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STATUTORY INSTRUMENTS

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**1995 No. 1775**

**LOCAL GOVERNMENT, ENGLAND AND WALES**

**The Hampshire (Cities of Portsmouth and Southampton) (Structural Change) Order 1995**

*Made - - - - 11th July 1995*

*Coming into force*

*For the purposes of articles  
2(2), 4, 6(1), (3) and (4),  
and 9 to 11*

*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<sup>(1)</sup> has submitted to the Secretary of State a report on its review of the county of Hampshire together with its recommendations;

And whereas the Secretary of State has decided to give effect, with modifications, to the recommendations in respect to the cities of Portsmouth and Southampton<sup>(2)</sup>;

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by sections 17<sup>(3)</sup>, 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 Hampshire (Cities of Portsmouth and Southampton) (Structural Change) Order 1995 and shall come into force for the purposes of articles 2(2), 4, 6(1), (3) and (4), and 9 to 11 on the day after the day on which it is made and for all other purposes on 1st April 1997.

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<sup>(1)</sup> 1992 c. 19.

<sup>(2)</sup> The non-metropolitan districts of Portsmouth and Southampton have been granted the status of cities.

<sup>(3)</sup> As amended by sub-sections 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);

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

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

“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;

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

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

“the transferee authorities” means the councils of Portsmouth and Southampton.

(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 PORTSMOUTH AND SOUTHAMPTON

#### Structural change

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

#### Hampshire 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 the transferee authorities had ceased to form part of Hampshire on that date; and

(b) accordingly, the appointments which are required to be made to the Hampshire Police Authority (as established under section 3 of the 1964 Act) (“the Authority”)(8) by

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(4) 1972 c. 70, as amended.

(5) 1978 c. 30.

(6) 1964 c. 48.

(7) Schedule 1B was inserted by section 3(2) of, and 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.

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, the Isle of Wight Council and the transferee authorities (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
  - (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 the areas of the transferee authorities(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 purposes 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 counties of Hampshire and Isle of Wight” in the right-hand column opposite the name of the Hampshire police area the words “and the non-metropolitan districts of Portsmouth and Southampton”.

#### **Fire services**

6.—(1) In this article—

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(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 11(1) of this Order.

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

“the 1947 Act” means the Fire Services Act 1947(13); and

“the relevant area” means the area comprising Hampshire (as constituted on and after the reorganisation date) and the areas of the transferee authorities.

(2) The area of each transferee authority shall, subject to any combination scheme under the 1947 Act, become the area of a fire authority for the purposes of that Act.

(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 Hampshire”; 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 Hampshire”.

(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 Hampshire and any proposals prepared before that date for the alteration or replacement of any such plan shall be treated as if they had been prepared jointly by the County Council and the transferee authorities; and section 50 of the Town and Country Planning Act 1990(14) (“the 1990 Act”) shall apply accordingly.

(2) In relation to the transferee authorities—

- (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.”.

### **Constitution of new counties**

8.—(1) Portsmouth and Southampton shall cease to form part of Hampshire.

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

(3) A new county shall be constituted comprising the area of Southampton and shall be named the county of Southampton.

(4) Section 2(1) of the 1972 Act (which provides that every county shall have a council) shall not apply in relation to the counties of Portsmouth and Southampton.

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

(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.

## PART III

### TRANSITIONAL PROVISION

#### **Elections of councillors in Portsmouth**

**9.—**(1) The City of Portsmouth (Electoral Arrangements) Order 1979(**15**) shall be amended by the substitution of the following article for article 9—

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

(2) The councillors holding office for any ward of the city immediately before 6th May 1996 shall retire on that date and the newly elected councillors for any such ward shall come into office on that date.

(3) Of the councillors elected in 1996 for any ward of the city—

(a) one-third shall retire in 1998 being, subject to paragraphs (4) and (5) below, the councillor elected by the smallest number of votes;

(b) one-third 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.

(4) 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.

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

(6) 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.

(7) 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.”

#### **Elections of councillors in Southampton**

**10.—**(1) The City of Southampton (Electoral Arrangements) Order 1976(**16**) shall be amended by the substitution of the following article for article 9—

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

(2) The councillors holding office for any ward of the city immediately before 6th May 1996 shall retire on that date and the newly elected councillors for any such ward shall come into office on that date.

(3) Of the councillors elected in 1996 for any ward of the city—

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(15) S.I. 1979/1494.

(16) S.I. 1976/2169.

- (a) one-third shall retire in 1998 being, subject to paragraphs (4) and (5) below, the councillor elected by the smallest number of votes;
  - (b) one-third 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.
- (4) 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.
- (5) If an election of councillors for any ward is not contested, the person to retire in each such year shall be determined by lot.
- (6) 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.
- (7) 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.”

### **Retirement of councillors**

**11.**—(1) The electoral divisions of Hampshire comprised in Portsmouth and Southampton 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<sup>(17)</sup>.

(2) 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 a transferee authority 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 described in paragraph (1) above as if the reference in that subsection were a reference to the reorganisation date.

Signed by authority of the Secretary of State

11th July 1995

*David Curry*  
Minister of State,  
Department of the Environment

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<sup>(17)</sup> The areas of the electoral divisions are as set out in the County of Hampshire (Electoral Arrangements) Order 1981 (S.I. 1981/51).

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## EXPLANATORY NOTE

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

This Order gives effect to recommendations made by the Local Government Commission for England in respect of the county of Hampshire (“Hampshire”) insofar as they relate to the structure of local government in the city of Portsmouth (“Portsmouth”) and the city of Southampton (“Southampton”).

Article 3 effects the structural change by providing for the transfer, on 1st April 1997, of the functions of Hampshire County Council in relation to Portsmouth and Southampton to the councils of those cities.

Articles 4 and 5 make provision in respect of the Hampshire police authority.

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

Article 7 makes provision in relation to the Hampshire structure plan and to enable the local plan prepared by the Portsmouth Council and the Southampton Council to contain minerals and waste policies.

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

Article 9 amends the City of Portsmouth (Electoral Arrangements) Order 1979 to make provision for a whole council election in the City of Portsmouth in 1996 and for reversion to election by thirds in subsequent years.

Article 10 amends the City of Southampton (Electoral Arrangements) Order 1976 to make provision for a whole council election in the City of Southampton in 1996 and for reversion to election by thirds in subsequent years.

Article 11 provides for the retirement, on 1st April 1997, of existing councillors elected for county divisions included in Portsmouth and Southampton and for casual vacancies in the office of a councillor who, by virtue of the Order, would retire before the day they would regularly have retired.