

EXPLANATORY MEMORANDUM TO
THE SOMERSET (STRUCTURAL CHANGES) ORDER 2022

2022 No. 329

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This Order provides for the creation of a single tier of local government for Somerset with effect from 1 April 2023. The existing four district areas are to be abolished as local government areas (district of Mendip, district of Sedgemoor, district of Somerset West and Taunton, district of South Somerset) and replaced by a single district area co-terminous with the county. All four district councils in Somerset (Mendip, Sedgemoor, Somerset West and Taunton and South Somerset) are to be wound up and dissolved. Somerset County Council will become the sole principal authority for Somerset from 1 April 2023, being known as Somerset Council. There are to be appropriate arrangements for preparing to transition to the new council.

3. Matters of special interest to Parliament

Matters of Special Interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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.

5. European Convention on Human Rights

- 5.1 Minister Kemi Badenoch has made the following statement regarding Human Rights:
“In my view the provisions of the Somerset (Structural Changes) Order 2022 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The Order is to be made under Part 1 of the Local Government and Public Involvement in Health Act 2007 (the Act) which provides for the making of local government structural and boundary changes in England. Section 2 provides that the Secretary of State may invite any principal authority to make a proposal for structural change for a single tier of local government.
6.2 Section 7 of the Act allows the Secretary of State to implement by order a proposal, with or without modification. An order may not be made unless the Secretary of State has consulted every authority affected by the proposal (except any authority who made the proposal) and such other persons as he considers appropriate. The detail of

what a section 7 order can include is set out in sections 11, 12 and 13. A section 7 order can, for example, create a new local government area or abolish an existing one; create a new council for the area or abolish an existing one and provide for a new name. A section 7 order can also make provision for “electoral matters” which, for example, includes the total number of members (councillors) of the authority; the number and boundaries of electoral areas and the number of councillors to be returned by each area. A section 7 order can also include incidental, consequential, transitional or supplementary provision.

- 6.3 Section 14 of the Act enables the Secretary of State, by regulations of general application, to make incidental, consequential, transitional and supplementary provision to give full effect to the local government changes. A number of statutory instruments have been made under this power including the Local Government (Structural Changes) (Transitional Arrangements) Regulations 2008 (SI 2008/2113), the Local Government (Structural Changes) (Transfer of Functions, Property, Rights and Liabilities) Regulations 2008 (SI 2008/2176), the Local Government (Structural Changes) (Transitional Arrangements) (No 2) Regulations 2008 (SI 2008/2867) and the Local Government (Structural Changes) (Finance) Regulations 2008 (SI 2008/3022). The Secretary of State will consider whether any further provision is required, in consultation with the councils concerned.

7. Policy background

What is being done and why?

- 7.1 The Government’s policy is that unitarisation must be locally led and Government solutions will not be imposed on areas. On 9 October 2020 the then Secretary of State invited the principal councils in Somerset, and the two neighbouring unitary councils of North Somerset and Bath and North East Somerset, to make proposals for replacing the current two-tier system of local government in Somerset. The criteria used to assess unitary proposals were set out in detail in this invitation¹ and guidance including that proposals would be considered:
- which are likely to improve local government and service delivery across the area of the proposal, giving greater value for money, generating savings, providing stronger strategic and local leadership, and which are more sustainable structures;
 - which command a good deal of local support as assessed in the round overall across the whole area of the proposal; and
 - where the area of each unitary authority is a credible geography consisting of one or more existing local government areas with an aggregate population which is either within the range 300,000 to 600,000, or such other figure that, having regard to the circumstances of the authority, including local identity and geography, could be considered substantial.
- 7.2 Two proposals for unitarisation in Somerset were received by 9 December 2020: a proposal for two unitary councils from Mendip District Council, Sedgemoor District Council, Somerset West and Taunton Council and South Somerset District Council; and a proposal for a single unitary council from Somerset County Council.

