

EXPLANATORY MEMORANDUM TO
THE LOCAL GOVERNMENT (STRUCTURAL CHANGES) (FURTHER
FINANCIAL PROVISIONS AND AMENDMENT) REGULATIONS 2009

2009 No. 5

1. This Explanatory Memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1. The Local Government (Structural Changes) (Transitional Arrangements) Regulations 2008 (S.I. 2008/2113) (“the first transitional regulations”) and The Local Government (Structural Changes) (Finance) Regulations 2008 (S.I. 2008/3022), make provision for the transition to a single tier of local government in relation to areas in England for which an order has been made under section 7 of the Local Government and Public Involvement in Health Act 2007 (“the 2007 Act”). There is a single tier of local government where there is a sole principal authority for the area (a “single tier council”).
- 2.2. An order which establishes a single tier council under section 7 of the 2007 Act (a “section 7 order”) will provide for a specified reorganisation date on which the functions of one or more of the existing councils are transferred to the new single tier council, and these existing councils may be abolished.
- 2.3. These Regulations make further provision for the transition to single tier local government in those areas for which a section 7 order is made. They concern matters relating to finance, which are relevant to councils which will be abolished on the reorganisation date (“predecessor councils”) and to the single tier councils that will succeed them (“successor councils”). A successor council may be an existing district or county council (a “preparing council”) or a newly constituted body which does not become a local authority until the reorganisation date (a “shadow council”).

3. Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1. None

4. Legislative Context

- 4.1. Part 1 of the 2007 Act provides for the making of local government structural and boundary changes in England. So far as is relevant to these Regulations, it enables provision to be made by a section 7 order for the restructuring of an area in which there are two tiers of local government (a county council and district councils) into a single tier of local government (a county council or a district council). Section 1(2) provides, for the purposes of Chapter 1

(structural and boundary change), that there is ‘a single tier of local government’ for an area if ‘there is a county council and no district councils for that area or there is a district council and no county council for that area’.

4.2. Seven section 7 orders have been made to date, as follows:

- 4.2.1. Five orders providing for the existing county council for an area to be established as a single tier council (Cornwall (SI 2008/491); Durham (SI 2008/493); Northumberland (SI 2008/494); Shropshire (SI 2008/492); and Wiltshire (SI 2008/490)).
- 4.2.2. Two further orders, one providing for the establishment of two new single tier district councils for Cheshire (SI 2008/634); and one providing for the existing Bedford Borough Council to be established as a single tier council and for a new single tier council for Central Bedfordshire (SI 2008/907)).

4.3. Further details about the section 7 orders made to date can be found in the Explanatory Memoranda which were laid alongside the draft orders¹. In this document ‘single tier council(s)’ has the same meaning as ‘unitary council(s)’ in the Explanatory Memoranda previously laid alongside those orders. The term ‘single tier council’ is the term used in these Regulations to describe what is commonly known as a unitary council, and reflects the 2007 Act’s description of unitary local government as “a single tier of local government” (section 1(2)).

4.4. Section 14 of the 2007 Act gives the Secretary of State power, by regulations of general application, to make incidental, consequential, transitional and supplementary provision for the purposes or in consequence of any structural change orders, or for giving full effect to such orders. Section 14(2) provides for subsection 14(1) to be read with section 15 of the 2007 Act. Section 15(2)(a) provides that regulations under section 14 may modify, exclude or apply (with or without modifications) any enactment. By virtue of section 15(3)(b), “enactment” in section 15(2) includes an instrument made under an enactment. The 2007 Act also provides that regulations made under that Act may make different provision for different cases (section 240(10)).

4.5. These Regulations are made under section 14 (to be read with section 15) and section 240(10) of the 2007 Act. Their purpose is to make provision about certain financial matters relevant to the functions of predecessor and successor councils; in particular, the dates on which the collection and general funds of successor councils are to be established, the treatment of surpluses and deficits in the collection funds of predecessor or preparing councils, and the calculation of the budget requirement by preparing or shadow councils in whose areas charter trustees are likely to be established by a section 7 order on the reorganisation date.

