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Report

Report subject: Update on formation of a new city council for Salisbury

Report to: City Area [Community] Committee

Date: 13 November 2007

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Cabinet Member for Planning and Economic Development Councillor P M Clegg

1. Summary

To update Members on progress on the creation of a new city council for Salisbury

2. Background

On 02.10.2007 this Committee agreed to the project initiation arrangements for the carrying out of a review of Salisbury with a view to the creation of a new city council for Salisbury in the event that a new unitary authority is created for Wiltshire. It also agreed to the initial consultation arrangements to establish the level of support for the creation of a new city council.

3. Current position

3.1. Legal arrangements.

- 3.1.1. The Department for Communities and Local Government ["DCLG"] has prepared a first draft of the Implementation Order ["the draft order"] that would be made for Wiltshire if Wiltshire County Council's ["WCC"] bid for unitary status is implemented. A copy of the draft is attached as Appendix 1.
- 3.1.2. Part 6 of the draft order states that a new parish shall be constituted for Salisbury on 01.04.2009. Officers take the view that this provision is of doubtful legal effect. The procedures for the creation of parish councils are set out in the Local Government & Rating Act 1997 and the Local Government and Public Involvement in Health Act 2007 ["the Acts"]. It is a fundamental constitutional principle that secondary legislation [the draft order if it is made in its present terms] cannot override primary legislation [the Acts]. Officers concerns have been raised with DCLG but the position has not yet been clarified.
- 3.1.3. Should the draft order be made in its present terms and be of legal effect then there would be no need for an initial consultation exercise to establish whether there is support for the creation of a city council for Salisbury.
- 3.1.4. Should the draft order not make provision for the creation of a new parish or it does and the provision is of no legal effect an initial consultation exercise would still be necessary.
- 3.1.5. Apparently a revised version of the draft order is due to be issued at the end of next week.



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3.1.6. When the Steering Group considered this issue the view was that it would be confusing to carry out the initial consultation exercise on the basis that the consultation would only be taken into account if the law did not create a new parish. It was agreed to defer taking any decision on carrying out an initial consultation exercise until the Steering Group next meets on 23rd November in anticipation that the position would be clarified by DCLG by then. The Steering Group agreed to report back to this Committee.

3.1.7. The current timetable for the review if it is to be carried out provides for the initial consultation exercise to be carried out this month and reported to this Committee in December.

3.2. Electoral arrangements.

3.2.1. Officers have attended a meeting with representatives from the Boundary Committee for England ["BC"]. Apparently DCLG is still undecided whether elections for Wiltshire should take place in 2008 or 2009 if WCC's bid for unitary status is implemented. It appears that BC's view is that an electoral review should take place before any elections and that elections should not take place until 2009.

3.2.2. It seems that BC's view is that any electoral review for Salisbury should take place in tandem with any wider electoral review for Wiltshire.

3.3. Visioning exercise

3.3.1. The Steering Group has agreed that however a new city council for Salisbury might be created it will be necessary to try achieve consensus on what a new city council might look like. Any agreed vision would be put to residents as part of any second consultation exercise.

3.3.2. Arrangements are being made for a facilitated session to take place involving the Members of this Committee at a special informal meeting on 11th December.

4. Recommendations

To note this report

5. Background papers

None

6. Implications:

- Financial: none
- Legal: contained in the report
- Human rights: none
- Personnel: none
- ICT: none
- Community safety: none
- Environmental: none
- Council's core values: communicate
- Wards affected: Salisbury city wards

Item 6

Draft of 23 October 2007

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

DRAFT STATUTORY INSTRUMENTS

200[7][8] No.

LOCAL GOVERNMENT, ENGLAND

The Wiltshire (Structural Change) Order 200[7][8]

Made - - - - ****200[7][8]*

Coming into force in accordance with article 1(2)

This Order gives effect to 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(a), that there should be a single tier of local government for the county of Wiltshire;

That proposal was made by Wiltshire County Council;

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][10], 11, [12,] and 13 [*other?*] of the Local Government and Public Involvement in Health Act 2007:

PART 1

GENERAL

Citation and commencement

- 1.—(1) This Order may be cited as the Wiltshire (Structural Change) Order 200[7][8].
- (2) [This article, article 2 and articles [*include transitional for precepting re new parish*] shall come into force on [xxxxxxxxxxxxxxxx].
- (3) [The remaining articles shall come into force on [xxxxxxxxxxxxxxxx].

(a) 2007 c.xx. See section [21(3)] as to proposals made in response to pre-commencement invitations, and section 23(3).

