

EXPLANATORY MEMORANDUM TO
THE LOCAL GOVERNMENT (STRUCTURAL CHANGES) (FURTHER
TRANSITIONAL AND SUPPLEMENTARY PROVISION AND
MISCELLANEOUS AMENDMENTS) REGULATIONS 2009

2009 No. 276

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) (No.2) Regulations 2008 (S.I. 2008/2867) (“the second transitional Regulations”) were the second in a series of Regulations making provision of general application as regards the transition to a single tier of local government for 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 third 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” until the reorganisation date).

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 third 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. 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 third 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 third 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 third transitional Regulations, if that date is later) and for a

transitional period following the reorganisation date.

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

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 29th August 2008, the first set of transitional Regulations 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. On 28th November 2008, the second transitional Regulations came into force. Those Regulations, which are also of general application to areas affected by a section 7 order, make provision in relation to the following matters:

- 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.

7.4. The third transitional Regulations, like the previous two sets of transitional Regulations, are of general application. 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 the 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 beyond the reorganisation date, the successor councils are able to undertake specific functions, and have powers in relation to any allegation of misconduct made against a member of a predecessor council and in relation to changing the name of certain areas.

7.5. The third transitional Regulations make provision relating to the following issues (each of which is explained in more detail below):

- Exercise of certain education functions;
- Councillors' conduct;
- The final accounts of predecessor councils and related financial matters;
- Changes of name of area;
- Amendment of Regulations.

7.6. It is likely that one further set of transitional Regulations (dealing with continuity matters in relation to the freedoms and flexibilities regime) will be laid before 1st April 2009.

Timing of the third transitional Regulations

7.7. The third transitional Regulations are being laid now in order to allow shadow councils and the preparing councils which are a district councils (ie. currently Bedford Borough Council) to commence consultation with parents and schools on moving from a three-tier to a two-tier schools structure in advance of the reorganisation date; and to provide certainty and continuity in respect of conduct allegations made against of members of predecessor councils.

Provisions of the third transitional Regulations

Part 2 – Exercise of certain education functions

7.8. Regulation 3 makes provision so that a shadow council or a preparing council which is a district council may commence consultation on proposals for schools reorganisation in its area before the reorganisation date. The relevant powers are found in the Education and Inspections Act 2006 ("the 2006 Act") and are listed

in the regulation. The shadow or preparing (district) council must give seven days' notice in writing to the local education authority (the current county council), which would ordinarily be responsible for those functions until the reorganisation date, specifying the date on which the shadow or preparing (district) council first intends to exercise any of the powers. From that date, the local education authority is no longer able to exercise those powers in relation to the area of the relevant shadow or preparing (district) council. These provisions have been included following representations from a Joint Implementation Team ("JIT") that they would like to publish proposals for moving from three-tier to two-tier schools in their area and consult on those proposals in advance of the reorganisation date. This will allow them to conduct a full period of consultation well in advance of the school summer break.

- 7.9. Additional provisions ensure that any direction made by the Secretary of State under section 13 of the 2006 Act have effect in relation to the exercise by a shadow or preparing (district) council of these powers as if references to the local education authority included references to that shadow or preparing (district) council. Any action taken by a predecessor council before the coming into force of these Regulations has effect as if taken by the related shadow or preparing (district) council.

