EXPLANATORY MEMORANDUM TO

THE LOCAL GOVERNMENT (STRUCTURAL AND BOUNDARY CHANGES) (CONTROL OF DISPOSALS ETC) (AMENDMENT) (ENGLAND) ORDER 2026

2026 No. 763

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee.

2. Declaration

2.1 Alison McGovern MP, Minister of State for Local Government and Homelessness at the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

2.2 Ruth Miller, Deputy Director for Local Government Reorganisation at the Ministry of Housing, Communities and Local Government, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Gemma Penn at the Ministry of Housing, Communities and Local Government can be contacted with any queries regarding the instrument: LGReorganisation@communities.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The instrument updates the legislative framework enabling directions to be issued to councils undergoing local government reorganisation. The framework is intended to protect the new councils from financial decisions taken by existing councils during transition that could have a negative impact on them. The instrument amends the aggregation date to be used for assessing whether financial thresholds have been met.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

5.1 During local government reorganisation (which covers both unitarisation and boundary change), section 24 of the enabling legislation, the Local Government and

Public Involvement in Health Act 2007 ("the 2007 Act"), allows the Secretary of State to issue a direction, known as a section 24 direction. This power helps to ensure that financial decisions taken by predecessor councils (councils which are to be dissolved) during the transition period do not undermine the benefits of reorganisation or adversely affect the financial position or future decision-making discretion of the successor councils. The framework operates through two parameters set in legislation:

- Financial thresholds - £100,000 for land disposals and certain non-capital contracts, and £1,000,000 for capital contracts.
- An aggregation date - 31 December 2006, after which land disposals and contracts must be taken into account in considering whether the financial thresholds have been exceeded.

5.2 The section 24 protection requires predecessor councils to obtain the consent of a specified person before entering into certain contracts, disposing of land, or committing reserves above the specified financial thresholds. The specified person may be the Secretary of State or such authority or other person as the Secretary of State thinks appropriate.

5.3 When making directions under section 24, the Secretary of State typically specifies the transition body for the successor council for each area. To manage routine financial decision-making, general consents can be provided to let most "business as usual" activity continue without needing case-by-case approval. Specific consents may then be required for decisions outside the scope of the general consents. The Government's policy is to issue a section 24 direction to councils in each area for which a structural changes order is made so that the requirement for consents is effective shortly after the first elections to the new councils.

5.4 The instrument updates the aggregation date from which financial commitments are taken account of when determining whether those thresholds are exceeded. The original aggregation date of 31 December 2006 was set when the framework was introduced in the 2007 Act and now requires authorities to assess financial commitments over a significantly longer period than originally envisaged. The instrument updates the aggregation date to 31 March 2025. Section 29 of the 2007 Act envisages precisely this scenario and provides a power for the Secretary of State to amend the date so that it continues to work in relation to future rounds of reorganisation.

5.5 Surrey is the first area under the current reorganisation programme to have legislation in place to implement a proposal for reorganisation[1]. Councillors that will serve the two new councils – East Surrey and West Surrey – were elected in May 2026 ahead of the new structures going live from 1 April 2027. These councillors form the shadow council during the shadow period and are the transition body for the successor council for each area. The section 24 direction is intended to be issued to come into force in early July 2026 to allow time for the shadow councils to make the necessary arrangements following the elections in May 2026.

5.6 The policy responds to practical concerns raised by councils in Surrey about the availability of historic financial records, which may limit their ability to identify transactions dating back to 2007. The current aggregation date creates a risk that councils would be unable to demonstrate compliance with the direction. If the date is

[1] The Surrey (Structural Changes) Order 2026 (S.I. 2006 / 264): https://www.legislation.gov.uk/uksi/2026/264/contents/made

not changed, it is almost certain that all councils to which directions are issued would be in breach in relation to any proposed financial decision following the direction coming into force. Updating the aggregation date is therefore intended to ensure the framework operates as originally intended in a practical and proportionate way while maintaining oversight of significant financial commitments.

5.7 Section 29 also provides for the Secretary of State to update the threshold values mentioned at paragraph 5.1. However, the Government has decided not to change the specified values. Surrey councils did not raise concerns, and although inflation has reduced their real-terms value since 2007, they operate as broad indicators of materiality. Unlike the aggregation date, the thresholds are more readily managed within the consents process.

