

**EXPLANATORY MEMORANDUM TO
THE CHARTER TRUSTEES REGULATIONS 2009**

2009 No. 467

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 Charter Trustees Regulations 2009 (“the Regulations”) make general provision in support of charter trustees established for the preservation of historic rights, privileges (including ceremonial rights and privileges) and traditions (“historic rights”) associated with certain areas in England. These provisions are incidental, consequential and supplementary to orders made under section 7 of the Local Government and Public Involvement in Health Act 2007 (“the 2007 Act”) establishing a single tier of local government for these areas.

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 (“a section 7 (restructuring) order”) will provide for a specified reorganisation date (“the reorganisation date”) on which the functions of one or more of the existing councils are transferred to the new single tier council (a “successor” council) and these existing councils may be abolished (“predecessor” councils). A successor council may be an existing district or county council or a newly constituted body which does not become a local authority until the reorganisation date (a shadow council). Districts or counties may also be abolished on the reorganisation date.

2.3. The Government believes that any historic rights which may be associated with some of those districts should be preserved locally for the benefit of local residents. Where it is not appropriate or possible for those historic rights to be continued by a single tier or parish council, charter trustees will be established by order under section 7 of the Act. These Regulations make provision for the transfer of historic rights and ceremonial property to charter trustees, the appointment of additional charter trustees, the election and appointment of a mayor and a deputy mayor, as well as specifying the applicable administrative arrangements.

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

3.1. None.

4. Legislative Context

4.1. Part 1 of the 2007 Act provides for the establishment of a single tier of local government for areas in England. So far as is relevant to these Regulations, it enables provision to be

made by a section 7 (restructuring) order for the restructuring of an area in which there are two tiers of local government (a county council and district councils) into a single tier of local government. 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 that there should be a single tier of local government for an area, she may make an order to implement the proposal with or without modification.

4.2. Seven section 7 (restructuring) 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 in Cornwall (S.I. 2008/491), County Durham (S.I. 2008/493), Northumberland (S.I. 2008/494), Shropshire (S.I. 2008/492) and Wiltshire (S.I. 2008/490).

4.2.2. An order providing for the establishment of two new single tier district councils for Cheshire (S.I. 2008/634).

4.2.3. An order 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 section 7 (restructuring) 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 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” (2007 Act, section 1(2)).

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 orders under section 7 or 10, or for giving full 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, provision with respect to charter trustees. Section 15(2)(a) provides that regulations made under section 14 may for any incidental, consequential, transitional or supplementary purpose, modify, exclude or apply (with or without modifications) any enactment. Section 15(3)(c) defines enactment to include any charter whenever granted. The 2007 Act also provides that regulations made under that Act may make different provision for different cases (section 240(10)).

4.5. These Regulations are made under section 14 (to be read with section 15) and section 240(10) of the 2007 Act.

¹ The Explanatory Memorandum for each of the five county Orders can be found at: http://www.opsi.gov.uk/si/si2008/draft/em/uksiem_9780110808154_en.pdf. The Memorandum for Cheshire is at http://www.opsi.gov.uk/si/si2008/em/uksiem_20080634_en.pdf, and for Bedfordshire at http://www.opsi.gov.uk/si/si2008/em/uksiem_20080907_en.pdf.

