



## ***Local Government Bill [HL]***

**[Bill No 75 of 2010-11]**

**RESEARCH PAPER 10/63** 14 October 2010

The *Local Government Bill [HL]* gives effect to the Coalition Government's commitment to stop the restructuring of councils in Norfolk, Suffolk and Devon. Specifically the Bill would prevent implementation of any of the existing proposals for a single-tier local government structure made under the *Local Government and Public Involvement in Health Act 2007*.

The Bill has completed its passage through the House of Lords and was introduced into the House of Commons on 11 October. This briefing has been prepared to inform the second reading debate on the Bill which is due to take place on 21 October.

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## Research Paper 10/63

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## Summary

Much of English local government retains a two-tier structure where county councils and district councils are each responsible for a range of local government functions. However, in the years since 1974, an increasing number of single-tier (or “unitary”) local authorities have been established which carry out all local government functions within their areas.

The Labour Government took the view that the two-tier structure was confusing to the public and tended to be less efficient and effective than single-tier government. It introduced new procedures whereby local authorities were invited to make proposals for unitary status. Ministers then assessed these against the five published criteria and made decisions on implementation. The system was given a statutory basis through the *Local Government and Public Involvement in Health Act 2007*. In this way, county unitary authorities were established in Cornwall, Durham, Northumberland, Shropshire and Wiltshire and restructuring also took place in Bedfordshire and Cheshire.

Proposals for unitary status from three cities – Exeter, Ipswich and Norwich – were adjudged to have met some but not all of the Government’s criteria. The Boundary Committee for England (BCE) was therefore asked to advise on whether there might be alternative unitary solutions in Devon, Suffolk and Norfolk. Following a number of legal challenges the BCE recommended, in December 2009, single county unitaries for all three areas. After a period of consultation, ministers rejected this advice and announced their decision to implement the original proposals from Exeter and Norwich. No decision was made on Ipswich/ Suffolk where stakeholders were invited to try to reach a consensus.

Draft structural change orders were laid in respect of Exeter and Norwich in February 2010. Despite opposition from Conservatives and Liberal Democrats, the orders were approved although the Lords appended a “statement of regret” deprecating the way in which the decision had been taken. The Conservative Party had pledged to reverse the changes if it was elected to Government. The Party believed that restructuring was expensive and disruptive and that joint working between councils in two-tier areas was more effective.

The Conservative-Liberal Democrat Coalition Government introduced the present Bill in the House of Lords following the Queen’s Speech in May 2010. The Bill, as originally drafted, sought to:

- revoke the orders relating to Exeter and Norwich; and
- prevent any further orders being made which would implement existing restructuring proposals (i.e. those relating to Suffolk).

However, in June, the orders were quashed by the High Court following a successful judicial review application by Devon and Norfolk County Councils. Government amendments at Lords committee stage removed those parts of the Bill which were no longer required as a result of the court judgement. The amended Bill would prevent implementation of any of the existing proposals for unitary status made under the 2007 Act. In practice, these all relate to Norfolk, Devon or Suffolk.

The Bill completed its Lords stages on 5 October without further amendment. It is due to be considered by the Commons at second reading on 21 October 2010.

## 1 Introduction

The *Local Government Bill [HL]* was introduced into the House of Lords on 26 May 2010 and received its second reading on 30 June. It sought to revoke the Labour Government's orders providing for the creation of unitary councils for Exeter and Norwich, and to prevent implementation of any other existing proposals for restructuring made under the *Local Government and Public Involvement in Health Act 2007*.

In the event, the orders were quashed by the High Court and the Bill was trimmed at committee stage (14 July) so that it simply sought to prevent implementation of any restructuring proposals made before its commencement (the existing proposals relate to Devon, Norfolk and Suffolk). The measure was not amended during subsequent Lords stages - report stage on 28 July and third reading on 5 October.

The Bill received its first reading in the Commons on 11 October and is scheduled to have its second reading on 21 October. The text of the Bill together with its explanatory notes can be found on the UK Parliament website.<sup>1</sup> An impact assessment was published in June 2010.<sup>2</sup> In terms of territorial extent, the Bill extends to England and Wales but applies only in relation to England.

## 2 Background: Labour's restructuring exercise

The Labour Government's local government white paper of October 2006, *Strong and prosperous communities*, set out its belief that strong local leadership and clear accountability are harder to achieve where local government has a two-tier structure.<sup>3</sup> Consequently, councils in England were to be invited to apply for unitary status, or to act as 'pathfinders' pioneering new ways of two-tier working. A separate paper, *Invitations to councils in England*, was published alongside the white paper and gave further information on the process including the criteria against which restructuring proposals would be judged.<sup>4</sup> Any change to unitary structures must be:

- affordable (i.e. represent value for money and be met from councils' existing resources);
- command a broad cross-section of support from partners and stakeholders.

Future unitary structures must:

- provide strong, effective and accountable leadership;
- deliver genuine opportunities for neighbourhood flexibility and empowerment;
- deliver value for money and equity on public services.

The *Local Government and Public Involvement in Health Act 2007* introduced revised procedures for structural and boundary change among its many provisions. In parallel with the Bill's passage through Parliament, the Government carried out a programme of assessment of the unitary bids received from councils. In all, 26 bids for unitary status were received by the deadline of 25 January 2007. These proposals were assessed against the

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<sup>1</sup> Link via this page - <http://services.parliament.uk/bills/2010-11/localgovernmenthl.html>

<sup>2</sup> DCLG, *The Local Government Bill: Impact Assessment*, June 2010

<sup>3</sup> Department for Communities and Local Government, *Strong and Prosperous Communities*, Cm 6939, October 2006

<sup>4</sup> DCLG, *Invitations to councils in England (1) to make proposals for unitary structures (2) to pioneer, as pathfinders, new two-tier models*, October 2006

five criteria and a shortlist of 16 was drawn up. The 16 proposals then went ahead to the next phase which was stakeholder consultation conducted over a period of 12 weeks.

On 25 July 2007, the then Local Government Minister, John Healey, announced that the Secretary of State was minded to implement nine of the proposals for unitary status.<sup>5</sup> Five of the nine were county council proposals for county unitaries covering **Cornwall, Durham, Northumberland, Shropshire** and **Wiltshire**. All five were subsequently implemented and became unitary authorities on 1 April 2009. Of the remaining four, the bids from **Bedford** and **Chester** councils were ultimately successful and led to restructuring in Bedfordshire and Cheshire respectively which took effect on 1 April 2009.

The final two proposals earmarked for implementation were from **Exeter City Council** and **Ipswich Borough Council** but both were said to carry risks of not achieving the outcomes specified by the affordability criteria. Both councils were therefore asked to submit additional information on the financial viability of their proposals. In addition to the nine shortlisted bids, **Norwich City Council** was adjudged to have a potentially strong case for a unitary authority but not while it remained within its present boundaries. In the present circumstances it was thought unlikely to achieve the outcomes specified by the affordability and the value for money criteria.<sup>6</sup>

In a written ministerial statement delivered on 5 December 2007, John Healey confirmed that the Secretary of State had decided to request advice from the Boundary Committee for England (BCE) on **Norwich City Council's** proposal. As to **Exeter** and **Ipswich**, having regard to the additional material received from their respective councils since July, the Government had concluded that these proposals were unlikely to meet the affordability criterion. However, the Minister said that, given the strengths of the proposals in other respects, there could be alternative unitary proposals covering the whole or part of their wider county area which would achieve the desired outcomes. The Secretary of State had therefore decided to request the advice of the BCE.

