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STATUTORY INSTRUMENTS

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**1995 No. 402**

**The Local Government Changes For England (Property Transfer and Transitional Payments) Regulations 1995**

**PART II**

**TRANSFER OF PROPERTY RIGHTS AND LIABILITIES**

**Application and interpretation of Part**

- 3.—**(1) This Part does not apply with respect to the transfer of —
- (a) any property, rights or liabilities for the transfer of which provision is made in the Local Government Changes for England (Finance) Regulations 1994(1) ;
  - (b) any superannuation fund maintained by a principal council by virtue of regulations made under section 7 of the Superannuation Act 1972(2) ; or
  - (c) any rights or liabilities of such a council in respect of such a fund.
- (2) In this Part —
- “associated property”, in relation to any land of an abolished authority or, as the case may be, the relinquishing authority in relation to a transferred area, means —
- (a) property in or on the land which is used or intended to be used by the authority exclusively for the discharge of functions on the land;
  - (b) property which is so used or intended to be so used and which is kept elsewhere when not in use;
  - (c) investments or cash which relate exclusively to the land; or
  - (d) records which relate exclusively to the land;
- “charitable purposes” has the same meaning as in the Charities Act 1993(3) ;
- “contract” includes any enforceable undertaking;
- “the preliminary period”, in relation to an authority, means the period specified as such in a section 17 order;
- “record” includes material in whatever form or medium which conveys or is capable of conveying information; and
- “relevant shares” means shares held in a company which is under the control of a local authority within the meaning of section 68 of the 1989 Act (but with the omission of the words “unless the Secretary of State otherwise directs” in subsection (1) of that section); and “share” has the same meaning as in the Companies Act 1985(4) .

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(1) [S.I.1994/2825](#).

(2) [1972 c. 11](#). The current regulations are in [S.I.1986/24](#).

(3) [1993 c. 10](#).

(4) [1985 c. 6](#).

### **Information for facilitating implementation**

4.—(1) This regulation has effect for the purpose of facilitating the implementation of these Regulations.

(2) An abolished authority shall, within the relevant period, supply to any successor authority —

- (a) details of any relevant contract; and
- (b) all such information relating to the abolished authority’s property, rights or liabilities as the successor authority may reasonably request.

(3) The relinquishing authority in relation to a transferred area shall, within the relevant period, supply to the acquiring authority in relation to that area —

- (a) details of any relevant contract in relation to which such rights or liabilities as are mentioned in paragraph (5)(a) of regulation 5 arise; and
- (b) all such information relating to any rights or liabilities so mentioned, or to property to which paragraph (6) of that regulation applies, as the acquiring authority may reasonably request.

(4) Any person authorized in that behalf by a successor authority in relation to an abolished authority or, as the case may be, the acquiring authority in relation to a transferred area shall be entitled, at all reasonable times, on producing, if so required, evidence of his authority —

- (a) to inspect any record belonging to or under the control of the abolished authority or, as the case may be, the relinquishing authority which relates to any relevant contract, or any property, rights or liabilities, mentioned in paragraph (2) or (3) above; and
- (b) to take, or be supplied with, a copy of any such record or part of it.

(5) The rights conferred by paragraph (4) above include the right to require any record which is not in legible form to be made available in legible form for the purposes of inspection or copying or being supplied with copies.

(6) In this regulation —

“the final period” means the period of six weeks ending on the date immediately before the reorganisation date;

“relevant contract” means a contract entered into by an abolished authority or the relinquishing authority the period of which extends or may, under the terms of the contract, be extended beyond that date; and

“relevant period” means —

- (a) for the purposes of paragraph (2)(a) and (3)(a) above —
  - (i) in a case where the relevant contract was entered into before the date on which the preliminary period begins, the period of 3 months beginning with that date;
  - (ii) in a case where the relevant contract is entered into on or after that date and before the beginning of the final period, the period of six weeks beginning with the date on which the contract is entered into; and
  - (iii) in a case where the relevant contract is entered into after the beginning of the final period, that period; and
- (b) for the purposes of paragraph (2)(b) or (3)(b) above —
  - (i) in a case where the request for information is made before the beginning of the final period, the period of six weeks beginning with the date of the making of the request; and
  - (ii) in a case where the request is made after the beginning of the final period, that period; and

a reference to a successor authority includes, where there are two or more successor authorities in relation to an abolished authority, a reference to the Residuary Body.

