

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

2010 No. XXXX

LOCAL GOVERNMENT, ENGLAND

The Exeter and Devon (Structural Changes) Order 2010

Made - - - - ****2010*

Coming into force in accordance with article 1

This Order implements a proposal, submitted to the Secretary of State 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 city of Exeter.

That proposal was made by Exeter City Council.

The Secretary of State made a request under section 4 of the Local Government and Public Involvement in Health Act 2007 (request for Boundary Committee for England's advice) and specified 8th December 2009 as the deadline for the Boundary Committee to provide the advice⁽²⁾.

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

- (a) every authority affected by the proposal (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

1. This Order may be cited as the Exeter and Devon (Structural Changes) Order 2010 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(2) and 6(7) of the Local Government and Public Involvement in Health Act [2007 \(c.28\)](#).

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⁽³⁾;
- “the 1972 Act” means the Local Government Act 1972⁽⁴⁾;
- “article 5 functions” means the other transitional functions referred to in article 5;
- “existing” means existing on the day on which this Order is made;
- “Exeter”, except the second mention of that word in article 3(2), in article 3(3), and in the expressions “the Exeter county electoral divisions” and “Exeter City Council”, means the city of Exeter;
- “Exeter City Council” means the non-metropolitan district council of that name⁽⁵⁾;
- “the Exeter county electoral divisions” means the existing county electoral divisions of Alphington and Cowick, Duryard and Pennsylvania, Exwick and St Thomas, Heavitree and Whipton and Barton, Newtown and Polsloe, Pinhoe and Mincinglake, Priory and St Leonard’s, St David’s and St James, and St Loyes and Topsham that are established by article 3 of the County of Devon (Electoral Changes) Order 2004⁽⁶⁾;
- “the 2011 election day” means the ordinary day of election of councillors⁽⁷⁾ in 2011;
- “the Implementation Executive” means the body established (whether before or after the coming into force of this Order) for the purposes of article 4(3);
- “the main transitional function” has the meaning given by article 4(1);
- “the proper officer”, in relation to any purpose and Exeter City Council or Devon County Council, means the officer appointed for that purpose by that council; and
- “the transitional period” means the period beginning on the date when this Order comes into force and ending on the fourth day after the 2011 election day.

PART 2

ESTABLISHMENT OF SINGLE TIER LOCAL GOVERNMENT IN EXETER

Single tier local government in Exeter

- 3.—(1) On 1st April 2011 Exeter shall cease to form part of the county of Devon.
- (2) For the purposes of enactments relating to local government, there shall be a new county, whose area shall be co-terminous with that of Exeter; and the name of that new county shall be Exeter.
- (3) In relation to the county of Exeter, section 2(1) of the 1972 Act (which provides that every county shall have a council) shall not apply.
- (4) On and after 1st April 2011 Exeter City Council shall be the sole principal council for Exeter.
- (5) On 1st April 2011—
- (a) the Exeter county electoral divisions shall cease to exist; and

(3) 2000 c.22.

(4) 1972 c.70.

(5) The district of Exeter has the status of a city.

(6) S.I. 2004/2812.

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

- (b) the term of office of the persons who, immediately before that date, are the elected members of Devon County Council for those divisions shall expire.

PART 3

TRANSITIONAL FUNCTIONS AND THEIR DISCHARGE

Main transitional function and Implementation Executive

4.—(1) On the coming into force of this Order until the end of the transitional period there shall be added to the functions of Exeter City Council and Devon County Council the function of preparing for and facilitating the economic, effective, efficient and timely transfer to Exeter City Council of Devon County Council’s functions, property, rights and liabilities, in so far as they relate to Exeter (“the main transitional function”).

(2) Throughout the transitional period, section 14 of the 2000 Act (discharge of functions: general)(8) shall have effect in relation to Exeter City Council and—

- (a) the main transitional function, and
- (b) the article 5 functions,

as if, in subsection (1), after the words “19 or 20,” there were inserted “or under the Exeter and Devon (Structural Changes) Order 2010”.