The following table outlines the main developments in the restructuring process from 2008 until the general election in 2010:

<b>Chronology of restructuring in Devon, Norfolk and Suffolk</b>	
6 February 2008	John Healey announces that the Boundary Committee for England (BCE) has been formally requested to advise on the Exeter, Norwich and Ipswich proposals by 31 December 2008. Government guidance issued.
7 July 2008	BCE publishes draft alternative proposals for Norfolk, Suffolk and Devon. For Devon this is single tier government for entire existing two-tier area. In Norfolk it is single tier government for entire existing county but including Lowestoft. For Suffolk, it is an Ipswich & Felixstowe unitary authority and a unitary authority comprising the rest of the county but excluding Lowestoft. In all 3 cases, certain other patterns of unitary government are also said to "have merit". Affordability not assessed although, subsequently, financial information published on BCE's website.
December 2008	Government extends deadline for receipt of BCE recommendations to 13 February 2009 in light of judicial review proceedings by, first,

<sup>5</sup> [HC Deb 25 July 2007 cc68-71WS](#)

<sup>6</sup> See DCLG, *Decision letter: Norwich City Council*, 25 July 2007,

	Breckland and other Norfolk district councils, then East Devon DC. Additional government guidance issued.
25 March 2009	Court of Appeal judgement published following appeals by Devon and Norfolk district councils. This holds that there has been inadequate consultation on affordability and that the BCE had erred in concluding that it could recommend only one alternative draft proposal. However judges do not consider that consultation process has been “broken beyond repair” so not quashed. Deadline already extended to 15 July 2009.
March 2009	BCE publishes further draft proposals in respect of Norfolk, Suffolk and Devon. Subsequently, three Suffolk district councils seek judicial review of Committee’s decision not to consider their own restructuring proposal.
July 2009	High Court ruling that further draft proposals for Suffolk be quashed. BCE begins appeal proceedings in order to seek clarification concerning the restructuring process in all 3 counties.
2 December 2009	Court of Appeal overturns High Court decision, judges holding that BCE procedures <i>had</i> been lawful and consistent with guidance from Secretary of State.
7 December 2009	BCE advises that there could indeed be alternative proposals for single tier government in all 3 counties which would deliver the outcomes specified by the five criteria. For Devon it is a single unitary council for the whole of the existing two-tier area. In Norfolk it is a unitary council for the whole county. In Suffolk, a single county unitary is the preferred option although an alternative two-unitary pattern comprising an Ipswich & Felixstowe unitary and a rural Suffolk unitary is also put forward. Committee recommends that the original proposals of unitary status for Norwich, Ipswich and Exeter should <u>not</u> be implemented.
8 December 2009	Rosie Winterton, Local Government Minister, states that representations on the BCE’s recommendations to the Secretary of State may be made during the next six weeks.
10 February 2010	Ms Winterton announces that ministers have concluded that BCE recommendations for Devon and Norfolk do not meet all the criteria and will not be implemented. Further, that ministers have reassessed the original proposals for Exeter and Norwich and decided that these <i>should</i> be implemented. No decision taken on Suffolk where a constitutional convention should seek to reach consensus.
22 February 2010	Judicial review proceedings are issued by Devon and Norfolk County Councils challenging the Government’s decisions in respect of Exeter and Norwich.
22 March 2010	Draft structural change orders are debated in both Houses. Lords motions to approve also contains statement of regret. Having secured parliamentary approval, orders are made on 24 March and come into effect the following day.

### 3 The Labour Government's decisions

As noted in the chronology above, the then Local Government Minister, Rosie Winterton, set out the Government's decision on the restructuring proposals for Norfolk, Suffolk and Devon in a written ministerial statement issued on 10 February 2010.<sup>7</sup> As regards the Boundary Committee's proposals the Minister said the following:

Our assessment is that contrary to the Boundary Committee's views the alternative proposals for unitary county councils in Devon and Norfolk do not meet all the criteria. Our judgment is that there is not a reasonable likelihood, if these proposals were implemented, of their delivering the outcomes specified by the broad cross-section of support criterion. I also judged that if a unitary council for Devon were implemented there is also not a reasonable likelihood of it delivering the outcomes specified by the neighbourhood engagement criterion. Accordingly, we have decided to take no action on these proposals.<sup>8</sup>

The Minister referred to a previous written statement made by the then Minister for Local Government, John Healey, on 5 December 2007.<sup>9</sup> This stated that the then Secretary of State judged that the unitary proposals for Exeter and Norwich would be unlikely to deliver the outcomes required by the affordability criterion, nor in the case of Norwich the outcomes specified by the value for money services criterion. However, it was believed that the unitary proposals for Exeter and Norwich would meet the other criteria.

Ms Winterton went on to explain the Government had reassessed its view on proposals for Exeter and Norwich as expressed in the 2007 written statement. Ministers now believed that there were "compelling reasons" to depart from the presumption that unitary proposals which do not meet all five criteria should not to be implemented. She set out the reasoning as follows:

First, the Government's priorities today are, above all, for jobs and economic growth. Local government has an essential role to play in delivering these economic priorities, and this role is of a significance that could not be contemplated in 2006 when the criteria were developed. We believe, as has been made clear to us by the representations we have received, that a unitary Exeter and a unitary Norwich would each be a far more potent force for delivering positive economic outcomes both for the city and more widely than the status quo two-tier local government.

Secondly, with today's approach to developing public service delivery, as envisaged by our Command Paper - *Putting the Frontline First* - announced by my right hon. Friend the Chief Secretary to the Treasury on 7 December 2009, *Official Report*, column 1WS, including the Total Place approach<sup>10</sup>, a unitary Exeter and a unitary Norwich could open the way for improvements to the quality of public services. Through innovative shared services and partnership arrangements the public services for the cities will be able to be tailored to the needs of the urban area while still being able to achieve the economies of scale that are possible under the countywide delivery of such services as adult social care and children's services.<sup>11</sup>

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<sup>7</sup> [HC Deb 10 February 2010 cc49-51WS](#)

<sup>8</sup> *Ibid*, c50WS

<sup>9</sup> [HC Deb 5 December 2007 c66WS](#)

<sup>10</sup> The Total Place initiative was announced in the 2009 Budget. It took a "whole area" approach to public spending, investigating how effective collaboration between organisations in a given area can deliver better services at reduced cost. 13 pilot areas across England chose specific themes for in-depth analysis. Further information can be found in a Library standard note: *Total Place* (SN/PC/5643).

