

2008 No. 2867

LOCAL GOVERNMENT, ENGLAND

The Local Government (Structural Changes) (Transitional Arrangements) (No.2) Regulations 2008

<i>Made</i>	- - - -	<i>5th November 2008</i>
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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

PRELIMINARY

Citation, commencement and application

1.—(1) These Regulations may be cited as the Local Government (Structural Changes) (Transitional Arrangements) (No.2) Regulations 2008 and shall come into force on 28th November 2008.

(2) These Regulations, which are of general application, do not affect—

- (a) any provision 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.); or
- (b) any matter for which provision is made 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 2007 Act” means the Local Government and Public Involvement in Health Act 2007;

“the 1972 Act” means the Local Government Act 1972(f);

“the 2000 Regulations” means the Local Authorities (Functions and Responsibilities) (England) Regulations 2000(g);

“Implementation Executive” means a committee of a preparing council’s executive established in pursuance of a section 7 order;

“predecessor council” means a local authority which, by or in consequence of a section 7 order, will cease to exist on the reorganisation date;

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

“reorganisation date”, in relation to a section 7 order, means the date specified in the order as that on which a structural change comes into effect;

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- (a) 2007 c.28. Section 14(2) provides for section 14(1) 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.
 - (f) 1972 c.70, to which there are amendments not relevant to these Regulations.
 - (g) S.I. 2000/2853; amended by S.I.s 2008/516 and 2008/744; there are other amending instruments but none is relevant.

“section 7 order” means an order under section 7 of the 2007 Act;

“shadow council” means an authority (not being a local authority) which, in accordance with a section 7 order, becomes a single tier council on the reorganisation date;

“shadow executive”, in relation to a shadow council, means the executive created by the council in accordance with a section 7 order;

“single tier council” means a local authority which on and after the reorganisation date is the sole principal authority for an area;

“successor council”—

(a) in relation to a predecessor council whose area is to become part of the area of a sole single tier council on the reorganisation date, means the preparing or shadow council which will become that single tier council;

(b) in relation to a predecessor council whose area is to become the area of more than one single tier council on the reorganisation date, means the preparing or shadow councils which will become those single tier councils; and

“transitional period” means the period beginning—

(a) on the date on which these Regulations come into force; or

(b) in relation to a section 7 order made after that date, the first date on which any action is required to be taken in accordance with that order,

and ending immediately before the reorganisation date.

(2) For the purposes of these Regulations—

(a) a single tier council is related to a predecessor council if on the reorganisation date the area of the single tier council includes that of the predecessor council; and

(b) where on the reorganisation date the area of a predecessor council comprises the areas of two or more single tier councils taken together, both or all of those single tier councils are related to the predecessor council.

PART 2

CONTINUITY AND RESPONSIBILITY FOR FUNCTIONS

Continuity: references in enactments, etc

3.—(1) In relation to an area for which, as a result of a section 7 order, there is a district council but no county council, any reference in an enactment to a county council or a county shall, so far as is required for giving effect to the enactment, be construed as including a reference to a district council or, as the case may be, a district.

(2) In relation to an area for which, as a result of a section 7 order, there is a county council but no district councils, any reference in an enactment to a district council or a district shall, so far as is required for giving effect to the enactment, be construed as including a reference to a county council or, as the case may be, a county.

(3) A provision of an enactment in which a predecessor council or its area is mentioned by name shall have effect on and after the reorganisation date, as if, for the name of that council or its area, there were substituted the name of its related single tier council or of the area of that council or, as the case may be, the names of its related single tier councils or of the areas of those councils.

(4) A provision of an enactment which, immediately before the reorganisation date, applies to an area (however defined) that is affected by a section 7 order, shall on and after that date continue to apply to, but only to, the area to which it applied immediately before that date.

(5) Where a provision referred to in paragraph (4) applies as regards the whole or part of the area of a predecessor council by reason only of a resolution passed or order made by that council, the resolution or order shall have effect on and after the reorganisation date as if—

- (a) it had been passed or made by the related single tier council as regards the whole or, as the case may be, the relevant part of its area; or
- (b) where there are two or more related single tier councils, and the area comprises the whole or part of the area of any of those councils, it had been passed or made by that council as regards the whole or the relevant part of its area.

(6) In paragraphs (1) to (4) “enactment” includes a local and personal Act, a private Act, any statutory instrument to which the Statutory Instruments Act 1946^(a) applies (whenever the Act or instrument is passed or made) and any charter or other grant under the royal prerogative (whenever granted) but does not include—

- (a) an Act of the Scottish Parliament or Northern Ireland legislation;
- (b) an order under section 7 or 10 of the 2007 Act or regulations under section 14 of that Act;
- (c) as regards paragraph (2)—
 - (i) section 245 of the 1972 Act (status of certain districts, parishes and communities);
 - (ii) an Order in Council under section 247 of the 1972 Act (transfer of armorial bearings from old to new authorities).

Continuity: other matters

4.—(1) The following provisions of this regulation have effect subject to regulation 5.

(2) Anything which, immediately before the reorganisation date, is in the process of being done by, or in relation to, a predecessor council or a successor council in the exercise of, or in connection with, a function that is to be exercised on and after that date by the related single tier council may be continued by, or in relation to, that council.

(3) Anything done by, or in relation to, a predecessor council or a successor council in the exercise of, or in connection with, a function that is to be exercised on and after the reorganisation date by the related single tier council shall have effect as if done by, or in relation to, that council.

(4) Paragraph (3) applies in particular to—

- (a) any agreement, decision, declaration, designation, determination or instrument made by a predecessor council or a successor council;
- (b) any byelaws, orders or regulations made by such a council;
- (c) any approval, authorisation, consent, dispensation, exemption, licence, permission, permit or relaxation granted by or to such a council;
- (d) any certificate, direction or notice given by or to such a council;
- (e) any application, objection, proposal or request made by or to such a council;
- (f) any condition imposed by or on such a council;
- (g) any fee paid by or to such a council;
- (h) any appeal allowed by or in favour of such a council; or
- (i) any proceedings instituted by or against such a council.

(5) A reference in paragraph (2) or (3) to anything done by or in relation to a predecessor council or a successor council includes a reference to anything which, by virtue of any enactment, is treated as having been done by or in relation to that council.

(6) So far as is required for giving effect to paragraphs (2) and (3), a reference in any document to a predecessor council or a successor council shall be construed on and after the reorganisation date—

- (a) where the document refers to an area that falls within the area of more than one related single tier council, as a reference to each of them;
- (b) in any other case, as a reference to the related single tier council.

^(a) 1946 c.36. See section 1(1) and (2) and S.I. 1948/1.

(7) A person appointed by a predecessor council to represent that council on any body (whether the body is public or private and whether or not the person has voting rights) (“the appointee”) shall, unless the appointee resigns or the appointment is otherwise terminated, continue to hold that appointment on and after the reorganisation date as if the appointee had been appointed by, and as a representative of, the related single tier council.

Continuity: limitations and supplementary provision

5.—(1) Regulation 4—

- (a) shall have effect only to the extent that other regulations under section 14 of the 2007 Act (including any provision of these Regulations) do not make different provision; and
- (b) shall not be construed as continuing in force any contract of employment made by a predecessor council.

(2) Where anything done or in the process of being done by a predecessor council or successor council was limited to part of its area, paragraphs (2) and (3) of regulation 4 shall have effect only as regards that part; but this does not preclude the related single tier council (if it has the power to do so), from taking steps to secure that the thing has effect in relation to the whole of its area.

(3) Subject to paragraph (4) of this regulation, where a predecessor council is succeeded by more than one related single tier council, paragraphs (2) and (3) of regulation 4 shall have effect as if references to the related single tier council were references to each of the related single tier councils.

(4) Paragraph (3) of this regulation does not apply where—

- (a) anything done or in the process of being done by a predecessor council or successor council was limited to part of its area, and
- (b) on the reorganisation date that part falls within the area of only one of the related single tier councils.

