

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

2018 No. 930

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 update existing regulations, made in 2008-2009, which provide for incidental, consequential, transitional and supplementary arrangements in consequence of orders made under section 7 of the Local Government and Public Involvement in Health Act 2007 (“the 2007 Act”), in respect of current legislation and policy.

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 of that Act 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. Section 1(2) provides, for the purposes of Chapter 1 (structural and boundary change), that there is “a single tier of local government” if “there is a county council and no district councils for that area or there is a district council and no county council for that area”

– i.e. there is a sole principal authority for the area (“a single tier council”). 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 orders made under section 7 to implement structural change (“section 7 orders”) or under section 10 (boundary change). Section 14(2) provides for subsection 14(1) to be read with section 15 of the 2007 Act. Section 15 provides that references to “incidental, consequential, transitional or supplementary provision” include, in particular, provisions for the transfer of functions, 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.

6.2 Eight section 7 orders which have effected structural change have been made to date, as follows:

- five orders providing for the existing county council for an area to be established as a single tier council Cornwall¹ (S.I. 2008/491); Durham² (S.I. 2008/493); Northumberland³ (S.I. 2008/494); Shropshire⁴ (S.I. 2008/492); and Wiltshire⁵ (S.I. 2008/490);
- two orders, one providing for the establishment of two new single tier district councils for Cheshire⁶ (S.I. 2008/634); and one providing for the existing Bedford Borough Council to be established as a single tier council and for a new single tier council for Central Bedfordshire⁷(S.I. 2008/907); and
- most recently, an order providing for the establishment of two new single tier district councils for Dorset⁸ (S.I. 2018/648).

6.3 Further details about the section 7 orders made to date can be found in the Explanatory Memorandums which accompany those orders.

6.4 Ten section 14 Regulations have been made to date (S.I. 2008/1419⁹, S.I 2008/2113¹⁰, S.I 2008/2176¹¹, S.I 2008/2867¹², S.I 2008/3022¹³, S.I 2009/5¹⁴, S.I 2009/276¹⁵, S.I. 2009/467¹⁶, S.I 2009/486¹⁷, and S.I 2012/20¹⁸) to provide for transitional

¹ <https://www.legislation.gov.uk/uksi/2008/491/contents/made>

² <https://www.legislation.gov.uk/uksi/2008/493/contents/made>

³ <https://www.legislation.gov.uk/uksi/2008/494/contents/made>

⁴ <https://www.legislation.gov.uk/uksi/2008/492/contents/made>

⁵ <https://www.legislation.gov.uk/uksi/2008/490/contents/made>

⁶ <https://www.legislation.gov.uk/uksi/2008/634/contents/made>

⁷ <https://www.legislation.gov.uk/uksi/2008/907/contents/made>

⁸ <https://www.legislation.gov.uk/uksi/2018/648/contents/made>

⁹ <http://www.legislation.gov.uk/uksi/2008/1419/contents/made>

¹⁰ <http://www.legislation.gov.uk/uksi/2008/2113/contents/made>

¹¹ <http://www.legislation.gov.uk/uksi/2008/2176/contents/made>

¹² <http://www.legislation.gov.uk/uksi/2008/2867/contents/made>

¹³ <http://www.legislation.gov.uk/uksi/2008/3022/contents/made>

¹⁴ <http://www.legislation.gov.uk/uksi/2009/5/contents/made>

¹⁵ <http://www.legislation.gov.uk/uksi/2009/276/contents/made>

¹⁶ <http://www.legislation.gov.uk/uksi/2009/467/contents/made>

¹⁷ <http://www.legislation.gov.uk/uksi/2009/486/contents/made>

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.

- 6.5 These Regulations, which are also made under section 14 of the 2007 Act (to be read with section 15), update seven of the Transitional Regulations (S.I. 2008/1419, S.I. 2008/2113, S.I. 2008/2176, S.I. 2008/2867, S.I. 2009/5, S.I. 2009/276 and S.I. 2009/486) 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?

