

EXPLANATORY MEMORANDUM TO
THE BUCKINGHAMSHIRE (STRUCTURAL CHANGES) ORDER 2019
2019 No. 957

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.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This Order gives effect to Buckinghamshire County Council’s proposal for the establishment of a single tier of local government for Buckinghamshire.¹ The existing district areas are to be abolished as local government areas and all five councils in Buckinghamshire – Buckinghamshire County Council and the four district councils of Aylesbury Vale, Chiltern, South Bucks and Wycombe – are to be wound up and dissolved. They will be replaced by a single unitary council called Buckinghamshire Council, which from 1 April 2020 will be the sole local authority for the local government area of Buckinghamshire.² There are to be appropriate arrangements for preparing to the 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 The Buckinghamshire (Structural Changes) (Modification of the Local Government and Public Involvement in Health Act 2007) Regulations 2019 (S.I. 2019/332) were made on 21 February 2019 and came in to force on 22 February 2019. They modify provisions relating to local authority structural and boundary change in the Local Government and Public Involvement in Health Act 2007 (“the 2007 Act”) as they apply to councils in Buckinghamshire, and so paved the way for this Order.
- 3.2 The Districts of Aylesbury Vale, Chiltern, South Bucks and Wycombe (Changes to Years of Elections) Order 2018 (S.I. 2018/1355) was made on 12 December 2018 and came into force on 18 January 2019. That Order changed the year of the scheduled elections of councillors in the Districts of Aylesbury Vale, Chiltern, South Bucks and Wycombe, from 2019 to 2020. It was made at the request of the district councils in Buckinghamshire following the Secretary of State’s decision to implement the proposal to reorganise local government in Buckinghamshire, subject to parliamentary approval. These elections to the four district councils will not take place if those councils are wound up and dissolved on 1 April 2020.

¹ https://www.buckscc.gov.uk/media/1314/mlg-in-bucks_final_low-res.pdf

² For these purposes ‘local authority’ does not include a parish council.

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)

- 3.3 This entire instrument applies to England only because the instrument is entirely concerned with local government areas in England.
- 3.4 The instrument does not have any minor or consequential effects outside England.
- 3.5 In the view of the Department, for the purposes of Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter; or the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament; or the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.
- 3.6 The Department has reached this view because the primary purposes of the provisions in this instrument relate to local government which is within the devolved legislative competence of the Northern Ireland Assembly, the Scottish Parliament and the National Assembly for Wales.

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 set out in Section 3 under “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)”.

5. European Convention on Human Rights

- 5.1 Rishi Sunak, Parliamentary Under Secretary of State at the Ministry of Housing, Communities and Local Government, has made the following statement regarding Human Rights:

“In my view the provisions of the Buckinghamshire (Structural Changes) Order 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This memorandum describes an Order being laid before Parliament that implements the locally led proposal, submitted in September 2016 to the Secretary of State by Buckinghamshire County Council, for the establishment of a single tier of local government for Buckinghamshire.
- 6.2 The Order is to be made under Part 1 of 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).³ The Regulations modify provisions relating to local authority structural and boundary change in the 2007 Act as they apply to councils in Buckinghamshire, enabling a more streamlined process, so that:

³ On laying a draft of these Regulations before Parliament, the Secretary of State also laid before Parliament a Section 15 report explaining the effect of the Regulations and why he considers it appropriate to make them. This report is available here: <http://www.legislation.gov.uk/ukxi/2019/332/resources/made>

- the requirement for unitary proposals to be “invited” by the Secretary of State is disapplied and proposals may be made for the purposes of the 2007 Act by any principal authority in Buckinghamshire on their own initiative;
- any unitary proposal received by the Secretary of State from Buckinghamshire councils, including proposals pre-existing before the Regulations are made, may be implemented with or without modification by order; and
- the requirement for the Secretary of State to consult the councils affected by that proposal and other persons about that proposal does not apply (reflecting the extensive consultation undertaken by the County Council and the subsequent period for representations).

6.3 Specifically, this Order is to be made in exercise of the powers conferred by sections 7, 11, 12 and 13 of the 2007 Act. Section 14 of the 2007 Act enables the Secretary of State, by regulations of general application, to make incidental, consequential, transitional and supplementary provision to give full effect to these local government changes. The Secretary of State will consider whether any further amendments or new provision is required, in consultation with the councils concerned.

7. Policy background

What is being done and why?