Responsibility for functions exercised by a shadow council

6.—(1) This regulation applies to a shadow council whose shadow executive is appointed by, or nominated in accordance with, a section 7 order.

(2) Any function which is to be exercised by the shadow council by virtue of these Regulations shall be the responsibility of its shadow executive notwithstanding any other enactment by virtue of which the function—

- (a) would not be the responsibility of its executive; or
- (b) may, but need not, be the responsibility of its executive.

Responsibility for functions exercised by a preparing council

7.—(1) This regulation applies to a preparing council for which there is an Implementation Executive.

(2) Any function which is to be exercised by the preparing council by virtue of these Regulations shall be a transitional function for the purposes of the section 7 order which establishes that council’s executive (and accordingly the responsibility of the Implementation Executive) notwithstanding any other enactment by virtue of which the function—

- (a) would not be the responsibility of its executive; or
- (b) may, but need not, be the responsibility of its executive.

PART 3

TRANSITIONAL ARRANGEMENTS: ELECTORAL MATTERS

Interpretation of Part 3

8. In this Part “the 1983 Act” means the Representation of the People Act 1983(a).

Interim acting and local returning officers and post-reorganisation registration officers

9.—(1) Every council which, on the coming into force of these Regulations—

- (a) is both a preparing council and a county council, or
- (b) is a shadow council,

shall, not later than 30th November 2008, appoint one of their officers to discharge the duties referred to in paragraph (2).

(2) The duties are—

- (a) such duties in relation to elections to the European Parliament to be held in 2009 as fall to be discharged by the local returning officer in the area which is for the time being the local counting area within the meaning of regulation 2 of the European Parliamentary Elections Regulations 2004(b), and
- (b) such duties in relation to any parliamentary election(c) for which a writ is issued after 30th November 2008 for any constituency or part of a constituency coterminous with or situated in the council’s area, as fall to be discharged by the acting returning officer(d).

(3) A person appointed under paragraph (1) is referred to in the following provisions of this regulation as an “electoral appointee”.

(4) If an electoral appointee dies or otherwise ceases to be the electoral appointee at any time after the date of his appointment and before the time at which the duties referred to in paragraph (1) have been fully discharged, the council shall immediately appoint another of its officers to discharge those duties or such of them as remain to be discharged.

(5) A person appointed under paragraph (4) is referred to in the following provisions of this regulation as a “substitute appointee”.

(6) If a substitute appointee dies or otherwise ceases to be the substitute appointee during the period referred to in paragraph (4), that paragraph shall apply as if, for “an electoral appointee” and “the electoral appointee”, there were substituted “a substitute appointee” and “the substitute appointee”.

(7) Subsection (1) of section 28 of the 1983 Act (discharge of returning officer’s functions in England and Wales) shall have effect as regards the period beginning on 1st December 2008 and ending on 1st April 2009 as if, after paragraph (aa)(e), there were inserted—

“(ab) in the case of a constituency or part of a constituency in England that is coterminous with or situated in an area for which, pursuant to an order under section 7 of the Local Government and Public Involvement in Health Act 2007, there is to be a single tier of local government, the person appointed in accordance with regulation 9(1) or (4) of the Local Government (Structural Changes) (Transitional Arrangements) (No.2) Regulations 2008;”.

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- (a) 1983 c. 2. Section 8(2) was amended by the Local Government (Wales) Act 1994 (c.19), Schedule 16, para 68(1). Section 37 was amended, and section 37A inserted, by section 60 of the Local Government and Public Involvement in Health Act 2007 (c.28). There are other amendments not relevant to these Regulations.
 - (b) S.I. 2004/293. *See also* sections 37 and 37A of the Representation of the People Act 1983. *See also* S.I. 2008/2857, which amends the definition of “local counting area”.
 - (c) Defined in Schedule 1 to the Interpretation Act 1978 (c.30).
 - (d) By virtue of section 28(2) of the 1983 Act, the excepted duties are those relating to the issue of the writ and, if the returning officer reserves to himself and undertakes to perform in person, those relating to the declaration of the result.
 - (e) Paragraph (aa) was inserted by the Local Government (Wales) Act 1994 (c.19), Schedule 16, paragraph 68(4).

(8) An electoral registration officer appointed by a predecessor council(a) under section 8 of the 1983 Act (registration officers) shall not discharge any duties of the returning officer(b) at an election of a description mentioned in paragraph (2), except those mentioned in section 28(2) of that Act.

(9) The person who, immediately before the reorganisation date, is the electoral appointee or substitute appointee of a preparing council (other than a district council) or a shadow council shall, on that date, be deemed to have been appointed the electoral registration officer for any constituency or part of a constituency that is coterminous with or situated in the area of the single tier council that succeeds that preparing council or shadow council.

(10) At any time before the reorganisation date, an electoral appointee or a substitute appointee may, after consultation with the persons mentioned in paragraph (11), take such steps as the electoral appointee or substitute appointee considers necessary to prepare for the exercise on and after that date of their functions as electoral registration officer.

(11) The persons are each person who is for the time being an electoral registration officer appointed by a council which, on the reorganisation date, will become a predecessor council in relation to the same single tier council that succeeds the preparing council or shadow council which appointed the electoral appointee or substitute appointee.

PART 4

STATUTORY PLANS, REVIEWS, SCHEMES, STATEMENTS AND STRATEGIES

Interpretation of Part 4

10. For the purposes of this Part—

- (a) a single tier council is related to a preparing council or a shadow council if it succeeds the preparing council or the shadow council on the reorganisation date.
- (b) a preparing council is related to a single tier council if it is succeeded by the single tier council on the reorganisation date; and
- (c) a shadow council is related to a single tier council if it is succeeded by the single tier council on the reorganisation date.

Plans required before reorganisation date

11.—(1) Subject to paragraphs (3) and (4), each preparing council which is a county council shall, not later than 31st March 2009, prepare for the whole of its area plans of the descriptions referred to in paragraph (2).

(2) The plans are—

- (a) plans of the descriptions mentioned in section 2(1)(c) and (d) of the Civil Contingencies Act 2004(c);
- (b) off-site emergency plans under regulation 10 of the Control of Major Accident Hazards Regulations 1999(d) (“the COMAH Regulations”); and
- (c) off-site emergency plans under regulation 9 of the Radiation (Emergency Preparedness and Public Information) Regulations 2001(e) (“the 2001 Regulations”).

(a) The only predecessor councils that can make appointments under section 8 are district councils.

(b) As to the discharge of a returning officer’s duties by a registration officer (as acting returning officer) see section 28(1)(b) of the 1983 Act.

(c) 2004 c.36.

(d) S.I. 1999/743.

(e) S.I. 2001/2975.

(3) A preparing council need not prepare plans of the description referred to in paragraph (2)(b)—

- (a) if there are in its area no establishments within the meaning of the COMAH Regulations^(a); or
- (b) in respect of such establishments in its area as are for the time being exempt by virtue of paragraph (7) of regulation 10 of the COMAH Regulations.

(4) A preparing council need not prepare plans of the description referred to in paragraph (2)(c) if—

- (a) there are in its area no premises at which there is carried out work with ionising radiation to which the 2001 Regulations apply^(b); or
- (b) in respect of premises in its area at which such work is carried out, if an assessment made by the operator pursuant to regulation 4(1) or regulation 5 of those Regulations shows that it is not reasonably foreseeable that a radiation emergency might arise (having regard to the steps taken by the operator under regulation 4(2) of those Regulations).

(5) In paragraph (4), the expressions “premises”, “work with ionising radiation”, and “radiation emergency” have the same meanings as in the 2001 Regulations^(c).

(6) Paragraph (1) (and the exceptions in paragraphs (3) and (4)) shall apply to a shadow council as they apply to a preparing council which is a county council as if, for the purposes of the Acts and instruments mentioned in paragraph (2), the shadow council were a preparing council which is a county council.

(7) As soon as any plan of the description referred to in paragraph (2)(a) has been prepared, the preparing or shadow council which prepared it shall publish it or such part of it as the council considers necessary or desirable for the purpose of—

- (a) preventing an emergency,
- (b) reducing, controlling or mitigating the effects of an emergency, or
- (c) enabling other action to be taken in connection with an emergency.