Part 3 – Provisions relating to councillors' conduct

- 7.10. Part 3 makes provision to ensure that allegations that a member of a predecessor council has failed to comply with that authority's code of conduct can be investigated and appropriate sanctions imposed, despite the dissolution of the predecessor councils on the reorganisation date. Part 3 of the Local Government Act 2000 ("the 2000 Act") establishes the conduct regime for local authority members, including the requirement for each local authority to adopt a code of conduct which its members must observe, and to establish a standards committee to consider allegations that a member has failed to comply with that code. Further provision relating to the size and composition of standards committees, as well as the findings and the sanctions available to them, are set out in the Standards Committee (England) Regulations 2008 (S.I. 2008/1085) ("the Standards Committee Regulations").
- 7.11. Regulation 5 of the third transitional Regulations requires a predecessor council's standards committee to refer to the Adjudication Panel for England any allegation where, from the coming into force of the Regulations until the reorganisation date, it is considering a sanction of suspension and, but for the dissolution of the council on the reorganisation date, would be minded to suspend the member for a period extending beyond the reorganisation date. This provision is being made to ensure that appropriate sanctions can be imposed on a member of a predecessor council regardless of that council's dissolution on the reorganisation date.
- 7.12. Regulation 6 ensures that relevant information about any allegation

against a member of a predecessor council, consideration of which is ongoing, is passed to the new related single tier council's standards committee, so that it can take any remaining action. Paragraph (1) requires the standards committee of each predecessor council to consider, 14 days before the reorganisation date, whether in relation to each allegation received against a member of their council for which they have not completed their investigation or made a finding under regulation 19 of the Standards Committee Regulations, the steps which remain to be taken in relation to that allegation are likely to be completed before the reorganisation date. Paragraph (2) then provides that, following this consideration by each predecessor council's standards committee, the monitoring officer of each predecessor council ("the PMO") must, before the reorganisation date, provide to the monitoring officer of the related preparing council or shadow council ("the RMO") a copy of the allegation received, a summary of the steps already taken in relation to the allegation by the predecessor council's standards committee or the PMO, every other document relevant to the consideration of the allegation, and such other information in relation to it as may reasonably be required. Paragraph (3) requires the RMO to present the allegation and summary to the first meeting of the new single tier council's standards committee.

- 7.13. Regulation 6(4) provides for the new single tier council's standards committee to treat any allegation presented at its first meeting as if it were an allegation received under section 57A(1) of the 2000 Act and then makes provision for the continued consideration of that allegation, depending on the steps that had already been taken in relation to it by the predecessor council's standards committee or the PMO. Any steps taken by the predecessor council's standards committee or the PMO in relation to the allegation prior to the reorganisation date are to be treated after that date as if they had been taken by the new single tier council's standards committee or the RMO, as appropriate (except for the purposes of regulation 6(4)(e)). The different stages are set out below.
- 7.14. Where, prior to the reorganisation date, the only action taken was that the matter had been referred by the predecessor council's standards committee to the PMO for steps other than an investigation (under regulation 13 of the Standards Committee Regulations), the allegation is treated as if it had been referred to the RMO.
- 7.15. Where, prior to the reorganisation date, the only action taken was that the matter had been referred by the predecessor council's standards committee to the PMO for investigation (under regulation 14 of the Standards Committee Regulations), the new single tier council's standards committee shall consider the matter afresh as if it were before them for initial assessment under section 57A(2) of the 2000 Act.
- 7.16. Where, prior to the reorganisation date, the predecessor council's standards committee had referred the matter to the PMO for investigation, the

PMO had completed a report and referred it to the predecessor council's standards committee under regulation 14(8)d) of the Standards Committee Regulations but that committee had not yet considered the report, the new single tier council's standards committee must consider the report as if it had been prepared and referred by its RMO.

7.17. Where, prior to the reorganisation date, the predecessor council's standards committee had referred the matter to the PMO for investigation, the PMO had completed a report and referred it back to the standards committee, and that committee had considered the report and had concluded (under regulation 17(1)(b) of the Standards Committee Regulations) that there should be a hearing but had not begun the hearing by the reorganisation date, the new single tier council's standards committee must hold a hearing (under regulation 18 of the Standards Committee Regulations).