What was the previous policy, how is this different?

5.8 The amendment is intended to restore the original policy position which has been eroded by the passage of time, ensuring the aggregation date provision works as envisaged. The original aggregation date specified for land disposals and contracts (section 27(1) and (3) of the 2007 Act respectively) was "after 31 December 2006". This date was intended to work for the round of reorganisation that was initiated by invitations issued to councils in two-tier areas in England in October 2006[2]. Where the resulting proposals were implemented, the legislation was made in 2008 with the new structures going live from 1 April 2009[3].

5.9 To approximate the original timing, whilst allowing the new date to coincide with the local government financial year, the new aggregation date is "after 31 March 2025". Invitations to councils for the current round of reorganisation were issued on 5 February 2025[4] following announcement in the English Devolution White Paper[5] on 16 December 2024. Legislation implementing a proposal has been made for Surrey as set out at paragraph 5.4 and the Government's intention is to make legislation for the remaining areas enabling elections to new councils in May 2027 with new structures going live on 1 April 2028.

6. Legislative and Legal Context

How has the law changed?

6.1 Provision relating to section 24 directions are set out in Chapter 2 (Control of disposals etc) of Part 1 of the 2007 Act. Section 24 (Authorities dissolved by orders: control of disposals, contracts and reserves) sets out the Secretary of State's direction-making power. A direction may require authorities that are to be dissolved to obtain consent from a specified person, usually the new unitary council/s, before they can:

- dispose of land if the consideration for it exceeds £100,000;
- enter into a capital contract where the authority concerned would be required to pay consideration of more than £1,000,000 or where the contract includes a term allowing the consideration to be varied;

[2] Invitations to councils in England (2006): https://webarchive.nationalarchives.gov.uk/ukgwa/20120919163806mp_/http://www.communities.gov.uk/documents/localgovernment/pdf/153400.pdf

[3] Reorganisation was implemented in Bedford, Cheshire, Cornwall, County Durham, Northumberland, Shropshire and Wiltshire.

[4] https://www.gov.uk/government/publications/local-government-reorganisation-invitation-to-local-authorities-in-two-tier-areas

[5] https://www.gov.uk/government/publications/english-devolution-white-paper-power-and-partnership-foundations-for-growth/english-devolution-white-paper

- enter into any non-capital contract where the consideration exceeds £100,000 and the contract extends beyond a date specified in the direction, or under the terms of the contract, the period of the contract may be extended beyond that date;
- include an amount of reserves in the calculation of its budget requirement for council tax purposes.

6.2 Section 26 (Directions: supplementary) sets out that consent may be given for a particular disposal or contract, or for disposals or contracts of any description. Consent may be given either unconditionally or subject to conditions.

6.3 Section 27 (Consideration to be taken into account for the purposes of direction) provides that for the purpose of deciding whether the financial limits in section 24 have been exceeded, the consideration with respect to certain disposals and contracts shall be taken into account. In particular:

- the consideration in relation to other disposals of land made after 31 December 2006 shall be taken into account (s.27(1));
- the consideration is that in respect of contracts entered into by the authority after 31 December 2006 which are either with the same contractor as the contract in question, or which relate to the same or a similar description of subject matter as the contract in question shall also be taken into account (s.27(2) and (3)).

6.4 Section 28 (Contraventions of direction) sets out that land disposals and contracts entered into without consent will be respectively void and unenforceable against the successor authority.

6.5 Section 29 (Power to amend) allows the Secretary of State to amend the limits set out in section 24(1) and the date specified in section 27(1) and (3), so that appropriate directions may continue to be made in the future, after the first wave of restructuring which took place in 2008-09.

6.6 The instrument is made using the power to amend at section 29 and amends the aggregation date specified in section 27(1) and (3), from “31 December 2006” to “31 March 2025”. The instrument is the first use of this amending power.

Why was this approach taken to change the law?