(8) Subject to paragraph (9), a plan prepared in accordance with paragraph (1) by a preparing or shadow council shall be treated, on and after the reorganisation date, as if it had been prepared by that council’s related single tier council.

(9) A single tier council may, but need not, prepare a plan of the same description as that prepared in accordance with paragraph (1) by its related preparing or shadow council but, where it does so, and the plan—

- (a) extends to the whole of its area; and
- (b) is a substitute for the plan prepared by its related preparing or shadow council (whether the substitution is made expressly or by necessary implication),

the preparing or shadow council’s plan shall cease to have effect on the date on which the single tier council’s plan is published.

(10) Nothing in paragraph (9) shall affect the continued validity of a plan after the date referred to in that paragraph for any transitional purpose specified in the single tier council’s plan.

(11) Paragraph (7) shall apply in relation to any plan of the description referred to in paragraph (2)(a) prepared by a single tier council as it applies in relation to a plan of that description prepared by a preparing council which is a county council.

(a) See the definition of “establishment” in regulation 2(1) of the COMAH Regulations.

(b) As to the application of the 2001 Regulations, see regulation 3 of those Regulations.

(c) Definitions of these expressions are to be found in regulation 2(1) of the 2001 Regulations.

Plans, reviews, schemes, statements and strategies required not later than 12 months after the reorganisation date

12.—(1) Where it is practicable to do so in the period beginning on the date on which these Regulations come into force and ending on the reorganisation date—

- (a) each preparing council which is a county council and each shadow council shall prepare for the whole of its area, and if required by the enactment concerned publish, a document of each of the following descriptions—
 - (i) an allocation scheme under section 167 of the Housing Act 1996(a);
 - (ii) a licensing statement (statement of licensing policy) under section 5 of the Licensing Act 2003(b);
 - (iii) a statement of principles under section 349 (three-year licensing policy) of the Gambling Act 2005(c); and
 - (iv) a statement of the policy for the provision of assistance under article 3 of the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002(d);
- (b) each shadow council and each preparing council which is a district council shall prepare for the whole of its area and publish—
 - (i) an accessibility strategy and plan under section 28D of the Disability Discrimination Act 1995(e); and
 - (ii) a children’s and young people’s plan under regulation 3 of the Children and Young People’s Plan (England) Regulations 2005(f); and
- (c) each shadow council and each preparing council which is a county council shall—
 - (i) carry out for the whole of its area a homelessness review within the meaning of the Homelessness Act 2002(g); and
 - (ii) based on the results of that review, formulate and publish a homelessness strategy within the meaning of that Act.

(2) For the purposes of paragraph (1)(a)—

- (a) the Acts and Order referred to in paragraphs (i) to (iv) shall have effect in relation to a shadow council as if the shadow council were a preparing council; and
- (b) the statement referred to in paragraph (iii) shall be prepared in accordance with the Gambling Act 2005 (Licensing Authority Policy Statement) (England and Wales) Regulations 2006(h).

(3) For the purposes of paragraph (1)(b)—

- (a) section 28D of the Disability Discrimination Act 1995 shall have effect in relation to a shadow council as if the shadow council were a county council; and
- (b) the Children and Young People’s Plan (England) Regulations 2005 shall have effect as if references to an authority included references to a shadow council and to a preparing council which is a district council(i).

(4) For the purposes of paragraph (1)(c)—

- (a) section 1(3) of the Homelessness Act 2002 shall not have effect; and

(a) 1996 c.52, amended by the Homelessness Act 2002 (c.7), section 16.

(b) 2003 c.17.

(c) 2005 c.19.

(d) S.I. 2002/1860. As to the requirement for the policy, see article 4 of the 2002 Order.

(e) 1995 c.50. Section 28D was inserted by section 14(1) of the Special Educational Needs and Disability Act 2001 (c.10) and amended by paragraph 26 of Schedule 21 to the Education Act 2002 (c.32). Subsection (6) was repealed by the Children Act 2004 (c.31), Schedule 5, Part 3. Subsection (13) was amended by the Education Act 2005 (c.18), Schedule 9, para 8.

(f) S.I. 2005/ 2149, amended by S.I. 2007/57.

(g) 2002 c.7. Section 3 was amended by the Local Government Act 2003 (c.26), Sch. 7, para 81. For the meaning of “homelessness review” see section 2. For the meaning of “homelessness strategy” see section 3. Section 4 contains other relevant definitions.

(h) S.I. 2006/636.

(i) See the definition of “authority” in regulation 2(1) of S.I. 2005/2149.

(b) section 1 of that Act (except subsection (3)) and sections 2 to 4 of that Act shall have effect as if—

- (i) references to a local housing authority included references to a preparing council which is a county council and to a shadow council, and
- (ii) references to a local housing authority's district (in whatever terms) included references to the area of a preparing council which is a county council and to a shadow council's area.

(5) Where a plan, review, scheme, statement or strategy of a description in paragraph (1) has not been completed, formulated or prepared (as the case may be) and, where required by or under the enactment concerned, published, before the reorganisation date, the single tier council that is related to the council authorised by that paragraph to take that action shall take such steps as are necessary to secure that the plan, review, scheme, statement or strategy is completed, formulated or prepared (as the case may be) and, where required by or under the enactment concerned, published, not later than the date that falls 12 months after the reorganisation date.

(6) In the period beginning on the reorganisation date and ending on the date on which the single tier council complies with paragraph (5), reviews and strategies of the description specified in paragraph (1)(c) and plans, schemes, statements and strategies of the descriptions specified in paragraph (1)(a) and (b) that have been carried out, formulated or prepared (as the case may be) and, where required by or under the enactment concerned, published—

- (a) before the reorganisation date, by any council that is a predecessor council in relation to the single tier council; or
- (b) before the date on which the section 7 order came into force, by the related preparing or shadow council,

shall be treated as if they had been carried out, formulated, prepared, and (where required) published by the single tier council for the whole or such part of its area as corresponds to the area to which the particular plan, review, scheme, statement or strategy relates.

(7) Nothing in paragraph (6) shall affect the continued validity, after the date on which the single tier council complies with paragraph (5), of a plan, review, scheme, statement or strategy prepared and published as mentioned in paragraph (6)(a) or (b), for any transitional purpose specified in the plan, review, scheme, statement or strategy prepared by the single tier council.

(8) The requirements of section 5(1) of the Licensing Act 2003 shall be treated as satisfied, as regards the three year period beginning with 7th January 2011^(a), and a single tier council, by a statement published in accordance with regulations under subsection (7) of that Act—

- (a) by that council's related preparing or shadow council by virtue of paragraph (1)(a) above; or
- (b) by the single tier council under paragraph (5) above.

(9) The requirements of section 349(1) of the Gambling Act 2005 shall be treated as satisfied, as regards the three year period beginning with 31st January 2010^(b), and a single tier council, by a statement published in accordance with regulations under subsection (4) of that Act—

- (a) by that council's related preparing or shadow council by virtue of paragraph (1)(a) above; or
- (b) by the single tier council under paragraph (5) above.

Sustainable community strategy required not later than 24 months after the reorganisation date

13.—(1) Where it is practicable to do so in the period beginning on the date on which these Regulations come into force and ending on the reorganisation date, each preparing council and

(a) S.I. 2004/2362 appointed 7th January 2005 as the start of the first three year period for the purposes of section 5 of the Licensing Act 2003.

(b) S.I. 2006/637 appointed 31st January 2007 as the start of the first three year period for the purposes of section 349 of the Gambling Act 2005.

each shadow council shall prepare for the whole of its area, a sustainable community strategy under section 4 of the Local Government Act 2000(a).

(2) Where a preparing or shadow council has been unable to prepare a sustainable community strategy before the reorganisation date, its related single tier council shall prepare that strategy not later than the date that falls 24 months after the reorganisation date.

