

**EXPLANATORY MEMORANDUM TO  
THE LOCAL GOVERNMENT (STRUCTURAL AND BOUNDARY CHANGES)  
(STAFFING) REGULATIONS 2008**

**2008 No. 1419**

**1** This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

1.1 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2 Description**

2.1 This instrument (“the Staffing Regulations”) makes provision in respect of the transfer of staff and other staffing matters when functions are transferred from a council which will cease to exercise its functions in relation to an area (a “predecessor council”) to a single tier (being the sole principle authority for an area).

2.2 The Staffing Regulations provide that the transfer of functions referred to at paragraph 2.1 fall within the scope of a relevant transfer under the Transfer of Functions (Protection of Employment) Regulations 2006 (“TUPE”). TUPE makes provision for the treatment of contracts of employment, employees and related matters.

2.3 The Local Authorities (Standing Orders) Regulations 1993( SI 1993/202) (“the 1993 Regulations”) have been modified to require an appointment to the post of head of paid service of a single tier council by means of open competition. There are further provisions regarding the treatment as regards TUPE and the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007, in respect of the incumbent head of paid service of a preparing council (defined as a county or district council that, on the reorganisation date, becomes the sole principle authority for an area for which there is a single tier of local government) or the head of paid service of a single tier council. The Staffing Regulations provide that specified bodies are to be responsible for discharging certain functions at particular stages of the reorganisation process, for example, the power to appoint the head of paid service and other senior officers is, in relation to a preparing council, exercisable by the Implementation Executive and, in relation to a Shadow Council is exercisable by the Shadow Executive or the Shadow Council, rather than the full council as would ordinarily be the case.

2.4 The Staffing Regulations also provide for an employee of a Shadow Council to be eligible to join the Local Government Pension Scheme.

### **3 Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 This is the first occasion on which the powers conferred by section 14 of the Local Government and Public Involvement in Health Act 2007 (c.28) (“the 2007 Act”) have been exercised.
- 3.2 The Staffing Regulations contain provisions 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. To date, Parliament has approved seven structural change orders. Following advice from the Boundary Committee under section 8(2) of the 2007 Act, the possible laying and approval of a draft order, and its making under section 10 of the 2007 Act, it may be necessary to make further regulations under section 14 of the 2007 Act for the transfer of staff and staffing matters.

#### **TUPE and the requirement to advertise the head of paid service post**

- 3.3 TUPE implements the 2001 European Council Acquired Rights Directive and makes provision for the treatment of contracts of employment, employees and related matters in the event of a “relevant transfer”, as defined by regulation 3(1) of TUPE. The Staffing Regulations apply TUPE to the event of a transfer of functions (in connection with one or both of a structural change and a boundary change) from a predecessor council (i.e. a district council or county council to be wound up and dissolved under an order) to a single tier council. Regulation 3 of the Staffing Regulations provides that the transfer of functions from a predecessor council to a single tier council shall be treated for all purposes as a “relevant transfer” within the meaning of TUPE.
- 3.4 Under regulation 3(1) of TUPE the transfer from one body to another of an economic entity which retains its identity constitutes a “relevant transfer”. An economic entity means an organised grouping of resources which has the objective of pursuing an economic activity. Regulation 3(5) of TUPE provides that an administrative reorganisation of public authorities or the transfer of administrative functions between public administrative bodies is not a “relevant transfer”. As the transfer of functions arising from local government restructuring involves the transfer of both economic and non-economic entities from one public body to another, TUPE will not automatically apply to all the functions transferred and an assessment of each activity on its own merits would be required to determine the application of TUPE for each case. Therefore, to ensure that all economic and non-economic (administrative) functions transferred under local government restructuring fall within the scope of a “relevant transfer” under TUPE, the Staffing Regulations provide that, notwithstanding regulation 3(5) of TUPE, the transfer of functions from a predecessor council to a single tier council constitutes a “relevant transfer” within the meaning of TUPE. The Staffing Regulations therefore provide additional protection to employees assigned to administrative functions by providing that they fall within the scope of a relevant transfer. Even though a district council or county council that continues after the

reorganisation date will not become a “new authority” on the reorganisation date in the legal sense – although the Government has made clear its expectation that reorganisation will mark a genuinely new start for local government in that area - TUPE applies to “affected employees” and therefore applies to employees of preparing councils. Applying TUPE in this way provides a framework for the clear and consistent treatment of staff assigned to economic or administrative functions and employed by a predecessor council or by a preparing council or a shadow council.

- 3.5 TUPE provides for the treatment of contracts of employment in the event of a relevant transfer. In brief, regulation 4(1) of TUPE provides that the contract of employment of any person employed by the transferor (i.e. old employer – a predecessor council) immediately before the transfer shall have effect after the transfer as if originally made between the employee and the transferee (i.e. new employer – single tier council). The transferee therefore inherits the contract of employment and the transferor’s rights, powers, duties and liabilities under or in connection with the contract. In addition, any act or omission of the transferor in respect of a contract of employment is deemed to have been an act or omission of or in relation to the transferee.
- 3.5 The application of TUPE in the Staffing Regulations is subject to the requirement to recruit to the post of head of paid service (chief executive) in the new single tier council, through open competition. The Government attaches great importance to the leadership of the new single tier councils and the commencement of single tier councils as genuinely marking a new start for local government in that area. The requirement to recruit and appoint to the head of paid service post gives qualified persons an opportunity to apply and authorities an opportunity to appoint the most suitable person to that post. The further reasoning behind this policy is set out in paragraph 7. This policy will qualify the protection provided under TUPE Regulation 4(1) in respect of certain persons occupying the post of head of paid service before reorganisation.
- 3.6 However, TUPE is not only concerned with contracts of employment but offers further protections: for example, it provides that representatives of affected employees have a right to be informed about the transfer and consulted about measures affecting employees; it places a duty on the transferor to provide the transferee with information about the transferring workforce; it contains provisions regarding recognised trade unions and collective agreements. Therefore, despite the requirement to advertise the post of head of paid service of the single tier council, chief executives will continue to benefit from some of the further protections under TUPE.
- 3.7 Whilst the application of TUPE is a matter of law based on individual circumstance, the Department considers that the post of head of paid service is likely to fall within the exemption provided by regulation 3(5) of TUPE as it is concerned with carrying out an administrative rather than an economic function. If the Department’s analysis is correct, the consequence is that there is no overriding statutory requirement under the 2001 European Council Acquired Rights Directive to give heads of paid service TUPE protection. The Cabinet

Office Statement of Practice January 2000 (COSOP) sets out a framework for the public sector regarding the transfer of staff. COSOP provides that in situations where TUPE would not apply in strict legal terms the principles should be followed and staff involved should be treated no less favourably than had TUPE applied. The Department recognises that, even without the requirement for open competition, the position of head of paid service in each single tier council would be likely to be subject to an assessment conducted by the incoming administration that could result in the dismissal of incumbent heads of paid service of preparing councils. The Staffing Regulations seek both to give effect to Government policy and also to take a practical approach to identifying further legislative provisions required for heads of paid service affected in a particular way as a result of the requirement for open competition. A similar approach was taken by Government during local government restructurings in the 1990s; the Local Government Changes for England (Staff) Regulations (SI 1995/520) provides for the recruitment of chief officer posts through open competition.