Interpretation

2. In this Order—

“the 1972 Act” means the Local Government Act 1972(a);

“the 2004 Order” means the County of Wiltshire (Electoral Changes) Order 2004(b);

“article 8(1) functions” means those functions of the county council which, in accordance with article 8(1), are to be discharged by the Implementation Executive;

“local government services”, in relation to the county, means the services that are required or authorised by or under any enactment relating to local government to be provided in the county by—

(a) a principal authority(c); or

(b) an authority that is a principal council for the purposes of the 1972 Act(d);

“the [XXXX] election” means the election required by article 14(1) to be held in [XXXX];

“the [XXXX] election day” means the ordinary day of election of councillors(e) in [XXXX];

“the county” means the county of Wiltshire;

“the county council” means Wiltshire County Council;

“the district councils” means the councils specified in article 4(b);

“the Implementation Executive” means the body established (whether before or after the coming into force of this Order) for the purposes of articles 7(2) and 8(1);

“the main transitional function” has the meaning given by article 7(1); and

“the proper officer”, in relation to any purpose and the county council or any of the district councils, means the officer appointed for that purpose by that council.

PART 2

ESTABLISHMENT OF SINGLE TIER LOCAL GOVERNMENT IN WILTSHIRE

Single tier local government in Wiltshire

3.—(1) On and after 1st April 2009 the county council shall be the sole principal council for the county.

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

Abolition of districts and winding up and dissolution of district councils

4. On 1st April 2009—

(a) the following local government areas are abolished—

(i) the district of Kennet,

(ii) the district of North Wiltshire,

(iii) the district of Salisbury, and

(iv) the district of West Wiltshire.

(a) 1972 c.70.

(b) S.I. 2004/2821.

(c) See sections 1 and [23(1)] of the Local Government and Public Involvement in Health Act 2007.

(d) See the definition of “principal council” in section 270(1).

(e) See section 37 of the Representation of the People Act 1983 (c.2).

- (b) the following councils shall be wound up and dissolved—
 - (i) Kennet District Council,
 - (ii) North Wiltshire City Council,
 - (iii) Salisbury District Council, and
 - (iv) West Wiltshire District Council

Cessation of term of office of district councillors

5. Every person who holds office as a councillor of one of the district councils immediately before 1st April 2009 shall cease to hold office on that date.

Transfer of functions, property, rights and liabilities to county council

6. All functions of, and property, rights and liabilities held, acquired, accrued or incurred by, the district councils shall, to the extent that they are not discharged, disposed of, relinquished or met before 1st April 2009, transfer to the county council on that date.

PART 3

TRANSITIONAL FUNCTIONS AND THEIR DISCHARGE

Main transitional function and Implementation Executive

7.—(1) On the coming into force of this Order there shall be added to the functions of the county council the function of preparing for and facilitating the economic, effective, efficient and timely transfer to itself of the district councils’ functions, property, rights and liabilities (“the main transitional function”).

(2) The county council shall arrange for the main transitional function to be discharged by a body to be known as the Implementation Executive.

(3) The Implementation Executive shall consist of—

- (a) [xx];
- (b) xx; and
- (c) xx].

(4) The leader of the Implementation Executive shall be [xxxxxxxxxxxxxx].

(5) It shall be the duty of the county council and [each of] the district councils to co-operate in the establishment of the Implementation Executive.

(6) The Implementation Executive shall be dissolved on the fourth day after the [XXXX] election day.

Other functions of the Implementation Executive

8.—(1) During the transitional period, any function of the county council or of any of the district councils, other than the main transitional function and the functions specified in paragraph (2), which—

- (a) relates to times on or after 1st April 2009, and
- (b) but for this paragraph, would have been discharged by the county council or, as the case may be, by one of the district councils, after receipt of advice from its executive,

shall be discharged by the Implementation Executive (“the article 8(1) functions”).

(2) The functions specified in this paragraph are—

[

].

(3) During the transitional period the article 8(1) functions shall not be discharged by the county council or any of the district councils.

(4) In this article “the transitional period” means the period beginning on the coming into force of this Order and ending on [XXXX].

Further provisions for discharge of main transitional and article 9(1) functions

9.—(1) In discharging the main transitional and article 8(1) functions the Implementation Executive shall—

- (a) prepare such budgets and plans as it considers necessary or desirable to facilitate the economic, effective, efficient and timely discharge of the county council’s functions on or after 1st April 2009;
- (b) have regard to [the information supplied by the county council to the Secretary of State in support of its proposal for single tier local government in the county [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(a)]];]
- (c) prepare such plans and timetables as are in its opinion necessary to secure the effective, efficient and timely discharge of the transitional function; and
- (d) use its best endeavours to meet such timetables relating to the matters specified in subparagraphs [(a) and (c)] as are notified to it from time to time by the county council.