(3) In the period beginning on the reorganisation date and ending on the date on which the single tier council complies with paragraph (2), the sustainable community strategy prepared—

- (a) before the reorganisation date, by any council that is a predecessor council in relation to the single tier council; or
- (b) before the date on which the section 7 order came into force, by the related preparing council,

shall be treated as if it had been prepared by the single tier council for the whole or such part of its area as corresponds to the area to which the strategy relates.

(4) Nothing in paragraph (3) shall affect the continued validity, after the date on which the single tier council complies with paragraph (2), of a sustainable community strategy prepared as mentioned in paragraph (3)(a) or (b), for any transitional purpose specified in the strategy prepared by the single tier council.

Continuity in relation to other plans, schemes, statements and strategies

14.—(1) Subject to paragraph (2) where, pursuant to a requirement imposed by or under any enactment (whether the requirement has direct effect in relation to the council concerned or because the enactment or provision that imposes the requirement applies to the council by virtue of an order or resolution), a plan, scheme, statement or strategy is prepared and, where required by the enactment or provision, published—

- (a) before the reorganisation date, by any council that is a predecessor council of its related single tier council; or
- (b) before the date on which the section 7 order came into force, by the preparing council of its related single tier council,

the plan, scheme, statement or strategy shall be treated, for the period specified in paragraph (3), as if it had been prepared and, if so required, published by the single tier council for the whole or such part of its area as corresponds to the area to which the particular plan, scheme, statement or strategy relates.

(2) Paragraph (1) does not apply—

- (a) in relation to a plan, scheme, statement or strategy of a description referred to in regulation 12(1) or 13(1); or
- (b) where different provision is made in regulations under section 14 of the 2007 Act.

(3) The period referred to in paragraph (1) begins on the reorganisation date and ends on the date on which the single tier council concerned publishes a plan, scheme, statement or strategy which—

- (a) extends to the whole of its area; and
- (b) is prepared in substitution for the plan, scheme, statement or strategy prepared by its related predecessor or preparing council (whether that substitution is made expressly or by necessary implication).

(4) Nothing in paragraph (1) shall affect the continued validity of a plan, scheme, statement or strategy after the end of the period specified in paragraph (3) for any transitional purpose specified in the plan, scheme, statement or strategy prepared by the single tier council.

(a) Section 4 is amended by section 7 of the Sustainable Communities Act 2007 (c.23) and section 114 of the Local Government and Public Involvement in Health Act 2007 (c.28).

PART 5

MEMBERSHIP OF CERTAIN LICENSING AND PLANNING COMMITTEES

Interpretation of Part 5

15.—(1) In this Part—

“the 1989 Act” means the Local Government and Housing Act 1989(a);

“2009-electing council” means a single tier council to which elections are to be held in 2009;

“licensing function” means any function conferred by or under—

(a) the Gambling Act 2005(b),

(b) the Licensing Act 2003(c), or

(c) any other enactment relating to the licensing of premises for any purpose, where the function is for the time being listed in paragraph B (licensing and registration functions) of Schedule 1 to the 2000 Regulations) (functions not to be the responsibility of an authority’s executive) so far as not covered by any other paragraph of that Schedule;

“planning function” means any function—

(a) conferred by or under Part 3 of the Town and Country Planning Act 1990(d) (control over development), or

(b) for the time being listed in Section A of Schedule 1 to the 2000 Regulations (functions relating to town and country planning and development control);

“pre-election period”, in relation to a 2009-electing council, means the period beginning on the reorganisation date and ending on the fourth day after the ordinary day of election of councillors in 2009; and

“relevant committee” means a committee of a 2009-electing council established—

(a) under section 6(1) of the Licensing Act 2003(e);

(b) for the purpose of the exercise by the council of any other licensing function; or

(c) for the purpose of the exercise by the council of any planning function.

(2) For the purposes of this Part—

(a) a 2009-electing council is related to a preparing council if it succeeds the preparing council on the reorganisation date; and

(b) a preparing council is related to a predecessor council if it is the successor council to the predecessor council.

Temporary co-opted membership of committees discharging licensing or planning functions

16.—(1) Subject to paragraph (6), where the Implementation Executive of a 2009-electing council so resolves, a person specified in the resolution who—

(a) immediately before the passing of the resolution is a member of the Implementation Executive; and

(b) is not a member of the related preparing council,

shall, for the duration of the pre-election period, be a co-opted member of such one or more relevant committees of the 2009-electing council as the Implementation Executive shall specify in the resolution.

(a) 1989 c.42. Subsection(3) of section 13 excepts members of a committee or sub-committee falling within subsection (4) from the restriction on voting imposed by subsection (1).

(b) 2005 c.19.

(c) 2003 c.17.

(d) 1990 c.8.

(e) 2003 c.17.

(2) Subject to paragraph (6), where the Implementation Executive of a preparing council which on the reorganisation date will be a 2009-electing council so resolves before the reorganisation date—

- (a) a member of the Implementation Executive specified in the resolution who, immediately before the passing of the resolution, is not a member of the related preparing council; or
- (b) a person specified in the resolution who is a member for the time being of a committee referred to in paragraph (3),

shall, for the duration of the pre-election period, be a co-opted member of such one or more relevant committees as exercise licensing functions as the Implementation Executive shall specify in the resolution.

(3) The committee mentioned in paragraph (2) is a committee that discharges licensing functions of a predecessor council that is related to the preparing council concerned.

(4) Subject to paragraph (6), where the Implementation Executive of a preparing council which on the reorganisation date will be a 2009-electing council so resolves before the reorganisation date—

- (a) a member of the Implementation Executive specified in the resolution who, immediately before the passing of the resolution, is not a member of the related preparing council; or
- (b) a person specified in the resolution who is a member for the time being of a committee referred to in paragraph (5),

shall, for the duration of the pre-election period, be a co-opted member of such one or more relevant committees as exercise planning functions as the Implementation Executive shall specify in the resolution.

(5) The committee mentioned in paragraph (4) is a committee that discharges planning functions of a predecessor council that is related to the preparing council concerned.

(6) Paragraphs (1), (2) and (4) do not apply where the preparing council is a district council.

(7) For the purposes of paragraphs (1), (2) and (4) it is immaterial that a person, who before the reorganisation date is a member of a predecessor council, ceases on that date to be a member of it.

(8) Section 102(2) of the 1972 Act shall not apply in relation to a person who is a co-opted member of a relevant committee of a description specified in paragraph (b) or (c) of the definition of “relevant committee”; and the term of office of any such person shall be the pre-election period.

(9) Subsection (1) of section 13 of the 1989 Act (voting rights of members of certain committees: England and Wales), shall not apply to a person who is a co-opted member of a relevant committee by virtue of a resolution under paragraph (2) or (4).

(10) Nothing in paragraph (1), (2), (4) or (8) shall prevent the Implementation Executive of a 2009-electing council from resolving on or after the reorganisation date—

- (a) that a person in respect of whom a resolution had been passed under this regulation before that date should from such date as may be specified in the resolution cease to be a co-opted member of a relevant committee; or
- (b) that a member of the Implementation Executive who was not a member of the 2009-electing council’s related preparing council should be a co-opted member of a relevant committee.

Political balance on certain licensing and planning committees

17.—(1) Section 15 of 1989 Act (duty to allocate seats to political groups) shall not apply in relation to—

- (a) the appointment before the reorganisation date by a preparing council to which paragraph (3) applies of persons to be members of a relevant committee of its related 2009-electing council; or
- (b) the appointment after the reorganisation date by a 2009-electing council of persons to be members of a relevant committee of that council,

where the period of membership falls within the pre-election period.

(2) But, subject to paragraphs (4) and (5), in making appointments of the description specified in paragraph (1), the preparing council or the 2009-electing council (as the case may be) shall—

- (a) so far as practicable, ensure that the seats on the relevant committee are allocated to particular political groups in the same proportion as the seats on the preparing council's Implementation Executive are for the time being or, in the case of appointments by the 2009-electing council, were immediately before the reorganisation date, filled by persons who are members of particular political groups; and
- (b) take into account the membership of particular political groups of the persons (if any) in respect of whom the preparing council has resolved (under regulation 15) that they should be co-opted to the relevant committee concerned.

