

**EXPLANATORY MEMORANDUM TO**  
**THE LOCAL GOVERNMENT (STRUCTURAL CHANGES)**  
**(TRANSITIONAL ARRANGEMENTS) (No.2) REGULATIONS 2008**

**2008 No. 2867**

**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”) 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 (“the No.2 Transitional 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 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 the No.2 Transitional 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 orders<sup>1</sup>. 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 the No.2 Transitional 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 provides that references to “incidental, consequential, transitional or supplementary provision” include, in particular, provisions for the transfer of functions from a local authority for an area to another local authority whose area consists of or includes the whole or part of that area and for treating any body to whom a transfer is made for some or all purposes as the same person in law as the body from whom the transfer is made. Section 15(2)(a) provides that regulations under section 14 may modify, exclude or apply (with or without modifications) any enactment. The 2007 Act also provides that regulations made under that Act may make different provision for different cases (section 240(10)).
- 4.5. The No. 2 Transitional 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 the functions of predecessor and successor councils during the transitional period after the making of a section 7 order (and after the coming into force of the No. 2 Transitional Regulations, if that date is later) and for a transitional period following the reorganisation date.

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<sup>1</sup> 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](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](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](http://www.opsi.gov.uk/si/si2008/em/uksiem_20080907_en.pdf)

## **5. Territorial Extent and Application**

5.1. This instrument applies 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**

### The Transitional Regulations

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. As the Explanatory Memoranda to these orders explained, they also made provision for arrangements affecting the implementation of this structural change. This included making provision about the executive arrangements of the successor councils (i.e. about who has responsibility for implementation of the structural change by that council), and as to the joint teams of council officers supporting these executives.

7.2. On 29<sup>th</sup> August 2008, the first set of transitional regulations<sup>2</sup> came into force. Those regulations, which are of general application to areas affected by a section 7 order, make provision in relation to the following matters:

- Responsibility for functions;
- Governance;
- Local area agreements and joint strategic needs assessments; and
- Electoral administration.

7.3. The No. 2 Transitional Regulations, like the first transitional regulations, are of general application, applying where a section 7 order is made. The Government's intention in making these Regulations, following extensive discussions with the councils concerned, is to ensure that during the "transitional period" (the period beginning with the date on which these Regulations come into force, or, if later, the first date on which any action is required to be taken under a section 7 order implementing a structural change, and ending immediately before the reorganisation date; or for a limited period of time beyond the reorganisation date), the successor councils are able to undertake specific functions, and have powers in relation to the specified

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<sup>2</sup> The Local Government (Structural Changes) (Transitional Arrangements) Regulations 2008, SI 2008/2113

electoral and governance matters. They further provide for anything done by or in relation to a predecessor council relating to functions which are to be exercised by a successor council by virtue of these Regulations, to be treated as done by or in relation to the successor council.

7.4. The No. 2 Transitional Regulations make provision relating to the following issues (each of which is explained in more detail below):

- Continuity and responsibility for functions;
- Electoral matters;
- Statutory plans, reviews, schemes, statements and strategies;
- Membership of certain licensing and planning committees;
- Functions relating to town and country planning;
- Functions relating to education;
- Miscellaneous transitional provisions; and
- Consequential amendment of the Local Government (Changes for England) Regulations 1994.

7.5. It is likely that at least one further set of transitional regulations will be laid this year.

#### Timing of the No.2 Transitional Regulations

7.6. The No. 2 Transitional Regulations are being laid now because of three key time-dependent provisions: for electoral matters, local development schemes ('LDS') and transitional schools forums. With regard to electoral matters, regulation 9 of these Regulations requires every council which, on the coming into force of the Regulations, is both a preparing council and a county council, or is a shadow council, to appoint by 30th November 2008 an officer (the "electoral appointee") to undertake the duties of acting and local returning officers in relation to the 2009 European elections and any general election that may be called after 30th November 2008. Regulation 22(1) requires each shadow council and each preparing council which is a county council to submit an LDS to the Secretary of State by no later than three months before the reorganisation date. Regulation 25 requires each shadow council and each preparing council which is a district council to establish a transitional schools forum not later than three months before the reorganisation date.