¹ The Explanatory Memorandum for the five county Orders can be found at: http://www.opsi.gov.uk/si/si2008/draft/em/ukdsiem_9780110808154_en.pdf. The Memorandum for Cheshire is at http://www.opsi.gov.uk/si/si2008/em/uksiem_20080634_en.pdf, and for Bedfordshire at http://www.opsi.gov.uk/si/si2008/em/uksiem_20080907_en.pdf

- 4.6. As regards funds, the provisions are consequential on the amendments made by paragraph 16 of Schedule 1 to the 2007 Act. The amendment of section 89 of the Local Government Finance Act 1988 (c.41) (“the 1988 Act”) by paragraph 16(3) requires the collection fund of a single tier council to be established on a date specified in either the section 7 order that established the council or in regulations under section 14 of the 2007 Act. (That requirement does not apply in relation to Bedford Borough Council, one of the two single tier councils that will succeed Bedfordshire County Council on 1st April 2009, because that Council is not “established” by the section 7 Order for Bedfordshire - it already has collection and general funds.)
- 4.7. Regulation 3 of these Regulations specifies a date for the purposes of section 89(2C) of the 1988 Act. That date is expressed in regulation 3 as the date that falls one day after the date on which the shadow council or preparing council which is a county council makes its calculation under section 32 (calculation of budget requirement) of the 1992 Act for the financial year beginning on the reorganisation date. The ‘reorganisation date’ is defined in regulation 2(1) as the date specified in the section 7 order as that on which a structural change comes into effect. It is not possible to specify a fixed date because the collection fund has to be in place so that pre-payments for the financial year beginning on 1st April 2009 can be recorded, and councils are not required to make their section 32 calculations on the same date.
- 4.8. The amendment relevant to a single tier council’s general fund is made by paragraph 16(4)(d) of Schedule 1 to the 2007 Act, which inserts new paragraph (3D) into section 91 of the 1988 Act. The date specified in regulation 4 of the Regulations as that on which a single tier council’s general fund must be established is 1st April 2009. It is recognised that this date is applicable only in relation to the section 7 orders referred to in paragraph 4.2. Should other section 7 orders be made, the intention is to specify the date for the purposes of section 91(3D) either in the section 7 order or by amending these Regulations.
- 4.9. In addition, subsection (8) of section 91 of the 1988 Act (amended by paragraph 16(4)(e) of Schedule 1 to the 2007 Act) provides that the assets held in the county fund of a relevant county council immediately before the reorganisation date (other than assets forming part of a trust fund) shall be transferred on that date to its general fund established under this section. Subsection (9) of section 91 (inserted by paragraph 16(4)(f) of Schedule 1 to the 2007 Act) defines ‘relevant county council’, and also defines for the purposes of that section ‘the reorganisation date’ as the date on which the council is required by this section to establish its general fund. Accordingly, to ensure that the county funds of the relevant county councils continue to operate until the single tier council is established, the only date that can be specified as that on which the general fund must be established is 1 April.
- 4.10. Provision for the apportionment of surpluses and deficits is made in regulation 11 of the Local Authorities (Funds) (England) Regulations 1992 (S.I. 1992/2428).

4.11. Provision about other financial matters has been made in the Local Government (Structural Changes) (Finance) Regulations 2008 (S.I. 2008/3022).

5. Territorial Extent and Application

5.1. This instrument applies in relation to England.

6. European Convention on Human Rights

6.1. As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1. Between February and March 2008, seven orders under section 7 of the 2007 Act came into force, implementing from 1st April 2009 a single tier of local government in the county areas of Bedfordshire, Cheshire, Cornwall, Durham, Northumberland, Shropshire and Wiltshire. As set out at paragraph 2.3 above, a successor council which will become a single tier council on the reorganisation date may be either an existing district or county council or a newly constituted shadow council.

7.2. The Local Government (Structural Changes) (Finance) Regulations 2008 (S.I. 2008/3022), which make transitional provision relating to budget requirements and council tax, came into force on 24th December 2008.

7.3. The Regulations that are the subject of this Memorandum deal with matters relating to funds, to the apportionment of surpluses and deficits, and the anticipation of the budget requirement for Charter Trustees to be established by order under the 2007 Act.

General and collection funds

7.4. As discussed at paragraphs 4.6 to 4.10, sections 89 and 91 of the 1988 Act were amended by paragraph 16 of Schedule 1 to the 2007 Act, requiring that the collection fund and general fund of a single tier council be established on a date specified in either the section 7 order that established the council or in regulations under section 14 of the 2007 Act. Regulations 3 and 4 therefore ensure that the collection fund is established ahead of the date on which the new single-tier councils are established so that the preparing and shadow councils can begin to deal with any payments which are payable into the collection fund and which are received in advance of the first financial year to which they relate.