<sup>11</sup> [HC Deb 10 February 2010 c50WS](#)



She continued:

Accordingly, the Secretary of State in the case of Norwich, and I in the case of Exeter, have decided, subject to Parliamentary approval, to implement a unitary council for each of these cities from 1 April 2011. In accordance with the 2007 Act we are thus laying before Parliament today drafts of orders, which if approved by Parliament, we will make to give effect to our decisions to create a unitary Exeter and a unitary Norwich.<sup>12</sup>

In regard to the Suffolk proposals the Minister said:

From the representations we have received it is clear that there is wide agreement across the county that there should be a unitary solution in some form. However, it is equally clear that neither of the unitary proposals which we consider meet the criteria is supported by all the principal councils in the county. Accordingly, we have concluded not now to take a statutory decision on the Suffolk proposals before us, and to invite all the Suffolk councils, with their Members of Parliament, consulting other stakeholders and through a county constitutional convention, to reach a consensus on a unitary solution for that area.<sup>13</sup>

### 3.1 Structural change orders

The *Draft Exeter and Devon (Structural Changes) Order 2010* and the *Draft Norwich and Norfolk (Structural Changes) Order 2010* were laid before Parliament on 10 February 2010. Their provisions included:

- The creation of new counties of Exeter and Norwich with areas co-terminous with the district (city) areas;
- The establishment of implementation executives whose main function is to prepare for transition to single tier arrangements. These are committees of each city council with membership drawn from both city and county councils.
- Provision for whole council elections to the city councils in 2011 and the cancellation of district council elections that would have been held in 2010. The explanatory memorandum explained that it would have been "...very wasteful of public resources to hold in 2010 elections to a district council for a number of members for a term of only a year. Instead, the draft orders make provision extending the term of office of those city councillors whose term of office would have expired in 2010 to 2011".<sup>14</sup>

### 3.2 Letter from Permanent Secretary of DCLG

Peter Housden, Permanent Secretary and Accounting Officer for DCLG, wrote to John Denham on 8 February seeking a written instruction to implement the decisions if ministers decided to proceed in the way that was currently proposed. The letter, and reply from John Denham, are reproduced in an appendix to the twelfth report (session 2009-10) of the Lords Merits of Statutory Instruments Committee.<sup>15</sup>

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<sup>12</sup> *Ibid*, c50-51WS. The Minister explained that, owing to family connections with the Devon area and to avoid any perception of bias, the Secretary of State had remitted decisions on unitary proposals for Devon to her.

<sup>13</sup> *Ibid*, c51WS

<sup>14</sup> [Explanatory memorandum to the Exeter and Devon \(Structural Changes\) Order 2010 and the Norwich and Norfolk \(Structural Changes\) Order 2010](#)

<sup>15</sup> House of Lords Merits of Statutory Instruments Committee, [Draft Exeter and Devon \(Structural Changes\) Order 2010/ Draft Norwich and Norfolk \(Structural Changes\) Order 2010](#), 4 March 2010, HL 70 2009-10, Appendix 1

Mr Housden wrote, firstly, of his concern about value for money:

Your currently proposed approach is estimated over the period to 2014/15 to involve net costs of £400k, made up of transitional costs of £39.8m and gross savings of £39.4m; annual on-going savings thereafter are estimated at £6.6m. I recognise that if your proposed approach of a unitary Norwich and Exeter achieves the economic gains you envisage, there may be off-setting benefits to the public purse from increased jobs of extra local and national tax revenues and reduced benefit payments. The evidence for such gains is mixed and representations that you have received provide no evidence to quantify such benefits. I also recognise your proposed approach may open the way for improved public services through the Total Place approach, but this will be dependent on the collaboration of all the councils concerned and as yet there is no clear evidence of the costs and benefits that may arise.

He contrasted this with the decision not to implement the Boundary Committee's recommendation of a unitary Suffolk even though the Secretary of State agreed that it met the criteria including cost savings. He then turned to the question of feasibility:

Moreover, any departure from the criteria when taking your statutory decisions also raises feasibility, as well as value for money, concerns. Whilst there is no statutory basis for the criteria, there is a legitimate expectation that they will be the basis of your decisions. Your proposed approach of implementing a unitary Exeter and Norwich, and not implementing a unitary council for Suffolk would be a departure from the criteria, and whilst I recognise you could adduce your reasons for this as public policy grounds for not meeting the legitimate expectation, my clear legal advice is that the risk of decisions for a unitary Exeter and Norwich, and indeed for not taking action on Suffolk, being successfully challenged in judicial review proceedings is very high.

The Secretary of State commented in his reply:

I am concerned that your letter implies that the public interest lies with adopting the cheapest option across all three counties. Rather, as we have been advised, we have carefully assessed each proposal against the five criteria. We have given careful consideration to the circumstances in which there are compelling reasons to depart from the presumption that proposals that meet the criteria are implemented, and those that do not are not implemented...[We] have taken the decisions which we are clear are in the best interest of the people of those areas, and for which there is a genuine local appetite in those areas.

We have given due weight to the capacity of new local authorities to promote economic growth and jobs, deliver effective public services and to implement our decisions with local support. We also believe that it is right to take into account the potential for more efficient ways of working across local authority and public service boundaries reflecting the 'Total Place' approach endorsed in the recent *Smarter Government* Command Paper.

### 3.3 Judicial review application

On 15 February 2010 Devon County Council announced that it was seeking a judicial review of the Government's decision to implement a unitary authority for Exeter.<sup>16</sup> On 16 February 2010 Norfolk County Council announced that it was also seeking a judicial review of the Government's decision to implement a unitary authority for Norfolk, and that this would be a

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<sup>16</sup> Devon County Council, [Devon launches judicial review of Government's unitary decision](#), press release, 15 February 2010

joint legal action with Devon CC.<sup>17</sup> A hearing for the request for permission and, if granted, the application itself, was set for 28 and 29 April.

A DCLG memorandum to the Joint Committee on Statutory Instruments gave the following grounds for challenge:

- i that the Secretary of State failed to comply with his statutory duty to consult in relation to the proposals being implemented;
- ii that the Secretary of State failed to give effect to the Claimants' legitimate expectation that he would follow a particular approach when reaching decisions;
- iii that the decisions of the Secretary of State are irrational;
- iv that the Secretary of State appears, absent any reasonable explanation, to have predetermined the matter;
- v that the Secretary of State failed to give adequate reasons for his decisions;
- vi that the Secretary of State acted in a manner that was procedurally unfair; and
- vii that the Secretary of State acted in a manner contrary to the ministerial code.<sup>18</sup>

The Joint Committee on Statutory Instruments (JCSI) examined the potential consequences of the judicial review in its report on the draft orders.<sup>19</sup> Referring to the "clear legal advice" received by the Department's Accounting Officer that there was a high risk of successful legal challenge, the report concluded:

1.7 It is for the court, not this committee, to decide whether or not the decisions to implement the proposals for a unitary Exeter and Norwich were lawful. But if the court finds those decisions unlawful (and that must at least be a possibility) the legal basis for these orders will be undermined, even if the orders are ones which might validly have been made had the proposals been handled differently. **Accordingly, there is a doubt as to whether the orders, if approved and made, would be lawfully made, and the Committee reports accordingly. It is for each House to decide whether or not to approve these draft orders. But the Houses should be in no doubt as to the proposition which the Secretary of State puts to them. It is that they should approve legislation implementing decisions which the Secretary of State himself is advised may well be successfully challenged in the courts.**

The outcome of the judicial review is discussed in a later section.