7.7. In relation to Part 3 of these Regulations (Electoral Matters), the Department recognises that there is only a very short time (between the coming into force of the Regulations and 30th November 2008) for preparing councils that are county councils, and shadow councils, to appoint the electoral appointee. However, this matter has been discussed extensively with the Joint Implementation Teams ('JITs')<sup>3</sup> over the past months, both at monthly meetings and on a bilateral basis. All JITs are well aware of this requirement, and have seen various draft versions of the Regulations. The Department does not therefore anticipate any difficulty or failure on the part of any of the

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<sup>3</sup> The Joint Implementation Teams ('JITs') for each area are formed of senior officers of the preparing and other affected authorities, and led by the Chief Executive of a preparing or shadow council.

affected authorities to meet this requirement. Furthermore, this timescale has been developed with reference to the existing requirement<sup>4</sup> on all electoral registration officers to publish, by 1 December 2008, a revised register of electors (following the annual canvass of electors in their area).

## Provisions of the No.2 Transitional Regulations

### Part 2 – Continuity and Responsibility for Functions

7.8. Regulation 3 makes provision to ensure that, on and after the reorganisation date, references in “enactments” to a predecessor council will, be read as references to the related single tier council. With “enactment” defined for the purposes of paragraphs (1) to (3) in paragraph (5), this will ensure that references in most public general, local and personal and private Acts and most statutory instruments:

- to a county council or a district council will be read as including references to the new single tier councils (which are responsible, under the section 7 orders, for discharging the functions of both county and non-metropolitan district councils in their areas);
- to a predecessor council by name, will be read as including references to the related single tier council, or the related single tier councils in areas where a county council is a predecessor council;
- which, immediately before the reorganisation date, relate to an area (however defined) that is affected by a section 7 order, will continue to relate to the area to which it applied immediately before that date. This includes legislation that a predecessor council has chosen to adopt (either by means of resolution or order), such as moving to civil parking enforcement by virtue of an order under Part 6 of the Traffic Management Act 2004.

7.9. Regulation 4 provides for continuity between the predecessor councils and successor councils and their related new single tier councils. This ensures not only that any action begun by a predecessor council or a successor council can continue on and after the reorganisation date as if it had been begun by the related single tier council, but also that any action taken by any person against or in relation to a predecessor or successor council can be continued in relation to the related single tier council.

7.10. Regulation 5 ensures that regulation 4 has effect only where more specific provision to the contrary has not been made in regulations under section 14 of the 2007 Act, and that regulation 4 does not have the effect of continuing contracts of employment entered into by predecessor councils (which are subject to the Local Government (Structural and Boundary Changes) (Staffing) Regulations 2008 (SI 2008/1419)). It also ensures that the provisions of regulation 4 apply, in areas where the county council is a predecessor council, so that anything done by or in relation to (or in the process of being done by or in relation to) that county council continue to

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<sup>4</sup> See section 13 of the Representation of the People Act 1983 (1983 c.2) as substituted by section 8 of, and paragraph 6 of Schedule 1 to the Representation of the People Act 2000 (c.2).

have effect on and after the reorganisation date as if done by or in relation to one or other or both related single tier councils, as is appropriate.

7.11. Regulations 6 and 7 provide for functions exercised by successor councils by virtue of these Regulations to be discharged by the body which is responsible for overseeing the transition to single tier status and can be said to best represent the democratic mandate of the citizens of the area concerned. In areas where there is a shadow council appointed or nominated in accordance with a section 7 order, that body is the shadow executive. In areas where there is a preparing council to which elections have not yet been held, that is the Implementation Executive (the “IE”). In other areas, where there have been elections to a shadow council or a preparing council, the functions fall to be discharged in accordance with the council’s executive arrangements in the usual way.

### Part 3 – Transitional Arrangements: Electoral Matters

7.12. Part 3 of the No.2 Transitional Regulations makes provision in respect of any authority which, on the coming into force of the Regulations, is either a preparing council and a county council, or is a shadow council. The council is required to appoint, not later than 30th November 2008, an officer of the council to undertake duties in relation to:

- the European Parliamentary election planned to be held on 4th June 2009; and,
- any general election for which a writ is issued after 30th November 2008.

7.13. Regulations 9(1) and (2) require that each preparing council which is a county council, and each shadow council, must appoint by 30<sup>th</sup> November 2008 one of its officers to discharge for the council’s area the duties of local returning officer in relation to European parliamentary elections in 2009, and the duties of acting returning officer in respect of any UK parliamentary election for which a writ is issued after 30<sup>th</sup> November 2008. That officer is known as an “electoral appointee” under paragraph (3).

7.14. Provision is made under regulations 9(4), (5) and (6) for replacement officers to be appointed should an electoral appointee (or any subsequent replacement) die or otherwise cease to hold that office. Paragraph (8) ensures that the functions of returning officer which are the responsibility of the electoral appointee are not to be discharged by the electoral registration officers of predecessor councils. However, the electoral appointee is responsible only for the conduct of elections and related matters: the preparation and maintenance of the discrete election register of predecessor councils during the year 2008-09 remains the responsibility of the registration officers of the predecessor councils.