- 7.1 The Government made a manifesto commitment to support those authorities that wished to combine to serve their communities better and is committed to considering locally led proposals from councils that wish to reorganise. In September 2016, Buckinghamshire County Council submitted a proposal to create a single unitary council to replace the existing two-tier arrangement, in which responsibility for local services is divided between Buckinghamshire County Council and the four district councils.
- 7.2 On 28 February 2017, in response to a Parliamentary Question from Christopher Chope MP (PQN 65271)⁴, the then Minister for Local Government Marcus Jones MP stated the criteria against which proposals for local government reorganisation would be assessed: namely that any proposal made by one or more councils in an area for reorganising that area’s local government will be considered, and a judgement in the round will be reached “as to whether the proposal, if implemented, is likely to improve the area’s local government, commands a good deal of local support in the area, and whether the area itself is a credible geography for the proposed new structures.”
- 7.3 On 1 November 2018, in a Written Ministerial Statement, the Secretary of State announced that the proposal met the criteria and, subject to Parliamentary approval, should be implemented.⁵ The 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”.

⁴ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-02-23/65271/>

⁵ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-11-01/HCWS1058/>

- 7.4 The benefits of the single unitary proposal are anticipated to be: enhanced social care and safeguarding services through closer connection with related services such as housing, leisure and benefits; improved strategic decision making in such areas as housing, planning and transport; improvements to local partnership working with other public sector bodies; establishment of nineteen community boards, each with a community hub, enabling local councillors to take decisions on issues such as funding for community groups and local roads maintenance; and providing a single point of contact. Buckinghamshire County Council also estimated savings of £18.2 million per annum. It is expected that there will be job losses as duplicated roles are removed, and in the short term there will be costs associated with implementation
- 7.5 This Order implements the proposal from Buckinghamshire County Council, as modified by the Secretary of State, to create a single unitary council. It establishes the new local government structure and enables arrangements for a smooth transition of local government functions to the new council. The modification made by the Secretary of State was to change the number of councillors on the new authority at the first election in 2020 from 98 to 147, to safeguard initial local democratic engagement.
- 7.6 Part 2 of the Order establishes the new council in shadow form the day after the Order comes in to force, 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 2020 by:
- abolishing as local authority areas the districts of Aylesbury Vale, Chiltern, South Bucks and Wycombe;
 - winding up and dissolving all five councils in Buckinghamshire – Buckinghamshire County Council, Aylesbury Vale District Council, Chiltern District Council, South Bucks District Council and Wycombe District Council;
 - creating a new, non-metropolitan, district of Buckinghamshire, for the existing local government area of the county of Buckinghamshire and comprising the areas of the district councils; and
 - disapplying the provision in the Local Government Act 1972 which requires that every county must have a council.
- 7.7 The period from the day after this Order comes into force until four days after the ordinary day of elections in 2020 is known as the shadow period. During this time Buckinghamshire Council will be a shadow authority. The main function of this shadow authority will be to make all necessary preparations in advance of councillors for the new authority being elected, including preparing and keeping under review an implementation plan and appointing key officers.
- 7.8 The members of the Buckinghamshire Council Shadow Authority will be all the existing members of the County Council and the four District Councils. The costs will be met by all five councils in such proportions as they agree. The Shadow Authority will elect a chairman of the Shadow Authority and will establish a Leader and Cabinet executive as provided for in the Order, known as a “shadow executive”, to exercise the majority of the functions of the Shadow Authority. The shadow executive is constituted as follows:

- the makeup of the shadow executive will be the Leader of Buckinghamshire County Council and eight further members nominated by the County Council, and two members nominated by each District Council, to give a total of 17 members;
- the Leader of the shadow executive will be the Leader of Buckinghamshire County Council unless the shadow executive decides that another member of the shadow executive is to be its Leader;
- 17 substitute members will be nominated by the councils (nine substitute members from the County Council and two from each of the District Councils) to act as members of the shadow executive in the absence of the nominated members or Leader;
- a Deputy Leader of the shadow executive will be elected by the District Council members of the shadow executive from the members of the shadow executive nominated by the District Councils, to act as the Leader of the shadow executive in the absence of the Leader; and
- the voting arrangements will be that each member of the shadow executive will have one vote, and all decisions taken by the shadow executive will be on the basis of a simple majority of those present and voting (including substitute members).

7.9 The Order sets out the key powers and arrangements for staffing the Shadow Authority to ensure there is a smooth transition. The Shadow Authority is therefore enabled to take all the necessary steps to prepare for the assumption of full local government functions and powers on 1 April 2020 and to ensure continuity of public service delivery on and after this date. The Order also requires all the affected authorities to co-operate in achieving structural change and generally to exercise their functions in such a way as to further the economic, efficient, effective and timely transfer of functions to the new unitary authority.

