
STATUTORY INSTRUMENTS

2018 No. 1128

LOCAL GOVERNMENT, ENGLAND

The Local Government (Boundary Changes) Regulations 2018

Made - - - - *31st October 2018*
Laid before Parliament *2nd November 2018*
Coming into force - - *26th November 2018*

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⁽¹⁾, makes the following Regulations:

PART 1

General

Citation, commencement, application and effect

1.—(1) These Regulations may be cited as the Local Government (Boundary Changes) Regulations 2018 and come into force on 26th November 2018.

- (2) These Regulations apply in a case where a section 10 order provides for—
- (a) the winding up and dissolution of two or more district councils; and
 - (b) the establishment of a single district council for an area which consists of the entirety of the areas of both or all of those district councils.
- (3) These Regulations, which are of general application—
- (a) have effect subject to any provision for the transfer of functions, property, rights or liabilities or any transitional provision included in—
 - (i) a section 10 order;
 - (ii) an order under section 20 of the 2007 Act (correction of orders);
 - (iii) an order under section 86 of the 2007 Act (reorganisation of community governance);
 - (iv) regulations under section 97 of the 2007 Act (supplementary regulations);

- (v) regulations under section 7 of the Superannuation Act 1972⁽²⁾ (superannuation of persons employed in local government service, etc.); or
 - (vi) regulations under section 3 of the Public Service Pensions Act 2013⁽³⁾ (scheme regulations); and
- (b) do not affect any transfer of property, rights or liabilities for which provision is contained in an agreement under section 16 of the 2007 Act (agreements about incidental matters).

Interpretation

2.—(1) In these Regulations—

- “the 1972 Act” means the Local Government Act 1972⁽⁴⁾;
- “the 1989 Act” means the Local Government and Housing Act 1989⁽⁵⁾;
- “the 2007 Act” means the Local Government and Public Involvement in Health Act 2007;
- “the 2000 Regulations” means the Local Authorities (Functions and Responsibilities) (England) Regulations 2000⁽⁶⁾;
- “head of paid service” means an officer responsible for performing the duties imposed by section 4(2) and (4) (designation and reports of head of paid service) of the 1989 Act;
- “predecessor council”, in relation to a section 10 order, means a district council for whose winding up and dissolution the order provides;
- “the reorganisation date” means the date specified in a section 10 order as that on which the predecessor council is to be wound up and dissolved;
- “section 10 order” means an order under section 10 of the 2007 Act (implementation of recommendations by order);
- “shadow authority” means an authority (not being a local authority) which, in accordance with a section 10 order, becomes the council for an area on the reorganisation date;
- “shadow executive”, in relation to a shadow authority, means the executive created by the authority in accordance with a section 10 order;
- “shadow period”, in relation to a shadow authority, means the period defined as such in the section 10 order which confers functions on the authority;
- “successor council” in relation to a predecessor council whose entire area becomes part of the area of a new council on the reorganisation date, means that new council;
- “transitional period” means the period beginning with—
 - (a) the date on which these Regulations come into force; or
 - (b) in relation to a section 10 order made after that date, the date on which that order comes into force,and ending immediately before the reorganisation date.

(2) Any reference in these Regulations to rights or liabilities of a predecessor council includes a reference to rights or liabilities acquired or incurred by any predecessor in title of that council.

(2) 1972 c. 11.

(3) 2013 c. 25.

(4) 1972 c. 70.

(5) 1989 c. 42.

(6) S.I. 2000/2853; relevant amendments were made by S.I. 2008/516 and 2008/2787.

Information for facilitating implementation of Regulations

3.—(1) This regulation has effect for the purpose of facilitating the implementation of these Regulations.

(2) A predecessor council shall supply to the shadow authority—

- (a) details of every relevant contract;
- (b) details of every relevant action or proceeding; and
- (c) such other information relating to the predecessor council's property, rights or liabilities as the shadow authority may reasonably request.

(3) Those details and that information shall be provided—

- (a) where paragraph (4) applies, not later than the day before the reorganisation date;
- (b) in any other case, as soon as practicable and not later than the end of the relevant period.

(4) This paragraph applies where the predecessor council and the shadow authority agree that the following do not need to be provided by the end of the relevant period—

- (a) details of—
 - (i) a relevant contract entered into before the beginning of the transitional period; or
 - (ii) a relevant action or proceeding arising before the beginning of the transitional period;or
- (b) such other information relating to the predecessor council's property, rights or liabilities as may be specified (whether generally or by reference to a particular class or description).

(5) A person so authorised by the shadow authority shall be entitled, at any reasonable time before the reorganisation date, on producing, if so required, evidence of his or her authority—

- (a) to inspect any record belonging to or under the control of the predecessor council which relates to any relevant contract, action or proceeding or any property, rights or liabilities mentioned in paragraph (2); and
- (b) to take, or be supplied with, a copy of any such record or part of it.