The Transitional Regulations

- 7.1 The Transitional Regulations are of general application, made under section 14 of the 2007 Act, applying where a section 7 order is made. As explained in paragraph 6.4, ten section 14 regulations were made in 2008 and 2009 to provide for transitional arrangements for councils undergoing local government reorganisation. The Transitional Regulations ensure that during the period beginning with the date on which the Transitional Regulations came into force, or, if a section 7 order implementing a structural change is made later, the first date on which any action is required to be taken in accordance with that order, and ending immediately before the reorganisation date (the “transitional period”), the preparing councils or shadow authorities (the bodies which become the single tier councils on the reorganisation date) are able to undertake specific functions, and have powers in relation to the specified electoral and governance matters. They further provide for anything done by or in relation to a predecessor council relating to functions which are to be exercised by a successor council by virtue of the Transitional Regulations, to be treated as done by or in relation to the successor council. They also make provision for the transfer of property, rights, liabilities and staff to the successor councils; and make transitional provision in respect of schemes, plans and strategies which have been prepared by the predecessor councils to continue to apply until a new scheme, plan or strategy is published for the area.
- 7.2 These Regulations, also made under section 14 of the 2007 Act, update seven of the ten Transitional Regulations with respect to changes in legislation and policy affecting the duties and functions of local authorities that have been made since 2009. It is planned that a further set of section 14 regulations will be laid before Parliament in the Autumn, which will update provisions in particular relating to finance and council tax made by S.I. 2008/3022 and S.I. 2012/20.
- 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 May 2018¹⁹. They will continue to apply to any future local government structural change.

¹⁸ <http://www.legislation.gov.uk/ukSI/2012/20/contents/made>

¹⁹ <http://www.legislation.gov.uk/ukSI/2018/648/contents/made>

Amendment of the Local Government (Structural and Boundary Changes) Staffing Regulations 2008

- 7.4 Regulation 2 amends the Local Government (Structural and Boundary Changes) (Staffing) Regulations 2008 (S.I. 2008/1419) – which make incidental, consequential, transitional and supplementary provision of general application in relation to the transfer of staff and other staffing matters for the purposes of, and in consequence of, orders made by the Secretary of State under sections 7 or 10 of the 2007 Act with respect to local government structural changes or boundary changes (or both such changes) in England.
- 7.5 Regulation 2(2) and 2(3) substitute references to revoked statutory instruments relating to the Local Government Pension Scheme with updated references to current legislation.

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

- 7.6 Regulation 3 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.
- 7.7 Regulation 3(2) provides that where a predecessor council receives a community governance petition or application during the transitional period, the predecessor council may resolve that the review be undertaken by the successor council after the reorganisation date. The primary reason for this is that once a section 7 order is made, the Local Government Boundary Commission for England will need to undertake a review of ward boundaries for the new unitary areas. Delaying any community governance reviews until after the reorganisation date will ensure that any such review is considered appropriately by the new unitary council and takes place with regard to any new ward boundaries.
- 7.8 Regulation 3(2) also provides that where a predecessor council does resolve that a community governance review is undertaken by the successor council after the reorganisation date the reference to the period of 12 months (the period within which a principal council must complete a review from the date of receipt of a petition or application) starts from the reorganisation date. This provision ensures that any delayed review is concluded within a reasonable period, that period beginning on the reorganisation date.
- 7.9 Regulation 3(3) substitutes references to repealed provisions with a reference to current legislation in respect of petitions for changing an authority's executive arrangements.
- 7.10 Regulation 3(4) provides that where a predecessor council has received an expression of interest under Chapter 2 of Part 5 of the Localism Act 2011 (Community right to challenge) but has not considered the expression of interest in accordance with that chapter before the beginning of the transitional period, the predecessor council may resolve that the consideration of the expression of interest be undertaken by the successor council after the reorganisation date. Regulation 3(4) also provides that where a predecessor council has resolved that consideration of such an expression of interest be undertaken by a successor council after the reorganisation date, the period

of 30 days (the period following receipt of an expression of interest within which an authority must notify the body who has made it of the period within which it expects to notify the body of its decision) starts with the reorganisation date. The reason for this provision is to ensure that the new unitary council can then fully and appropriately consider any such expression of interest received, considering whether it would promote or improve the social, economic or environmental well-being of the authority's area, within a reasonable time period.

