
DRAFT STATUTORY INSTRUMENTS

2008 No.

The Cornwall (Structural Change) Order 2008

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⁽¹⁾,
- (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,
- (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)⁽²⁾,
- (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.

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

(2) 1978 c.30.

(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⁽³⁾.

- (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.

(3) 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).