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Guide to Local Government Re-organisation

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Introduction



In recent years we have seen a number of local government re-organisations take place. These have been driven by differing factors both political and financial. However, with increasing financial pressure on local authorities coupled with increased demand for key services, more and more local authorities are considering whether a more streamlined unitary system could be one way of relieving the strain being put on them.

Re-organisation is not just something that local authorities themselves are considering, reform of local government is also something being actively driven by the Government. This is demonstrated by the recent invitation from the Secretary of State inviting local authorities in the areas of Somerset, North Yorkshire and Cumbria to submit re-organisation proposals.

We are also eagerly anticipating the (now delayed) White Paper on local government devolution and re-organisation. While it is impossible to plan how to respond to that just now, we are certainly wanting to encourage local authorities to consider how re-organisation could impact their areas and be on the front foot when it comes.

Clearly there are also lots of very good reasons not to change the structure of local government and this guide does not seek to advocate one structural approach over another. It aims to serve as a guide in relation to the key issues which might need to be considered.

This guide provides information and guidance for local authorities considering a move to a unitary form of local government in their area. It has been prepared for local authorities in England and does not address the particular circumstances arising in the other UK nations. It is a general guide only, and you should take full legal advice in advance of, and during, any re-organisation.

Legal mechanism for local government re-organisation

Introduction

The creation of unitary authorities isn't new. Section 14 of the Local Government Act 1992 permitted the Local Government Commission to recommend a unitary system in any non-metropolitan area. 15 years later the Local Government and Public Involvement in Health Act 2007 (**2007 Act**) allowed the Secretary of State (**SoS**) to invite any authority to propose a unitary model.

On 7 May 2015 a Conservative Government was elected on a manifesto commitment to “devolve powers and budgets to boost local growth in England”. The Cities and Local Government Devolution Act 2016 (**2016 Act**) gave effect to this commitment.

The 2016 Act created a legislative framework that can be deployed flexibly to implement a wide range of local government reforms. Crucially, it provides a fast track mechanism for delivering the structural changes necessary to create unitary authorities.

Therefore, there are currently two legal mechanisms which can be used to effect local government re-organisation:

Route 1: the SoS can invite or direct a local authority to make a re-organisation proposal under S2 of the 2007 Act; or

Route 2: Authorities may themselves put together re-organisation proposals and submit these for consideration by the SoS without being invited to. The SoS will then review these may then pass a statutory instrument (**SI**) under S15 of the 2016 Act to govern the re-organisation.

Route 1

Under S2 of the 2007 Act the SoS can direct or invite one or more authorities to make a Type A, Type B, Type C or combined proposal.

- Type A: a proposal that there should be a single tier of local government for the same area which covers the county concerned.
- Type B: proposal that there should be a single tier of local government for an area which is currently a district, or two or more districts, in the county concerned.
- Type C: proposal that there should be a single tier of local government for an area specified in the proposal which currently consists of the county concerned or one or more districts in the county concerned and one or more relevant adjoining areas.
- Combined Proposal: a proposal that consists of a) two or more Type B proposals; b) two or more Type C proposals; or c) one or more Type B proposals and one or more Type C proposals.

It is worth noting that the SoS may specify in its invitation or direction which proposals are being directed or invited, or it may leave scope to the authority to choose which proposal it feels would be best.

Legal mechanism for local government re-organisation

The SoS may request further advice from the Local Government Boundary Commission (LGBC) in relation to a proposal it receives following an invitation or direction. The LGBC can recommend that the SoS implements the proposal without amendment, recommend that he does not implement or could look to make an alternative proposal to him. S7 of the 2007 Act then gives the SoS the overall power to either sign off on the re-organisation or not. The SoS may implement the proposal without modification, or look to implement any alternative proposal put forward by the LGBC. If the SoS decides to proceed with the re-organisation then it will pass a detailed SI dealing with the transfer of powers, property, assets and staff as well as any boundary and electoral changes necessary to give effect to the re-organisation. We consider these instruments as well as the general SIs made under Part 1 of the 2007 Act later in this guide.

Route 2

The 2016 Act effectively sets out a mechanism where local authorities can work together on a re-organisation proposal and submit this to the SoS without being specifically invited to.

Section 15(1) of the 2016 Act grants the SoS the power to bring forward regulations to amend and vary:

- the governance arrangements of local authorities;
- their constitution and membership; and
- their structural and boundary arrangements.

Section 15(9)(c) permits regulations made under the 2016 Act to deal with any issues that may arise from a re-organisation, allowing the SoS to ensure that the re-organisation can happen quickly and efficiently and that any new unitary authority has the powers, property, assets and staff it needs to deliver its functions, including any new devolved powers.