### 3.4 House of Lords Merits of Statutory Instruments Committee

The Merits Committee considered the structural change orders in its twelfth report of 2009-10, published on 4 March.<sup>20</sup> The Committee examined the decision-making progress, sought additional information from the DCLG and invited comment on the practicalities of the implementation of the recommendations. The Committee summarised its report in the following terms:

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<sup>17</sup> Norfolk County Council, [Legal proceedings launched to overturn unitary Norwich decision](#), press release, 16 February 2010

<sup>18</sup> *Ibid*

<sup>19</sup> Joint Committee on Statutory Instruments, [Drawing special attention to: Exeter and Devon \(Structural Changes\) Order 2010 \(Draft SI\) Norwich and Norfolk \(Structural Changes\) Order 2010 \(Draft SI\) etc...](#), 18 March 2010, HL96/HC 3-xi

<sup>20</sup> House of Lords Merits of Statutory Instruments Committee, [Draft Exeter and Devon \(Structural Changes\) Order 2010; Draft Norwich and Norfolk \(Structural Changes\) Order 2010](#), HL 70 2009-10, 4 March 2010

The Department has proposed the creation of two unitary councils, in Exeter and Norwich, which do not conform with all of the Department's five published criteria. In these circumstances we would have expected the DCLG to have set out a more detailed case for the proposed course of action than the assertion of "compelling reasons" with little supporting evidence. The parts of the explanatory material to which this Committee routinely looks for evidence to support a policy proposal, in particular the Impact Assessment and the outcome of consultation, do not in our view combine to make a clear, evidence-backed case for the proposal. The Department's response to our supplementary questions (see Appendix 1) has failed to provide more robust evidence. The Committee therefore remains unclear how unitary status is expected to solve the problems identified in relation to each city, without creating unacceptable consequences elsewhere. We also draw the House's attention to the intention to cancel forthcoming council elections in each area.

The Committee emphasises that it is not our role to reach a view on whether some form of unitary status is right in these circumstances, but to draw to the special attention of the House issues which it may wish to take into account when reaching its decision on the specific proposals in these Orders. We also note, from the evidence sent to us (see Appendices 2 and 3), that the circumstances of Exeter and Norwich are different; and that the issues we raise affect each Order to differing degrees.

### 3.5 Parliamentary approval of the draft orders

The draft structural change order was considered by the Commons Seventh Delegated Legislation Committee on 22 March 2010. Robert Neill, Conservative Shadow Local Government Minister, called it "a thoroughly disreputable and discreditable piece of secondary legislation"<sup>21</sup> Dan Rogerson, Liberal Democrat Spokesman, said that he considered that unitary government had merits but the key question was "whether it is correct to proceed in this direction, at this time and in the way proposed by the Government".<sup>22</sup> He said that he shared the Conservatives' concern about a lack of evidence in support of the Government's decisions. The Committee divided on the motion that it had considered the draft orders, the Government winning the division by 9 votes to 5. The House of Commons approved the draft Orders without debate on 23 March 2010. The *Draft Exeter and Devon (Structural Changes) Order 2010* was approved by 251 votes to 163<sup>23</sup>; the *Draft Norwich and Norfolk (Structural Changes) Order 2010* was approved by 249 votes to 171.<sup>24</sup>

The Lords debated the draft orders on 22 March. A fatal amendment tabled by Lord Tope (Lib Dem) was not passed but the House did agree a statement of regret, moved by Baroness Butler-Sloss (a Crossbencher), which was appended to the motion to approve the orders. This was worded as follows:

...but this House regrets that Her Majesty's Government have laid before Parliament the draft Order, which does not comply with the Government's published criteria with respect to affordability of the future structure, without providing more evidence on whether the course proposed is likely to achieve its declared policy objective; and calls on Her Majesty's Government not to proceed with the draft Order before conducting further consultation with the residents of Norwich and Norfolk.<sup>25</sup>

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<sup>21</sup> House of Commons Seventh Delegated Legislation Committee, *Draft Exeter and Devon (Structural Changes) Order 2010 etc*, 22 March 2010, c8

<sup>22</sup> *Ibid*, c11

<sup>23</sup> [HC Deb 23 March 2010 cc196-99](#)

<sup>24</sup> *Ibid*, cc199-202

<sup>25</sup> [HL Deb 22 March 2010 c836](#)

Lord MacKenzie of Luton responded for the Government in ministerial statement issued on 24 March. He noted the House's concerns and then explained that:

The Government take very seriously the concerns and requests of the House but, for the reasons set out below, have decided that it is right now to proceed and to make the orders that the House has approved.<sup>26</sup>

#### 4 Costs and savings: a note<sup>27</sup>

The regulatory impact assessment relating to the structural changes orders for Exeter and Norwich summarised the estimates of the costs and benefits of reorganisation. These were as provided in the full financial business cases submitted by Norwich and Exeter in January 2007, which were assessed by Independent Financial Consultants (IFCs) appointed by DCLG. Updated information was provided by Exeter in 2007 and Norwich in January 2010, which was subsequently modelled for risk by the IFCs.

The one-off implementation costs for both reorganisations combined were estimated to be £20.6m (£19.1m at present value)<sup>28</sup> over the six years to 2014/15. The on-going costs, over the same period, were estimated to be £19.4m (£17.4m at present value). The total costs over the six year period were therefore estimated to be £40m (£36.5m at present value). The key monetised costs are staff related costs, IT, change management and planning.

Over the six year period it was estimated that gross savings could be made of £39.4m (£34.9m at present value). This results in a net deficit over the period to 2014/15 of £0.6m (£1.6m at present value).

The rejected reorganisation option was to implement unitary government across the whole of Devon and Norfolk. Such a proposal was projected to provide a surplus of £51.5m over the six years (£42.4m at present value).

The Labour Government's criteria specified that changes to structures should be affordable and that costs should be offset by savings over no more than five years. Neither city unitary fulfilled this criterion, although both county unitary authorities would have done. The Lords Merits of Statutory Instruments Committee thought it "unusual" that the former had been chosen and the latter rejected without any "non-monetised benefits" being offered in mitigation in the impact assessment.<sup>29</sup>

In response to the Committee's request for further explanation of this rationale the DCLG provided the following information:

Whilst the Impact Assessment for the two City Unitary proposals suggested a potential deficit over the period to 2014-15 it also suggests that the proposals have the capacity to deliver annual on-going savings of around £6.5m from 2015-16 onward (net present value £5.3m in 2015-16).<sup>30</sup>

The Merits Committee report commented:

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<sup>26</sup> [HL Deb 24 March 2010 cWS132](#). This statement was also delivered in the Commons by Rosie Winterton at HC Deb 24 March 2010 cc38-41WS.

<sup>27</sup> This section was written by Gavin Berman, Social and General Statistics Section.

<sup>28</sup> "Present value" refers to 2009/10 prices

<sup>29</sup> House of Lords Merits of Statutory Instruments Committee, [Draft Exeter and Devon \(Structural Changes\) Order 2010; Draft Norwich and Norfolk \(Structural Changes\) Order 2010](#), HL 70 2009-10, 4 March 2010, report para 22

<sup>30</sup> *Ibid*, Appendix 1, Q25

However they do not mention that at the same point in time the unitary counties would be expected to be saving £33.4m per annum.<sup>31</sup>

[In fact, the cost-effectiveness or otherwise of the county unitary options was not a major issue of contention in the Lords debates on the present Bill. Labour ministers had ruled out the county unitaries on the grounds that they did not meet other criteria, notably the requirement that they command a broad cross-section of local support. A more important battleground in financial terms became the extent to which collaboration within the existing two-tier structure might yield savings commensurate with those expected from reorganisation.]