(6) The rights conferred by paragraph (5) include the right to require any record which is not in legible form to be made available in legible form for the purposes of inspection or copying or being supplied with copies.

(7) In this regulation—

“record” includes material in whatever form or medium which conveys or is capable of conveying information;

“relevant action or proceeding”, means an action or proceeding—

- (a) to which a predecessor council is a party; and
- (b) which, in that council's opinion, is unlikely to have been determined or settled before the reorganisation date;

“relevant contract” means a contract entered into by a predecessor council the period of which extends, or may, under the terms of the contract, be extended, beyond the reorganisation date; and

“relevant period”—

- (a) as regards details referred to in paragraph (2)(a) and (b), means—
 - (i) where the relevant action or proceeding arises, or the relevant contract is entered into, before the date on which the transitional period begins, the period beginning on that date and ending three months before the reorganisation date;

- (ii) where the relevant action or proceeding arises, or the relevant contract is entered into on or after the date on which the transitional period begins, the period—
 - (aa) beginning on the date on which the action or proceeding arises or the contract is entered into; and
 - (bb) ending on whichever is the earlier of the reorganisation date and the date that falls four months after that on which the action or proceeding arose or the contract was entered into;
- (b) as regards information referred to in paragraph (2)(c), means—
 - (i) where the request is made at least six weeks before the reorganisation date, the period of six weeks beginning with the date of the making of the request; and
 - (ii) where the request is made within six weeks of the reorganisation date, the period beginning with the date of the making of the request and ending on the day before the reorganisation date.

PART 2

Transfer of functions to successor council, continuity and responsibility for functions exercised by a shadow authority

Transfer of functions to successor council

4. On the reorganisation date, the functions of the predecessor councils shall become functions of the successor council.

Continuity: references in enactments, etc.

5.—(1) 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 the successor council or of the area of that council.

(2) A provision of an enactment which, immediately before the reorganisation date, applies to an area (however defined) that is affected by a section 10 order, shall on and after that date continue to apply to, but only to, the area to which it applied immediately before that date.

(3) Where a provision referred to in paragraph (2) 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 it had been passed or made by the successor council as regards the whole or, as the case may be, the relevant part of its area.

(4) In paragraphs (1) and (2) “enactment” includes a local and personal Act, a private Act, any statutory instrument to which the Statutory Instruments Act 1946(7) 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.

Continuity: successor council

6.—(1) The following provisions of this regulation have effect subject to regulation 7.

(7) 1946 c. 36.

(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 shadow authority in the exercise of, or in connection with, a function that is to be exercised on and after that date by the successor council may be continued by, or in relation to, that council.

(3) Anything done by, or in relation to, a predecessor council or a shadow authority in the exercise of, or in connection with, a function that is to be exercised on and after the reorganisation date by the successor 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 shadow authority;
- (b) any byelaws, orders or regulations made by such a council or authority;
- (c) any approval, authorisation, consent, dispensation, exemption, licence, permission, permit or relaxation granted by or to such a council or authority;
- (d) any certificate, direction or notice given by or to such a council or authority;
- (e) any application, objection, proposal or request made by or to such a council or authority;
- (f) any condition imposed by or on such a council or authority;
- (g) any fee paid by or to such a council or authority;
- (h) any appeal allowed by or in favour of such a council or authority; or
- (i) any proceedings instituted by or against such a council or authority.

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

(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 shadow authority shall be construed on and after the reorganisation date as a reference to the successor council.

(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 successor council.

Continuity: limitations

7.—(1) Regulation 6 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 shadow authority was limited to part of its area, regulation 6(2) and (3) shall have effect only as regards that part; but this does not preclude the successor 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.

Responsibility for functions exercised by a shadow authority

8.—(1) This regulation applies to a shadow authority whose shadow executive is appointed by, or nominated in accordance with, a section 10 order.

(2) Any function which is to be exercised by the shadow authority 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.

(3) The 2000 Regulations (which make provision as to functions which are not, or need not be, the responsibility of an executive) shall have effect in relation to the exercise of functions by a shadow authority subject to the following modifications—

- (a) regulation 2 (giving effect to recommendations made in a community governance review) has effect as if paragraph (6E) were omitted;
- (b) Schedule 1 has effect as if—
 - (i) items 3, 4 and 5 of paragraph D (functions in relation to parishes and parish councils) were omitted; and
 - (ii) items 7, 8 and 9 of paragraph EB (certain functions relating to community governance) were omitted.

