

EXPLANATORY MEMORANDUM TO
THE LOCAL GOVERNMENT (STRUCTURAL CHANGES) (FINANCE)
REGULATIONS 2008

2008 No. 3022

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1. The Local Government (Structural Changes) (Finance) Regulations 2008 (“the Finance Regulations”) make general provision in relation to areas in England for which an order has been made under section 7 of the Local Government and Public Involvement in Health Act 2007 (“the 2007 Act”).

2.2. There is a single tier of local government where there is a sole principal authority for the area (“a single-tier council”). An order which establishes a single-tier council under section 7 of the 2007 Act (“an order”) will provide for a specified reorganisation date on which one or more of the existing councils (“predecessor authorities”) are abolished and their functions are transferred to the new single-tier council. The new single-tier council may be an existing district or county council (a “preparing council”) or a newly constituted body which does not become a local authority until the reorganisation date (a “shadow council”). Districts (“predecessor areas”) or counties may also be abolished on this date. An order also makes provision for arrangements effecting the implementation of structural change including provision about the executive arrangements of a preparing council (providing for an Implementation Executive which is a committee of a preparing council’s executive established in pursuance of an order, and shadow councils).

2.3. The Finance Regulations make provision in relation to the exercise of functions under the Local Government Finance Act 1988 (“the 1988 Act”) and the Local Government Finance Act 1992 (“the 1992 Act”) by authorities. In particular, they make provision for-

- the exercise of functions under Part 3 of the 1988 Act (non-domestic rating) and Part 1 of the 1992 Act (council tax: England and Wales) before and after the reorganisation date, including the continuity of those functions; and
- the equalisation of amounts of council tax payable in respect of dwellings in the predecessor areas of a reorganised area.

2.4. Schedule 1 to the Finance Regulations specifies a procedure for the exercise by preparing councils of certain functions relating to council tax. The procedure applies where actions are the responsibility of an Implementation Executive.

2.5. Schedule 2 to the Finance Regulations includes modifications to the 1992 Act, the Local Authorities (Calculation of Council Tax Base) Regulations 1992 (“the Council Tax Base Regulations”) and the Local Authorities (Calculation of Council Tax Base) (Supply of Information) Regulations 1992 (“the Council Tax Base Information Regulations”).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. Paragraphs 4.6 to 4.9 discuss section 19 of the 2007 Act and the drafting and *vires* of regulation 7 of the Finance Regulations.

4. Legislative Context

4.1. Part 1 of the 2007 Act provides for the making of local government structural and boundary changes in England. So far as is relevant to the Finance Regulations, it enables provision to be made by an order for the restructuring of an area in which there are two tiers of local government (namely, a county council and district councils) into a single tier of local government (namely, a county council or a district council). Section 1(2) provides, for the purposes of Chapter 1 (structural and boundary change), that there is “a single tier of local government” for an area 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”.

4.2. Seven orders have been made to date, as follows:

4.2.1. Five orders providing for the existing county council for an area to be established as a single tier council (Cornwall (S.I. 2008/491); Durham (S.I. 2008/493); Northumberland (S.I. 2008/494); Shropshire (S.I. 2008/492); and Wiltshire (S.I. 2008/490)).

4.2.2. Two further orders, one providing for the establishment of two new single tier district councils for Cheshire (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 district council for Central Bedfordshire (S.I. 2008/907).

4.3. Further details about the orders made to date can be found in the Explanatory Memoranda which were laid alongside the draft orders¹. In this document “single-tier council(s)” has the same meaning as “unitary council(s)” in the Explanatory Memoranda previously laid alongside those orders. The term “single-tier council” is the term used in the Finance Regulations to describe what is commonly known as a unitary council, and reflects the 2007 Act’s description of unitary local government as “a single tier of local government” (section 1(2) of the 2007 Act).

4.4. Section 14 of the 2007 Act gives the Secretary of State power, by regulations of general application, to make incidental, consequential, transitional and supplementary provision for the purposes or in consequence of any structural change orders, or for giving full

¹ The Explanatory Memorandum for each of the five county Orders can be found at: http://www.opsi.gov.uk/si/si2008/draft/em/ukdsiem_9780110808154_en.pdf. The Memorandum for Cheshire is at http://www.opsi.gov.uk/si/si2008/em/ukdsiem_20080634_en.pdf, and for Bedfordshire at http://www.opsi.gov.uk/si/si2008/em/ukdsiem_20080907_en.pdf

effect to such orders. Section 14(2) provides for subsection (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 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. The 2007 Act also provides that regulations made under that Act may make different provision for different cases (section 240(10)).

