

EXPLANATORY MEMORANDUM TO
THE CORNWALL (ELECTORAL ARRANGEMENTS AND CONSEQUENTIAL
AMENDMENTS) ORDER 2009

2009 No. 850

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.
2. This memorandum contains information for the Joint Committee on Statutory Instruments.

3. Purpose of the instrument

- 3.1. The draft Order, if approved by Parliament, will abolish the existing 71 electoral divisions of the county of Cornwall and establish 123 new county electoral divisions. It will provide for one councillor to be elected for each of the new electoral division.
- 3.2. The draft Order, if approved by Parliament, will amend the County of Cornwall (Electoral Arrangements) Order 2005 (S.I. 2005/168) by omitting paragraphs (2) and (3) of article 1, article 3, articles 6 to 8 and the Schedule. The order does not affect the areas of, or the number of councillors to be elected for, the parishes of Helston and Newquay, for which articles 4 and 5 of the 2005 Order provide.

4. Matters of special interest to the Joint Committee on Statutory Instruments

- 4.1. Orders making changes in the electoral arrangements of local government areas are ordinarily made by the Electoral Commission in exercise of powers conferred by sections 17 and 26 of the Local Government Act 1992 (c.19) (“the 1992 Act”), giving effect (with or without modifications) to some or all of the recommendations of the Boundary Committee for England following a review under section 15 of the 1992 Act. (The Boundary Committee for England is a committee of the Electoral Commission, established in accordance with section 14 of the Political Parties, Elections and Referendums Act 2000 (c.41).)
- 4.2. The functions of the Secretary of State under sections 13 to 15 and 17 of the 1992 Act, to the extent that they relate to electoral changes within the meaning of the 1992 Act (see section 14(1)(c)), were transferred, with modifications, to the Electoral Commission on 1st April 2002 (see The Local Government Commission for England (Transfer of Functions) Order 2001 (S.I. 2001/3962).
- 4.3. The circumstances in which this draft Order has been prepared are unusual; they are set out in detail in section 8 of this memorandum. In summary, an order (the Cornwall (Structural Change) Order 2008 (S.I. 2008/491)) (the “Cornwall Order”) has been made under the Local Government and Public Involvement in Health Act 2007 (c.28) (“the 2007 Act”), providing for a single tier of local government in Cornwall with effect from 1st April 2009. There is to be a county council for the county, but no district councils (see section 1(2)(a) of the 2007 Act). 2009 is a year in

which the ordinary elections of county councillors take place under the Local Government Act 1972 (c.70) (see sections 6 and 7). On 2nd December 2008, the Boundary Committee for England published draft recommendations for electoral changes in Cornwall. The Electoral Commission has not taken any decisions in relation to those recommendations, and is unlikely to do so in time for arrangements to be made for the elections which, by virtue of the Local Elections (Ordinary Day of Elections in 2009) Order 2008 (S.I. 2008/2857), are to be held at the same time as elections are held for the return of members to the European Parliament (4th June 2009). Such arrangements need to be in place by, at the latest, the third week in April.

- 4.4. The Department for Communities and Local Government is particularly concerned that the first elections of councillors to the new single tier council should be held both on the basis of an appropriate number of councillors for the new single tier council, and as soon as possible after the establishment of single tier government in Cornwall on 1st April 2009. The reasons for this are set out in section 8 of this memorandum.
- 4.5. In order to achieve that objective, and in view of the practical impossibility of establishing new county electoral divisions under the 1992 Act procedure in time for the 2009 elections in Cornwall to proceed on the ordinary day of election of councillors in 2009, the Department for Communities and Local Government has decided to rely on the powers conferred by sections 7, 11 and 12 of the 2007 Act to make the electoral changes that are considered to be necessary. The attention of the Joint Committee is drawn, in particular, to section 11(1)(b) and (4)(d) and section 12(1)(a) to (d) of the 2007 Act.

5. Legislative Context

- 5.1. Part 1 of the 2007 Act provides for the establishment of a single tier of local government for areas in England. There is a single tier of local government for an area if there is either a county council and no district councils for that area, or a district council and no county council for that area (section 1(2) of the 2007 Act). Where the Secretary of State has received a proposal that there should be a single tier of local government for an area, she may make a section 7 order to implement the proposal with or without modification.
- 5.2. One section 7 order was made in relation to the county of Cornwall providing for the existing county council to be established as a single tier council (The Cornwall (Structural Change) Order 2008 (SI 2008/491)('the Cornwall Order')).
- 5.3. Further details about the section 7 orders can be found in the Explanatory Memorandum which was laid alongside the draft of that and other orders¹. The term 'single tier council' is the term used to describe what is commonly known as a unitary council, and reflects the 2007 Act's description of unitary local government as "a single tier of local government" (section 1(2) of the 2007 Act).