A summary of the financial information provided for each option is shown in the table below:

**Breakdown of estimated costs and savings, £ million - cash and present value (PV)**

		Over six year period to 2014/15					From 2015/16
		One off costs of implementation	Ongoing costs	Total costs	Gross savings	Net benefit	Ongoing net savings
Policy option 1 - Implementing Unitary Government in Exeter and Norwich							
Exeter	Cash	8.9	11.0	19.9	17.4	-2.5	2.6
	PV	8.2	9.9	18.1	15.3	-2.8	2.1
Norwich	Cash	11.7	8.4	20.1	22.0	1.9	3.9
	PV	10.8	7.5	18.3	19.5	1.2	3.2
Total	Cash	20.6	19.4	40.0	39.4	-0.6	6.5
	PV	19.1	17.4	36.5	34.9	-1.6	5.3
Policy option 2 - Implementing Unitary Government in Devon and Norfolk							
Devon	Cash	36.5	37.9	74.4	96.7	22.3	17.2
	PV	33.6	33.5	67.2	85.4	18.2	14.0
Norfolk	Cash	18.3	24.0	42.3	71.5	29.2	16.2
	PV	17.1	21.2	38.3	62.5	24.2	13.2
Total	Cash	54.8	61.9	116.7	168.2	51.5	33.4
	PV	50.8	54.7	105.5	147.9	42.4	27.2

Source: Annex C, Explanatory Memorandum to SI 2010 No 998 and SI 2010 No 997

Looking at each of the reorganisations in isolation shows that, over the six year period, the change to Norwich would see a financial benefit of £1.2m at present value compared to the net deficit of £2.8m in Exeter. From 2015/16 both unitary authorities would see annual net savings at present value of £3.2m in Norwich and £2.1m in Exeter.

To assist the Merits Committee in its assessment of the orders, a short call for evidence was issued. This invited comments on a variety of issues relating to the reorganisation including the accuracy of the estimates of the costs and benefits. As one submission noted, the estimates as to the costs and benefits of unitary government differ widely and "...protagonists in the debate tend to quote those (especially the costs) which favour their case."<sup>32</sup>

With this in mind it is not surprising that both Exeter City Council and Norwich City Council strongly defended the estimates in their submissions citing independent validation by Deloitte. Other district authorities within the county areas, who opposed the creation of the city unitaries, sought to highlight inaccuracies in the estimates. The two main arguments

<sup>31</sup> *Ibid*, report, para 23. This would represent £27.2m at present value.

<sup>32</sup> *Ibid*, Appendix 2, Item 2

against the accuracy of the estimates were that they were based on out of date analysis and that no account had been taken of the financial impact on the remaining local authorities.<sup>33</sup>

## 5 Coalition Government policy

The Conservative Party's green paper on local government, *Control shift*, published in February 2009, contained a critique of restructuring (see later section on views and responses). The paper gave the following commitment:

Given the uncertainty that surrounds the probity of the Government's handling of applications for unitary status, there is serious doubt as to the legitimacy of the decisions reached. **While we recognise that restructuring cannot be easily undone, we will scrap the Government's ongoing proposals for restructuring if they have not reached the stage of having been irreversibly signed off under the Parliamentary process. In particular, we will stop the unitary restructuring plans for Norfolk, Suffolk and Devon, where recent delays following legal challenges mean the process will not have reached a conclusion prior to the next general election.**<sup>34</sup>

Robert Neill, Shadow Local Government Minister, had said in the March 2010 debate on the structural change orders for Exeter and Norwich:

I restate clearly and unequivocally that, if at the general election there is a change of Government and the official Opposition have anything to do with it and are in any position to do so, we will take every necessary step immediately to rescind the orders and will issue immediate instructions to Department officials to cease all work on any form of local government reorganisation. I make that abundantly clear, in the hope that officers of the two counties will not waste time and money on the fool's errand on which the Government are sending them.<sup>35</sup>

The Party's 2010 general election manifesto repeated the promise to scrap "Labour's uncompleted plans to impose unwieldy and expensive unitary councils..."<sup>36</sup> The Coalition's *Programme for government*, published after the election, reaffirmed the commitment to stop restructuring of councils in the three counties and to stop the regionalisation of the fire service.<sup>37</sup> The Bill to revoke the structural change orders was announced in the Queen's Speech on 25 May 2010 and introduced into the Lords on 26 May. Its impact assessment explained:

We believe that imposed restructuring is expensive and brings with it significant risks of disruption and of fragmentation of major services.

As regards restructuring in Devon, Norfolk and Suffolk, the paper cited (a) the concerns of the DCLG's permanent secretary about value for money, (b) the concerns of the House of Lords Merits of Statutory Instruments Committee over the adequacy of available information on the policy options, and (c) the Lords motion of regret in the debate on the structural change orders. It stated:

In short, as explained by the Department's Accounting Officer and recognised by Parliament, a unitary Exeter and Norwich represented poor value for money for the

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<sup>33</sup> *Ibid*, Appendix 2

<sup>34</sup> Conservative Party, *Control shift: Returning power to local communities*, February 2009, pp19-20

<sup>35</sup> House of Commons Seventh Delegated Legislation Committee, *Draft Exeter and Devon (Structural Changes) Order 2010 etc*, 22 March 2010, c10

<sup>36</sup> Conservative Party, *Invitation to join the Government of Britain*, 2010, p76

<sup>37</sup> HM Government, *The Coalition: our programme for government*, 2010, p12

public purse. Stopping these unitaries therefore is good value for money. Moreover, we are clear that there is no need for forced amalgamations to achieve efficiencies of scope and scale, and the way forward is to reform and improve local government from within.<sup>38</sup>

## 6 Judicial review: the orders quashed

On 21 June 2010, Mr Justice Ouseley delivered his judgement in the judicial review case brought by Devon and Norfolk County Councils.<sup>39</sup> The Judge quashed the orders on the grounds that the consultation process had been unfair and had deprived the County Councils of the opportunity to make their case in that process. He did not agree with a number of other grounds for challenge advanced by the claimants, notably that the decision was pre-determined, that it was irrational and that the claimants had a substantive legitimate expectation that the Secretary of State's decision would go against the city councils. The main points of the judgement in respect of the consultation process are summarised below.

The Judge held that the Secretary of State had **consulted** on the basis that a failure to meet any one of the criteria would guarantee that a proposal would not be taken forward. This position was maintained from first to last. The Secretary of State had not indicated to consultees that the serious economic downturn might require a different approach (giving the leadership criterion such decisive importance). Nor had he indicated that Total Place, a new policy, was of such potential significance that it, too, justified a fundamentally different approach to the criteria. Without warning, the Secretary of State had altered the basis of his decision-making so that failure of a proposal against the criteria was no longer decisive. There had been no opportunity for consultees to deal with this change, or with the merits of Total Place and the recession as factors warranting this change. Therefore the orders were quashed but, the Judge added, "this does not prevent them being put forward for approval after what need only be a short period of consultation."