7.15. Regulation 9(9) provides that, on the reorganisation date, the officer who is the electoral appointee becomes the electoral registration officer for the new single tier council and therefore takes on responsibility for preparing and maintaining the electoral register of the new single tier council. Paragraphs (10) and (11) ensure that the electoral appointee may consult the

electoral registration officers of the predecessor councils in advance of the reorganisation date, in order to prepare for becoming the electoral registration officer for the new single tier council on the reorganisation date.

7.16. Following consultation, the Department considers these provisions to be necessary in order to ensure seamless and consistent preparation for and conduct of any UK parliamentary election, if one were to be called so as to fall shortly before or after the reorganisation date. Similarly, this approach is considered necessary to ensure sound preparations for the 2009 European parliamentary elections. Arrangements for returning officers are already in place to provide for local elections being held on the ordinary day of elections in 2009<sup>5</sup>.

#### Part 4 – Statutory Plans, Reviews, Schemes, Statements and Strategies

7.17. Part 4 of the Regulations makes provision in respect of the large number of plans, reviews, schemes, statements and strategies that, like all local authorities, the new single tier councils would ordinarily be required, under statute, to have in place on the reorganisation date.

7.18. Following consultation with the JITs, the approach adopted is to divide the plans etc into four categories:

- Essential: plans etc that need to be in place for the whole area of the new single tier council on the reorganisation date;
- Important: plans etc that should be in place for the whole area of the new single tier council on the reorganisation date if possible, but which must in any case be in place within 12 months thereafter;
- Sustainable Community Strategy: which must be prepared no later than 24 months after the reorganisation date; and
- Non-essential: other plans etc that should be in place for the whole area of the new single tier council as soon as possible after the reorganisation date, though no end date is specified.

7.19. Regulation 11 lists the plans etc that shadow councils and preparing councils which are county councils need to prepare (and, where appropriate, publish) in advance of the reorganisation date, in order for those plans to be in place on that date. These are plans that relate to contingency planning and similar emergencies, which local authorities are required to prepare for their area in order to safeguard the public: plans under the Civil Contingencies Act 2004, the Control of Major Accident Hazards Regulations 1999, and the Radiation (Emergency Preparedness and Public Information) Regulations 2001. The plans prepared by the shadow councils and preparing councils which are county councils have effect, on and after the reorganisation date, as if they had been prepared by the new single tier council.

7.20. Regulation 12 lists the plans etc that the various successor councils should prepare in advance of the reorganisation date where it is practicable to

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<sup>5</sup> See, in respect of Central Bedfordshire, article 25(8) of the relevant section 7 order; and, in relation to Cornwall, Shropshire and Wiltshire, Part 1 of the Representation of the People Act 1983.

do so. Any such plans have effect on and after that date as if they had been prepared by the new single tier council. Where it is not possible for the successor council to prepare a plan by the reorganisation date, the new single tier council must prepare it no later than 12 months after the reorganisation date. Until all those plans etc have been prepared, the plans etc prepared by the relevant predecessor councils, or the preparing councils prior to the coming into force of a section 7 order, continue to have effect as if they had been prepared by the new single tier council, for the whole or part of that council's area to which the plans etc relate.

7.21. Regulation 13 relates to the Sustainable Community Strategy ('SCS') that all local authorities are required to prepare. All preparing councils and shadow councils are required under regulation 13 to prepare a SCS for the whole of their area in advance of the reorganisation date where it is practicable to do so. Any such strategy has effect on and after the reorganisation date as if it had been prepared by the new single tier council. However, given the timescales required for a full SCS to be prepared by the council and for meaningful consultation with the public to take place, Government recognises that this is unlikely to be possible before the reorganisation date. The new single tier councils will therefore be under a duty to prepare a SCS by no later than 24 months after the reorganisation date. In the case of those areas currently subject to section 7 orders, this will enable the new SCS to feed into the next round of negotiations on local area agreements, which are expected to have effect from April 2011. Until the single tier council has prepared a new strategy, the predecessor councils' strategies continue to have effect for the whole or part of the single tier council's area to which the strategies relate.