- 3.8 The Department has considered the practical implications of requiring competition for the post of head of paid service. During dialogue with interested parties, Joint Implementation Teams expressed concern that heads of paid service in preparing authorities may have more difficulty than their counterparts (i.e. in councils to be abolished) in satisfying the definition of redundancy as set out in section 139 of the Employment Rights Act 1996 (“the 1996 Act”) and being eligible to be considered 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. For example, section 139(1)(b)(i) of the 1996 Act provides that an employee shall be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to the fact that the requirements of the business for employees to carry out work of a particular kind have ceased or diminished – or are expected to cease or diminish. The reasoning behind the concerns expressed by the Joint Implementation Teams, is that as the employer will continue to exist, following the reorganisation, such heads of paid service may be considered to have been “displaced” rather than made redundant if, under employment legislation, it cannot be shown that the post of head of paid service in the single tier council is substantially different from the post of head of paid service in the county or district council before the reorganisation. The Staffing Regulations therefore include provisions to ensure that this group of staff will be treated as redundant for the purposes of being eligible to redundancy payments and early receipt of pension.

### **Section 7 orders and Staffing Regulations**

- 3.9 Section 14(3) of the 2007 Act provides for regulations made under section 14 to have effect subject to any provision included in a section 7 or 10 order. Therefore, the Staffing Regulations are subject to the seven structural change orders that have already been made. To the extent that those orders make provision that differs from the Staffing Regulations, the provisions of the orders prevail. There are specific provisions in the Cheshire (Structural Changes) Order

2008 (SI 2008/634) and the Bedfordshire (Structural Changes) Order 2008 (SI 2008/907): article 8(3)(c) of the Cheshire Order requires the appointment of a head of paid service by each shadow authority by 31 December 2008 and article 17(2)(c) of the Bedfordshire Order enables the Central Bedfordshire Council to appoint a head of paid service before 1 April 2009.

### **Equality Impact Screening**

- 3.10 Following an initial equality screening, the Department has not carried out a full equality impact assessment because we do not consider the policy aims discriminate, either directly or indirectly against a particular group. We have however, given particular consideration to the policy aim of recruiting to the post of head of paid service of the single tier council by open competition; and also to providing that incumbent heads of paid service should be considered as being dismissed by reason of redundancy to enable them to be eligible for redundancy compensation and early receipt of pension. Direct discrimination occurs when an employer treats one person less favourably than he treats or would treat another person on the grounds of sex; race; religion or belief; sexual orientation or age, and in relation to disability direct discrimination occurs when on the grounds of a person's disability the disabled person is treated less favourably than a person who does not have that disability is or should be treated. To be indirectly discriminatory the policy must have the effect of putting a particular group at a "particular disadvantage" and cannot be shown to be a proportionate means of achieving a legitimate aim.
- 3.11 In respect of the policy for recruiting to the post of head of paid service, we are not aware that the policy currently puts any group at a particular disadvantage. In relation to data collection and analysis, we have assessed the original proposals submitted by authorities and have held ongoing discussions and dialogue with human resources managers in affected councils. There are practical and confidential issues surrounding extensive data collection, given that such persons are not central government employees and in this particular case, the data set would be of such a small number that individuals could be readily identified. In any event, we consider this policy to be a proportionate means of achieving the legitimate aim of trying to recruit the most suitable candidate to the post by subjecting the post to fair and open competition, and making it accessible to qualified applicants from all groups. The requirement to appoint through fair and open competition does not preclude suitably qualified members of the existing officer cadre from applying.
- 3.12 In respect of the policy aim that only incumbent heads of paid service should be considered as dismissed by reason of redundancy, the Department recognises that no similar provision is made for the head of paid service of a predecessor council who may be considered to be redundant and whose eligibility to redundancy will be assessed according to individual circumstances. This policy developed following potential legal uncertainty expressed by Joint Implementation Teams as to whether it would be within the vires of a preparing council to pay redundancy compensation to its head of paid service if that individual were not appointed to that post after it had been advertised in accordance with the relevant requirements

(under the 1993 Regulations, as modified by regulation 4(1)). The Government agreed that such a position would, in effect, be treating that head of paid service differently to any other employees being made redundant as a result of reorganisation. The Department therefore included regulation 5 in an attempt to prevent such an anomaly arising. No similar provision has been included for any other employees as there is no requirement for any other post to be subject to open competition. The Department considers that the policy is a proportionate means of achieving the legitimate aim of ensuring that incumbent heads of paid service whose posts are subject to open competition are not disadvantaged by the requirement for open competition, and will be eligible to be considered for redundancy compensation and early receipt of pensions in the same way as their counterparts in district councils who are highly likely to satisfy the definition of redundancy as a consequence of the restructuring.

## **4 Legislative Background**

- 4.1 Part 1 of the 2007 Act provides for the making of local government structural and boundary changes in England. So far as is relevant to the Staffing Regulations, it enables provision to be made by order under section 7 for re-structuring an area in which there are two tiers of local government (a county council and district councils) into a single tier of local government (a county council or a district council). Section 1(2) provides, for the purposes of Chapter 1 (structural and boundary change), that there is ‘a single tier of local government’ for an area if ‘there is a county council and no district councils for that area or there is a district council and no county council for that area’. The 2007 Act also enables provision to be made (with or without modification) by order under section 10 following advice to the Secretary of State from the Boundary Committee.
- 4.2 Structural change orders under section 7 of the 2007 Act and providing for the creation of single tier local government in Cornwall (SI 2008/491), Durham (SI 2008/493), Northumberland (SI 2008/494), Shropshire (SI 2008/492) and Wiltshire (SI 2008/490), were laid before the House in draft and, following debate, were approved and made. They came into force on 26 February 2008.
- 4.3 Subsequently, the Cheshire (Structural Changes) Order 2008 (SI 2008/634) was approved in draft, made and came into force on 5 March, providing for the creation of two new single tier district councils for the area of Cheshire. Similarly, the Bedfordshire (Structural Changes) Order 2008 (SI 2008/907) was approved in draft, made and came into force on 28 March, providing for the establishment of Bedford Borough Council as a single tier council and for the creation of a new single tier district council for the remaining area of Bedfordshire.
- 4.4 Further details about the structural change orders (both the legislative and policy context) can be found in the Explanatory Memorandums which were laid alongside the draft orders. The seven structural change orders referred to at paragraph 4.2 and 4.3 are referred to in the rest of this Memorandum as “the Orders”. In this document ‘single tier council(s)’ has the same meaning as

‘unitary council(s)’ in the Explanatory Memorandums previously laid alongside the Orders.

