

EXPLANATORY MEMORANDUM TO
THE LOCAL GOVERNMENT (STRUCTURAL AND BOUNDARY CHANGES)
(AMENDMENT) REGULATIONS 2018

2018 No. 1296

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 apply to local authorities undergoing structural change and boundary change. They update, to reflect current legislation and policy, existing regulations made in 2008-2009 which provide for incidental, consequential, transitional and supplementary arrangements for local authorities undergoing structural change in consequence of orders made under section 7 of the Local Government and Public Involvement in Health Act 2007 (“the 2007 Act”). They also apply these regulations, where applicable, to local authorities undergoing boundary change and reorganisation in consequence of orders made under section 10 of 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. It enables provision to be made by order under section 7 and 10 of that Act. Orders under section 7 (“section 7 orders”) provide for re-structuring of an area in which there are two tiers of local government (a county

council and district councils) and the establishment of single tier local government (a county council or a district council) in that area. Orders under section 10 (“section 10 orders”) provide for boundary changes to a local government area and may provide for reorganisation of an area by the abolition of existing local government areas and local authorities and the establishment of a new local government area and authority (“merged areas”).

- 6.2 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 give full effect to these local government changes in consequence of any section 7 or section 10 orders. Section 14(2) provides for subsection 14(1) to be read with section 15 of the 2007 Act.
- 6.3 Section 15 provides that references to “incidental, consequential, transitional or supplementary provision” include, in particular, provisions for the transfer of functions, property, rights or liabilities, staff and staffing matters 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. Section 240(10) of the 2007 Act enables different provision to be made for different cases.
- 6.4 Eight section 7 orders which have effected structural change establishing single tier councils have been made to date, as follows: Bedford and Central Bedfordshire¹ (S.I. 2008/907); Bournemouth, Christchurch and Poole and Dorset² (S.I. 2018/648); Cheshire East and Cheshire West and Chester³ (S.I. 2008/634); Cornwall⁴ (S.I. 2008/491); Durham⁵ (S.I. 2008/493); Northumberland⁶ (S.I. 2008/494); Shropshire⁷ (S.I. 2008/492); and Wiltshire⁸ (S.I. 2008/490).
- 6.5 Three section 10 orders which have effected boundary change and reorganisation to a local government area and the establishment of a new local authority (“a merged council”) have been made to date in East Suffolk (S.I. 2018/640)⁹, Somerset West and Taunton (2018/649)¹⁰ and West Suffolk (S.I. 2018/639)¹¹.
- 6.6 Twelve sets of section 14 Regulations have been made to date (S.I. 2008/1419¹², S.I. 2008/2113¹³, S.I. 2008/2176¹⁴, S.I. 2008/2867¹⁵, S.I. 2008/3022¹⁶, S.I. 2009/5¹⁷, S.I.

¹ <https://www.legislation.gov.uk/uksi/2008/907/contents/made>

² <https://www.legislation.gov.uk/uksi/2018/648/contents/made>

³ <https://www.legislation.gov.uk/uksi/2008/634/contents/made>

⁴ <https://www.legislation.gov.uk/uksi/2008/491/contents/made>

⁵ <https://www.legislation.gov.uk/uksi/2008/493/contents/made>

⁶ <https://www.legislation.gov.uk/uksi/2008/494/contents/made>

⁷ <https://www.legislation.gov.uk/uksi/2008/492/contents/made>

⁸ <https://www.legislation.gov.uk/uksi/2008/490/contents/made>

⁹ <http://www.legislation.gov.uk/uksi/2018/640/contents/made>

¹⁰ <http://www.legislation.gov.uk/uksi/2018/649/contents/made>

¹¹ <http://www.legislation.gov.uk/uksi/2018/639/contents/made>

¹² <http://www.legislation.gov.uk/uksi/2008/1419/contents/made>

¹³ <http://www.legislation.gov.uk/uksi/2008/2113/contents/made>

¹⁴ <http://www.legislation.gov.uk/uksi/2008/2176/contents/made>

¹⁵ <http://www.legislation.gov.uk/uksi/2008/2867/contents/made>

¹⁶ <http://www.legislation.gov.uk/uksi/2008/3022/contents/made>

¹⁷ <http://www.legislation.gov.uk/uksi/2009/5/contents/made>

2009/276¹⁸, S.I 2009/467¹⁹, S.I 2009/486²⁰, S.I 2012/20²¹, S.I. 2018/930²² and S.I. 2018/1128²³) to provide for transitional arrangements for councils undergoing local government reorganisation (“the Transitional Regulations”). The Transitional Regulations include provisions for, among other things, transferring functions, property, rights and liabilities to the new council, and transitional provisions relating to financial matters and staffing.

- 6.7 Part 1 of these Regulations, which are also made under section 14 of the 2007 Act (to be read with section 15), update four of the Transitional Regulations (S.I. 2008/3022, S.I. 2008/2113, S.I. 2008/2867 and S.I. 2009/467) with respect to changes in legislation and policy affecting the duties and functions of local authorities that have been made since 2009. Part 2 of these Regulations makes provision about the establishment of funds for new merged councils established under Section 10 orders and the anticipation of precepts from charter trustees for these councils. This part of the Regulations replicates the provisions in Regulations 3, 4 and 6 of S.I. 2009/5 which only applies to councils undergoing structural change effected by a section 7 order.

