

2008 No. 2113

LOCAL GOVERNMENT, ENGLAND

The Local Government (Structural Changes) (Transitional Arrangements) Regulations 2008

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| <i>Made</i> - - - - | <i>4th August 2008</i> |
| <i>Laid before Parliament</i> | <i>7th August 2008</i> |
| <i>Coming into force</i> - - | <i>29th August 2008</i> |

The Secretary of State, in exercise of the powers conferred by section 14 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) (Transitional Arrangements) Regulations 2008 and come into force on 29 August 2008.

Interpretation

2. In these Regulations—

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

“the 2000 Regulations” means the Local Authorities (Functions and Responsibilities) (England) Regulations 2000(b);

“Implementation Executive” means a committee of a preparing council’s executive established in pursuance of a section 7 order;

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

“preparing council” means a local authority which, in accordance with a section 7 order, becomes a single tier council on the reorganisation date;

“reorganisation date”, in relation to a section 7 order, means the date specified in that order as that on which a structural change comes into effect;

“section 7 order” means an order under section 7 of the 2007 Act;

“shadow council” means an authority (not being a local authority) which, in accordance with a section 7 order, becomes a single tier council on the reorganisation date;

(a) 2007 c.28. Section 14(2) provides for section 14(1) to be read with section 15.

(b) S.I. 2000/2853; amended by S.I.s 2008/516 and 2008/744; there are other amending instruments but none is relevant.

“shadow executive”, in relation to a shadow council, means the executive created by the council in accordance with a section 7 order;

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

“successor council”—

(a) in relation to a predecessor council whose area is to become part of the area of a sole single tier council on the reorganisation date, means the preparing or shadow council which will become that single tier council;

(b) in relation to a predecessor council whose area is to become the area of more than one single tier council on the reorganisation date, means the preparing or shadow councils which will become those single tier councils; and

“transitional period” means the period beginning—

(c) on the date on which these Regulations come into force; or

(d) in relation to a section 7 order made after that date, the first date on which any action is required to be taken in accordance with that order,

and ending immediately before the reorganisation date.

PART 2

RESPONSIBILITY FOR FUNCTIONS

Continuity

3.—(1) Anything which is in the process of being done by or in relation to a predecessor council—

(a) immediately before the beginning of the transitional period;

(b) in the exercise of, or in connection with, any function which is to be exercised by the preparing or shadow council by virtue of these Regulations,

may be continued by or in relation to the successor council.

(2) Anything done by or in relation to a predecessor council in the exercise of, or in connection with, any function which is to be exercised by the preparing or shadow council by virtue of these Regulations shall have effect as if done by or in relation to the successor council.

Responsibility for functions exercised by a shadow council

4.—(1) This regulation applies to a shadow council whose shadow executive is appointed by, or nominated in accordance with, a section 7 order.

(2) Any function which is to be exercised by the shadow council by virtue of these Regulations shall be the responsibility of its shadow executive notwithstanding any other enactment by virtue of which the function—

(a) would not be the responsibility of its executive; or

(b) may, but need not, be the responsibility of its executive.

Responsibility for functions exercised by a preparing council

5.—(1) This regulation applies to a preparing council for which there is an Implementation Executive.

(2) Any function which is to be exercised by the preparing council by virtue of these Regulations shall be a transitional function for the purposes of the section 7 order which establishes that council’s executive (and accordingly the responsibility of the Implementation Executive) notwithstanding any other enactment by virtue of which the function—

- (a) would not be the responsibility of its executive; or
- (b) may, but need not, be the responsibility of its executive.

Modification of the 2000 Regulations

6. In relation to the exercise of functions by a council to which regulation 4 or 5 applies, the 2000 Regulations (which make provision as to functions which are not, or need not be, the responsibility of an executive) shall have effect subject to the modifications specified in the Schedule to these Regulations.

PART 3 GOVERNANCE

Establishment of parishes and parish councils under the 2007 Act

7.—(1) This regulation applies—

- (a) in relation to recommendations or proposals made, or a petition received, by a predecessor council under Part 2 of the Local Government and Rating Act 1997 which by virtue of the Schedule to the 2008 Order are to be treated as recommendations made in a community governance review under Part 4 of the 2007 Act; or
- (b) where a predecessor council undertakes, or has undertaken, a community governance review under Part 4 of the 2007 Act,

where the predecessor council has not exercised its powers under section 86 of the 2007 Act to give effect to the review’s recommendations before the beginning of the transitional period.

(2) Sections 86 and 96 to 100 of the 2007 Act shall have effect as if the successor council were the principal council.

