STATUTORY INSTRUMENTS

2009 No. 5

LOCAL GOVERNMENT, ENGLAND

The Local Government (Structural Changes) (Further Financial Provisions and Amendment) Regulations 2009

Made - - - -	*5th January 2009*
Laid before Parliament	*7th January 2009*
Coming into force - -	*29th January 2009*

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, commencement and application

1.—(1) These Regulations may be cited as the Local Government (Structural Changes) (Further Financial Provisions and Amendment) Regulations 2009 and shall come into force on 29th January 2009.

(2) These Regulations, which are of general application, do not affect—

(a) any provision included in other regulations under Chapter 1 of Part 1 of the Local Government and Public Involvement in Health Act 2007 (**b**) (structural and boundary change); or

(b) any matter for which provision is made in an agreement under section 16 of the Local Government and Public Involvement in Health Act 2007 (agreements about incidental matters).

Interpretation

2.—(1) In these Regulations—

"the 1988 Act" means the Local Government Finance Act 1988(**c**);

"the 1992 Act" means the Local Government Finance Act 1992(**d**);

"predecessor council" means a local authority which, by or in consequence of a section 7 order, ceases to exist on the reorganisation date;

"preparing council" means a local authority which, in accordance with a section 7 order, becomes a single tier council on the reorganisation date;

(**a**) 2007 c.28. Section 14(2) provides for section 14(1) to be read with section 15.

(**b**) *See also* section 14(3), which provides that regulations under section 14 have effect subject to any provision included in an order under section 7 or 10.

(**c**) 1988 c.41. Amendments relevant to these Regulations are made by paragraph 16 of Schedule 1 to the Local Government and Public Involvement in Health Act 2007 (c.28).

(**d**) 1992 c.14. Chapter 4A, which includes sections 52X and 52Y, was inserted by the Local Government Act 1999 (c.27), section 30 and Schedule 1. There are other amendments not relevant to these Regulations.

"reorganisation date", in relation to a single tier council, means the date specified in the section 7 order as that on which a structural change comes into effect;

"section 7 order" means an order under section 7 of the 2007 Act;

"shadow council" means an authority (not being a local authority) which, in accordance with a section 7 order, becomes a single tier council on the reorganisation date; and

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

(2) For the purposes of these Regulations—

(a) a single tier council is related to a predecessor council if on the reorganisation date the area of the single tier council includes that of the predecessor council; and

(b) where on the reorganisation date the area of a predecessor council comprises the areas of two or more single tier councils taken together, both or all of those single tier councils are related to the predecessor council.

Establishment of collection funds

3. As regards a single tier council that is related to a predecessor council which is—

(a) a shadow council, or

(b) a preparing council which is a county council,

the date specified for the purposes of subsection (2C) of section 89 of the 1988 Act (collection funds)(**a**) is the date that falls one day after the date on which the predecessor council makes its calculation under section 32 (calculation of budget requirement) of the 1992 Act for the financial year beginning on the reorganisation date.

Establishment of general funds

4. 1st April 2009 is the date specified for the purposes of subsection (3D) of section 91 of the 1988 Act (general funds)(**b**) as regards a single tier council that is related to a predecessor council which is—

(a) a shadow council, or

(b) a preparing council which is a county council.

Treatment of collection fund surpluses and deficits

5. The Local Authorities (Funds) (England) Regulations 1992(**c**) ("the Funds Regulations") shall have effect with the modifications specified in the Schedule to these Regulations.

Anticipation of amounts required to discharge functions of charter trustees

6.—(1) Section 32 of the 1992 Act (calculation of budget requirement) shall have effect in relation to—

(a) a preparing or shadow council which, by virtue of regulation 8 of the Local Government (Structural Changes)(Finance) Regulations 2008(**d**), is the billing authority for an area for any part of which charter trustees are likely to be established on the reorganisation date; and

(b) the financial year beginning on that date,

(**a**) Section 89 is amended by paragraph 16(1) and (3) of Schedule 1 to the Local Government and Public Involvement in Health Act 2007 (c.28).

(**b**) Section 91 is amended by paragraph 16(1) and (4) of Schedule 1 to the Local Government and Public Involvement in Health Act 2007 (c.28).

(**c**) S.I. 1992/2428, amended by S.I. 1994/246 and 1995/2910. There are other amendments not relevant to these Regulations.

(**d**) S. I. 2008/3022. *See* regulation 8 and the definitions of "first year" and "relevant authority" in regulation 1(2).

as if, notwithstanding subsection (6), it required the authority, in making calculations under that section (whether originally of by way of substitute(**a**)), to anticipate the amount likely to be required in that financial year for the discharge of the charter trustees' functions.

(2) An amount anticipated as mentioned in paragraph (1) shall be treated for the purposes of section 34 of the 1992 Act (additional calculations where special items relate to part only of area) as if it were an item mentioned in section 35(1) of that Act (special items for purposes of section 34) relating to the area for which the charter trustees are to act.

