

## EXPLANATORY MEMORANDUM TO

### THE LOCAL GOVERNMENT (CORONAVIRUS) (STRUCTURAL CHANGES) (CONSEQUENTIAL AMENDMENTS) (ENGLAND) REGULATIONS 2020

2020 No. 426

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.

#### 2. Purpose of the instrument

- 2.1 These Regulations amend the structural changes orders that make provision for new unitary councils in Buckinghamshire and Northamptonshire. The amendments are required as a result of the postponement of local government elections from 7 May 2020 to 6 May 2021, which would have elected members for the first time to the new unitary council in Buckinghamshire and to the shadow authorities in Northamptonshire.
- 2.2 In absence of the May 2020 elections, these Regulations make provision for the membership and governance arrangements for Buckinghamshire Council and for the Northamptonshire shadow authorities until 10 May 2021.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

##### *Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

#### 4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England only.

#### 5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

#### 6. Legislative Context

- 6.1 The Buckinghamshire (Structural Changes) Order 2019 (S.I. 2019/957) (“the 2019 Order”) was made under Part 1 of the Local Government and Public Involvement in Health Act 2007 (“the 2007 Act”), as modified by the Buckinghamshire (Structural Changes) (Modification of the Local Government and Public Involvement in Health

Act 2007) Regulations 2019 (S.I. 2019/332) (“the 2019 Regulations”). The 2019 Regulations modified provisions relating to local authority structural and boundary change in the 2007 Act as they apply to councils in Buckinghamshire.

- 6.2 The Northamptonshire (Structural Changes) Order 2020 (S.I. 2020/156) (“the 2020 Order) was made under the powers provided for under Part 1 of the 2007 Act which provides for the making of local government structural and boundary changes in England.
- 6.3 Specifically, the structural changes orders were made in exercise of the powers conferred by sections 7, 11, 12, 13 and 15(2) of the 2007 Act. Orders under section 7 provide for implementation of a proposal for a single tier of local government in an area - a change from a county council and district councils (two-tier local government) to a single county or district council to exercise all functions of a principal council in that area. The 2019 Order provides for a single tier of local government in the non-metropolitan county of Buckinghamshire. A new district council (Buckinghamshire Council) was established and on 1 April 2020 became the sole principal local authority for Buckinghamshire. The existing county council and district councils in the area were abolished on that date and all functions, property, rights and liabilities of those councils transferred to Buckinghamshire Council. The 2019 Order provides for elections on 7 May 2020 to the new Buckinghamshire Council. Those elections have been postponed to 6 May 2021 by section 60 of the Coronavirus Act 2020.
- 6.4 The 2020 Order provides for a single tier of local government in the non-metropolitan county of Northamptonshire from 1 April 2021. Two new district councils, North Northamptonshire Council and West Northamptonshire Council, are to be established as shadow authorities in May 2020. The function of each shadow authority is to make the necessary transitional arrangements for the assumption by each new unitary district council, on 1 April 2021, of full local authority powers upon the abolition of the existing councils. The 2020 Order provides for elections on 7 May 2020 to the shadow authorities. Those elections have been postponed to 6 May 2021 by section 60 of the Coronavirus Act 2020.
- 6.5 Section 63 of the Coronavirus Act 2020 provides the power to make, by regulations, consequential, supplementary, incidental, transitional or savings provision in connection with the postponement of elections. This includes the power to make provision relating to the membership or governance arrangements of a local authority in relation to which an order has been made under section 7 of the 2007 Act and the membership or governance arrangements of any shadow authority established under such an order, or any other matter dealt with in such an order.

## **7. Policy background**

### *What is being done and why?*

- 7.1 The COVID-19 pandemic is a severe public health emergency. On 13 March 2020 the Prime Minister announced that the scheduled elections on 7 May 2020 would be postponed by 12 months. This decision to postpone was taken following advice from the Government’s medical experts in relation to the response to the COVID-19 virus.
- 7.2 On 19 March 2020, Chloe Smith, the Minister of State for the Cabinet Office, announced by Written Ministerial Statement that, as well as bringing forward measures within the Coronavirus Bill to postpone the scheduled elections, provisions

would be made “to enable the postponement of other electoral events over the course of the year (such as by-elections) and to make necessary consequential amendments associated with the postponement of polls which may, for example, include measures relating to incumbent office holders, the nomination of candidates and election expenses. This includes the particular circumstances of new unitary councils in Buckinghamshire and Northamptonshire to ensure the new Buckinghamshire council goes live on 1st April 2020 and that the shadow unitary councils in Northamptonshire are established in May 2020”.