¹ The Explanatory Memorandum for the county Orders can be found at:
http://www.opsi.gov.uk/si/si2008/draft/em/ukdsiem_9780110808154_en.pdf.

- 5.4. The power to make a section 7 order also includes the power to make provision for, or with respect to, any of the matters set out in section 11(4) of the 2007 Act. The matters listed in section 11(4) include electoral matters within the meaning of section 12 of the 2007 Act (11(4)(d)). It also includes the power to make incidental, consequential, transitional and supplementary provision (section 13(1) of the 2007 Act).
- 5.5. The particular context of this draft Order is further set out in sections 3 and 4 of this memorandum.

6. Territorial Extent and Application

- 6.1. This instrument applies to England, but affects only the county of Cornwall.

7. European Convention on Human Rights

- 7.1. The Minister for Local Government has made the following statement regarding Human Rights:

In my view the provisions of the Cornwall (Electoral Arrangements and Consequential Amendments) Order 2009 are compatible with the Convention rights.

8. Policy background

- 8.1. The Cornwall Order provided for the creation of the new single tier council for Cornwall. Section 12(5) of the 2007 Act requires that as soon as practicable after the making of a section 7 order the Electoral Commission must consider whether to direct the Boundary Committee to conduct an electoral review. The Department's expectation was that the Electoral Commission would make an order in sufficient time to enable, at the next ordinary day of election of county councillors in 2009, the election of the appropriate number of councillors for effective democratic governance of the new single tier council; further elections would be held, in accordance with section 7 of the Local Government Act 1972, every four years thereafter (i.e. 2013, 2017 etc.). The Boundary Committee commenced its electoral review for Cornwall on 26 February 2008, the date that it also started electoral reviews for Shropshire and Wiltshire (areas for which section 7 orders have already been made). The Department understands that the Electoral Commission has written to both Shropshire and Wiltshire to inform them that it will make an order on or around 13 March 2009 implementing the Boundary Committee's final recommendations for electoral arrangements in those counties.
- 8.2. On 15th August 2008 the Boundary Committee for England wrote to David Whalley, Leader of Cornwall County Council announcing:
- (a) that they were minded to recommend a council size of 123 members for the new unitary Cornwall Council; but
 - (b) that they would not be able to complete their electoral review of Cornwall in time for the Electoral Commission to make an order implementing new arrangements (assuming that their recommendations were accepted) in time for the 2009 local government elections, whether they were to take place in May or June.

- 8.3. Without an order implementing new electoral divisions the 2009 local government elections would be held on the basis of the current County Council arrangements as set out in the 2005 Order – returning 82 councillors for 71 electoral divisions.
- 8.4. Following the Boundary Committee’s letter, the Department received representations from a number of Cornish councillors and members of Parliament all of whom expressed their disappointment in relation to the delay and stressed the importance of the electoral review and any election returning the increased number of councillors to the new single tier council, reflected the new nature (i.e. single tier) and functions of the council.
- 8.5. These representations included, in particular, a letter from the Leader of the County Council and of the Cornwall Implementation Executive (IE), the body charged by the Cornwall Order with leading preparations for the new council, stating that a council size of 82 would undermine the basis of the new council and particularly the proposed community networks for empowering local communities. He also recognised that it would be a poor start for the new council and could lead to confusion and frustration for the electorate. He stressed that he and the IE believed it essential that elections to the new council were held on the basis of new electoral arrangements and that 123 councillors were returned.
- 8.6. The Department shared the view that elections held on the basis of existing county electoral divisions would be undesirable as returning only 82 councillors for the new unitary council would be damaging to the credibility and democratic legitimacy of local government in Cornwall.
- 8.7. Additionally, the Department was concerned that, given the Boundary Committee’s stated preference for a council size of 123, it was unlikely that the Electoral Commission would allow a council of 82 members, if returned at the 2009 local government elections, to continue until 2013 (the next scheduled county council election). The consequence could be that the Electoral Commission would seek to implement new electoral arrangements through an earlier “one off” election – in either 2010 or 2011 - which would be extremely destabilising for the new council.
- 8.8. On 24th October 2008 the Electoral Commission wrote to the Department setting out the background and their “forward look” timetable for the electoral review in Cornwall. The letter stated that the Electoral Commissioners could not reasonably expect to consider the Boundary Committee’s final recommendations and make an Order to implement those recommendations (assuming they were content) before the end of August 2009. Throughout the letter the Electoral Commission stressed that the timetable that they had set out was very tight and came with a “significant level of risk of further slippage”.
- 8.9. On 28th October 2008, during the debate on the Draft Local Elections (Ordinary Day of Elections in 2009) Order 2008, John Healey, speaking about the situation that had arisen in Cornwall, said:
- “Over the last few days, I have spoken to the chair of the Electoral Commission, and the Commission has now written to the Department setting out its intended