### **Agreements for the transfer of property etc.**

5.—(1) Nothing in this regulation applies to —

- (a) any investments of an authority which are not associated property or relevant shares;
- (b) any property held by an authority, as sole trustee, exclusively for charitable purposes;
- (c) any rights or liabilities of an authority in respect of such investments or such property; or
- (d) any rights or liabilities of an authority in respect of money borrowed by the authority.

(2) Where there are two or more successor authorities in relation to an abolished authority, the successor authorities shall, during the preliminary period, use their best endeavours to make agreements which, subject to paragraph (3) below —

- (a) identify all the property, rights or liabilities of the abolished authority;
- (b) in relation to any property so identified, specify one of the successor authorities for the purposes of regulation 6(4);
- (c) in relation to any rights or liabilities so identified, specify one, or two or more, of the successor authorities for those purposes; and
- (d) in the case of any property mentioned in sub-paragraph (b) above which is land —
  - (i) identify such, if any, of it as will not be required by any of them for the purposes of, or in connection with, the exercise of functions on and after the reorganisation date; and
  - (ii) provide for the distribution among all the successor authorities of receipts from its disposal in accordance with regulation 10.

(3) An agreement pursuant to paragraph (2) above shall not specify different successor authorities in relation to —

- (a) any property identified in the agreement which forms part of a relevant collection; or
- (b) any rights or liabilities exclusively in respect of any such property;

and, for these purposes, “relevant collection” means —

- (i) any collection of archives or other records of general or local interest held as such by an abolished authority; or
- (ii) any collection of a museum or gallery provided or maintained by such an authority.

(4) Where the successor authorities in relation to an abolished authority are unable to make an agreement under paragraph (2) above in respect of any relevant shares held by that authority, any of the successor authorities may, before the reorganisation date, serve on the other successor authorities a notice stating that a difference has arisen in respect of such of those shares as are specified in the notice.

(5) The relinquishing authority and the acquiring authority in relation to a transferred area shall, during the preliminary period, use their best endeavours to make agreements which —

- (a) identify property of the relinquishing authority to which paragraph (6) below applies and any rights or liabilities acquired or incurred by that authority in respect of any such property or the exercise of any functions in or in relation to the transferred area;
- (b) in relation to any property so identified (other than property (“surplus land”) mentioned in sub-paragraph (b)(ii) of that paragraph), specify the acquiring authority for the purposes of paragraph (1) of regulation 8; and

- (c) in relation to any rights or liabilities so identified (other than rights or liabilities in respect of surplus land), specify that authority for those purposes or that authority and the relinquishing authority for the purposes of paragraph (3) of that regulation.
- (6) This paragraph applies to property —
  - (a) which is situated in the transferred area or is held for the purposes of, or in connection with, the exercise of functions in or in relation to that area; and
  - (b) which either
    - (i) is required by the acquiring authority for the purposes of, or in connection with, the exercise of functions in or in relation to that area on and after the reorganisation date; or
    - (ii) in the case of property which is land, is neither so required nor required by the relinquishing authority for the purposes of, or in connection with, the exercise of functions, on and after that date, in or in relation to its area.
- (7) Where the relinquishing authority and the acquiring authority in relation to a transferred area are unable to make an agreement under paragraph (5) above in respect of any property, rights or liabilities mentioned in sub-paragraph (a) of that paragraph, either of those authorities may, before the reorganisation date, serve on the other a notice specifying that property, or those rights or liabilities, for the purposes of paragraph (4) of regulation 8.
- (8) Except where the context otherwise requires, any reference in any of the following provisions of these Regulations to an agreement is a reference to an agreement made under the preceding paragraphs of this regulation; and any such agreement shall be in writing and be sealed, before the end of the preliminary period, by —
  - (a) in the case of an agreement under paragraph (2) above, all the successor authorities; and
  - (b) in the case of an agreement under paragraph (5) above, the relinquishing authority and the acquiring authority.