Buckinghamshire

- 7.3 In Buckinghamshire, on 1 April 2020, the County Council and four district councils were abolished, and the new Buckinghamshire Council took on full local government functions and powers. The postponed May 2020 elections would have elected the first directly elected members to the new council and without these Regulations the postponement would have left the council without any members.
- 7.4 These Regulations amend the 2019 Order to provide that the current 202 members of the Buckinghamshire Council (having been members of the shadow authority) are to be the members of the new Buckinghamshire Council until four days after the ordinary day of election in 2021. This is an unusually high number of members for a council as the shadow authority was made up of the members of the five predecessor councils. The quorum for a council meeting during this period will be twenty members, instead of the usual statutory 25 percent, reflecting difficulties in achieving a quorum of 50 (25% of the total) at the February meeting of the Shadow Authority.
- 7.5 The Regulations provide that the shadow executive established by the 2019 Order, will continue as the executive of the new Buckinghamshire Council and both the leader and deputy leader will continue in their roles. The Regulations also provide that if a vacancy for the leader arises, the executive will appoint the new leader (other vacancies on the executive are to be filled by the leader as is usually the case for executives); that in line with standard practice on local government executives there will no longer be substitute members; that there is to be a second deputy leader; and that the executive is to have the additional functions for appointing members to committees as described below.
- 7.6 In February, whilst still in shadow form, the Buckinghamshire Council agreed its future constitution including its committee structures. Membership to these committees would have been appointed by the full council at its annual meeting after the May 2020 elections. The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 have removed the requirement in Schedule 12 of the Local Government Act 1972 to have an annual meeting, which would normally have been held within 21 days of the newly elected councillors coming into office, and have also made remote meetings possible. With the postponement of the May 2020 elections these appointments now need to be made from the continuing 202 members of the council. Given the impracticability of holding a meeting of 202 people remotely, the Regulations provide for alternative arrangements for making committee appointments as follows:
- appointments to council committees other than the overview and scrutiny committees are to be made by the executive; and

- appointments to the overview and scrutiny committees (the role of which is to hold the executive to account) are to be made by the Head of Paid Service in consultation with leaders of the various political groups on the council (i.e. leaders of the Conservative, Liberal Democrat, Labour and Independent groups).

These appointment arrangements apply until four days after the ordinary day of election in 2021.

- 7.7 In addition, the Regulations provide that in the period until four days after the 2021 elections three Independent Persons (an Independent Person is a statutory appointment whose role is to advise on allegations of member misconduct and to consider the dismissal of statutory officers) are to be appointed by the Chair of the Audit Committee, in consultation with the Head of Paid Service.

Northamptonshire

- 7.8 The 2020 Order provides that on 11 May 2020, four days after the ordinary day of election, two new councils – North Northamptonshire and West Northamptonshire – are established and will operate in shadow form (“shadow authorities”). The new councils will cease to operate in shadow form on 1 April 2021 when the County Council and seven district councils will be abolished and the councils will, on that date, become the sole principal authorities for the respective areas and all the functions, property, rights and liabilities of the abolished councils will transfer to the new unitary councils. The Order provides that there were to be elections to the new councils (in their shadow form) on 7 May 2020.
- 7.9 The postponed May 2020 elections would have elected the members to the shadow authorities who would have continued as members when the new councils took on all local government functions on 1 April 2021. These Regulations amend the 2020 Order to provide that the membership of each new council from 11 May 2020 will instead be the existing county and district councillors for the area of the new councils until four days after the May 2021 elections.
- 7.10 The Regulations specify 4 June 2020 as the date by which the first meetings of the shadow authorities must take place and require the Head of Paid Service of the County Council to convene and make necessary arrangements for the first meeting of the shadow authorities. They also define quorums for the shadow authorities as five members from each district and five members who have been elected to an electoral division of the county council within the North and West Northamptonshire areas respectively.
- 7.11 The Regulations also amend the 2020 Order to specify the membership of the shadow executives and their leaders and deputies to ensure effective governance and accountability. They provide that:
- The North Northamptonshire shadow executive will have ten members: two drawn from each of the four existing district councils (Corby, East Northamptonshire, Kettering and Wellingborough) – one the leader of the district council and the other to be nominated by the leader – and two from the County Council (nominated by the County Council leader and drawn from County Council Cabinet members representing wards in the North Northamptonshire area).