(3) Where paragraph (1) applies—

(a) section 37(1) of the 1992 Act (substitute calculations) shall have effect as if after "purpose" there were inserted "and taking into account the modification of that section by regulation 6(1) of the Local Government (Structural Changes) (Further Financial Provisions and Amendment) Regulations 2008"; and

(b) subsection (1)(b) of section 52X of the 1992 Act (calculations to be net of precepts) and subsection (2) of section 52Y of that Act (information for the purposes of Chapter 4A) shall have effect as if references to the aggregate amount of precepts anticipated by a billing authority in pursuance of regulations under section 41 of that Act included references to an amount anticipated under paragraph (1) of this regulation(**b**).

Amendment of the Local Government (Structural Changes) (Transfer of Functions, Property, Rights and Liabilities) Regulations 2008

7. The Local Government (Structural Changes) (Transfer of Functions, Property, Rights and Liabilities) Regulations 2008(**c**) are amended, in regulation 6 (interpretation and application of Part 3), in paragraph (1), by the substitution for the definition of "financial reserves" of—

> ""financial reserves", in relation to a predecessor council and any successor council, means—
>
> (a) the total of such amounts of a description contained in section 69(2A)(b) of the Local Government Finance Act 1992(**d**) (construction of references to expenditure incurred by a billing authority, major precepting authority or local precepting authority); and
>
> (b) the total of the amount of the predecessor council's capital receipts, as defined for the purposes of Chapter 1 of the Local Government Act 2003(**e**)".

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

John Healey
Minister of State
Department for Communities and Local Government

5th January 2009

(**a**) As to substitute calculations, *see* section 37 of the 1992 Act.
(**b**) Chapter 4A, which includes sections 52X and 52Y, was inserted by the Local Government Act 1999 (c.27), section 30 and Schedule 1.
(**c**) S.I. 2008/2176.
(**d**) 1992 c. 14. Section 69(2A) was inserted by paragraph 51(1) and (3) of Schedule 7 to the Local Government Act 2003 (c.26) ("the 2003 Act"). Section 69(2A) broadly corresponds to section 41(3) of the Local Government and Housing Act 1989 (c.42) which was repealed by the 2003 Act, Schedule 8, Part 1.
(**e**) 2003 c.26. As to "capital receipts" *see* section 9(1) of that Act.

SCHEDULE

Regulation 5

MODIFICATIONS OF THE FUNDS REGULATIONS

1. In regulation 2 (interpretation)—

(a) in paragraph (1) insert the following definitions—

""preceding financial year" means the financial year that precedes the relevant year;

"predecessor billing authority" means a predecessor council which, as regards the preceding financial year, is a billing authority for the purposes of Part 1 of the 1992 Act;

"predecessor council" means a local authority which, by or in consequence of a section 7 order, ceases to exist on the reorganisation date;

"predecessor county council" means a predecessor council which is a county council;

"relevant year" means the financial year beginning on the reorganisation date;

"reorganisation date", in relation to a council, means the date specified in the section 7 order as that on which a structural change comes into effect;

"section 7 order" means an order under section 7 of the 2007 Act;

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

"successor council"—

(a) in relation to a predecessor council whose area is to become part of the area of a sole single tier council on the reorganisation date, means the preparing or shadow council which will become that single tier council;

(b) in relation to a predecessor council whose area is to become the area of more than one single tier council on the reorganisation date, means the preparing or shadow councils which will become those single tier councils;"; and

(b) After paragraph (3) insert—

"(4) For the purposes of these Regulations—

(a) a single tier council is related to a billing authority (whether or not a predecessor billing authority) and to a predecessor county council if on the reorganisation date the area of the single tier council includes that of the billing authority or county council; and

(b) where on the reorganisation date the area of a billing authority (whether or not a predecessor billing authority) or a predecessor county council is comprised in the areas of two or more single tier councils taken together, both or all of those single tier councils are related to the authority.".

2. In regulation 5 (information on schedules of instalments), omit paragraph (1)

3. In regulation 11 (apportionment of and liability for surpluses and deficits)—

(a) in paragraph (2), for "Any" substitute "Subject to paragraphs (2A) to (2C), any";

(b) after paragraph (2), insert—

"(2A) The amounts estimated by a shadow council, or a preparing council which is a county council, as the aggregate of—

(a) the amounts that, but for the section 7 order, would have belonged to each of its predecessor billing authorities as the billing authority's share of any surplus in its collection fund as regards the preceding financial year; and

(b) the amounts that, but for the section 7 order, would have been borne by each of its predecessor billing authorities as the billing authority's share of any deficit in its collection fund as regards the preceding financial year,

shall be treated, as regards the relevant year, as amounts estimated as belonging to or to be borne by the related single tier council.

(2B) The amount of any surplus or deficit in its collection fund estimated by a council which is both—

(a) a billing authority as regards the preceding financial year, and

(b) a single tier council as regards the relevant year,

(a "continuing council") as an amount that, but for the section 7 order relevant to the continuing council, the continuing council would have been required to treat as the amount of the surplus or deficit estimated as belonging to or to be borne by its related predecessor county council as regards the relevant year, shall be treated, as regards that year, as the amount of the surplus or deficit estimated as belonging to or to be borne by the continuing council (in addition to any amount that it is entitled, in accordance with paragraph (2), to treat as belonging to or to be borne by it).