PART 3

Transfer of property, rights and liabilities

Transfer of property, rights and liabilities

9. All property, rights and liabilities of the predecessor councils shall on the reorganisation date vest in, and transfer to, the successor council.

PART 4

Staffing

Transfer of functions: staffing

10. Notwithstanding regulation 3(5) of the Transfer of Undertakings (Protection of Employment) Regulations 2006⁽⁸⁾, the transfer of functions from a predecessor council to a successor council in consequence of a section 10 order shall be treated for all purposes as a relevant transfer within the meaning of those Regulations, whether or not, apart from this provision, those Regulations would otherwise apply.

Heads of paid service and other chief officers

11.—(1) Subject to paragraph (2), the 1993 Regulations and the 2001 Regulations shall apply to a shadow authority (notwithstanding that it does not have the functions and full powers of a local authority) and a successor council—

- (a) throughout the relevant period; and
- (b) as regards the post of head of paid service of a successor council, as if—
 - (i) in paragraph 1 of Part 1 of Schedule 1 to the 1993 Regulations (standing orders relating to appointment of chief officers), for the words from the beginning to “they shall”, there were substituted the words “Subject to paragraph 3A and without prejudice to the right of any existing holder of the post of head of paid service to

⁽⁸⁾ S.I. 2006/246.

apply for it, the shadow authority or successor council shall appoint a person to the post of head of paid service within the relevant period and shall”;

(ii) after paragraph 1 there were inserted—

“**1A.** An appointment as head of paid service may take effect before the date which, for the purposes of the Local Government (Boundary Changes) Regulations 2018, is the reorganisation date as regards the council to whose service the person is appointed.”

(iii) after paragraph 3 there were inserted—

“**3A.** Paragraphs 1, 2 and 3 do not apply where the shadow authority or successor council appoints a person to the post of head of paid service within the relevant period and the appointment is made exclusively from among existing officers of the shadow authority or a predecessor council.”; and

(iv) any proposal for the dismissal of a head of paid service were excluded from the definition of “disciplinary action” in the 2001 Regulations.

(2) Where a shadow authority has appointed a head of paid service of the successor council pursuant to a section 10 order or the 1993 Regulations (as so modified), the successor council is not under a duty to make a further appointment to that post.

(3) In relation to chief officers, regulation 2(1) of the 2000 Regulations shall have effect in relation to a shadow authority and successor council, as if paragraphs 37 (appointment of staff), 39 (arrangements for administration of financial affairs), 43 (designation of head of paid service) and 44 (designation of monitoring officer) of Section I (miscellaneous functions) of Schedule 1 to those Regulations were omitted.

(4) The modifications specified in paragraph (3) shall cease to have effect as regards a shadow authority and a successor council, on the date on which the shadow period ends.

(5) In this regulation—

“the 1993 Regulations” means the Local Authorities (Standing Orders) Regulations 1993⁽⁹⁾;

“the 2001 Regulations” means the Local Authorities (Standing Orders) (England) Regulations 2001⁽¹⁰⁾;

“chief officer”—

(a) in relation to a shadow authority or successor council with a mayor and cabinet executive, means an officer of any of the descriptions specified in sub-paragraphs (a) to (d) of paragraph 3 of Part 1 of Schedule 1 to the 2001 Regulations; and

(b) in relation to a shadow authority or successor council with a leader and cabinet executive, means an officer of any of the descriptions specified in sub-paragraphs (a) to (d) of paragraph 3 of Part 2 of that Schedule;

“relevant period” means—

(a) in relation to a shadow authority or successor council provided for under an existing section 10 order, the period beginning on the date on which these Regulations come into force and ending on the date that falls 12 months after the reorganisation date; and

(b) in relation to any other shadow authority or successor council, the period beginning on the date on which the section 10 order concerned comes into force and ending on the date that falls 12 months after the reorganisation date.

⁽⁹⁾ S.I. 1993/202; relevant amendments were made by S.I. 2001/3384.

⁽¹⁰⁾ S.I. 2001/3384 amended by S.I. 2014/165 and S.I. 2015/881.

Redundancy payments

12. A head of paid service—

- (a) who is employed by a predecessor council; and
- (b) whose employment would have continued but for the fact that his or her employer has, in accordance with the 1993 Regulations (as modified by regulation 11(1)), appointed another person to the post of head of paid service of the successor council,

shall be treated as being dismissed by reason of redundancy for the purposes of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006⁽¹¹⁾ and the Local Government Pension Scheme Regulations 2013⁽¹²⁾, regardless of whether or not that person applies for the post of head of paid service of the successor council.

Local Government Pension Scheme

13. A shadow authority shall, notwithstanding that it does not have the functions and full powers of a district council, be treated as falling within paragraph 1 of Part 1 of Schedule 2 (Scheme employers) to the Local Government Pension Scheme Regulations 2013.