(3) Where a predecessor council undertakes a community governance review during the transitional period and its successor council is a shadow council—

- (a) section 79(3) of the 2007 Act shall have effect as if the requirement for a district council to notify the county council were a requirement to notify both the county council and the shadow council; and
- (b) section 92 of that Act shall have effect as if the shadow council were a principal council.

(4) In this regulation, “the 2008 Order” means the Local Government and Public Involvement in Health Act (Commencement No.3, Transitional and Saving Provisions and Commencement No.2 (Amendment)) Order 2008(a).

Establishment of parish councils under the Local Government and Rating Act 1997

8.—(1) This regulation applies where the Secretary of State has given a direction under section 14 of the Local Government and Rating Act 1997(b) requiring a predecessor council to make provision to establish a parish council on or after the reorganisation date.

(2) Where the predecessor council has not complied with the direction before the beginning of the transitional period—

- (a) references in the direction to the predecessor council shall have effect as references to the successor council; and

(a) 2008/337 (C.13).

(b) 1997 c.29. Part 2 of the Local Government and Rating Act 1997 was repealed by sections 101 and 241 of, and paragraph 10 of Schedule 5 and paragraph 4 of Schedule 18 to, the 2007 Act, but has been saved for certain purposes by article 2 of, and the Schedule to, the 2008 Order.

- (b) a successor council which is a county council or a shadow council shall be treated as if it were a unitary county council for the purposes of making an order under section 16 of the Local Government and Rating Act 1997.

(3) Where the predecessor council has made provision by order to comply with the direction, sections 86 and 98 of the 2007 Act shall have effect for the purposes of enabling the successor council to vary or revoke any incidental, consequential, transitional or supplementary provision made in that order as if—

- (a) the successor council were the principal council; and
- (b) a community governance review had been undertaken under Part 4 of the 2007 Act.

Old-style executive arrangements

9. Schedule 4 to the 2007 Act (new arrangements for executives: transitional provision) shall have effect in relation to a predecessor council as if paragraphs 3 and 4 (which provide for a change in a local authority's governance arrangements) were omitted.

Petitions on executive arrangements

10. Part 2 of the Local Government Act 2000 (arrangements with respect to executives etc) shall have effect in relation to a predecessor council as if any regulations made under section 34 (holding of a referendum about the authority's executive arrangements) did not apply to that council.

PART 4

LOCAL AREA AGREEMENTS AND JOINT STRATEGIC NEEDS ASSESSMENTS

Preparation of new agreements and assessments

11.—(1) This regulation applies for the purposes of—

- (a) the preparation, submission and approval of a local area agreement; and
- (b) the preparation and publication of an assessment of relevant needs,

for the area of a single tier council.

(2) Part 5 of the 2007 Act shall have effect during the transitional period—

- (a) in relation to a preparing council which is a district council as if it were a responsible local authority under sections 103 and 117 of that Act;
- (b) in relation to a shadow council as if—
 - (i) it were a responsible local authority under sections 103 and 117 of that Act; and
 - (ii) the requirement in section 106(2)(c)(i) to have regard to its community strategy were a requirement to have regard to the community strategies of its predecessor councils (in so far as those strategies relate to the shadow council's area); and
- (c) in relation to a predecessor council which is a county council, as if it were a partner authority under sections 104 and 117 of that Act, and not a responsible local authority under sections 103 and 117.

(3) Where the predecessor council is a county council, its successor council and each partner PCT within the meaning of section 116 of the 2007 Act must consult with it when preparing an assessment of relevant needs under that section.

Application of existing agreements and assessments to a shadow council

12. In relation to a local area agreement or an assessment of relevant needs of a predecessor council, Part 5 of the 2007 Act shall have effect as if a successor council which is a shadow council—

- (a) were a partner authority(a);
- (b) were a relevant district council for the purposes of section 116 of that Act.

PART 5

ELECTORAL ADMINISTRATION

Casual vacancies

13. Section 89(1) of the Local Government Act 1972(b) (filling of casual vacancies in case of councillors) shall not apply where a casual vacancy in the office of councillor of a predecessor council arises within six months of the reorganisation date.

Returning officers and proper officers

14.—(1) The returning officer and the proper officer at an election to fill a casual vacancy in the office of councillor for the area of a shadow council shall be—

- (a) the officers appointed as such by the shadow council; or
- (b) if the shadow council has not appointed a returning officer or a proper officer at the date that the vacancy arises, the person designated by the section 7 order which established the council as the returning officer in relation to the first election of councillors.

(2) The returning officer and the proper officer at any election of councillors of parishes in the area of a predecessor council that will take place after the reorganisation date but for which proceedings must be taken by a returning officer or proper officer before that date shall be—

- (a) the officers appointed as such by the successor council; or
- (b) if the successor council has not appointed a returning officer or a proper officer before the date on which the notice of election must be published, the returning officer and proper officer appointed by the predecessor council.