- 4.5 Section 14 of the 2007 Act gives the Secretary of State power, by regulations of general application, to make incidental, consequential, transitional and supplementary provision for the purposes or in consequence of any orders made under section 7 or 10 of the 2007 Act, or for giving full effect to such orders. Section 14(2) provides for subsection 14(1) to be read with section 15 of the 2007 Act. Section 15 provides that references to “incidental, consequential or supplementary provision” include, in particular, provisions for the transfer of staff and other staffing matters (section 15(1)(d)) and provisions for treating any body to whom a transfer is made for some or all purposes as the same person in law as the body from whom the transfer is made (section 15(1)(e)). The 2007 Act also provides that Regulations made under that Act may make different provision for different cases (section 240(10)).
- 4.6 The Staffing Regulations are made under section 14 (to be read with section 15) and section 240(10) of the 2007 Act.
- 4.7 The Staffing Regulations provide that, subject to the requirement to recruit to the post of head of paid service of the single tier council, the transfer of functions from a predecessor council to a single tier council in connection with a structural and/or boundary change occurring as a result of an order shall be treated for all purposes as a relevant transfer under the TUPE Regulations.

## **5 Territorial Extent and Application**

- 5.1 The Staffing Regulations apply in relation to England only.

## **6 European Convention on Human Rights**

- 6.1 As the Staffing Regulations are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

## **7 Policy background**

### The Background to Local Government Restructuring: The White Paper and the Invitation to Councils

- 7.1 The Local Government White Paper, *Strong and Prosperous Communities*<sup>1</sup>, (‘the White Paper’) published on 26 October 2006, explained the Government’s intention to give councils in local government areas where both county and district councils exercise local government functions (‘two-tier areas’) an opportunity to make proposals for the establishment of single tier councils. A single tier council exercises all local government functions in its area. The implementation of local government structural change has significant

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<sup>1</sup> Cm 6939-I, <http://www.communities.gov.uk/publications/localgovernment/strongprosperous>

consequences for existing councils in the affected area, as well as being of importance to their staff, stakeholders and citizens.

- 7.2 The White Paper identified that councils in two-tier areas face additional challenges. In particular, it noted that ‘strong leadership and clear accountability is hard to achieve where for the same place there are two council leaders each with a legitimate democratic mandate and often having different, sometimes conflicting agendas’ (paragraph 3.50 of the White Paper). It concluded that councils in all two-tier areas would be expected to find new governance arrangements which overcome the risks of confusion, duplication and inefficiency between tiers, and can meet the particular challenges faced by small districts with small budgets or tightly constrained boundaries (paragraph 3.54 of the White Paper).
- 7.3 The White Paper explained that in some counties there was a widely held view that moving to unitary structures would be the best way of overcoming the risks and challenges of two-tier arrangements, and would improve accountability and leadership, increase efficiency, and improve outcomes for local people (paragraph 3.55 of the White Paper). In accordance with this policy, the Government published alongside the White Paper the *Invitation to Councils in England*<sup>2</sup> (‘the Invitation’), which invited councils to submit proposals for unitary structures. The Invitation also invited proposals from partnerships of councils wishing to pioneer innovative forms of two-tier working. It was a matter for councils whether they chose to respond to either (or, by way of alternatives, to both) parts of the Invitation.
- 7.4 Following the publication of the White Paper and Invitation, on 12 December 2006 the Local Government and Public Involvement in Health Bill was introduced into Parliament. It received Royal Assent on 30 October 2007. Part 1 of the 2007 Act makes provision for the implementation of local government structural and boundary change. The Orders were made under section 7 of the 2007 Act.

#### The Invitation process

- 7.5 The Invitation set out guidance to councils as to the criteria which proposals had to meet. The five criteria set out in the Invitation were that if change is made and new unitary structures implemented: the change to future unitary structures must be affordable; be supported by a broad cross section of partners and stakeholders; future structures must provide strong, effective and accountable strategic leadership; deliver genuine opportunities for neighbourhood flexibility and empowerment; and deliver value for money and equity on public services.
- 7.6 The Invitation also outlined the process for handling councils’ proposals. Firstly, proposals received by the 25 January deadline underwent a preliminary assessment against the criteria. 26 proposals were received by the deadline. After seeking further information from councils and assessing the proposals against the criteria, the Government announced on 27 March that it considered there was at

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<sup>2</sup> <http://www.communities.gov.uk/publications/localgovernment/invitationall>

least a reasonable likelihood that 16 of those 26 proposals would, if implemented, meet the criteria (*Official Report*, column 71WS). The 16 proposals therefore progressed to stage two of the process, stakeholder consultation, *Proposals for Future Unitary Structures: Stakeholder Consultation*<sup>3</sup>, launched on 27 March 2007. The consultation ran for twelve weeks until 22 June.

- 7.7 The Department sent the consultation document to key partners and stakeholders identified as having an interest in, or responsibility for, various aspects of service delivery in the areas affected by the proposals. Each affected local authority was also requested to bring the consultation to the attention of its key stakeholders. The consultation was also available on the Department's website where it was open to anyone to respond to the consultation commenting either on the proposal affecting their area or more generally. All representations, and all other relevant material, were considered by the Secretary of State during the process of assessing the proposals.
- 7.8 Stakeholders were asked to consider the extent to which, in their view, proposals relevant to their geographic or functional area met the criteria as set out by the Government; to provide evidence-based facts in support of their assertions and, if relevant, to express a preference where competing proposals were being considered for an area. In particular, views were welcomed on the long-term outcomes specified by the strong leadership; neighbourhood empowerment; and value for money and equity on public services criteria. In areas where there was more than one proposal being consulted upon (of the seven areas for which Orders have been made, only Bedfordshire, Cheshire and Northumberland), the Government sought views on which of the alternative proposals would better achieve the long-term outcomes specified in the Invitation.
- 7.9 The Government received over 55,000 responses to this consultation, with 1,700 being submitted by organisations and 4,900 individual representations from members of the public. A further 49,000 responses were 'campaign responses', where the respondent had filled in a pro-forma distributed to them as part of an organised campaign, though there was considerable variation in the number of campaign responses received in relation to different areas.
- 7.10 The Department published a summary of the consultation responses<sup>4</sup>, and a copy of the summary was supplied to the Committees at the time that the five draft structural change orders were laid before the House. In all areas, a wide range of views were expressed. The Department does not seek to summarise here the comments received as it does not consider the responses to this consultation exercise to be of direct interest or relevance to the instrument to which this Memorandum relates, as the comments related to the proposals put forward by local authorities themselves for restructuring, some of which were later implemented by means of the Orders. Members of the Committee may therefore find it helpful to read the introduction and relevant area sections of the published summary if they desire further information on these aspects.