PART 5

Governance

Establishment of parishes and parish councils under the 2007 Act

14.—(1) This regulation applies where a predecessor council undertakes, or has undertaken, a community governance review under Part 4 of the 2007 Act (parishes), where the predecessor council has not exercised its powers under section 86 of the 2007 Act (reorganisation of community governance) to give effect to the review’s recommendations before the beginning of the transitional period.

(2) Sections 86 and 96 to 100 of the 2007 Act shall have effect as if the successor council were the principal council⁽¹³⁾.

(3) Where a predecessor council undertakes a community governance review during the transitional period and its successor council is a shadow authority—

- (a) section 79(3) of the 2007 Act shall have effect as if the requirement for a district council to notify the county council were a requirement to notify both the county council and the shadow authority; and
- (b) section 92 of that Act shall have effect as if the shadow authority were a principal council.

(4) Where a predecessor council receives a community governance petition under section 80 or a community governance application under section 80A⁽¹⁴⁾ of the 2007 Act during the transitional period, the predecessor council may resolve that the review be undertaken by the successor council after the reorganisation date.

(5) Where a resolution is made by a predecessor council under paragraph (4)—

- (a) section 93(8) of the 2007 Act has effect as if the reference to the period of 12 months were a reference to the period of 12 months starting with the reorganisation date; and

⁽¹¹⁾ S.I. 2006/2914.

⁽¹²⁾ S.I. 2013/2356.

⁽¹³⁾ See section 102 of the Local Government and Housing Act 1989 for meaning of “principal council”.

⁽¹⁴⁾ Section 80A was inserted by S.I. 2015/998.

- (b) sections 86 and 96 to 100 of the 2007 Act have effect as if the successor council were the principal council for the purposes of the review mentioned in paragraph (4).

Petitions on executive arrangements

15. Part 1A of the Local Government Act 2000 (arrangements with respect to local authority governance in England) shall have effect in relation to a predecessor council as if any regulations made under section 9MC(15) (referendum following petition) did not apply to that council.

PART 6

Electoral administration

Returning officers and proper officers

16.—(1) The returning officer(16) and the proper officer at any election of councillors of parishes in the area of a predecessor council that will take place after the reorganisation date but for which proceedings must be taken by a returning officer or proper officer before that date shall be—

- (a) the officers appointed as such by the shadow authority; or
- (b) if the shadow authority has not appointed a returning officer or a proper officer before the date on which the notice of election must be published, the returning officer and proper officer appointed by the predecessor council.

(2) In this regulation, “proper officer” means the proper officer for the purposes of the Local Elections (Parishes and Communities) (England and Wales) Rules 2006(17).

Interim acting returning officers and electoral registration officers

17.—(1) Every authority which, on the coming into force of these Regulations, is a shadow authority, shall, not later than the relevant date, appoint one of their officers to discharge the duties referred to in paragraph (2).

(2) The duties are such duties in relation to any parliamentary election(18) for which a writ is issued after the relevant date for any constituency or part of a constituency coterminous with or situated in the authority’s area, as fall to be discharged by the acting returning officer.

(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 or her appointment and before the time at which the duties referred to in paragraph (2) have been fully discharged, the authority shall immediately appoint another of its officers to discharge those duties or such of them as remain to be discharged(19).

(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”

(15) 2000 c. 22. Part 1A was inserted by the Localism Act 2011 (c.20) section 21 and Schedule 2.

(16) See section 35 of the Representation of the People Act 1983 (c. 2) for meaning of “returning officer”.

(17) S.I. 2006/3305.

(18) See Schedule 1 to the Interpretation Act 1978 (c. 30) for meaning of “parliamentary election”.

(19) 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 him or herself and undertakes to perform in person, those relating to the declaration of the result.

and “the electoral appointee”, there were substituted “a substitute appointee” and “the substitute appointee”.

(7) Section 28(1) of the 1983 Act (discharge of returning officer’s functions in England and Wales) shall have effect as regards the period beginning on the day after the relevant date and ending on the reorganisation date as if, after paragraph (aa)(20), 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 10 of the Local Government and Public Involvement in Health Act 2007, there is to be a new council, the person appointed in accordance with regulation 17(1) or (4) of the Local Government (Boundary Changes) Regulations 2018;”.

(8) An electoral registration officer appointed by a predecessor council under section 8 of the 1983 Act (registration officers) shall not discharge any duties of the returning officer 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 shadow authority 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 successor 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(21) appointed by a predecessor council.

(12) In this regulation—

“the 1983 Act” means the Representation of the People Act 1983(22); and

“the relevant date” means the 30th November that immediately precedes the reorganisation date.