(3) In this regulation, “proper officer” means—

- (a) in relation to a casual vacancy in the office of councillor for the area of a shadow council, the proper officer for the purposes of Part 5 of the Local Government Act 1972;
- (b) in relation to an election of councillors of parishes, the proper officer for the purposes of the Local Elections (Parishes and Communities) (England and Wales) Rules 2006(c).

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

John Healey
Minister of State

4th August 2008

Department for Communities and Local Government

(a) See sections 104 and 117 of the 2007 Act.
(b) 1972 c.70.
(c) S.I. 2006/3305.

Modification of the 2000 Regulations

The modifications are the omission of—

- (c) regulation 2(6E) (giving effect to recommendations made in a community governance review)(**a**);
- (d) items 3, 4 and 5 of paragraph D of Schedule 1 (functions in relation to parishes and parish councils);
- (e) items 7, 8 and 9 of paragraph EB of Schedule 1 (certain functions relating to community governance)(**b**); and
- (f) item 22 of Schedule 2 (functions relating to local area agreements).

(a) Regulation 2(6E) of the 2000 Regulations was inserted by regulation 4(b) of the Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2008 (S.I. 2008/516) (“the 2008 Amendment Regulations”).

(b) Paragraph EB of Schedule 1 to the 2000 Regulations was inserted by regulation 5(a) of the 2008 Amendment Regulations.

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 in relation to the exercise of functions by local authorities during the transitional period (defined in regulation 2) for the purposes of, and in consequence of, orders made by the Secretary of State under section 7 of the 2007 Act. Section 14(3) of the 2007 Act provides for these Regulations to have effect subject to any provision included in such an order.

Regulation 3 provides for continuity when a function of a council which will be abolished on the reorganisation date is, by virtue of these Regulations, to be exercised during the transitional period by the council which will succeed it (a “successor council”). Anything which has been done by, or is in the process of being done by, the council which will be abolished in the exercise of or in connection with such a function has effect as if done by or in relation to the successor council, and may be continued by or in relation to the successor council.

Regulations 4 to 6 and the Schedule make provision for responsibility for the discharge of functions by successor councils during the transitional period. Part 2 of the Local Government Act 2000 provides that the discharge of a local authority’s functions is the responsibility of an executive of the authority unless those functions are specified as functions that are not to be the responsibility of the authority’s executive. These Regulations modify the provision made under Part 2 of the Local Government Act 2000 in relation to successor councils which are either shadow councils established by an order under section 7 of the 2007 Act, or existing councils for which an executive committee, referred to as an Implementation Executive, has been established by such an order. The effect of these modifications is to make responsibility for any function which such successor councils will exercise by virtue of these Regulations a function of its shadow executive (in relation to a shadow council) or its Implementation Executive (in relation to an existing council for which such an Executive has been constituted).

Regulation 7 provides that where a community governance review is or has been undertaken by a council which is to be abolished on the reorganisation date, the powers to implement the recommendations or proposals resulting from that review (including, in particular, proposals for the establishment of new parishes or parish councils) shall be exercised during the transitional period by the successor council. Regulation 8 makes similar provision in relation to the establishment of new parish councils under the Local Government and Rating Act 1997, which has been repealed by the 2007 Act but saved for certain purposes by the Local Government and Public Involvement in Health Act Commencement No.3, Transitional and Saving Provisions and Commencement No.2 (Amendment) Order 2008.

Regulation 9 and 10 make provision in relation to the governance of councils which will be abolished on the reorganisation date. Their effect is to disapply the requirements of paragraphs 3 and 4 of Schedule 4 to the 2007 Act, and of section 34 of the Local Government Act 2000, which make provision for changes in the form of a council’s executive.

Regulation 11 modifies Part 5 of the 2007 Act so that during the transitional period a local area agreement can be prepared submitted and approved, and an assessment of relevant needs prepared and published, for the area of a single tier council. Regulation 12 makes provision in relation to the local area agreement or assessment of relevant needs of a predecessor council to ensure that a shadow council is treated as a partner authority of the predecessor council (so that, for example, it must be consulted about any proposal to revise a local area agreement under section 111 of the 2007 Act).

Regulation 13 disapplies the requirement to hold a by-election where a casual vacancy arises for a councillor of a council in the six months before its abolition. Regulation 14 makes provision for who will be the returning officer and proper officer for the purpose of holding a by-election to a shadow council, or for the purpose of any election to a parish council where such officers are required to act before the reorganisation date in relation to parish council elections that are to be held after that date.

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

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