

2008 No. 2176

LOCAL GOVERNMENT, ENGLAND

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

<i>Made</i>	- - - -	<i>14th August 2008</i>
<i>Laid before Parliament</i>		<i>18th August 2008</i>
<i>Coming into force</i>	- -	<i>8th September 2008</i>

The Secretary of State, in exercise of the powers conferred by sections 14 and 240(10) of the Local Government and Public Involvement in Health Act 2007(a), makes the following Regulations:

PART 1

GENERAL

Citation, commencement, application and effect

1.—(1) These Regulations may be cited as the Local Government (Structural Changes) (Transfer of Functions, Property, Rights and Liabilities) Regulations 2008 and shall come into force on 8th September 2008.

(2) These Regulations, which are of general application—

- (a) have effect subject to any provision for the transfer of functions, property, rights or liabilities included in—
 - (i) other regulations under Chapter 1 of Part 1 of the Local Government and Public Involvement in Health Act 2007 (b) (structural and boundary change),
 - (ii) an order under section 20 of that Act (correction of orders),
 - (iii) an order under section 86 of that Act (reorganisation of community governance)(c),
 - (iv) regulations under section 97 of that Act (supplementary regulations),
 - (v) an order under Part 2 of the Local Government and Rating Act 1997(d) (parishes and parish councils), or
 - (vi) regulations under section 7 of the Superannuation Act 1972(e) (superannuation of persons employed in local government service, etc.); and

(a) 2007 c.28. In accordance with subsection (2) of section 14, subsection (1) of that section is to be read with section 15.
(b) See also section 14(3), which provides that regulations under section 14 have effect subject to any provision included in an order under section 7 or 10.
(c) See also section 98(3) and (4) and the definition of “reorganisation order” in section 102(2).
(d) 1997 c.29. Part 2 is repealed, with savings; see S.I. 2008/337.
(e) 1972 c.11. There are amendments of which none is relevant to these Regulations.

- (b) do not affect any transfer of property, rights or liabilities for which provision is contained in an agreement under section 16 of the Local Government and Public Involvement in Health Act 2007 (agreements about incidental matters).

Interpretation

2.—(1) In these Regulations—

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

“agreement”, except in regulations 14, 15 and 17(1)(b), means an agreement under section 16 of the Act;

“caretaker council” has the meaning given by regulation 13(1);

“default award”, means the arbitrator’s award in the arbitration of a disputed matter under section 16(3) of the Act (agreements about incidental matters)(a);

“nominated council” has the meaning given by regulation 10(1);

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

“predecessor council”, in relation to a section 7 order, means a county or district council for whose winding up and dissolution the order provides;

“relevant instrument” means a statutory instrument made under the Act or, in connection with the Act or such an instrument, under any other Act, and includes these Regulations;

“the reorganisation date”, in relation to a predecessor council and a section 7 order, means the date specified in the order as that on which the council is to be wound up and dissolved;

“section 7 order” means an order under section 7 of the Act (implementation of proposals by order);

“single tier council” means the county or district council which, on the reorganisation date, becomes the principal authority for an area for which there is a single tier of local government(b); and

“successor council”—

- (a) in relation to a predecessor council whose entire area becomes part of the area of a sole single tier council on the reorganisation date, means that council;

- (b) in relation to a predecessor council whose area becomes the area of more than one single tier council on the reorganisation date, means those councils,

but this is subject to paragraph (2).

(2) Where, as regards any period—

- (a) which, for the purposes of the section 7 order relevant to a predecessor council, is a shadow period(c) or part of a transitional period(d) before the reorganisation date, and

- (b) during which a provision of these Regulations requires or authorises steps to be taken by a successor council,

the definition of “successor council” shall have effect as if, for “that council” and “those councils”, there were substituted—

- (i) as regards a shadow period, “the shadow authority”;

- (ii) as regards part of a transitional period before the reorganisation date, “the preparing council”.

(a) As to “disputed matter”, see section 16(5) of the Local Government and Public Involvement in Health Act 2007.

(b) As to “a single tier of local government”, see section 1(2) of the Local Government and Public Involvement in Health Act 2007.

(c) See, for example, the definition in article 2 of S.I. 2008/634 and article 14 of S.I. 2008/907.

(d) See, for example, article 6(1) of S.I. 2008/490 and 2008/491.

(3) Any reference in these Regulations to rights or liabilities of a predecessor council includes a reference to rights or liabilities acquired or incurred by any predecessor in title of that council.