PART 7

Statutory reviews, schemes, statements, rules and strategies

Reviews, schemes, statements, strategies and rules required not later than 24 months after the reorganisation date

18.—(1) Where it is practicable to do so during the transitional period—

(a) the shadow authority 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 166A of the Housing Act 1996(23);

(ii) a licensing statement (statement of licensing policy) under section 5 of the Licensing Act 2003(24);

(20) Paragraph (aa) was inserted by the Local Government (Wales) Act 1994 (c. 19), Schedule 16, paragraph 68(4).

(21) See section 8 of the Representation of the People Act 1983 for meaning of “electoral registration officer”.

(22) 1983 c. 2. Section 8(2) was amended by the Local Government (Wales) Act 1994 (c. 19), Schedule 16, paragraph 68(1). Section 37 was amended 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.

(23) 1996 c. 52. Section 166A was inserted by the Localism Act 2011 (c. 20) section 147(1).

(24) 2003 c. 17. Section 5 was amended by the Police Reform and Social Responsibility Act 2011 (c. 13), sections 98 and 122 and Schedule 15.

- (iii) a statement of principles under section 349 (three-year licensing policy) of the Gambling Act 2005(25);
 - (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(26);
 - (v) a council tax reduction scheme under section 13A(2) (reductions by billing authority) of the Local Government Finance Act 1992(27); and
 - (vi) rules determined under section 47(1)(a) (discretionary relief) of the Local Government Finance Act 1988(28); and
- (b) the shadow authority shall—
- (i) carry out for the whole of its area a homelessness review within the meaning of the Homelessness Act 2002(29); 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 (vi) shall have effect in relation to a shadow authority as if the shadow authority were a district 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(30).
- (3) For the purposes of paragraph (1)(b)—
- (a) section 1(3) of the Homelessness Act 2002 shall not have effect; and
 - (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 shadow authority, and
 - (ii) references to a local housing authority’s district (in whatever terms) included references to the shadow authority’s area.
- (4) Where a relevant document or review has not been carried out, formulated or prepared (as the case may be) and, where required by or under the enactment concerned, published, before the reorganisation date, the successor council shall take such steps as are necessary to secure that the relevant document or review is carried out, formulated or prepared (as the case may be) and, where required by or under the enactment concerned, published as soon as practicable and not later than the date that falls 24 months after the reorganisation date.
- (5) In the period beginning on the reorganisation date and ending on the date on which the successor council complies with paragraph (4), a relevant document or review that has been carried out, formulated or prepared (as the case may be) and, where required by or under the enactment concerned, published by a predecessor council shall be treated as if it had been carried out, formulated, prepared, and (where required) published by the successor council for the whole or such part of its area as corresponds to the area to which the relevant document or review relates.

(25) 2005 c. 19.

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

(27) 1992 c. 14. Section 13A was inserted by the Local Government Finance Act 2012 (c. 17) section 10(1).

(28) 1988 c. 41. Section 47(1) was amended by the Local Government Finance Act 1992, section 117(1) and Schedule 13 and by the Localism Act 2011, section 69(1).

(29) 2002 c. 7. Section 3 was amended by the Local Government Act 2003 (c.26), Schedule 7 and the Localism Act 2011, section 153. For the meaning of “homelessness review” see section 2. For the meaning of “homelessness strategy” see section 3. Section 4 contains other relevant definitions.

(30) S.I. 2006/636.

(6) Nothing in paragraph (5) shall affect the continued validity, after the date on which the successor council complies with paragraph (4), of a relevant document or review carried out, formulated, prepared and published as mentioned in paragraph (5), for any transitional purpose specified in the relevant document or review.

(7) The requirements of section 5(1) of the Licensing Act 2003 shall be treated as satisfied, as regards the five year period beginning with 7th January 2021, or the five year period specified by the shadow authority or successor council under section 5(6C) of that Act⁽³¹⁾, and as regards a successor council, by a statement published in accordance with regulations under section 5(7) of that Act—

- (a) by the shadow authority by virtue of paragraph (1)(a) above; or
- (b) by the successor council under paragraph (4) above.

(8) 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 2019, and a successor council, by a statement published in accordance with regulations under subsection (4) of that Act—

- (a) by the shadow authority by virtue of paragraph (1)(a) above; or
- (b) by the successor council under paragraph (4) above.

(9) Where a successor council is taking steps under paragraph (4) to prepare a council tax reduction scheme under section 13A(2) of the Local Government Finance Act 1992, paragraph 5(1) of Schedule 1A to that Act does not apply.

(10) In this regulation “relevant document or review” means a scheme, statement, rules, review or strategy of a description in paragraph (1).