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 is committed to consider locally-led proposals from councils who wish to reorganise. The Transitional Regulations are of general application to areas where a proposal for reorganisation is implemented through a section 7 order or a section 10 order. As explained in paragraph 6.6, nine sets of section 14 regulations were made in 2008 and 2009 to provide for transitional arrangements for councils undergoing local government reorganisation through a section 7 order. These were updated in 2012 and 2018. A further set of regulations was made in 2018 to provide for similar arrangements for areas reorganised under section 10 orders.
- 7.2 These Regulations, also made under section 14 of the 2007 Act, update four of the existing Transitional Regulations with respect to changes in legislation and policy affecting the duties and functions of local authorities that have been made since 2009, in particular updating provisions relating to finance and council tax made by S.I. 2008/3022 and applying these provisions, where appropriate, to reorganisations of whole local government areas made by section 10 orders as well as by section 7 orders.
- 7.3 These Regulations are of general application, although in the first instance they will apply to local government reorganisation in Bournemouth, Dorset and Poole, for which an order under section 7 was made on 25 May 2018 and came into force on 26

¹⁸ <http://www.legislation.gov.uk/uksi/2009/276/contents/made>

¹⁹ <http://www.legislation.gov.uk/uksi/2009/467/contents/made>

²⁰ <http://www.legislation.gov.uk/uksi/2009/486/contents/made>

²¹ <http://www.legislation.gov.uk/uksi/2012/20/contents/made>

²² <http://www.legislation.gov.uk/uksi/2018/930/made>

²³ <http://www.legislation.gov.uk/uksi/2018/1128/made>

May 2018²⁴, and reorganisation in East Suffolk²⁵, West Suffolk²⁶ and Somerset West and Taunton²⁷ for which orders were made under section 10 on 24 May 2018 for East Suffolk and West Suffolk, and 25 May for Somerset West and Taunton. They will continue to apply to any future reorganisation of whole local government areas made through a section 7 or section 10 order.

Part 1

Amendment of the Local Government (Structural Changes) (Finance) Regulations 2008

- 7.4 Regulations 2 to 13 amend the Local Government (Structural Changes) (Finance) Regulations 2008 (S.I. 2008/3022) which make incidental, consequential, transitional and supplementary provision of general application in relation to the exercise of functions under the Local Government Finance Act 1988 and the Local Government Finance Act 1992 including specifying how council tax should be harmonised across the new areas, for the purposes of and in consequence of section 7 orders.
- 7.5 Regulations 3-8 update the Local Government (Structural Changes) (Finance) Regulations 2008 to also apply to orders made by the Secretary of State under section 10 of the 2007 Act under which two or more councils are wound up and dissolved.
- 7.6 Regulations 9 and 10 extend the maximum timeframe over which a successor council can harmonise different levels of council tax across its predecessor areas by two years, allowing this process to take place over seven years with harmonisation by the start of year eight.
- 7.7 Regulations 11 and 13 insert a new schedule 4 into the 2008 Finance Regulations (modifications to the Council Tax (Demand Notices) (England) Regulations 2011 (SI 2011/3038²⁸)). These modifications ensure that restructuring authorities with adult social care responsibilities are required to show information about the adult social care precept (“the precept”) on council tax bills on the same basis as other authorities with those functions, including displaying the proportion of the annual percentage increase which is attributable to the precept. In years when the restructuring authority is setting different amounts of council tax in its predecessor areas it must show the cumulative cash amount of precept charged in each area since its introduction in 2016-17. Once harmonisation is achieved bills must show the average amount of precept charged across the predecessor areas since 2016-17.
- 7.8 Regulation 12 amends Schedule 3 (referendums relating to council tax: modifications) to Chapters 4ZA and 6 of Part 1 of the Local Government Finance Act 1992.
- Regulation 12(a)(i) applies paragraph 1 of Schedule 3 to single tier councils only.
 - Regulation 12(a)(ii) introduces a new principle (s52ZC(3D)) by which the question of whether an authority's relevant basic amount of council tax for a financial year is decided to be excessive and requires approval in a local referendum. This now has the overall effect of allowing an authority to comply with the referendum principles determined by the Secretary of State

²⁴ <http://www.legislation.gov.uk/uksi/2018/648/contents/made>

²⁵ <http://www.legislation.gov.uk/uksi/2018/640/contents/made>

²⁶ <http://www.legislation.gov.uk/uksi/2018/639/contents/made>

²⁷ <http://www.legislation.gov.uk/uksi/2018/649/contents/made>

²⁸ <http://www.legislation.gov.uk/uksi/2011/3038/contents/made>

by ensuring that the annual increase in its amount of council tax is not excessive either in each predecessor area or in relation to the average council tax across the new area in any year until harmonisation is achieved.

- Regulation 12(b) applies the same equalisation principles to merged areas established by section 10 orders.