- 4.5. The Finance Regulations are made under section 14 (to be read with section 15) and section 240(10) of the 2007 Act.
- 4.6. Section 19 of the 2007 Act provides that where an order under Chapter 1 of Part 1 of the 2007 Act transfers the functions of district councils in relation to any area to a council for a county consisting of that area the county council-
 - (a) shall, for any financial year beginning at the same time as or after that transfer, be a billing authority for the purposes of Part 1 of the 1992 Act in relation to the area;
 - (b) shall not, for any such year, be a major precepting authority for those purposes.
- 4.7. However, section 19(2) also provides that section 19 of the 2007 Act does not limit any power to make provision by order under Chapter 1 of Part 1 of that Act or any power to make incidental, consequential, transitional or supplementary provision in connection with the provisions of any such order.
- 4.8. Consequently, regulation 7 of the Finance Regulations provides for county councils to be billing authorities under the 1992 Act in circumstances where the functions of district councils in relation to any area are transferred to a council for a county consisting of that area *otherwise* than by way of an order under Chapter 1 of Part 1 of the 2007 Act.
- 4.9. For the following reasons the Department considers that regulation 7 is within the powers of the 2007 Act-
 - Section 19(1) makes consequential provision where functions are transferred by the relevant order. It is clear that that position cannot be changed by subordinate legislation under Chapter 1 of Part 1 to the 2007 Act. However, it is also clear from section 19(2) that section 19 does not limit the power to make incidental, consequential, transitional or supplementary provision under Chapter 1 in other circumstances.
 - It is clear from section 15(1)(a) that an order under section 13 of the 2007 Act and regulations under section 14 of that Act may include provision for the transfer of functions from a local authority to another local authority. Regulations 4 and 5 of the Local Government (Structural Changes) (Transfer of Functions, Property, Rights and Liabilities) Regulations 2008 (S.I. 2008/2176) make provision in this regard. The

structural changes taking place in the financial year 2009-10 rely on these provisions to effect the transfer of functions involved in those structural changes.

- Regulation 7 of the Finance Regulations makes provision which is consistent with Parliament's intention as expressed in section 19(1) of the 2007 Act.

5. Territorial Extent and Application

5.1. This instrument applies in relation to England only.

6. European Convention on Human Rights

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

7. Policy background

The Finance Regulations: general

7.1. The Finance Regulations, which are of general application, apply in relation to local government reorganisations effected by an order. The Regulations mainly concern local authority functions under Part 3 of the 1988 Act (non-domestic rating) and Part 1 of the 1992 Act (council tax: England and Wales).

7.2. Regulations 3 and 4 concern responsibility for functions exercised under the 1988 Act, the 1992 Act and Part 4 of the Finance Regulations. Regulation 3 concerns functions exercised by shadow councils, and regulation 4 concerns functions exercised by preparing councils.

7.3. Where appropriate the Finance Regulations provide for functions to be discharged by the body which is responsible for overseeing the transition to single-tier status and can be said to best represent the democratic mandate of the citizens of the area concerned. In areas where there is a shadow council appointed or nominated in accordance with an order, that body is the shadow executive. In areas where there is a preparing council to which elections have not yet been held, that body is the Implementation Executive, but where elections have been held responsibility for the functions lies with the council's executive.

7.4. Functions under the 1988 Act are, therefore, the responsibility of the shadow executive or the relevant executive (see regulations 3(1) and 4(1)). The "relevant executive" is defined in regulation 4(5) as the Implementation Executive, or where there has been an election to a preparing council (as is the case in Durham and Northumberland in relation to the structural changes taking place in the financial year 2009-10) as the executive of the preparing council.

7.5. Functions under Part 4 of the Finance Regulations are the responsibility of the authority, although certain actions related to those functions are the responsibility of the shadow or the relevant executive (see regulations 3(2) to (4) and 4(2) to (4)).