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<sup>3</sup> <http://www.communities.gov.uk/documents/localgovernment/pdf/322770.pdf>

<sup>4</sup> Available on the CLG website at:

<http://www.communities.gov.uk/publications/localgovernment/unitarystructureresponses>.

- 7.11 Following the stakeholder consultation, the third stage of the Invitation process was to further assess proposals against the criteria. The Government had regard to all representations which had been made to it, including the consultation responses, as well as to all further information available, for example, submissions from local authorities developing the detail of their proposals. Where consultees had provided comments or views on the content of a proposal, those responses were taken into account in the assessment of the proposals against the relevant criteria. All the consultation responses contributed to the assessment against the broad cross section of support criterion.

#### Decisions as to which proposals to implement

- 7.12 Following the reassessment of proposals, the Government announced to Parliament on 25 July 2007 that it was minded to implement nine unitary proposals (*Official Report*, column 68WS). At that stage of the process, the Secretary of State judged that these nine proposals had a reasonable likelihood of achieving the outcomes specified by all the criteria set out in the Invitation. Letters were sent to the proposing authorities on 25 July stating the Secretary of State's reasons for her decisions.
- 7.13 As regards Cheshire, the Secretary of State took the view that both alternative proposals that had proceeded to stakeholder consultation – a proposal from the county council for a single unitary county council and a proposal from a number of the district councils for a two-unitary Cheshire – had a reasonable likelihood of achieving the outcomes specified by all the criteria set out in the Invitation but that she was minded to implement the two-unitary proposal as she considered that proposal more likely to deliver to a greater extent the long-term outcomes around strategic leadership, neighbourhood empowerment and value for money and equity on public services. However, she recognised that there were risks to the two-unitary proposal achieving the outcomes specified by the affordability criterion and accordingly the district councils were invited to undertake further work and submit additional information on the financial viability of the proposal. They were advised that the Secretary of State would have regard to any additional information provided before taking a final decision. Letters were sent to the authorities submitting each proposal on 25 July 2007 stating the Secretary of State's reasons for her decision to opt for the two-unitary proposal.
- 7.14 As regards Bedfordshire, the Secretary of State took the view that both alternative proposals that had proceeded to stakeholder consultation – a proposal from the county council for a single unitary county council and a proposal from Bedford Borough Council for a unitary Bedford – had a reasonable likelihood of achieving the outcomes specified by all the criteria set out in the Invitation but that she was minded to implement the Bedford Borough proposal as she considered that proposal more likely to deliver to a greater extent the long-term outcomes around strategic leadership, neighbourhood empowerment and value for money and equity on public services. However, she also recognised that there were risks to the Bedford Borough proposal achieving the outcomes specified by the affordability criterion and accordingly the Borough Council was invited to

undertake further work and submit additional information on the financial viability of its proposal. They were advised that the Secretary of State would have regard to any additional information provided before taking a final decision.

- 7.15 In reaching her “minded to” decision on Bedford Borough’s proposal the Secretary of State also recognised that implementing Bedford Borough’s proposal meant that consideration must be given to the future local government structures for the remaining county area. She was satisfied that this area needed unitary local government, and she announced that she intended to formally invite all the other councils in Bedfordshire to propose a unitary solution that would meet the five criteria for that remaining area.
- 7.16 The Government therefore announced on 19 November 2007 (*Official Report*, column 115WS) that the Secretary of State was inviting Bedfordshire County Council, Mid-Bedfordshire District Council, and South Bedfordshire District Council to make a proposal – which needed to be submitted by 17 December 2007 – for future unitary local government structures for the remaining area of Bedfordshire. The Government also issued guidance, to which the councils were required by the Act to have regard when responding to the invitation. The guidance set out the outcomes any proposal should seek to achieve and matters which the councils should take into account in formulating any proposal. These matters included Bedford Borough Council’s unitary proposal. At the same time the Government confirmed that, following assessment of the further financial information from Bedford Borough Council, the Secretary of State was still minded to implement Bedford Borough’s proposal.
- 7.17 In relation to the five areas of Cornwall, Durham, Northumberland, Shropshire and Wiltshire, the Government announced on 5 December 2007 (*Official Report*, column 67WS) that the Secretary of State had decided to confirm her decisions of 25 July. Five draft structural change orders, referred to at paragraph 7.10 providing for unitary local government on the boundaries of the current county councils were laid before the House on the same day and, following debate in both Houses, were approved and came into force on 26 February 2008. The decision in relation to Cheshire was deferred in order to allow more time for consideration of the very large volume of detailed information and representations received since July about both proposals, including the additional financial information sought by the Secretary of State in her letter of 25 July.
- 7.18 The Government then announced on 18 December 2007 (*Official Report* column 104WS) that the Secretary of State, having considered all the information and representations made to her, remained of the view that there was a reasonable likelihood that, if implemented, both proposals would meet the outcomes specified by each of the criteria set out in the Invitation of 26 October 2006. Overall, however, she decided to confirm her “minded to” decision of 25 July that it was more likely that the long term outcomes around strategic leadership, neighbourhood empowerment and value for money and equity on public services would be delivered to the greater extent by the proposal for a two-unitary Cheshire. Her decision further reflected the fact that the additional information requested had satisfied her in relation to the financial viability of the proposal. A

draft structural change order was subsequently laid before the House and, following debate in both Houses, was approved and came into effect on 5 March 2008