Section 15(4) of the 2016 Act prevents the SoS from exercising his powers without the consent of all local authorities affected by a proposal. Any re-organisation proposal must therefore be developed in consultation with all affected local authorities and the final proposal must have their full support.

The next step is to secure support from the SoS on behalf of central government. While the SoS will consider each proposal on its merits, there are certain tests that must be met by any proposal. In February 2017 the then Minister for Local Government Marcus Jones MP confirmed that local authorities would need to demonstrate that:

“...the proposal, if implemented, is likely to improve the area’s local government, commands a good deal of local support in and around the area, and whether the area itself is a credible geography for the proposed new structures”.

Legal mechanism for local government re-organisation

Following approval by the SoS, a SI is passed under S15 of the 2016 Act. This tends to be light touch and has the effect of modifying Part 1 of the 2007 Act to permit the re-organisation. The detailed SI dealing with the transfer of powers, property, assets and staff as well as any boundary and electoral changes necessary to give effect to the re-organisation is then passed under Section 7 of the 2007 Act.

Considerations that authorities should have regard to when formulating proposals

The question of public consultation is considered in detail in the next section of this guide. In respect of the other tests that will be applied to any proposal, we recommend that local authorities should consider as a minimum:

- How will the new structure(s) improve local government accountability? If the new unitary authority is seeking further devolution of powers and budgets from central government, how will the unitary authority ensure democratic oversight of these? Will the new structures bring decision making closer to the communities expected to benefit from devolution and how will residents engage with the new structures?
- What will the financial impact of the proposed re-organisation be? How much will the initial re-organisation cost? How will this be funded? How quickly will the initial costs be recovered and what are the long-term savings? How does the authority intend to use any anticipated savings?
- Is there geographical logic to the plan? Where are the major economic hubs? Are the local populations broadly rural, or urban, or a combination of the two? Is there a risk that transferring functions from a lower tier authority to one large unitary authority will create a disconnect with local residents? Would one unitary authority suffice or might it be more appropriate to move to a unitary structure but with two or more authorities that can cooperate but are independent of one another? If so, how would statutory services delivered across all current authorities be split?
- How will the authority approve any proposals, and co-ordinate with neighbouring councils, to reduce the risk of challenge? We recommend carefully considering the most “accountable” option and seeking legal advice where necessary.

Once approval for the re-organisation has been secured then the local authorities will need to set a realistic timescale for implementing the new structure. We consider some of the particular issues that local authorities may face as they work towards implementing a new single-tier structure later in this report, but the complexity and the time necessary to embed the new structure properly should not be underestimated.

Consultation during re-organisation

Local authorities are under no specific statutory duty to consult residents, or anyone else affected by a proposed re-organisation into a unitary system. However, if Route 1 is being followed, then the SoS will likely want to see that consultation has taken place, and will normally indicate this in its guidance when it sends out its invitation. In relation to Route 2, Section 15(4) of the 2016 Act requires that regulations made under that Act may 'be made only with the consent of the local authorities to whom the regulations apply'. Section 15(11) requires that a draft Order giving effect to the proposal is approved by each House of Parliament and Section 15(12) requires that the draft Order is accompanied by a report to Parliament which must include:

- a description of any consultation taken into account by the SoS,
- information about any representations considered by the SoS in connection with the proposal, and
- any other evidence or contextual information that the SoS considers it appropriate to include.

As the consequences of local government re-organisation can be wide-ranging, and potentially controversial, we would always recommend that proposals should be developed in conjunction with stakeholders including neighbouring local authorities, local residents, community interest groups, local Councillors and MPs.

Local authorities may wish to consider the following factors when developing a consultation strategy.

- Do affected communities share common features, or will the plans involve bringing disparate communities together under one unitary authority? Urban and rural communities are likely to face unique issues, have different priorities and different expectations of local government. Early engagement with residents will enable local authorities to understand these issues and to tailor their plans accordingly.
- How do local residents currently access public services and how would this change under a unitary model? Transferring functions from a local district council to a more remote unitary authority may make it more difficult for residents to access the services they need. Particularly vulnerable residents and heavy users of local government services should be consulted to ensure their needs will be met under the new structure.
- What are the political implications? If the intention is to bring together two neighbouring authorities which are currently under different control then early engagement with elected members will be essential. Political differences aren't necessarily a barrier to local government re-organisation, but they can make the process more difficult
- People form strong and complex bonds with their homes, communities and local areas. If communities are made to feel that changes to these are being imposed on them by outsiders then their reaction is likely to be strong and negative. Early engagement and participation in the decision making process should ease these concerns and allow the authorities concerned to tailor their plans to address any particular issues.

