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DRAFT STATUTORY INSTRUMENTS

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**2008 No.**

**The Cheshire (Structural Changes) Order 2008**

**PART 1**

**GENERAL**

**Citation and commencement**

1. This Order may be cited as the Cheshire (Structural Changes) Order 2008 and shall come into force on the day after that on which this Order is made.

**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(1);

“the 1972 Act” means the Local Government Act 1972(2);

“2008 election” means an election required by article 13(1) to be held in 2008;

“the 2008 election day” means the ordinary day of election of councillors(3) in 2008;

“article 16 functions” means—

(a) in relation to the County Council, the functions referred to in article 16(1) and (2);

(b) in relation to each of the East Cheshire councils, the function referred to in article 16(3);  
and

(c) in relation to each of the West Cheshire councils, the function referred to in article 16(4);

“Cheshire”, unless immediately preceded or followed by “East” or “West”, means the non-metropolitan county of Cheshire as constituted immediately before 1st April 2009;

“Cheshire East”, except in references to the county of Cheshire East, means the district constituted by article 3;

“the Cheshire East Council” means the council constituted by article 3(2);

“the Cheshire East Joint Committee” means the committee established (whether before or after the coming into force of this Order) as mentioned in article 17(1)(a);

“Cheshire West and Chester”, except in references to the county of Cheshire West and Chester, means the district constituted by article 4;

“the Cheshire West and Chester Council” means the council constituted by article 4(2);

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(1) 2000 c.22. Parts 2 and 3 of that Act were amended by Part 3 of the Local Government and Public Involvement in Health Act 2007 (c.28).

(2) 1972 c.70.

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

“the Cheshire West and Chester Joint Committee” means the committee established (whether before or after the coming into force of this Order) as mentioned in article 17(1)(b);

“the County Council” means Cheshire County Council;

“the East Cheshire councils” means Congleton Borough Council, Crewe and Nantwich Borough Council and Macclesfield Borough Council;

“the East Cheshire districts” means the boroughs of Congleton, Crewe and Nantwich, and Macclesfield;

“electoral division” means a division created by article 2 of the County of Cheshire (Electoral Changes) Order 2000(4);

“the proper officer”, in relation to any purpose and any council, means the officer appointed for that purpose by that council;

“shadow authority” means an authority (not being a local authority) which will become a local authority on 1st April 2009;

“shadow executive” has the meaning given by article 7(2);

“the shadow period” means the period beginning with the fourth day after the 2008 election day and ending immediately before 1st April 2009;

“the West Cheshire councils” means Chester City Council, Ellesmere Port and Neston Borough Council and Vale Royal Borough Council; and

“the West Cheshire districts” means the city of Chester and the boroughs of Ellesmere Port and Neston, and Vale Royal.

## PART 2

### ESTABLISHMENT OF SINGLE TIER LOCAL GOVERNMENT IN CHESHIRE

#### Single tier local government in East Cheshire

**3.—**(1) A new non-metropolitan county and a new non-metropolitan district, each to be known as Cheshire East, shall be constituted comprising (in each case) the area of the East Cheshire districts.

(2) A new district council, to be known as the Cheshire East Council, shall be established as the sole principal authority for the non-metropolitan district of Cheshire East.

(3) Except for the purposes of Part 4 of this Order (electoral matters), until 1st April 2009—

(a) the Cheshire East Council shall not be a local authority for the purposes of the 1972 Act or any other enactment relating to local government; and

(b) subsection (2) of section 2 of the 1972 Act (constitution of principal councils in England) shall have effect in relation to that Council as if the words from “and the council” to the end of that subsection were omitted.

(4) In relation to the county of Cheshire East, section 2(1) of the 1972 Act (which provides that every county shall have a council) shall not apply.

(5) On 1st April 2009—

(a) the East Cheshire districts shall be abolished as local government areas; and

(b) the East Cheshire councils shall be wound up and dissolved.

### **Single tier local government in West Cheshire**

4.—(1) A new non-metropolitan county and a new non-metropolitan district, each to be known as Cheshire West and Chester, shall be constituted comprising (in each case) the area of the West Cheshire districts.

(2) A new district council, to be known as the Cheshire West and Chester Council, shall be established as the sole principal authority for the non-metropolitan district of Cheshire West and Chester.

(3) Except for the purposes of Part 4 of this Order (electoral matters), until 1st April 2009—

- (a) the Cheshire West and Chester Council shall not be a local authority for the purposes of the 1972 Act or any other enactment relating to local government; and
- (b) subsection (2) of section 2 of the 1972 Act (constitution of principal councils in England) shall have effect in relation to that Council as if the words from “and the council” to the end of that subsection were omitted.

(4) In relation to the county of Cheshire West and Chester, section 2(1) of the 1972 Act (which provides that every county shall have a council) shall not apply.

(5) On 1st April 2009—

- (a) the West Cheshire districts shall be abolished as local government areas; and
- (b) the West Cheshire councils shall be wound up and dissolved.

### **County of Cheshire, Cheshire County Council and councillors of that Council**

5.—(1) On 1st April 2009—

- (a) the county of Cheshire shall be abolished as a local government area; and
- (b) the County Council shall be wound up and dissolved.