(3) This paragraph applies to a preparing council which—

- (a) before the reorganisation date is a county council, and
- (b) on that date becomes a 2009-electing council.

(4) At any time before the reorganisation date the Implementation Executive of a preparing council which is a county council may resolve that the requirements of paragraph (2) shall not apply to the making of appointments of the description specified in paragraph (1); but this is subject to paragraph (6).

(5) At any time during the pre-election period, the Implementation Executive of a 2009-electing council may resolve that the requirements of paragraph (2) shall not apply to the making of appointments of the description specified in paragraph (1); but this is subject to paragraph (6).

(6) A resolution may not be passed under paragraph (4) or (5)—

- (a) unless different provision is made by arrangements approved by the preparing council or, as the case may be, the 2009-electing council in the manner for the time being prescribed in regulations made by the Secretary of State for the purposes of section 17 of the 1989 Act (exceptions to and extensions of political balance requirements); and
- (b) if any member of the Implementation Executive votes against it.

PART 6

FUNCTIONS RELATING TO TOWN AND COUNTRY PLANNING

Interpretation of Part 6

18. In this Part—

“the 2004 Act” means the Planning and Compulsory Purchase Act 2004(a);

“the 2004 Regulations” means the Town and Country Planning (Local Development) (England) Regulations 2004(b);

“the Regional Regulations” means the Town and Country Planning (Regional Planning) (England) Regulations 2004(c);

“joint committee” means a committee established by an order under section 29(2) of the 2004 Act; and

“related planning successor”, in relation to a predecessor council whose area is to become part of the area of only one single tier council on the reorganisation date, means that single tier council.

(a) 2004 c.5.

(b) S.I. 2004/2204, amended by S.I. 2008/1371.

(c) S.I. 2004/2203.

Local development documents

19.—(1) A local development document adopted by a predecessor council under section 23 of the 2004 Act (adoption of local development documents) before the reorganisation date shall have effect on and after that date as if it had been adopted by that council's related planning successor for such part of its area as corresponds to the area to which the document relates.

(2) In paragraph (1) "local development document" must be construed in accordance with section 17 (local development documents) of the 2004 Act.

(3) Nothing in paragraph (1) affects any power of the Secretary of State to revoke, or the related planning successor to revise a document to which paragraph (1) relates^(a).

Modifications relevant to regional functions

20.—(1) Part 1 of the 2004 Act (regional functions) shall have effect until the reorganisation date as if—

- (a) a shadow council, and a preparing council which is a district council, were authorities falling within section 4(4) (assistance from certain local authorities); and
- (b) in section 4(4)(a), after "county council", there were inserted "other than a county council which is a predecessor council within the meaning of the Local Government (Structural Changes) (Transitional Arrangements) (No.2) Regulations 2008".

(2) The Regional Regulations shall have effect until the reorganisation date as if—

- (a) a shadow council were a local planning authority; and
- (b) a county council which is a predecessor council within the meaning of these Regulations were not a local planning authority.

Modifications relevant to local development functions

21.—(1) Part 2 of the 2004 Act (local development), except as mentioned in regulations 22 and 23, and the 2004 Regulations shall have effect until the reorganisation date—

- (a) in relation to a successor council, as if it were both a district council and a county council;
- (b) in relation to a predecessor council which is a district council, as if it were not a local planning authority;
- (c) in relation to a predecessor council which is a county council, as if it did not have functions under section 14 (survey of areas: county councils) or 16 (minerals and waste development scheme) of the 2004 Act.

(2) A predecessor council shall continue to be a relevant authority for the purposes of the 2004 Regulations.

Modifications relevant to local development schemes

22.—(1) Subject to paragraph (2), section 15 of the 2004 Act (local development scheme) shall have effect in relation to a shadow council or a preparing council which is a county council as if—

- (a) the geographical area required by subsection (2) to be specified in the scheme did not include such part of the council's area as relates the area of a predecessor council whose functions under Part 2 of the 2004 Act have been delegated to a joint committee; and
- (b) in paragraph (b) of subsection (3), for the words from "at such time" to the end of that paragraph, there were substituted "not later than three months before the reorganisation date" (and, accordingly, regulation 10(1) of the 2004 Regulations does not apply).

(2) The modification made by paragraph (1) does not have effect as regards any minerals and waste development scheme under section 16 of the 2004 Act.

(a) See sections 25 and 26 of the 2004 Act.

(3) A scheme submitted by a shadow council or a preparing council which is a county council in accordance with section 15 of the 2004 Act as modified by paragraph (1) must specify the documents (if any)—

- (a) to which paragraph (4) applies; and
- (b) that were specified by a predecessor council or a joint committee in its local development scheme as documents that were to be local development documents.

(4) This paragraph applies to any document adopted by the predecessor council or the joint committee which the shadow council or a preparing council which is a county council has adopted or intends to adopt without revision, to revise, or to invite the Secretary of State to revoke^(a).

Statement of community involvement

23.—(1) A scheme prepared by a successor council under section 15 of the 2004 Act (as modified as mentioned in regulation 22), may specify that, until the reorganisation date, local development documents are to be prepared and adopted in accordance with Part 6 of the 2004 Regulations.

(2) Until the reorganisation date, Part 2 of the 2004 Act shall have effect, in relation to a scheme referred to in paragraph (1) that includes such a specification as is mentioned in that paragraph—

- (a) as if section 18 and subsections (2) to (4) of section 23 were omitted; and
- (b) as if it required local development documents to be prepared and adopted in accordance with Part 6 of the 2004 Regulations.

(3) Section 20 of the 2004 Act (independent examination) shall not apply as regards a statement of community involvement prepared by a successor council before the reorganisation date where that statement is to have effect as a local development document relating to the whole of the area of the relevant single tier council.

(4) In paragraph (3), “relevant single tier council”, in relation to a successor council, means the single tier council which succeeds the successor council on the reorganisation date.

Continuity relevant to section 29 joint committees

24.—(1) An order under section 29 of the 2004 Act establishing a joint committee of which a predecessor council is a constituent member shall continue to have effect on and after the reorganisation date as if—

- (a) references to a predecessor council which is a district council were references to the single tier council whose area includes that of the district council;
- (b) references to the area of a predecessor council which is a district council were references to such part of the area of the single tier council as is coterminous with the area of the district council;
- (c) references to a predecessor council which is a county council were references to the single tier council referred to in sub-paragraph (a); and
- (d) references to the area of a predecessor council which is a county council were references to such part of the area of the single tier council as is referred to in sub-paragraph (b).

(2) A single tier council to which paragraph (1) applies shall be treated for the purposes of section 29 of the 2004 Act as a county council and, for the purposes of subsection (9) of that section, as a constituent authority of the joint committee.

(3) Anything which is in the process of being done by or in relation to a joint committee before the reorganisation date may be continued on and after the reorganisation date—

- (a) to the extent that it relates to a predecessor council or its area, by or in relation to the single tier council referred to in paragraph (1)(a) or the part of its area referred to in paragraph (1)(b);

(a) As to the power to revise a local development document, *see* section 26 of the 2004 Act.

- (b) to any other extent, by or in relation to any other authority (other than a predecessor council) whose functions under Part 2 of the 2004 Act have been delegated to the joint committee.

(4) Anything done by or in relation to a joint committee before the reorganisation date shall, so far as is necessary for continuing its effect on or after the reorganisation date, have effect as if done—

- (a) to the extent that it relates to a predecessor council or its area, by or in relation to the single tier council referred to in paragraph (1)(a) or the part of its area referred to in paragraph (1)(b);
- (b) to any other extent, by or in relation to any other authority (other than a predecessor council) whose functions under Part 2 of the 2004 Act have been delegated to the joint committee.

