
STATUTORY INSTRUMENTS

2008 No. 2176

The Local Government (Structural Changes) (Transfer of Functions, Property, Rights and Liabilities) Regulations 2008

PART 3

TRANSFER OF PROPERTY, RIGHTS AND LIABILITIES

Interpretation and application of Part 3

6.—(1) In this Part —

“associated property”, in relation to any land of a predecessor council, means —

- (a) property in or on the land which is used or intended to be used by the council exclusively for the discharge of functions on the land;
- (b) property which is so used or intended to be so used and which is kept elsewhere when not in use;
- (c) investments or cash which relate exclusively to the land; and
- (d) records which relate exclusively to the land;

“contract” includes any enforceable undertaking;

“financial reserves”, in relation to a predecessor council and any successor council, means—

- (a) the total of such amounts of a description contained in section 41(3)(b) of the Local Government and Housing Act 1989⁽¹⁾ (expenditure to be charged to revenue account) as have at any time been charged to a revenue account of the predecessor council, to the extent that those amounts have not been applied before the reorganisation date; and
- (b) the total of the amount of the predecessor council’s capital receipts, as defined for the purposes of Chapter 1 of the Local Government Act 2003⁽²⁾ (capital finance etc and accounts), as have not been applied before the reorganisation date—
 - (i) to meet expenditure incurred for capital purposes; or
 - (ii) as provision to meet credit liabilities; and

“investment” does not include any land held as an investment.

(2) Regulations 9 to 13 do not apply where regulation 7 applies.

Transfers where only one successor council

7. If a section 7 order provides for—

- (a) the winding up and dissolution of two or more predecessor councils; and

(1) 1989 c.42.

(2) 2003 c.26. As to “capital receipts” see section 9(1) of that Act.

- (b) the establishment of a single tier of local government for an area which consists of the entirety of the areas of both or all of the predecessor councils,

all property, rights and liabilities of the predecessor councils shall on the reorganisation date vest in, and transfer to, the successor council.

Transfers where more than one successor council

8.—(1) Where there is more than one successor council in relation to a predecessor council—

- (a) regulation 9 shall have effect as regards the transfer of property which, immediately before the reorganisation date, is held by the predecessor council, as sole trustee, exclusively for charitable purposes; and
- (b) regulation 10 shall have effect as regards the transfer of property consisting of financial reserves held by the predecessor council immediately before the reorganisation date.

(2) Regulations 11 to 13 shall have effect as regards the transfer of other property and rights and liabilities of a predecessor council in relation to which there is more than one successor council, but this is subject to paragraphs (3) and (4) and regulation 9(4).

(3) The following provisions of this Part do not apply with respect to so much of a predecessor council's property, rights or liabilities as is the subject of a default award made before the reorganisation date

(4) Regulation 13 shall apply with respect to so much of a predecessor council's property, rights or liabilities as is a disputed matter within the meaning of section 16(3) of the Act only until the matter is the subject of a default award.

Property held exclusively for charitable purposes

9.—(1) If the property is held for the benefit of, or of the inhabitants of, or of any particular class or body of persons in, a specified area, the property shall vest on the reorganisation date (on the same trusts) in the successor council whose area comprises the whole or the greater part of the specified area.

(2) If the property is not held as mentioned in paragraph (1), the property shall vest on the reorganisation date (on the same trusts) in the successor council whose area comprises an area which, immediately before that date, is the whole or the greater part of the predecessor council's area.

(3) Property which is not vested in a successor council by virtue of paragraph (1) or (2) shall vest on the reorganisation date (on the same trusts) in such one of the successor councils as may be agreed between them not later than three months before that date or, failing such agreement, in such successor council as the Charity Commissioners shall determine.

(4) Any rights and liabilities of a predecessor council in respect of property to which any of paragraphs (1) to (3) applies shall, on the reorganisation date, vest in the successor council in which the property is vested.

(5) Where, immediately before the reorganisation date, any power with respect to a relevant charity is, under the trusts of the charity or by virtue of any enactment, vested in, or in the holder of, an office connected with a predecessor council, that power shall, on that date, vest in, or in the holder of the corresponding office connected with, or (if there is no such office) the proper officer of, the successor council in which the property of the charity would have vested under any of paragraphs (1) to (3) if that property had been property held by the predecessor council, as sole trustee, exclusively for charitable purposes.

(6) References in paragraph (5) to a power with respect to a relevant charity do not include references to a power of any person by virtue of being a charity trustee of the charity; but where, under the trusts of the charity, the charity trustees immediately before the reorganisation date include

a predecessor council or the holder of an office connected with a predecessor council, those trustees shall instead include the successor council in which the property of the charity would have vested as mentioned in paragraph (5) or, as the case may be, the holder of the corresponding office connected with, or (if there is no such office) the proper officer of, that successor council.

(7) Nothing in this regulation shall affect any power of Her Majesty, the court or any other person to alter the trusts of any charity.

(8) In this regulation—

“charitable purposes” and “charity” have the same meanings as in the Charities Act 2006(3);

“charity trustees”, “company”, “the court” and “trusts” have the same meanings as in the Charities Act 1993(4);

“proper officer” has the same meaning as in the Local Government Act 1972(5); and

“relevant charity” means a charity other than a charity which is incorporated by charter or a company.

