

2009 No. 486

LOCAL GOVERNMENT, ENGLAND

**The Local Government (Structural Changes) (Further
Transitional Arrangements and Staffing) Regulations 2009**

<i>Made</i> - - - -	<i>4th March 2009</i>
<i>Laid before Parliament</i>	<i>9th March 2009</i>
<i>Coming into force</i> - -	<i>31st March 2009</i>

The Secretary of State, in exercise of the powers conferred by sections 14 and 240(10) of the Local Government and Public Involvement in Health Act 2007(a), makes the following Regulations:

PART 1
PRELIMINARY

Citation and commencement

1. These Regulations may be cited as the Local Government (Structural Changes) (Further Transitional Arrangements and Staffing) Regulations 2009 and shall come into force on 31st March 2009.

Interpretation

2.—(1) In these Regulations—

“the 2000 Act” means the Local Government Act 2000(b);

“the 2003 Act” means the Local Government Act 2003(c);

“the 2007 Act” means the Local Government and Public Involvement in Health Act 2007;

“predecessor council” means a local authority which, by or in consequence of an order under section 7 of the 2007 Act, will cease to exist on the reorganisation date;

“reorganisation date”, means the date specified in an order under section 7 of the 2007 Act as that on which a structural change comes into effect;

“single tier council” means a local authority which on and after the reorganisation date is the sole principal authority for an area.

(a) 2007 c.28.
(b) 2000 c.22
(c) 2003 c.26.

- (2) For the purposes of these Regulations—
- (a) a single tier council and a predecessor council are related if on the reorganisation date the area of the single tier council includes that of the predecessor council;
 - (b) where on the reorganisation date the area of a predecessor council comprises the areas of two or more single tier councils taken together, both or all of those single tier councils and the predecessor council are related.

PART 2

CONTINUITY AND LOCAL AUTHORITY CATEGORISATION

Continuity

3.—(1) In this regulation, “the 2008 Regulations” means the Local Government (Structural Changes) (Transitional Arrangements) (No.2) Regulations 2008(a).

(2) Regulation 4 of the 2008 Regulations (continuity) shall not apply to—

- (a) the categorisation of a predecessor council under section 99(4) of the 2003 Act (categorisation of English local authorities by reference to performance); or
- (b) anything which a predecessor council is entitled to do or is exempted from doing by virtue of its categorisation.

(3) Nothing in paragraph (2) affects an entitlement or exemption of a single tier council in right of its own categorisation, or as otherwise provided in this Part or in other regulations under section 14 of the 2007 Act.

(4) A home energy conservation report prepared under section 2 of the Home Energy Conservation Act 1995(b) shall be treated for the purposes of regulation 14 of the 2008 Regulations (continuity in relation to other plans, schemes, statements and strategies) as if it were a plan to which paragraph (1) of that regulation applies.

Preparation of reports and plans: end of exemption

4.—(1) This regulation applies where a single tier council is under a duty to prepare and publish—

- (a) a home energy conservation report under section 2 of the Home Energy Conservation Act 1995;
- (b) a rights of way improvement plan under section 60 of the Countryside and Rights of Way Act 2000(c); or
- (c) an air quality action plan under section 84(2)(b) of the Environment Act 1995(d),

which any one of its related predecessor councils did not prepare and publish because, by virtue of the Local Authorities’ Plans and Strategies (Disapplication) (England) Order 2005(e), it was not required to do so.

(2) Where the duty arises in relation to a home energy conservation report or an air quality action plan, the single tier council must prepare and publish the report or plan for the whole of its area within 12 months of the reorganisation date.

(3) Where the duty arises in relation to a rights of way improvement plan, the single tier council must prepare and publish the plan for the whole of its area within 24 months of the reorganisation date.

(a) S.I. 2008/2867.
(b) 1995 c.10.
(c) 2000 c.37.
(d) 1995 c.25.
(e) S.I. 2005/157.

Fixed penalty receipts and trading

5.—(1) This regulation applies to a single tier council which has not been categorised under section 99(4) of the 2003 Act.

(2) Where, by virtue of regulations under section 96 of the Clean Neighbourhoods and Environment Act 2005(a) (use of fixed penalty receipts: higher tier authorities), any of a single tier council's related predecessor councils was permitted to use its fixed penalty receipts for the purposes of any of its functions, the single tier council may use its fixed penalty receipts for the purposes of any of its functions for the period of 12 months beginning on the reorganisation date.

(3) Where any of a single tier council's related predecessor councils was authorised under section 95 of the 2003 Act (power to trade in function-related activities through a company) to do things for a commercial purpose, the single tier council may, for the period of 24 months beginning on the reorganisation date, do for a commercial purpose anything which it is authorised to do in the exercise of any of its functions, other than functions under that section, as if it were authorised to do so under that section.