7.22. Regulation 14 provides that any other plan, scheme, statement or strategy that a predecessor council has prepared (and where necessary published) in advance of the reorganisation date because it is required to do so under any enactment, shall continue to have effect on and after the reorganisation date as if it had been prepared by the new single tier council for the whole or part of the council's area to which the plan etc applies. Those plans etc continue to have effect until the new single tier council publishes a replacement plan covering the whole of its area. The Department is, however, encouraging all successor councils to ensure the new single tier council reviews the plans etc that are in place shortly after the reorganisation date and revise them accordingly so they reflect the new single tier council's area and responsibilities.

#### Part 5 – Membership of Certain Licensing and Planning Committees

7.23. Following consultation with the affected JITs, provision is made in regulation 16 to allow the IE of a preparing council which is a county council to which elections are to be held in 2009 to co-opt district councillors with the relevant experience on to the new single tier council's licensing or planning committee for the pre-election period from the reorganisation date until four days after the elections to the new single tier council in 2009.



- 7.24. Specifically, the IE of a preparing council which is a county council and which on the reorganisation date becomes a single tier council to which elections are to be held in 2009 can resolve (before the reorganisation date) that any member of that IE who is not a member of the preparing council (i.e. any district councillor who is a member of the IE) shall be co-opted as a member of a licensing committee of the new single tier council, and that any such co-opted member shall have voting rights. In the same way, the IE of a new single tier council to which elections are to be held in 2009 ('a 2009-electing council') can also resolve after the reorganisation date to co-opt any of its members who is not a member of the single tier council on to a licensing committee.
- 7.25. Similarly, an IE can resolve to co-opt any of its members (except those who are members of the preparing or single tier council) to be a member of a planning committee.
- 7.26. The regulation also allows the IE of a preparing council to which elections are to be held in 2009 to resolve, prior to the reorganisation date, that any councillor who is a member of a licensing (or planning) committee of a related predecessor district council shall be co-opted on to the licensing (or planning) committee of the new single tier council, and shall have voting rights, during the transitional period.
- 7.27. Any member co-opted by virtue of this regulation would be subject to the Code of Conduct for Local Authority Members (set out in Local Authorities (Model Code of Conduct) Order 2007 (SI 2007/1159)) and the provisions set out in Part III of the Local Government Act 2000, as amended by the Local Government and Public Involvement in Health Act 2007, as preparing county councils and single tier councils will be relevant authorities for the purposes of s.49(6) of the Local Government Act 2000 (as amended) and, under regulation 1(4)(c) of the Model Code of Conduct Order, the Code will apply to any member or co-opted member of a planning or licensing committee. Furthermore, the preparing council's standards committee could consider any allegation against a member co-opted onto a relevant committee under this regulation and could impose a sanction as it deems fit under regulation 19(3) of the Standards Committee (England) Regulations 2008 (SI 2008/1085). Any members co-opted under regulation 16 would be eligible for allowances in accordance with the preparing council or single tier council's own existing scheme, which should already make arrangements for payments to co-opted members where appropriate. Provision is also made for an IE to resolve on or after the reorganisation date that persons who have been co-opted on to a relevant planning or licensing committee should cease to be members of that committee.
- 7.28. Having made this provision for the pre-election period until the 2009 elections are held, the Department considers it important that the planning and licensing committees of a single tier council reflect the democratic mandate for the area. Regulation 17 therefore provides that these licensing and planning committees should reflect, so far as practicable, the political balance of the IE (since in the absence of elections the IE can best be said to

reflect the mandate for both tiers in an area). The provisions mirror the political balance requirements for committees of a local authority under section 15 of the Local Government and Housing Act 1989. However, the Department also recognises that this requirement for political balance may be difficult to implement in certain local areas, and could result in impractical solutions such as members of certain district councils having to attend meetings of planning or licensing committees which cover other areas of the new single tier council, simply because they are the only members of one or other political party. This would clearly be challenging logistically and not a sensible use of public money. As requested by the JITs, therefore, regulation 17 therefore also allows an IE to choose to make arrangements for planning and licensing committees different from its own political balance, as long as these alternative arrangements have been approved by the IE and no member of that Executive voted against them.