Key themes in the primary statutory instrument

As noted in the ‘[Legal mechanism for local government re-organisation](#)’ section of this guide, local government re-organisations necessarily require the passing of a new statutory instrument which provides an underpinning framework for the re-organisation. Whilst, these of course vary on a case by case basis, there are some common themes which we consider below.

- **Shadow authorities:** Most SIs dealing with local authority re-organisation will take effect prior to the creation of the new unitary authority. For example, the Bournemouth, Dorset and Poole (Structural Changes) Order 2018/648 came in to force on 26 May 2018, but the new unitary authorities created under that order did not come into existence until 1 April 2019. The SI will therefore designate the newly created unitaries as ‘shadow authorities’ until they are formally established. This meant that the councillors of the borough councils and county council which were to merge in to the Bournemouth Christchurch and Poole unitary were deemed to be the members of the Bournemouth, Christchurch and Poole shadow authority during this period.

The SI will direct how these shadow authorities should be structured, including the number of members on the shadow executive committee each authority should have. It will prescribe the obligations and standards that the shadow authority will be expected to adhere to during the transitional period, and outline any specific obligations to prepare for the creation of the new unitary, such as to agree the executive arrangements of the new unitary authority.

- **Elections:** Local authority restructuring will have a knock on effect on how elections are carried out, especially if an election falls either during the transitional period or shortly afterwards. Therefore, it is likely that the SI will detail how voting and elections will be carried out both during the transition and subsequently. For example, it will contain details about the wards including their names and the area they cover, the number of councillors connected to each ward, etc. It may also specify, if applicable, that certain parish council elections are not to take place.
- **General obligations on the existing authorities:** The SI will also impose a number of general obligations on the current authorities to assist in the transition to a unitary model. For example, an obligation to take necessary steps to prepare for the transfer of their respective functions, property, rights and liabilities to the new unitary.

Governance and constitution

Governance will be one of the most important considerations when approaching re-organisation. Each authority involved in the re-organisation will have its own governance arrangements and indeed each authority may be fundamentally different in structure. For instance, one authority may operate under a committee arrangement and one under an executive arrangement. Therefore, it will be necessary to undertake an internal exercise to decide which structure to use. This involves taking several steps:

- Firstly, it is necessary to take a step back and plan a methodology to be followed when approaching the governance review. For example, it will be important to capture the views of all interested parties so the methodology will need to detail the relevant stakeholders and when it will be necessary to engage with them. This will include those working in the relevant authorities and the elected members, but residents and other interested parties should also be consulted.
- Secondly, it is necessary to derive several potential systems of governance that should be explored and to conduct a detailed assessment of their respective strengths and weaknesses using the views collated. It is important to think about what procedural steps would be needed to arrive at each potential design and the impact that each would have on the unitary authority's culture. This should also feed into considerations of whether one or possibly more unitary authorities may be necessary and how and where the boundaries should be drawn.

It is important to deal with the proposed governance arrangements at an early stage in the process as the opportunity to change the structure of the new unitary authorities once the statutory order for the re-organisation has been carried out will be limited. For example, in the Bournemouth, Dorset and Poole case considered earlier, Regulation 14(2) of the order required that the shadow authority must comply with Section 9B(2) of the Local Government Act 2000 and follow a cabinet and executive structure.

Implementing the revised governance arrangements will require that work is started promptly on preparing the documentation that will govern the new unitary. This includes the constitution but also other pertinent documents such as the code of conduct for members and the scheme for members' allowances.

General Statutory Instruments which apply to re-organisations



Whilst many of the specific obligations regarding a particular re-organisation are derived from the primary SI passed under S7 of the 2007 Act, (see **'key themes in the primary statutory instrument'** section of this guide) the Secretary of State has also passed a series of more generic regulations applicable to all re-organisations under S14 of that Act. These cover the common practical issues that arise when implementing a re-organisation including finance requirements, the transfer of assets and employees and other necessary transitional arrangements. We have sought to outline these general SIs and their impacts throughout this guide, as well as providing further practical guidance to assist councils to prepare for the effects of these SIs.

Transitional arrangements

Many of the transitional arrangements are outlined in a single SI called the Local Government (Structural Changes) (Transitional Arrangements) (No.2) Regulations 2008/2867 (**Transition Regulations**).