Property consisting of financial reserves

10.—(1) On the reorganisation date the financial reserves shall vest in the successor council nominated by the Secretary of State for the purposes of this regulation (the “nominated council”) on trust for itself and the other successor councils concerned.

(2) Within three months of the reorganisation date, or such longer period as may be agreed between the successor councils concerned before the end of that three-month period, the nominated council shall divide the financial reserves between itself and the other successor councils concerned in such proportion as may be agreed by all the successor councils concerned or, failing such agreement, as is determined by such person as the Secretary of State shall appoint.

(3) The nominated council shall, as soon as practicable after the other successor councils’ shares have been agreed or determined, transfer the shares so agreed or determined; and the trust created by paragraph (1) shall cease as soon as the transfer has been completed.

(4) In this regulation “the successor councils concerned” means those councils that are the successor councils to the predecessor council to which the financial reserves relate.

Agreements in relation to property, etc: supplementary provision

11.—(1) This regulation applies in relation to—

(a) property which is not associated property or relevant shares;

(b) property which is land;

(c) rights or liabilities in respect of such property; and

(d) rights or liabilities in respect of money borrowed by a predecessor council.

(2) The successor councils shall use their best endeavours to secure that, subject to paragraph (3), an agreement provides—

(a) for property of the description in paragraph (1)(a), to transfer to one (and only one) of the successor councils;

(b) for property which is land and has been identified as surplus to the requirements of both or all of the successor councils for the purposes of, or in connection with, the exercise of functions on and after the reorganisation date, to be disposed of; and

(3) 2006 c.50. See sections 1 and 2.

(4) 1993 c.10, to which there are amendments not relevant to these Regulations. For the definitions of “charity trustees”, “company”, “the court” and “trusts” see section 97.

(5) 1972 c. 70; for “proper officer”, see section 270(3) of the Act.

- (c) for the distribution among the successor councils of receipts from the disposal of property referred to in sub-paragraph (b).
- (3) An agreement shall not specify different successor councils in relation to —
 - (a) any property identified in the agreement which forms part of a relevant collection; or
 - (b) any rights or liabilities exclusively in respect of any such property,
 and, for these purposes, “relevant collection” means —
 - (i) any collection of archives or other records of general or local interest held as such by a predecessor council; or
 - (ii) any collection of a museum or gallery provided or maintained by a predecessor council.
- (4) In paragraph (1)(a) “relevant shares” means shares held in a company which is under the control of a local authority within the meaning of section 68 of the Local Government and Housing Act 1989 Act⁽⁶⁾ (but with the omission from subsection (1) of that section of the words “unless the Secretary of State otherwise directs”); and “share” has the same meaning as in the Companies Act 1985⁽⁷⁾.

Vesting of property, etc to which agreements relate

- 12.—(1) Subject to paragraph (2)—
- (a) property, rights and liabilities of a predecessor council which are identified in an agreement as for transfer on the reorganisation date to only one of the successor councils shall, on that date, vest in and transfer to that council; and
 - (b) property, rights and liabilities of a predecessor council which are identified in an agreement as for transfer on the reorganisation date to two or more successor councils shall, on that date, vest in and transfer to those councils—
 - (i) where the property consists of land, as joint tenants; and
 - (ii) in any other case, jointly and severally.
- (2) Where—
- (a) land of a predecessor council vests in a successor council by virtue of paragraph (1), and
 - (b) any associated property in relation to the land does not vest in that council by virtue of that paragraph,

the associated property shall, on the reorganisation date, vest in the successor council in which the land is vested, notwithstanding any agreement to the contrary.

Transfers to caretaker councils

- 13.—(1) Where—
- (a) there are two or more successor councils in relation to a predecessor council, and
 - (b) on the date that falls three months before the reorganisation date, there is no agreement between them as to the transfer of particular property, rights or liabilities of the predecessor council (“residual matters”),

the Secretary of State shall nominate such one or more of the successor councils, as the Secretary of State thinks fit, as the council or councils to which, subject to paragraphs (2) and (3), residual matters shall transfer on the reorganisation date (a “caretaker council”).

⁽⁶⁾ 1989 c.42.

⁽⁷⁾ 1985 c.6, to which there are amendments not relevant to these Regulations.

(2) The Secretary of State's nomination of more than one council as a caretaker council shall also specify the particular residual matters or the class or description of residual matters that are to transfer to a particular caretaker council.

(3) The successor councils shall use their best endeavours to reach agreement before the reorganisation date as to the transfer of residual matters; and, where an agreement has been made in respect of any residual matter—

- (a) the property, rights or liabilities to which the agreement relates shall on that date vest and transfer in accordance with regulation 12(1); and
- (b) the Secretary of State's nomination and specification shall cease to have effect as regards the residual matters to which the agreement relates.

(4) Any residual matter for whose transfer there is no agreement between the successor councils immediately before the reorganisation date shall, on that date, in accordance with the Secretary of State's nomination and specification, transfer to, and vest in, the caretaker council on trust for itself and the other successor councils.

(5) References in paragraphs (1)(b) and (4) to there being no agreement between successor councils include references to a disputed matter within the meaning of section 16(3) of the Act⁽⁸⁾.

⁽⁸⁾ See section 16(5) of the Act.