- 7.19 In response to the *Invitation for unitary structure in Bedfordshire*, issued on 19 November 2007, the Secretary of State received a proposal from Mid and South Bedfordshire District Councils for a new Central Bedfordshire unitary council. The County Council chose neither to submit a proposal of its own, nor to submit a joint proposal with the district councils. On 19 December the Secretary of State invited comments and views of partners and stakeholders in the areas affected by the proposal for Central Bedfordshire. Stakeholders were asked to consider the extent to which, in their view, the Central Bedfordshire proposals met the criteria as set out by the Government and which of the alternative proposals i.e. a single county unitary or a two-unitary Bedfordshire (comprising Bedford Borough and Central Bedfordshire) would better achieve the long-term outcomes specified in the Invitation. That consultation closed on 13 February, and the views expressed in response to that consultation and all other relevant information were taken into account in the Secretary of State's assessment.
- 7.20 The Government subsequently announced on 6 March 2008 (*Official Report*, column 118WS) that the Secretary of State, having considered all the information and representations made to her, including the material she received in response to the second consultation exercise, considered that there was a reasonable likelihood that either a single unitary council for the county, or two-unitary authorities based on Bedford Borough and Central Bedfordshire (the area of the Mid and South Bedfordshire districts) would, if implemented, meet the outcomes specified by each of the criteria set out in the invitation of 26 October 2006. In line with the process for selecting from alternative proposals set out in the consultation document "Means of Prioritising Proposals", issued in June 2007, the Secretary of State believed that, overall, the long-term outcomes around strategic leadership, neighbourhood empowerment and value for money and equity on public services, would be delivered to the greater extent by a two-unitary Bedfordshire. Accordingly, she announced her intention to implement the proposals made by Bedford Borough and jointly by Mid and South Bedfordshire District Councils. A draft structural change order was therefore laid before the House and, following debate, was approved and came into force on 28 March 2008.
- 7.21 The Government considers that the implementation of these proposals will establish new and innovative local governance in each of the seven areas, combining both strong, strategic councils and effective arrangements for empowering communities at the most local level. This takes further the concept of unitary local government developed in the 1990s. It provides for the creation of councils that will be able to lead the way in empowering citizens and communities, promoting prosperity and modernising local service delivery to achieve both greater efficiencies and better outcomes. It is expected to result in total estimated annual savings of over £100m per year. It is estimated that transitional costs will be approximately £138m in total. Overall, the number of councils in these areas will be reduced from 44 to 9.

## New authorities

- 7.22 During the preparation of the five structural change orders, some concern was expressed that, unless all the councils (districts and county) were technically abolished and a new unitary council established, then the council which was technically continuing to exist could be seen to ‘take over’ those which were being dissolved and wound up. Government has been clear that the current restructuring of local government is about creating *new* councils in any commonly understood meaning of the word. However, since in five areas the county councils cover exactly the same local government areas as the new unitary councils, and Bedford Borough Council is to become a new unitary council on its own boundaries, the Government decided that implementation arrangements would be more straightforward if the new council were treated, in legal terms, as a continuation of the existing council. Creating a new council in the legal sense would require abolition of the existing council and establishing another one on the same borders. It would require significant additional work in the transitional period, and would mean a new council operating alongside the existing council on the same boundaries in a shadow capacity during the transitional period, which would be likely to lead to duplication and confusion for citizens and service users.
- 7.23 The relevant structural change orders therefore provided for a transfer of functions to the existing county councils and to Bedford Borough Council on 1 April 2009, with those councils taking the lead in preparing for restructuring in the transitional period. Even though employees in preparing councils will not have their employment contracts transferred, they will still be affected by the “relevant transfer” in their area and certain provisions of TUPE will apply in relation to them, i.e. the requirement to inform and consult staff and their trade union representatives, and all affected employees will have an opportunity to apply for a post in the new single tier council.

## The Staffing Regulations

- 7.24 The Staffing Regulations apply to local government restructuring which is provided for by an order under section 7 or 10 of the 2007 Act. When the Regulations were made seven structural change orders had been approved by Parliament and subsequently made (“the Orders”). Although the Staffing Regulations are of general application to orders under section 7 or 10, they have been drafted with particular reference to the Orders. Further (or amending) regulations will be made under section 14 of the 2007 Act if needed for the purposes of future structural or boundary change orders.
- 7.25 The Staffing Regulations make provision associated with the transfer of functions from a predecessor council to a single tier council. The broad intention is that employees of predecessor councils will enjoy the protection afforded by TUPE. The Staffing Regulations also make provision in respect of appointments to certain senior posts, particularly that of head of paid service, of the new single tier councils and of the preparing councils and Shadow Councils that will become single tier councils on the reorganisation date.

- 7.26 Alongside the Staffing Regulations, the Government has published non-statutory guidance, “*Guidance on Staffing Issues*” (“the Guidance”), as to the approach that Implementation Executives and Shadow Councils are recommended to adopt in relation to staffing issues. The Guidance sets out the importance the Government attaches to the use of open competition as the means by which the majority of senior managers of the new single tier councils will be appointed. It also suggests some criteria for consideration when decisions are being made about the disaggregation of staff where there is more than one new single tier council for an area. It is the Government’s expectation that the trade unions will be closely consulted on decisions concerning the new council structures. The Guidance also highlights the importance of all the affected councils giving their full co-operation to the Implementation Executives and Shadow Councils, and a number of other key issues which the Department wishes to draw to the attention of those managing the staffing issues relating to the transition to single tier status.

#### Discussion with stakeholders

- 7.27 In the Explanatory Memorandums for the Orders, the Department explained that it intended to make regulations to deal with staffing issues in relation to the transition to single tier local government. It has been engaged in discussion with the affected local authorities, the trade unions, the Local Government Employers (“LGE”) and others about the overall approach that should be taken. The policy that is implemented by way of the Staffing Regulations has been refined with regard to the contributions and comments received from these and other stakeholders during the ongoing dialogue that commenced in July 2007.
- 7.28 In August 2007, following the announcement in July 2007 of the Secretary of State’s ‘minded to’ decisions, the Department published a discussion document, [\*Councils’ Proposals for Unitary Local Government: An Approach to Implementation\*](#)<sup>5</sup>. That document set out the Department’s initial intentions as to the approach to be adopted for implementing any proposals for single tier local government. It was brought to the attention specifically of the potentially affected councils, with the request that they involve their own local and regional stakeholders in its consideration. It was also sent to a number of key national stakeholders and the Department’s Expert Group on Restructuring, which included the major local government trade unions, the Association of Local Authority Chief Executives (“ALACE”), the Local Government Association (“LGA”) and the LGE. A copy of the document was also placed on the Department’s website.
- 7.29 All these organisations responded to the discussion document, and these views formed the basis of the Department’s subsequent discussions with them. The responses to the August 2007 discussion document strongly shaped the approach that the Department has taken in relation to the Staffing Regulations and the Guidance. Since then, the dialogue with the Joint Implementation Teams and all the councils concerned, ALACE,, the LGA, the LGE and the trade unions, (with

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<sup>5</sup> <http://www.communities.gov.uk/publications/localgovernment/unitarycouncilsimplementation>

whom the Department also shared two previous drafts of the Regulations and the Guidance in February and in May 2008), has continued.