7.10 The Order specifies the election cycle (the first election to Buckinghamshire Council is in 2020, the second in 2025 and thereafter every four years), and the Schedule to the Order sets out that the wards for the new council will be based on the existing divisions for the predecessor county council and lists the number of councillors per ward. The Order also provides that elections for parish councils in Buckinghamshire will take place on the same day as elections to Buckinghamshire Council and follow the same cycle.

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

10. Consultation outcome

10.1 This Order relates to a proposal that itself was subject to consultation, as described below. The Government shared drafts of this Order with the Buckinghamshire councils during its development and this Order has been prepared having regard to representations from the councils.

- 10.2 Further consultation is not considered necessary given the extensive nature of the engagement that has already taken place on the principle of unitarisation and the way forward. That engagement is now summarised.
- 10.3 The representations from the County Council in relation to this Order included the following: the first elections to be held in May 2020, the second in 2025 and then every four years thereafter; those councillors who represent the County and a District to have one vote on the shadow authority; the name of the new council to be Buckinghamshire Council; the new council to have two member wards and 98 members; the shadow authority to be comprised of 49 members from the County Council and 49 members from the District Councils in proportion to the number of wards; the shadow executive to be made of 17 members, with two appointed from each District Council and nine from the County Council, with the leader of the executive coming from the County; the shadow authority to not be required to have regard to the district proposal; if a single officer is named then the proper officer of the County Council is to convene the first meeting of the shadow authority; the shadow executive to designate interim officers; the leader of the implementation team to be the Chief Executive of the County Council; the responsibility for the Implementation Plan to be a function of the shadow executive; and the provisions regarding cooperation between the councils to be strengthened. In addition, the County Council made representations for the local government reorganisation to be implemented through a continuing council model rather than through the abolition of the five existing councils.
- 10.4 The representations from the District Councils in relation to this Order included the following: the first elections to be held in May 2020, the second in 2025 and then every four years thereafter; those councillors who represent the County and a District to have one vote on the shadow authority; the name of the new council to be Buckinghamshire Council; the new council to have three members wards and so 147 members for the first election and until any electoral review by the Boundary Commission for England; the shadow authority to be comprised of all members of the five councils; the shadow executive to be made of 10 members with two from each council, or for the shadow executive to be have three members per District and six or seven from the County (a total of 18 or 19), or two per District and four or five from the County (a total of 12 or 13); the shadow authority to elect the leader of the shadow executive; the shadow authority to be required to have regard to the district proposal where it is consistent with the single unitary proposal; if a single officer is named then the proper officer of Wycombe District Council is to convene the first meeting of the shadow authority; and the shadow authority is to take decisions on designating interim officers.
- 10.5 Following these representations, the Secretary of State took decisions and communicated these to the councils. Rishi Sunak MP, Minister of Local Government at the Ministry of Housing, Communities and Local Government wrote to the councils: “In making his decisions the Secretary of State took account of the representations made by both the county and district councils. He balanced those differing views in the context of his decision to implement the proposal for a single unitary and the need to ensure stability of key social care services, taking particular note of the recommendations of the Children’s Commissioner [see paragraph 10.14]. I appreciate that neither the district councils nor the county council will be fully satisfied that all their preferences have been met, but equally both the district councils

and the county council can note that the Secretary of State has decided in line with their preferences on certain significant matters.”

- 10.6 Turning to consultation in relation to the proposal, Buckinghamshire County Council commissioned an independent engagement programme on unitarisation from Opinion Research Services (ORS), which ran from 31 March to 19 May 2017, and published this alongside the proposal that they had originally submitted in September 2016. This engagement had the following components:
- a consultation inviting residents and stakeholders to provide feedback through a questionnaire, that was available for anyone to complete online and in hard copy;
 - a representative telephone survey of 1,005 residents to provide an accurate profile of opinions from the general population across Buckinghamshire;
 - five deliberative focus groups with members of the public: one in each of the districts of Chiltern, South Bucks and Wycombe, with one in the north and one in the south of Aylesbury Vale;
 - three focus groups with town and parish councillors;
 - three focus groups with voluntary and community sector groups; and
 - in-depth telephone interviews with representatives of Buckinghamshire-based businesses.
- 10.7 The engagement programme generated 3,449 contributions: 2,344 open questionnaire responses (including 20 from organisations); 1,005 responses to the residents’ survey; 89 people attended focus groups; and 11 business representatives undertook in depth telephone interviews. A detailed analysis is available.⁶
- 10.8 In summary, while the engagement programme found high levels of support for the principle of reducing the number of councils in Buckinghamshire in both the open questionnaire and the representative residents’ survey, opinions differed as to how this should be achieved. The open questionnaire showed more support for the one unitary authority option, whereas the survey showed an overall preference for two unitary councils across Buckinghamshire. The vast majority of members of the public who took part in the focus groups also accepted the case for the need to reduce the number of councils across Buckinghamshire from the current five, and majorities in all the focus groups preferred the one unitary authority option. Overall, a majority of town and parish councillors favoured two unitary authorities and almost all business representatives interviewed supported reducing the number of councils across Buckinghamshire from five to one unitary authority.
- 10.9 In March 2018 the Secretary of State announced he was minded to implement the proposal for a single unitary and not minded to implement a proposal for two unitary councils that had been submitted by the district councils, and invited representations on that ‘minded to’ decision until 25 May 2018.⁷
- 10.10 A total of 3,044 representations were received, of which the majority, 2,861, came from members of the public. The representations show overwhelming support for change, with 87 per cent of all representations supporting unitarisation in principle.