The Transition Regulations are very detailed but they broadly cover the following key issues:

- **Continuity and responsibility for functions:** Firstly, they state that any functions exercised by the shadow authority by virtue of the Transition Regulations will be the responsibility of the shadow executive. They also deal with issues of continuity in relation to enactments post re-organisation. For example, they make clear that where an enactment references a predecessor council or its area, then after the re-organisation date that enactment should be read as referring to the new unitary authority.
- **Statutory plans and strategies:** The Transition Regulations also impose a series of obligations in relation to plans and strategies required under various statutes, including when during the re-organisation process these plans must be prepared. For instance, Regulation 11 outlines the plans which must be prepared prior to the re-organisation date (and includes plans such as those required under the Civil Contingencies Act 2004), whereas Regulation 12 outlines a series of plans, schemes etc. which the shadow authority should endeavour to agree prior to the re-organisation date but, if this is not possible, the unitary authority should finalise and publish within 24 months of the re-organisation date.
- **Town and country planning:** The Transition Regulations make clear that a local development document (such as a development plan) adopted by a predecessor council prior to re-organisation shall continue to apply after re-organisation as if it had been adopted by the unitary authority in relation to the area the plan covers. Additionally, the new unitary must adopt its own local development plan within 5 years of the re-organisation date.
- **Miscellaneous transitional provisions:** The Transitions Regulation also outline a number of miscellaneous provisions. Some of the important ones to note are:
 - (a) The shadow authority will be able to be classed as a local housing authority prior to the re-organisation. This means it can utilise the provisions of Part 6 of the Local Government and Housing Act 1989, Part 7 of the Localism Act 2011 and the provisions of the Homelessness Act 2002.
 - (b) If a predecessor authority receives a report from an auditor or investigator, that report shall immediately be copied to the correct officer of the shadow authority. Additionally, a predecessor authority shall not change its policies or procedures in light of a report without first consulting the shadow authority on the proposed changes.

Transfer of property, rights and liabilities (together known as the ‘Assets’)



The mechanism by which Asset transfers should take place will depend upon whether the re-organisation is to a single new unitary authority or multiple unitary authorities.

The starting point for the transfer of Assets on re-organisation is the Local Government (Structural Changes) (Transfer of Functions, Property, Rights and Liabilities) Regulations 2008/2176 (**2008 Regulations**). These are applicable “subject to any provision for the transfer of functions, property, rights or liabilities included in other regulations under Chapter 1 of Part 1 of the Local Government and Public Involvement in Health Act 2007” (Regulation 1).

The 2008 Regulations will also not apply to any Assets which are subject to an agreement made pursuant to S16 of the 2007 Act, which stipulates that those bodies subject to an order under S7 of the 2007 Act regarding re-organisation can enter in to agreements detailing what should occur in relation to any Assets. These agreements can cover a broad range of issues.

The explanatory note to the 2008 Regulations in fact makes it clear that there is an expectation that in most instances the vast majority of Assets will be subject to agreements made under S16 prior to the re-organisation date, with the 2008 Regulations acting as a backstop to enact a transfer if not all Assets are dealt with. This means that a significant amount of work will be required of all authorities involved in a re-organisation to identify all of their Assets and to complete these agreements.

We have outlined in tables below the position under the 2008 Regulations in relation to the transfer of different types of Assets depending on whether the re-organisation involves the creation of one, or multiple unitary authorities.

Transfer of property, rights and liabilities (together known as the ‘Assets’)

Re-organisation to a single unitary

Asset	Effect of 2008 Regulations
Functions	Functions of the dissolved authorities shall become functions of the new unitary authority on the re-organisation date (Regulation 4)
Property, rights and liabilities	All property, rights and liabilities of the predecessor authorities shall on the re-organisation date vest in, and transfer to, the unitary authority (Regulation 7)

Re-organisation to more than one unitary

Asset	Effect of 2008 Regulations
Functions	Functions of the predecessor authorities will transfer to both of, or all of, the new unitary authorities on the re-organisation date. However, where a particular function was exercisable only in respect of a particular geographical area then that function will only transfer to a unitary authority that includes that area within its boundary. (Regulation 5)
Property held for charitable purposes	<p>If property is held for the benefit of a particular area (or for the benefit of residents of that area) then it shall vest on the re-organisation date in whichever unitary authority covers the whole, or the largest part, of that area.</p> <p>Otherwise property shall vest on the re-organisation date in whichever unitary authority covers the whole, or the largest part, of the predecessor authority’s total area.</p> <p>Any property which has not vested in a unitary authority by the mechanisms above shall vest on the re-organisation date in whichever unitary authority is agreed not less than 3 months before the re-organisation date, or as determined by the Charity Commissioners.</p> <p>(Regulation 9)</p>

Transfer of property, rights and liabilities (together known as the ‘Assets’)

Re-organisation to more than one unitary (cont.)