(2) The term of office of persons serving as councillors of the County Council immediately before 1st April 2009 shall end on that date.

(3) 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 the office of councillor of the County Council where that vacancy arises after 30th September 2008 and before 1st April 2009.

## **PART 3**

### **SHADOW AUTHORITIES AND THEIR FUNCTIONS**

#### **Shadow authorities**

6. During the shadow period the Cheshire East Council and the Cheshire West and Chester Council shall each be a shadow authority for the purposes of the following provisions of this Part.

#### **Duties of shadow authorities: executive arrangements and code of conduct**

7.—(1) At its first meeting(5), each shadow authority shall discharge the duties specified or referred to—

- (a) in paragraph (2); and

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(5) See paragraphs (11) and (12) of article 13.

(b) in section 51 of the 2000 Act (duty of relevant authorities to adopt codes of conduct), as applied by paragraph (5),  
and it shall discharge those duties in accordance with paragraphs (3) and (6), respectively.

(2) It shall be the duty of a shadow authority to create a leader and cabinet executive within the meaning of Part 2 of the Local Government Act 2000 (arrangements with respect to executives etc), as originally enacted(6) (“the shadow executive”).

(3) The shadow authority shall adopt the proposals made to it under article 19—

- (a) without amendment or modification, or
- (b) subject to such amendments or modifications as it thinks fit.

(4) With the exception of sections 25 (proposals), 26 (proposals not requiring referendum), 27 (referendum in case of proposals involving elected mayor), 28 (approval of outline fall-back proposals) and 29 (operation of, and publicity for, executive arrangements) the provisions of Part 2 of the 2000 Act, to the extent that they relate to a leader and cabinet executive, shall have effect in relation to each shadow authority as if—

- (a) its executive were a leader and cabinet executive of a district council;
- (b) the executive arrangements that it makes were executive arrangements of a district council(7);
- (c) section 15 authorised its executive to delegate functions not only to officers of the shadow authority but also—
  - (i) in the case of the shadow executive for Cheshire East, to officers of the County Council or of any of the East Cheshire councils;
  - (ii) in the case of the shadow executive for Cheshire West and Chester, to officers of the County Council or of any of the West Cheshire councils;
- (d) for the purposes of the application of Part 1 of Schedule 4 to the 2007 Act (new arrangements for executives: transitional provision: old-style leader and cabinet executive), its executive had been operating at the relevant time within the meaning of that Part of that Schedule(8).

(5) Part 3 of the 2000 Act (conduct of local government members and employees)(9) shall apply in relation to each shadow authority as if—

- (a) it were a district council(10);
- (b) references to co-opted members were omitted; and
- (c) in section 51—
  - (i) in subsection (1), for “before the end of the period of six months beginning with the day on which the first order under section 50 which applies to them is made”, there were substituted “at the first meeting of an authority that is a shadow authority within the meaning of the Cheshire (Structural Changes) Order 2008”; and
  - (ii) in subsection (5), “(1) or” were omitted.

(6) In complying with subsection (1) of section 51 of the 2000 Act, each shadow authority shall make such amendments or modifications to the proposals submitted to it under article 20

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(6) 2000 c.22. Section 11 was amended by section 62 of the Local Government and Public Involvement in Health Act 2007 (c.28). Subsection (3) of that section, as originally enacted, defines a leader and cabinet executive.

(7) In Part 2 of the Local Government Act 2000, “executive arrangements” has the meaning given by section 10; see the definition in section 48(1). Section 48(1) defines “local authority”, in relation to England, as including a district council.

(8) *See, in particular*, the definitions of “old-style leader and cabinet executive” and “relevant time” in paragraph 5 of Part 1 of Schedule 4.

(9) Part 3 was amended by Chapter 1 of Part 10 of the Local Government and Public Involvement in Health Act 2007 (c.28). *See, in particular*, the amendments to section 51 in section 183(3) of that Act.

(10) Part 3 applies in relation to relevant authorities; see the definition of “relevant authority” in section 49(6).

as it considers necessary to secure that, when adopted, the code will satisfy the requirements of subsection (4) of that section.

### **Duties of shadow authorities: appointment of certain officers**

**8.—(1)** It shall be the duty of each shadow authority at its first meeting to designate, on an interim basis, an officer of the County Council, one of the East Cheshire councils or one of the West Cheshire councils—

- (a) to be responsible for performing, in relation to the shadow authority, the duties imposed by subsections (2) and (3) of section 5 (designation and reports of monitoring officer) of the Local Government and Housing Act 1989<sup>(11)</sup> (“the 1989 Act”) and subsections (2) and (5) of section 5A<sup>(12)</sup> of the 1989 Act (reports of monitoring officer – local authorities operating executive arrangements), as applied by paragraph (4) (the “interim monitoring officer”); and
- (b) to be responsible for the administration of the financial affairs of the shadow authority (the “interim chief finance officer”).

(2) A designation under paragraph (1) shall cease to have effect on the day on which a person appointed under paragraph (3) to discharge responsibilities equivalent to those of the designated officer takes up his appointment.