7.18. Where, prior to the reorganisation date, the predecessor council's standards committee had referred the matter to the PMO for investigation, the PMO had completed a report and referred it back to the standards committee, that committee had considered the report and had concluded that there should be a hearing, and had begun the hearing but not made a finding (under regulation 19 of the Standards Committee Regulations) and hence not completed the process, then the new single tier council's standards committee must recommence the hearing. The Department considers that recommencing the hearing is necessary in the interests of fairness, since it is unlikely that there will be any continuity of membership between the predecessor council's standards committee and the new single tier council's standards committee, and it would not be fair to the member in respect of whom the allegation had been made for a hearing to be heard in part by one standards committee and then continued by a standards committee composed of different members. Although similar situations may occasionally arise where a hearing has been begun by a standards committee but not completed before an election to the council in question, in which case the members of the standards committee who are members of the council may well be different, continuity would be provided by the independent members, who must constitute a minimum of 25% of the membership of the committee and one of whom must be the chair of the standards committee (section 53(4) of the 2000 Act and regulation 4 of the Standards Committee Regulations). It is unlikely that such continuity would exist between the predecessor council's standards committee and that of the new single tier council.

7.19. Regulation 7 maintains the public's ability to make allegations against a member of a predecessor council after the reorganisation date, by providing that any such allegation should be made to the related new single tier council's standards committee, which can then consider the allegation in the usual way. It will, of course, be open to the new single tier council's standards committee at its initial assessment of the allegation to refer the matter to the Standards Board for England in accordance with section 57A(2) of the 2000 Act. It also enables a

person to make a request to the related new single tier council's standards committee after the reorganisation date to review the decision of a predecessor council's standards committee not to take action in relation to an allegation, as long as that request is made within the usual 30-day period following the decision.

Part 4 – Provisions relating to accounts of predecessor councils and other financial matters

- 7.20. Part 4 makes provision for the preparation, approval and publication of final statements of accounts and statements on internal control relating to district and county councils that will cease to exist on the reorganisation date. Regulation 8 contains definitions of terms used in Part 4 and identifies the councils that are “related” for Part 4 purposes.
- 7.21. Regulation 9(1) and (2) makes the new single tier county councils and single tier district councils responsible for the preparation and publication of the final accounts of their related predecessor district councils.
- 7.22. Regulation 9(3) identifies the relevant single tier council in those cases where a predecessor county council will be succeeded by more than one single tier district council. In those cases responsibility will rest with the single tier district council that is appointed as the nominated council for the purposes of regulation 10 of the Local Government (Structural Changes) (Transfer of Functions, Property, Rights and Liabilities) Regulations 2008 (S.I. 2008/ 2176) (the “Transfer of Functions Regulations”). In these regulations, where more than one single tier council succeeds a predecessor council that is a county council, those successor councils are required to nominate one council from amongst themselves to which the financial reserves of the predecessor council will transfer to be held on trust for itself and the other successor councils and until those reserves are distributed amongst the successor councils. In relation to the orders made to date under section 7 of the 2007 Act, the effect of the provision is that responsibility for the preparation of the final accounts of Bedfordshire County Council and Cheshire County Council will rest with the single tier councils of Central Bedfordshire and Cheshire West and Chester since these will be the nominated councils under the Transfer of Functions Regulations.
- 7.23. Regulation 9(4) modifies regulations 7, 10 and 11 of the Accounts and Audit Regulations 2003 (S.I. 2003/533 as amended) (“the 2003 Regulations”) in consequence of the provisions of paragraphs (1) to (3) of regulation 9.
- 7.24. In placing the responsibility for the preparation and approval of the final statement of accounts of the predecessor authorities on the new single tier councils, the Government recognises that those councils and their councillors will need to consider a number of sets of accounts including, in those cases where councils are continuing, those of their own preparing council. It also recognises that the time and capacity of councillors to undertake this task will be

further constrained in those councils that will be holding elections in June 2009.