Information for facilitating implementation of Regulations

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

(2) A predecessor council shall supply to the successor council—

- (a) details of every relevant contract;
- (b) details of every relevant action or proceeding; and
- (c) such other information relating to the predecessor council's property, rights or liabilities as the successor council may reasonably request.

(3) Those details and that information shall be provided—

- (a) where paragraph (4) applies, not later than the day before the reorganisation date;
- (b) in any other case, as soon as practicable and not later than the end of the relevant period.

(4) This paragraph applies where the predecessor council and the successor council agree that—

- (a) details of—
 - (i) a relevant contract entered into before the beginning of the preliminary period; or
 - (ii) a relevant action or proceeding arising before the beginning of the preliminary period, or
- (b) such other information relating to the predecessor council's property, rights or liabilities as may be specified (whether generally or by reference to a particular class or description),

do not need to be provided by the end of the relevant period.

(5) A person authorised in that behalf by the successor council shall be entitled, at any reasonable time before the reorganisation date, on producing, if so required, evidence of his authority—

- (a) to inspect any record belonging to or under the control of the predecessor council which relates to any relevant contract, action or proceeding or any property, rights or liabilities mentioned in paragraph (2); and
- (b) to take, or be supplied with, a copy of any such record or part of it.

(6) The rights conferred by paragraph (5) 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.

(7) In this regulation—

“the preliminary period” means the period beginning on the date on which the section 7 order relevant to the predecessor council comes into force and ending on the reorganisation date;

“record” includes material in whatever form or medium which conveys or is capable of conveying information;

“relevant action or proceeding”, means an action or proceeding—

- (a) to which a predecessor council is a party; and
- (b) which, in that council's opinion, is unlikely to have been determined or settled before the reorganisation date;

“relevant contract” means a contract entered into by a predecessor council the period of which extends, or may, under the terms of the contract, be extended, beyond the reorganisation date; and

“relevant period”—

- (a) as regards details referred to in paragraph (2)(a) and (b), means—
 - (i) where the relevant action or proceeding arises, or the relevant contract is entered into, before the date on which the preliminary period begins, the period beginning on that date and ending six months before the reorganisation date;
 - (ii) where the relevant action or proceeding arises, or the relevant contract is entered into on or after the date on which the preliminary period begins, the period beginning on the date on which the action or proceeding arises or the contract is entered into and ending on whichever is the earlier of the reorganisation date and the date that falls four months after that on which the action or proceeding arose or the contract was entered into;
- (b) as regards information referred to in paragraph (2)(c), means—
 - (i) where the request is made at least six weeks before the reorganisation date, the period of six weeks beginning with the date of the making of the request; and
 - (ii) where the request is made within six weeks of the reorganisation date, the period beginning with the date of the making of the request and ending on the day before the reorganisation date.

PART 2

TRANSFER OF FUNCTIONS

Transfer of functions to sole single tier council

4. If a section 7 order provides for—

- (a) the winding up and dissolution of two or more predecessor councils; and
- (b) the establishment of a single tier of local government for an area which consists of the entirety of the areas of both or all of the predecessor councils,

the functions of the predecessor councils shall on the reorganisation date become functions of the single tier council.

Transfer of functions to more than one single tier council

5.—(1) If a section 7 order provides for—

- (a) the winding up and dissolution of two or more predecessor councils; and
- (b) the establishment, for the area of at least one of those councils, of more than one area for which there is a single tier of local government,

the functions of the predecessor councils shall on the reorganisation date become functions of both or, as the case may be, all of the successor councils, and exercisable by each of them independently of the other or others, but this is subject to paragraph (2).

(2) Functions exercisable by a predecessor council under any local Act in respect of an area that constitutes the area, or part of the area, of only one of the successor councils, shall on the reorganisation date become functions of that council only.

PART 3

TRANSFER OF PROPERTY, RIGHTS AND LIABILITIES

Interpretation and application of Part 3

6.—(1) In this Part —

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

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

“contract” includes any enforceable undertaking;

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

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

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

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

Transfers where only one successor council

7. If a section 7 order provides for—

- (a) the winding up and dissolution of two or more predecessor councils; and
- (b) the establishment of a single tier of local government for an area which consists of the entirety of the areas of both or all of the predecessor councils,

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

Transfers where more than one successor council

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

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

(a) 1989 c.42.

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

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

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

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

Property held exclusively for charitable purposes

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

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

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

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

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

(6) References in paragraph (5) to a power with respect to a relevant charity do not include references to a power of any person by virtue of being a charity trustee of the charity; but where, under the trusts of the charity, the charity trustees immediately before the reorganisation date include a predecessor council or the holder of an office connected with a predecessor council, those trustees shall instead include the successor council in which the property of the charity would have vested as mentioned in paragraph (5) or, as the case may be, the holder of the corresponding office connected with, or (if there is no such office) the proper officer of, that successor council.