- 7.6. There is no need to make provision in the Finance Regulations requiring certain functions under Part 1 of the 1992 Act to be the responsibility of an authority, since section 67 of the 1992 Act already makes provision in this regard². However, regulations 3(3) and (4) and 4(3) and (4) do provide that certain actions related to functions under Part 1 of the 1992 Act are the responsibility of the shadow or the relevant executive³.
- 7.7. Regulation 5 introduces Schedule 1, which specifies a procedure for the exercise by preparing councils of certain functions relating to council tax. The procedure applies where, by virtue of regulation 4(3), actions are the responsibility of an Implementation Executive.
- 7.8. The procedure in Schedule 1 recognises that a preparing council which has not yet held elections will not best represent the democratic mandate of the citizens of the area concerned. The procedure in Schedule 1, therefore, requires that where an Implementation Executive prepares estimates or revised estimates of the budget and council tax calculations for the financial year beginning on the reorganisation date (“the first year”) (in relation to the structural changes taking place in the financial year 2009-10 this includes Bedford Borough, Cornwall, Shropshire and Wiltshire) and presents these calculations to the preparing council for consideration, a two-thirds majority of the members of the council present and voting on the question at a meeting of the council is required before the council can choose to use its own estimates rather than those presented by the Implementation Executive (see, in particular, paragraph 6 of Schedule 1 to the Finance Regulations). This is similar to the arrangements currently in place for the mayor and cabinet executive governance model (see generally paragraphs 8 to 14 of Part 1 of Schedule 2 to the Local Authorities (Standing Orders) (England) Regulations 2001 (S.I. 2001/3384)).
- 7.9. Regulation 7 provides that certain county councils are to be billing authorities for the purposes of the 1992 Act and not to be major precepting authorities for those purposes (see also paragraphs 4.6 to 4.9 above).
- 7.10. By virtue of the relevant order, section 19 of the 2007 Act, or regulation 7 of the Finance Regulations, it follows that on and after the reorganisation date all single-tier councils (whether district or county councils) will be billing authorities for the purposes of Part 1 of the 1992 Act in relation to the relevant reorganised areas.
- 7.11. During the period leading up to the reorganisation date the shadow and preparing councils exercise functions under Part 3 of the 1988 and Part 1 of the 1992 Act in relation to the first year (see regulation 8(a)). In particular, these functions include the calculation of the contributions to the non-domestic rating pool, the calculation of budget requirements and council tax, and the issuing of non-domestic rating and council tax demand notices.

²This provision continues to apply for the purposes of section 13 (functions which are the responsibility of an executive) of the Local Government 2000 Act by virtue of regulation 2(11) of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (SI 2000/2853) (“the 2000 Regulations”).

³Insofar as they relate to the 1992 Act these provisions are very similar to those in regulation 4(9) to (11) of the 2000 Regulations, except that the functions under these Regulations are exercised by the shadow or relevant executive rather than the executive of the local authority as is the case with the 2000 Regulations.

- 7.12. On and after the reorganisation date those Parts apply in relation to any financial year before the first year as if the single-tier council were the billing authority (see regulation 8(b)). In particular, this will enable the single-tier councils to deal in the first year with any adjustments required to the contributions made by the predecessor authorities in the year before restructuring took effect.
- 7.13. The Finance Regulations also provide for the continuity of functions exercised under Part 3 of the 1988 Act and Part 1 of the 1992 Act. Anything done under those Parts before the reorganisation date by or in relation to a billing authority must on and after that date be treated as if it had been done by or in relation to the single-tier council (see regulation 9). This provision covers a wide range of matters, but importantly ensures that billing and enforcement activity undertaken by a predecessor authority can be continued by the single-tier council.
- 7.14. Provision is also made in relation to local rating lists under the 1988 Act and valuation lists under the 1992 Act (“the relevant lists”). On and after the reorganisation date the relevant lists of the predecessor authorities taken as a whole form the valuation and local rating lists of a single-tier council (see regulation 10). The Finance Regulations enable each of those lists to be amalgamated into a single document at any time after the reorganisation date (see regulation 11).
- 7.15. In relation to council tax, the Finance Regulations also include a procedure which billing authorities can use in order to equalise more equitably the amounts of council tax payable in respect of dwellings situated in the predecessor areas of a reorganised area. The procedure enables those authorities to calculate different basic amounts of council tax for those areas (see generally Part 4 of the Finance Regulations). This Part of the Regulations is considered in more depth below.