- 7.25. For those reasons, regulation 9(4)(c) extends to 31 July the period by which the statement of accounts will have had to have been considered and approved (by a committee of the new single tier council or by the whole council). This extension does not apply to the consideration by the single tier council of its related preparing council's accounts. The modification has no effect on the requirement to publish the various statements of accounts and associated documents by 30 September.
- 7.26. The Government also recognises that where a predecessor county council is succeeded by more than one new single tier district council, and the county council's final accounts are to be prepared by the nominated council, information may become available to the nominated council that will have an impact on those accounts and, as a consequence, on the position of the other successor single tier district council in the area. Regulations 9(5) and (6) therefore require the nominated council to make any such information available to the other related single tier district council as soon as is reasonably practicable.
- 7.27. Work on closing down the accounts of predecessor councils and preparing the final statements of accounts needs to begin before the reorganisation date. The approach therefore set out in regulation 10 requires this work to be started by the related preparing or shadow councils rather than the predecessor councils in advance of the reorganisation date. In particular, regulation 10(3) makes the section 151 officer of the related preparing or shadow council responsible for taking the necessary steps during the transitional period (defined in regulation 2(1)), and regulation 10(7) requires each predecessor council and its officers to assist and co-operate in this process.
- 7.28. Regulations 10(4), (5) and (6) requires the section 151 officer of the preparing or shadow council to prepare and implement a closure plan setting out the timetable and the resources that will be required to further the efficient and timely closure of the predecessor council's final accounts and to keep that plan under review and amend it if necessary.
- 7.29. All authorities to which the 2003 Regulations apply are required to ensure that their financial management is adequate and effective and that they have a sound system of internal control. They are required to review the effectiveness of their systems of internal control and, under regulation 4 of the 2003 Regulations, put the findings of their review to the full council or a committee of the council for consideration, following which the council or the committee will approve a statement on internal control.
- 7.30. That statement would normally cover the financial year to which the accounts relate together with any matters arising between the end of the financial year to which the accounts relate and the date on which they are approved. For

councils outside the restructuring areas and continuing councils within restructuring areas that date must be before 30 June. The statement of internal control should also be reviewed before it is published, with the accounts, on a date that must not be later than 30 September in the year after that to which the accounts relate.

- 7.31. The Regulations recognise that the officers and members of the predecessor councils in restructuring areas are best placed to complete these reviews. Regulation 11(1) requires each predecessor council to approve a statement on internal control (in accordance with the provisions of regulation 4 of the 2003 Regulations), and to have done so between the coming into force of the Regulations and the reorganisation date. Regulation 11(2)0 requires the statement to be signed by the leader of the predecessor council and by its head of paid service.
- 7.32. Regulation 11(3) and (4) requires the section 151 officer of the new single tier council to prepare for that council a statement about aspects of the internal controls of a predecessor council, if that officer believes there is a material inaccuracy in or omission from the statement on internal control of that predecessor council. That belief may derive from enquiries that the officer has made or matters that have arisen after the end of the financial year and that are relevant to internal control. The statement for the single tier council will contain details of the perceived inaccuracy or omission.
- 7.33. Regulation 11(6) modifies regulation 4(4) of the 2003 Regulations to provide for the statement on internal control of predecessor councils to be published by the new single tier council, together with the related statement of accounts, before 30 September immediately following the end of the year to which the accounts relate.

Part 5 - Changes of name

- 7.34. The section 7 orders that have so far been made establish nine new single tier councils, each as the sole principal council for its area. In those five areas where the existing county council is the preparing council which will become the new single tier council, the relevant section 7 order creates a new district, which is coterminous with the existing county and bears the same name. Therefore, for example, there is a county of Shropshire as well as a coterminous district of Shropshire. Similarly, there is already an existing district of Bedford (which has borough status and whose council is a preparing (district) council) in relation to which the section 7 order creates a coterminous county with the same name. The relevant orders create the entirely new coterminous counties and districts of Central Bedfordshire, Cheshire East, and Cheshire West & Chester. However, in accordance with section 2(3) of the Local Government Act 1972, each of the new single tier councils is constituted as either a county council or a district council, in the style “the County Council of X” or “the district council of Y”.

