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STATUTORY INSTRUMENTS

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**1996 No. 1876**

**LOCAL GOVERNMENT, ENGLAND AND WALES**

**The Kent (Borough of Gillingham and City of Rochester upon Medway) (Structural Change) Order 1996**

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| <i>Made</i>  | - - - - | <i>18th July 1996</i> |
| <i>Coming into force</i>   |         |                       |
| <i>For the purposes of articles 2(2), 3, 6(1), (3) and (4) and 9 to 16</i> |         | <i>19th July 1996</i> |
| <i>For all other purposes</i>  |         | <i>1st April 1998</i> |

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 boroughs of Dartford, Gillingham and Gravesham and the city of Rochester upon Medway<sup>(2)</sup> in the county of Kent:

And whereas the Secretary of State has decided to give effect to the recommendations in respect to the borough of Gillingham and the city of Rochester upon Medway:

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 Kent (Borough of Gillingham and City of Rochester upon Medway) (Structural Change) Order 1996 and shall come into force for the purposes of articles 2(2),

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

<sup>(2)</sup> Section 245 of the 1972 Act enables district councils to petition Her Majesty for the grant of borough status. The non-metropolitan districts of Dartford, Gillingham and Gravesham have been granted that status. The non-metropolitan district of Rochester upon Medway has been granted the status of a city.

<sup>(3)</sup> Amended by section 39(4) and (5) of the Police and Magistrates' Courts Act 1994 c. 29.

3, 6(1), (3) and (4), and 9 to 16 on the day after the day on which it is made and for all other purposes on 1st April 1998.

### **Interpretation**

2.—(1) In this Order—

“the Act” means the Local Government Act 1992;

“the 1972 Act” means the Local Government Act 1972(4);

“existing”, in relation to an area, means that area as it exists on the date this Order is made;

“Gillingham” means the borough of Gillingham and “the Gillingham Council” means the council of that borough;

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

“Kent district” means a district in Kent;

“the relevant date” means 5th May 1997;

“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 1998;

“Rochester” means the city of Rochester upon Medway and “the Rochester Council” means the council of that city;

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

“transferee authority” means the Medway Towns District Council; and

“transferor authorities” means the County Council, the Gillingham Council and the Rochester Council.

(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 this Order and any other statutory instrument made under the Act.

## **PART II**

### **LOCAL GOVERNMENT REORGANISATION IN GILLINGHAM AND ROCHESTER**

#### **Constitution of new district of the Medway Towns**

3.—(1) A new district of the Medway Towns shall be constituted and shall comprise the areas of the existing Kent districts of Gillingham and Rochester.

(2) Subject to article 13, there shall be a new non-metropolitan district council for the district of the Medway Towns (“the Medway Towns Council”).

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(4) 1972 c. 70.

(5) 1978 c. 30.

### **Structural change**

4. The functions of the County Council in relation to the districts of Gillingham and Rochester shall, subject to the following provisions of this Part and to any other relevant provision, be transferred to the Medway Towns Council.

### **Constitution of new county of the Medway Towns**

5.—(1) The district of the Medway Towns shall cease to form part of Kent.

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

(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 the Medway Towns.

### **Fire services**

6.—(1) In this article—

“the 1947 Act” means the Fire Services Act 1947(6); and

“the relevant area” means the area comprising Kent (as constituted on and after the reorganisation date) and the area of the district of the Medway Towns.

(2) The area of the district of the Medway Towns 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 Kent”; 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 Kent”.

(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 Kent 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 Medway Towns Council; and section 50 of the Town and Country Planning Act 1990(7) shall apply accordingly.

(2) In relation to the Medway Towns 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

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(6) 1947 c. 41; section 10 of this Act is amended by paragraph 2 of Schedule 3 to the Local Government Act 1992.

(7) 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.

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.”.

### **Existing local government areas**

- 8.**—(1) The existing Kent districts of Gillingham and Rochester shall be abolished.  
 (2) The Gillingham Council and the Rochester Council shall be wound up and dissolved.

## **PART III**

### **ELECTORAL ARRANGEMENTS**

#### **Electoral areas in the Medway Towns**

**9.** The district of the Medway Towns shall be divided into 34 wards, which shall comprise the areas and bear the names of the wards described in the Borough of Gillingham (Electoral Arrangements) Order 1976(**8**) and the Borough of Medway (Electoral Arrangements) Order 1976(**9**), and each ward shall be represented by two councillors.

#### **Elections in the Medway Towns**

**10.**—(1) Elections of all councillors of the Medway Towns Council shall be held simultaneously on the ordinary day of election of councillors in 1997, 2000, 2003 and every fourth year after 2003(**10**); and the term of office of any councillor so elected shall be, in the case of a councillor elected in 1997 and 2000, three years and, in any other case, four years.

- (2) On the fourth day after such an election held after 1997—

- (a) the persons who were councillors immediately before the election shall retire; and  
 (b) the newly elected councillors shall come into office.

#### **First elections**

**11.**—(1) At the elections held in 1997 by virtue of article 10, the returning officer for the election of the Medway Towns Council shall be the returning officer appointed under section 35 of the Representation of the People Act 1983 (“the 1983 Act”)(**11**) by the council of the existing district of Rochester.

(2) All expenditure properly incurred by the returning officer in relation to the holding of the election of councillors of the Medway Towns Council in 1997 shall be paid by the councils of Gillingham and Rochester in such proportions as may be agreed between them or, failing such agreement, as may be determined by the Secretary of State.

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(8) S.I. 1976/2069.

(9) S.I. 1976/1130.

(10) For the ordinary day of election of councillors of local government areas, *see* section 37 of the Representation of the People Act 1983 (c. 2), amended by section 18(2) of the Representation of the People Act 1985 (c. 50).

(11) 1983 c. 2.