Part 4 of the Finance Regulations: the equalisation of council tax

- 7.16. This section explains the operation of the provisions in Part 4 of the Finance Regulations and the modifications which are made to the 1992 Act and related subordinate legislation by Schedule 2 to the Finance Regulations.

Calculating council tax: how the 1992 Act operates in its unmodified form

- 7.17. Without any modification, the 1992 Act operates in the following way in relation to a reorganised area, and in relation to the first year and subsequent financial years.
- 7.18. Firstly, the billing authority calculates its budget requirement for the year under section 32 (calculation of budget requirement) of the 1992 Act.
- 7.19. Then, taking into account its budget requirement for the year, the council tax base for the reorganised area for the year, and certain central government grants (such as revenue support grant) payable for the year, the billing authority calculates its basic amount of council tax under section 33 (calculation of basic amount of tax) of the 1992 Act. A “basic amount of council tax” is the amount of council tax that will be payable

for the financial year in respect of a band D dwelling (see the definition of that term in regulation 12(1) of the Finance Regulations).

7.20. If any special items relate to a part only of the reorganised area, further calculations are required under section 34 (additional calculations where special items relate to part only of area) of the 1992 Act in order to calculate-

- a basic amount of council tax for those parts of the reorganised area to which the special items relate, and
- a separate basic amount of council tax for those parts of the reorganised area to which no special items relate.

7.21. In circumstances where section 34 applies, the amount calculated under section 33 of the 1992 Act is (in effect) the starting point for the calculations under section 34.

7.22. Once basic amounts of council tax have been calculated under section 33 or 34 of the 1992 Act, the amounts of the billing authority's council tax which are payable for the financial year in respect of dwellings situated in the reorganised area and listed in valuation bands other than Band D are calculated under section 36 (calculation of tax for different valuation bands).

7.23. Finally, the total amount of council tax payable for the various categories of dwellings situated in the reorganised area are calculated under section 30 (amount for different categories of dwellings) of the 1992 Act. For each dwelling this amount will include not only the billing authority's council tax as calculated under sections 32 to 36 of the 1992 Act, but also any council tax precept issued to the billing authority and calculated by a major precepting authority under sections 43 to 47 of the 1992 Act.

Structural changes: issues associated with the calculation of council tax under the 1992 Act

7.24. In areas where restructuring is occurring under an order, there may (for a variety of reasons) be large differences in the basic amounts calculated for the predecessor areas for the financial year preceding the first year ("the preceding year"). If the 1992 Act operates in an unmodified form in these circumstances, subject only to the special items calculations in section 34 of the 1992 Act, the billing authority for a reorganised area would be required to calculate a single basic amount of council tax for the reorganised area.

7.25. In other words, subject to any capping action that the Secretary of State may decide to take under Chapter 4A of Part 1 of the 1992 Act, it is possible that in some of the predecessor areas there would be large increases in council tax between the preceding year and the first year.

7.26. Part 4 of the Finance Regulations has, therefore, been drafted to allow billing authorities for a transitional period to calculate different basic amounts of council tax for the predecessor areas. The purpose of Part 4 is to enable billing authorities to equalise more equitably the amounts of council tax payable in respect of chargeable dwellings in the predecessor areas of a reorganised area.

How Part 4 of the Finance Regulations operates

7.27. The starting point in relation to Part 4 is regulation 15. That regulation enables-

- a shadow council or a preparing council in relation to the first year, and
- a single-tier council in relation to any of the second to the fifth years,

to determine that different basic amounts of council tax will be calculated for the principal area and predecessor areas other than the principal area. (The terms “second year” and “fifth year” are defined in regulation 2 of the Finance Regulations).). A single-tier council may only make a determination in relation to the second to fifth years if a determination has been made in the preceding year (i.e. by its related shadow or preparing council in the first year and by that single-tier council in the second to fourth year).

7.28. These authorities are defined as “appropriate authorities” for the purposes of Part 4 of the Finance Regulations (see the relevant definition in regulation 12(1)) and they are billing authorities under Part 1 of the 1992 Act in relation to those financial years (see also paragraphs 7.10 and 7.11 above).