7.35. Section 74(1) of the Local Government Act 1972 enables the council of a county or a district to resolve to change the name of that county or district of which it is the council. This does not, however, allow the council to change the name of its corresponding county or district area, where this is coterminous. The Department received representations from the JITs that, since each of the new single tier councils is responsible for discharging the functions of both tiers of local government, they should be able to resolve to change the name of both their county and district. Regulation 12 of the third transitional Regulations therefore provides that where a county council established by a section 7 order resolves to change the name of its county, the name of the coterminous district shall change accordingly; and that where a district council established by a section 7 order resolves to change the name of its district, the name of the coterminous county shall also change accordingly.

Part 6 – Amendment of regulations

7.36. The Local Government (Structural and Boundary Changes) (Staffing) Regulations 2008 (SI 2008/1419) (“the Staffing Regulations”) make provision in respect of employees of councils affected by a section 7 order, in particular the transfer of employees from predecessor councils to the new single tier councils, and the appointment of chief officers of the new single tier councils.

7.37. The power to recruit, appoint and dismiss the chief officers of the new single tier council (and of the preparing or shadow council prior to the reorganisation date) rests, by virtue of regulation 4(2) of the Staffing Regulations, with the body which most closely represents the democratic mandate for both tiers of local government in the area. Where there have been elections to a preparing or shadow council, this is (as is ordinarily the case) the full council. In preparing councils where there have not been elections, however, this is the Implementation Executive until its dissolution (which is the fourth day after the next ordinary day of election of councillors; where there is an appointed shadow council then the power rests with the shadow executive until the fourth day after the next ordinary day of election of councillors.

7.38. Regulation 4(4) of the Staffing Regulations disapplied the provisions of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (“the Functions and Responsibilities Regulations”) which provide that functions relevant to the recruitment, appointment and dismissal of chief officers are not to be functions of the executive of a council. The third transitional Regulations amend the Staffing Regulations to clarify that the disapplication of those provisions of the Functions and Responsibilities Regulations ceases to have effect at the same time as the power to recruit, appoint and dismiss chief officers reverts to the full council in those areas with an Implementation Executive or appointed shadow council, ie. on the fourth day following the first ordinary day of election of councillors to occur after the reorganisation date. In the case of a shadow council with elections in 2008, the power rests with the executive until the end of the shadow period.

7.39. The second transitional Regulations made provision (regulation 19) for the continuity of local development documents that have been adopted under Part 2 of the Planning and Compulsory Purchase Act 2004 by predecessor councils. On and after the reorganisation date, these documents are to have effect as if they had been adopted by the related new single tier council. Regulation 23 of the second transitional Regulations also provides that the preparing or shadow councils (which by virtue of regulation 21 exercise the functions of local development authorities until the reorganisation date) may prepare local development documents until the reorganisation date in accordance with the minimum criteria for community involvement laid down in the Town and Country Planning (Local Development) (England) Regulations 2004 (“the 2004 Regulations”). This provision, introduced following representations of the JITs, was intended to avoid the situation of a preparing or shadow council having to use different arrangements in each of its former district areas during the preparation of a local development document, since it would otherwise be bound by each of the predecessor district councils’ Statements of Community Involvement (“SCIs”).

7.40. Since the second transitional Regulations were made, however, the Planning Act 2008 has received Royal Assent. Section 180 of that Act provides that an SCI does not need to be specified in a local planning authority’s local development scheme (LDS) and also removes the need for an SCI to be subject to independent examination in public. It is likely that these provisions will be commenced in April 2009.