Asset	Effect of 2008 Regulations
Financial Reserves	<p>On the re-organisation date the financial reserves, or a proportion of the financial reserves agreed between the successor authorities, shall vest in the successor authority nominated by the Secretary of State on trust for itself and the other unitary authorities concerned.</p> <p>Within three months of the re-organisation date, the nominated authority shall divide the financial reserves as agreed by the unitary authorities concerned or, failing agreement, as determined by the the Secretary of State.</p> <p>(Regulation 10)</p>
Other Property	<p>Other property is a broad description, but includes land as well as other less obvious forms of property such as intellectual property rights and commercial contracts. These are listed in detail in Regulation 11(1).</p> <p>There is an obligation on successor authorities to agree how property (including land) will be divided amongst the successor authorities. These agreements do not actually give effect to the property transfers which shall occur automatically on the re-organisation date (under Regulation 12). However, this does mean that the property agreements must be completed before that date.</p> <p>In addition to determining which property will transfer to which successor authority, the agreements must:</p> <ul style="list-style-type: none"> • identify land judged to be surplus to the requirements of the successor authorities; and • express how land disposal receipts should be distributed amongst the successor authorities. <p>Where land is transferred to more than one successor authority, the default position is that such land will be held by those authorities as joint tenants rather than tenants in common. In all other cases, other property transferred to more than one unitary shall be held jointly and severally.</p>

Commercial considerations

Contract management

Re-organisation to a unitary system is likely to result in duplication of service contracts with suppliers for the same or similar services. Therefore there may potentially be a number of providers providing the same services to the new authority.

Streamlining into a unitary authority will therefore necessitate a thorough review of all existing contracts to identify where overlaps exists and to evaluate which of the contracts are surplus. The authorities will need to consider how best to deal with this duplication. Factors to consider will be:

- **Whether an agreement should or can be terminated.** When considering this the authorities should look to the duration of the term that remains before expiry and the termination rights under the agreement. Some agreements may also have termination payments or other financial penalties and so the authorities will need to weigh up whether it is worth paying these penalties in the circumstances or whether it would be more cost effective simply to continue the agreement to expiry.
- **Whether a service should be re-procured following re-organisation.** It may be prudent to identify services which should be re-procured following re-organisation in order to benefit from the unitary authority's increased economy of scale and thus buying power.

Branding

Every authority has a name and a logo; the Warwickshire County Council bear, the Manchester City Council coat of arms, to name but a few.

With each predecessor authority having its own name and logo, a new name and logo will need to be agreed upon for the unitary authority. Once a new name and/or logo has been agreed upon the unitary authority should register this as a trade mark. A large number of local authorities choose to register their logo as a trade mark (a sign or symbol used to distinguish products and services from those of other traders). The benefit of registration is the ability to prevent others from using it without permission. Although an unregistered trade mark is capable of protection, infringement is often difficult to prove.

When deciding on a new name/logo the following should be considered:

- Consideration should be given to what the logo will represent. It can be assumed that each individual authority will have well-established logos that they may want to use moving forward, therefore it is important that all entities agree the new name and logo moving forwards.
- How will the name/logo be protected, and which entity will pay for its registration (if the decision is made to register the trade marks to one of the current authorities prior to the re-organisation date)?

Contract management

In order to be registerable a trade mark must be:

- capable of being represented graphically;
- distinctive;
- capable of distinguishing goods or services; and
- not excluded by statute.

If it is decided that the new logo and name will be registered, clearance searches will need to be undertaken to ensure that the proposed branding would not infringe any third party rights.

Intellectual property

Copyright will almost certainly exist in some form in the work of local authorities. The right protects original artistic, musical, dramatic and literary works, including computer programs, sound recordings, films and broadcasts. It is possible that authorities have produced leaflets, booklets, training documentation and even radio and television adverts that contain copyright. There will almost certainly be copyright in each authorities' websites. It will be important when becoming a unitary authority for consideration to be given to whether copyright in any materials will need to be transferred to the new unitary.

Often local authorities will outsource certain services to third party providers, e.g. website developers/marketing agencies/software providers. Where the third parties retain ownership of the copyright to the outputs, the third party will usually grant the authority a licence to use the copyright. In these instances, authorities looking to merge will need to review their licences to establish the extent to which the unitary authority will still need to use them and whether it would be financially prudent to terminate those licences identified as redundant post re-organisation prior to the re-organisation date.

Authorities may also have know-how in business methods, computer systems, customer lists etc. Know-how is information which, to the extent that it is confidential, can be protected under the legal principle of confidential information but cannot be formally registered. Any know-how that will need to be used by the unitary authority post re-organisation will need to be identified. Strict confidentiality provisions should be put in place to ensure that the know-how is not made publicly available.

Local authorities should therefore take stock of their intellectual property portfolio prior to the re-organisation. It will be necessary to identify which intellectual property will be required post re-organisation and to identify which new unitary authority requires it, as well as identifying whether there is any intellectual property which will no longer be needed and deciding what should be done with this.