(2C) The amount estimated by a shadow council, or a preparing council which is a county council, to be the amount of any surplus or deficit in the collection fund of each of its predecessor billing authorities that, but for the section 7 order relevant to its related predecessor county council, the predecessor billing authority would have been required to treat as the amount estimated as belonging to or to be borne by its related predecessor county council as regards the relevant year, shall be treated, as regards that year, as the amount of the surplus or deficit estimated as belonging to or to be borne by the related single tier council."; and

(c) After paragraph (3) insert—

"(4) Each predecessor billing authority shall, at the same time as it informs its relevant major precepting authorities by notice in accordance with paragraph (3) (a "paragraph (3) notice"), send a copy of the paragraph (3) notice to its related successor council.

(5) As soon as practicable after a shadow council or a preparing council which is a county council receives a copy of a paragraph (3) notice, it shall prepare a schedule of instalments(**a**) of amounts payable in the relevant year—

(a) on the basis of the information contained in the paragraph (3) notice, and

(c) in accordance with regulation 4.".

(**a**) As to "schedule of instalments", *see* the definition in regulation 2(1) of S.I. 1992/2428.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 1 of the Local Government and Public Involvement in Health Act 2007 (the "2007 Act") provides for the establishment of a single tier of local government for areas in England. There is a single tier of local government for an area if there is either a county council and no district councils for that area, or a district council and no county council for that area (section 1(2) of the 2007 Act). Where the Secretary of State has received a proposal or a recommendation that there should be a single tier of local government for an area, 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 exercise of certain functions for the purposes of, and in consequence of, orders made by the Secretary of State under section 7 of the 2007 Act ("section 7 orders"). Section 14(3) of the 2007 Act provides for these Regulations to have effect subject to any provision included in such an order.

Regulation 1(2) provides that these Regulations have no effect on matters for which provision has been made in other regulations under Chapter 1 of Part 1 of the 2007 Act or in agreements under section 16 of the 2007 Act.

Regulation 2 contains definitions.

Regulation 3 specifies for the purposes of section 89(2C) of the Local Government Finance Act 1988 ("the 1988 Act") the date on which a single tier council that succeeds a shadow council or a preparing council which is a county council is to establish a collection fund. The specified date is that which falls one day after the shadow council or, as the case may be, the preparing county council makes its calculations under section 32 of the Local Government Finance Act 1992 ("the 1992 Act") for the financial year beginning on the reorganisation date.

Regulation 4 specifies 1st April 2009 as the date on which a single tier council that succeeds a shadow council or a preparing council which is a county council is to establish its general fund. The date is specified for the purposes of section 91(3D) of the 1988 Act.

Regulation 5 modifies the Local Authorities (Funds) (England) Regulations 1992. The effect of the modifications, which are set out in the Schedule to the Regulations, requires a shadow council or a preparing council which is a county council to deal with the allocation of surpluses and deficits in respect of the year ending immediately before the reorganisation date in the collection funds of councils which will cease to exist on that date. The amounts allocated to predecessor district councils as their share of surpluses and deficits in their collection funds are to be treated as shares of surpluses and deficits of those predecessor councils' related single tier councils. A district council which is both a billing authority for the purposes of Part 1 of the 1992 Act (council tax) and a single tier council may retain the share of any surplus or deficit in its own collection fund that would have passed to the county council (as a major precepting authority) if that council had continued to exist. (The billing authority is entitled to this share in addition to the share to which it is entitled as billing authority.) The amount of a predecessor county council's share (as a major precepting authority) of any surplus or deficit in the collection fund of predecessor district councils is to be treated as belonging to or to be borne by the single tier council.

The modifications also provide for shadow councils and preparing councils which are county councils to prepare a schedule of instalments of amounts payable by their related single tier councils to those councils' major precepting authorities (police and fire and rescue authorities) in the financial year beginning on the reorganisation date.

Regulation 6 relates to the setting of council tax under the 1992 Act. It requires a billing authority within whose area charter trustees are likely to be established on the reorganisation date to anticipate the amount likely to be required for the discharge of the charter trustees' functions in the financial year beginning on the reorganisation date, and to treat that amount as a "special item" for the purposes of calculating the basic amount of its council tax for that year. Regulation 6(3) makes consequential modifications to sections 37, 52X and 52Y of the 1992 Act.

Regulation 7 amends regulation 6(1) of the Local Government (Structural Changes) (Transfer of Functions, Property, Rights and Liabilities) Regulations 2008. It substitutes the definition of "financial reserves". The new definition differs in two respects from that contained in the original regulation 6(1): paragraph (a) has been corrected to refer to section 69(2A)(b) of the Local Government Finance Act 1992, and paragraph (b) does not specify particular purposes for which a predecessor council's capital receipts were applied before the reorganisation date.

No impact assessment has been produced for these Regulations as no impact on the private or voluntary sectors is foreseen.

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