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

- 7.11 Regulation 4 amends the Local Government (Structural Changes) (Transfer of Functions, Property, Rights and Liabilities) Regulations 2008 (S.I. 2008/2176), which deal with the transfer of functions, property, rights and liabilities between local authorities in consequence of orders made under section 7 of the 2007 Act.
- 7.12 Regulation 4(2) updates references to statutory provisions relating to the Local Government Pension Scheme.
- 7.13 Regulation 4(3) provides that on the reorganisation date the financial reserves, or a proportion of the financial reserves as may be agreed between the successor councils, shall vest in the successor council nominated by the Secretary of State in trust for itself and the other successor councils. Where there is an agreement between the predecessor councils for a proportion of the financial reserves to vest in trust in the nominated council, the remainder of the financial reserves transfers to the successor councils on the reorganisation date in the proportions which have been agreed (as part of the agreement on the proportion of financial reserves to be held in trust) between those councils. This is to ensure that the new unitary councils can have access to a proportion of the financial reserves (in respect of which agreement has been reached) from the reorganisation date to assist them to operate effectively.

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

- 7.14 Regulation 5 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.
- 7.15 Regulation 5(2) amends the dates by which every council which is both a preparing council and a county council or is a shadow council must appoint officers to discharge electoral duties as described in Regulation 9(2) of S.I. 2008/2867. It also amends the dates referred to in Regulation 9(7) of S.I. 2008/2867.
- 7.16 Regulation 5(3) amends the date by which a preparing council or shadow council must prepare certain plans for the whole of its area, so as to apply to any future structural changes.
- 7.17 Regulation 5(4) amends the date by which certain plans, reviews, schemes, statements and strategies are required – from 12 to 24 months after the reorganisation date. The list of these required documents has been amended to include: a council tax reduction scheme under section 13A(2) (Reductions by billing authority) of the Local Government Finance Act 1992; and rules governing discretionary business rate relief determined by a local authority under section 47(1)(a)(Discretionary relief) of the Local Government Finance Act 1988. Regulation 5(4)(h) updates references to the

Licensing Act 2003 by reference to changes made by the Police Reform and Social Responsibility Act 2011. Regulation 5(4)(i) updates the relevant date (to 31st January 2019) for the purposes of preparation of a new unitary authority's three year licensing policy under section 349 of the Gambling Act 2005.

- 7.18 Regulation 5(5) removes references to statutory provisions which have been revoked.
- 7.19 Regulation 5(6) amends Regulation 19 of S.I. 2008/2867 to provide a period of 5 years from the reorganisation date for a single tier council to revise or replace a local development document to apply to the whole of the new area. This time period has been set to allow the new councils sufficient time to follow the due processes to produce an effective local development document. In the time after the reorganisation date but before the new single tier council has produced a local development document which applies to the whole area, the single tier council may revise or replace a local development document which applies to a predecessor council area. In addition a single tier council is able to adopt a local development document for only part of its area (a predecessor council area) where a predecessor council has prepared but not adopted this document before the reorganisation date (or prepare and adopt a document where a document has neither been prepared nor adopted by the predecessor council). These provisions have been designed to ensure that at any time after reorganisation but before a new unitary council has developed a local development document for the whole new area, there is an up to date local plan for every part of the unitary area to ensure a sound basis for planning decisions.
- 7.20 Regulation 5(7) omits regulations 20-23 of the S.I. 2008/2867. The effect of this amendment is to keep the existing councils as the local planning authorities during the transitional period, rather than make the shadow councils the local planning authorities. This is to enable Dorset authorities to be able to continue their plan-making seamlessly whilst preparing for the reorganisation date.
- 7.21 Regulation 5(8) updates references to regulations relating to education functions to take into account the Schools Forums (England) Regulations 2012 (S.I. 2012/2261).
- 7.22 Regulation 5(9) updates the relevant date (to 1st April 2019) for the financial year beginning on the reorganisation date. This provision ensures, in effect, that issues relating to housing revenue accounts and housing revenue account subsidy in respect of the financial year beginning on the reorganisation date fall to the relevant shadow council or preparing council which is a county council, since these bodies will be responsible for all housing and housing finance functions from the reorganisation date and are responsible for preparing the budget for the new single tier council for the financial year beginning on the reorganisation date.
- 7.23 Regulation 5(10) and (11) update provisions relating to ceremonial issues in line with current relevant legislation.

Amendment of the Local Government (Structural Changes) (Further Financial Provisions and Amendment) Regulations 2009

- 7.24 Regulation 6 amends the Local Government (Structural Changes) (Further Financial Provisions and Amendment) Regulations 2009 (S.I. 2009/5) which make further provision for the transition to single tier local government in those areas for which a section 7 order is made, in relation to matters relating to finance.