7.41. Following representations from the JITs, the third transitional Regulations therefore amend regulation 19 of the second transitional Regulations in order to exclude SCIs from the local development documents which continue to have effect after the reorganisation date. In this way, the preparing and shadow councils may prepare local development documents in accordance with the minimum criteria laid down in the 2004 Regulations until the reorganisation date (by virtue of regulation 23 of the second transitional Regulations) and the new single tier councils may continue to do so thereafter by virtue of regulation 14 of the third transitional Regulations, until each puts in place a new SCI to cover the whole of its area.

8. Consultation outcome

8.1. The third transitional Regulations make provision in respect of those matters Government and its stakeholders (in particular, the councils affected by section 7 orders), consider necessary, particularly both in advance of the reorganisation date and in the period immediately after it, to facilitate and ensure 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, and what functions need to be exercised and how by the new single tier councils after the reorganisation date. The trade unions, including the Association of Local Authority Chief Executives (“ALACE”), were also given the opportunity to comment on the proposed amendment to the Staffing Regulations.

8.2. Since the coming into force of the seven section 7 orders made to date and the two existing sets of transitional Regulations, many of the issues addressed in the third transitional Regulations have been the subject of extensive discussions between the Department and the Joint Implementation Teams (“JITs”) for each area, formed of senior officers of the affected authorities, led by the Chief Executive

8.3. The policy intentions behind these Regulations were specifically discussed at three of the monthly meetings held in London with the leaders of each JIT, all of whom were content with the proposed approaches, and indeed many of the provisions implement representations the Department had received over the previous weeks from the JITs themselves. Draft copies of these Regulations have been circulated to lead officers of the JITs 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:

Exercise of certain education functions

- The provisions of Part 2 of these Regulations have been included following representations at JIT meetings which suggested that, in areas where the county council will cease to exist on the reorganisation date, preparing district and shadow councils may wish to have the option of beginning consultation on moving from a three-tier to a two-tier schools system in advance of the reorganisation date;

Provisions relating to councillors’ conduct

- The inclusion of a provision to protect a person’s right on and after the reorganisation date to request a review of a decision of a predecessor council’s standards committee to take no action in respect of an allegation it had received, has been included following representations from the JITs. A number of technical amendments were made following comments from the Standards Board for England and the Adjudication Panel for England;

Provisions relating to accounts of predecessor councils and other financial matters

- The provisions relating to the accounts of predecessor councils were developed in discussion with finance leads in restructuring areas and the JITS,

and have also been discussed with the Audit Commission. They reflect comments received following the circulation of an earlier draft;

Changes of name

- The provisions relating to the changing of the name of a council's county or district have been included following representations from the JITs;

Amendment of Regulations

- The amendment to the Staffing Regulations to clarify the point at which the disapplication of certain provisions of the Functions and Responsibilities Regulations relating to the power to recruit, appoint and dismiss chief officers ceases to have effect has been included following a query from one of the JITs. All the JITs, the trade unions and ALACE were given an opportunity to comment on the proposal, and the only comment received was a request to ensure clarity in respect of both preparing councils and shadow councils to which elections have not yet been held, which is reflected in the drafting;
- The amendment to the second transitional Regulations to ensure that predecessor council SCIs do not continue to have effect after the reorganisation date has been included following queries from several JITs as to the status of SCIs after the reorganisation date and the provisions of the Planning Act 2008;
- The Department also received queries about the continuity of local plans which had been adopted by predecessor councils under the transitional provisions in the Planning and Compulsory Purchase Act 2004. No provision has been made in relation to these plans, since the Department considers that any local plans, policies or proposals which have been subject to a saving direction from the Secretary of State will continue to have effect under the terms of that direction owing to the general continuity provisions at regulation 4 of the second transitional Regulations; and furthermore that any local plans which have been adopted by a predecessor council (but are not subject to a direction) are covered by regulation 14 of those Regulations, which provides generally for plans prepared by predecessor councils to continue to have effect on and after the reorganisation date as if they had been prepared by the related new single tier council.

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, can answer any queries regarding the instrument.

Department for Communities and Local Government

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