Property considerations



The principles by which assets, including property will transfer following re-organisation are described in detail in the **‘Transfer of Property, Rights and Liabilities’** section.

To avoid unintended consequences, particularly where more than one unitary authority is to be created, careful consideration should be given by both the predecessor authorities and the shadow authorities to the arrangements for each of the current authorities’ properties including in very basic terms, which unitary authority each property should be transferred to.

The first stage of these deliberations must be to identify all of the land and buildings in which the current authorities have an interest, whether a legal freehold or leasehold interest or a contractual (or even less formal) occupational arrangement such as a licence to occupy or memorandum of terms of occupation (perhaps with another authority or other public body).

One of the key drivers behind the re-organisation is likely to be a desire to drive efficiency savings which may involve operating with a smaller number of people from fewer buildings as well as through process and systems improvements. By way of a simple example the new unitary authority is unlikely to need more than one ‘Town Hall’ or head office location.

The new unitary authority might need a presence in more than one location for particular functions (e.g. a ‘parks and recreation depot’) but it would be wasteful for all functions to be replicated across all existing locations, so the authority will need to consider how to rationalise surplus and underutilised property.

Surplus Property

If a whole property will be surplus to the new unitary authority’s requirements then it should be disposed of on ‘best consideration’ terms.

Property considerations

Completing the sale of a surplus property prior to re-organisation might make the re-organisation cleaner but may yield a lower return because the market might regard it as an opportunity to buy 'on the cheap'. Deferring the sale until after re-organisation may yield a better return but could result in void costs during the intervening period.

If these considerations apply to operational premises, they will be magnified if any of the current authorities own land with development potential which in normal circumstances the authority might consider selling on a 'conditional on planning' basis or on the basis of a base sale price with potential future 'overage' in the event that development is permitted and/or commenced, or even applying for planning permission for development and making a disposal of consented development land.

Disposal of property to third parties prior to re-organisation may of course necessitate valuation advice and preparatory due diligence to be undertaken. Predecessor authorities should be realistic about whether they have the time and resources to complete this in advance of re-organisation.

Under-utilised property

Properties may already be underutilised by the current authority owner, or may become underutilised by the unitary authority following re-organisation. If a property has been identified as having alternative use potential (perhaps conversion into a hotel) then realistically it may not be possible to organise a disposal or to procure a development partner and to agree all relevant legal documents until after the re-organisation takes place. It may therefore be more appropriate to plan for the new unitary authority to dispose of such properties after re-organisation.

Leasehold property

There are a number of other relevant considerations in relation to surplus (and other) leasehold property:

- Does the current authority need landlord's prior written consent to dispose of (assign) surplus leasehold property?
- Is the lease term due to expire soon or are there any opportunities to exercise a tenant break clause?
- Can a surrender of the lease be negotiated with the landlord, albeit at a price?
- Are the premises in the state required by the lease or can steps be taken to bring them up to scratch?
- Have any alterations been carried out that will require reinstatement?

Property considerations

- If let property is transferred whether by regulation or agreement, tenants will need to be notified of the new landlord details and most importantly new rent payment arrangements will need to be put in place.
- Regardless of whether the existing authority is landlord or tenant it would be prudent to notify the other parties to any lease of the transfer or assignment.
- It may be prudent to audit leases to determine these points, where relevant, and to check any site specific provisions that might impact on assignment.

Other general property issues

This list of considerations is by no means exhaustive, but it is worth also considering the following:

- If the current authority occupies a property under a contractual licence or on informal terms, it may be appropriate to terminate those arrangements (in the case of surplus property) or to negotiate a more robust lease (if the property will be required by the new unitary authority).
- Whether any property is currently listed as an Asset of Community Value or may be vulnerable to such an application.
- Whether transfers or disposals may be simplified by terminating existing occupancies to enable transfer/disposal with vacant possession.
- Are there any boundary discrepancies, arrears, disputes or any other matters that might delay or prevent a disposal?
- Are there any 'informal' arrangements with third parties (other authorities e.g. parish councils, voluntary organisations etc.) that either need to be regularised or terminated?
- All relevant authorities will need to take specialist tax advice on the implications of property (and other assets) transferring to the new unitary authority whether pursuant to the Regulations or by specific agreement.

Staff and employment considerations

The legal position in relation to staff transfers

The incorporation of one organisation into another, or the merger of more than one organisation into an entirely new entity will result in the transfer of employees.

