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

2008 No. XXXX

LOCAL GOVERNMENT, ENGLAND

The Cheshire (Structural Changes) Order 2008

*Made - - - - *** 2008*

Coming into force in accordance with article 1

This Order implements, without modification, a proposal, submitted to the Secretary of State for Communities and Local Government 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 county of Cheshire.

The proposal was made by Chester City Council, Ellesmere Port and Neston Borough Council, Macclesfield Borough Council and Vale Royal Borough Council, acting jointly.

The Secretary of State did not make a request under section 4 of the Local Government and Public Involvement in Health Act 2007 (request for Boundary Committee for England's advice).

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

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

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

A draft of this Order was laid before and approved by a resolution of each House of Parliament in accordance with section 240(6) of the Local Government and Public Involvement in Health Act 2007.

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:

(**1**) 2007 c.28. *See* section 21(3) as to proposals made in response to pre-commencement invitations, and section 23(3).

PART 1

GENERAL

Citation and commencement

1. This Order may be cited as the Cheshire (Structural Changes) Order 2008 and shall come into force on the day after that on which this Order is made.

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(**2**);

"the 1972 Act" means the Local Government Act 1972(**3**);

"2008 election" means an election required by article 13(1) to be held in 2008;

"the 2008 election day" means the ordinary day of election of councillors(**4**) in 2008;

"article 16 functions" means—

(a) in relation to the County Council, the functions referred to in article 16(1) and (2);

(b) in relation to each of the East Cheshire councils, the function referred to in article 16(3); and

(c) in relation to each of the West Cheshire councils, the function referred to in article 16(4);

"Cheshire", unless immediately preceded or followed by "East" or "West", means the non-metropolitan county of Cheshire as constituted immediately before 1st April 2009;

"Cheshire East", except in references to the county of Cheshire East, means the district constituted by article 3;

"the Cheshire East Council" means the council constituted by article 3(2);

"the Cheshire East Joint Committee" means the committee established (whether before or after the coming into force of this Order) as mentioned in article 17(1)(a);

"Cheshire West and Chester", except in references to the county of Cheshire West and Chester, means the district constituted by article 4;

"the Cheshire West and Chester Council" means the council constituted by article 4(2);

"the Cheshire West and Chester Joint Committee" means the committee established (whether before or after the coming into force of this Order) as mentioned in article 17(1)(b);

"the County Council" means Cheshire County Council;

"the East Cheshire councils" means Congleton Borough Council, Crewe and Nantwich Borough Council and Macclesfield Borough Council;

"the East Cheshire districts" means the boroughs of Congleton, Crewe and Nantwich, and Macclesfield;

"electoral division" means a division created by article 2 of the County of Cheshire (Electoral Changes) Order 2000(**5**);

(**2**) 2000 c.22. Parts 2 and 3 of that Act were amended by Part 3 of the Local Government and Public Involvement in Health Act 2007 (c.28).
(**3**) 1972 c.70.
(**4**) *See* section 37 of the Representation of the People Act 1983 (c.2).
(**5**) S.I. 2000/2486.

"the proper officer", in relation to any purpose and any council, means the officer appointed for that purpose by that council;

"shadow authority" means an authority (not being a local authority) which will become a local authority on 1st April 2009;

"shadow executive" has the meaning given by article 7(2);

"the shadow period" means the period beginning with the fourth day after the 2008 election day and ending immediately before 1st April 2009;

"the West Cheshire councils" means Chester City Council, Ellesmere Port and Neston Borough Council and Vale Royal Borough Council; and

"the West Cheshire districts" means the city of Chester and the boroughs of Ellesmere Port and Neston, and Vale Royal.

PART 2

ESTABLISHMENT OF SINGLE TIER LOCAL GOVERNMENT IN CHESHIRE

Single tier local government in East Cheshire

3.—(1) A new non-metropolitan county and a new non-metropolitan district, each to be known as Cheshire East, shall be constituted comprising (in each case) the area of the East Cheshire districts.

(2) A new district council, to be known as the Cheshire East Council, shall be established as the sole principal authority for the non-metropolitan district of Cheshire East.

(3) Except for the purposes of Part 4 of this Order (electoral matters), until 1st April 2009—

(a) the Cheshire East Council shall not be a local authority for the purposes of the 1972 Act or any other enactment relating to local government; and

(b) subsection (2) of section 2 of the 1972 Act (constitution of principal councils in England) shall have effect in relation to that Council as if the words from "and the council" to the end of that subsection were omitted.

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

(5) On 1st April 2009—

(a) the East Cheshire districts shall be abolished as local government areas; and

(b) the East Cheshire councils shall be wound up and dissolved.

Single tier local government in West Cheshire

4.—(1) A new non-metropolitan county and a new non-metropolitan district, each to be known as Cheshire West and Chester, shall be constituted comprising (in each case) the area of the West Cheshire districts.

(2) A new district council, to be known as the Cheshire West and Chester Council, shall be established as the sole principal authority for the non-metropolitan district of Cheshire West and Chester.

(3) Except for the purposes of Part 4 of this Order (electoral matters), until 1st April 2009—

(a) the Cheshire West and Chester Council shall not be a local authority for the purposes of the 1972 Act or any other enactment relating to local government; and

(b) subsection (2) of section 2 of the 1972 Act (constitution of principal councils in England) shall have effect in relation to that Council as if the words from "and the council" to the end of that subsection were omitted.