- 7.30 This process of discussion and dialogue has led the Department to further develop its approach, resulting in particular in the decision to apply TUPE (with only limited exceptions) to the transfer to the single tier councils of employees of those councils which cease to exercise their functions. This was a direct result of the concerns of stakeholders, who overwhelmingly called for the proposed distinction between 'front office' and 'back office' staff (which the discussion document proposed) to be dropped. It was suggested that such a distinction would be very difficult to define both legally and in practice, and would therefore lead to disagreement and possibly legal challenge in individual cases, taking up a significant amount of both staff time and council resources. Above all, however, it was felt that such a distinction would create tensions on the ground and demotivate staff, who might feel their job was being judged as being of less worth than others in the organisation.
- 7.31 The only exception to this was a general agreement among the councils which responded that it would be appropriate for the chief executive of the new single tier council to be recruited by means of open competition, a view which the Government shares and which has, therefore, been made a requirement in the Staffing Regulations. Differing views were expressed, though, as to the ideal timing of such an appointment. Some councils considered it important that the new chief executive should have the confidence of their new council and therefore should be appointed after elections to the new single tier council have taken place. Other councils believed it more important to have a chief executive in place well in advance of the reorganisation date, to drive through preparations and ensure the new single tier council was well placed to take full advantage of the opportunities for transformation from that time. Recognising that views on this issue vary according to local circumstances (including the timing of elections to the new single tier councils as provided for in the relevant structural change orders) and that locally elected councillors are therefore best placed to take such a decision, the Staffing Regulations provide for a head of paid service (chief executive) to be recruited and appointed by means of open competition at any time during the period beginning with the coming into force of the Staffing Regulations until 12 months after the reorganisation date or such date as may be specified in an order. We believe this allows for the necessary local flexibility.
- 7.32 This process of ongoing discussion and dialogue has led us to further develop our approach and the detail of the Staffing Regulations and Guidance document. For example, as a result of concerns expressed by the JITs, regulation 5 was inserted in the light of apparent legal uncertainty as to whether it would be within the vires of a preparing council to pay redundancy compensation to its head of paid service if that individual were not appointed to that post after it had been advertised in accordance with the relevant requirements (as modified by regulation 4(1)). The Government agreed that such a position would, in effect, be treating that head of paid service differently to any other employees being made redundant as a result of reorganisation (and who would, in the ordinary course of events, be eligible for redundancy payments). Regulation 5 seeks to prevent such an anomaly arising.

- 7.33 There were some proposals from stakeholders that the Department has decided not to reflect in the Staffing Regulations. In some instances, this was because the Department considered that existing legislation made additional provision unnecessary, in others it was decided that the matter would be best addressed in guidance. In many cases, however, the Department considered that a detailed national scheme for staffing issues was neither appropriate nor possible, as had been set out in the August 2007 discussion document. Each restructuring is the result of a locally developed proposal for one or more councils accountable to their own electorates and with their own structures and circumstances; there is a need for local flexibility to enable these local variances to be fully addressed. Those issues which are not reflected in the Staffing Regulations are summarised at paragraphs 7.48 – 7.60 below.

#### Provisions of the Staffing Regulations

- 7.34 The Government believes that employees of all councils in each area affected by restructuring should be treated fairly, within a clear framework providing certain basic protections, and that they should be informed and consulted on the main changes relating to their employment as a result of local government restructuring. It is also important that all employees of affected councils have a fair opportunity of being appointed to posts in the succeeding single tier council.
- 7.35 The Government considers that the application of TUPE provides a benchmark of basic protections for employees, and a clear and familiar framework for the councils concerned.
- 7.36 The Staffing Regulations therefore apply TUPE to the circumstances of restructuring as mentioned in paragraph 7.25 above. Regulation 3 of the Staffing Regulations provides that any transfer of functions (in connection with one or both of a structural change and a boundary change) from a predecessor council to a single tier council shall be treated as a relevant transfer for the purposes of TUPE. TUPE also places requirements on both the transferor organisation (in this case, the predecessor councils) and the transferee organisation (the new single tier councils or, before the reorganisation date, the transitional councils) to inform and consult employees and trade unions about plans for the transfer. TUPE further provides for continuity of trade union recognition and collective agreements.
- 7.37 The Government considers that applying TUPE in this way will aid employee morale and productivity, providing reassurance in what may well be a challenging and unsettling time in the run-up to reorganisation. It is vital that employees and the trade unions are kept informed and are consulted on key changes that will affect them. In the Department's discussions with Joint Implementation Teams, trade unions, the LGE and others since the August 2007 document, widespread support has been expressed for this approach. Overall, the Government considers that the application of TUPE to transfers of staff occurring as a result of local government restructuring will create a clear framework (which councils and trade

unions are familiar with), which will be to the benefit of employees and councils in preparing for a smooth transition to the new single tier councils.

- 7.38 The Government has consistently made clear that it attaches great importance to the leadership of the new single tier councils, since it is vital that the leadership provides the vision necessary to take full advantage of the opportunity that the establishment of the new single tier councils provides for creating genuine flagship councils, leading the future of local government. Accordingly, Ministers stated during the Parliamentary debates on the Orders for the five “county unitary” authorities (*Official Report*, 19 February 2008, column 303) that 1 April 2009 must be a genuinely ‘new start’ for authorities of which local people will have wholly different expectations. In those debates, the Government made clear that it would be essential that in each new single tier council there is a new or “refreshed” senior management team.
- 7.39 In order to ensure that the best possible leadership is in place, the Staffing Regulations require the post of head of paid service (chief executive) of the new single tier councils to be recruited to in accordance with the Local Authorities (Standing Orders) Regulations 1993 as modified (see regulation 4(1)). Those Regulations require the council to draw up a job description, “make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it” and “interview all qualified applicants for the post”. The Government considers that, as well as being the best available person for the job, a head of paid service recruited by means of open competition will have a greater legitimacy in leading the new council (or the preparing council or Shadow Council that will become the new single tier council on the reorganisation date) in delivering better services and innovative arrangements.
- 7.40 In order to allow the timing of the appointment of head of paid service to be decided upon in the light of local circumstances, the Staffing Regulations provide that the appointment may be made at any time up to 12 months after the reorganisation date, except in relation to certain Shadow Councils in respect of which an earlier date is specified in the relevant structural change order (see the definition of ‘relevant period’ in regulation 4(5)). Regulation 4(3) provides that, where a preparing council or a Shadow Council has made an appointment to the post of head of paid service pursuant to the 1993 Regulations (as modified by regulation 4(1)), the succeeding single tier council is not under a duty to make a further appointment to that post.
- 7.41 If, in order to appoint a head of paid service, a preparing council has to dismiss its incumbent head of paid service, the Government believes this should be done with fairness and minimum bureaucracy. The Staffing Regulations therefore ensure that, in such circumstances, a report of a designated independent person is not required (regulation 4(1)(c)), and also that the incumbent head of paid service should be treated by the council as being eligible for redundancy compensation under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 and early receipt of pension under the Local Government Pension Scheme (Benefits, Membership and

Contributions) Regulations 2007, whether or not he applies for the post. The Department considers that this will ensure that any incumbent head of paid service of a preparing council in such a situation will be treated in a similar manner to other heads of paid service of predecessor councils who may be made redundant if their post no longer exists in the new single tier council.