(4) In this regulation, "fixed penalty receipts" means amounts to which section 96 of the Clean Neighbourhoods and Environment Act 2005 applies that are paid to a single tier council or any related predecessor council.

PART 3

CODE OF CONDUCT MATTERS

Councillors' conduct: functions of monitoring officers, standards committees and single tier councils

6.—(1) This regulation applies where, on the day before the reorganisation date, steps remain to be taken under the 2000 Act by the monitoring officer or standards committee of a predecessor council in relation to any written allegation pursuant to section 58 of the 2000 Act(b) (written allegations) received by the Standards Board for England before 8th May 2008.

(2) The monitoring officer of the predecessor council must provide the monitoring officer of a related single tier council (the "related monitoring officer") with—

- (a) a copy of the allegation,
- (b) a summary of the steps taken by the predecessor council in relation to the allegation,
- (c) every other document relevant to the allegation, and
- (d) such other information relating to the allegation as the related monitoring officer may require.

(3) On receipt of a copy of an allegation, the related monitoring officer must notify—

- (a) the Standards Board for England,
- (b) the person who made the allegation,
- (c) the subject of the allegation, and
- (d) any parish council concerned,

of its receipt.

(a) 2005 c.16.

(b) Article 3 of the Local Government and Public Involvement in Health Act 2007 (Commencement No. 6 and Transitional and Saving Provision) Order 2008 (S.I.2008/1265) provides that section 58 of the 2000 Act and the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 (S.I.2003/1483) as they stand immediately before 8th May 2008 shall continue to have effect in relation to any allegation in writing received by the Standards Board for England before 8th May that a member or co-opted member (or former member or former co-opted member) of a relevant authority in England has failed, or may have failed to comply with the authority's code of conduct.

(4) On and after the reorganisation date—

(a) the single tier council to whose related monitoring officer a copy of an allegation has been provided in accordance with paragraph (2)(a) shall be the relevant authority in relation to the allegation for the purposes of the 2000 Act and the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003(a) (“the 2003 Regulations”); and

(b) the related monitoring officer shall be the monitoring officer in relation to the allegation for those purposes,

and, so far as is necessary for the purpose of giving effect to the 2000 Act and the 2003 Regulations, references in that Act and those Regulations to the relevant authority shall include references to the single tier council and its related predecessor councils.

PART 4

PORT HEALTH AUTHORITIES

Staffing

7.—(1) Notwithstanding regulation 3(5) of the TUPE Regulations, the transfer of port health authority functions by or in consequence of a structural change made by a section 7 order—

(a) from a predecessor council to a single tier council; or

(b) from a joint board to a single tier council,

shall be treated for all purposes as a relevant transfer within the meaning of the TUPE Regulations, whether or not, apart from this provision, those Regulations would otherwise apply.

(2) In this regulation—

“joint board” means a board constituted as a port health authority under section 2 of the Public Health (Control of Disease) Act 1984(b) or section 2 of the Public Health Act 1936(c);

“port health authority functions” means any functions exercised by a local authority or by a joint board by virtue of being constituted as a port health authority under those Acts; and

“the TUPE Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006(d).

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

John Healey
Minister of State

4th March 2009

Department for Communities and Local Government

(a) S.I. 2003/1483; regulation 2 and regulations 4 to 7 were amended by the Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004 (S.I. 2004/2617).

(b) 1984 c.22.

(c) 1936 c.49. Section 2 of the Public Health Act 1936 was repealed by section 78 of, and Schedule 3 to, the Public Health (Control of Diseases) Act 1984, but with savings for orders made under that section (see section 77 of, and paragraph 2 of Schedule 1 to, the Public Health (Control of Diseases) Act 1984).

(d) S.I. 2006/246.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 1 of the Local Government and Public Involvement in Health Act 2007 (the “2007 Act”) provides for the establishment of a single tier of local government for areas in England. There is a single tier of local government for an area if there is either a county council and no district councils for that area, or a district council and no county council for that area (section 1(2) of the 2007 Act). Where the Secretary of State has received a proposal or a recommendation that there should be a single tier of local government for an area, he may make an order to implement the proposal or recommendation with or without modification. These Regulations make incidental, consequential, transitional and supplementary provision of general application for the purposes of, and in consequence of, orders made by the Secretary of State under section 7 of the 2007 Act (“section 7 orders”).

Part 2 of the Regulations makes provision in relation to the categorisation of single tier councils on and after the reorganisation date, and in particular makes transitional provision as to the effect of the categorisation of a predecessor council on what its related single tier council can do. Section 99(4) of the Local Government Act 2003 (“the 2003 Act”) gives the Secretary of State power to categorise local authorities by order, following reports made from time to time by the Audit Commission categorising such authorities in relation to their performance in exercising their functions, which she has done in the Local Authorities (Categorisation) (England) Order 2006 (S.I. 2006/3096).