In a supplementary judgment delivered on 5 July, the High Court confirmed that the orders were quashed in their entirety. The immediate effect of this was that the terms of office of one third of the members of Exeter and Norwich City Councils, which had been extended by the orders, ended on 5 July. **By-elections** were therefore held on 9 September to fill the vacancies. As regards the restructuring process, the situation was returned to the point at which a ministerial decision was awaited on unitary proposals in all three counties. The Coalition Government's Bill aimed to put an end to all such uncompleted plans.<sup>40</sup>

Supporters of restructuring later contended that there had been serious **constitutional implications** in this judgment. Lord Howarth of Newport (Lab), speaking at the Bill's committee stage, accepted that there had been precedents at supreme court level for quashing secondary legislation but thought this was the first time that a High Court judge had overturned orders which had been formally approved by Parliament. He considered that this was part of the "...continuing extension of judicial authority to supersede parliamentary authority".<sup>41</sup> Baroness Butler-Sloss, a Crossbencher, countered that there was "...nothing adventurous about a High Court judge sitting in the Administrative Court" deciding that the Government had acted illegally.<sup>42</sup>

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<sup>38</sup> DCLG, *Local Government Bill: impact assessment*, June 2010, p7

<sup>39</sup> *Devon County Council and Norfolk County Council v Secretary of State for Communities and Local Government*, [2010] EWHC 1456 (admin), 21 June 2010

<sup>40</sup> *HC Deb 6 July 2010 c4WS*

<sup>41</sup> *HL Deb 14 July 2010 cc700-703*

<sup>42</sup> *Ibid*, c704



## **7 The Bill**

### **7.1 Main provisions**

The *Local Government Bill [HL]* was introduced into the House of Lords on 26 May 2010. Having completed its Lords stages it received its first reading in the Commons on 11 October 2010. Readers may wish to consult the explanatory notes.<sup>43</sup>

The Bill prevents any “relevant” order from being made under section 7 of the *Local Government and Public Involvement in Health Act 2007*. A “relevant” order is one implementing a proposal for single-tier government received by the Secretary of State prior to the commencement of the present measure. This, therefore, would prevent implementation of any of the existing unitary proposals relating to Devon, Norfolk or Suffolk. However, it would not prevent the Secretary of State from inviting proposals for unitary status in the future and implementing those proposals.

The Bill comes into force on the day it receives the Royal Assent. In terms of territorial extent, it extends to England and Wales only but, in practice, applies only in relation to England since orders under section 7 of the 2007 Act may only be made in relation to an English local authority.

### **7.2 Effect of High Court judgement**

The Bill, as originally drafted, also sought to:

- revoke the structural changes orders creating unitary councils for Exeter and Norwich from 1 April 2011;
- Provide that, where a councillor’s term of office had been extended by one of the orders, the term of office continued to be extended in spite of the order being revoked. The Bill also set out the arrangements whereby the two Councils would return to the normal cycle of elections.

The quashing of the orders by the High Court removed the need for these provisions. The Government explained following the Court’s judgment that a Bill would still be needed because:

...uncompleted plans now remain for Ipswich and Suffolk, Norwich and Norfolk; Exeter and Devon on which no decision has been taken.<sup>44</sup>

Government amendments agreed at committee stage in the Lords trimmed the Bill accordingly.

## **8 The Bill’s progress in the Lords**

### **8.1 Referral to the Examiners: Hybridity**

Second reading had been scheduled for 8 June 2010 but on that date, Lord Howarth of Newport moved a motion that the Bill be referred to the examiners to determine whether or not it was hybrid. A hybrid Bill is defined as “a public Bill which affects a particular private interest in a manner different from the private interests of other person or bodies of the same

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<sup>43</sup> [Local Government Bill \[HL\]: Explanatory Notes](#)

<sup>44</sup> [Local Government Bill \[HL\]: Certificate from the Examiners, Statement of Reasons and Record of Hearing before the Examiners](#), 29 June 2010, HL 12 2010-11, p25

category or class.”<sup>45</sup> Such a Bill would therefore be subject to elements of private as well as public Bill procedure. The motion to refer was carried by 154 votes to 150.<sup>46</sup>

The Examiners<sup>47</sup> received evidence and held a hearing on 23 June. Both County Councils had withdrawn their memorials so that, by the time of the hearing, no party was alleging that private business standing orders applied to the Bill. The unanimous view of the Examiners was that the Bill was not hybrid; their statement of reasons was published as a House of Lords paper.<sup>48</sup>

## 8.2 Second reading

The Bill received its second reading on 30 June 2010. The Minister, **Baroness Hanham**, attacked the Labour Secretary of State’s decision, “taken late in the Parliament” and controversial because of “a general lack of evidence for the ‘compelling reasons’ and a lack of public support.” She said that the Government’s case for introducing legislation was:

...non-compliance with the five criteria and, more generally, lack of any evidence of value for money. The arguments in favour of the restructuring in Devon and Norfolk were, in truth, never made out and should never have been pursued.<sup>49</sup>

The Bill would put an end to all uncompleted plans for restructuring, including those for Suffolk, and would give the affected councils “certainty on their future and a clear position for them to regroup and work with others to structure their services.” She added that it would save reorganisation costs of £40m and that estimates of offsetting savings were subject to “clear financial risks”.

**Lord McKenzie of Luton**, responding for the Opposition, noted that the High Court judgement had concluded that the Secretary of State was entitled to reach the view he did on the merits of the proposal, and that it was not irrational. Further, that the final approach taken had been within the scope of the 2007 Act. He asked what democratic legitimacy underpinned the present Bill given that the Liberal Democrat manifesto had not mentioned the issue and that both coalition parties had proclaimed their support for devolution of power and greater local autonomy. Yet the Bill:

...in an arrogant, dictatorial and brutal way...shut out Exeter and Norwich from the opportunity to become unitary councils – an outcome for which there is genuine local appetite.<sup>50</sup>

He added that the prospect of ongoing savings, opportunities for enhanced economic development and the Total Place approach remained “powerful reasons” to grant unitary status to the two cities.

The Bill was given a second reading without a division.

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<sup>45</sup> See *Erskine May*, 23<sup>rd</sup> ed, 2004, pp640-1

<sup>46</sup> [HL Deb 8 June 2010 cc603-613](#)

<sup>47</sup> The Examiners were (1) the Clerk of Bills, House of Commons, (2) Counsel to the Chairman of Committees, House of Lords (3) Counsel for Domestic Legislation, House of Commons. The Clerk of Public and Private Bills in the House of Lords, Tom Mohan, had written to the Minister on 3 June setting out his view that, *prima facie*, the Bill was not hybrid. He therefore played no part in the examination.

<sup>48</sup> [Local Government Bill \[HL\]: Certificate from the Examiners, Statement of Reasons and Record of Hearing before the Examiners](#), 29 June 2010, HL 12 2010-11

<sup>49</sup> [HL Deb 30 June 2010 c1799](#)

<sup>50</sup> *Ibid*, c1805

### 8.3 Issues raised at subsequent stages

The Bill was considered in committee on 14 July, on report on 28 July and at third reading on 5 October. Government amendments introduced at committee stage, which were carried without division, truncated the Bill in the light of the High Court judgement which had quashed the orders.<sup>51</sup> A number of other issues were raised by opponents of the Bill although, with very few exceptions, the amendments were either withdrawn or not moved. Issues raised included the following:

- The cost-effectiveness of continuing with the present two-tier arrangements in Devon, Norfolk and Suffolk. Baroness Hanham indicated in a letter to Peers that collaborative working might yield even greater savings than those projected under restructuring.<sup>52</sup> An amendment discussed (but not moved) in committee called for an independent report within 3 years into whether such arrangements had delivered value for money.<sup>53</sup>
- Whether the Secretary of State might invite further proposals for unitary structures during this Parliament. Baroness Hanham had indicated at second reading that the Government had no plans to issue further invitations and that any applications would be viewed in the light of the “serious economic situation.”<sup>54</sup> She said at report stage that, if the Government did decide on reorganisation at any stage, it would do it “with authority” and not on the back of an amendment.<sup>55</sup>
- Costs incurred by Norwich and Exeter city councils in holding by-elections. Lord Rosser (Lab) argued that the judicial review judgment was against the Government and that the DCLG, rather than the two city councils, should pay the costs of holding by-elections.<sup>56</sup> On report, Lord Rosser spoke to an amendment calling on central government to provide money to pay for the elections which he estimated at £80,000 to £100,000.<sup>57</sup>
- Future partnership arrangements between the city councils and county councils. Baroness Hollis of Heigham and Lord Howarth of Newport contended in committee that the city councils - and other districts - must be able to scrutinise the county’s spending plans for their areas, and must have adequate representation (for example on police authorities).<sup>58</sup> At report stage, Baroness Hollis spoke to an amendment that would have required the county councils to provide detailed financial data on their service provision within district areas. Baroness Hanham said that she regretted the implication that there were “such desperate animosities” between city and county that they could not work together. On division, the amendment was rejected by 183 votes to 89.