¹

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/925742/Invitation_Somerset.pdf

- 7.3 On 22 February 2021 the then Secretary of State launched the statutory consultation inviting views from all the principal councils in the area, principal councils neighbouring Somerset and all other bodies that he considered appropriate including the Heart of the South West Local Enterprise Partnership, Avon and Somerset Police and Crime Commissioner, Chief Fire Officer of Devon and Somerset Fire and Rescue Service, local health bodies and representatives of the voluntary sector – a full list is available online². He also welcomed views from any interested persons, including local residents and organisations. Full details are provided in section 10.
- 7.4 On 21 July 2021, in a Written Ministerial Statement³, the then Secretary of State announced that the proposal submitted by Somerset County Council met the criteria and, subject to Parliamentary approval, should be implemented. The then Secretary of State also announced that he had decided not to implement the proposal for two unitary councils that had been submitted by the district councils since whilst that proposal met the “local support” criterion it did not meet the criteria on “improving local government” and “being a credible geography”.
- 7.5 This Order implements the proposal made by Somerset County Council under section 2 of the 2007 Act. It establishes the new local government structure of a single principal authority for Somerset and enables arrangements for a smooth transition of local government functions to the new council.
- 7.6 Part 2 of the Order establishes the new council as a continuing authority of Somerset County Council, and provides for the new council to take on full local government functions and powers on the abolition of the existing councils on 1 April 2023 by:
- abolishing as local government areas the districts of Mendip, Sedgemoor, Somerset West and Taunton and South Somerset;
 - winding up and dissolving all four district councils in Somerset – Mendip District Council, Sedgemoor District Council, Somerset West and Taunton Council and South Somerset District Council;
 - creating a new, non-metropolitan, district of Somerset, whose area is coterminous with the existing local government area of the county of Somerset; and
 - providing that all existing district councillors cease to hold office on 1 April 2023.
- 7.7 Part 3 confers functions on Somerset Council, from the date that this Order comes into force, for facilitating the transition to the new single tier of local government including preparing for the transfer of the district councils’ functions, property, rights and liabilities. It establishes an Implementation Executive to be responsible for these functions during the first transitional period which ends on the fourth day after the ordinary day of elections in 2022, when councillors newly elected to Somerset Council come into office, with the new executive formed taking on the responsibility to lead the implementation through the second transitional period which runs until 1 April 2023.

² www.gov.uk/government/consultations/proposals-for-locally-led-reorganisation-of-local-government-in-cumbria-north-yorkshire-and-somerset/outcome/consultation-response-summary-local-government-reorganisation#annex-b-named-consultees

³ <https://questions-statements.parliament.uk/written-statements/detail/2021-07-21/hcws234>

- 7.8 The Order defines the membership of the Implementation Executive as five members from Somerset Council and four members from the district councils (one from each district). Part 3 also provides for an Implementation Plan to be prepared and provides for the establishment of an officer Implementation Team throughout both transitional periods.
- 7.9 Part 4 of the Order establishes a duty on Somerset Council and each of the district councils to cooperate throughout both transitional periods.
- 7.10 Part 5 makes provisions regarding electoral matters. The Order establishes whole council elections in 2022 for Somerset Council. It specifies the electoral cycle, with the second election in 2027 and then on a 4-year cycle. It provides that if a councillor vacancy occurs in any of the four district councils after 30 September 2022, then the council concerned will not be required to call a by-election to fill that office. It also provides that a by-election must still be held to fill a vacancy in that period if the number of vacancies on that council would exceed one third of the membership of that council. Schedule 1 to the Order provides for the electoral divisions and number of councillors to be elected to each division for Somerset council. Subject to parliamentary approval of this Order, the Local Government Boundary Commission for England is expected to review the electoral divisions after 1 April 2023 and in time for the 2027 elections.
- 7.11 The Order also provides that any ordinary parish council elections currently due in 2023 will not be held and those elections will be held in 2022 and 2027 and every four years thereafter. It makes consequential amendments to the terms of parish councillors due to end in 2023. Parish council by-elections may be held in 2023 and as required.

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

- 9.1 There is no requirement for consolidation as this instrument does not amend other legislation.

10. Consultation outcome

- 10.1 This Order relates to the implementation of a proposal that was subject to extensive consultation, as described below. In addition, the Government shared draft texts of provisions within this Order with the Somerset councils during its development and this Order has been prepared having regard to representations from the councils about the detailed content of the Order.
- 10.2 Both of the unitary proposals submitted by councils in Somerset cited surveys of local views on the options for unitary local government in support of the proposal. As explained at paragraph 7.3, the Government launched a statutory consultation on the two proposals for unitary local government in Somerset on 22 February 2021. The Act requires that, before a proposal for local government reorganisation can be implemented, the Secretary of State must first consult any local authority that is affected by a proposal (but which has not submitted it), and such other persons as he considers appropriate. The then Secretary of State consulted named consultees on both of the proposals he received from Somerset councils and additionally welcomed views

from any interested persons, including residents. A full list of named bodies consulted on each proposal was published in the consultation⁴.