(3) Not later than 31st December 2008, each shadow authority shall appoint a person (who may, but need not, be a person designated under paragraph (1)) —

- (a) to be responsible for performing, in relation to the shadow authority and, on and after 1st April 2009, in relation to the Cheshire East Council or, as the case may be, the Cheshire West and Chester Council, the duties imposed by subsections (2) and (3) of section 5 of the 1989 Act and subsections (2) and (5) of section 5A of that Act (including those subsections as they have effect as mentioned in paragraph (4) in relation to times on or before 31st March 2009) (the “appointed monitoring officer”);
- (b) to be responsible, from the date on which he takes up his appointment, for the administration of the financial affairs of the shadow authority and, on and after 1st April 2009, of the Cheshire East Council or, as the case may be, the Cheshire West and Chester Council (the “appointed chief finance officer”); and
- (c) a person to be the head of its paid service.

(4) Subsections (2) to (7) of section 5 of the 1989 Act and subsections (2) and (5) of section 5A of that Act shall apply in relation to a shadow authority, its interim or appointed monitoring officer and its executive arrangements as they apply in relation to a relevant authority and the monitoring officer and executive arrangements of a relevant authority as if references in those subsections to a relevant authority, its monitoring officer and its executive arrangements were references to the shadow authority, its interim or appointed monitoring officer and the executive arrangements that it adopts pursuant to article 7.

(5) Sections 114 to 116 of the Local Government Finance Act 1988<sup>(13)</sup> shall apply in relation to a shadow authority, its interim chief finance officer and its appointed chief finance officer as if—

- (a) references to the chief finance officer of a relevant authority included references to the interim and appointed chief finance officers of a shadow authority;

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<sup>(11)</sup> 1989 c.42. Relevant amendments were made by S.I. 2001/2237, article 23.

<sup>(12)</sup> Section 5A was inserted by S.I. 2001/2237, article 23.

<sup>(13)</sup> 1988 c.41. In section 114, subsection (3A) was inserted by the Local Government and Housing Act 1989 (c.42), Schedule 5, paras 1, 66 and 79(1), and other relevant amendments were made by the Police and Magistrates’ Courts Act 1994 (c.29), Schedule 4, Part 1, para 34 and by S.I. 2001/2237, article 20. (Section 115A, which is not relevant to this Order, was inserted by the Greater London Authority Act 1999 c.29.) Section 115B was inserted, and section 116 amended, by S.I. 2001/2237, article 20.

- (b) references to a relevant authority (in whatever terms) included references to a shadow authority; and
- (c) references to joint committees were omitted.

### **Other functions of shadow authorities**

9.—(1) During the shadow period the shadow authorities shall have, in addition to the duties specified or referred to in articles 7 and 8, the functions described in this article, and such other functions as may be conferred on them by—

- (a) a subsequent order made under section 7 of the 2007 Act by virtue of section 14 of the Interpretation Act 1978 (power to amend)<sup>(14)</sup>,
  - (b) an order under section 20 of the 2007 Act (correction of orders), or
  - (c) regulations under section 14 of the 2007 Act (regulations for supplementing orders).
- (2) Each shadow authority shall take all such practicable steps as are necessary or expedient—
- (a) to commence and sustain its running as a shadow authority;
  - (b) to prepare the authority for the assumption, as the Cheshire East Council or the Cheshire West and Chester Council (as the case may be), of local government functions and full local authority powers on 1st April 2009;
  - (c) to prepare any budgets or plans required by the Cheshire East Council or the Cheshire West and Chester Council (as the case may be), when those functions are assumed; and
  - (d) to liaise with the County Council and the other shadow authority for the purpose of ensuring continuity of the delivery of public services on and after 1st April 2009.
- (3) The shadow authority for Cheshire East shall also take all such practicable steps as are necessary or expedient to liaise with the East Cheshire councils for the purpose of ensuring continuity of the delivery of public services on and after 1st April 2009.
- (4) The shadow authority for Cheshire West and Chester shall also take all such practicable steps as are necessary or expedient to liaise with the West Cheshire councils for the purpose of ensuring continuity of the delivery of public services on and after 1st April 2009.
- (5) Subject to paragraph (6), the shadow authorities shall have all other powers of a non-metropolitan county council and a non-metropolitan district council.
- (6) The powers conferred by paragraph (5) may be exercised by the shadow authorities only—
- (a) in the discharge of the functions specified or referred to in this article and article 8(3), and
  - (b) in the same manner, and subject to the same conditions and limitations, as if it were a non-metropolitan county council or a non-metropolitan district council, and
  - (c) where the exercise of the power would involve incurring expenditure or acquiring a liability—
    - (i) with the prior consent of the County Council, where the expenditure or liability relates to a matter which, before 1st April 2009, is the responsibility of that Council; or
    - (ii) where the expenditure or liability relates to a matter which, before 1st April 2009, is the responsibility of any of the East Cheshire councils or the West Cheshire councils, with the prior consent of that council.
- (7) The total of the expenditure properly incurred by the shadow authorities shall be divided among, and paid by, the County Council, the East Cheshire councils and the West Cheshire councils

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<sup>(14)</sup> 1978 c.30.

in such proportion as may be agreed between them; but, where either of the shadow authorities notifies the Secretary of State that there is no such agreement, the Secretary of State may—

- (a) determine the proportion in which that expenditure is to be divided and paid; or
- (b) appoint an arbitrator for that purpose.

