

2008 No. 1419

LOCAL GOVERNMENT, ENGLAND

**The Local Government (Structural and Boundary Changes)
(Staffing) Regulations 2008**

<i>Made</i> - - - -	<i>2nd June 2008</i>
<i>Laid before Parliament</i>	<i>5th June 2008</i>
<i>Coming into force</i> - -	<i>28th June 2008</i>

The Secretary of State in exercise of the powers conferred by sections 14 and 240(10) of the Local Government and Public Involvement in Health Act 2007(a) makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Local Government (Structural and Boundary Changes) (Staffing) Regulations 2008 and shall come into force on 28th June 2008.

Interpretation

2. In these Regulations—

“the 2007 Act” means the Local Government and Public Involvement in Health Act 2007;

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

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

“the TUPE Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006(d);

“boundary change” has the meaning given by section 8(3) of the 2007 Act;

“head of paid service” means an officer responsible for performing the duties imposed by subsections (2), (4) and (5) of section 4 (designation and reports of head of paid service) of the Local Government and Housing Act 1989(e);

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

“order” means an order under section 7 or 10 of the 2007 Act;

“predecessor council” means a local authority which, by or in consequence of an order, will cease to exercise functions in relation to an area;

(a) 2007 c.28. Section 14(2) provides for section 14(1) to be read with section 15. Section 240(10) provides for different provision to be made for different cases.

(b) S.I. 1993/202, amended, as to England, by regulation 8 of S.I. 2001/3384.

(c) S.I. 2001/3384.

(d) S.I. 2006/246, to which there are amendments not relevant to these Regulations.

(e) 1989 c.42, to which there are amendments to section 4 not relevant to these Regulations.

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

“reorganisation date”, in relation to an order, means the date specified in the order as that on which one or both of a structural change and a boundary change comes into effect;

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

“shadow executive”, in relation to a shadow council, means the executive created by the council in accordance with the order which confers functions on the council;

“the shadow period”, in relation to a shadow council, means the period defined as such in the order which confers functions on the council;

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

“structural change” means a change effected by an order which establishes a single tier of local government for an area.

Transfers of functions: staff

3. Subject to regulation 4(1) and notwithstanding regulation 3(5) of the TUPE Regulations, the transfer of functions from a predecessor council to a single tier council in connection with one or both of a structural change and a boundary change shall be treated for all purposes as a relevant transfer^(a) within the meaning of the TUPE Regulations, whether or not, apart from this provision, those Regulations would otherwise apply.

Heads of paid service and other chief officers

4.—(1) Subject to paragraph (3), the 1993 Regulations and the 2001 Regulations shall apply to a preparing council, a shadow council (notwithstanding that it does not have the functions and full powers of a local authority) and a single tier council—

(a) throughout the relevant period; and

(b) as regards the post of head of paid service of a single tier council, as if—

(i) in paragraph 1 of Part 1 of Schedule 1 to the 1993 Regulations (standing orders relevant to appointment of chief officers), for the words from the beginning to “they shall”, there were substituted the words “Without prejudice to the right of any existing holder of the post of head of paid service to apply for it, the authority 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 under paragraph 1 may take effect before the date which, for the purposes of the Local Government (Structural and Boundary Changes) (Staffing) Regulations 2008, is the reorganisation date as regards the single tier council to whose service the person is appointed.”; and

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

(2) The functions of a preparing council, its succeeding single tier council or a shadow council relating to the recruitment, appointment and dismissal of any chief officer—

(a) shall, in the case of a preparing council or its succeeding single tier council, be the responsibility of, and be discharged by, its Implementation Executive (until the dissolution of that Executive);

(a) As to “relevant transfer”, see regulation 2(1) of the TUPE Regulations.

- (b) shall, in the case of a shadow council required by an order to hold an election of its councillors in 2008, as regards the period beginning on the date on which these Regulations come into force and ending at the end of the shadow period, be the responsibility of, and be discharged by, that council; and
- (c) shall, in the case of any other shadow council—
 - (i) as regards the period beginning on the date on which these Regulations come into force and ending on the fourth day after the next following day of election of councillors to that council, be the responsibility of, and be discharged by, its shadow executive;
 - (ii) as regards the period beginning on the fourth day after that election and ending at the end of the shadow period, be the responsibility of, and be discharged by, the shadow council,

but where the fourth day after that election is the day on which the shadow period ends, paragraph (ii) shall not apply.

(3) Where—

- (a) a preparing council has appointed a head of paid service of the single tier council pursuant to the 1993 Regulations (as modified by paragraph(1)); or
- (b) a shadow council has appointed a head of paid service of the single tier council pursuant to an order or the 1993 Regulations (as so modified),

the succeeding single tier council is not under a duty to make a further appointment to that post.