- 10.3 The Government's consultation was conducted online using "Citizen Space", the department's dedicated platform for consultations, with online capture of responses and an alternative option of email responses or post.
- 10.4 The consultation asked respondents questions directly related to the criteria for assessing the unitary proposals:
- whether a proposal would be likely improve local government and service delivery across each area;
 - where it is proposed that services will be delivered on a different geographic footprint to currently, or through some form of joint arrangements, whether this would be likely to improve those services;
 - whether a proposal would be likely to impact local public services delivered by others, such as police, fire and rescue, and health services;
 - whether respondents supported a proposal; and
 - whether respondents considered that a proposal had a credible geography.
- 10.5 A full summary of the consultation responses was published on gov.uk⁵ alongside the 21 July announcement of the then Secretary of State's decision to implement the single unitary proposal and a copy placed in the House of Commons library.
- 10.6 The Government received a total of 5,498 responses regarding the two proposals for Somerset. The vast majority of responses (5,167, 94 per cent of total responses) were from residents living in the area, the remaining responses were as follows: residents from outside of the area - 43; business organisations – 32; education organisation - 1; principal council, including responses from employees and individual members - 34; town and parish councils - 54; local government organisation other - 8; police organisations - 2; health organisation - 3; other - 154 (this includes responses from the voluntary and community sector (VCS)) .
- 10.7 There was considerable variation between the views of different groups of respondents on the potential benefits and downsides of the two proposals. The proportion of responses in each group that were either negative or positive for a proposal were consistent across all questions i.e., those that supported a proposal also thought it would improve services, the footprint would have a positive effect, the impact on other services would be positive and the proposal had a credible geography.
- 10.8 The majority of resident respondents, 58 per cent who live in the area and 42 per cent who do not, supported the two unitary proposal, compared to 34 per cent who live in the area and 44 per cent who do not, who supported the single unitary proposal. The majority (72 per cent) of business respondents supported the single unitary proposal, compared to 25 per cent who supported the two unitary proposal. Far more town and parish council respondents (67 per cent) supported the two unitary proposal than the

⁴ www.gov.uk/government/consultations/proposals-for-locally-led-reorganisation-of-local-government-in-cumbria-north-yorkshire-and-somerset/outcome/consultation-response-summary-local-government-reorganisation#annex-b-named-consultees.

⁵ www.gov.uk/government/consultations/proposals-for-locally-led-reorganisation-of-local-government-in-cumbria-north-yorkshire-and-somerset/outcome/consultation-response-summary-local-government-reorganisation

single unitary proposal (22 per cent) with 11 per cent expressing no preference. 88 per cent of public service partner respondents (including health, police, safeguarding and transport) supported the single unitary proposal more. However, most public service partner respondents stressed that they would work with either option were it to be adopted and could see merits of both proposals. More VCS respondents (53 per cent) supported the two unitary proposal with 20 per cent supporting the single unitary proposal. Responses from the councils, whether formal council responses or from individual members or employees, largely supported the proposal from the council with which they were associated.