7.29. If a determination is made under regulation 15 for a financial year, the appropriate authority calculates its budget requirement for the reorganised area in the usual way under section 32 of the 1992 Act.

7.30. The appropriate authority is still required to make the calculation in section 33(1) of the 1992 Act, although the amount calculated under that section is “the uniform amount of council tax” for the reorganised area (see the definition of this term in regulation 12(1)). The uniform amount of council tax is (in effect) an average basic amount of council tax for the whole of the reorganised area, which includes any special items that relate to any part of that area. In particular, this amount is used in regulation 16 of the Finance Regulations to limit the total amount of council tax that can be raised under Part 4 in relation to a reorganised area (see also paragraph 7.47 below).

7.31. Regulations 17 and 18 concern the calculation of the basic amount of council tax for “the principal area”. In the first year (i.e. 2009-10 for the current structural changes) the principal area is the predecessor area which had the highest preceding year council tax (see the definition of that term in regulation 12(1)). “Preceding year council tax” is defined for these purposes in regulation 12(1) as the amount calculated under section 33(1) of the 1992 Act for a predecessor area for the preceding year.

7.32. Regulation 17 applies where no special items relate to any part of the principal area, or where special items relate to the whole of that area. In these circumstances the appropriate authority effectively has a free hand about how it calculates the basic amount of council tax for the principal area, although regulation 17(2) makes it clear that this amount must be higher than the uniform amount of council tax. It is important to provide for this in regulation 17(2), since if the basic amount of council tax for the

principal area were set at or below the level of the uniform amount of council tax, there would be a council tax shortfall in relation to the reorganised area for the financial year.

- 7.33. Regulation 18 applies where one or more special items relate to a part only of the principal area. In these circumstances regulation 18(2) requires different basic amounts of council tax to be calculated for any part of the principal area to which no special items relate, and any part of the principal area to which one or more special items relate. Subject to this requirement, the appropriate authority again effectively has a free hand in deciding how it calculates these basic amounts of council tax, although (for the same reasons as are explained in the preceding paragraph) regulation 18(3) provides that these amounts must be higher than the uniform amount of council tax.
- 7.34. In practice, in setting basic amounts of council tax under regulation 17 or 18 the Department anticipates that an appropriate authority will take into account a variety of matters including in particular; the budget requirement for the financial year, the uniform amount of council tax for the year, the basic amount of council tax calculated for the principal area for the preceding financial year, the amount of any special items relating to the principal area or a part of the area for the year, the rules under Part 4 of the Finance Regulations governing the calculation of basic amounts of council tax for predecessor areas other than the principal area, and the calculation in regulation 16 of the Finance Regulations.
- 7.35. The basic amounts of council tax for predecessor areas other than the principal area are calculated in accordance with regulations 20 to 22 of the Finance Regulations (see regulation 19 of the Finance Regulations). The requirements for the calculation of these amounts are expressed by reference to two amounts; “the higher amount” and “the lower amount”.
- 7.36. The higher amount is defined in regulation 13. In essence, the higher amount is the basic amount of council tax calculated for the principal area, but excluding any special items that relate to that area.
- 7.37. The lower amount is defined in regulation 14. In essence, this amount is the higher amount *less* the difference between the basic amounts of council tax calculated for the principal area and the predecessor area (or part of that area) *for the preceding financial year*. As with the higher amount the calculation of the lower amount does not include any special items relating to either the principal area or the predecessor area.
- 7.38. The rules in regulations 20 to 22 are designed to ensure that the basic amount of council tax calculated for a predecessor area other than the principal area is-
- less than or equal to the higher amount, but
 - more than the lower amount.
- 7.39. These rules ensure that the basic amounts of council tax calculated for the principal area and for the predecessor areas other than the principal area converge year on year over the period that the appropriate authority decides to utilise the procedure under Part 4 of the Finance Regulations.