Regulation 3(2) of these Regulations provides that the continuity provision made by regulation 4(1) of the Local Government (Structural Changes) (Transitional Arrangements) (No.2) Regulations 2008 (S.I. 2008/2867) (“the 2008 Regulations”) shall not apply to the categorisation of a predecessor council or to anything which that council was entitled to do, or exempted from doing, by virtue of that categorisation. Regulation 4(1) provides that anything done by or in relation to a predecessor council in the exercise of, or in connection with, a function that is to be exercisable on and after the reorganisation date by its related single tier council shall have effect as if done by that council. The effect of regulation 3 of these Regulations is that the single tier council may not rely on the categorisation of its predecessor councils, except to the extent provided in Part 2 of these Regulations, or other regulations made under section 14 of the 2007 Act.

The remaining provisions of Part 2 provide for circumstances in which a single tier authority may rely on exemptions and entitlements enjoyed by its predecessor council as follows:

Regulation 3(3) has the effect of providing for continuity in relation to the preparation of a home energy conservation report prepared under section 2 of the Home Energy Conservation Act 1995 (1995 c.25), so that a single tier council is treated as satisfying its duty to prepare and publish such a report if its predecessor council had done so.

Regulation 4 applies where a single tier council is under a duty to prepare and publish certain reports and plans which its predecessor council (or one or more of its predecessor councils) was exempt from preparing and publishing by virtue of the Local Authorities’ Plans and Strategies (Disapplication) (England) Order 2005 (S.I. 2005/157). It gives the single tier council 1 year to prepare a home energy conservation report or an air quality action plan (under section 84(2) (b) of the Environment Act 1995 (1995 c.25)), or 2 years to prepare a rights of way improvement plan (under section 60 of the Countryside and Rights of Way Act 2000 (2000 c.37)). The new report or plan must be prepared for the whole of the single tier council’s area.

Regulation 5 makes provision in relation to single tier councils which have not been categorised (because they were not local authorities prior to the reorganisation date). Where one or more of the predecessor councils of the single tier council was permitted to use fixed penalty receipts paid to it under section 96 of the Clean Neighbourhoods and Environment Act 2005 (use of fixed penalty receipts from environmental offences) for any of its functions, the single tier council may use its fixed penalty receipts in the same way for a period of 1 year. Similarly, where one or more of the predecessor councils of a single tier council was authorised under section 95 of the 2003 Act to do

things for commercial purposes, the single tier council will be similarly authorised for a period of 2 years from the reorganisation date.

Part 3 of the Regulations makes provision about councillors' conduct. Part 3 of the Local Government Act 2000 (the "2000 Act") establishes the conduct regime for local authority members, including the requirement for each local authority to establish a standards committee. Part 3 of the 2000 Act was amended by Part 10 of the 2007 Act introducing a new devolved conduct regime, in which allegations are considered primarily by the standards committee of the local authority with whose code of conduct a member is alleged to have failed to comply. Prior to this, allegations were considered by the Standards Board for England. The procedure for dealing with allegations received before 8th May 2008 is set out in the 2000 Act and in the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 (S.I.2003/1483) (the "2003 Regulations"). Section 58 of the 2000 Act and the 2003 Regulations are saved by the Local Government and Public Involvement in Health Act 2007 (Commencement No.6 and Transitional and Saving Provision) Order 2008 (S.I.2008/1265) (the "2008 Savings Order") but only for the purposes of any allegation received by the Standards Board for England before 8th May 2008. The procedure for dealing with allegations received on or after that date is set out in the Standards Committee (England) Regulations 2008 (S.I.2008/1085).

Regulation 6 applies to allegations received by the Standards Board for England before 8th May 2008, and which have subsequently been referred to a local authority monitoring officer. Paragraph (2) makes provision to ensure that a single tier council is provided with information relating to such allegations. Regulation 6(4) enables a single tier council to deal with such allegations in accordance with the provisions of the 2000 Act and the 2003 Regulations as saved by the 2008 Savings Order.

Part 4 of the Regulations makes provision in relation to the staff of port health authorities. It provides for the transfer of the functions of port health authorities constituted under section 2 of the Public Health (Control of Diseases) Act 1984 or section 2 of the Public Health Act 1936 to be treated for all purposes as a relevant transfer within the meaning of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246). The effect of this is to ensure that the employees of port health authorities receive the same protection as other local authority employees when the port health authority's functions transfer to a single tier council by or in consequence of restructuring.

A full impact assessment has not been produced for this instrument as no impact on business or the private or voluntary sectors is foreseen.

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STATUTORY INSTRUMENTS

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