(8) The following provisions of the 1972 Act shall apply in relation to the shadow authorities, notwithstanding that those authorities do not have the functions and full powers of a local authority and, as appropriate, to persons standing for election or elected at the 2008 elections:

<i>Part or section of 1972 Act</i>	<i>Description</i>
Section 3 <b>(15)</b>	Chairman
Section 5 <b>(16)</b>	Vice-chairman
Parts 5 and 5A <b>(17)</b>	General provisions as to members and proceedings of local authorities, access to meetings and documents of certain authorities, committees and sub-committees
Section 103	Expenses of joint committees
Section 106	Standing orders
Section 146 <b>(18)</b>	Transfer of securities on alteration of area, etc
Section 178 <b>(19)</b>	Regulations as to allowances

(9) The shadow authorities shall, notwithstanding that they do not have the functions and full powers of a local authority, be treated—

- (a) for the purposes of Part 2 of, and Schedule 2 to, the Audit Commission Act 1998**(20)** (accounts and audit of public bodies), as local authorities (and, therefore, bodies subject to audit); but sections 11A**(21)**, 19 and 30 to 32 in that Part, and references in that Part to those sections, shall be treated as omitted,
- (b) for the purposes of section 101 of that Act (indemnification of members and officers of relevant authorities)**(22)**, as relevant authorities,
- (c) for the purposes of Part 1 of the Local Government Act 2003**(23)** (capital finance etc and accounts), as local authorities, and
- (d) for the purposes of the Local Authorities (Standing Orders) (England) Regulations 2001**(24)**, as relevant authorities.

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**(15)** Section 3 was amended by the Local Government Act 2000, Schedule 3, para 2.

**(16)** Section 5 was amended by the Local Government Act 2000, Schedule 3, para 3.

**(17)** Part 5A was inserted by section 1(1) of the Local Government (Access to Information) Act 1985 (c.43). Sections 100A and 100B were amended by S.I. 2002/715. Section 100D was amended by section 97 of the Local Government Act 2000. Section 100F was amended by S.I. 2006/88 and 2007/969. Section 100H was amended by S.I. 2006/88. Section 100K was amended by section 98 of the Local Government Act 2000. There are other amendments not relevant to this Order.

**(18)** Section 146(2) was amended by the Financial Services Act 1986 (c.60), Schedule 16, para 8(b). There is another amendment not relevant to this Order.

**(19)** Section 178 was amended by Schedules 11 and 12 to the Local Government and Housing Act 1989 (c.42).

**(20)** 1998 c.18. As regards England, sections 18 and 20 to 23 were repealed, and sections 19B and 19C inserted by the Local Government Act 2000 (c.22) and S.I. 2000/3335. Part 2 was most recently amended by Chapter 2 of Part 9 of the Local Government and Public Involvement in Health Act 2007.

**(21)** Section 11A was inserted by the Greater London Authority Act 1999 (c.29), Schedule 8, para 4.

**(22)** 2000 c.22. In section 101 “relevant authority” has the same meaning as in Part 3 of the Act. The definition of “relevant authority” for the purposes of that Part is to be found in section 49(6).

**(23)** 2003 c.26.

**(24)** S.I. 2001/3384.

(10) For the purposes of the application of section 83 of the 1972 Act (declaration of acceptance of office) to persons elected at the 2008 elections, references in that section to the proper officer of the council shall be treated—

- (a) as regards the Cheshire East Council, as references to the proper officer appointed by Macclesfield Borough Council; and
- (b) as regards the Cheshire West and Chester Council, as references to the proper officer appointed by Vale Royal Borough Council.

### **Functions of shadow authorities relevant to Implementation Plans**

**10.**—(1) After the dissolution of the Cheshire East Joint Committee<sup>(25)</sup>, it shall be a function of the shadow authority for Cheshire East to keep under review, and revise as necessary, the Implementation Plan prepared by the Cheshire East Joint Committee.

(2) After the dissolution of the Cheshire West and Chester Joint Committee<sup>(26)</sup>, it shall be a function of the shadow authority for Cheshire West and Chester to keep under review, and revise as necessary, the Implementation Plan prepared by the Cheshire West and Chester Joint Committee.

(3) Article 18(2) shall apply in relation to each shadow authority as if—

- (a) the word “preparing” were omitted;
- (b) for “the article 16 functions” there were substituted “the main transitional functions”; and
- (c) for “each Joint Committee” there were substituted, as the circumstances require, “the Cheshire East Council” or “the Cheshire West and Chester Council”.

(4) Article 18(3) shall apply in relation to each shadow authority as if—

- (a) for “Each Joint Committee”, there were substituted, as the circumstances require, “The Cheshire East Council” or “The Cheshire West and Chester Council”; and
- (b) for “the article 16 functions” there were substituted “the main transitional functions”.