Continuity in relation to plans, schemes, statements and strategies

19.—(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 before the reorganisation date by a predecessor 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 successor 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 in relation a scheme, statement or strategy of a description referred to in regulation 18(1).

(3) The period referred to in paragraph (1) begins on the reorganisation date and ends on the date on which the successor council 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 the predecessor 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 (2) for any transitional purpose specified in the plan, scheme, statement or strategy prepared by the successor council.

(31) Section 5 of the Licensing Act 2003 requires a licensing authority to determine and publish its licensing policy for each five year period ending with 6th January 2016 and for each subsequent five year period. Section 5 was amended by section 122 of the Police Reform and Social Responsibility Act 2011 (c. 13) to substitute for the reference to three years in subsection (1) reference to a period of five years; to insert the definition of “five year period” and “licensing statement” in subsection (8) and to insert subsections (6A) to (6C) to allow an authority to replace its policy at any time within the five year period and to specify the five year period to which the policy relates. There are other amendments not relevant to this provision.

PART 8

Accounts of predecessor councils and other financial matters

Interpretation of Part 8

20. In this Part—

“the 2015 Regulations” means the Accounts and Audit Regulations 2015⁽³²⁾;

“final accounts”, in relation to a predecessor council, means the council’s statement of accounts for the financial year ending immediately before the reorganisation date;

“section 151 officer” means the person who is for the time being appointed by the predecessor council, shadow authority or successor council, as the case may be, to be responsible for the administration of its financial affairs; and

“statement of accounts” means the statement required by regulation 7(1) (statement of accounts for Category 1 authorities) of the 2015 Regulations.

Responsibility for preparation of final accounts of predecessor councils

21.—(1) A successor council shall prepare and publish the final accounts of its predecessor councils.

(2) The 2015 Regulations shall have effect for the purposes of paragraph (1) as if—

(a) in regulation 7 (statement of accounts for Category 1 authorities)—

(i) in paragraph (1) the reference to an authority were a reference to the successor council and not to any of its predecessor councils;

(ii) in paragraphs (2) and (5) the reference to an authority were a reference to a predecessor council and not to its successor council;

(b) in regulation 8 (narrative statements)—

(i) the reference to an authority were references to the successor council and not to any of its predecessor councils;

(ii) in paragraph (2) the reference to an authority’s financial performance and economy, efficiency and effectiveness were reference to those matters in relation to a predecessor council and not to the successor council;

(c) in regulation 9 (signing and approval of statement of accounts etc.)—

(i) the reference to the responsible financial officer were a reference to the section 151 officer; and

(ii) in paragraphs (1)(a) and (3)(a) and (b) the reference to an authority were a reference to a predecessor council and not to its successor council; and

(d) the requirement in regulation 10(1) (publication of statement of accounts etc.) were a requirement for the successor council to publish the final accounts of each of its predecessor councils.

Transitional responsibility for preparation of final accounts, etc.

22.—(1) During the transitional period, steps for the preparation of the final accounts of a predecessor council—

(a) shall be taken by the shadow authority; and

(32) S.I. 2015/234.

- (b) except as mentioned in paragraph (7), shall not be taken by or on behalf of the predecessor council.
- (2) The 2015 Regulations shall have effect for the purposes of paragraph (1) as if in regulation 7 (statement of accounts for Category 1 authorities)—
 - (a) in paragraph (1) the reference to an authority were a reference to the shadow authority and not to any of the predecessor councils;
 - (b) in paragraphs (2) and (5) the reference to an authority were a reference to a predecessor council and not to the shadow authority.
- (3) The section 151 officer of the shadow authority shall direct and supervise the taking of the steps referred to in paragraph (1) and such other steps as may reasonably be required to further the efficient and timely closure of the predecessor council’s final accounts.
- (4) The section 151 officer must as soon as reasonably practicable prepare and implement a plan for the taking of the necessary steps.
- (5) The closure plan must include—
 - (a) a timetable for the taking of the necessary steps; and
 - (b) a statement of the resources which, in the section 151 officer’s opinion, are required to further the efficient and timely closure of the predecessor council’s final accounts.
- (6) The section 151 officer must keep the closure plan under review and, if necessary, amend it.
- (7) The predecessor council and its officers must assist and co-operate with the section 151 officer in the discharge of the functions of that officer under this regulation.
- (8) In this regulation—
 - “closure plan” means the plan required by paragraph (4); and
 - “necessary steps” means the steps referred to in paragraph (3).

Reports of statutory audits, inspections and investigations

- 23.**—(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 to the proper officer of the shadow authority.
- (2) In paragraph (1)—
 - “proper officer” means the officer appointed for the purpose by the council; 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 the shadow authority (“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.