- 7.25 Regulation 6(2) updates the date (to 1st April 2019) by which a new unitary authority's general fund must be established in accordance with Part 6 of the Local Government Finance Act 1988.

Amendment of the Local Government (Structural Changes) (Further Transitional and Supplementary Provision and Miscellaneous Amendments) Regulations 2009

- 7.26 Regulation 7 amends the Local Government (Structural Changes) (Further Transitional and Supplementary Provision and Miscellaneous Amendments) Regulations 2009 (S.I. 2009/276) which make further provisions for the transition to single tier local government in those areas for which a section 7 order is made, in particular with respect to making provision relating to the following issues: exercise of certain education functions; councillors' conduct; and the final accounts of predecessor councils and related financial matters.
- 7.27 Regulation 7(2) updates references to statutory provisions relating to the Local Government Pension Scheme.
- 7.28 Regulation 7(3)(a) updates provisions relating to education functions to take into account changes made to the Education and Inspections Act 2006 by the Education Act 2011 and the Children, Schools and Families Act 2010.
- 7.29 Regulation 7(3)(b) updates provisions to replace references to revoked legislation. The School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007 (S.I. 2007/1288) are replaced by the School Organisation (Establishment and Discontinuance of Schools) Regulations 2013 (S.I. 2013/3109) and the School Organisation (Prescribed Alteration to Maintained Schools) (England) Regulations 2007 are replaced by the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 (S.I. 2013/3110).
- 7.30 Regulations 7(4) – 7(7) update the provisions relating to accounts of predecessor councils and other financial matters to take account of the Accounts and Audit Regulations 2015 (S.I. 2015/234).

Amendment of the Local Government (Structural Changes) (Further Transitional Arrangements and Staffing) Regulations 2009

- 7.31 Regulation 8 amends the Local Government (Structural Changes) (Further Transitional Arrangements and Staffing) Regulations 2009 (S.I. 2009/486), which make further provisions for the transition to single tier local government in those areas for which a section 7 order is made, in particular with respect to continuity and local authority categorisation; councillors' conduct; and port health authorities.
- 7.32 Regulation 8(2) provides that where a single tier council is under a duty to prepare and publish a home energy conservation report or an air quality action plan, the single tier council has 24 months from the reorganisation date to do so. This provision ensures consistency with the general timeframe which applies, 24 months from the reorganisation date, during which time a single tier council must prepare certain reports, plans and documents.

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 Dorset, Bournemouth Borough Council, Christchurch Borough Council, Dorset County Council, East Dorset District Council, North Dorset District Council, Poole Borough Council, Purbeck District Council, West Dorset District Council, and Weymouth and Portland Borough Council, as councils undergoing local government reorganisation, have been involved in the development of these Regulations. During this process, consideration of the potential impact on and likely preferences of other local authorities generally which may undergo local government reorganisation has been made.
- 10.2 The focus of the Department's consultative procedure in preparing these Regulations has been to understand from affected local authorities and central government departments with policy responsibility for functions exercised by local authorities:
- a) which functions should be exercised by the successor councils in advance of the reorganisation date;
 - b) how those functions should be exercised: whether any other new or amended transitional provision were required in respect of the exercise of those functions: and whether any further incidental, consequential, transitional or supplementary provision were required in respect of such matters as staffing and transfer of property.
- 10.3 As a result of this process, the new provisions in Regulations 3(2) and 3(4), 5(4), 5(6) and 5(7) were included to address potential barriers to effective implementation.

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 impact on business, charities or voluntary bodies.
- 12.2 There is no significant impact on the public sector.
- 12.3 The establishment of the two new councils across Dorset would improve the sustainability of the services that are currently carried out by the existing councils. Estimated savings over the first six years would be at least £108 million and if the full transformation programme could be achieved there is the potential to save over £170 million over that period. Annual savings as a result of the restructuring are estimated to be £28m per year. A number of local public bodies, such as NHS providers, housing associations and third sector organisations, have made representations that implementing the proposal would improve local partnership working and remove duplication.
- 12.4 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.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 Lord Bourne of Aberystwyth, Minister for Faith, at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.