

EXPLANATORY MEMORANDUM TO

THE LOCAL GOVERNMENT (BOUNDARY CHANGES) REGULATIONS 2018

2018 No. 1128

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 These Regulations provide that when two or more councils come together through a merger to create a single, district council there is a smooth transition in practical terms from the predecessor councils (the councils that will be abolished on the reorganisation date) to the successor council (the new council that is being created for the whole of the area). The Regulations provide for incidental, consequential, transitional and supplementary arrangements in consequence of any orders made by the Secretary of State under section 10 (“section 10 orders”) of the Local Government and Public Involvement in Health Act 2007 (“the 2007 Act”).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 Part 1 of the 2007 Act provides for the making of local government structural and boundary changes in England. Section 10 orders may make provision for the alteration of a local government boundary, the abolition of an existing local

government area, the winding up and dissolution of the council for the area and the creation of a new local government area and council.

- 6.2 To enable continuity between the predecessor and successor councils a section 10 order establishes a shadow authority made up of all members of the predecessor councils. The shadow authority appoints a shadow executive with responsibility to take forward the preparations for the successor council. At the point of reorganisation, the shadow authority takes on the full functions and responsibilities of a local authority and becomes the new successor council.
- 6.3 Section 14 of the 2007 Act enables the Secretary of State, by regulations of general application, to make incidental, consequential, transitional and supplementary provision to provide for a smooth transition from the predecessor councils to the successor council, in part by providing the shadow authority with more powers. These Regulations are made under section 14 and will apply to any future changes to a local government area made by a section 10 order. However, in the first instance, these Regulations will facilitate the implementation of a series of district council mergers which are due to take effect on 1st April 2019 (see the East Suffolk (Local Government Changes) Order 2018 (S.I. 2018/640)¹, the West Suffolk (Local Government Changes) Order 2018 (S.I. 2018/639)² and the Somerset West and Taunton (Local Government Changes) Order 2018 (S.I. 2018/649)³. Further details about these section 10 orders can be found in the Explanatory Memorandums that accompany those orders. It is planned that a further set of section 14 regulations will be laid before Parliament later in the Autumn, which will make provisions relating to finance and council tax.
- 6.4 These Regulations make similar provisions to the general regulations made under section 14 of the 2007 Act that apply in relation to section 7 orders. Section 7 orders provide for re-structuring of an area in which there are two tiers of local government and the establishment of single tier local government in that area. These general regulations (S.I. 2008/1419, 2008/2113, 2008/2176, 2008/2867 and 2009/276) applicable to section 7 orders have been updated through Regulations (S.I. 2018/930) with respect to changes in legislation and policy affecting the duties and functions of local authorities that have been made since 2009.

7. Policy background

What is being done and why?

- 7.1 The Government made a manifesto commitment to support those local authorities who wish to combine to serve their communities better, and the Ministry of Housing, Communities and Local Government is committed to consider locally-led proposals from councils who wish to merge when requested. Each proposal is considered on its own merits with regard to the criteria announced to Parliament in a Written Ministerial Statement on 7 November 2017⁴; namely that the proposal is likely to improve local government in the area; the proposal commands local support; and the proposed merged area is a credible geography which would not pose an obstacle to

¹ <http://www.legislation.gov.uk/ukxi/2018/640/contents/made>

² <http://www.legislation.gov.uk/ukxi/2018/639/contents/made>

³ <http://www.legislation.gov.uk/ukxi/2018/649/contents/made>

⁴ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2017-11-07/HCWS232/>

further locally-led proposals for authorities to combine to serve their communities better.