### Part 6 – Functions Relating to Town and Country Planning

- 7.29. As the new single tier councils will become responsible, on the reorganisation date, for development control functions, the Department considers that some transitional provision is necessary, in order to encourage the successor councils to begin consideration in advance of that date as to how they wish to carry out those functions, and also to ensure a seamless transition both legally and in terms of delivery to the public on and after the reorganisation date.
- 7.30. Regulation 19 ensures that any local development document adopted by a predecessor council before the reorganisation date will have effect, on and after that date, as if it had been adopted by the related new single tier council in relation to the area to which the document applies, thus providing certainty for the local authorities concerned and others (members of the public, business and the third sector) who have an interest in local development control.
- 7.31. The effect of the modifications made by regulation 20, which have effect between the coming into force of the Regulations and the reorganisation date is to ensure that a Regional Planning Body (the ‘RPB’; ie. currently the Regional Assembly) seeks the advice of shadow councils and preparing councils which are district councils in its area when reviewing, revising or monitoring the implementation of its Regional Spatial Strategy (RSS) under Part 1 of the Planning and Compulsory Purchase Act 2004 (‘the 2004 Act’), and consulting on any new draft RSS under the Town and Country Planning (Regional Planning) (England) Regulations 2004. This is so that, in areas where the county council will cease to exist on the reorganisation date, it is the views of the successor councils which are taken into account in the RSS, as will be the case when they take on the functions of the county council on the reorganisation date. As a corollary, the modifications have the effect of removing those county councils which will cease to exist on the reorganisation date from the list of bodies from which the RPB must seek advice in reviewing, revising or monitoring the implementation of the RSS, or consulting on a revised draft of it.

7.32. Similarly, as the new single tier councils will take on all town and country planning and development control functions on the reorganisation date, regulation 21 makes all successor councils responsible for discharging, in advance of the reorganisation date, the functions under Part 2 of the 2004 Act. These functions are, in essence, the strategic and forward-planning functions; particularly the preparation of a local development scheme (LDS) and local development documents (LDDs). Therefore, a preparing council which is a district council becomes responsible for preparing a waste and minerals planning scheme (it is already responsible for discharging the functions of a local planning authority). A preparing council which is a county council becomes responsible for discharging the functions of a local planning authority, and retains the waste and minerals planning functions. Shadow councils become responsible for discharging both waste and minerals (ie. typically county council) functions and local planning authority (ie. typically district council) functions. Predecessor councils cease to be responsible for discharging local planning authority and waste and minerals planning functions, as appropriate. However, predecessor councils remain relevant authorities under the Town and Country Planning (Local Development) (England) Regulations 2004 ('the 2004 Regulations'). However, there are exceptions, as mentioned in regulations 22 and 23.

7.33. In order to ensure that the successor councils have a coherent view of how development planning will work in their areas on and after the reorganisation date, and to ensure that there is clarity for the public, regulation 22 requires shadow councils and preparing councils which are county councils to submit an LDS to the Secretary of State three months before the reorganisation date. This date has been discussed with the JITs. The LDS may specify LDDs that have been prepared and adopted by a predecessor council (or a joint committee where one exists), and must state whether the successor council intends that LDD to continue without revision, or to revise it, or to request that the Secretary of State revoke it.

7.34. Following representations from the JITs, in order to make the preparation and adoption of LDDs more straightforward practically for successor councils, and to simplify the legal requirements, regulation 23 provides that an LDS prepared by a successor council may specify that LDDs which are to be prepared before the reorganisation date are to be prepared (and where necessary adopted) under Part 6 of the 2004 Regulations. Part 6 in effect lays down minimum criteria for public consultation in the preparation of LDDs. This will allow the successor council to prepare LDDs in accordance with this single set of minimum criteria rather than under the differing requirements of the various predecessor district councils' Statements of Community Involvement (SCI) which would otherwise apply. Thus the same processes may be used in the preparation of LDDs across the area of the new single tier council. In addition, in order to encourage the successor councils to prepare a new SCI covering the whole area of the new single tier council, regulation 23 waives the requirement for any such SCI to be subject to independent examination in public. The Department considers that the benefit to local people of having a single SCI in place from the reorganisation

date justifies the waiver for independent examination during this limited transitional period, particularly as the Secretary of State retains the power to direct the council to modify the LDD prior to its adoption (under section 21 of the 2004 Act) or to require an independent examination at any time and modify the LDD as a result of that examination (under section 27 of the 2004 Act). The provisions of this regulation have been included following representations from the affected JITs seeking simplification, greater legal certainty and assistance to ensure they can put in place a coherent strategy in time for the reorganisation date. The JITs have agreed that any such SCI will be prepared in close consultation with the relevant Government Office.

7.35. Regulation 24 makes provision in respect of areas where a predecessor council currently delegates its functions under Part 2 of the 2004 Act to a joint committee constituted under section 29 of that Act. In summary, the joint committee will continue on and after the reorganisation date with references to any constituent predecessor council (whether as a local planning authority or a county council) being read as references to the appropriate succeeding single tier council. It only applies, however, in respect of the area of the new single tier council that was previously covered by the joint committee. The single tier council will remain the local planning authority (including the minerals and waste planning authority) in respect of any other part of its area which, prior to the reorganisation date, formed part of the area of a predecessor council whose functions were not delegated to a joint committee.