(4) In relation to the county of Cheshire West and Chester, section 2(1) of the 1972 Act (which provides that every county shall have a council) shall not apply.

(5) On 1st April 2009—

(a) the West Cheshire districts shall be abolished as local government areas; and

(b) the West Cheshire councils shall be wound up and dissolved.

County of Cheshire, Cheshire County Council and councillors of that Council

5.—(1) On 1st April 2009—

(a) the county of Cheshire shall be abolished as a local government area; and

(b) the County Council shall be wound up and dissolved.

(2) The term of office of persons serving as councillors of the County Council immediately before 1st April 2009 shall end on that date.

(3) Nothing in section 89 of the 1972 Act (filling of casual vacancies in case of councillors) shall authorise the holding of an election to fill a casual vacancy in the office of councillor of the County Council where that vacancy arises after 30th September 2008 and before 1st April 2009.

PART 3

SHADOW AUTHORITIES AND THEIR FUNCTIONS

Shadow authorities

6. During the shadow period the Cheshire East Council and the Cheshire West and Chester Council shall each be a shadow authority for the purposes of the following provisions of this Part.

Duties of shadow authorities: executive arrangements and code of conduct

7.—(1) At its first meeting(**6**), each shadow authority shall discharge the duties specified or referred to—

(a) in paragraph (2); and

(b) in section 51 of the 2000 Act (duty of relevant authorities to adopt codes of conduct), as applied by paragraph (5),

and it shall discharge those duties in accordance with paragraphs (3) and (6), respectively.

(2) It shall be the duty of a shadow authority to create a leader and cabinet executive within the meaning of Part 2 of the Local Government Act 2000 (arrangements with respect to executives etc), as originally enacted(**7**) ("the shadow executive").

(3) The shadow authority shall adopt the proposals made to it under article 19—

(a) without amendment or modification, or

(b) subject to such amendments or modifications as it thinks fit.

(**6**) *See* paragraphs (11) and (12) of article 13.

(**7**) 2000 c.22. Section 11 was amended by section 62 of the Local Government and Public Involvement in Health Act 2007 (c.28). Subsection (3) of that section, as originally enacted, defines a leader and cabinet executive.

(4) With the exception of sections 25 (proposals), 26 (proposals not requiring referendum), 27 (referendum in case of proposals involving elected mayor), 28 (approval of outline fall-back proposals) and 29 (operation of, and publicity for, executive arrangements) the provisions of Part 2 of the 2000 Act, to the extent that they relate to a leader and cabinet executive, shall have effect in relation to each shadow authority as if—

(a) its executive were a leader and cabinet executive of a district council;

(b) the executive arrangements that it makes were executive arrangements of a district council(**8**);

(c) section 15 authorised its executive to delegate functions not only to officers of the shadow authority but also—

(i) in the case of the shadow executive for Cheshire East, to officers of the County Council or of any of the East Cheshire councils;

(ii) in the case of the shadow executive for Cheshire West and Chester, to officers of the County Council or of any of the West Cheshire councils;

(d) for the purposes of the application of Part 1 of Schedule 4 to the 2007 Act (new arrangements for executives: transitional provision: old-style leader and cabinet executive), its executive had been operating at the relevant time within the meaning of that Part of that Schedule(**9**).

(5) Part 3 of the 2000 Act (conduct of local government members and employees)(**10**) shall apply in relation to each shadow authority as if—

(a) it were a district council(**11**);

(b) references to co-opted members were omitted; and

(c) in section 51—

(i) in subsection (1), for "before the end of the period of six months beginning with the day on which the first order under section 50 which applies to them is made", there were substituted "at the first meeting of an authority that is a shadow authority within the meaning of the Cheshire (Structural Changes) Order 2008"; and

(ii) in subsection (5), "(1) or" were omitted.

(6) In complying with subsection (1) of section 51 of the 2000 Act, each shadow authority shall make such amendments or modifications to the proposals submitted to it under article 20 as it considers necessary to secure that, when adopted, the code will satisfy the requirements of subsection (4) of that section.

Duties of shadow authorities: appointment of certain officers

8.—(1) It shall be the duty of each shadow authority at its first meeting to designate, on an interim basis, an officer of the County Council, one of the East Cheshire councils or one of the West Cheshire councils—

(a) to be responsible for performing, in relation to the shadow authority, the duties imposed by subsections (2) and (3) of section 5 (designation and reports of monitoring officer) of the Local Government and Housing Act 1989(**12**) ("the 1989 Act") and subsections (2)

(**8**) In Part 2 of the Local Government Act 2000, "executive arrangements" has the meaning given by section 10; see the definition in section 48(1). Section 48(1) defines "local authority", in relation to England, as including a district council.

(**9**) *See, in particular*, the definitions of "old-style leader and cabinet executive" and "relevant time" in paragraph 5 of Part 1 of Schedule 4.

(**10**) Part 3 was amended by Chapter 1 of Part 10 of the Local Government and Public Involvement in Health Act 2007 (c.28). *See,* in particular, the amendments to section 51 in section 183(3) of that Act.

(**11**) Part 3 applies in relation to relevant authorities; see the definition of "relevant authority" in section 49(6).

(**12**) 1989 c.42. Relevant amendments were made by S.I. 2001/2237, article 23.