Other transitional provisions relating to financial matters

24.—(1) Not later than the reorganisation date, each predecessor council must, in accordance with regulation 6 (review of internal control) of the 2015 Regulations, prepare and approve an annual governance statement.

(2) The paragraph (1) statement must be signed by the leader of the predecessor council and by its head of paid service.

(3) Paragraph (5) applies where, before the date on which the successor council considers the final accounts of a related predecessor council, the section 151 officer has reason to believe, as the result of one or more of the matters referred to in paragraph (4), that there is a material inaccuracy in, or omission from, the paragraph (1) statement.

(4) The matters are—

- (a) enquiries made by the section 151 officer into the accuracy or completeness of the paragraph (1) statement; or
- (b) any matter relevant to internal control⁽³³⁾ arising on or after the reorganisation date.

(5) The section 151 officer must, before the successor council considers the final accounts, provide each member of the council with a statement containing—

- (a) particulars of the perceived inaccuracy or omission; and
- (b) the section 151 officer’s reasons for believing that the inaccuracy or omission exists and is material.

(6) In this regulation “paragraph (1) statement” means the annual governance statement mentioned in paragraph (1).

PART 9

Functions relating to town and country planning

Interpretation of Part 9

25. In this Part—

“the 2004 Act” means the Planning and Compulsory Purchase Act 2004⁽³⁴⁾; and

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

Local development documents

26.—(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 the successor council for such part of its area as corresponds to the area to which the document relates.

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

⁽³³⁾ See regulation 3 of S.I. 2015/234 for meaning of “internal control”.

⁽³⁴⁾ 2004 c. 5. Section 23 was amended by the Localism Act 2011 (c. 20), section 112.

(3) A successor council must adopt a local development document under section 23 of the 2004 Act to apply to the whole of its area within a period of five years starting with the reorganisation date.

(4) On or after the reorganisation date and prior to adoption of a document to apply to the whole of its area as required by paragraph (3) a successor council may revise or replace a document referred to in paragraph (1) for a part of its area which was the area of a predecessor council.

(5) In revising or replacing a document in accordance with paragraph (4), a successor council may adopt, with or without modification, a document which was prepared but not adopted by a predecessor council before the reorganisation date.

(6) Where—

- (a) a predecessor council has not, before the reorganisation date, prepared or adopted a local development document under section 23 of the 2004 Act; and
- (b) the successor council has not yet adopted such a document for the whole of its area as required by paragraph (3),

the successor council may prepare and adopt such a document for the part of its area which was the area of the predecessor council.

Continuity relevant to section 29 committees

27.—(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 were references to the successor council;
- (b) references to the area of a predecessor council were references to such part of the area of the successor council as is coterminous with the area of the predecessor council.

(2) A successor council to which paragraph (1) applies shall be treated for the purposes of section 29(9) of the 2004 Act 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 successor 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.

(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 successor 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 10

Miscellaneous transitional provisions

Housing finance

28.—(1) The relevant provisions shall have effect, in relation to functions falling to be discharged by or in relation to a shadow authority under those provisions before the reorganisation date and as regards a financial year beginning on or after the reorganisation date, as if the shadow authority were a local housing authority within the meaning of those provisions.

(2) In relation to functions falling to be discharged as mentioned in paragraph (1), the relevant provisions shall have effect as if a predecessor council were not a local housing authority.

(3) In this regulation “the relevant provisions” means—

(a) Part 6 of the 1989 Act (housing finance); and

(b) sections 171, 172, 173 (insofar as that section relates to a determination under section 171) and 175 of the Localism Act 2011 (limits on indebtedness).

Community right to challenge

29.—(1) This regulation applies in relation to an expression of interest received by a predecessor council under Chapter 2 of Part 5 of the Localism Act 2011⁽³⁵⁾ (“the 2011 Act”) (community right to challenge) where the predecessor council has not considered the expression of interest in accordance with that chapter before the beginning of the transitional period.

(2) The predecessor council may resolve that consideration of the expression of interest be undertaken by the successor council after the reorganisation date.

(3) Where a resolution is made under paragraph (2)—

(a) except for the references in sections 81(1)(a), 82 and 84(6), Chapter 2 of Part 5 of the 2011 Act has effect as if the references to relevant authority were references to the successor council;

(b) sections 81(1)(a) and 82(1), (2) and (3) of the 2011 Act have effect as if the references to relevant authority were references to the predecessor council;

(c) section 82(4) of the 2011 Act has effect as if the reference to the relevant authority—

(i) before the reorganisation date were reference to the predecessor council; and

(ii) after the reorganisation date were reference to the successor council; and

(35) 2011 c. 20.