7.36. Provision is made for the joint committee to be dissolved either once all the LDDs required under Part 2 of the 2004 Act have been adopted, or three years after the reorganisation date, whichever is the sooner. This is to ensure that the joint work which has already been undertaken can be continued through to the adoption of the key LDDs, avoiding the new single tier council and other constituent councils having to begin the complex work again and risking significant delay. The new single tier council will, of course, be represented on the joint committee. The inclusion of a final dissolution date of three years after the reorganisation date provides an incentive for the joint committee to continue to progress work and ensures that the joint committee's lifespan is limited to a reasonable transitional period. Thereafter, it will be for the single tier council to decide how it wishes to discharge its functions under Part 2 of the 2004 Act, and to what extent it wishes to work jointly with other local planning authorities. Regulation 24 ensures continuity between the joint committee and its constituent members, both in terms of the continued application of an LDS and accompanying LDDs, and also so that anything done by or in relation to the joint committee, or being done by or in relation to the joint committee, has effect after its dissolution as if done by or in relation to the relevant constituent authority. These provisions have been agreed with the JITs.

#### Part 7 – Functions Relating to Education

7.37. Regulation 25 makes provision relating to schools forums in areas where the county council will cease to exist on the reorganisation date. In

brief, it provides the framework for budgets to be set for schools for the financial year beginning on the reorganisation date by the same body as is responsible for setting the budget for the new single tier council for that financial year, and which can be said to best represent the democratic mandate of the area. It requires every shadow council and every preparing council which is a district council (all of which will assume responsibility for education functions on the reorganisation date) to establish a transitional schools forum not later than three months before the reorganisation date. The forums' function is to advise the shadow or preparing (district) council on the setting of budgets for schools which will be located in the area of the new single tier council. The transitional schools forums are to be established as if they were schools forums being established by a local education authority under the School Standards and Framework Act 1998 and the Schools Forums (England) Regulations 2002. Once a shadow council or a preparing (district) council has established a transitional schools forum any schools forum established by a predecessor council which is a county council (and therefore a local education authority) will cease to exercise functions in relation to the financial year beginning on the reorganisation date.

#### Part 8 – Miscellaneous Transitional Provisions

- 7.38. Various miscellaneous transitional provisions are included in Part 8 of the Regulations. Regulation 26 ensures, in effect, that issues relating to housing revenue accounts and housing revenue account subsidy in respect of the financial year beginning on the reorganisation date fall to the relevant shadow council or preparing council which is a county council, since these bodies will be responsible for all housing and housing finance functions from the reorganisation date and are responsible for preparing the budget for the new single tier council for the financial year beginning on the reorganisation date. This includes making the shadow council or preparing council which is a county council responsible for providing data and certifying claims in respect of the financial year beginning on the reorganisation date.
- 7.39. Regulation 27 ensures that functions under the Homelessness Act 2002 relating to the financial year which begins on the reorganisation date are to be exercised by each shadow council and each preparing council that is a county council.
- 7.40. Following representations from the JITs, regulation 28 has been included to impose a duty on predecessor councils to share any report (whether in draft or final form) received from a statutory auditor, inspector or investigator with the IE of the related preparing council where one exists, with the executive of a related preparing council to which elections have already been held, or with the related shadow council, as appropriate. Predecessor councils are also required to consult the IE, preparing council executive or shadow council and take their views into account before varying in a material respect any of its policies, procedures or structures in order to give effect to a recommendation in any such report or in consequence of it. These provisions will ensure that the successor council is made aware of the strengths and weaknesses in any of the services it will be responsible for

discharging from the reorganisation date, and that its views will be taken into account if any remedial action is to be taken before the reorganisation date.