## 9 Views and responses

### 9.1 Views on restructuring in general

In December 2005, David Miliband, then Minister for Communities and Local Government, began the process leading to **Labour’s** restructuring programme with an article in *Local Government Chronicle*. He wrote:

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<sup>51</sup> [HL Deb 14 July 2010 cc699-711](#)

<sup>52</sup> [HL Deb 28 July 2010 c1299](#)

<sup>53</sup> [HL Deb 14 July 2010 cc685-699](#)

<sup>54</sup> [HL Deb 30 June 2010 c1832](#)

<sup>55</sup> [HL Deb 28 July 2010 c1315](#)

<sup>56</sup> [HL Deb 14 July 2010 cc711-721](#)

<sup>57</sup> [HL Deb 28 July 2010 cc1317-1324](#)

<sup>58</sup> [HL Deb 14 July 2010 cc722-733](#)

The charge put to me is that too many districts are too small to be strategic and yet too big to be local. The two-tier system stands accused of being confusing, inefficient and costly.

Confusing because of the way responsibilities are divided. Counties deal with social services; districts deal with housing. Counties dispose of waste; districts collect it. Districts deal with town planning; counties deal with transport planning. Keeping the grass verge cut can be a matter for the parish council, keeping the pavement clean, the district and keeping the road clean, the county council. People may not much care about these distinctions - but they're paying for multiple back offices. Seventy district councils have budgets of less than £10m. That partly explains the high proportion of cost spent on central administration...<sup>59</sup>

The impact assessments for the orders implementing single tier government summarised the Labour Government's reasoning as follows:

Weaknesses exist in many two-tier local government areas (those based on county and district councils). These structures often add to public confusion, create fragmented and sometimes competing local leadership, and lead to duplication, inefficiency and coordination failures in service delivery. A way of removing these weaknesses is the introduction of unitary (single tier) local government...<sup>60</sup>

By way of contrast, the rationale for the establishment of a two-tier structure by Edward Heath's **Conservative** administration in the early 1970s had been as follows:

In the Government's view there will always be a conflict between those who argue for large scale organisation of local government on grounds of efficiency and those, on the other hand, who argue for control by a body close to the people for whom the service is designed. Where these opposing arguments are evenly balanced, the Government favour responsibility being exercised at the more local level. A genuine local democracy means that decision should be taken – and should be seen to be taken – as locally as possible.<sup>61</sup>

The **Conservative Party's** green paper on local government, *Control shift*, published in February 2009, emphasised the disruptiveness of the restructuring process for what it considered to be little gain:

Another aspect of central government's tendency to micro-manage local government has been the persistent efforts across many decades of central departments to promote amalgamations and reorganisations of local government. This is normally done in the name of efficiency – and the present Government's thinly disguised attempts to persuade the District and County authorities to amalgamate into unitary councils is no exception. But there is little evidence to suggest that efficiencies are actually generated by these reorganisations. Instead, they have turned councils inwards, creating instability in local services, and taken authorities' attention away from the needs of rapidly changing service provision...

It continued:

There is no need for forced amalgamations in order to achieve efficiencies of scope and scale. The way forward is to reform and improve local government from within by

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<sup>59</sup> David Miliband on reorganisation, *Local Government Chronicle*, 1 December 2005 pp8-9

<sup>60</sup> See, for example, *Explanatory memorandum to the Exeter and Devon (Structural Changes) Order 2010 and the Norwich and Norfolk (Structural Changes) Order 2010*, p11

<sup>61</sup> Conservative Party, *Campaign guide 1974*, March 1974 p448

way of function and powers. There are plenty of excellent examples of councils of all types and sizes coming together to benefit from joint working, sharing of chief executives, back office pooling and co-procurement. Such collaborations help to reduce the town hall wage bill and improve co-ordination between different tiers of local governance...**a Conservative government will not instigate any amalgamations or reorganisations. Councils will be left free to decide on sensible co-operation in the interests of their citizens.**<sup>62</sup>

**Liberal Democrats** have generally favoured the concept of unitary authorities provided that they are not opposed by local people. A Liberal Democrat policy paper, adopted at the Autumn 2007 conference, stated:

4.3.2 Within England there are five different types of local authority above parish/community councils. In urban areas there is typically one tier and in rural areas there are typically two, the district and county councils. Having several tiers of government can not only lead to confusion over which council is responsible for what (such as highways and street parking), but can also mean that some councils seem very remote from the communities they serve. As a result, it is difficult for residents to identify which council is responsible for the particular issue they need resolving, and to establish why things have gone wrong.

4.3.3 The Liberal Democrats therefore believe that there should be a single principal tier of local government, unless the local community would prefer other arrangements. The boundaries for principal authorities should, as much as possible, reflect natural communities people recognise. The final structure, however, must be a decision for the people living in an area, with any move to a single tier authority being preceded by a local referendum, not imposed by central government. Such a referendum should be independently monitored to ensure the campaign around it is properly conducted.<sup>63</sup>

Professor Michael Chisholm, a former member of the Local Government Commission, has written a number of critical assessments of the restructuring process.<sup>64</sup> He has co-authored a book with Professor Steve Leach - *Botched business* - which criticises strongly the way in which the latest restructuring exercise was undertaken.<sup>65</sup> In March 2010, the Labour Government published interim findings of a research project by PwC and others assessing the performance of the new unitary authorities.<sup>66</sup>

## 9.2 Views on restructuring in Devon, Norfolk and Suffolk

The views of stakeholders in the sixteen shortlisted restructuring proposals were canvassed by the Government during the period March to June 2007. The DCLG published a summary of responses on its website in November 2007.<sup>67</sup> The Boundary Committee (now the Local Government Boundary Commission for England) has published on its website the submissions from interested individuals and organisations on its various proposals relating to

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<sup>62</sup> Conservative Party, *Control shift: Returning power to local communities*, February 2009, pp19-20

<sup>63</sup> Liberal Democrats, *The power to be different: policy paper 79*, 10 July 2007

<sup>64</sup> See, for example, Michael Chisholm, "Emerging realities of local government reorganization", *Public Money & Management*, May 2010, pp143-150

<sup>65</sup> Michael Chisholm and Steve Leach, *Botched business: the damaging process of reorganising local government 2006-2008*, Douglas McLean, 2008. Steve Leach as also written: "Reorganisation, reorganisation, reorganisation: a critical analysis of the sequence of local government reorganisation initiatives, 1979-2008, *Local Government Studies*, Vol 35, No 1, pp61-74, February 2009.