(3) Exeter City Council’s executive arrangements shall provide for the discharge of the main transitional function and the article 5 functions to be the responsibility, throughout the transitional period, of a committee of the City Council’s executive(9), 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 transitional period to, or in relation to, the Implementation Executive subject to paragraphs (5), (6) and (8) to (11) of this article and article 6(2) and (3); 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 Exeter City Council’s executive;
- (b) ten other persons nominated by that Council who, for the time being, are members of that Council; and
- (c) four persons nominated by Devon County Council who are for the time being members of that Council elected for any of the Exeter county electoral divisions.

(6) In making the nominations referred to in paragraph (5)(b) and (c), Exeter City Council and Devon County Council shall, to the extent that it is practicable to do so, secure that at all times the Conservative Party, the Labour Party, the Liberal Democrat Party and the Liberal Party are each represented on the Implementation Executive by at least one member.

(7) It shall be the duty of Exeter City Council and Devon County Council to co-operate in the establishment of the Implementation Executive.

(8) Section 14 was amended by section 63 of the Local Government and Public Involvement in Health Act 2007 (c.28).

(9) As to the permitted forms of executive, see section 11 of the Local Government Act 2000 (c.22). Exeter City Council operates a leader and cabinet executive (England).

(8) The leader of the Implementation Executive shall be the person who is for the time being the leader of Exeter City Council's executive.

(9) The persons who, immediately before 1st April 2011, 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 Devon County Council.

(10) The Implementation Executive shall regulate its own proceedings, but a question to be decided by that 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 of the Implementation Executive

5.—(1) The other transitional functions which are to be exercisable only during the transitional period are—

- (a) the existing executive and non-executive functions of Exeter City Council and Devon County Council; and
- (b) such other functions (including functions conferred on or after the day on which this Order is made 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 specifies as a function or responsibility of the Implementation Executive.

(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) **(10)**,
- (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

6.—(1) The discharge of the main transitional function and the article 5 functions shall be a responsibility, throughout the transitional period, of the Implementation Executive.

(2) Section 14(5) 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 the transitional period in relation to the Implementation Executive as if the reference to an officer of the authority included a reference to—

- (a) a sub-committee of the Implementation Executive, and
- (b) an officer of Devon County Council.

(3) Section 14(6) of the 2000 Act (which enables the discharge of a function by a person despite that person having made arrangements for the discharge of that function by a different person) shall have effect in the transitional period in relation to arrangements made under subsection (5) of that section (as modified by paragraph (2) above) as if the reference to an officer of the authority included a reference to—

- (a) a sub-committee of the Implementation Executive, and

(b) an officer of Devon County Council.

(4) Section 21 of the 2000 Act (overview and scrutiny) shall not apply during the transitional period in relation to any matter that is a responsibility of the Implementation Executive by virtue of paragraph (1).

(5) During the transitional period, 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 6(6) of the Exeter and Devon (Structural Changes) Order 2010”.

(6) During the transitional period, Exeter City Council and Devon County Council shall 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 that is a responsibility of that Executive by virtue of paragraph (1); and
- (b) preparing reports for, or making recommendations to, the Implementation Executive in connection with any such responsibility.

(7) The joint committee established pursuant to paragraph (6) shall at least once in each period of three months during the transitional period inform Exeter City Council and Devon County Council of—

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

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

7.—(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 or desirable to secure the economic, effective, efficient and timely discharge of the main transitional function and the article 5 functions; and
- (b) such budgets and plans as it considers necessary or desirable to facilitate the economic, effective, efficient and timely discharge of Exeter City Council’s functions on or after 1st April 2011.

(2) For the purposes of—

- (a) preparing, reviewing and revising the Implementation Plan,
- (b) discharging the main transitional function and the article 5 functions, and
- (c) discharging such other functions as may be conferred on it,

the Implementation Executive shall have regard to the information supplied by Exeter City Council to the Secretary of State in support of its proposal for single tier local government in Exeter 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⁽¹¹⁾.