Surpluses and deficits in collection funds

- 7.5. By virtue of section 99 of the 1988 Act (substituted by paragraph 24 of Part 3 of Schedule 10 to the Local Government Finance Act 1992 (c.14) (“the 1992 Act”) with effect for financial years from 1 April 1993) and the Local Authorities (Funds) (England) Regulations 1992 (‘the 1992 Regulations’) made under that section, billing authorities (defined, so far as relevant to these Regulations, as district councils; see section 144(2) of the 1988 Act (substituted by the 1992 Act, Schedule 13, paragraph 81) and section 1(2) of the 1992 Act (substituted by section 35 of the Local Government (Wales) Act 1994 (c.19)) are required to estimate at a prescribed time in the preceding financial year whether there is a surplus or deficit in their collection fund for that year and the amount of the surplus or deficit. Any such surplus or deficit shall, in the financial year concerned (i.e. the year following the preceding financial year), be shared among or borne by the billing authority and its major precepting authorities (including the county council) in accordance with rules set out in the 1992 Regulations.
- 7.6. The 1992 Regulations also require the billing authority to inform its major precepting authorities of these estimated amounts, the manner in which payments must be made and the period within which or time or times at which payments or instalments of such payments must be made.
- 7.7. However, in areas currently subject to section 7 orders, there are predecessor councils that are billing authorities and county councils which are major precepting authorities that will cease to exist on and after the reorganisation date. There are also preparing county councils which on or after the reorganisation date cease to be major precepting authorities.
- 7.8. Regulation 5 amends the 1992 Regulations so that the predecessor councils that are billing authorities (“predecessor billing authorities”) make their estimates and notify their related major precepting authorities as before except that:
- 7.8.1. when notifying their major precepting authorities they must send a copy of the notice to their related successor council;
- 7.8.2. where the predecessor billing authorities are to be succeeded by a successor council that is a shadow council or a preparing council which is a county council, the aggregate of the sums estimated by each of the predecessor billing authorities as their own share of the surplus or, as the case may be, their own share of any deficit to be borne, will be treated as an amount belonging to or to be borne by the new related successor council;
- 7.8.3. where the predecessor billing authority is related to a county council which will itself cease to exist on the reorganisation date (a predecessor county council) any amount estimated by the predecessor billing authority as that predecessor county council’s share of the surplus or, as the case may be, the deficit to be borne had the county council continued to exist, will be treated as if it belonged to the related successor council;

- 7.8.4. where the council is a billing authority in respect of the current financial year and will become a single-tier council on the reorganisation date (i.e. it is a preparing council that is a billing authority), the estimate of the surplus, or as the case may be the deficit that would otherwise have belonged to or have been borne by the county council (which will cease to exist on the reorganisation date) will be treated as belonging to the preparing council (in addition to its own share of the surplus/deficit in its capacity as billing authority);
- 7.9. The preparing councils that are county councils and shadow councils will prepare a schedule of the instalments that are to be paid by the new single-tier councils to their major precepting authorities in the financial year beginning on the reorganisation date.

Charter Trustees

- 7.10. For those areas that are to be subsumed into a larger area administered by a single-tier council the department would seek to preserve and protect, if requested by the local authorities to do so, the historic traditions associated with that area. In order to avoid those traditions and privileges being lost, where it is not possible or appropriate to transfer such rights to the new single-tier council or an appropriate parish or town council, it is possible to provide for the establishment of an incorporated body known as Charter Trustees to which the Charter and its associated privileges can be transferred.
- 7.11. Where they are established, Charter Trustees are formed of the members of the new single tier council elected to the electoral areas covering the area, or part of the area, to which the historic traditions and charter relate. Charter Trustees may elect one of their number to act as town or city mayor, and hold historic and ceremonial property such as the charter, insignia and plate of the former borough or city. They can also be given the role of exercising historic ceremonial rights, for example the appointment of local officers of dignity, such as High Stewards and Honorary Recorders.
- 7.12. Section 15(1)(i) of the 2007 Act enables the Secretary of State to include in an order under section 7 (read with section 13) or in regulations under section 14 provision with respect to charter trustees. Charter Trustees were created after both the 1974 reorganisation of local government and the changes in local government introduced in the 1990s under the Local Government Act 1992.
- 7.13. Charter Trustees are local precepting authorities. They can issue a precept to the billing authority for their expenses (as a special expense, chargeable only on the relevant area).
- 7.14. Regulation 6 requires a preparing or shadow council which is a billing authority by virtue of regulation 8 of the Local Government (Structural Changes) (Finance) Regulations 2008 for an area for any part of which Charter Trustees are likely to be established on the reorganisation date to

anticipate the amount likely to be required in the financial year beginning on that date for the discharge of Charter Trustees' functions when calculating its budget requirement under section 32 of the 1992 Act. This provision is necessary because Charter Trustees will not be established until the reorganisation date and preparing or shadow councils that are billing authorities will need to anticipate, for the purposes of council tax calculations relevant to the year beginning on that date, the amount likely to be required in that year by Charter Trustees.