Amendment of the Local Government (Structural Changes) (Transitional Arrangements) Regulations 2008

- 7.9 Regulation 14 amends the Local Government (Structural Changes) (Transitional Arrangements) Regulations 2008 (S.I. 2008/2113) which make incidental, consequential, transitional and supplementary provision of general application in relation to the exercise of functions by local authorities during the transitional period for the purposes of, and in consequence of, section 7 orders.
- 7.10 Regulation 14(2) amends regulation 10A of S.I. 2008/2113 – which modifies the community right to challenge under Part 5 of the Localism Act 2011 to reflect the creation of and transition to single-tier councils. The modifications of regulation 10A apply in specific circumstances. This amendment clarifies the exceptions where these modifications do not apply.
- 7.11 Regulation 14(3) amends regulation 11 of S.I. 2008/2113 to remove the reference to Local Area Agreements as these are now defunct and add a reference to the preparation and publication of a joint health and wellbeing strategy. It provides for preparing or shadow councils to be the ‘responsible local authority’ for joint strategic needs assessments and joint health and wellbeing strategies. This regulation also replaces the reference to PCT with “clinical commissioning groups” which have now replaced them.

Amendment of the Local Government (Structural Changes) (Transitional Arrangements) (No. 2) Regulations 2008

- 7.12 Regulation 15 amends the Local Government (Structural Changes) (Transitional Arrangements) (No. 2) Regulations 2008 (S.I. 2008/2867), which make further provisions for the transition to single tier local government in those areas for which a section 7 order is made. Regulation 26 is updated to include the application of relevant provisions of the Localism Act 2011 in relation to housing finance. This provides that before the reorganisation date sections 171-173 of the Localism Act have effect as regards determinations for a financial year beginning on or after reorganisation as if references in those sections to a local housing authority are to the shadow council.

Amendment of the Charter Trustees Regulations 2009

- 7.13 Regulation 16 amends the Charter Trustees Regulations 2009 (S.I. 2009/467) to update a reference to the Local Government Finance Act 1992 to clarify that charter trustees (established for the preservation of historic rights, privileges and traditions associated with certain areas) in their first year do not need to calculate a council tax requirement.

Part 2

Establishment of collection funds of merged councils

- 7.14 Regulation 18 makes provision to specify the date on which the collection funds of councils established under a section 10 order must be established.

Establishment of general funds of merged councils

- 7.15 Regulation 19 makes provision to specify the date on which the general funds of councils established under a section 10 order must be established.

Anticipation of amounts required to discharge functions of charter trustees

- 7.16 Regulation 20 modifies provisions of the Local Government Finance Act 1992 to allow those councils, in setting their council tax, to take account of precepts which may be issued by charter trustees that may be established under a section 10 order.

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 There are no plans for consolidation.

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 local government reorganisation in Bournemouth, Dorset and Poole, and the three new merged district councils in Suffolk and Somerset, these councils have been involved in the development of these Regulations. In particular, the shadow authorities of the five new councils were invited to submit their local preference in relation to council tax harmonisation and then given a further opportunity to comment on the Secretary of State's minded to decision before a final decision was taken.
- 10.2 26 representations were also received from one MP, eight Councillors, and seventeen members of the public in one area in Dorset asking that the Regulations, rather than allowing local preference, should require harmonisation on day 1. These were carefully considered before a decision was made. Decisions on council tax harmonisation involve balancing local interests. Some of those representations received expressed concern that it was unfair that for a period of time until harmonisation council tax payers in part of an authority's area would pay a higher council tax than those in other parts of an authority's area, notwithstanding that those paying the higher tax will have their tax frozen for the period until harmonisation is complete. However, it might also be considered unfair that council tax payers in part of an area should have a reduction in their council taxes, notwithstanding that spending on services in their area may be at the existing level. Having considered all the representations from the local councils and the public, it was concluded that it is most appropriate that balancing these local interests and deciding the approach to council tax harmonisation should be for a local decision by those accountable to local residents.
- 10.3 As a result of this process, the provisions in these Regulations were drafted to enable

local preference in relation to the maximum time frame for harmonisation and to address potential barriers to effective implementation. These Regulations make provisions which provide for the flexibility to allow local preferences to be adopted within the maximum time frame of seven years for harmonisation. They also provide councils with the option of applying the referendum principles in any year before harmonisation to either the average council tax across the new council's whole area, or to the council tax in each predecessor area.

11. Guidance

- 11.1 No guidance has been prepared for this instrument. The Department works with and supports any local authorities undergoing reorganisation.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because there is no impact on business, charities or voluntary bodies.

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 structural change to local government and will not be monitored. The new councils will be democratically accountable for their performance to the local electorate, and subject to the audit and accountability regimes applicable to the generality of local government.
- 14.2 These Regulations do not include a statutory review clause.

15. Contact

- 15.1 Nicola Chissell, telephone: 0303 444 1941, and Louise Beckingham, telephone: 0303 444 4336, or email: jobshare.beckingham-chissell@communities.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 MP, Minister for Local Government, at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.