(5) In article 18(2) and (3), as applied by paragraph (3) and (4), “the main transitional functions” means the functions referred to in article 9(2) and—

- (a) as regards the shadow authority for Cheshire East, the function referred to in article 9(3); and
- (b) as regards the shadow authority for Cheshire West and Chester, the function referred to in article 9(4).

### **Allowances payable to members of shadow authorities**

**11.**—(1) The Local Authorities (Members’ Allowances) (England) Regulations 2003<sup>(27)</sup> (“the 2003 Regulations”), other than regulations 6 and 17 and Part 5, shall apply in relation to the shadow authorities and their members as they apply in relation to district councils and their members subject to the modifications specified in the following paragraphs of this article.

(2) For the purposes of regulation 4(1)(a) (requirement for scheme of allowances), the shadow authorities shall be treated as if they had adopted, as their scheme of allowances for the purposes of the 2003 Regulations, the scheme adopted by the County Council on 18th May 2006 (“the county scheme”).

(3) Regulation 4(1)(b) (payment of allowances only in accordance with scheme) shall apply as if references in the county scheme to members of the County Council included references to members of the shadow authorities.

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<sup>(25)</sup> See article 17(11).

<sup>(26)</sup> See article 17(12).

<sup>(27)</sup> S.I. 2003/1021.

(4) Regulation 10 shall apply as if the county scheme were the scheme made by the shadow authorities for the year beginning on 1st April 2008.

(5) Nothing in paragraph (2) or (4) shall prevent a shadow authority from exercising, in relation to the county scheme as it applies in relation to that authority and its members, the powers conferred by regulation 10(3) of the 2003 Regulations (power to amend or revoke scheme).

(6) Regulation 16 of the 2003 Regulations (publicity for schemes) shall apply as if “making or” were omitted.

## PART 4

### ELECTORAL MATTERS

#### **Cancellation of elections to East Cheshire councils and West Cheshire councils in 2008, etc**

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

- (a) elections shall not be held in 2008 for the return of councillors to any of the East Cheshire councils or the West Cheshire councils; and
- (b) the term of office of councillors elected to any of those councils shall end on 1st April 2009.

(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 the office of councillor of any of the East Cheshire councils or the West Cheshire councils where that vacancy arises after 30th September 2008.

#### **Elections of councillors of Cheshire East Council and Cheshire West and Chester Council in 2008**

**13.**—(1) Elections of councillors of the Cheshire East Council and the Cheshire West and Chester Council shall be held on the ordinary day of election of councillors<sup>(28)</sup> in 2008.

- (2) Cheshire East shall be represented by 81 councillors.
- (3) Cheshire West and Chester shall be represented by 72 councillors.
- (4) For the purposes of the 2008 elections—
  - (a) Cheshire East and Cheshire West and Chester shall be divided into wards;
  - (b) the names of the new wards shall be those indicated in column 1 of the Table set out in the Schedule to this Order;
  - (c) the area of each new ward shall be the same as that of the electoral division of the same name (as indicated in column 2 of that Table); and
  - (d) each ward shall return three councillors.
- (5) At the 2008 elections—
  - (a) the returning officer for the election to the Cheshire East Council (“the Cheshire East returning officer”) shall be the proper officer appointed by Macclesfield Borough Council; and
  - (b) the returning officer for the election to the Cheshire West and Chester Council (“the Cheshire West and Chester returning officer”) shall be the proper officer appointed by Vale Royal Borough Council.

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

(6) The 2008 elections shall be conducted in accordance with the Representation of the People Act 1983<sup>(29)</sup> as applied to local government elections by rules under section 36 of that Act<sup>(30)</sup>.

(7) The Cheshire East returning officer and the Cheshire West and Chester returning officer shall take such steps as are necessary or appropriate to prepare for the 2008 elections, including the making of all necessary alterations in the electoral register.

(8) The total of the expenditure properly incurred by the Cheshire East returning officer and the Cheshire West and Chester returning officer in relation to the holding of the 2008 elections shall be divided among, and paid by, the County Council, the East Cheshire councils and the West Cheshire councils in such proportion as may be agreed between them; but, where either of those returning officers notifies the Secretary of State that there is no such agreement, the Secretary of State may—

- (a) determine the proportion; or
- (b) appoint an arbitrator for that purpose.

(9) In relation to the 2008 elections, “the appropriate officer” in Parts 1 and 2 of the Representation of the People Act 1983 does not have the meaning given by section 67(7) of that Act but means the Cheshire East returning officer or the Cheshire West and Chester returning officer (as the case may be).

(10) The term of office of councillors elected at the 2008 elections shall be three years; and they shall come into office on the fourth day after the 2008 elections and retire on the fourth day after the ordinary day of election of councillors in 2011.

(11) The Cheshire East returning officer shall convene, and make all necessary arrangement for, the first meeting of the shadow authority for Cheshire East, which shall be held not later than 14 days after the ordinary day of election of councillors in 2008.

