
STATUTORY INSTRUMENTS

1995 No. 1773

LOCAL GOVERNMENT, ENGLAND AND WALES

The Derbyshire (City of Derby)(Structural Change) Order 1995

Made - - - - *11th July 1995*

Coming into force

*For the purposes of articles
2(2), 4, 6(1), (3) and (4), 9
and 10*

12th July 1995

For all other purposes

1st April 1997

Whereas the Local Government Commission for England, acting pursuant to section 15(4) of the Local Government Act 1992⁽¹⁾, has submitted to the Secretary of State a report on its review of the county of Derbyshire 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 Derby⁽²⁾:

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by sections 17⁽³⁾, 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 Derbyshire (City of Derby) (Structural Change) Order 1995 and shall come into force for the purposes of articles 2(2), 4, 6(1), (3) and (4), 9 and 10 on the day after the day on which it is made and for all other purposes on 1st April 1997.

⁽¹⁾ 1992 c. 19.

⁽²⁾ The non-metropolitan district of Derby has been granted the status of a city.

⁽³⁾ 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);

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

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

“the relevant date” means 6th May 1996;

“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 1997; and

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

(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 DERBYSHIRE

Structural change

3. The functions of the County Council in relation to Derby shall, subject to the following provisions of this Part and to any other relevant provision, be transferred to the Derby Council.

Derbyshire Police Authority

4.—(1) In this article, “the 1964 Act” means the Police Act 1964(6).

(2) For the purposes of the functions to which this article applies—

(a) sub-paragraph (1) of paragraph 27 of Schedule 1B to the 1964 Act (meaning of “relevant council”)(7) shall have effect as from 1st October 1996 as if Derby had ceased to form part of Derbyshire on that date; and

(b) accordingly, the appointments which are required to be made to the Derbyshire Police Authority (as established under section 3 of the 1964 Act) (“the Authority”)(8) by paragraph 2(2) of that Schedule (appointments of members of police authority by joint committee appointed by relevant councils) shall be made, as soon as practicable after that date, by a joint committee appointed by the County Council and the Derby Council (as relevant councils) in accordance with that provision.

(3) The functions to which this article applies are—

(a) on and after the reorganisation date, all functions of the Authority; and

(4) 1972 c. 70.

(5) 1978 c. 30.

(6) 1964 c. 48.

(7) Schedule 1B was inserted by Schedule 2 to the Police and Magistrates' Courts Act 1994 (c. 29) (“the 1994 Act”).

(8) Section 3 was substituted by section 2 of the 1994 Act.

- (b) before that date (but on and after 1st October 1996), the following functions of the Authority in respect of the financial year beginning on the reorganisation date—
- (i) functions under Chapter IV of Part I of the Local Government Finance Act 1992 (precepts)**(9)**, and
 - (ii) functions under sections 4A (local policing objectives) and 4B (local policing plans) of the 1964 Act**(10)**.
- (4) For the purposes of the functions referred to in paragraph (3)(b) above—
- (a) section 28(2)(b) of the Police and Magistrates' Courts Act 1994 (approval of decisions about precepts) shall have effect as though the reference to the members of the police authority appointed under paragraph 2 of Schedule 1B to the 1964 Act was a reference to the members so appointed by virtue of paragraph (2) above, and
 - (b) the members of the Authority appointed under paragraph 2 of that Schedule otherwise than by virtue of paragraph (2) above shall not participate in the discharge of those functions.
- (5) In the exercise of its powers, the joint committee referred to in paragraph (2)(b) above—
- (a) shall, for the purposes of paragraph 4(1)(b) of Schedule 1B to the 1964 Act, ignore any member of the County Council elected for an electoral division in Derby**(11)**; and
 - (b) shall not appoint any such member to the Authority under paragraph 2(2) of Schedule 1B to the 1964 Act.
- (6) A member of the Authority who was appointed under paragraph 2 of Schedule 1B to the 1964 Act otherwise than by virtue of paragraph (2) above and who is not subsequently so appointed shall cease to hold office as a member of the Authority on the reorganisation date.
- (7) In determining the period of a term of years for the purpose of paragraph 17 of Schedule 1B to the 1964 Act (term of appointment of members of a police authority), any period as a member of the Authority prior to the reorganisation date under an appointment made by virtue of paragraph (2) above shall be disregarded except where the person in question had been a member of the Authority by virtue of an appointment under paragraph 2 of that Schedule prior to his appointment by virtue of paragraph (2) above.

Amendment of Schedule 1A to the Police Act 1964

5. Schedule 1A to the Police Act 1964**(12)** shall be amended by inserting after the words “The county of Derbyshire” in the right-hand column opposite the name of the Derbyshire police area the words “and the non-metropolitan district of Derby”.

Fire services

- 6.—(1) In this article—
- “the 1947 Act” means the Fire Services Act 1947**(13)**; and
 - “the relevant area” means the area comprising Derbyshire (as constituted on and after the reorganisation date) and Derby.
- (2) Derby shall, subject to any combination scheme under the 1947 Act, become the area of a fire authority for the purposes of that Act.

(9) 1992 c. 14; section 39 of that Act was amended by section 27(1) of the 1994 Act.

(10) Sections 4A and 4B were inserted by section 4 of the 1994 Act.

(11) See article 10(2) of this Order.