- 7.42 Ordinarily, if a local authority were appointing a head of paid service, the appointment would be made by the full council (as required by the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (“the 2000 Regulations”). In the specific circumstances of restructuring, the Government considers that the appointment of the head of paid service should be made by the body which is responsible for overseeing the transition to single tier status and which can be said to best represent the democratic mandate of the citizens of the area concerned. Where elections to the new single tier council or the Shadow Council have already taken place, it is that council which is responsible for making the appointment to head of paid service. However, where elections have not yet taken place, the Staffing Regulations provide that the responsibility for appointing a head of paid service lies with the Implementation Executive (in the case of preparing councils) until its dissolution, and with the Shadow Executive (in the case of Shadow Councils) until the fourth day after the day of election of councillors.
- 7.43 Similarly, where ordinarily a senior officer would be appointed by the full council, in the special circumstances of restructuring, the Staffing Regulations provide that this should be the responsibility of the same body as that which appoints the head of paid service. The Government considers that this approach is in the interests of consistency and will ensure that the head of paid service and key senior officers have the legitimacy that comes from being appointed by the body which best represents the democratic mandate for the area at both tiers of existing local government.
- 7.44 In the interest of clarity, certain items in Schedule 1 to the 2000 Regulations, which provide that the appointment of staff is not a function of a council’s executive, are disapplied in these circumstances.
- 7.45 Any head of paid service employed by a preparing council or a single tier council and 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) 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. An incumbent head of paid service does not need to compete for the post in the successor single tier council to be deemed to have been made redundant. This measure has been taken to ensure that as a result of the requirement to recruit to the post of head of paid service, an incumbent head of paid service of a preparing council is not unfairly deprived of the opportunity to be considered for compensation and will be eligible to be considered for

redundancy compensation and early receipt of pension in the same way as his counterparts in predecessor councils who are highly likely to satisfy the definition of redundancy as a consequence of the restructuring.

- 7.46 The Government is of the view that employees of Shadow Councils, who may be employed in advance of the reorganisation date in order to undertake certain functions to ensure a smooth transition to single tier status, should be eligible to join the Local Government Pension Scheme and have their employment count for the purposes of the Scheme, as if they were employed by a local authority. However, an employee can only become a member of the Scheme if he is employed by an organisation which is listed in Schedule 2 to the Local Government Pension Scheme (Administration) Regulations 2008. Regulation 6 of the Staffing Regulations therefore provides that a Shadow Council shall be treated as falling within Schedule 2 to the 2008 Regulations and enables staff employed by a Shadow Council to be eligible for membership of the Local Government Pension Scheme.
- 7.47 The Government believes that this approach will create a clear and consistent framework for the transfer and appointment of staff to all the new single tier councils, which will give both the level of reassurance staff rightly need and expect over their employment, and the flexibility the new councils need to establish innovative arrangements for empowering local communities and delivering improved local public services.

#### Stakeholder proposals and views not adopted by Government

- 7.48 As mentioned above, many stakeholders made comments and proposals on the draft versions of both the Staffing Regulations and the Guidance. While the Department thought it helpful and prudent to incorporate a great number of these suggestions, it also received some that it would not have been appropriate to include in legislation and/or guidance. An indication of the issues raised, and the reasons for their not being incorporated, are provided over the following paragraphs, followed by a summary of the current position of the stakeholder/s concerned.
- 7.49 **National scheme for staffing issues:** Several key stakeholders, in particular the trades unions, consider there is a need for a detailed national scheme for staffing issues, of the type that was adopted during previous reorganisations of local government. This might include the establishment (on a statutory basis) of a staffing commission to draw up the scheme on the Government's behalf, and it was suggested should include standardised redundancy and severance packages which would be applicable to employees across the seven areas. However, the Government made clear in its August 2007 discussion document that it saw a detailed, national scheme as being neither possible nor desirable. First and foremost, this is because the relationship between central and local government has developed considerably since the reorganisations of the 1990s: central Government may set the direction and framework, but it is for locally elected councils to respond flexibly and in the light of their own local circumstances. The

challenges facing society are too complex, and the needs often too local, for all solutions to be imposed from the centre. In these particular circumstances, each restructuring is the result of a locally developed proposal for one or more councils accountable to their own electorates and with their own structures and circumstances. In addition, the terms and conditions of persons employed by the affected councils vary considerably, and any attempt to set a standard redundancy compensation package would be incredibly complex and it would be difficult to adequately reflect the differing local and individual circumstances.

- 7.50 The Staffing Regulations therefore set a clear framework consisting of certain basic protections for staff and requirements relating to the heads of paid service, and the Guidance sets out Government's recommendations to Implementation Executives and Shadow Councils as to the factors they may wish to take into account and the approach they might wish to adopt in relation to certain key issues. The details of implementation, however, will be dependent upon the vision set out in the original proposals which were agreed by Parliament and to which the seven structural change orders give effect. The Government considers its approach best allows for the flexibility that is necessary to enable the local variances to be fully addressed.
- **Joint Implementation Teams welcomed this approach, as set out in the August 2007 discussion document, and agree this is the most practical approach. Indeed, the proscriptive and inflexible approach adopted previously was criticised as having been too complicated and even divisive. While the trade unions still consider a detailed, national scheme to be preferable, they have engaged constructively on the detail of the Staffing Regulations and Guidance document implementing the framework approach.**
- 7.51 **Continuity of employment:** It was suggested, primarily by trade union representatives, that there was a need for an explicit statement in the Staffing Regulations on the continuity of an individual's employment upon their transfer from a predecessor council to a successor single tier council. The Department does not consider that this is necessary or appropriate; it is of the opinion that TUPE fully provides for the continuity of employment of staff transferring in these circumstances.
- 7.52 Regulation 3 of the Staffing Regulations ensures that a transfer as a result of local government restructuring is treated as a relevant transfer for the purposes of TUPE. Regulation 4 of TUPE preserves continuity of employment where there is a relevant transfer as (in brief) it provides that the contract of employment of any person employed by the transferor immediately before the transfer shall have effect after the transfer as if originally made between the employee and the transferee.
- **Having fully explained the legal basis for the Department's position on the inclusion of an explicit provision for continuity of employment in the Staffing Regulations, we understand that the Joint Implementation Teams accept this position, and are content that it will not have any unintended consequences for transferring employees and that following**