- (d) section 84 of the 2011 Act has effect as if—
- (i) in subsection (3)(a) the reference to the date on which the relevant authority receives an expression of interest were reference to the reorganisation date;
 - (ii) in subsection (6)—
 - (aa) the reference to a relevant authority receiving an expression of interest were reference to the predecessor council receiving such an expression of interest; and
 - (bb) the reference to a relevant authority notifying the relevant body in writing were reference to the successor council so notifying the relevant body; and
 - (iii) in subsection (7) each time it occurs reference to the period of 30 days were reference to the period of 30 days beginning with the reorganisation date.

Honorary titles

30.—(1) Section 249(1)(36) of the 1972 Act (honorary titles) shall have effect in relation to 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 10 order, a local government area is abolished on the reorganisation date, any person who, immediately before that date, is an honorary alderman or alderwoman of the predecessor council for that area shall, on that date become an honorary alderman or alderwoman of the successor council.

(3) In relation to a person to whom paragraph (2) applies, references in section 249(2) and (4) 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 successor council.

(4) A person who, before the reorganisation date, has been admitted as an honorary freeman or freewoman of a local government area that is abolished by a section 10 order (an “abolished area”) shall, on that date, be treated as having been admitted as an honorary freeman or freewoman of the area which, on the reorganisation date, comprises or includes the abolished area.

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

Rishi Sunak
Parliamentary Under Secretary of State
Ministry of Housing, Communities and Local
Government

31st October 2018

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 1 of the Local Government and Public Involvement in Health Act 2007 (c. 28) (“the 2007 Act”) enables the Secretary of State, by order under section 10, to make boundary changes in relation to local authorities including changes which result in the abolition of existing local government areas and their councils and their replacement with new local government areas and councils.

Section 14 of the 2007 Act provides for regulations to make incidental, consequential, transitional and supplementary provision of general application for the purposes or in consequence of any orders under section 10 or for giving full effect to such orders. These Regulations make such provision in relation to a section 10 order which provides for the winding up and dissolution of two or more district councils (“the predecessor councils”) and the establishment of a single council (“the successor council”) for an area which consists of the entirety of the areas of both, or all, of the predecessor council. Orders under section 10 provide for the establishment of a shadow authority and shadow executive which become the successor council on the reorganisation date.

Part 1 covers general provisions including interpretation. Regulation 3 imposes a duty on the predecessor councils to provide information to the successor council for the purposes of facilitating the transfer to the new council.

Part 2 provides for the transfer of all the functions of the predecessor councils to the successor council (regulation 4) and ensures continuity as a result of the transfer (regulations 5 to 7). Regulation 8 provides that any function conferred on the shadow authority by virtue of the Regulations will be exercisable by the shadow authority’s executive. Part 3 provides for the transfer of all property, rights and liabilities of the predecessor councils to the successor council. Part 4 covers staffing. Regulation 10 ensures that the transfer of functions to the successor council is treated as a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006. Regulation 11 modifies, for transitional purposes, existing rules that apply to the appointment of the head of paid service and disciplinary rules for chief officers. Regulation 12 provides for redundancy payments for heads of paid service of the predecessor councils who are not appointed head of paid service of the successor council. Regulation 13 ensures that a shadow authority is treated as an employer for the purposes of the Local Government Pension Scheme.

Part 5 provides for transitional arrangements for parish council reorganisation and disapplies section 9MC of the 2000 Act in relation to predecessor councils so that they may not hold a referendum about the council’s executive arrangements.

Part 6 concerns electoral arrangements. Regulation 16 provides transitional arrangements for the appointment of returning officers and proper officers for any parish council election that takes place after the reorganisation date but for which steps must be taken before that date. Regulation 17 provides for the appointment of interim acting returning officers and electoral registration officers in relation to any parliamentary election for which a writ is issued less than six months before the reorganisation date.

Part 7 provides for the successor council to make certain plans, reviews, schemes, statements and strategies for their area within a specified period (regulation 18) and provides for continuity in relation to plans, schemes, statements and strategies generally (regulation 19).

Part 8 imposes a duty on the successor council to prepare and publish the final accounts of the predecessor councils and modifies the Accounts and Audit Regulations 2015 (S.I. 2015/234) in consequence.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Part 9 contains transitional arrangements relevant to certain planning functions under the Planning and Compulsory Purchase Act 2004.

Part 10 includes miscellaneous transitional provisions including modification of the application of Part 6 of the Local Government and Housing Act 1989 (housing finance) and sections 171 to 173 and 175 of the Localism Act 2011 (c. 20) (limitations on indebtedness), modification of the community right to challenge provisions in Chapter 2 of Part 5 of the Localism Act 2011 and modification of provisions on honorary titles in the Local Government Act 1972.

A full impact assessment has not been prepared as this instrument will have no impact on the costs of business and the voluntary sector.