Draft Order laid before Parliament under section 240(6) of the Local Government and Public Involvement in Health Act 2007, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2010 No. XXXX

LOCAL GOVERNMENT, ENGLAND

The Exeter and Devon (Structural Changes) Order 2010

*Made - - - - ***2010*

Coming into force in accordance with article 1

This Order implements a proposal, submitted to the Secretary of State under section 2 of the Local Government and Public Involvement in Health Act 2007(**1**), that there should be a single tier of local government for the city of Exeter.

That proposal was made by Exeter City Council.

The Secretary of State made a request under section 4 of the Local Government and Public Involvement in Health Act 2007 (request for Boundary Committee for England's advice) and specified 8th December 2009 as the deadline for the Boundary Committee to provide the advice(**2**).

Before making the Order the Secretary of State consulted the following about the proposal—

(a) every authority affected by the proposal (except the authority which made it); and

(b) other persons the Secretary of State considered appropriate.

The Secretary of State for Communities and Local Government makes this Order in the exercise of the powers conferred by sections 7, 11, 12, and 13 of the Local Government and Public Involvement in Health Act 2007:

PART 1

GENERAL

Citation and commencement

1. This Order may be cited as the Exeter and Devon (Structural Changes) Order 2010 and shall come into force on the day after that on which it is made.

(**1**) 2007 c.28. *See* section 21(3) as to proposals made in response to pre-commencement invitations, and section 23(3).
(**2**) *See* section 7(2) and 6(7) of the Local Government and Public Involvement in Health Act 2007 (c.28).

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(**3**);

"the 1972 Act" means the Local Government Act 1972(**4**);

"article 5 functions" means the other transitional functions referred to in article 5;

"existing" means existing on the day on which this Order is made;

"Exeter", except the second mention of that word in article 3(2), in article 3(3), and in the expressions "the Exeter county electoral divisions" and "Exeter City Council", means the city of Exeter;

"Exeter City Council" means the non-metropolitan district council of that name(**5**);

"the Exeter county electoral divisions" means the existing county electoral divisions of Alphington and Cowick, Duryard and Pennsylvania, Exwick and St Thomas, Heavitree and Whipton and Barton, Newtown and Polsloe, Pinhoe and Mincinglake, Priory and St Leonard's, St David's and St James, and St Loyes and Topsham that are established by article 3 of the County of Devon (Electoral Changes) Order 2004(**6**);

"the 2011 election day" means the ordinary day of election of councillors(**7**) in 2011;

"the Implementation Executive" means the body established (whether before or after the coming into force of this Order) for the purposes of article 4(3);

"the main transitional function" has the meaning given by article 4(1);

"the proper officer", in relation to any purpose and Exeter City Council or Devon County Council, means the officer appointed for that purpose by that council; and

"the transitional period" means the period beginning on the date when this Order comes into force and ending on the fourth day after the 2011 election day.

PART 2

ESTABLISHMENT OF SINGLE TIER LOCAL GOVERNMENT IN EXETER

Single tier local government in Exeter

3.—(1) On 1st April 2011 Exeter shall cease to form part of the county of Devon.

(2) For the purposes of enactments relating to local government, there shall be a new county, whose area shall be co-terminous with that of Exeter; and the name of that new county shall be Exeter.

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

(4) On and after 1st April 2011 Exeter City Council shall be the sole principal council for Exeter.

(5) On 1st April 2011—

(a) the Exeter county electoral divisions shall cease to exist; and

(**3**) 2000 c.22.
(**4**) 1972 c.70.
(**5**) The district of Exeter has the status of a city.
(**6**) S.I. 2004/2812.
(**7**) *See* section 37 of the Representation of the People Act 1983 (c.2).

(b) the term of office of the persons who, immediately before that date, are the elected members of Devon County Council for those divisions shall expire.

PART 3

TRANSITIONAL FUNCTIONS AND THEIR DISCHARGE

Main transitional function and Implementation Executive

4.—(1) On the coming into force of this Order until the end of the transitional period there shall be added to the functions of Exeter City Council and Devon County Council the function of preparing for and facilitating the economic, effective, efficient and timely transfer to Exeter City Council of Devon County Council's functions, property, rights and liabilities, in so far as they relate to Exeter ("the main transitional function").

(2) Throughout the transitional period, section 14 of the 2000 Act (discharge of functions: general)(**8**) shall have effect in relation to Exeter City Council and—

(a) the main transitional function, and

(b) the article 5 functions,

as if, in subsection (1), after the words "19 or 20," there were inserted "or under the Exeter and Devon (Structural Changes) Order 2010".

(3) Exeter City Council's executive arrangements shall provide for the discharge of the main transitional function and the article 5 functions to be the responsibility, throughout the transitional period, of a committee of the City Council's executive(**9**), to be known as the Implementation Executive.

(4) Such statutory provisions as apply to, or in relation to, committees of a local authority's executive shall apply throughout the transitional period to, or in relation to, the Implementation Executive subject to paragraphs (5), (6) and (8) to (11) of this article and article 6(2) and (3); and for this purpose "statutory provisions" includes—

(a) any enactment contained in an Act passed after the making of this Order; and

(b) any instrument made at any time under an enactment (including an enactment contained in an Act passed after the 2007 Act).