timetable for beyond 2 December, which is when it plans to publish its draft proposals.

The Electoral Commission recognises that its timetable is tight, stresses that it needs to go through certain stages and expects to be able to make an order establishing electoral arrangements by the end of August. Like everyone else, I wish to see an election for the new authority based on new ward arrangements, and that suggests that an election could be held in late October at the earliest.

I am therefore minded to introduce for consideration an order that would, exceptionally, move the election date for Cornwall from the beginning of June, as in this Order, to the end of October 2009.

Before introducing such an order, I propose to take soundings and consult those affected in Cornwall, discuss the matter further with the Boundary Committee and the Electoral Commission if necessary, and confirm our intentions in due course.

Although this Order applies to Cornwall, the further order would deal specifically with the Cornish situation and defer elections to the soonest practicable date. I hope that that is helpful to the Committee and to those who are following this issue closely from beyond the House.”.

8.10. On 5th December 2008 John Healey wrote to Cornish MPs, the Boundary Committee and the Electoral Commission, and to the leaders of the county and district councils in Cornwall commencing a soundings exercise on the 2009 elections to the Cornwall Council. In writing to these stakeholders the Department sought views on the proposal for an order that would defer the election from June 2009 to October 2009. The letter included a note which set out in more detail how the Department might approach the 2009 elections in Cornwall and any potential deferral including the possibility of an election in June using interim arrangements.

8.11. Central to any decision to defer was the Electoral Commission’s ability to put in place new electoral arrangements in time for an October election. In particular, the Department explained that, if there were any significant likelihood of this timetable not being met, the Department believed it would be wrong to defer the election, and a preferable course, as explained in the note, might be to hold the election on 4 June 2009, but on the basis of interim electoral arrangements to be specified in an order which, if Parliament approved, the Secretary of State would make under the Local Government and Public Involvement in Health Act 2007.

8.12. The note also stated the Department’s expectation that a June 2009 election would be followed by a further election in May 2010 on the basis of final electoral arrangements established by the Electoral Commission, unless these were substantially the same as the interim arrangements in which case the next election should be in 2013. However, given the representations received as part of the soundings exercise the Department is now firmly of the view that after 2009 the next election should be 2013 – i.e. councillors elected for a 4 year term as it is strongly of the view that any “one off” election in 2010 would be both destabilising and damaging for the new council and to improved service delivery and effective political leadership for Cornwall.

8.13. The closing date for the soundings exercise was 30th January 2009. The Department recognised in the letter of 5 December 2008 that this was a short timescale in which to respond, but was clear that it needed to complete this soundings exercise in time to bring any draft Order before the House in February 2009 in order to bring certainty about the next election to the council, councillors, electoral administrators and the public as soon as possible.

9. Consultation outcome

9.1. The Department received 24 responses to the soundings exercise, including responses from Cornwall County Council, the Electoral Commission, all Cornish MPs, all district councils in Cornwall and the Association of Electoral Administrators.

9.2. There was a considerable measure of support – amongst Cornish MPs and locally both cross-party, and cross-council that the approach should be:

- 2009 elections to the new Cornwall Council for 123 members as soon as practicable (123 councillors was widely recognised as being the appropriate number to boost effective, democratic leadership in Cornwall and to enable the new council to deliver its innovative proposals to empower local communities); and
- irrespective of when, or on what basis, the 2009 elections are held, the next election to the Council should be in 2013 using the electoral arrangements established by the Electoral Commission.

9.3. Views diverged as to when it would be practicable to hold the 2009 elections. The Cornish MPs were strongly attracted to an election in June on the basis of finally approved electoral arrangements, however if this was unworkable they would settle for elections as soon as possible with the draft new electoral arrangements for Cornwall. Cornwall County Council on the other hand were attracted to an October election; with their Leader expressing concerns about an election in June being less secure than an election in October.

