persons who, for the time being, are 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 Wiltshire 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 Wiltshire 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 Wiltshire 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 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 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 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 1st April 2009, are—

- (a) such executive and non-executive functions of the Wiltshire 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),
- (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 Wiltshire 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) 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 Wiltshire 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 Wiltshire (Structural Change) Order 2008”.

(6) The Wiltshire 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 article 8(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 Wiltshire 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 are in the opinion of the Implementation Executive 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 Wiltshire 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 Wiltshire council to the Secretary of State in support of its proposal for single tier local government in Wiltshire 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⁽⁶⁾.

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

- (a) the proper officer of the Wiltshire council, or
- (b) the proper officer of any of the district councils,

require that council 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 Wiltshire 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 Wiltshire council and each of the district councils.

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

(4) It shall be the duty of the Wiltshire 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.

PART 4

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

General transitional duties of the Wiltshire council and the district councils

12.—(1) It shall be the duty of the Wiltshire 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 Wiltshire council and each of the district councils shall provide such information relating to its functions as another council may reasonably request for the purpose of implementing 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 that the person is authorised (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

⁽⁶⁾ 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).

(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 parish council elections, etc

13. 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 Wiltshire; and

(b) the term of office of 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(7).

(2) Elections of parish councillors for those parishes in which, but for paragraph (1), 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.

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

Date

Name
Minister of State
Department for Communities and Local
Government

(7) 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 Wiltshire (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 Wiltshire council”.

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

Kennet District Council
North Wiltshire District Council
Salisbury District Council and
West Wiltshire 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 Wiltshire 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(2) requires the Wiltshire 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 Wiltshire council and the district councils. Article 7 provides for the Implementation Executive to have responsibility, instead of the Wiltshire council, for the discharge of certain functions of that council relating to times on and after 1st April 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 Wiltshire council and the district councils under section 101(5) of the Local Government Act 1972 for the review or scrutiny of decisions or other action taken by the Implementation Executive by a joint committee, 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 Wiltshire 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 Wiltshire council’s response to the Secretary of State in support of its proposal for single tier local government in the county. Article 10

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

Part 4 of the Order relates to the functions of the Wiltshire council and the district councils in the period before 1st April 2009. Article 11 requires the Wiltshire 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 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.

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