(2) Where, in relation to a matter arising or effective on or after 1st April 2009, any action in the discharge of the transitional function is required by or under any enactment—

- (a) to be taken before 1 April 2009
- (b) by the full county council,

the Implementation Executive must, by written notice to the proper officer of the county council, require the council to take that action; and the council shall, in taking that action, have regard to any guidance provided by the Executive.

(3) [The Implementation Executive may, by written notice to the proper officer of the county council or any district council, require that council to take such action as may be specified in the notice.]

(4) The county council shall, within [48 hours] of the receipt from the Secretary of State of any guidance or timetable that relates to, or is connected with, the main transitional function or the article 8(1) functions, provide the Implementation Executive with a copy of that guidance or timetable.

Implementation Team

10.—(1) Not later than 21 days after the coming into force of this Order the Implementation Executive shall form a team of officers for the purpose of assisting the Executive in the discharge of the main transitional and article 8(1) functions (“the Implementation Team”).

(2) The members of the Implementation Team shall include officers from both the county council and [each of?] the district councils.

(3) The leader of the Implementation Team shall be such member of that Team as the Implementation Executive shall appoint.

(a) 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)

(4) It shall be the duty of the county council and [each of] the district councils to co-operate in the formation of the Implementation Team [and to release the officers concerned from their normal duties at such times or for such periods as the Implementation Executive may reasonably require].

PART 4

DUTIES OF COUNTY AND DISTRICT COUNCILS RELEVANT TO TRANSITION

General transitional duties of county and district councils

11.—(1) It shall be the duty of the county council and the district councils—

- (a) to take, whether alone or in any combination, such steps as may be necessary to ensure that functions, property, rights and liabilities transfer in accordance with article 6;
- (b) to consult and co-operate with each other and the Implementation Executive in order to secure the economic, effective, efficient and timely transfer of those functions, property, rights and liabilities; and
- (c) generally, to exercise their functions so as to further the purposes of this Order.

(2) Without prejudice to the generality of paragraph (1), the county council and each of the district councils shall provide such information relating to its functions as another council or the Implementation Executive may reasonably request for the purpose of implementing this Order.

(3) Any person authorised in that behalf by the body making the request shall be entitled, at all reasonable times, on producing evidence of his authority (if so required by the council from which the information is sought)—

- (a) to inspect any record belonging to or under the control of the council providing the information and relating to that council or its functions; and
- (b) to take, or be supplied with, a copy of any such record or part of it.

(4) The rights conferred by paragraph (3) include the right to require any record which is not in legible form to be made available in legible form for the purposes of his inspection or copying or being supplied with copies.

[Modification of Local Government Finance Act 1992

12. Chapter 3 of Part 1 of the Local Government Finance Act 1992(a) (setting of council tax) shall have effect in relation to the district councils and the financial year beginning on [1st April XXXX] as if sections [] were omitted [*or whatever modification is required*].

PART 5

ELECTORAL MATTERS

County Council election in [XXXX]

13.—(1) A whole council election of councillors of the county council shall be held on the ordinary day of election of councillors(b) in [XXXX].

(2) On and after the fourth day after the [XXXX] election day the county council shall consist of 98 councillors(a).

(a) 1992 c.14.

(b) See section 37 of the Representation of the People Act 1983 (c.2).

(3) The proper officer of the county council shall take such steps as are necessary or appropriate to prepare for the [XXXX] election, including the making of all necessary alterations in the electoral register.

(4) For the purposes of the [XXXX] election, each electoral division other than Salisbury East and Salisbury South shall return two councillors, and the divisions of Salisbury East and Salisbury South shall each return four councillors.

and amend the 2004 Order?

(5) The councillors elected at the [XXXX] election shall come into office on the fourth day after the [XXXX] election day.

(6) In this article “electoral division” means an electoral division of the county as established by article 3 of the 2004 Order.

Cancellation of parish council elections in [XXXX], etc

14. Notwithstanding section 16(3) of the 1972 Act (election of parish councillors)—

- (a) elections shall not be held in [xxxxxxxxxxxxxxxx] for the return of councillors to the council of any parish within the county; and
- (b) the term of office of those parish councillors elected in [xxxxxxxxxxxxxxxx] shall end on the fourth day after the ordinary day of election of councillors in [XXXX](b).

(2) Elections of parish councillors for those parishes in which, but for paragraph (1), elections would have been held in [xxxxxxxxxxxxxxxx] shall be held on the ordinary day of election of councillors in [XXXX].