(5) The Implementation Executive shall consist of—

(a) the person who, for the time being, is the leader of Exeter City Council's executive;

(b) ten other persons nominated by that Council who, for the time being, are members of that Council; and

(c) four persons nominated by Devon County Council who are for the time being members of that Council elected for any of the Exeter county electoral divisions.

(6) In making the nominations referred to in paragraph (5)(b) and (c), Exeter City Council and Devon County Council shall, to the extent that it is practicable to do so, secure that at all times the Conservative Party, the Labour Party, the Liberal Democrat Party and the Liberal Party are each represented on the Implementation Executive by at least one member.

(7) It shall be the duty of Exeter City Council and Devon County Council to co-operate in the establishment of the Implementation Executive.

(**8**) Section 14 was amended by section 63 of the Local Government and Public Involvement in Health Act 2007 (c.28).
(**9**) As to the permitted forms of executive, *see* section 11 of the Local Government Act 2000 (c.22). Exeter City Council operates a leader and cabinet executive (England).

(8) The leader of the Implementation Executive shall be the person who is for the time being the leader of Exeter City Council's executive.

(9) The persons who, immediately before 1st April 2011, are members of the Implementation Executive by virtue of paragraph (5)(c) shall continue as members of the Implementation Executive notwithstanding that they cease on that date to be members of Devon County Council.

(10) The Implementation Executive shall regulate its own proceedings, but a question to be decided by that Executive 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 leader of the Implementation Executive) having one vote.

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

Other transitional functions of the Implementation Executive

5.—(1) The other transitional functions which are to be exercisable only during the transitional period are—

(a) the existing executive and non-executive functions of Exeter City Council and Devon County Council; and

(b) such other functions (including functions conferred on or after the day on which this Order is made on local authorities generally or on particular classes of local authority),

as, by any of the means mentioned in paragraph (2), the Secretary of State specifies as a function or responsibility of the Implementation Executive.

(2) The means referred to in paragraph (1) are—

(a) this Order,

(b) a subsequent order made under section 7 of the 2007 Act by virtue of section 14 of the Interpretation Act 1978 (power to amend) (**10**),

(c) an order under section 20 of the 2007 Act (correction of orders), and

(d) regulations under section 14 of the 2007 Act (regulations for supplementing orders).

Discharge of functions by Implementation Executive

6.—(1) The discharge of the main transitional function and the article 5 functions shall be a responsibility, throughout the transitional period, of the Implementation Executive.

(2) Section 14(5) of the 2000 Act (which enables a committee of a local authority executive to arrange for the discharge of its functions by an officer of the authority) shall have effect in the transitional period in relation to the Implementation Executive as if the reference to an officer of the authority included a reference to—

(a) a sub-committee of the Implementation Executive, and

(b) an officer of Devon County Council.

(3) Section 14(6) of the 2000 Act (which enables the discharge of a function by a person despite that person having made arrangements for the discharge of that function by a different person) shall have effect in the transitional period in relation to arrangements made under subsection (5) of that section (as modified by paragraph (2) above) as if the reference to an officer of the authority included a reference to—

(a) a sub-committee of the Implementation Executive, and

(**10**) 1978 c.30.

(b) an officer of Devon County Council.

(4) Section 21 of the 2000 Act (overview and scrutiny) shall not apply during the transitional period in relation to any matter that is a responsibility of the Implementation Executive by virtue of paragraph (1).

(5) During the transitional period, section 13 of the 2000 Act (functions which are the responsibility of an executive) shall have effect as if, at the end of subsection (10)(c), there were added "or as mentioned in article 6(6) of the Exeter and Devon (Structural Changes) Order 2010".

(6) During the transitional period, Exeter City Council and Devon County Council shall discharge jointly under arrangements under section 101(5) of the 1972 Act the functions of—

(a) reviewing or scrutinising decisions made, or other action taken, by the Implementation Executive in connection with any matter that is a responsibility of that Executive by virtue of paragraph (1); and

(b) preparing reports for, or making recommendations to, the Implementation Executive in connection with any such responsibility.

(7) The joint committee established pursuant to paragraph (6) shall at least once in each period of three months during the transitional period inform Exeter City Council and Devon County Council of—

(a) the matters that it has considered, and

(b) the conclusions (if any) that it has reached concerning those matters.

Implementation Plan and further provisions relevant to discharge of functions by Implementation Executive

7.—(1) The Implementation Executive shall 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 the Implementation Executive necessary or desirable to secure the economic, effective, efficient and timely discharge of the main transitional function and the article 5 functions; and

(b) such budgets and plans as it considers necessary or desirable to facilitate the economic, effective, efficient and timely discharge of Exeter City Council's functions on or after 1st April 2011.

(2) For the purposes of—

(a) preparing, reviewing and revising the Implementation Plan,

(b) discharging the main transitional function and the article 5 functions, and

(c) discharging such other functions as may be conferred on it,

the Implementation Executive shall have regard to the information supplied by Exeter City Council to the Secretary of State in support of its proposal for single tier local government in Exeter 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(**11**).

(3) The Implementation Executive may, by written notice to—

(a) the proper officer of Exeter City Council, or

(b) the proper officer of Devon County Council,

(**11**) 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 or online at www.communities.gov.uk).