6.7 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 As set out at paragraph 5.6, updating the aggregation date addresses the practical concerns raised by Surrey councils about their ability to identify and verify financial commitments dating back to 2006, while retaining the statutory safeguard of the section 24 direction intended by Parliament. The Department invited written representations from Surrey councils on a section 24 direction. Representations were received from Surrey County Council and two district councils jointly, and separately from the remaining nine district councils. Both sets of representations raised concerns that the current aggregation date of 31 December 2006 created practical challenges as it captures financial information dating back almost two decades. Financial systems and record-keeping practices have changed significantly during that time. Surrey councils suggested that a more recent aggregation date should be used, suggesting 1 April 2021.

7.2 The concern raised by councils was not simply that the date is historic, but that authorities may be unable in practice to identify and verify cumulative commitments dating back to 2006. This creates a risk that the section 24 framework is unable/unfit to operate as intended, particularly where councils cannot confidently evidence the full history of relevant transactions. Updating the aggregation date is therefore a targeted use of the power in section 29 to ensure the framework remains workable in practice, while preserving the statutory safeguard over significant financial commitments.

7.3 The Department has also engaged with sector representatives, including the Department's Sector Advisory Group ("the Group")[6], which comprises senior local government leaders and experts who provide advice on policy development, implementation, and risk management. This engagement was used to test the practical operation of the current framework and potential options for amendment.

7.4 The Group recognised the concerns raised by Surrey councils that the current aggregation date is outdated and agreed that aligning the aggregation date with the financial year would more practically support the identification of relevant financial information. The Group agreed that setting the aggregation date at 1 April 2025 would better reflect the original policy intention of the framework, by providing a clear and proportionate period ahead of vesting day, while reducing unnecessary administrative burden associated with tracing historic transactions. This date would also continue to work as originally envisaged for the other councils undergoing reorganisation in the next few years. The Group agreed that the current thresholds did not need to be updated as they are a broad indicator of materiality – more precise figures would vary between councils, including between counties and districts and it would not be possible to achieve "one size fits all" figures.

7.5 The Department also discussed the approach with other sector experts, including representatives from the Chartered Institute of Public Finance and Accountancy. These discussions reinforced the importance of ensuring that the section 24 framework remains workable in practice and continues to support sound financial governance during reorganisation. In particular, they emphasised that updating the aggregation date would improve operability of the framework, while retaining the existing financial thresholds would avoid introducing unnecessary complexity for little or no benefit.

8. Applicable Guidance

8.1 The Government does not intend to publish any guidance relating to this instrument. However, each direction to councils in an area undergoing reorganisation is accompanied by an Explanatory Note[7].

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because there is no impact on businesses.

[6] https://www.gov.uk/government/groups/local-government-reorganisation-advisory-group

[7] Examples of section 24 Directions and Explanatory Notes issued under the previous government can be found here: https://www.gov.uk/government/publications/cumbria-somerset-and-north-yorkshire-councils-direction

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies. The instrument updates a technical matter in relation to a section 24 direction. Councils in receipt of a section 24 direction will continue to make funding and land disposal decisions and to consider general and specific consents as they would have done previously.

9.3 The legislation does not impact small or micro businesses.

9.4 The impact on the public sector is marginal. The instrument updates the aggregation date used for assessing land disposals and contracts in relation to specified thresholds in connection with section 24 directions. These directions apply solely to local authorities undergoing reorganisation during the transition period. The update will ensure the provision for section 24 notices operates as originally envisaged when the parent legislation was introduced, and will ensure affected councils are able to identify relevant contracts etc. necessary to comply with a direction.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The Government does not intend to monitor this legislation formally.

10.2 The instrument does not include a statutory review clause. It is anticipated that the new aggregation date will apply in relation to the current programme of reorganisation. In the longer term, and as envisaged in the parent legislation, a further update may be deemed helpful to reflect the passage of time and availability of relevant council financial records to inform the operation of future section 24 directions.

10.3

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The instrument is made using the power at section 29(1)(b) of the 2007 Act to amend the aggregation date specified in section 27(1) and (3), from "31 December 2006" to "31 March 2025". The instrument is the first use of this amending power.

12. European Convention on Human Rights

12.1 The Minister of State for Local Government and Homelessness at the Ministry of Housing, Communities and Local Government has made the following statement regarding Human Rights:
"In my view the provisions of the Local Government (Structural and Boundary Changes) (Control of Disposals etc) (Amendment) (England) Order 2026 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").