⁶ <http://futurebucks.co.uk/wp-content/uploads/2018/04/2017-engagement-final-report.pdf>

⁷ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-03-12/HCWS535/>

However, views on the preferred option are more split, with 35 per cent of all representations supporting a single unitary council, and 47 per cent supportive of two unitaries. Of the 2,861 representations submitted by members of the public, 36 per cent supported a single unitary while 46 per cent supported the two unitary option.

- 10.11 The public sector service providers (Police and Crime Commissioner, South Central Ambulance Service, Buckinghamshire Healthcare NHS Trust and Buckinghamshire Clinical Commissioning Group) all support a single unitary and highlight that the majority of partner organisations operate on a countywide geography and so support a shared geography with the council to improve the overall provision of services in Buckinghamshire. A majority (69 per cent) of district councillors supported the districts' proposal for two unitaries whilst a majority of county councillors supported the single unitary option.
- 10.12 Of the 69 representations from town and parish councils and councillors, 14 per cent supported the one unitary proposal, whereas 71 per cent preferred the two unitary option. Town and parish councils and councillors were particularly concerned about their capacity to take on additional devolved activity in a single unitary arrangement.
- 10.13 The business community (22 representations excluding the two Local Enterprise Partnerships) was split in its support, though Bucks Business First, with a membership of 11,000 businesses, is strongly supportive of the single unitary. The two Local Enterprise Partnerships in the area were also split. Representations from 22, mainly small, voluntary sector organisations were received, with the majority supporting the two unitary option.
- 10.14 The Commissioner for Children's Services in Buckinghamshire⁸ indicated a preference for a single unitary as opposed to two unitary councils. He indicated that he considered that the present leadership capacity was exceptional and central to achieving the recovery. He was strongly opposed to "any LGR [local government reorganisation] proposal which would break-up (disaggregate) the existing children's services structures in Buckinghamshire."

11. Guidance

- 11.1 No guidance is necessary to accompany this instrument. The local authorities are considered to be best placed to deliver the new council and the Ministry of Housing, Communities and Local Government will work closely with those responsible for implementing 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 Buckinghamshire, with a reduction in the number of councils from five to one. In making their proposal, Buckinghamshire County Council estimated savings of £18.2 million per annum.⁹

⁸ The Children's Commissioner for Buckinghamshire was appointed by the Secretary of State for Education on 5 March 2018, following a report by Ofsted on 29 January 2018 that judged the overall effectiveness of Buckinghamshire's children's social care services as inadequate. In June 2018 the Children's Commissioner for Buckinghamshire completed his report: <https://www.gov.uk/government/publications/buckinghamshire-county-council-report-on-childrens-social-care>

⁹ https://www.buckscc.gov.uk/media/1315/j2844-options-appraisal_final_lowres-1.pdf

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 that the new council will be democratically accountable for its performance to the local electorate, and subject to the audit and accountability regimes applicable to the generality of local government.

14.2 The Order does not include a statutory review clause. Officials are working with the Buckinghamshire councils on taking forward implementation in line with the provisions in this Order.

15. Contact

15.1 Kathy Bee at the Ministry of Housing, Communities and Local Government 030 3444 4579 or email Kathy.Bee@communities.gov.uk can be contacted with any queries regarding this instrument.

15.2 Paul Rowsell, Deputy Director and 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 Rishi Sunak MP, Minister of Local Government at the Ministry of Housing, Communities and Local Government, can confirm that this Explanatory Memorandum meets the required standard.