### **Vesting of property etc. of abolished authorities**

- 6.—**(1) Nothing in this regulation shall apply to any property held, as sole trustee, exclusively for charitable purposes by an abolished authority or to any rights or liabilities in respect of such property.
- (2) All the property, rights and liabilities of an abolished authority in relation to which there is only one successor authority shall, on the reorganisation date, vest in that successor authority.
- (3) The following paragraphs of this regulation, and regulation 7, shall have effect where there are two or more successor authorities in relation to an abolished authority.
- (4) Subject to paragraph (5) below —
  - (a) any property of the abolished authority which is identified in an agreement and in relation to which a successor authority is specified for the purposes of this paragraph shall, on the reorganisation date, vest in that authority; and
  - (b) any rights or liabilities of an abolished authority which are so identified and in relation to which a successor authority, or two or more successor authorities, are specified for the purposes of this paragraph shall, on that date, vest in that authority or, as the case may be, in those authorities jointly and severally.
- (5) Paragraph (4) above shall not apply to vest —
  - (a) any land identified in an agreement as mentioned in sub-paragraph (d)(i) of paragraph (2) of regulation 5, or any associated property in relation to that land, where the agreement does not include the provision mentioned in sub-paragraph (d)(ii) of that paragraph; or

(b) any rights and liabilities exclusively in respect of such property, including, in the case of property which is land, rights and liabilities in respect of a contract for the provision of services on, or the delivery of goods to, the land.

(6) Where any land of the abolished authority vests in a successor authority by virtue of paragraph (4) above and any associated property in relation to the land does not vest in that authority or another successor authority by virtue of that paragraph, the associated property shall, on the reorganisation date, vest in the successor authority in which the land is vested.

(7) This paragraph applies to —

- (a) any relevant shares of the abolished authority which have been specified in a notice under regulation 5(4);
- (b) any property of the abolished authority consisting of cash or investments which is not vested by virtue of paragraph (4) or (6) above;
- (c) any rights or liabilities in respect of such shares or such property; and
- (d) any rights or liabilities in respect of money borrowed by the abolished authority.

(8) Any property, rights and liabilities to which paragraph (7) above applies shall, on the reorganisation date, vest in the successor authority specified in a section 17 order as the designated authority in relation to this paragraph.

(9) This paragraph applies to —

- (a) any property of the abolished authority which is not vested by virtue of paragraph (4), (6) or (8) above; and
- (b) any rights or liabilities exclusively in respect of such property, including, in the case of property which is land, rights or liabilities in respect of a contract for the provision of services on, or the delivery of goods to, the land.

(10) Any property, rights or liabilities to which paragraph (9) above applies shall, on the reorganisation date, vest in the Residuary Body.

### **Vesting of residual rights and liabilities of abolished authorities**

7.—(1) This paragraph applies to any rights or liabilities arising in relation to any contract for the provision of services, or the delivery of goods, by or to the abolished authority which are not vested by virtue of paragraph (4) or (10) of regulation 6.

(2) Any rights or liabilities to which paragraph (1) above applies shall, on the reorganisation date, vest —

- (a) where the contract relates exclusively to land which is vested in a successor authority by virtue of paragraph (4) of regulation 6, in that authority;
- (b) where the contract relates to land which is vested by virtue of that paragraph in a successor authority and to land which is so vested in another successor authority, in those authorities jointly and severally;
- (c) where the contract relates to land which is vested in a successor authority by virtue of that paragraph and to land which is vested in the Residuary Body by virtue of paragraph (10) of that regulation, in that authority and the Residuary Body jointly and severally;
- (d) where the contract relates exclusively to the area of one successor authority, in that authority; and
- (e) where the contract relates to the area of two or more successor authorities, in those authorities jointly and severally.

(3) This paragraph applies to any rights or liabilities arising in relation to any transaction whereby an abolished authority undertook (whether voluntarily or by virtue of a statutory provision) any liability for —

- (a) the management, maintenance, repair or improvement of any property situated within its area which is vested in any other person (“the relevant property”); or
- (b) a guarantee, indemnity or financial assistance by way of grant or otherwise in respect of any such property.

(4) Any rights or liabilities to which paragraph (3) above applies shall, on the reorganisation date, vest in the successor authority in whose area the relevant property is situated or, where it is situated in the area of more than one successor authority, in those authorities jointly and severally.

(5) Any rights or liabilities of the abolished authority which are not vested by virtue of regulation 6 or any of the preceding paragraphs of this regulation shall, on the reorganisation date, vest in all the successor authorities jointly and severally.

### **Vesting of property etc. of relinquishing authorities**

**8.—**(1) The following property shall, on the reorganisation date, vest in the acquiring authority in relation to a transferred area —

- (a) any property of the relinquishing authority in relation to that area which is identified in an agreement and in relation to which the acquiring authority is specified for the purposes of this paragraph; and
- (b) any associated property in relation to such property (other than associated property specified in a notice under regulation 5(7)).

(2) Any rights or liabilities of the relinquishing authority in relation to a transferred area in respect of any associated property which, by virtue of paragraph (1) above, vests in the acquiring authority in relation to that area shall, on the reorganisation date, vest in that authority.