- 7.40. The simplicity of this approach to equalisation is obscured somewhat by the need to take account of special items which relate to part only of the reorganised area (and in certain cases to part only of a predecessor area). In short, as mentioned above the calculation of the higher and the lower amounts must exclude special items, whilst the rules in regulations 20 to 22 must include special items where these are relevant to the part of the reorganised area which is under consideration.
- 7.41. There are a number of other points to note in relation to Part 4 of the Finance Regulations.
- 7.42. Firstly, a determination may not be made under regulation 15 of the Finance Regulations for a financial year if an appropriate authority has already made calculations under the 1992 Act for that year (see regulation 15(2)(a)).
- 7.43. Regulation 15(3) requires any determination under regulation 15 to be made before 11 March in the financial year preceding that year. In addition, under section 30 of the 1992 Act a billing authority is required to set amounts of council tax for different categories of dwelling in its area and this too must occur before 11 March in the financial year preceding that for which the amounts are set (see section 30(6) of the 1992 Act). In practice, therefore, at the time the appropriate authority complies with section 30 of the 1992 Act regulation 15(2)(a) requires that it elects whether to utilise the procedure under Part 4 of the Finance Regulations and once that decision has been made it may not be changed at a later date.
- 7.44. The purpose of this approach is to identify a clear point in time by which a decision to utilise the procedure in Part 4 of the Finance Regulations must be made in order that appropriate authorities can plan the setting of their council tax for a financial year accordingly. If there were any doubt about this issue, it could (for example) give rise to practical difficulties regarding the operation of the council tax capping regime under Chapter 4A of Part 1 of the 1992 Act in relation to reorganised areas.
- 7.45. Secondly, once the council tax levels for all the predecessor areas in a reorganised area have been equalised under Part 4, that Part no longer has any application in relation to the reorganised area. This is achieved in two ways-
- Regulation 19(2) provides that for at least one of the predecessor areas other than the principal area the basic amount of council tax for the area must be calculated in such a way that (disregarding special items) that amount is less than the higher amount. In other words, the basic amounts of council tax for the predecessor areas must not all be equalised in any financial year when a determination is made under regulation 15. If this is going to occur, then the 1992 Act must apply in its unmodified form.
 - Regulation 15(2)(b) provides that a determination can only be made under regulation 15(1)(b) (determination for the second, third, fourth and fifth years) if a determination was made by an appropriate authority under regulation 15(1) for the preceding financial year. In other words, once an authority ceases to calculate its

basic amounts of council tax under Part 4 of the Finance Regulations, it cannot utilise that Part again in a later financial year.

- 7.46. Thirdly, provision has been made to enable predecessor areas other than the principal area to equalise their levels of council tax with the principal area on different time scales. This is achieved by including in the definition of the principal area those predecessor areas whose basic amount of council tax (disregarding special items) is equal to the higher amount (see paragraph (b) of the definition of “principal area” in regulation 12(1)). This makes it possible (for example) for one predecessor area to equalise with the principal area in (say) the second year and for another to equalise with the principal area in (say) the fourth year (the terms “second year” and “fourth year” are defined in regulation 2 of the Finance Regulations).
- 7.47. Fourthly, regulation 16 places a limit on an authority’s council tax requirement as calculated under Part 4 of the Finance Regulations. In effect, this regulation ensures that the total amount of council tax that an authority can raise under Part 4 of the Finance Regulations cannot be more than the amount it would have raised had the 1992 Act applied in its unmodified form.
- 7.48. Finally, Part 4 does not require year-on-year increases in the amount of council tax payable in a reorganised area. Instead, Part 4 requires that the difference between the basic amount of council tax payable in respect of the principal area, and the basic amount of council tax payable in respect of a predecessor area other than the principal area, is reduced year on year over the period that the appropriate authority decides to utilise the procedure under Part 4 of the Finance Regulations.

Schedule 2: modifications to the 1992 Act and related subordinate legislation

- 7.49. Schedule 2 to the Finance Regulations (which is introduced by regulation 15(5) and (6)) modifies the 1992 Act and related subordinate legislation.
- 7.50. Section 33 of the 1992 Act is modified so that the amount calculated under that section is the uniform amount of council tax.
- 7.51. Section 34 of the 1992 Act is omitted, since if a determination has been made under regulation 15 of the Finance Regulations the relevant basic amounts of council tax are calculated under Part 4 of the Finance Regulations and not under either section 33 or 34 of the 1992 Act.
- 7.52. The modifications to sections 30, 36, 37, 52I, 52T, 66 and 69 of the 1992 Act are to ensure that the basic amounts of council tax calculated under Part 4 of the Finance Regulations are taken into account appropriately in Part 1 of that Act. The modification to section 67 of the 1992 Act is consequential on the omission of section 34.
- 7.53. Regulation 12(3) requires that any calculation of a council tax base under Part 4 of the Finance Regulations is made in accordance with the Council Tax Base Regulations. The modifications to those Regulations ensure that the relevant rules in those Regulations operate appropriately for this purpose.