- 10.9 The proportion of each group that supported a proposal was consistent with the proportions that considered that proposal would be likely to improve service delivery and local government and had a credible geography. Full detail on the responses to all the questions is set out in the summary document referred to in paragraph 10.2.
- 10.10 Those who supported the single unitary thought it would improve services because it would provide a simplified, more efficient structure which would provide better value for money and be more sustainable. They also thought it had a credible geography because it retained the current county footprint, and that the area of Somerset was too small to be divided into two. These respondents disagreed with the east / west split of the two unitary proposal, seeing the proposed division and boundaries as arbitrary. Those who did not support the single unitary proposal thought it would not improve services and considered that in a single unitary authority services would be too remote and local democracy would be diminished.
- 10.11 Those who supported the two unitary proposal thought that it would improve service delivery and local government because it would create more local organisations with better access to services whilst being more efficient than the current two-tier system, and that it would generate savings. Those who thought the two unitary proposal had a credible geography agreed with the east / west split and thought that the area of the single unitary was too big geographically and too rural for a single authority. Those who did not support the two unitary proposal thought it would complicate structures, create duplication, not provide value for money and expressed concerns about the disaggregation of services currently provided by the county council.
- 10.12 The Somerset district councils distributed a leaflet to residents about the consultation, setting out reasons why residents should support the two unitary proposal and not support the single unitary proposal. The leaflet included a response form for submission to the department; the form enabled responders to select a preferred option and tick up to four preselected reasons for their choice. Names were not included on these response forms and they have therefore been treated as a campaign and reported on separately in the consultation analysis. 1,314 of these forms were received prior to the decision on whether to implement a proposal, 76 per cent of these forms were in support of the two unitary proposal; 22 per cent supported the single unitary; and 2 per cent supported both proposals. A further 3,966 of these forms subsequently became available, 65 per cent of these supported the two unitary and 33 per cent supported the single unitary.
- 10.13 The Somerset district councils held a local poll, writing to all households in Somerset inviting them to vote on which of the two proposals for local government restructuring in Somerset they preferred; the poll ran from 18 May 2021 until 4 June 2021. This was after the consultation closed on 19 April 2021. The result of the local poll was in line with the consultation responses: total votes cast - 111,569; of which: supporting

two unitaries - 72,561 (65 per cent); supporting a single unitary – 38,547 (34.5 per cent).

10.14 The Government also received a number of representations regarding the conduct of the consultation, material provided by the councils during the consultation, including the district councils’ leaflet, and the local poll conducted by the district councils.

10.15 The then Secretary of State carefully considered the consultation responses, all representations received, and all the relevant information available to him, including the results of the local poll, in reaching his decision on which proposal to implement, subject to Parliamentary approval. The then Secretary of State concluded that both proposals had a good deal of local support, but the two unitary proposal did not meet the criteria on “improving local government” and “being a credible geography, as set out in paragraph 7.4

10.16 The councils were given an opportunity to make representations on a number of aspects of the Order, in particular:

- the name of the council,
- the legal basis of new unitary council: whether to establish an entirely new legal entity (a non-continuing council) or to provide that an existing legal entity becomes the new unitary council (a continuing council);
- electoral arrangements: council size and warding pattern for the new unitary council and whether to reschedule parish council elections to align with the new unitary council elections; and
- the make-up of the elected member transitional decision-making bodies and officer implementation team.

10.17 All the Somerset councils were in agreement on the way forward with the exception of the legal basis of the council for which the district councils requested a non-continuing authority and the county council requested a continuing authority. The councils jointly submitted a number of proposals for council size and warding pattern. Additionally, the county council asked the Secretary of State to review for Somerset the Government policy of holding in May 2022 the first election to all the new unitary councils being established in April 2023; their preference was to hold the first election to the new unitary Somerset council in May 2023. The Secretary of State invited the views of Somerset councils and their members on this which showed there was no consensus but considerable support for the May 2022 elections.

10.18 The Secretary of State considered all the representations he received in deciding on the content of the Order. He concluded that a continuing council was the most efficient legal structure, he selected one of the warding proposals for the new unitary council submitted by the Somerset councils and confirmed that the first election to the new unitary Somerset council will be in May 2022.

11. Guidance

11.1 No guidance is necessary to accompany this instrument. The local authorities working in conjunction with DLUHC are considered to be best placed to implement the provisions of this Order.

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 a simplification to the system of local government in Somerset, with a reduction in the number of councils from five to one. In making their proposal Somerset County Council estimated savings of £52.6m over five years.

12.3 A full 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 that the new councils will be democratically accountable for their performance to their local electorates, and subject to the audit and accountability regimes applicable to the generality of local government.

14.2 The instrument does not include a statutory review clause. Officials are working with the Somerset councils on taking forward implementation in line with the provisions of this Order, which give effect to changes in local government structure which are completed on 1 April 2023.

15. Contact

15.1 Kathy Bee at the Governance Reform and Democracy Unit, DLUHC, Telephone: 0303 4444579 or email: Kathy.Bee@communities.gov.uk can be contacted with any queries regarding the instrument.

15.2 Paul Rowsell, Deputy Director and Head of Governance Reform and Democracy Unit at the DLUHC can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kemi Badenoch MP, Minister of State at the DLUHC can confirm that this Explanatory Memorandum meets the required standard.