(5) Paragraphs (1) to (3) shall cease to have effect as regards an area on whichever is the earlier of—

- (a) the date on which the last of such of the documents mentioned or referred to in the agreement under section 29(1) of the 2004 Act to which the order under that section gives effect (being documents required under any provision of Part 2 of the 2004 Act to be adopted) is adopted; and
- (b) the third anniversary of the reorganisation date,

and the date so ascertained is referred to in the following paragraph as the relevant date.

(6) On the date that is the relevant date as regards an area, the order under section 29 relevant to that area shall be treated as revoked; and section 29 of the 2004 Act shall have effect as if—

- (a) the reference in subsection (5) to annulment in pursuance of a resolution of either House of Parliament were a reference to this paragraph; and
- (b) the reference in subsection (5)(a) to the date of the resolution were a reference to the relevant date.

PART 7

FUNCTIONS RELATING TO EDUCATION

Schools Forums

25.—(1) Not later than three months before the reorganisation date, a successor council to which this paragraph applies shall establish for its area a body, to be known as a transitional schools forum, representing—

- (a) the governing bodies and head teachers of schools in its area that are maintained by a local education authority; and
- (b) if the successor council so determines, such bodies as it may determine.

(2) Paragraph (1) applies to a successor council which, on the date on which these Regulations come into force, is either—

- (a) a preparing council other than a county council, or
- (b) a shadow council.

(3) The Schools Forums (England) Regulations 2002^(a) shall apply in relation to the composition, meetings and proceedings of transitional schools forums and the expenses of their members as they apply in relation to schools forums established by local education authorities and the expenses of the members of such forums as if—

(a) S.I. 2002/2114, amended by S.I. 2004/447, 2005/3299 and 2008/47.

- (a) references to the relevant authority, except in relation to the maintenance of a school, included references to a successor council to which paragraph (1) above applies;
 - (b) regulation 2 (establishment of schools forum) were omitted; and
 - (c) in regulation 9 (consultation on financial issues)—
 - (i) for “annually” there were substituted “in respect of the financial year beginning on the reorganisation date”; and
 - (ii) after paragraph (2) there were inserted—

“(3) In paragraph (1) “reorganisation date” has the same meaning as in the Local Government (Structural Changes) (Transitional Arrangements) (No.2) Regulations 2008.”.
- (4) A transitional schools forum shall be treated for the purposes of—
- (a) subsection (3) of section 47A of the School Standards and Framework Act 1998^(a) and the financial year beginning on the reorganisation date,
 - (b) subsection (8) of that section (expenses of schools forum), and
 - (c) regulations under that section or section 45A(3) of that Act^(b),
- as if it were established by a local education authority under section 47A(1) of that Act.
- (5) On the establishment of a transitional schools forum for an area—
- (a) the functions under section 47A of the Schools Standards and Framework Act 1988 of the local education authority for that area, and
 - (b) the functions of the schools forum established by that authority,
- shall cease to be exercisable as regards that area and the financial year beginning on the reorganisation date.

PART 8

MISCELLANEOUS TRANSITIONAL PROVISIONS

Application of Part 6 of the Local Government and Housing Act 1989

26.—(1) Part 6 of the Local Government and Housing Act 1989^(c) (housing finance) shall have effect, in relation to functions falling to be discharged under that Part before the reorganisation date and as regards the financial year beginning on 1st April 2009, by a preparing council which is a county council, or by a shadow council, as if the council were a local housing authority within the meaning of that Part^(d).

(2) In relation to functions falling to be discharged as mentioned in paragraph (1), Part 6 of the Local Government and Housing Act 1989 shall have effect as if a predecessor council were not a local housing authority.

Functions under the Homelessness Act 2002

27. Where functions under the Homelessness Act 2002^(e), other than those referred to in regulation 12(1)(c), fall to be discharged by a preparing council which is a county council or by a shadow council—

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- (a) 1998 c.31. Section 47A was inserted by section 43 of the Education Act 2002 (c.32). Subsection (3) was substituted by the Education Act 2005 (c.18), Sch.16, para.7.
 - (b) Section 43A was inserted by section 41(1) of the Education Act 2002 (c.32) and amended by section 101 of, and para.3 of Sch.16 to, the Education Act 2005 (c.18). As to regulations, *see* S.I. 2008/228.
 - (c) 1989 c.42.
 - (d) As to the meaning of “local housing authority” in Part 6 of the 1989 Act, *see* section 88(1) of that Act and sections 1, 2(2) and 434 of the Housing Act 1985 (c.68).
 - (e) 2002 c.7.

- (a) before the reorganisation date, and
- (b) as regards the financial year beginning on that date,

references in that Act to a local housing authority shall be taken to include references to a council of either of those descriptions.

Reports of statutory audits, inspections and investigations

28.—(1) A predecessor council which receives from an auditor, inspector or investigator, in the performance of duties under any enactment, a report (whether in draft or final form), shall immediately copy it—

- (a) where its related preparing council has an Implementation Executive, to the proper officer of the Implementation Executive;
- (b) in any other case, to the proper officer of its related preparing or shadow council (as the case may be).

(2) In paragraph (1)—

“proper officer” means the officer appointed for the purpose by the council or the Implementation Executive (as the case may be); and

“report” includes the results of an inspection or investigation.

(3) A predecessor council which is minded to vary, in a material respect, any of its policies, procedures or structures—

- (a) for the purpose of giving effect to a recommendation made in a report referred to in paragraph (1); or
- (b) in consequence of the council’s consideration of such a report,

shall not pass a resolution to vary the policy, procedure or structure in that respect at any time in the period specified in paragraph (4) unless it has complied with the requirements of paragraph (5).

(4) The period referred to in paragraph (3) begins on the date on which these Regulations come into force and ends on the reorganisation date.

(5) The requirements of this paragraph are that the predecessor council—

- (a) has consulted its related preparing council or its related shadow council (as the case may be) (“the consultee”) about the proposed variation;
- (b) has allowed the consultee a reasonable time within which to respond; and
- (c) has taken into account any comments received from the consultee within the period allowed for responding.

(6) For the purposes of paragraphs (1), (3) and (5)—

- (a) a preparing council is related to a predecessor council if it is the successor council to the predecessor council; and
- (b) a shadow council is related to a predecessor council if it is the successor council to the predecessor council.

Changing governance arrangements: single tier county councils with 2008 elections

29.—(1) This regulation applies to a single tier council which—

- (a) is a county council;
- (b) is required by a section 7 order to hold an election of its councillors in 2008; and
- (c) intends to make a change in governance arrangements to a leader and cabinet executive (England).

(2) In relation to a council to which this regulation applies, the following provisions shall not apply—

- (a) subsections (4) and (5) of section 33G of the Local Government Act 2000^(a) (implementation: new executive or move to executive arrangements),
- (b) paragraph 3(3) of Schedule 4 to the 2007 Act, and
- (c) to the extent that it defines “relevant elections”, paragraph 5(1) of that Schedule.

(3) Subsection (2) of section 33G of the Local Government Act 2000, as applied to a council to which this regulation applies by paragraph 3(2) of Schedule 4 to the 2007 Act, shall have effect as if, for the words from the beginning to “elections”, there were substituted “On the day before the first meeting of the council after the reorganisation date,”.

Election of leader: leader and cabinet executives of single tier councils with 2008 elections

30. For the purposes of section 44A(2) of the Local Government Act 2000^(b) (election of leader: whole-council elections), a council of the description specified in regulation 29 shall treat its first meeting after the reorganisation date as its post-election annual meeting^(c).

Review of plans under the Pipelines Safety Regulations 1996

31.—(1) It shall be the duty of each shadow council and each preparing council which is a county council to review and, where appropriate, revise any plan prepared under regulation 25 (emergency plans in case of major accidents) of the Pipelines Safety Regulations 1996^(d) (“a regulation 25 plan”) which, by virtue of regulation 14 of these Regulations, is to have effect in the council’s area on and after the reorganisation date.

(2) The duty imposed by paragraph (1) shall be discharged before the reorganisation date.

(3) On and after the reorganisation date, paragraph (3) of regulation 25 of the Pipelines Safety Regulations 1996 shall have effect in relation to a single tier council for whose area there is a regulation 25 plan as if after “every three years” there were inserted “beginning with the period of three years that commences in the third year after that in which the reorganisation date falls”.