In the context of a re-organisation of local government structures into a unitary system, Regulation 3 of the Local Government (Structural and Boundary Changes) (Staffing) Regulations 2008 (**Employment Regulations**) confirms that that such a transfer of functions shall constitute a relevant transfer under the TUPE Regulations, despite this involving the transfer of some administrative functions. The only caveat in respect of this relates to the position of the head of paid service (see below). The Employment Regulations also provide further detail regarding some specific situations which are unique in the context of re-organisation and transfers between local government. Below are some of the key points the Employment Regulations outline.

- **There is a requirement to recruit a ‘head of paid service’ for the new single-tier authority through open competition.** This has to be done through complying with the provisions set out in Schedule 1 of the Local Authorities (Standing Orders) Regulations 1993 (**1993 Regulations**). This includes drawing up a job description, advertising the role and interviewing all qualified applicants for the post.
- **A former chief executive who does not receive the post in the new shadow authority or single-tier authority shall be deemed to be redundant for certain purposes.** Regulation 5 indicates that any head of service (chief executive) whose employment would have continued but for the appointment of another person to the post of the single-tier authority (in accordance with the 1993 Regulations) shall be treated as if they had been dismissed by reason of redundancy by their employing authority for

the purposes of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 and the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007. There is no requirement on the incumbent chief executive to compete for the post in the successor single-tier authority to be deemed to have been made redundant for these purposes. Any dismissal in these circumstances is not treated as falling within the wider definition of “disciplinary action” for the purposes of the Local Authorities (Standing Orders) (England) Regulations 2001.

- **The Local Government Pension Scheme shall apply to a shadow authority (explained earlier in this guide) during the transitional period of re-organisation.** This is outlined in Regulation 6 and is notwithstanding the fact it does not have the full functions and powers of a district or county council.

In addition to the Employment Regulations the Department for Communities and Local Government also published the “local government restructuring: guidance on staffing issues” paper shortly after the 2007 Act which remains useful and contains detailed guidance with pertinence for local authorities.

Local authorities will also need to be mindful of whether the Restriction of Public Sector Exit Payments Regulations 2020 (**Exit Payments Regulations**) apply to any proposed exit payments to be made to any staff who are leaving as part of the reorganisation. The Exit Payments Regulations may limit the amount of an exit payment which can be made, or where it is possible for the cap to be relaxed, require additional procedural steps and reporting obligations to be complied with.

Staff and employment considerations

Practical tips for dealing with the transfer

Employees are an organisation's greatest asset and, whilst there may be shared aims and approaches across local authorities, each organisation develops its own unique cultural style through those employees. The re-organisation of authorities into unitary authorities will inevitably impact on employees across the authorities but there are steps that can be taken to smooth the transition process.

Communication and planning are key to ensuring a successful re-organisation - from identifying any cultural barriers to engaging staff in the process. This can be a time consuming process but a structured approach can ensure that employees are receiving the correct messages about the process and avoid speculation and unnecessary concerns from circulating. A communications plan can also ensure that appropriate consultation is scheduled whilst still allowing delivery of day-to-day services to continue.

Consultation and communication will need to include any appropriate union representatives. Early union engagement in the process can again smooth the transition by ensuring that concerns can be considered and addressed at an early stage. Positive union support in respect of any proposals being considered can go a long way in maintaining a good level of employee engagement in the process.

Early identification of any workforce changes will also be important - having a workforce that is fit for purpose is essential. Merging organisations can inevitably result in a degree of duplication of roles, require the creation of new roles, or result in changes to existing roles to ensure the aims and objectives of the unitary authority are met. Any potential changes will affect the type or nature of consultation required. For example, whether there is the need to formally collectively consult in respect of redundancies or whether there are particular 'measures' that need to be disclosed in advance of any transfer.

Authorities should be aware of the need to provide accurate employee data as a result of any transfer of employees. Consideration will also need to be given as to how any employment liabilities (such as existing tribunal claims) will be dealt with.

Whilst there is likely to be a considerable degree of consistency across local authority terms and conditions, there may still be unique local terms in place to be accommodated, and different approaches taken to non-contractual policies and procedures that will need to be resolved.

Moving forwards, creating a cohesive culture in the new unitary authority will be necessary to enable the unitary authority to meet its objectives and to facilitate collaborative working within the organisation. Some of this will need to be driven by the senior management team - it is important to get these individuals on board with the new identity, strategy and vision.

Finance considerations and council tax



The Local Government (Structural Changes) (Finance) Regulations 2008/3022 (**Finance Regulations**) make provisions in relation to the exercise of functions under the Local Government Finance Act 1988 (**1988 Act**) and the Local Government Finance Act 1992 (**1992 Act**) by local authorities where re-organisation occurs. The two key areas for which they make provisions are:

- the exercise of functions under Part 3 of the 1988 Act (in relation to non-domestic rates) and Part 1 of the 1992 Act (in relation to council tax); and
- the equalisation of the amounts of council tax payable.