- 4.6. Charter trustees are to be established for each relevant area by order under section 7 of the 2007 Act. A draft of the Local Government (Structural Changes) (Miscellaneous Amendments and Other Provision) Order 2009 (“the draft Order”), is attached to this document. The relevant provisions establishing charter trustees are found in article 8 and the Schedule to the draft Order.
- 4.7. The general approach taken in regulation 4 of these Regulations is that the charter trustees may continue to exercise those rights conferred in the charters which vest in them by regulation 3(2) (transfer of property) which were exercised by the predecessor councils prior to the reorganisation date in relation to the area for which the charter trustees are established (“charter trustee area”). Any exceptions to that general approach will be specified in the order in which the charter trustees are established. Regulations under section 14 of the 2007 Act are of general application and section 14(3) provides that such regulations have effect subject to any provision included in an order under section 7. See, for example, article 9 of the draft Order which provides that the right to hold markets in Chester arising from various charters granted by the Earldom of Chester and by the Crown vest in the relevant single tier council (Cheshire West and Chester Council) and not in the charter trustees.
- 4.8. Section 39(2)(d) of the Local Government Finance Act 1992 provides that charter trustees are local precepting authorities for the purposes of that Act. Regulation 12 (funding in the first year) of these Regulations disapplies, for the financial year in which the charter trustees are established, the provisions of the 1992 Act which require a local precepting authority to calculate a budget requirement (section 50(1)) and authorise it to issue a precept (section 41(1)). The effect of regulation 6(1) of the Local Government (Structural Changes)(Further Financial Provisions and Amendment) Regulations 2009 (S.I. 2009/ 5) (“the Further Financial Provisions Regulations”) is to require the authority which will become the single tier council on the reorganisation date to anticipate the amount likely to be required in that financial year for the discharge of the charter trustees’ functions. Paragraphs (2) and (3) of regulation 12 of these Regulations provide that charter trustees may request the single tier council to pay to them such amount as they consider necessary for the discharge of their functions in the financial year in which they are established provided that the amount requested does not exceed the amount anticipated by the successor council under regulation 6(1) of the Further Financial Provisions Regulations.
- 4.9. In accordance with the powers given in regulation 15(2)(a) of the 2007 Act, these Regulations apply various provisions of other Acts, and in particular the Local Government Act 1972 (“the 1972 Act”), to charter trustees in order to provide that their administrative arrangements follow closely the arrangements which apply to parish councils. This approach follows that taken where charter trustees were established following previous local government reorganisations – see paragraph 7.1 below.
- 4.10. Charter trustees are dissolved by virtue of regulation 15(2)(a) of the Local Government (Parishes and Parish Councils) Regulations 2008 (S.I. 2008/625) where the charter trustee area becomes wholly comprised in a parish or two or more parishes. Regulation 15 also provides that, in those circumstances, any mayor or deputy mayor shall cease to

hold office as such and all property, rights and liabilities of whatever description of the charter trustees shall become the property, rights and liabilities of the parish council.

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 the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1. Following local government reorganisation under Part 1 of the 2007 Act, the historic rights associated with the areas covered by predecessor councils will be lost on the reorganisation date when those areas and the associated councils are abolished unless there is an existing local government body for the relevant area, such as a parish council, to which they can be transferred. For example, a district authority may have a borough or city charter granting historic rights, such as the right to have a mayor, on the residents of a defined geographical area. The historic rights conferred by that charter will be lost to the area when the area and associated council is abolished. In order to avoid that situation arising, where it is not possible to transfer such rights to an existing local government body, an incorporated body known as charter trustees will be established to protect and preserve historic rights associated with the area for local residents. Charter trustees were created for similar purposes after both the 1974 reorganisation of local government (see section 246(4) of the 1972 Act) and the reorganisation of local government structures in some areas introduced under the Local Government Act 1992. These Regulations draw on the Charter Trustees Regulations 1996 (S.I. 1996/263) (“the 1996 Regulations”) which applied in relation to that last local government reorganisation.

7.2. The creation of charter trustees is a temporary arrangement put in place solely to preserve historic rights locally (and not create a break in those traditions) until such time as a parish can be created. Once that happens the charter trustees are dissolved – see paragraph 4.10 above.

7.3. The initial members of a body of charter trustees are drawn from those members of the single tier council who represent the electoral areas to which the historic rights relate and which will comprise the charter trustee area. These Regulations make general provision, amongst other things, for the election of one of their number to act as mayor and another as deputy mayor, the appointment of additional charter trustees as necessary, for the holding of meetings and for the transfer and holding of historic and ceremonial property such as the charters, insignia and plate of the predecessor area. Charter trustees may also exercise such other historic rights as had been granted to the charter trustee area such as, for example, the appointment of local officers of dignity.

7.4. One significant point of difference with the 1996 Regulations concerns the identity of the charter trustees. Following representations, regulation 6 provides for cases where the

number of charter trustees for a charter trustee area is insufficient (where there are 5 or fewer) or where the appointment of additional charter trustees for an area is considered desirable (up to a maximum of 3). This is discussed further in paragraphs 8.4 to 8.9 below.