(12) The Cheshire West and Chester returning officer shall convene, and make all necessary arrangement for, the first meeting of the shadow authority for Cheshire West and Chester, which shall be held not later than 14 days after the ordinary day of election of councillors in 2008.

#### **Elections of councillors of Cheshire East Council and Cheshire West and Chester Council in 2011, etc**

**14.** A whole council election of councillors of—

- (a) the Cheshire East Council, and
- (b) the Cheshire West and Chester Council,

shall be held on the ordinary day of election of councillors<sup>(31)</sup> in 2011 and in every fourth year thereafter.

#### **Cancellation of parish council elections, etc**

**15.—**(1) Notwithstanding section 16(3) of the 1972 Act (election of parish councillors)<sup>(32)</sup>—

- (a) elections shall not be held in 2010 for the return of councillors to the council of any parish of the county of Cheshire East or Cheshire West and Chester; and
- (b) the term of office of councillors elected to a council of a parish of Cheshire in 2006 or 2008, or at any by-election before the ordinary day of election of councillors in 2011, shall end on the fourth day after the ordinary day of election of councillors in 2011.

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<sup>(29)</sup> 1983 c.2. Under section 7(9) of the Local Government Act 1972, the term of office of councillors elected to non-metropolitan districts councils in 2008 would ordinarily be four years.

<sup>(30)</sup> See S.I. 1986/2214.

<sup>(31)</sup> See section 37 of the Representation of the People Act 1983 (c.2).

<sup>(32)</sup> Under section 16(3) of the Local Government Act 1972, the term of office of parish councillors is four years.

(2) Elections of parish councillors for all parish councils in the counties of Cheshire East and Cheshire West and Chester shall be held on the ordinary day of election of councillors in 2011 and in every fourth year thereafter.

(3) The term of office of parish councillors shall be four years and all parish councillors shall retire on the fourth day after the ordinary day of election of councillors in the year of retirement, and the newly-elected parish councillors shall come into office on the day on which their predecessors retire.

## PART 5

### FURTHER TRANSITIONAL PROVISIONS

#### **Functions of the County Council, the East Cheshire councils and the West Cheshire councils, and prohibition on preparation of certain budgets and plans**

16.—(1) There shall be added to the functions of the County Council the function, which shall be exercisable only in the transitional period beginning on the coming into force of this Order and ending on the fourteenth day after the 2008 election day, of preparing for and facilitating the economic, effective, efficient and timely transfer to the Cheshire East Council, of such of its functions, property, rights and liabilities as relate to Cheshire East and its inhabitants.

(2) There shall be added to the functions of the County Council the function, which shall be exercisable only in the transitional period beginning on the coming into force of this Order and ending on the fourteenth day after the 2008 election day, of preparing for and facilitating the economic, effective, efficient and timely transfer to the Cheshire West and Chester Council, of such of its functions, property, rights and liabilities as relate to Cheshire West and Chester and its inhabitants.

(3) There shall be added to the functions of each of the East Cheshire councils the function, which shall be exercisable only in the transitional period beginning on the coming into force of this Order and ending on the fourteenth day after the 2008 election day, of preparing for and facilitating the economic, effective, efficient and timely transfer to the Cheshire East Council of its functions, property, rights and liabilities.

(4) There shall be added to the functions of each of the West Cheshire councils the function, which shall be exercisable only in the transitional period beginning on the coming into force of this Order and ending on the fourteenth day after the 2008 election day, of preparing for and facilitating the economic, effective, efficient and timely transfer to the Cheshire West and Chester Council of its functions, property, rights and liabilities.

(5) Notwithstanding any enactment, none of the East Cheshire councils or the West Cheshire councils or the County Council shall undertake, as a local authority, the preparation of any budgets or plans that are to be prepared by a shadow authority, the Cheshire East Council or the Cheshire West and Chester Council.

#### **Joint committees**

17.—(1) Not later than 14 days after the coming into force of this Order—

- (a) the County Council and the East Cheshire councils shall establish a joint committee under section 101(5) of the 1972 Act for the purpose of discharging, until the first meeting of the shadow authority for Cheshire East, the functions mentioned in paragraph (2) (“the Cheshire East Joint Committee”); and
- (b) the County Council and the West Cheshire councils shall establish a joint committee under section 101(5) of the 1972 Act for the purpose of discharging, until the first meeting of the

shadow authority for Cheshire West and Chester, the functions mentioned in paragraph (2) (“the Cheshire West and Chester Joint Committee”).