<sup>66</sup> Pricewaterhouse Coopers et al, *Form and function: a comparative evaluation of new unitaries and two-tier pathfinders – qualitative research – Interim Report*, DCLG, March 2010

<sup>67</sup> DCLG, *Proposals for future unitary structures: stakeholder consultation: summary of responses*, November 2007

Norfolk, Suffolk and Devon.<sup>68</sup> The Government consulted on the Boundary Committee's final advice during the six week period from 8 December 2009 until 19 January 2010, and has published a summary of responses.<sup>69</sup>

The House of Lords Merits of Statutory Instruments Committee invited comment on the practicalities of implementing the Government's decisions on the city unitaries. Responses were published in its twelfth report of session 2009-10.<sup>70</sup> MPs and Peers made their views known in a series of debates following the Labour Government's decisions. These were (1) a Westminster Hall debate initiated by Keith Simpson on 2 March,<sup>71</sup> (2) an opposition day debate initiated by the Conservatives on 9 March,<sup>72</sup> (3) the debates in the Commons and the Lords on 22 March on the draft structural change orders.<sup>73</sup> The following is a summary of the principal arguments, both for and against, taken from those debates as well as the debates in the Lords on the present Bill.

### **Support for city unitaries**

A key argument employed by supporters of restructuring in Devon and Norfolk was that it provided for a **more targeted approach** to the challenges faced by city and county. Labour ministers in both Houses argued that the change offered "the best of both worlds":

The cities can have one strong authority and the county councils can have a more focused approach to the rural areas. Together, in a partnership of equals, the two can work jointly with other service providers to deliver high-quality services that are tailored to their diverse communities.<sup>74</sup>

Baroness Hollis of Heigham wrote in evidence to the Merits Committee:

Cities like Norwich need unitary structures. It allows focus and more effective delivery of otherwise disjointed services...if the city thrives then so do Norfolk people, especially the unemployed, who benefit directly from a unitary city that is green, progressive, energetic, innovative and outward looking. At the moment, Norwich is trying to address issues of deprivation and the need for economic development with one hand tied behind its back.<sup>75</sup>

A second argument advanced in favor of single-tier government is that it is more **efficient**. Charles Clarke, formerly Labour MP for Norwich South, commented:

The reason for unitary local government is that it is much more efficient than two-tier government. It is far more effectively co-ordinated and coherent. The value for money

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<sup>68</sup> Local Government Boundary Committee for England, (1) Devon structural review, <http://www.lgbce.org.uk/all-reviews/south-west/devon/devon-structural-review> (2) Norfolk structural review, <http://www.lgbce.org.uk/all-reviews/eastern/norfolk/norfolk-structural-review> (3) Suffolk structural review, <http://www.lgbce.org.uk/all-reviews/eastern/suffolk/suffolk-structural-review>

<sup>69</sup> DCLG, *Proposals for future unitary structures in Devon, Norfolk and Suffolk: period for representations: summary of responses*, 2010

<sup>70</sup> House of Lords Merits of Statutory Instruments Committee, *Draft Exeter and Devon (Structural Changes) Order 2010; Draft Norwich and Norfolk (Structural Changes) Order 2010*, HL 70 2009-10, 4 March 2010

<sup>71</sup> HC Deb 2 March 2010 cc205-229WH

<sup>72</sup> HC Deb 9 March 2010 cc219-270

<sup>73</sup> House of Commons Seventh Delegated Legislation Committee, *Draft Exeter and Devon (Structural Changes) Order 2010; Draft Norwich and Norfolk (Structural Changes) Order 2010*, 22 March 2010; HL Deb 22 March 2010 cc784-836

<sup>74</sup> Speech by Barbara Follett in the House of Commons Seventh Delegated Legislation Committee debate on the draft structural change orders, 22 March 2010 c4. This was echoed in the equivalent debate in the House of Lords by Lord McKenzie of Luton, HL Deb 22 March 2010 c787.

<sup>75</sup> House of Lords Merits of Statutory Instruments Committee, *Draft Exeter and Devon (Structural Changes) Order 2010; Draft Norwich and Norfolk (Structural Changes) Order 2010*, HL 70 2009-10, 4 March 2010, p94

that it offers is far higher, the costs are lower, and the decisions taken by unitary local government are more transparent and much closer to the citizen.<sup>76</sup>

Baroness Hollis said at committee stage of the present Bill that the Government could not afford not to restructure given the projected savings for local taxpayers.<sup>77</sup>

A third advantage cited for restructuring is greater **transparency** and therefore accountability since it reduces the confusion in the minds of citizens as to who has responsibility for specific services. Dr Phyllis Starkey, then Chairman of the Communities & Local Government Committee, emphasised this aspect in the opposition day debate in March.<sup>78</sup> Allied to this is the view that a simpler and clearer local government structure makes it easier for **organisations** of all kinds, including businesses, voluntary organisations and partner agencies, to work with the (single) local authority for an area.

### **Arguments against**

Members and Peers who opposed the restructuring orders, maintained that the **decision-making process** had been flawed in a number of respects, notably:

- Ministers had departed from the Government's own criteria in making the decision. This echoed the concern of the Merits Committee and the DCLG's permanent secretary about consistency in the decision-making process.
- The Merits Committee criticised the DCLG for not setting out in greater detail the reasons for rejecting the Boundary Committee's advice and the "compelling" reasons for departing from the criteria.
- Lack of consultation. Keith Simpson complained about "democratic deficit, as my constituents were never asked for their views."<sup>79</sup> The Lords statement of regret referred to the need for further consultation locally.

The decision-making process was, of course, examined in some depth in the judicial review proceedings.

Prominent among the arguments used against the restructuring process was the **cost and disruption** involved. Henry Bellingham, a Norfolk MP, spoke of:

The cost in terms of the paralysis in decision making, the diversion of management time and the judicial challenges involves money that could have been spent on local services.<sup>80</sup>

Lord MacGregor of Pulham Market spoke at second reading of the present Bill of the "huge up-front cost" of restructuring "before any benefits run through".<sup>81</sup>

Robert Neill, then Shadow Local Government Minister, had argued that all three counties had excellent records of **joint working** between councils and that this made restructuring unnecessary.<sup>82</sup> Gary Streeter suggested that the Total Place collaborative approach was at least as well suited to the existing structure of local government as to a changed structure.<sup>83</sup>

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<sup>76</sup> [HC Deb 9 March 2010 c247](#)

<sup>77</sup> [HL Deb 14 July 2010 c693](#)

<sup>78</sup> [HC Deb 9 March 2010 cc243-4](#)

<sup>79</sup> *Ibid*, c244

<sup>80</sup> *Ibid*, c249

<sup>81</sup> [HL Deb 30 June 2010 c1810](#)

<sup>82</sup> [HC Deb 2010 cc221 and 226](#)

<sup>83</sup> *Ibid*, c254

Supporters and opponents of the present Bill clashed repeatedly in the Lords over the extent to which collaborative working would yield cost savings.

Finally, critics were concerned at the impact of **removing the city areas from their respective counties** (leaving what the Merits Committee called “a doughnut of the two tier system”.) County councils would be left with a reduced taxbase, yet faced with the relatively higher costs of service provision in rural areas. Those favouring reorganisation countered that: (1) unitary status for other cities had benefited their former counties; (2) the cities were simply being restored to the self-governing position they had enjoyed prior to the 1974 local government reorganisation.