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

- (a) the proper officer of Exeter City Council, or
- (b) the proper officer of Devon County Council,

(11) 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).

require the council referred to in the notice to take such action relevant to the main transitional function and the article 5 functions as may be specified in the notice.

Implementation Team

8.—(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 that Executive in the discharge of the main transitional and article 5 functions (“the Implementation Team”).

(2) The Implementation Team shall include officers from both Exeter City Council and Devon County Council.

(3) The leader of the Implementation Team shall be such member of that Team, being also an officer of Exeter City Council, as the Implementation Executive shall appoint.

(4) It shall be the duty of Exeter City Council and Devon County Council 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 EXETER CITY COUNCIL AND DEVON COUNTY COUNCIL RELEVANT TO TRANSITION

General transitional duties of Exeter City Council and Devon County Council

9.—(1) It shall be the duty of Exeter City Council and Devon County Council—

- (a) to take, whether alone or together, such steps as may be necessary to prepare for the transfer to Exeter City Council of Devon County Council’s functions, property, rights and liabilities relating to Exeter;
- (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), Exeter City Council and Devon County Council shall provide such information relating to its functions as the other council or the Implementation Executive may reasonably request for the purpose of implementing this Order.

(3) Any person authorised in that behalf by the body making the request shall be entitled, at all reasonable times, on producing evidence of such 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

Elections to Exeter City Council in 2011 and terms of office of councillors

10.—(1) Subject to the following provisions of this article, elections of councillors for wards of Exeter City Council shall be by thirds⁽¹²⁾.

(2) A whole council election of councillors of Exeter City Council shall be held on the 2011 election day.

(3) The election held on the 2011 election day shall be conducted on the basis of the existing wards of the city⁽¹³⁾.

(4) The proper officer of Exeter City Council shall take such steps as are necessary or appropriate to prepare for the election on the 2011 election day, including the making of all necessary alterations in the electoral register.

(5) The order and date of retirement of councillors elected in 2011 shall be as set out in the Schedule.

(6) Of the councillors elected in 2011 for any ward of the city—

(a) the first to retire shall, subject to paragraphs (7) and (8) below, be the councillor elected by the smallest number of votes; and

(b) the second to retire shall, subject to those paragraphs, be the councillor elected by the next smallest number of votes.

(7) In the case of an equality of votes between any persons elected which makes it uncertain which of them is to retire in any year, the person to retire in that year shall be determined by lot.

(8) Where under this article any question is to be determined by lot, the lot shall be drawn at the next practicable meeting of the council after the question has arisen and the drawing shall be conducted under the direction of the person presiding at the meeting.

(9) Except as otherwise provided in this article, the term of office of councillors shall be four years and all councillors shall retire on the fourth day after the ordinary day of election of councillors in the year of retirement and the newly elected councillors shall come into office on the day on which their predecessors retire.

Cancellation of elections

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

(a) elections shall not be held on the ordinary day of election of councillors in 2010 for the return of councillors to Exeter City Council; and

(b) the term of office of all councillors elected to Exeter City Council before the 2011 election day shall end on the fourth day after the 2011 election day.

(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 any of the Exeter county electoral divisions where that vacancy arises after 30th September 2010 and before 1st April 2011.

⁽¹²⁾ The City of Exeter (Electoral Changes) Order 1999 (S.I. 1999/2468) provides for elections for wards of the city to be by thirds.

⁽¹³⁾ See S.I. 1999/2468 article 2.

Amendment of the City of Exeter (Electoral Changes) Order 1999

12. On 1st April 2011 the City of Exeter (Electoral Changes) Order 1999(**14**) is amended by the omission of article 3 (elections of the council of Exeter).

Amendment of the County of Devon (Electoral Changes) Order 2004

- 13.** On 1st April 2011 the County of Devon (Electoral Changes) Order 2004(**15**) is amended—
- (a) in article 3(2) (electoral divisions of the county of Devon) for “sixty-two” substitute “fifty-three”; and
 - (b) in the Schedule omit the heading “In the city of Exeter” and all entries under that heading.