(3) Paragraph 2(2) of the Schedule to the Local Government Changes for England Regulations 1994(12) shall not apply in relation to this election.

### **Suspension of elections, retirement of councillors and casual vacancies**

**12.**—(1) The ordinary election of councillors in 1997 for the electoral divisions of Kent comprised in Gillingham and Rochester(13) shall not take place; and any councillor for such a division holding office immediately before the relevant date who would, but for this paragraph, have retired on that date shall, unless he resigns his office or it otherwise becomes vacant, continue to hold office until the reorganisation date.

(2) Section 89 of the 1972 Act (filling of casual vacancies in case of councillors) shall have effect, in relation to a casual vacancy occurring in the office of councillor of the Gillingham Council, the Rochester Council, or any electoral division referred to in paragraph (1) above, 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 reorganisation date.

(3) The electoral divisions of Kent comprised in Gillingham and Rochester shall cease to be electoral divisions on the reorganisation date.

## **PART IV**

### **TRANSITIONAL PROVISION**

#### **Shadow authorities**

**13.** During the preliminary period—

- (a) the transferree authority shall not be a local authority for the purposes of the 1972 Act and, in relation to that council, section 2(2) of that Act shall have effect as if the words from “and the council” to the end of that subsection were omitted; and
- (b) the transferee authority shall be a shadow authority for the purposes of the Local Government Changes for England Regulations 1994(14).

#### **Co-operation**

**14.** The transferor authorities and their officers and, during the preliminary period, those authorities and officers and the transferee authority and its officers, shall co-operate with each other, and generally exercise their functions, so as to facilitate the implementation of this Order and any other relevant provision.

#### **Preparations for transfer of functions**

**15.**—(1) The transferor authorities and, during the preliminary period, the transferee authority, make take such steps as appear to them to be necessary for the purpose of preparing for the transfer and exercise of functions which will, on and after the reorganisation date, be exercisable by the transferee authority by virtue or in consequence of this Order or any other relevant provision.

(2) During the preliminary period—

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(12) *S.I. 1994/867*; amended by *S.I. 1995/590* and *S.I. 1995/1055*. Paragraph 2(2) of the Schedule makes provision as to election expenses.

(13) The electoral divisions of the county of Kent are constituted by the County of Kent (Electoral Arrangements) Order 1981 (*S.I. 1981/85*).

(14) *S.I. 1994/867*. *See*, in particular, Part 3 of those Regulations, which has been amended by *S.I. 1995/590*, *1995/1055* and *1995/1748*.

- (a) the transferor authorities shall furnish the transferee authority with all such information relating to the transferor authorities or their functions as the transferee authority may reasonably request for the purpose of implementing this Order or any other relevant provision; and
- (b) the transferee authority shall—
  - (i) in relation to the functions mentioned in paragraph (1) above, make such arrangements for organisation and management and such appointments of officers as are necessary to secure the proper performance of those functions on and after the reorganisation date;
  - (ii) at a meeting of the authority, consider a report by the head of its paid service as to whether any such functions could with advantage be discharged in pursuance of arrangements made under section 101 of the 1972 Act (arrangements for discharge of functions) or under any other enactment; and
  - (iii) if of that opinion, shall promote the making of such arrangements.

(3) In paragraph (2) above, the reference to the head of a council's paid service is a reference to the officer designated as such under section 4(1) of the Local Government and Housing Act 1989(15); and nothing in section 101 of the 1972 Act shall apply to the duty imposed by virtue of sub-paragraph (b) of that paragraph.

#### **Activities preliminary to the exercise of functions**

**16.** Where, during the preliminary period, a transferor authority is required by virtue of any enactment to prepare any budgets or plans, or to consult any person, for purposes connected with the exercise, on and after the reorganisation date, of any functions in relation to any part of the area of the transferee authority, which, on and after that date, are exercisable by the transferee authority, the requirement in question shall, subject to any other relevant provision, cease to have effect during that period in relation to that authority; and any such requirement shall instead have effect, during that period and for those purposes, in relation to the transferee authority.

Signed by authority of the Secretary of State

18th July 1996

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

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## 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 borough of Gillingham (“Gillingham”) and the City of Rochester upon Medway (“Rochester”), in the county of Kent.

Article 3 provides for the constitution of the district of the Medway Towns (“the Medway Towns”), comprising the existing areas of Gillingham and Rochester, and establishes a new district council for that area.

Article 4 effects the structural change by providing for the transfer, on 1st April 1998, of the functions of the Kent County Council in relation to Gillingham and Rochester to the council of the Medway Towns.

Article 5 provides for the district of the Medway Towns to cease to form part of Kent on 1st April 1998 and for a new county of the Medway Towns to be constituted on that date (but without a county council).

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

Article 7 makes provision in relation to the Kent structure plan and to enable the local plan prepared by the new council of the Medway Towns under the Town and Country Planning Act 1990 to contain minerals and waste policies.

Article 8 provides for the abolition of Gillingham and Rochester and their councils.

Article 9 makes provision in respect of electoral areas for the Medway Towns.

Article 10 provides for whole council elections to the new council of the Medway Towns in 1997, 2000, 2003 and every four years after that year.

Article 11 makes provision in respect of returning officers and election expenses for the first elections in 1997.

Article 12 makes provision for the suspension of county council elections in 1997 in electoral divisions in Gillingham and Rochester and extends the term of office of councillors for such divisions until 1st April 1998. It also makes provision in respect of casual vacancies in the office of councillor of the local authorities affected by this Order.

Article 13 provides that the new council of the Medway Towns established by the Order shall be a “shadow authority” for the purposes of the Local Government Changes for England Regulations 1994 (S.I. 1994/867).

Articles 14 to 16 make provision with respect to preparations for implementation of the reorganisation.