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

(8) In this regulation—

“charitable purposes” and “charity” have the same meanings as in the Charities Act 2006(a);
“charity trustees”, “company”, “the court” and “trusts” have the same meanings as in the Charities Act 1993(b);

(a) 2006 c.50. *See* sections 1 and 2.

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

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

Property consisting of financial reserves

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

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

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

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

Agreements in relation to property, etc: supplementary provision

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

- (a) property which is not associated property or relevant shares;
- (b) property which is land;
- (c) rights or liabilities in respect of such property; and
- (d) rights or liabilities in respect of money borrowed by a predecessor council.

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

- (a) for property of the description in paragraph (1)(a), to transfer to one (and only one) of the successor councils;
- (b) for property which is land and has been identified as surplus to the requirements of both or all of the successor councils for the purposes of, or in connection with, the exercise of functions on and after the reorganisation date, to be disposed of; and
- (c) for the distribution among the successor councils of receipts from the disposal of property referred to in sub-paragraph (b).

(3) An agreement shall not specify different successor councils in relation to —

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

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

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

(4) In paragraph (1)(a) “relevant shares” means shares held in a company which is under the control of a local authority within the meaning of section 68 of the Local Government and Housing Act 1989 Act(b) (but with the omission from subsection (1) of that section of the words

(a) 1972 c. 70; for “proper officer”, see section 270(3) of the Act.
(b) 1989 c.42.

“unless the Secretary of State otherwise directs”); and “share” has the same meaning as in the Companies Act 1985(a).

Vesting of property, etc to which agreements relate

12.—(1) Subject to paragraph (2)—

- (a) property, rights and liabilities of a predecessor council which are identified in an agreement as for transfer on the reorganisation date to only one of the successor councils shall, on that date, vest in and transfer to that council; and
- (b) property, rights and liabilities of a predecessor council which are identified in an agreement as for transfer on the reorganisation date to two or more successor councils shall, on that date, vest in and transfer to those councils—
 - (i) where the property consists of land, as joint tenants; and
 - (ii) in any other case, jointly and severally.

(2) Where—

- (a) land of a predecessor council vests in a successor council by virtue of paragraph (1), and
- (b) any associated property in relation to the land does not vest in that council by virtue of that paragraph,

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

Transfers to caretaker councils

13.—(1) Where—

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

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

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

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

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

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

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

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

(b) See section 16(5) of the Act.

PART 4

MATTERS SUPPLEMENTARY TO TRANSFER OF PROPERTY, RIGHTS AND LIABILITIES

Disposal of surplus land

14.—(1) A successor council (including any caretaker council), in which any surplus land is vested on the reorganisation date (“the custodian council”)—

- (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) The custodian council shall, as soon as is reasonably practicable after a disposal under paragraph (1)—

- (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 such proportions as may be agreed between the successor councils concerned or, failing such agreement, as may be determined by a person appointed by the Secretary of State.

(3) Where the whole of a custodian council’s relevant expenditure is not met as mentioned in paragraph (2), that council may recover an amount equal to the relevant proportion of any relevant expenditure which is not so met from any other successor council concerned.

(4) For the purposes of paragraph (3), the relevant proportion means such proportion as the successor councils concerned may agree, or failing such agreement, as may be determined by a person appointed by the Secretary of State.

(5) In this regulation—

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

“the successor councils concerned”, in relation to any land, means those councils that are the successor councils to the predecessor council in which the land was vested before the reorganisation date; and

“surplus land” means any land that has been identified by the successor councils concerned as surplus to their requirements.

Caretaker and nominated councils: recovery of expenditure and distribution of surpluses

15.—(1) A council which, under any provision of a relevant instrument, is a caretaker council or a nominated council, may recover from the other successor councils concerned such proportion of any eligible expenditure as may be agreed between them or, failing such agreement, as may be determined by a person appointed by the Secretary of State.

(2) Where the total of any sums received by the caretaker council or the nominated council (as the case may be) in any financial year in carrying out its functions as such exceeds the amount of any eligible expenditure in respect of that year, the caretaker council or the nominated council shall, as soon as is reasonably practicable after the end of that year, pay to each other successor council such proportion of the excess as may be agreed between them or, failing such agreement, as may be determined by a person appointed by the Secretary of State.