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

Name
Minister of State
Department for Communities and Local
Government

(14) [S.I.1999/2468](#).
(15) [S.I. 2004/2812](#).

SCHEDULE

article 10(5)

ORDER OF RETIREMENT OF COUNCILLORS

<i>Name of ward</i>	<i>Number of councillors to retire in 2013</i>	<i>Number of councillors to retire in 2014</i>	<i>Number of councillors to retire in 2015</i>
Alphington	1	1	1
Cowick	1	1	0
Duryard	1	1	0
Exwick	1	1	1
Heavitree	1	1	0
Mincinglake	1	1	0
Newtown	1	0	1
Pennsylvania	1	0	1
Pinhoe	1	0	1
Polsloe	1	0	1
Priory	1	1	1
St David's	1	0	1
St James	0	1	1
St Leonard's	0	1	1
St Loyes	0	1	1
St Thomas	0	1	1
Topsham	0	1	1
Whipton & Barton	1	1	1

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

This Order provides for the establishment, on 1st April 2011, of a single tier of local government for the city of Exeter (article 3). A new county, to be known as Exeter, is created, with the same area as the city, but without county councillors. The area of the city is excluded from that of the county of Devon from 1st April 2011.

The city will be administered on and after 1st April 2011 by Exeter City Council.

In Part 3 of the Order, article 4(1) confers on Exeter City Council and Devon County Council the function of preparing for the transfer on 1st April 2011 of the County Council's functions,

property, rights and liabilities, so far as they relate to Exeter (the “main transitional function”). Article 4(3) makes provision for the discharge of the main transitional function by a committee of the City Council’s executive, to be known as its “Implementation Executive”. This arrangement is to begin when this Order comes into force and to end on the fourth day after the ordinary day of election of councillors in 2011 (“the transitional period”), when councillors newly-elected to the City Council come into office. The membership of the Implementation Executive is to be drawn from both the City Council and the County Council. Article 5 provides for the Implementation Executive to have responsibility, instead of the City and County Councils, during the transitional period, for the discharge of certain functions of those Councils if specified by the Secretary of State (“article 5 functions”).

Article 6(1) makes the discharge of the main transitional function and the article 5 functions a responsibility of the Implementation Executive during the transitional period. Article 6(2) and (3) modifies section 14(5) and (6) 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 those responsibilities. Article 6(4) disappplies, until the end of the 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 councils. Instead, paragraphs (5) and (6) of article 6 require arrangements to be made by the City Council and the County Council 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 that Executive. Article 6(7) provides for that committee to make a report to the City Council and the County Council.

Article 7 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 5 functions, the Implementation Executive is required to have regard to the City Council’s response to the Secretary of State in support of its proposal for single tier local government in Exeter. Article 8 provides for the establishment of a team of officers drawn from the City Council and the County Council to assist the Implementation Executive.

Part 4 of the Order makes provision about the functions of the City Council and the County Council relevant to transition. Article 9 requires those 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 10 retains the established system of elections by thirds for Exeter City Council except in 2011, when the Order provides for the holding of a whole council election to the City Council. The Schedule regulates the date and order of retirement of councillors elected in 2011. The 2011 elections are to be conducted on the basis of the wards established by article 2 of the City of Exeter (Electoral Changes) Order 1999 and the number of councillors to be elected for each ward remains unchanged. Article 11 cancels the elections to Exeter City Council that would have taken place in 2010 and extends the term of office of councillors elected before the 2011 election to the fourth day after the 2011 election day. It also provides that no by-elections should be held for any of the Exeter county electoral divisions in the 6 months leading up to the abolition of those divisions.

Articles 12 and 13 make consequential amendments to the City of Exeter (Electoral Changes) Order 1999 and the County of Devon (Electoral Changes) Order 2004.

A full impact assessment has been produced for this Order. 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