- 7.15. Subject to Parliamentary approval, an order is to be made establishing Charter Trustees for certain areas in respect of which a section 7 order has already been made. Further supporting regulations are to be made in relation to the powers of Charter Trustees and these will include provisions to ensure that payments up to the amount anticipated as mentioned in paragraph 7.14 are made to them by the relevant single-tier councils.

Financial Reserves

- 7.16. Regulation 7 amends the definition of financial reserves in regulation 6 of the Local Government (Structural Changes) (Transfer of Functions, Property, Rights and Liabilities) Regulations (SI 2008/2176). Broadly this amendment is required to remove reference to a repealed section of the Local Government and Housing Act 1989 and to remove specific reference to the purpose for which capital receipts can be applied to prevent any uncertainty.

Timing of the Regulations

- 7.17. The Regulations are being laid now partly because of the issue relating to pre-payments into successor councils' collection funds mentioned in paragraph 4.8 above and partly because successor councils need to notify before 31 January 2009 their major precepting authorities of any schedule of instalments relating to surpluses on predecessor councils' collection funds.

8. Consultation outcome

- 8.1. The Department's discussion document "Councils' Proposals for Unitary Local Government: An Approach to Implementation"² (August 2007) set out the Department's initial intentions as to the approach to be adopted for implementing any proposals for single-tier local government. The document generally dealt with higher level issues than those addressed in these Regulations. The Discussion Paper was brought to the attention of the potentially affected councils, with the request that they involve their own local and regional stakeholders in its consideration, and was the starting point for the Government's discussion with authorities about the issues it covered.

- 8.2. Since the publication of this discussion document, and in particular since the coming into force of the seven orders made to date, finance issues and

² <http://www.communities.gov.uk/publications/localgovernment/unitarycouncilsimplementation>

ceremonial arrangements have been among the issues discussed between the Department and the Joint Implementation Teams (“JITs”) for each area, formed of senior officers of the affected authorities, and led by the Chief Executive, acting Chief Executive, or lead officer of a successor council. Finance issues have also been discussed by members of a Finance Working Group comprising finance leads of each of the shadow or preparing councils, and there have also been extensive discussions of the wider ceremonial arrangements with appropriate officers from the relevant authorities.

- 8.3. The need to establish collection and general funds was discussed with the Finance Working Group and the JITs. It was at the suggestion of the successor councils that the department is proposing a date for the establishment of the new single-tier councils’ collection funds before the reorganisation date so that they can deal with pre-payments and payments relating to the first financial year in advance of the reorganisation date.
- 8.4. It was also in discussion in the Finance Working Group that the department was alerted to the need to make provision for dealing with the estimates of surpluses and deficits on the collection fund.
- 8.5. Finally, there has been detailed discussion of ceremonial issues and the need to establish Charter Trustees in some of the areas for which section 7 orders have been made. The provisions being put in place through these Regulations are to ensure that the relevant shadow or preparing council will be able to anticipate, when they calculate their budget requirements and council tax, the operational costs of such Charter Trustees as may be established.
- 8.6. A draft of these Regulations has been circulated to lead officers of the successor councils. No substantive comments have been received.

9. Guidance

- 9.1. The Department does not intend to issue any formal guidance to accompany these Regulations. However, the Department will continue its close dialogue and liaison with the JITs throughout the transitional period up to and beyond the reorganisation date.

10. Impact

- 10.1. The impact on business, charities or voluntary bodies is nil.
- 10.2. There will be no additional impact on the public sector above that already identified in the Impact Assessments accompanying the seven section 7 orders providing for the creation of the nine new single tier councils, which were based on the figures provided by the local authorities in their proposals.
- 10.3. An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1. The legislation does not apply to small business.

12. Monitoring & review

12.1. The Department continues to maintain a close dialogue and liaison with the JITs. This is centred around monthly meetings, which provide the opportunity for the Department to be kept abreast of the progress being made in each area to implement the change to single tier local government. Any issues relating to these Regulations will be identified through these channels.

13. Contact

13.1. Ian Barber at Communities and Local Government, tel: 020 7944 4469 or email: ian.barber@communities.gsi.gov.uk, can answer any queries regarding the instrument.

Department for Communities and Local Government

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