(3) In this regulation “eligible expenditure”, in relation to a caretaker council or a nominated council (as the case may be) and a year, means the difference between—

- (a) an amount equal to the expenditure properly incurred by the caretaker council or the nominated council in that year in carrying out any of its functions as such for the meeting of which provision is not otherwise made in a relevant instrument; and
- (b) an amount equal to the total of any interest or other sums—
 - (i) where the council is a nominated council, received by that council in connection with the management of financial reserves transferred to it under regulation 10;
 - (ii) where the council is a caretaker council, received by that council with respect to investments vested in it by virtue of regulation 13(4).

Rights of access to records

16.—(1) Where—

- (a) records of a predecessor council are vested by virtue of these Regulations or any other relevant instrument in any body; and
- (b) the records relate to—
 - (i) property, rights or liabilities which are vested by virtue of these Regulations 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 normal 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) 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.

PART 5 DISPUTES

Disputes

17.—(1) Any question as to the interpretation or application of any provision of these Regulations may be determined—

- (a) in the case of a question as to the interpretation or application of regulation 9, by the Charity Commissioners; and
- (b) in any other case, by a person agreed on by the parties concerned or, failing their agreement, appointed by the Secretary of State.

(2) Subject to paragraph (3), where any question as to the interpretation or application of any provision of these Regulations which relates to the vesting of any property, or the transfer of rights or liabilities, is referred for determination under paragraph (1) before the end of the period of 12 months beginning on the reorganisation date—

- (a) the provision of these Regulations which is in question shall not have, or shall cease to have, effect for the purposes of the vesting of the property, or the transfer of the rights or liabilities concerned; and
- (b) pending the determination of the question, the property, rights or liabilities concerned shall vest in, or transfer to, the caretaker council on trust for itself and the other successor councils.

(3) Where the question referred for determination relates to—

- (a) property vested in a nominated council under regulation 10; or

- (b) property vested in, or rights or liabilities transferred to, a caretaker council under regulation 13(4),

the property, rights or liabilities shall continue in the possession of that council pending the determination of the question.

- (4) The determination may make any provision that might be contained in an agreement.

(5) Where a determination provides for the transfer to only one successor council of any property, rights or liabilities or, in the case of rights or liabilities, to two or more successor councils jointly and severally—

- (a) the property, rights or liabilities concerned shall, by virtue of the determination, vest in, or transfer to, the council specified in the determination or, as the case may be, jointly and severally in the councils so specified; and
- (b) the provision of these Regulations which would have applied to the property, rights or liabilities if the vesting or transfer had been effected by that provision shall apply to the property, rights or liabilities.

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

Parmjit Dhandra

Parliamentary Under Secretary of State

Department for Communities and Local Government

14th August 2008

EXPLANATORY NOTE

(This note is not part of the Regulations)

Orders under section 7 of the Local Government and Public Involvement in Health Act 2007 (“the 2007 Act”) give effect to proposals for changes to the structure of local government. In particular, they provide for there to be a single tier of local government for the areas to which they relate. There is a single tier of local government for an area if there is a county council and no district councils or if there is a district council and no county council.

The first orders to be made under section 7 of the 2007 Act provide for the establishment of single tiers of local government in Bedfordshire, Cheshire, Cornwall, County Durham, Northumberland, Shropshire and Wiltshire on 1st April 2009 (S.I.s 2008/907, 634, 491, 493, 494, 492 and 490, respectively). In Cornwall, County Durham, Northumberland, Shropshire and Wiltshire, the existing county council continues after 31st March 2009 as the single tier council for the county. In Bedfordshire, the county council is wound up and dissolved. Bedford Borough Council continues as the single tier council for the borough of Bedford and a new Central Bedfordshire Council (a district council) becomes the single tier council for the rest of the county. In Cheshire, the county council is superseded by two new district councils, Cheshire East, and Cheshire West and Chester, which become single tier councils for their respective areas.

These Regulations, which are of general application, supplement those orders and any orders that may be made in the future under section 7 of the 2007 Act.

Section 14(3) of the 2007 Act provides for regulations under section 14 to have effect subject to any provision included in an order under section 7 or 10. Additionally, regulation 1(2) provides for these Regulations to have effect subject to any provision included in—

- (a) other regulations under Chapter 1 of Part 1 of the 2007 Act (which may make provision for the transfer of specific functions, property, rights and liabilities between authorities affected by orders under section 7),
- (b) an order under section 20 of the 2007 Act (which, so far as relevant to these Regulations, enables mistakes in section 7 orders to be corrected if they cannot be corrected by the making of amending orders under that section),
- (c) an order under section 86 of the 2007 Act or regulations under section 97 of the 2007 Act or an order under Part 2 of the Local Government and Rating Act 1997 (transfers relevant to parish councils), or
- (d) regulations under section 7 of the Superannuation Act 1972 (relevant to pension schemes of local government employees).