7.54. Finally, the modification to the Council Tax Base Information Regulations is consequential on both the omission of section 34 of the 1992 Act and the requirement in regulation 12(3) of the Finance Regulations.

8. Consultation outcome

Discussions with Stakeholders

- 8.1. The Department's discussion document "Councils' Proposals for Unitary Local Government: An Approach to Implementation"⁴ (August 2007) set out the Department's initial intentions as to the approach to be adopted for implementing any proposals for single-tier local government. The document generally dealt with higher level issues than those addressed in the Finance Regulations. The Discussion Paper was brought to the attention of the potentially affected councils, with the request that they involve their own local and regional stakeholders in its consideration, and was the starting point for the Government's discussion with authorities about the issues it covered.
- 8.2. Since the publication of this discussion document, and in particular since the coming into force of the seven orders made to date, the issues addressed in the Finance Regulations have been the subject of extensive discussions between the Department and the Joint Implementation Teams ("JITs") for each area, formed of senior officers of the affected authorities, and led by the Chief Executive, acting Chief Executive, or lead officer of a successor council. They have also been discussed by members of a Finance Working Group comprising finance leads of each of the shadow or preparing councils. Draft copies of the Finance Regulations have been circulated to lead officers of the shadow and preparing councils at various points in the drafting process, who have in turn cascaded them to their relevant colleagues. The issues raised and the way in which the Department has responded to them in these or other regulations is described in paragraphs 8.4 to 8.12 below.
- 8.3. The policy that is implemented by way of the Finance Regulations has been refined in the light of contributions and comments received during these discussions from stakeholders during this ongoing dialogue. With the exception of some quite specific transitional measures relating to council tax equalisation and budget approval, the main thrust of the Finance Regulations is to ensure that as far as possible existing legislation and the attendant processes relating to non domestic rating and council tax will apply with continuity and seamlessly both before and after the reorganisation date..
- 8.4. The overall principle with regard to the preparatory functions to be carried out before the first financial year of the new single tier councils, and in respect of non-domestic rates and the calculation of council tax, were discussed and agreed. The principle was that any functions to be discharged under Part 3 of the 1988 Act and Part 1 of the 1992 Act in respect of the first year would, in the period leading up to the reorganisation date, be discharged by the shadow and preparing councils. In practice they would have full billing authority powers, but only in respect of the first year (that is, the financial year 2009-10 for the current round of restructuring). The existing district councils in each area would retain their billing authority powers with regard to the current financial year.

⁴ <http://www.communities.gov.uk/publications/localgovernment/unitarycouncilsimplementation>

On and after the reorganisation date, the new single-tier councils will be billing authorities in their own right, either by virtue of their being district councils (Bedford Borough, Central Bedfordshire, Cheshire West and Chester and Cheshire East), or by virtue of regulation 7 of the Finance Regulations where the functions of former district councils were transferred to a single-tier county council under regulations 4 or 5 of Transfer of Functions Regulations.