Honorary aldermen

32.—(1) Subsection (1) of section 249 of the 1972 Act (honorary aldermen and freemen) shall have effect in relation to a principal council which is a predecessor council as if, for the words from “as past members” to the end, there were substituted “as past or serving members of the council”.

(2) Where, by virtue of a section 7 order, a local government area is abolished on the reorganisation date, any person who, immediately before that date, is an honorary alderman of the predecessor council for that area shall, on that date—

- (a) where there is more than one related single tier council for that area, become an honorary alderman of the council (whether a related single tier council or another local authority) whose area includes the whole or the greater part of the electoral area for which the person was last returned as a councillor of the predecessor council;
- (b) in any other case, become an honorary alderman of the related single tier council.

(3) In relation to a person to whom paragraph (2) applies, references in subsections (2) and (4) of section 249 of the 1972 Act which, immediately before the reorganisation date, fall to be construed as references to the predecessor council shall, on and after that date, be construed as references to the council of which that person becomes an honorary alderman on that date.

^(a) 2000 c.22. Section 33G was inserted by section 64 of the Local Government and Public Involvement in Housing Act 2007 (c.28). Transitional arrangements are contained in Schedule 4 to that Act.

^(b) Section 44A was inserted by section 67 of the Local Government and Public Involvement in Housing Act 2007.

^(c) See the definition in section 44A(4)(b) of the Local Government Act 2000.

^(d) S.I. 1996/825.

Honorary freemen

33.—(1) A person who, before the reorganisation date, has been admitted as an honorary freeman of a local government area that is abolished by a section 7 order (an “abolished area”) shall, on that date, be treated as having been admitted as an honorary freeman of the area described in paragraph (2), notwithstanding that the area so described is not on that date an area to which persons may be admitted as honorary freemen^(a).

(2) The area is that which, on the reorganisation date, comprises or includes the abolished area, and for which, on and after that date, there is a single tier of local government.

PART 9

CONSEQUENTIAL AMENDMENT OF THE LOCAL GOVERNMENT (CHANGES FOR ENGLAND) REGULATIONS 1994

Consequential amendment of the Local Government (Changes for England) Regulations 1994

34. The Local Government (Changes for England) Regulations 1994^(b) are amended, in regulation 5 (references in enactments, by the substitution for paragraphs (6) and (7) of—

“(6) In relation to an area for which, as a result of an order under section 17 of the Act, there is a district council but no county council, any reference in a provision to a county council or a county shall, so far as is required for giving effect to the provision, be construed as including a reference to a district council or, as the case may be, a district.

(7) In relation to an area for which, as a result of an order under section 17 of the Act, there is a county council but no district councils, any reference in a provision to a district council or a district shall, so far as is required for giving effect to the provision, be construed as including a reference to a county council or, as the case may be, a county.”.

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

John Healey
Minister of State

5th November 2008

Department for Communities and Local Government

(a) See section 249(5) of the Local Government Act 1972 (c.70) as to honorary freemen and the local government areas of which there may be honorary freemen .
(b) S.I. 1994/867.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 1 of the Local Government and Public Involvement in Health Act 2007 (the “2007 Act”) provides for the establishment of a single tier of local government for areas in England. There is a single tier of local government for an area if there is either a county council and no district councils for that area, or a district council and no county council for that area (section 1(2) of the 2007 Act). Where the Secretary of State has received a proposal or a recommendation that there should be a single tier of local government for an area, he may make an order to implement the proposal or recommendation with or without modification. These Regulations make incidental, consequential, transitional and supplementary provision of general application in relation to the exercise of functions by local authorities during the transitional period (defined in regulation 2) for the purposes of, and in consequence of, orders made by the Secretary of State under section 7 of the 2007 Act (“section 7 orders”).

Section 14(3) of the 2007 Act provides for these Regulations to have effect subject to any provision included in such an order. Regulation 1(2) provides that these Regulations have no effect on matters for which provision has been made in other regulations and orders of specified descriptions or in agreements under section 16 of the 2007 Act.

Regulation 2 contains definitions. Other terms that appear in only one Part of the Regulations are defined in regulation 8 (for Part 3), regulation 10 (for Part 4), regulation 15 (for Part 5) and regulation 18 (for Part 6).

In Part 2, regulations 3 to 5 deal with continuity. Regulation 3 provides for references in enactments (defined in paragraph (6)) to councils that are to be dissolved in accordance with section 7 orders to be read after the date specified in the order as that on which certain councils are dissolved and the administration of their areas becomes the responsibility of one or more single tier councils (the “reorganisation date”) as references to the single tier council. The provision also operates in relation to references in enactments to the areas of councils that are to be dissolved (counties and districts). Where a provision of an enactment applies to a particular area, it continues to apply after the reorganisation date only to that area. Regulation 4 makes similar provision in relation to things done, or in the process of being done, by or in relation to a dissolved council. Regulation 5 contains limitations relevant to regulation 4

Regulations 6 and 7 deal with responsibility, within particular authorities, for the discharge of functions in the period before the reorganisation date. Regulation 6 applies to a shadow council (defined in regulation 2) whose shadow executive is appointed by, or nominated in accordance with, a section 7 order. Most of the functions are to be discharged by the shadow executive, but where a shadow council intends to prepare a plan, scheme, statement or strategy of a description specified in regulation 13(1), and elections to its related single tier council are not due to be held in 2009, the function of preparing the plan, scheme, statement or strategy is to be that of the shadow council itself. The function of carrying out a review of any of those plans, schemes, statements or strategies is also to be that of the shadow council. Regulation 7 applies to a preparing council (defined in regulation 2) for which there is an Implementation Executive. Functions are to be “transitional functions” for the purposes of the section 7 order which establishes the council’s executive, with the consequence that responsibility for the discharge of the function is that of the council’s Implementation Executive.

In Part 3, regulation 9 deals with electoral matters for which action may need to be taken in the period before the reorganisation date. Before 30th November 2008, preparing councils, other than district councils, and shadow councils must appoint one of their officers to discharge the duties in relation to elections to the European Parliament to be held in 2009 that fall to be discharged by the local returning officer. That officer is also to discharge the duties in relation to any parliamentary election for which a writ is issued after 30th November 2008 that fall to be discharged by the acting returning officer.

In Part 4, regulation 11 requires shadow councils and preparing councils which are county councils to prepare for the whole of their areas certain plans under the Civil Contingencies Act

2004, the Control of Major Accident Hazards Regulations 1999 and the Radiation (Emergency Preparedness and Public Information) Regulations 2001. The plans are to be prepared before the reorganisation date and will be treated, on and after that date, as if they had been prepared by the single tier councils (though those councils may, if they wish, prepare plans in substitution for those prepared by the preparing or shadow council).

Regulation 12(1)(a) requires preparing councils which are county councils, and shadow councils, if able to do so before the reorganisation date, to prepare:

- an allocation scheme under section 167 of the Housing Act 1996;
- a statement of licensing policy under section 5 of the Licensing Act 2003;
- a statement of principles under section 349 of the Gambling Act 2005; and
- a statement of the policy for the provision of assistance under article 3 of the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002.

Regulation 12(1)(b) makes similar provision in relation to a shadow council and a preparing council which is a district council as regards the preparation of an accessibility strategy and plan under section 28D of the Disability Discrimination Act 1995 and a children's and young people's plan under regulation 3 of the Children and Young People's Plan (England) Regulations 2005.

Regulation 12(1)(c) makes similar provision in relation to a shadow council and a preparing council which is a county council as regards a homelessness review and preparation of a homelessness strategy under the Homelessness Act 2002.

If the relevant preparing or shadow council has been unable to prepare any of these documents before the reorganisation date, the single tier council must prepare them within the following 12 months.

Regulation 13 requires each preparing and shadow council which is able to do so before the reorganisation date to prepare a sustainable community strategy under section 4 of the Local Government Act 2003. If the relevant preparing or shadow council has been unable to prepare a sustainable community strategy before the reorganisation date, the single tier council must prepare one within the following 24 months.