- 7.41. Regulations 29 and 30 make provision in respect of executive arrangements. All county councils in England operate the leader and cabinet form of executive which is being phased out under transitional provisions contained in Schedule 4 to the 2007 Act. These provisions require county councils to resolve, by 31 December 2008, to move to a different form of executive which can be either the leader and cabinet (England) or mayor and cabinet. After passing the resolution to make the change, a county council must stop operating its existing governance model and start operating a new form of executive on the third day after the ordinary elections in 2009.
- 7.42. However, by virtue of the section 7 orders, two of the preparing councils which are county councils held ordinary elections in May 2008 and will not be holding ordinary elections in 2009. As a consequence, Regulation 29 modifies the transitional provisions to require a preparing council that is a county council and which held elections in 2008, and which is moving to the leader and cabinet executive (England) governance model to move to that model on the day before the first meeting held by that council after the reorganisation date.
- 7.43. Under section 44A of the Local Government Act 2000, county councils which move to the leader and cabinet executive (England) must elect an executive leader at the first annual meeting of the council to be held after the ordinary elections in 2009 have taken place. For the preparing councils that are county councils which will not be holding ordinary elections in 2009, regulation 30 provides that each must elect an executive leader at the first meeting that they hold after the reorganisation date. These dates have been chosen following discussions with the JITs, who consider them to be the most logical point at which to move to the new arrangements.
- 7.44. The JITs of the two affected preparing councils have assured us that their respective councils are not intending to resolve to adopt the mayor and cabinet model. Indeed, had they wished to, they would be obliged to undertake a full public consultation before making the resolution by 31 December 2008, and we would expect that any such consultation would already be underway. Therefore, this regulation only makes provision to allow those councils to move to the leader and cabinet model.
- 7.45. Regulation 31 has been included in the interests of public safety. It requires each preparing council and each shadow council to review and, where necessary, update before the reorganisation date any emergency plan prepared under the Pipelines Safety Regulations 1996 by a predecessor council. Any such plan is then to be reviewed every three years after the reorganisation date.
- 7.46. Regulations 32 and 33 make provision relating to ceremonial issues. Regulation 32 allows a predecessor council that is a district council to appoint current members of the council as honorary aldermen, as well as past

members. This will allow current councillors to be appointed as honorary aldermen of that area before the council ceases to exist on the reorganisation date. It also provides that the aldermen of the predecessor council retain their status by becoming aldermen of the relevant local authority after the reorganisation date. Regulation 33 provides that honorary freemen of a predecessor council become honorary freemen of the related single tier council.

- 7.47. Regulation 34 amends regulation 5 of the Local Government (Changes for England) Regulations 1994 ('the 1994 Changes Regulations'), which provided for continuity between the councils being abolished and the new unitary councils created during the restructuring process undertaken under the Local Government Act 1992. The amendments make clear that the 1994 Changes Regulations apply only to the restructuring undertaken by means of an order under section 17 of the Local Government Act 1992, and ensure consistency with the continuity provisions for councils affected by the current round of restructuring, as provided for in regulation 3 of these Regulations.

## **8. Consultation outcome**

- 8.1. The No. 2 Transitional Regulations make provision in respect of those matters Government and its stakeholders, in particular councils affected by section 7 orders, consider necessary in advance of the reorganisation date to facilitate the smooth transfer to the new single tier councils. Therefore, the focus of the Department's consultative procedure in preparing these Regulations has been to understand from affected local authorities and central government departments which functions should be exercised by the successor councils in advance of the reorganisation date, and how those functions should be exercised.
- 8.2. In August 2007, during the process of assessment of proposals, the Department published a discussion document, Councils' Proposals for Unitary Local Government: An Approach to Implementation<sup>6</sup> ("the Discussion Paper"). The Discussion Paper set out the Department's initial intentions as to the approach to be adopted for implementing any proposals for single tier local government. This 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.
- 8.3. Since the publication of the Discussion Paper, and in particular since the coming into force of the seven section 7 orders made to date and the making of the first transitional regulations, many of the issues addressed in the No.2 Transitional Regulations have been the subject of extensive discussions between the Department and the JITs.

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<sup>6</sup> <http://www.communities.gov.uk/publications/localgovernment/unitarycouncilsimplementation>

8.4. Draft copies of these Regulations have been circulated to lead officers of the successor councils at various points in the drafting process, who in turn cascaded them to their relevant colleagues. A number of comments were received. The majority of these related to minor drafting points, and are reflected in the Regulations now laid before Parliament. The substantive comments received on each of the matters covered by these Regulations, and which are reflected in them, are as follows:

*Continuity*

- Many of the examples in the list at regulation 4(4) of things that are included at paragraphs (2) and (3), such as “authorisation” and “permit”, were inserted following requests by the JITs;
- Regulation 4(7) was included in response to a request from the JITs, to ensure continuity in relation to certain appointments, where the appointee will continue as a representative of the new single tier council;

*Electoral Matters*

- The requirements on preparing councils which are county councils and shadow councils to appoint electoral appointees under regulation 9 were included following extensive discussions with the JITs of the affected authorities, who considered it necessary that they have the power to appoint an interim acting returning officer and local returning officer in advance of the reorganisation date;