- 7.5. Any appointment of additional charter trustees lasts until the next election of the relevant council, unless the appointed person ceases to be a councillor or is removed as a charter trustee for failing, without sufficient cause, to attend 2 consecutive meetings (regulation 6(7)). There is no difference in role between those councillors that are charter trustees by virtue of the fact that they represent the charter trustee area and those councillors that are appointed as charter trustees. It will therefore be possible for an appointed charter trustee to become mayor of the charter trustee area if that is what is wanted locally.
- 7.6. Another difference with the 1996 Regulations is that councillors who hold the office of mayor prior to the reorganisation and who continue to serve as councillors on the single tier council can continue in that office for the charter trustees until their first annual meeting at which the election for mayor will be held. The provision ensures continuity of tradition in the charter trustee areas and has the support of the affected areas.
- 7.7. These Regulations also specify:
- a) that charters, insignia, plate and property which is historic and ceremonial in nature and which relate to the charter trustee area shall vest in the charter trustees on the reorganisation date rather than transferring to the single tier council (regulation 3);
 - b) that charter trustees may dispose of historic and ceremonial property to the single tier council (regulation 3);
 - c) a process to resolve any dispute as to what historic and ceremonial property transfers (regulation 3);
 - d) that charter trustees may exercise in relation to the charter trustee area the rights conferred in any charter which transfers to them under regulation 3 where those rights (such as the right to use the style associated with the mayor and deputy mayor and the right to appoint local officers of dignity) were exercisable immediately before the reorganisation date by a predecessor council in respect of an area the whole or part of which is situated in the charter trustee area (regulation 4);
 - e) that charter trustees have the right to acquire, or accept gifts of, and hold historic or ceremonial property (regulation 5);
 - f) the procedure for the appointment of mayor and deputy mayor and the payment of an allowance to meet the reasonable expenses of their office (regulation 7);
 - g) supporting administrative arrangements which are largely based on parish council arrangements (regulations 9-11 and 13-15); and
 - h) the payment of funds to charter trustees in the financial year in which they are established (regulation 12).

8. Consultation outcome

- 8.1. The Department's discussion document "Councils' Proposals for Unitary Local Government: An Approach to Implementation"² (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 was brought to the attention of the potentially

² <http://www.communities.gov.uk/publications/localgovernment/unitarycouncilsimplementation>

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 on the issues it covered.

- 8.2. Since the publication of this discussion document, and in particular since the coming into force of the seven section 7 (restructuring) orders made to date, the issues addressed in these Regulations have been the subject of discussions between the Department and the Joint Implementation Teams for each area, formed of senior officers of the affected authorities, led by the Chief Executive. Discussions and correspondence have also taken place with lead officers on ceremonial issues of both the predecessor and successor councils. Draft copies of these Regulations have been circulated to Chief Executives and 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.
- 8.3. The policy that is implemented by these Regulations has been refined in the light of contributions and comments received during these discussions from stakeholders during this ongoing dialogue – see in particular the matters set out in paragraphs 7.4 and 7.6 above.
- 8.4. Whilst representations were received that past practice (i.e. charter trustees being members of the single tier council for the area concerned) should be maintained, other representations were received that the charter trustees for an area should be appointed by the single tier council. It was recognised that the historic rights and privileges associated with an area might in certain circumstances, particularly for areas with city status, have a significance across the wider area of the single tier council.
- 8.5. Having regard to these representations the Department concluded that an appropriate approach would be for charter trustees to be the members of the single tier council elected to the charter trustee area, as before, but that additional charter trustees from the wider area may be appointed.
- 8.6. Regulation 6 provides that in all cases up to 3 such additional charter trustees may be appointed by the appointing body. Except where the charter trustee area has city status, the appointing body is the charter trustees themselves. Where the charter trustee area has city status regulation 6 provides that the appointing body is the single tier council.
- 8.7. That the single tier council is the appointing body where there is city status reflects the fact that areas with such status have significance to the wider area of the single tier council, as a commercial and administrative centre and in terms of historic traditions, culture, tourism and leisure.
- 8.8. In addition regulation 6 provides that, irrespective of the 3 discretionary appointments, the appointing body must appoint charter trustees where the number of charter trustees for an area is less than five so that there are at least 5 charter trustees. Under the 1996 Regulations, the relevant district council could appoint local electors as additional charter trustees where the number of charter trustees for an area was less than three. However, appointing elected representatives to be charter trustees is considered more democratic and accountable.

8.9. The provision that allows the existing mayor of an area to remain in that office for the charter trustees until their first meeting has been added at the request of predecessor councils.

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 affected councils both in advance and following the reorganisations.

10. Impact

10.1. These Regulations have no impact on business, charities or voluntary bodies.

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 (see paragraph 4.2 above), which were based on 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. These Regulations do 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 relevant councils.

13. Contact

13.1. Maggie Crosby at the Department for Communities and Local Government (Tel: 020 7944 4254 or e-mail: maggie.crosby@communities.gsi.gov.uk) can answer any queries regarding this instrument.

Department for Communities and Local Government