Regulation 14 makes provision for continuity as regards other plans, schemes, statements and strategies prepared by preparing councils or councils that are dissolved on the reorganisation date. Plans, schemes, statements or strategies prepared under the Planning and Compulsory Purchase Act 2004 or regulations under that Act are excluded, and the provision does not apply if other regulations under section 14 of the 2007 Act make different provision.

Part 5 deals with transitional arrangements relating to membership of certain committees that exercise licensing and planning functions (see the definitions in regulation 15 of "licensing functions", "planning functions" and "relevant committee"). Regulation 16 enables the Implementation Executive of a preparing council other than a district council (excluded by paragraph (6)) which on the reorganisation date will become a single tier council for which elections will be held in 2009, to resolve:

that any of its members who are not also members of the preparing council shall serve as co-opted members of the single tier council's licensing or planning committees until the fourth day after the ordinary day of election of councillors in 2009;

that a person who is a member of a licensing committee of a council of which the preparing council is the successor shall serve as a co-opted member of any of the single tier council's licensing committees until the fourth day after the ordinary day of election of councillors in 2009;

that a person who is a member of a planning committee of a council of which the preparing council is the successor shall serve as a co-opted member of any of the single tier council's planning committees until the fourth day after the ordinary day of election of councillors in 2009.

Regulation 16(8) provides that the co-opted membership is not affected by the dissolution of the council by virtue of which the co-opted person became a member of the preparing council's Implementation Executive (relevant to the first case) or the dissolution of the council of whose committee the co-opted person was a member before the reorganisation date (relevant to the second and third cases). Regulation 16(10) enables the Implementation Executive to adjust the co-opted membership to deal with, for example, persons who are disqualified or suspended and the filling of vacancies.

Regulation 17 disapplies section 15 of the Local Government and Housing Act 1989, which relates to political balance on local authority committees, in relation to appointments, whether made before or after the reorganisation date, to the same licensing and planning committees as are referred to in regulation 16, where the single tier council succeeds a county council and is to hold elections of its councillors in 2009. But paragraph (2) of the regulation makes provision for appointments to be made to those committees, so far as practicable, so as to ensure that the seats on the committee are allocated to particular political groups in the same proportion as the seats on the preparing council's Implementation Executive are for the time being or, in the case of appointments by the 2009-electing council, were immediately before the reorganisation date, filled by persons who are members of particular political groups. In making such appointments account must be taken of the membership of particular political groups of the persons (if any) in respect of whom the preparing council has resolved (under regulation 16) that they should be co-opted to the committee concerned. These rules affect the making of appointments only where the period of membership ends before on the fourth day after the ordinary day of election of councillors in 2009. The effect of paragraphs (4) to (6) of regulation 16 is to enable an Implementation Executive to dispense with these rules if the preparing or 2009-electing council concerned has approved alternative arrangements in the manner prescribed by the Secretary of State and no member of the Implementation Executive voted against disapplying the rules.

Part 6 contains transitional arrangements relevant to certain planning functions. Regulation 19 provides for continuity as regards local development documents for the purposes of section 23 of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act"). Regulation 20 modifies Part 1 of the 2004 Act and the Town and Country Planning (Regional Planning) (England) Regulations 2004 as regards regional planning functions. Regulation 21 modifies Part 2 of the 2004 Act (subject to regulations 22 and 23) and the Town and Country Planning (Local Development) (England) Regulations 2004 as regards local development functions. Regulations 22 and 23 make modifications in relation to the application of section 15 of the 2004 Act to local development schemes (other than minerals and waste development schemes) and statements of community involvement, respectively. Regulation 24 provides for continuity as regards certain joint committees established under section 29 of the 2004 Act and for their dissolution.

In Part 7 regulation 25 deals with functions relating to education. It requires the establishment by shadow councils and by preparing councils which are district councils of transitional schools forums that, in relation to the financial year beginning on the reorganisation date, and instead of the Schools Forums of councils which are to be dissolved on that date, are to serve the same purposes as are served by Schools Forums under the School Standards and Framework Act 1998.

In Part 8, regulation 26 provides for the discharge of functions under Part 6 of the Local Government and Housing Act 1989, which relates to housing finance, so far as those functions need to be discharged before the reorganisation date as regards the financial year beginning on 1st April 2009. The functions are to be discharged by the council (either the preparing county council or the shadow council) that is to succeed on the reorganisation date the council that would otherwise have discharged those functions.

Regulation 27 relates to functions under the Homelessness Act 2002 other than those for which provision is made in regulation 12(1)(c). Where such functions are to be discharged before the reorganisation date and in relation to the year beginning on that date, that Act is to be effect as if references to a local housing authority included references to a shadow council and to a preparing council which is a county council.

Regulation 28 relates to reports (whether in draft or final form) of statutory audits, inspections and investigations that are received by a council which is to be dissolved on the reorganisation date. Depending on the type of council that is involved in the arrangements for the transfer to single tier local government on the reorganisation date, the council that receives the report is required to send a copy of it to the proper officer of the Implementation Executive of the preparing council or to the proper officer of the preparing council or the shadow council. If as a consequence of the report, the council that is to be dissolved is minded to vary in a material respect any of its policies, procedures or structures, it can do so only if it has first consulted the relevant preparing or shadow council and has taken account of any comments received.

Regulation 29 applies to a single tier council which is a county council, is required by a section 7 order to hold an election of its councillors in 2008, and is changing its governance arrangements to move to a “new style” leader and cabinet executive (the leader and cabinet executive (England)). The regulation disapplies subsections (4) and (5) of section 33G of the Local Government Act 2000 (sections 33A to 33O are inserted by section 64 of the 2007 Act) and certain transitional provisions in Part 1 of Schedule 4 to the 2007 Act. It also modifies section 33G(2), as applied by the transitional provisions, with the effect that the council must stop operating its current arrangements and move to its new arrangements on the day before its first meeting after the reorganisation date.

Regulation 30 requires a single tier council which is a county council to treat its first meeting after the reorganisation date as its post-election annual meeting for the purposes of section 44A(2) of the Local Government Act 2000. The effect is to require such a council to elect the executive leader at that meeting. (If it fails to do so, section 44A(3) of that Act provides for the executive leader to be elected at a subsequent meeting of the council.)

Regulation 31 requires every shadow council and every preparing council which is a county council and to review and, where appropriate, revise any plan prepared under regulation 25 of the Pipelines Safety Regulations 1996 (emergency plans in case of major accidents) which is to have effect in the council’s area on and after the reorganisation date. The duty is to be discharged before the reorganisation date. Regulation 25(3) of those Regulations is modified so that the three-year cycle of reviews of the plan begins in the third year after that in which the reorganisation date falls.

Regulation 32(1) enables a council that is to be dissolved on the reorganisation date to elect as honorary aldermen not only past members of the council but also serving members. Regulation 32(2) provides for honorary aldermen of a dissolved council to become honorary aldermen of its successor council on the reorganisation date, but where there is more than one successor council, those persons may become honorary aldermen of one of the successor councils or of another local authority, depending on the location of the electoral area for which the person was last returned as a councillor of the dissolved council.

Regulation 33 makes similar provision in relation to persons who are honorary freemen.

In Part 9, regulation 34 substitutes paragraphs (6) and (7) of regulation 5 of the Local Government (Changes for England) Regulations 1994, which deals with the construction of enactments in consequence of orders made under section 17 of the Local Government Act 1992. The substitution makes it clear that paragraphs (6) and (7) are concerned only with orders under section 17 of the 1992 Act and achieves consistency with regulation 3(1) and (2) of these Regulations.

A full impact assessment has not been produced for these Regulations as no impact on the private or voluntary sectors is foreseen.

STATUTORY INSTRUMENTS

2008 No. 2867

LOCAL GOVERNMENT, ENGLAND

The Local Government (Structural Changes) (Transitional
Arrangements) (No.2) Regulations 2008

£5.00