Exercise of functions

Regulations 3 and 4 concern responsibility for functions exercised under that 1988 Act and the 1992 Act, as well as those exercised in relation to Part 4 of the Finance Regulations. For the purpose of restructuring which involves the creation of a newly constituted unitary authority Regulation 3 is of relevance.

The Finance Regulations provide that during the period leading up to the re-organisation date the 'shadow authority' shall exercise functions under Part 3 of the 1998 Act and Part 1 of the 1992 Act in relation to the first year, which 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.

The Finance Regulations also provide for the continuity of functions exercised under the aforementioned Parts; anything done under those Parts before the re-organisation date must be treated as if it had been done by or in relation to the unitary authority post re-organisation.

Finance considerations and council tax

Equalisation of council tax

In areas where restructuring is occurring under a 2007 Act order, there may be (for a variety of reasons) differences in the basic amounts of council tax payable under the different authority areas prior to re-organisation. In order to equalise the council tax payable in the new unitary authority area, a newly constituted unitary authority is able to calculate its council tax using the methodology under Part 4 of the Finance Regulations for a transitional period.

Part 4 of the Finance Regulations modifies the operation of the council tax provisions in the 1992 Act, allowing the new unitary authority to use different methods of comparison to determine whether its council tax increase is excessive in accordance with its preferred approach to equalisation.

Once the council tax levels for all of the individual areas which make up the unitary authority have been equalised under Part 4, that Part no longer has any application.

The starting point for Part 4 is Regulation 15A which provides that different modifications apply for the first, and the second, to seventh, and eighth years following the date of the structural change to the local authorities (the tax must balance-out between the new and predecessor areas by the eighth year after re-organisation).

It should be noted that different predecessor authorities are able to equalise their levels of council tax with the authority with the highest council tax rates on different timescales. This makes it possible for one area to equalise in the second year and another to equalise in the sixth.

Insurance considerations



When looking at re-organisation of local government there are many considerations that need to be made in terms of the local authority's risk position.

Firstly, re-organisation may involve transfer of a range of risks, including reported and incurred but not reported. Risks that are in particular need of consideration are:

- Recent incidents and incidents involving children or vulnerable adults where the limitation period is still live. The limitation period for bringing a tortious claim is usually 3 years from the date of incident. However the limitation period for children does not start running until they are aged 18 and ends on their 21st birthday. With regards to vulnerable adults who lack capacity to litigate the limitation period only starts to run if they are deemed to have capacity and therefore in some instances the limitation will never start and end.
- Instances of disease and abuse where delayed notification is common can pose a risk for local government re-organisation. Although the limitation period may have already expired, the court often exercises its discretion in abuse cases to allow the claimant to proceed with their claim.
- Financial 'abuse'. These types of activities can be concealed over a long period of time and may only come to light many years later, once significant losses have been incurred, potentially affecting multiple service users.

Insurance considerations



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Secondly, focus needs to be given to external service providers for several reasons:

- Independent contractors are increasingly coming within the scope of vicarious liability. Understanding past relationships with independent contractors will be key to assessing such claims. Establishing details of contractual indemnities and the insurance position of contractors may mitigate risk.
- Re-organisation may provide an opportunity to review the risks created by service delivery models, and to take steps to mitigate those risks including reviewing contractual provisions and the level of protection offered by contractors' insurance.
- Vicarious liability is very much a developing area with current live cases exploring the extent to which authorities can be liable for the staff of external organisations. Planning for continuing extension of liabilities for contractors may be the most prudent course.

Thirdly, management of information pertaining to risk should be systematic. It is not realistic or appropriate to attempt to retain all information, but key items should be identified and secured. File destruction policies (including for predecessor organisations) should be retained to evidence the basis of destruction of documents.

Fourthly, where re-organisations result in personnel changes organisational knowledge can be lost. Therefore it will be necessary to schedule handovers between changing personnel in advance of the re-organisation to ensure as much of this knowledge is retained as possible.

Finally, in relation to supplier contracts and insurance records, mitigating actions should be taken when considering restructuring to:

- Reviewing ongoing or inherited supplier arrangements and contracts to ensure they are compliant with current regulations and best practice and to understand risks.
- Securing historical insurance records for predecessor organisations (including in some cases legacy cover for predecessors to past re-organisations), and for contractors.
- Engaging with any insurers that you have not worked with before.

If you have any further queries about local government re-organisation generally, or you are interested in exploring potential re-organisation routes in your local government area, we would love to talk to you. Please contact one of our specialist public sector team using the contact details to the left.

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