9.4. The Electoral Commission and Association and Electoral Administrators (AEA) were essentially opposed to both a June and an October election on revised electoral arrangements, expressing concerns about practical administration of the election. The AEA stated that in their view a May 2010 election was a safer alternative. The Electoral Commission described the October election as the least worst of the options, but also stated that “Aiming to hold elections in October 2009 using electoral arrangements which have been approved by the Electoral Commission relies heavily on meeting an uncertain timetable for implementing the electoral review recommendations and could involve considerable risk to the effective administration of the electoral process”.

9.5. The Department considered carefully all the representations it received through the soundings exercise and all other relevant information available to it. It also considered carefully which electoral arrangements it might be appropriate to specify in the draft Order and what would be the practical implications of implementing new electoral arrangements.

- 9.6. On 19th February the Minister (John Healey) announced his decision:
- that the 2009 elections to the new unitary council for Cornwall should take place – as they would if no provision were made otherwise – on Thursday 4th June – the same day as elections to the European Parliament; and
 - that he intended to lay before Parliament a draft order which, if approved, would provide for elections to the unitary council to take place on the basis of the Boundary Committee’s draft recommended arrangements, as published on 2nd December 2008, for the return of 123 councillors.
- 9.7. In taking this decision the Minister considered the representations received about the risks that could be involved in a June election on new electoral arrangements and the risks to the successful establishment of the new Cornwall Council, and to improved service delivery and effective local leadership, that any postponement of the election could cause.
- 9.8. He believed that this approach would give the new Cornwall Council full democratic legitimacy as soon as possible after its inception. In the expectation that the next election to that Council will be held in May 2013 (on the basis of the Electoral Commission’s final electoral arrangements), it allows the new Council from its early days to have the strength and stability necessary to pursue innovative and demanding improvements in service delivery and to give Cornwall the clear and effective leadership it needs, particularly in light of the current economic challenges the area faces.
- 9.9. Some of the representations from electoral administrators expressed concern that a June election would pose certain challenges for administration of the combined local and European elections, given the new boundaries of the county electoral divisions. The Department believes that none of these is insuperable and is working with colleagues in the Ministry of Justice (MOJ), relevant stakeholders in the electoral administration community (the Association of Electoral Administrators (AEA), the Society of Local Authority Chief Executives and Senior Managers (SOLACE), and the Electoral Commission), and the Cornwall Council, to ensure that any risks to the successful administration of the 2009 elections are effectively managed so as to deliver soundly-based combined European Parliamentary and local government elections in June 2009.

10. Guidance

- 10.1. The Department does not intend to issue any guidance alongside this instrument. This is not considered necessary as the Order is self-explanatory and has been drafted in close consultation with interested parties. As explained above the Department is working closely with colleagues in MOJ, relevant stakeholders in the electoral administration community and Cornwall Council.

11. Impact

- 11.1. An Impact Assessment has not been prepared for this instrument because no impact on the private or voluntary sector is foreseen

- 11.2. Holding the local government elections on the same date as the European elections, should result in savings for the administration of those elections for the council and for the Government. It is difficult to provide an accurate estimate of what the total savings will be although the Government's initial considerations indicate that savings would be in the region of £600,000 which would be shared equally between the local authority and the consolidated fund.

12. Regulating small business

- 12.1. The legislation does not apply to small business.

13. Monitoring & review

- 13.1. The implementation of the Cornwall (Electoral Arrangements and Consequential Amendments) Order 2009 will be monitored through the Department's frequent discussions with the council's senior management team at our regular monitoring meetings and also through liaison with electoral administration bodies.
- 13.2. Successful implementation will be defined by an efficiently conducted election in accordance with all the statutory requirements on 4th June 2009 returning 123 councillors to the new unitary Cornwall Council.
- 13.3. The Order will not be reviewed as its relevance is mostly limited to the 2009 elections. As explained in paragraphs 8.1, 8.11 and 9.8, it is envisaged that the electoral arrangements for which the Order provides will have been superseded before the next elections are due in 2013 by an order to be made by the Electoral Commission.

14. Contact

- 14.1. Joanne Allison at the Department for Communities and Local Government
Tel: 020 7944 4267 or email: Joanne.allison@communities.gsi.gov.uk can answer any queries regarding the instrument.