- 8.5. Within this context, the Department sought to provide clarity on the responsibility for functions exercised by the shadow and preparing councils. This is provided for under Part 2 of the Finance Regulations, the provisions of which have been considered and agreed.
- 8.6. The Finance working group was keen to ensure that the single-tier councils would have the power to recover debts from previous years, an issue which reflected more widely on the administration and enforcement provisions in both Part 3 of the 1988 Act and Part 1 of 1992 Act. To effect this, regulation 9 of the Finance Regulations provides that anything done by or in relation to a billing authority under Part 3 of the 1988 Act or Part 1 of the 1992 Act before the reorganisation date shall on and after that date be treated as if it had been done by or in relation to the single-tier council.
- 8.7. In order to reflect requirements in at least one of the proposals put to the Department in response to the Invitation to Councils in England (which was published in October 2006 and which sought proposals for unitary (single-tier) government for area), the Finance Regulations include provision in Part 4 that allows for the equalisation of council tax over a period of more than 1 year but equalisation must occur (at the latest) in the financial year immediately after the fifth year (the term “fifth year” is defined in regulation 2 of the Finance Regulations). These were considered and agreed in discussion. However, the Finance working group was concerned to ensure that the Finance Regulations did not affect the principle established in section 34 of the 1992 Act that billing authorities are able to calculate and apply a charge on any special items that relate to only a part of the area. In response, the Department confirmed that it would make provision ensuring that this principle would be met. The relevant provisions were considered and agreed by the Finance Working Group.
- 8.8. The Finance working group also wished to have the flexibility to retain the existing valuation and local rating lists of district councils from 1 April 2009. This, they considered, would help to achieve a smooth transition in those areas where the single-tier councils would still be operating the inherited billing systems of the predecessor districts on the reorganisation date, and would also assist councils that planned to equalise council tax over a period of more than 1 year using the procedure in Part 4 of the Finance Regulations. This has been provided for in Part 3, regulations 10 and 11.
- 8.9. The Department also considered the approach to be adopted by shadow and preparing councils in obtaining approval for the budget calculations for the first year. It was particularly concerned to address the position in preparing councils where no elections had been held. In those circumstances, budgets would have been presented to a full council which would in practice have been the existing councils with no new electoral mandate for preparation and without the representation from all affected councils. The proposal (to give the Implementation Executive some primacy in the first year only via a procedure that broadly mirrors that applicable where there is a Mayor and Cabinet

governance model) was considered and agreed by the Finance working group and JITs. This is reflected in regulation 5 and Schedule 1.

- 8.10. In relation to budget requirement calculations, the shadow and principal councils raised the issue of the apportionment of surpluses or deficits in the collection fund under section 99 of the Local Government Finance Act 1988. This could be an issue particularly in areas such as Bedfordshire and Cheshire where the county council will cease to exist after the reorganisation date and would therefore not take its share (as a major precepting body) of any surplus council tax generated or conversely carry its share of any deficit. In discussion it was agreed that the appropriate billing authority in the first year would retain the former county council's share of the surplus or deficit and that this would be provided for in additional set of finance regulations.
- 8.11. In consideration of the implications for Non-Domestic rates, finance leads sought advice on the approach to discretionary reliefs under section 47 of the Local Government Finance Act 1988. They were concerned that the establishment of a single-tier area would result in councils having different policies in respect of discretionary relief, which they would be unable to equalise before the reorganisation date. The Department advised that, as these reliefs were discretionary and to be considered on a case-by-case basis, it would not be considered unreasonable that initially at least different policies might be in place in a reorganised area, although the longer this situation remained the greater the risk to them of a legal challenge of some kind. They were advised that no regulations were required to safeguard their position, but that accordingly they may wish to set new reorganised-area wide policies in due course.
- 8.12. Finally, there was consideration of the responsibility for and the approach to the close down of the accounts of those authorities that would cease to exist on or after the reorganisation date. Discussions of these issues are ongoing and the Department is involving the Audit Commission in its considerations with JITs. It is anticipated that a further set of regulations covering these close down issues will be made in due course.

9. Guidance

- 9.1. The Department does not intend to issue any guidance alongside this instrument. However, the Department will continue its close dialogue and liaison with the JITs and Finance Working Group throughout the transitional period up to and beyond the reorganisation date.

10. Impact

- 10.1. The impact on business, charities or voluntary bodies is nil.
- 10.2. There will be no additional impact on the public sector above that already identified in the Impact Assessments accompanying the seven orders providing for the creation of the nine new single tier councils, which were based in figures provided by the local authorities in their proposals.
- 10.3. An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1. The legislation does not apply to small business.

12. Monitoring & review

12.1. As described above, the Department continues to maintain a close dialogue and liaison with the JITs. This is centred around monthly meetings, which provide the opportunity for the Department to be kept abreast of the progress being made in each area to implement the transition to the new single tier councils. The Department will also maintain its dialogue with finance leads through the Finance Working Group. Any issues relating to these Regulations will be identified through these channels.

13. Contact

13.1. Ian Barber at the Department for Communities and Local Government, Tel: 020 7944 4469 or e-mail: ian.barber@communities.gsi.gov.uk can answer any queries regarding the instrument.

Department for Communities and Local Government