(4) In relation to chief officers, regulation 2(1) of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000(a) shall have effect in relation to a preparing council, a shadow council or a single tier 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.

(5) In this regulation—

“chief officer”—

- (a) in relation to a preparing council or a shadow council with a mayor and cabinet executive(b), 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 preparing council or a shadow council with a leader and cabinet executive(c), 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”—

- (a) in relation to a shadow council required by order to hold an election of its councillors in 2009, means the period beginning on the date on which these Regulations come into force and ending on 31st March 2009;
- (b) in relation to a shadow council required by order to hold an election of its councillors in 2008, means the period beginning on the date on which these Regulations come into force and ending on 31st December 2008;
- (c) in relation to a preparing council that is the subject of an order commencing before the coming into force of these Regulations, means the period beginning on the date on which these Regulations come into force and ending on the date that falls twelve months after the reorganisation date; and

(a) S.I. 2000/2853, to which there are amendments relevant to these Regulations made by S.I. 2001/2212, regulation 2(b) and S.I. 2004/2748, regulation 2(a).
 (b) See section 11(2) of the Local Government Act 2000 (c.22).
 (c) See section 11(3) of the Local Government Act 2000.

- (d) in relation to any other preparing council or shadow council, means the period beginning on the date on which the order concerned comes into force and ending on the date that falls twelve months after the reorganisation date.

Redundancy payments

5. A head of paid service—

- (a) who is employed by a preparing council or a single tier council; and
(b) whose employment would have continued but for the fact that his employer has, in accordance with the 1993 Regulations (as modified by regulation 4(1)), appointed another person to the post of head of paid service of the single tier 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(a) and the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007(b), regardless of whether or not he applies for the post of head of paid service of the single tier council.

Local Government Pension Scheme

6. A shadow council shall, notwithstanding that it does not have the functions and full powers of a district council or a county council, be treated as falling within paragraph 2 of Part 1 of Schedule 2 of the Local Government Pension Scheme (Administration) Regulations 2008(c).

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

John Healey
Minister of State

2nd June 2008

Department for Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part I of the Local Government and Public Involvement in Health Act 2007 (the “2007 Act”) deals with structural and boundary changes in England. Where the Secretary of State has received a proposal or a recommendation he may make an order to implement the proposal or recommendation with or without modification. These Regulations make incidental, consequential, transitional and supplementary provision of general application in relation to the transfer of staff and other staffing matters for the purposes of, and in consequence of, orders made by the Secretary of State under section 7 or 10 of the 2007 Act with respect to local government structural changes or boundary changes (or both such changes) in England. Section 14(3) of the 2007 Act provides for these Regulations to have effect subject to any provision included in such an order.

Regulation 2 contains definitions.

Regulation 3 provides for the transfer of functions from an existing local authority to a county or district council that on the reorganisation date becomes the sole principal authority for an area (a “single tier council”) to be treated as a relevant transfer within the meaning of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (the “TUPE Regulations”) (SI 2006/246). The TUPE Regulations make provision for the treatment of contracts of employment,

(a) S.I. 2006/2914.

(b) S.I. 2007/1166, to which there are amendments relevant to these provisions.

(c) S.I. 2008/239.

employees and related matters, in the event of a relevant transfer (as defined in regulation 3 of TUPE).

Regulation 4 makes special provision in connection with the recruitment, appointment and dismissal of heads of paid service and other chief officers. The Local Authorities (Standing Orders) Regulations 1993 (SI 1993/202) and the Local Authorities (Standing Orders) (England) Regulations 2001 (SI 2001/3384) are modified accordingly. Regulation 4(2) specifies the bodies that are to be responsible for discharging those functions at particular stages of the reorganisation process. Regulation 4(3) relieves a single tier council of the duty of appointing a head of paid service where its predecessor preparing council or shadow council made an appointment to that post by virtue of regulation 4(1).

The effect of regulation 4(4) is that certain functions of a preparing council, a shadow council or a single tier council that, as regards matters relating to chief officers, would otherwise not be the responsibility of the council's executive, become functions that the council may, but need not, delegate to its executive.

Regulation 5 provides that a head of paid service whose employment would have continued but for the appointment of another person to the post of head of paid service of the single tier council, in accordance with the 1993 Regulations (as modified by regulation 4(1)), is to be treated as dismissed by reason of redundancy for the purposes of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (SI 2006/2914) and the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (SI 2007/1166).

Regulation 6, by requiring a shadow council to be treated as falling within Schedule 2 of the Local Government Pension Scheme (Administration) Regulations 2008 (SI 2008/239), provides for staff employed by a shadow council to be eligible for membership of the Local Government Pension Scheme.

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