PART 6

CREATION OF NEW PARISH

New parish of Salisbury City

15. On 1st April 2009 a new parish shall be constituted comprising the unparished area of the district of Salisbury, bounded by the parishes of Britford, Laverstock, Netherhampton and Quidhampton.

Usual new parish provisions to follow. Also, ensure comparable provision to reg 18 of the Charter Trustees Regulations 1996 for transfer of property, rights and liabilities from Charter Trustees to new parish council and dissolution of Charter Trustees. Include transitional provisions for precept, etc.)

[PART 4

AMENDMENTS AND REVOCATIONS

Revocations

16. The following provisions are revoked—

[Some parish orders may need to be revoked]

(a) Section 6(2)(a) of the Local Government Act 1972, which would otherwise have limited the number of councillors to one for each electoral division, is amended by paragraph [1] of [Part 2] of the Local Government and Public Involvement in Health Act 2007.

(b) Under section 16(3) of the Local Government Act 1972, the term of office of parish councillors is four years.

Amendments

17. The Orders specified in column (1) of the Schedule to this Order shall be amended as mentioned in column (2).]

[Some parish orders may need to be amended]

Signed by authority of the Secretary of State for Communities and Local Government

Date _____
Department for Communities and Local Government
Name
Minister of State

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the establishment, on 1st April 2009, of a single tier of local government in the county of Wiltshire (article 3). The area of the county remains unchanged. A new district is created, with the same area as the county.

The county will be administered by Wiltshire County Council.

Article 4 of the Order provides for the winding up and dissolution on 1st April 2009 of the district councils in the county:

Kennet District Council
North Wiltshire District Council
Salisbury District Council and
West Wiltshire District Council.

Those councils are referred to in this Note and the Order as “the district councils”.

The districts administered by the district councils are also abolished.

The term of office of all district councillors expires on 1st April 2009 (article 5).

Article 6 of the Order provides for the functions, property, rights and liabilities of the district councils to transfer to the County Council on 1st April 2009.

In Part 3 of the Order, article 7(1) confers on the County Council the function of preparing for the transfer to itself on 1st April 2009 of the district councils’ functions, property, rights and liabilities and ensuring continuity in the provision of local government services in the county (its “main transitional function”). Article 7(2) requires the County Council to arrange for the discharge of its main transitional function by an Implementation Executive. The membership of that Executive is to be drawn from both the County Council and the district councils. Article 8 provides for the Implementation Executive to discharge, instead of the County Council, certain functions of that Council relating to times on and after 1st April 2009 (“article 8(1) functions”). Article 9 requires the Implementation Executive to prepare budgets, plans and timetables relevant to the process of transition and, in discharging the main transitional function and the article 8(1) functions, to have regard to the County Council’s response to the Secretary of State in support of its proposal for single tier local government in the county. Article 10 provides for the establishment of a team of County Council and district council officers to assist the Implementation Executive.

Part 4 of the Order relates to the functions of the County Council and the district councils in the period before [1st April XXXX]. Article 11 requires the County Council and the district councils to prepare for the transition to single tier local government, to consult and co-operate, to disclose relevant information and, generally, to further the purposes of the Order. [Article 12 modifies the Local Government Finance Act 1992 so as to prohibit the districts councils from [budget-setting, etc] in relation to the financial year beginning on 1st April 2009.]

In Part 5 of the Order, article 13 requires the holding of a whole council election to the County Council in [XXXX]. The number of councillors is increased from 49 to 98. The election will be conducted on the basis of the 46 electoral divisions established by article 3 of the County of Wiltshire (Electoral Changes) Order 2004 (S.I. 2004/2821), but the number of councillors to be elected for Trowbridge East remains at 2, the number for Salisbury East and Salisbury South increases from 2 to 4 and for all other divisions the number increases from 1 to 2.

Article 14 cancels the parish council elections that would otherwise have taken place in [XXXX].

In Part 6, article 15 provides for the creation of a new parish, Salisbury City, comprising the unparished area of the district of Salisbury. [By virtue of regulation 18 of the Charter Trustees Regulations 1996, the property, rights and liabilities of the area's current Charter Trustees will transfer to a newly-elected parish council and the Charter Trustees (a corporate body) will be dissolved.]

[Part 7 deals with the amendment of the Orders specified in the Schedule to this Order and contains revocations.]

A full impact assessment has been produced for this [Order][and other orders that provide for a change to single tier local government for a county?] A copy of the assessment has been deposited in the Library of both Houses of Parliament and may be accessed at www.communities.gov.uk