Regulation 1(2) also provides that these Regulations do not affect transfers of property, rights or liabilities made by agreement under section 16 of the Local Government and Public Involvement in Health Act 2007 (agreements between councils about incidental matters).

Regulation 2 contains definitions, including that of “the reorganisation date” which, in relation to a predecessor council and an order under section 7 of the 2007 Act, means the date specified in the order as that on which the council is to be wound up and dissolved.

Regulation 3 contains provisions relevant to the supply of information by a local authority which is to be wound up and dissolved (a “predecessor council”) to the appropriate single tier council (a “successor council”).

Regulations 4 and 5 make provision for the transfer of functions from a predecessor council. (In this context, “functions” means the powers and duties exercisable by a predecessor council immediately before the reorganisation date.) Where the predecessor council is succeeded by only one successor council, all of its functions transfer to that council on the reorganisation date. Where there is more than one successor council for a predecessor council’s area, most of the predecessor council’s functions transfer on the reorganisation date to the successor councils and become exercisable by each of them independently of the other or others. A function of a predecessor

council that relates to a particular part of its area, for example, a function conferred by a local Act, will transfer to the successor council whose area consists of or includes that part.

In Part 3 of the Regulations, regulation 6(1) contains definitions relevant to that Part and regulation 6(2) makes clear that regulations 9 to 13 do not apply to transfers of property, rights and liabilities under regulation 7.

Regulation 7 makes provision for the transfer of property, rights and liabilities where a predecessor council is to be succeeded by only one successor council.

Regulation 8 makes provision for the transfer of property, rights and liabilities where a predecessor council is succeeded by more than one successor council.

Paragraph (1) of regulation 8 provides that property of a predecessor council that is held exclusively for charitable purposes is to transfer in accordance with regulation 9, and that property in the form of a predecessor council's financial reserves (defined in regulation 6) is to transfer in accordance with regulation 10. Other property, rights and liabilities of a predecessor council are to transfer to a "caretaker" council in accordance with regulation 13 unless—

- (a) they are the subject of an agreement under section 16 of the 2007 Act or of the arbitrator's award in the arbitration of a disputed matter under subsection (3) of that section made before the reorganisation date (in which case they will transfer in accordance with the agreement or the award); or
- (b) other regulations under section 14 of the Act provide for their transfer.

Where regulation 13 applies with respect to some of a predecessor council's property, rights or liabilities that is a disputed matter within the meaning of section 16(3) of the 2007 Act, it does so only until the matter is the subject of a default award.

Regulations 11 and 12 contain provisions relevant to agreements under section 16 of the 2007 Act.

Regulation 13 deals with the situation where there is more than one successor council in relation to a predecessor council and, by the date that falls three months before the reorganisation date, the successor councils have not been able to reach agreement under section 16 of the 2007 Act as to which of them should take particular property, rights or liabilities of the predecessor council ("residual matters"). The Secretary of State is required to nominate one or more of the successor councils as a "caretaker" council, with the consequence that, if agreement under section 16 has not been reached by the reorganisation date, residual matters will transfer on that date to the caretaker council. Where the Secretary of State nominates more than one of the successor councils as the caretaker councils, he is required to indicate the particular residual matters, or the classes or descriptions of residual matters, that are to transfer to a particular caretaker council. Each caretaker council is required to hold the particular residual matters, or residual matters of the specified classes or descriptions, on trust for itself and the other successor council(s) concerned until a decision has been made as to which of the successor councils should take them.

In Part 4 of the Regulations, regulation 14 requires a council to which land has been transferred and which has been identified by the successor councils concerned as surplus to their requirements to dispose of it. The net proceeds or net deficits are to be shared among or borne by the successor councils concerned.

Regulation 15 provides for the "caretaker" council to recover part of its expenditure from the other successor council(s) concerned or, as the circumstances require, to distribute part of any surplus attributable to its management of the property, rights and liabilities for which it is the "caretaker".

Regulation 16 deals with access to records.

In Part 5, regulation 17 provides for the resolution of disputes as to the interpretation or application of provisions of the Regulations.

STATUTORY INSTRUMENTS

2008 No. 2176

LOCAL GOVERNMENT, ENGLAND

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

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