(12) Schedule 1A was inserted by Schedule 1 to the 1994 Act.

(13) 1947 c. 41; section 10 of this Act is amended by paragraph 2 of Schedule 3 to the Local Government Act 1992.

(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—

- (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 Derbyshire”; 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 Derbyshire”.

(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

7.—(1) The structure plan applying immediately before the reorganisation date to Derbyshire 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 County Council and the Derby Council; and section 50 of the Town and Country Planning Act 1990(14) (“the 1990 Act”) shall apply accordingly.

(2) In relation to the Derby 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

- (c) include their waste policies in their local plan.”.

(3) This article shall not apply to any plan relating to the area of the Peak District National Park(14), or to any proposals for the alteration or replacement of such a plan.

Constitution of new county of Derby

8.—(1) Derby shall cease to form part of Derbyshire.

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

(3) Section 2(1) of the 1972 Act (which provides that every county shall have a council) shall not apply in relation to the county of Derby.

(14) 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.

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PART III

TRANSITIONAL PROVISION

Election of councillors in 1996 and subsequent years

9.—(1) The City of Derby (Electoral Arrangements) Order 1978(15) shall be amended in accordance with the following paragraphs of this article.

(2) The following shall be substituted for article 9—

“9.—(1) The whole number of councillors shall be elected at the ordinary day of elections of councillors in 1996.

(2) The order of retirement of the councillors elected in 1996 shall be as set out in Schedule 2 to this Order.

(3) Where the number of councillors elected in 1996 for any ward of the city is two, the first to retire in that ward shall be, subject to paragraphs (5) and (6) below, the councillor elected by the smaller number of votes.

(4) Where the number of councillors elected in 1996 for any ward of the city is three—

(a) one shall retire in 1998 being, subject to paragraphs (5) and (6) below, the councillor elected by the smallest number of votes;

(b) one shall retire in 1999 being, subject as aforesaid, the councillor elected by the next smallest number of votes;

(c) the remaining councillor shall retire in 2000.

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

(6) If an election of councillors for any ward is not contested, the person to retire in that year shall be determined by lot.

(7) 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.

(8) Except as otherwise provided in the foregoing paragraphs of 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 for the city in the year of retirement and the newly elected councillors shall come into office on the day on which their predecessors retire.”.

(3) The following shall be substituted for Schedule 2—

“SCHEDULE 2

Article 9(2)

ORDER OF RETIREMENT OF COUNCILLORS

Name of ward	Number of councillors to retire in 1998	Number of councillors to retire in 1999	Number of councillors to retire in 2000
Abbey	1	1	1
Allestree	1	1	0

(15) S.I. 1978/1613.

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

Name of ward	Number of councillors to retire in 1998	Number of councillors to retire in 1999	Number of councillors to retire in 2000
Alvaston	1	1	0
Babington	1	1	1
Blagreaves	1	1	0
Boulton	1	1	0
Breadsall	1	1	0
Chaddesden	1	0	1
Chellaston	1	0	1
Darley	1	1	1
Derwent	1	0	1
Kingsway	1	0	1
Litchurch	1	0	1
Littleover	0	1	1
Mackworth	0	1	1
Mickleover	0	1	1
Normanton	0	1	1
Osmaston	0	1	1
Sinfin	0	1	1
Spondon	1	1	1.”.

Retirement of councillors and casual vacancies

10.—(1) The councillors holding office for any ward in the city immediately before the relevant date shall retire on that date and the newly elected councillors for any such ward shall come into office on that date.

(2) The electoral divisions of Derbyshire comprised in Derby shall cease to be electoral divisions on the reorganisation date; and any person holding office, immediately before that date, as a councillor for such a division shall retire on that date⁽¹⁶⁾.

(3) 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 Derby Council during the period beginning with the date on which this article comes into force and ending with 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 (2) above, as if that reference in that subsection were a reference to the reorganisation date.

⁽¹⁶⁾ The electoral divisions of the county of Derbyshire are those described in the Schedule to the County of Derbyshire (Electoral Arrangements) Order 1980 (S.I. 1980/1985).

Signed by authority of the Secretary of State

11th July 1995

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.

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 Derby (“Derby”).

Article 3 effects the structural change by providing for the transfer, on 1st April 1997, of the functions of Derbyshire County Council in relation to Derby to the council of that city.

Articles 4 and 5 make provision in respect of the Derbyshire Police Authority.

Article 6 makes provision for the purposes of subordinate legislation which may be made under the Fire Services Act 1947 in respect of fire services.

Article 7 makes provision in relation to the Derbyshire structure plan and to enable the local plan prepared by the council of Derby under the Town and Country Planning Act 1990 to contain minerals and waste policies. Article 7 does not apply to any plan relating to the area of the Peak District National Park.

Article 8 provides for Derby to cease to form part of Derbyshire on 1st April 1997 and for a new county of Derby to be constituted on that date (but without a county council).

Article 9 makes provision for a whole council election in Derby in 1996 and for reversion to election by thirds in subsequent years.

Article 10 provides for the retirement on 6th May 1996 of existing city councillors for Derby and on 1st April 1997 of existing county councillors elected for divisions in Derby. It also provides in respect of casual vacancies in the office of a councillor who, by virtue of the Order, would retire before the day they would regularly have retired.