- The West Northamptonshire shadow executive will have eight members: two drawn from each of the three existing districts (Daventry, Northampton and South Northamptonshire) – one the leader of the district council and the other nominated by the leader – and two from the County Council (the leader and a member nominated by the leader who both represent wards in the West Northamptonshire area).
- The leader of the North Northamptonshire shadow executive is to be the person who on 11 May 2020 is the leader of Kettering Borough Council. The leader of Kettering Borough Council is the chair of the Future Northants Leaders Oversight Board so has a key leadership role in driving unitary implementation across the whole of Northamptonshire. The Regulations also specify that the deputy chair of the North Northamptonshire shadow executive is to be the person who is on 11 May 2020 the leader of Wellingborough Borough Council. The leader of Wellingborough Borough Council is the chair of the statutory North Northamptonshire Joint Committee. If the office of leader or the office of deputy leader becomes vacant the North Northamptonshire shadow executive must elect a new leader or deputy leader from among the members of the executive.
- The leader of the West Northamptonshire shadow executive is to be the person who on 11 May 2020 is the leader of South Northamptonshire Council. The leader of South Northamptonshire Council is the deputy chair of the Future Northants Leaders Oversight Board so has a key leadership role in driving unitary implementation across the whole of Northamptonshire. The Regulations also specify the deputy chair of the West Northamptonshire shadow executive is to be the person who on 11 May 2020 is the leader of Northampton Borough Council. The leader of Northampton Borough Council is the chair of the statutory West Northamptonshire Joint Committee. If the office of leader or the office of deputy leader becomes vacant the shadow executive must elect a new leader or deputy leader from among the members of the executive.
- The Returning Officers for the May 2021 elections will be those Returning Officers appointed for that purpose by the new councils, rather than being specified as the Police Area Returning Officer (PARO). The PARO had been the Returning Officer under the 2020 Order as the shadow authorities were not yet in existence, but for the 2021 elections the new councils will be in place and able to appoint Returning Officers.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

8.1 This instrument does not relate to withdrawal from the European Union.

## **9. Consolidation**

9.1 This instrument does not consolidate any legislation.

## **10. Consultation outcome**

10.1 These Regulations have been prepared following engagement with representatives from local government in Buckinghamshire and Northamptonshire. There is no statutory duty to consult on the development of these Regulations.

## **11. Guidance**

- 11.1 The Ministry of Housing, Communities and Local Government does not propose to issue guidance on the content of these Regulations. Ministers and officials will continue to work closely with those responsible for local government reorganisation in Buckinghamshire and Northamptonshire.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 The impact on the public sector is to ensure that local government reorganisation in Buckinghamshire and Northamptonshire can continue to proceed effectively as envisaged in the 2019 and 2020 Orders, notwithstanding the COVID-19 pandemic and the necessary postponement of elections to the new authorities in these areas.
- 12.3 An impact assessment has not been prepared for this instrument because there is no, or no significant, impact on business.

## **13. Regulating small business**

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

## **14. Monitoring & review**

- 14.1 The approach to monitoring of this legislation is to continue to engage with councillors and officers from Buckinghamshire and Northamptonshire.
- 14.2 The Regulations do not include a statutory review clause.

## **15. Contact**

- 15.1 Kathy Bee or Jonathan Scanlan at the Ministry of Housing, Communities and Local Government, telephone: 030 3444 4579, 030 3444 8940, or email: [kathy.bee@communities.gov.uk](mailto:kathy.bee@communities.gov.uk), [jonathan.scanlan@communities.gov.uk](mailto:jonathan.scanlan@communities.gov.uk).
- 15.2 Paul Rowsell, Head of the Governance Reform and Democracy Unit at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Simon Clarke, Minister of State at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.