- (2) The functions are—
  - (a) the article 16 functions, and
  - (b) the functions referred to in articles 18, 19 and 20.
- (3) The Cheshire East Joint Committee shall consist of—
  - (a) six persons nominated by the County Council who, for the time being, are members of that Council for electoral divisions whose areas are within the East Cheshire districts; and
  - (b) nine persons of whom each of the East Cheshire councils shall nominate three, being persons who, for the time being, are members of those councils.
- (4) The Cheshire West and Chester Joint Committee shall consist of—
  - (a) six persons nominated by the County Council who, for the time being, are members of that Council for electoral divisions whose areas are within the West Cheshire districts; and
  - (b) nine persons of whom each of the West Cheshire councils shall nominate three, being persons who, for the time being, are members of those councils.
- (5) In making the nominations referred to in paragraphs (3) and (4), the County Council and the East Cheshire councils and the West Cheshire 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 all represented on each Joint Committee by at least one member.
- (6) It shall be the duty of the County Council, and—
  - (a) as regards the Cheshire East Joint Committee, each of the East Cheshire councils,
  - (b) as regards the Cheshire West and Chester Joint Committee, each of the West Cheshire councils,

to co-operate in the establishment of the relevant Joint Committee.

(7) The chairman of the Cheshire East Joint Committee shall be the person who is for the time being the leader of Macclesfield Borough Council.

(8) The chairman of the Cheshire West and Chester Joint Committee shall be the person who is for the time being the leader of Vale Royal Borough Council.

(9) The Cheshire East Joint Committee and the Cheshire West and Chester Joint Committee shall each regulate its own proceedings, but a question to be decided by the committee 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 chairman of the committee) having one vote.

(10) In the case of an equality of votes, the person presiding at the meeting (whether or not the chairman of the committee) shall have a casting vote, in addition to any other vote the person may have.

(11) The Cheshire East Joint Committee shall be dissolved on the day following that on which the shadow authority for Cheshire East holds its first meeting.

(12) The Cheshire West and Chester Joint Committee shall be dissolved on the day following that on which the shadow authority for Cheshire West and Chester holds its first meeting.

(13) This article shall cease to have effect on the fifteenth day after the 2008 election day.

### **Implementation Plans and further provisions relevant to discharge of functions by joint committees**

**18.**—(1) The Cheshire East Joint Committee and the Cheshire West and Chester Joint Committee shall each 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 each Joint Committee necessary to secure the effective, efficient and timely discharge of the article 16 functions; and
  - (b) such budgets and plans as it considers necessary or desirable to facilitate the economic, effective, efficient and timely discharge, on or after 1st April 2009, of the functions that, before that date, are functions of the County Council, the East Cheshire councils, or the West Cheshire councils.
- (2) For the purposes of —
- (a) preparing, reviewing and revising the Implementation Plan,
  - (b) discharging the article 16 functions, and
  - (c) discharging such other functions as may be conferred on it, each Joint Committee shall have regard to the information supplied to the Secretary of State in support of proposals for single tier local government in Cheshire 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<sup>(33)</sup> by—
    - (i) as regards Cheshire East, Macclesfield Borough Council,
    - (ii) as regards Cheshire West and Chester, Chester City Council, Ellesmere Port and Neston Borough Council and Vale Royal Borough Council.
- (3) Each Joint Committee may, by written notice to—
- (a) the proper officer of the County Council, or
  - (b) the proper officer of any of the East Cheshire councils or the West Cheshire councils,

require the council referred to in the notice to take such action relevant to any of the article 16 functions as may be specified in the notice.

### **Functions of joint committees relevant to executive arrangements**

**19.**—(1) It shall be a function of the Cheshire East Joint Committee to formulate proposals for the executive arrangements that are to be operated by the shadow authority for Cheshire East and to present those proposals at the first meeting of the shadow authority.

(2) It shall be a function of the Cheshire West and Chester Joint Committee to formulate proposals for the executive arrangements that are to be operated by the shadow authority for Cheshire West and Chester and to present those proposals at the first meeting of the shadow authority.

(3) In formulating proposals under paragraph (1) or (2) the Joint Committees shall comply with section 10(2) of the 2000 Act, and for that purpose shall treat the shadow authority for Cheshire East or, as the case may be, the shadow authority for Cheshire West and Chester, as if—

- (a) it were a district council, and

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<sup>(33)</sup> 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](mailto:communities@twoten.com) or online at [www.communities.gov.uk](http://www.communities.gov.uk)).

- (b) its executive were a leader and cabinet executive within the meaning of section 11(3) of the 2000 Act as originally enacted<sup>(34)</sup>.

### **Functions of joint committees relevant to codes of conduct**

**20.**—(1) It shall be a function of the Cheshire East Joint Committee to formulate proposals for the code of conduct to be adopted by the shadow authority for Cheshire East in accordance with article 7(1)(b) and to present those proposals at the first meeting of the shadow authority.

(2) It shall be a function of the Cheshire West and Chester Joint Committee to formulate proposals for the code of conduct to be adopted by the shadow authority for Cheshire West and Chester in accordance with article 7(1)(b) and to present those proposals at the first meeting of the shadow authority.

(3) In formulating proposals under paragraph (1) or (2) the Joint Committees shall comply with section 51 of the 2000 Act (as applied to each shadow authority as mentioned in article 7(5)) and, in particular, shall secure that the proposals are consistent with the requirements of subsection (4) of that section.

### **Implementation Teams**

**21.**—(1) Not later than 21 days after the coming into force of this Order, the Cheshire East Joint Committee and the Cheshire West and Chester Joint Committee shall each form a team of officers (“the Implementation Team”) for the purposes of assisting—

- (a) the relevant Joint Committee in the discharge of their functions under this Part; and
- (b) if, after the dissolution of the relevant Joint Committee, the relevant shadow authority so requires, that shadow authority.