- 7.2 Where such a proposal is implemented, these Regulations will provide that all functions conferred on the predecessor councils are transferred to the successor council as well as all property, rights and liabilities; staffing; specified electoral and governance matters; honorary titles; plans, schemes, statements and strategies; and responsibility for certain functions relating to town and country planning and housing. These Regulations also provide transitional responsibility to the shadow authority for financial matters, including the preparation of accounts and approval of the annual governance statement.
- 7.3 The Regulations will ensure that anything that is being done by or to a predecessor council, can be continued by or to the successor council. This relates in particular, but is not limited to, any agreements, decisions or declarations made by the predecessor councils, any byelaws, orders or regulations made and any approvals, permits or licences issued. These provisions do not preclude the successor council from taking future steps to change anything that was done by or to a predecessor council.
- 7.4 The predecessor councils are required to supply to the shadow authority all details and information relating to the functions and activities of the councils. This ensures timely cooperation between the councils during the period that the shadow authority and its executive prepares for a smooth transition of functions to the new successor council.
- 7.5 A key responsibility of the shadow authority before the date of reorganisation is the appointment of the head of paid service and other statutory officers for the shadow authority and the successor council. The Regulations allow for the shadow authority or successor council to choose to retain an existing head of paid service or to recruit more widely. These provisions are designed to be flexible enough to allow merging councils to consider a range of options and make the appointment that is right for their local circumstances.
- 7.6 Where practicable, during the transition period the shadow authority should prepare for the whole of the new area a number of key reviews, schemes, statements, strategies, and rules. These include, but are not limited to, a housing allocation scheme, licensing statements and a homelessness strategy. Where these schemes have not been agreed by the shadow authority, the successor council should ensure that they are no later than 24 months after the reorganisation date (except in respect of special provisions relating to statements required under the Licensing Act 2003 and the Gambling Act 2005 where different timescales will apply). In the period before the strategies covering the entirety of the new area are agreed, the equivalent strategies of the predecessor councils will continue to apply in those parts of the new area which were the areas of those predecessor councils. This will minimise any actual or perceived disruption arising from the transition from the predecessor councils to the new successor council and ensure that all relevant duties continue to be performed during this period.
- 7.7 The Regulations provide a period of 5 years from the reorganisation date for a local development document which will apply to the whole of the new area to be prepared and adopted by the new successor council. This time period has been set to allow a new council sufficient time to follow the due processes to produce an effective local development document. In the time preceding adoption of a new document for the whole of the area, the new successor council may revise or replace an existing

document which applies to a part of its area or may adopt a document for part of its area (where a predecessor council has prepared but not adopted this document before the reorganisation date). These provisions are designed to ensure that at any time after reorganisation but before a whole area plan has been developed and adopted, there is a sound basis in place for planning decisions.

- 7.8 There are certain matters that may be best addressed after the reorganisation date and the Regulations allow the predecessor councils to suspend specific matters for consideration by the successor council. These specific matters are in relation to a community governance review, given that it may be appropriate to consider the results of the review of ward boundaries that the Local Government Boundary Commission for England will undertake following a section 10 order being made, and if a predecessor council receives an expression of interest in running services under the community right to challenge (Chapter 2 of Part 5 of the Localism Act 2011) but has not considered it before the transition period.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 None.

10. Consultation outcome

- 10.1 There is no requirement to consult on the preparation of these Regulations. However, as these Regulations will in the first instance deal with the merger of six district councils to create three new district councils these six councils have been involved in the development of these Regulations. During this process, consideration has been given to the potential impact on other local authorities which may undertake mergers. Discussion has also taken place with the central government departments with policy responsibility for the functions exercised by local authorities.
- 10.2 Through this approach the Ministry of Housing, Communities and Local Government has sought to understand which functions should best be exercised by the successor councils in advance of the reorganisation date; and how those functions should be exercised; whether, as compared with the equivalent regulations applicable in the case of section 7 orders, any other new or amended transitional provisions were required in respect of the exercise of those functions; and whether any further incidental, consequential, transitional or supplementary provisions were required in respect of such matters as staffing and transfer of property.

11. Guidance

- 11.1 No guidance has been prepared for this instrument. The Department works with and supports any local authorities as they implement governance changes.

12. Impact

- 12.1 A Regulatory Impact Assessment has not been prepared for this instrument because it does not relate to the activities of businesses, charities or voluntary bodies. It allows for the smooth transition of council functions where the Secretary of State has

decided, having regard to the publicly announced criteria, to implement locally led proposals from councils who wish to merge to local government in their area.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 This instrument makes incidental, consequential, transitional and supplementary provisions for councils to enable the effective implementation of a new governance arrangements in areas where two or more district councils merge to create a new council. The new council will be democratically accountable for its performance to the local electorate, and subject to the audit and accountability regimes applicable to local government. The Department works with and supports any local authorities as they implement governance changes and will consider the case for special provisions in a further instrument should that be necessary.
- 14.2 These Regulations do not include a statutory review clause.

15. Contact

- 15.1 Jonathan Scanlan, telephone: 0303 444 8940, email: jonathan.scanlan@communities.gsi.gov.uk and Siobhan Smyth, telephone 0303 444 4870, email Siobhan.smyth@communities.gsi.gov.uk at the Ministry of Housing, Communities and Local Government, can be contacted with any queries regarding the instrument.
- 15.2 Paul Rowsell at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Rishi Sunak at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.