(3) Any rights or liabilities of the relinquishing authority in relation to a transferred area which are identified in an agreement and in relation to which the acquiring authority or, as the case may be, that authority and the relinquishing authority, are specified for the purposes of this paragraph shall, on the reorganisation date, vest in the acquiring authority or, as the case may be, in that authority and the relinquishing authority jointly and severally.

(4) During the period of six months beginning with the reorganisation date, the relinquishing authority and the acquiring authority in relation to a transferred area shall make agreements under this paragraph providing for —

- (a) the transfer to the acquiring authority, or the retention by the relinquishing authority, of any property specified for the purposes of this paragraph in a notice under regulation 5(7); and
- (b) either —
  - (i) the transfer to the acquiring authority, or to that authority and the relinquishing authority jointly and severally, of any rights or liabilities so specified; or
  - (ii) the retention by the relinquishing authority of any such rights or liabilities.

(5) Where an agreement under paragraph (4) above provides for the transfer of any property, rights or liabilities as mentioned in that paragraph, on such date as shall be specified in the agreement for the purposes of this paragraph —

- (a) the property shall vest in the acquiring authority; and
- (b) the rights and liabilities shall, according as the agreement provides, vest in that authority or that authority and the relinquishing authority jointly and severally.

## Charities

9.—(1) This paragraph applies to any property which, immediately before the reorganisation date, is held, as sole trustee, exclusively for charitable purposes by an abolished authority.

(2) Where any property to which paragraph (1) above applies is held for the benefit of, or of the inhabitants of, or of any particular class or body of persons in, a specified area, the property shall, on the reorganisation date, vest (on the same trusts) in the successor authority the area of which, on and after that date, comprises the whole or the greater part of that specified area.

(3) Where any property to which paragraph (1) above applies is not held for such a benefit as is mentioned in paragraph (2) above, the property shall, on the reorganisation date, vest (on the same trusts) in the successor authority the area of which, on and after that date, comprises an area which, immediately before that date, is the whole or the greater part of the area of the abolished authority.

(4) Any property to which paragraph (1) above applies which is not vested in a successor authority by virtue of paragraph (2) or (3) above shall, on the reorganisation date, vest (on the same trusts) in such one of the successor authorities as may be agreed between them not later than three months before the reorganisation date or, in default of such agreement, in such successor authority as the Charity Commissioners shall determine.

(5) Where, immediately before the reorganisation date, any property is held, as sole trustee, exclusively for charitable purposes by the relinquishing authority in relation to a transferred area and is so held for the benefit of, or of the inhabitants of, or of any particular class or body of persons in, a specified area the whole or the greater part of which is comprised in the transferred area, the property shall, on that date, vest (on the same trusts) in the acquiring authority in relation to that area.

(6) Any rights and liabilities —

- (a) of an abolished authority in respect of any property to which paragraph (1) above applies; or
- (b) of the relinquishing authority in relation to a transferred area in respect of any property which is held as mentioned in paragraph (5) above,

shall, on the reorganisation date, vest in the authority in which the property is vested.

(7) Where, immediately before the reorganisation date, any power with respect to a relevant charity is under the trusts of the charity or by virtue of any enactment vested in, or in the holder of an office connected with, an abolished authority or, as the case may be, the relinquishing authority in relation to a transferred area, that power shall, on that date, vest in, or in the holder of the corresponding office connected with, or (if there is no such office) the proper officer of, the authority in which the property of the charity would have been vested under paragraphs (2) to (5) above if that property had been property to which paragraph (1) above applied or, as the case may be, held as mentioned in paragraph (5) above.

(8) References in paragraph (7) above to a power with respect to a relevant charity do not include references to a power of any person by virtue of being a charity trustee of the charity; but where, under the trusts of such a charity, the charity trustees immediately before the reorganisation date include an abolished authority or the relinquishing authority in relation to a transferred area, or the holder of an office connected with such an authority, those trustees shall instead include the authority in which the property of the charity would have been vested as mentioned in paragraph (7) above or, as the case may be, the holder of the corresponding office connected with, or (if there is no such office) the proper officer of, that authority.

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

(10) In this regulation —

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

“proper officer” has the same meaning as in the Local Government Act 1972(5) ; and  
“relevant charity” means a charity other than a charity which is incorporated by charter or a company.