(2) The members of the Implementation Team shall comprise officers from both the County Council and, as appropriate, each of the East Cheshire councils or each of the West Cheshire councils.

(3) The leader of the Implementation Team for Cheshire East shall be an officer of Macclesfield Borough Council and the leader of the Implementation Team for Cheshire West and Chester shall be an officer of Vale Royal Borough Council.

(4) It shall be the duty of the County Council and, as regards the relevant Joint Committee, each of the East Cheshire councils or each of the West Cheshire councils—

- (a) to co-operate in the formation of the Implementation Team, and
- (b) to release the officers concerned from their normal duties at such times or for such periods as the relevant Joint Committee or the relevant shadow authority may reasonably require.

(5) In this article—

“the relevant Joint Committee” means—

- (a) as regards the East Cheshire councils, the Cheshire East Joint Committee;
- (b) as regards the West Cheshire councils, the Cheshire West and Chester Joint Committee;

“the relevant shadow authority” means—

- (a) as regards the East Cheshire councils, the shadow authority for Cheshire East; and
- (b) as regards the West Cheshire councils, the shadow authority for Cheshire West and Chester.

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<sup>(34)</sup> 2000 c.22. Section 11 was amended by section 62 of the Local Government and Public Involvement in Health Act 2007 (c.28). Subsection (3) of that section, as originally enacted, defines a leader and cabinet executive.

## **General transitional duties of the County Council, the East Cheshire councils and the West Cheshire councils**

**22.**—(1) It shall be the duty of the County Council, each of the East Cheshire councils and each of the West Cheshire councils—

- (a) to consult and co-operate with one another and with the shadow authorities in order to secure the economic, effective, efficient and timely transfer of the County Council's and those councils' functions, property, rights and liabilities; and
- (b) generally, to exercise their functions so as to further the purposes of this Order.

(2) Without prejudice to the generality of paragraph (1), the County Council, each of the East Cheshire councils and each of the West Cheshire councils shall provide such information relating to its functions as any other of those councils or a shadow authority may reasonably request for the purpose of giving effect to 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 his authority (if so required by the council or shadow authority from which the information is sought)—

- (a) to inspect any record belonging to or under the control of the council or shadow authority providing the information and relating to that council or authority 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 6**

### **CONSEQUENTIAL AMENDMENTS**

#### **Amendment of the Borough of Congleton (Electoral Changes) Order 1998**

**23.**—(1) The Borough of Congleton (Electoral Changes) Order 1998<sup>(35)</sup> is amended by the omission of article 9 (parish elections).

(2) Nothing in paragraph (1) shall affect the elections to be held in 2008 of parish councillors for the parishes of Betchton, Church Lawton, Hassall and Holmes Chapel.

#### **Amendment of the Borough of Crewe and Nantwich (Electoral Changes) Order 1998**

**24.**—(1) The Borough of Crewe and Nantwich (Electoral Changes) Order 1998<sup>(36)</sup> is amended by the omission of article 10 (parish elections).

(2) Nothing in paragraph (1) shall affect the elections to be held in 2008 of parish councillors for the parishes of Alpraham, Baddiley, Bunbury, Calveley, Marbury-cum-Quoisley, Norbury, Wardle, Willaston, Wirswall and Wrenbury-cum-Frith.

#### **Amendment of the Borough of Macclesfield (Electoral Changes) Order 1998**

**25.**—(1) The Borough of Macclesfield (Electoral Changes) Order 1998<sup>(37)</sup> is amended by the omission of article 7 (parish elections).

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<sup>(35)</sup> [S.I. 1998/2843](#).

<sup>(36)</sup> [S.I. 1998/2845](#).

<sup>(37)</sup> [S.I. 1998/2847](#).

(2) Nothing in paragraph (1) shall affect the elections to be held in 2008 of parish councillors for the parishes of Ashley, Aston by Budworth, Bexton, Bollington, Bosley, Chelford, Gawsworth, Great Warford, High Legh, Little Warford, Marthall, Mere, Millington, Mobberley, Nether Alderley, North Rode, Ollerton, Peover Inferior, Peover Superior, Pickmere, Plumley, Poynton with Worth, Rostherne, Snelson, Tabley and Toft.

**Amendment of the City of Chester (Electoral Changes) Order 1998**

**26.**—(1) The City of Chester (Electoral Changes) Order 1998(**38**) is amended by the omission of article 5 (parish elections).

(2) Nothing in paragraph (1) shall affect the elections to be held in 2008 of parish councillors for the parishes of Aldford, Buerton, Churton-by-Aldford, Churton-by-Farndon, Churton Heath, Claverton, Clotton Hoofield, Dodleston, Eaton, Eccleston, Farndon, Lea Newbold, Lower Kinnerton, Marlston-cum-Lache, Poulton, Pulford, Rowton, Saighton and Waverton.

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

*Name*  
Minister of State  
Department for Communities and Local  
Government

Date