*Statutory plans, reviews, schemes, statements and strategies*

- The JITs made strong representations to the Department that, in the transitional period leading up to the reorganisation date, their efforts needed to be focused on creating the new single tier council as one organisation (including preparatory work for the transfer of thousands of employees), integrating and re-designing services for the public, and above all ensuring that those services continued to be delivered on and after the reorganisation date seamlessly. In the context of the huge change programme that restructuring represents, they argued that their resources have to be concentrated on those priorities. The Department therefore agreed to adopt a flexible approach regarding certain statutory plans, reviews, schemes, statements and strategies that, by virtue of being local authorities and having the functions of both district and county councils in their areas, the new single tier councils would ordinarily be required to have in place on the reorganisation date. Regulations 11, 12, 13 and 14 reflect this flexible and pragmatic approach;
- In particular, the requirement for a Sustainable Community Strategy (‘SCS’) to be in place no later than 24 months after the reorganisation date (reg 13) was included following discussion with the JITs, who believed the Department’s original suggestion (of 12 months after the reorganisation date) would not allow sufficient time for the councillors elected in 2009 to draw up such a strategy and consult in any meaningful way with the public. In relation to those single tier councils created by a section 7 order which is already in force, 24 months also ties in the preparation of a SCS with the next round of negotiations for local area agreements;



### *Membership of certain licensing and planning committees*

- The provisions of Part 5 of the Regulations have been included following representations from the Implementation Executives and JITs of preparing councils which are county councils and to which elections have not yet been held. Concerns were expressed that, on the reorganisation date, those single tier councils will have a relatively small number of members and very few of those members (being members of a county council) will have experience of development control or licensing functions (which are district council functions). This situation is likely to last for a number of weeks until elections are held to those new single tier councils, at which point the number of councillors may be increased and a comprehensive training package can be put in place for new members, thereby providing a sufficient number of members with the necessary expertise. Those preparing councils are putting in place measures to minimise the risk of delays to the public in the processing of development control ('planning') and licensing applications, but they asked whether Government could give them any additional flexibility.
- The provisions in Part 5 therefore allow the 2009-electing councils to co-opt certain members of the the IE and/or certain other district councillors on to licensing and planning committees were included at the request of those councils. While the Department believes it is important that the political balance of such committees reflects as far as practicable the political balance of the IE (as it is the body which is responsible for overseeing the transition to single tier status and can be said to best represent the democratic mandate of the citizens of the area concerned) and has required this by virtue of regulation 17(1)-(3), following representations from the 2009-electing councils, provision has been made (paragraphs (4)-(6)) which enables the IE to decide not to reflect its own political balance but to put in place alternative arrangements as best reflect the local circumstances, provided that those arrangements have been approved by the IE and no member has voted against;

### *Functions relating to town and county planning*

- Regulation 20(2)(b) which provides that a county council which is a predecessor councils shall not be treated as a local planning authority within the meaning of the Town and Country Planning (Regional Planning) (England) Regulations 2004 (SI 2004/2203) was included following requests from affected JITs for clarity, to avoid a regional planning body from having to seek advice on the same issues from multiple councils in the same area;
- The provisions of regulation 23, allowing a successor council to prepare and adopt local development documents between the coming into force of the Regulations and the reorganisation date in accordance with the minimum criteria for community involvement set out in Part 6 of the Town and Country Planning (Local Development) (England) Regulations 2004 (SI 2004/2204), have been included following requests from the JITs. Concerns were expressed about the legal and practical difficulties of preparing such documents under the requirements of the separate statements of community involvement of existing predecessor councils.

The Department therefore agreed that the minimum criteria could be used for a limited period. The waiving in regulation 23 of the requirement for an SCI prepared by a successor council in advance of the reorganisation date to be subject to independent examination has been included following representations from the JITs;

#### *Miscellaneous transitional provisions*

- The requirement at regulation 28 for predecessor councils to share reports of statutory audits, inspections and investigations with the related IE or shadow council was included at the request of the JITs;
- The transition of single tier councils to which elections were held in 2008 to new-style executive arrangements, provided for in regulations 29 and 30, was set at the first meeting after the reorganisation date at the request of the affected JITs, who considered this to be the most logical and practical point at which to move to the new arrangements.

### **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. As described above, 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 transition to the new single tier councils. Any issues relating to these Regulations will be identified through these channels.

### **13. Contact**

- 13.1. Mark Doran at Communities and Local Government, tel: 020 7944 6729 or email: [mark.doran@communities.gsi.gov.uk](mailto:mark.doran@communities.gsi.gov.uk), can answer any queries regarding the instrument.

Department for Communities and Local Government

6th November 2008