### **Disposal of surplus land**

**10.**—(1) An authority in whom any surplus land is vested on the reorganisation date (“the custodian authority”)—

- (a) shall use its best endeavours to secure that the land is disposed of as soon as is reasonably practicable; and
- (b) shall not, except with the consent of the Secretary of State, dispose of it for a consideration which is less than the best that can reasonably be obtained.

(2) Where the custodian authority is a successor authority, the authority shall, as soon as is reasonably practicable after a disposal under paragraph (1) above—

- (a) deduct the amount of any relevant expenditure from the amount received in respect of the disposal (“the disposal receipt”); and
- (b) if the amount found after that deduction is a positive amount, distribute that amount in accordance with provisions included in an agreement as mentioned in regulation 5(2)(d)(ii).

(3) Where the custodian authority is the relinquishing authority in relation to a transferred area, the authority shall, as soon as is reasonably practicable after a disposal under paragraph (1) above—

- (a) deduct the relevant proportion of any relevant expenditure from the appropriate proportion of the disposal receipt; and
- (b) if the amount found after that deduction is a positive amount, pay that amount to the acquiring authority in relation to the area.

(4) For the purposes of paragraph (3) above—

- (a) the appropriate proportion is the proportion equal to the proportion which the population of the transferred area bears to the population of the area which, immediately before the reorganisation date, was the area of the relinquishing authority; and
- (b) the population of an area shall be taken to be the number estimated by the Registrar General by reference to the date which, at the reorganisation date, is the latest date in respect of which such an estimate is available.

(5) Where the whole of a custodian authority’s relevant expenditure is not met by a deduction of such expenditure from the amount of a disposal receipt as mentioned in paragraph (2) or (3) above, that authority may recover an amount equal to the relevant proportion of any relevant expenditure which is not so met from—

- (a) where the custodian authority is a successor authority in relation to an abolished authority, any other successor authority in relation to that authority; or
- (b) where the custodian authority is the relinquishing authority in relation to a transferred area, the acquiring authority in relation to that area.

(6) For the purposes of paragraphs (3) and (5) above, the relevant proportion means such proportion as the authorities concerned may agree, or failing such agreement—

- (a) where those authorities are successor authorities in relation to an abolished authority, the proportion equal to the proportion which the council tax base of the authority from whom an amount is to be recovered for the financial year in which the disposal takes place bears to

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



the aggregate of the council tax bases for that financial year of all the successor authorities;  
and

- (b) where the authorities concerned are the relinquishing authority and the acquiring authority in relation to a transferred area, the proportion equal to the proportion which the relinquishing authority's estimate of the council tax base of the transferred area for that financial year bears to that authority's estimate of the council tax base for that year of the area which, immediately before the reorganisation date, was the area of that authority.

(7) In this regulation—

“relevant expenditure” means a sum equal to the amount by which the total of expenditure properly incurred by the custodian authority in connection with the management or disposal of surplus land exceeds the total of payments (other than the disposal receipt) received by that authority in respect of the land; and

“surplus land” means any land identified in an agreement as mentioned in paragraph (2)(d)(i) or, as the case may be, (6)(b)(ii) of regulation 5.

### **Rights of access to records**

11.—(1) Where—

- (a) any records of a relevant authority are vested by virtue of these Regulations or any other relevant instrument in any body; and
- (b) the records relate to—
- (i) any property, rights or liabilities which are so vested in another body; or
  - (ii) any function which is exercisable, on and after the reorganisation date, by such other body,

that other body shall be entitled during ordinary office hours, through any person authorised in that behalf, to inspect those records and to take, or be supplied with, copies of those records or of any part of them.

(2) The rights conferred by paragraph (1) above include the right to require any record which is not in legible form to be made available in legible form for the purposes of inspection or copying or being supplied with copies.

(3) In this regulation and regulation 12, “relevant authority” means—

- (i) an abolished authority; or
- (ii) the relinquishing authority in relation to a transferred area.

### **Continuity of matters**

12.—(1) All contracts, deeds, bonds, agreements, licences and other instruments subsisting in favour of, or against, and all notices in force which were given, or have effect as if given, by or to, a relevant authority in respect of any transferred matters shall be of full force and effect in favour of, or against, the body to whom such matters are transferred.

(2) Any action or proceeding, or any cause of action or proceeding, pending or existing at the reorganisation date by or against a relevant authority in respect of any transferred matters may be continued, prosecuted and enforced by or against the body to which such matters are transferred.

(3) In this regulation, “transferred matters” means any property, rights or liabilities transferred by virtue of these Regulations or any other relevant instrument.