**discussions and meetings with stakeholder representatives they understand this position.**

- 7.53 **Early transfer of staff and functions to a preparing or Shadow Council:** It was suggested that the Staffing Regulations should make provision to allow employees of predecessor councils to be transferred under TUPE to the preparing councils or Shadow Councils in advance of the reorganisation date (under a permissive power which the Implementation Executive or Shadow Council could use if it wished). However, the structural change orders impose a duty on all affected councils in each area to make officers available to assist the Implementation Executive or Shadow Council, and in some cases it may be appropriate to use secondment arrangements. The Government therefore considers that any attempt to provide for early transfer of staff in the Staffing Regulations would necessarily risk further complicating a framework with which local authorities and the trades unions are familiar and conflicting with the court's interpretation of the TUPE Regulations, that (in brief) the date of the TUPE transfer is the date on which responsibility as employer for carrying on the business or undertaking moves from the old employer to the new employer.
- 7.54 Similarly, it has been suggested that certain Government regulations in future (also made under section 14 of the 2007 Act) could legally transfer certain functions to the preparing councils or Shadow Councils in advance of the reorganisation date. The Government is not, however, minded to make any regulations which would constitute a legal transfer of functions in advance of the reorganisation date. At present the Department is considering certain transitional issues which may need to be dealt with by regulation, and we are discussing these with Joint Implementation Teams. It is likely, however, that any regulations would not transfer functions in advance of the reorganisation date, but rather confer certain administrative functions as "other transitional functions" on the preparing or Shadow Councils, as envisaged under the structural change orders. This might include, for example, charging the preparing councils and Shadow Councils with calculating the budget requirement for the purposes of setting the council tax for the new single tier council in respect of the financial year 2009-10. The Department does not consider that the conferring of a transitional function, which would be clearly a preparatory and transitional measure in relation to a narrowly defined task for a limited period, would constitute a transfer of functions for the purposes of the TUPE Regulations. There would therefore be no question of any employees transferring to the preparing or Shadow Councils in advance of the reorganisation date.
- **The Government is confident that the Joint Implementation Teams understand the reasoning behind the decision not to provide for an early transfer of functions and recognise that the situation can be dealt with on a practical level through the release of officers from their normal duties and secondment arrangements as appropriate.**
- 7.55 **Transfer from a Shadow Council to a new single tier council:** It was initially suggested that the Staffing Regulations should provide for employees of a Shadow Council to transfer under TUPE to the new single tier council. The Shadow Councils are likely to appoint and employ only a few key persons during

their existence, namely the head of paid service of the new council and, potentially, certain members of senior staff (indeed, the Cheshire (Structural Changes) Order 2008 imposes a duty on the Shadow Councils to make certain appointments by 31 December 2008, and similarly the Bedfordshire (Structural Changes) Order 2008 imposes a duty on the Central Bedfordshire Council to make certain interim appointments and contains a power to make permanent appointments before 1 April 2009 (by 31 March 2009)). The Department does not consider it necessary to make provision for these few individuals appointed to and employed by the Shadow Council to transfer to the new single tier council as the former *becomes* the latter on 1 April 2009. However, the Staffing Regulations do make provision for any such persons to be eligible to join the Local Government Pension Scheme (regulation 6).

- **The Joint Implementation Teams in Cheshire and Bedfordshire agreed that this was the least complex, and therefore most pragmatic, approach.**

7.56 **Vacancy management protocols:** It was suggested that councils should be required, by means of regulation, to adopt a protocol regarding their management of any vacancies that may arise. The Government strongly agrees that such an arrangement would be very much in the interests of best practice, and indicates as much in the Guidance. However, this is ultimately a matter for councils to decide upon themselves, and not something upon which the Department considers it appropriate to regulate in such detail.

- **All key stakeholders are in agreement that formal vacancy management protocols between authorities in each affected area would be highly beneficial, and wholly support the principle.**

7.57 **Pension funds:** Several stakeholders sought clarity over the Government's intended approach for the future management and investment of pension funds in Cheshire and Bedfordshire where the existing administering authorities (the county councils) will cease to exist on the reorganisation date. The August 2007 discussion document had set out the Department's view that the complex splitting of pension funds was to be avoided wherever possible. The Guidance, which is being published alongside the Staffing Regulations, reflects the agreement of the affected authorities that one of the two new single tier councils in each area should take on the administration of the fund on behalf of both new councils. The Department is discussing arrangements, including possible adjustments to the Local Government Pension Scheme regulations – which would involve an eventual statutory consultation over the technical changes that are likely to be required – with the Joint Implementation Teams concerned and their emerging view is to support the Department's approach.

7.58 **Tensions between Officer and Member roles:** It was suggested by stakeholders that certain issues could arise during the restructuring process in relation to persons who have been an employee of one authority and a member of another, and their right to remain in either/or both positions in light of s.116 of the Local Government Act 1972. S.116 disallows a person who ceases to be a Member of a local authority from being appointed or elected to any paid office of that authority for a period of 12 months after he ceases to be a Member.

- 7.59 The Government recognises that there may be circumstances in which anomalies occur, preventing certain persons from becoming either Members or officers of a new single tier council.
- **However, the Department is not currently minded to modify this legislation for the purposes of local government restructuring as it believes that it is important to maintain the principles set out in section 116 to avoid potential conflicts of interest.**
- 7.60 **Coroners and Registrars:** Some stakeholders suggested there was some uncertainty as to whether the provisions of TUPE would extend to Coroners and Registrars in the affected authorities. However, the Statistics and Registration Service Act 2007 provided that, as of 1 December 2007, Registration Officers (Registrars) are employees of their relevant local authorities. They will therefore transfer with TUPE protection to the new single tier council on the reorganisation date along with other employees. Coroners, on the other hand, are appointed by, and paid by, a local authority, although not actually employed by them. In the five ‘county model’ areas, the coronial districts are contiguous with the administrative boundaries, and the Coroners will simply be accommodated and paid by the new single tier councils. In the two ‘district model’ areas, Cheshire and Bedfordshire, the coronial districts are already shared with Halton Borough Council and Luton Borough Council respectively.
- **The Joint Implementation Teams in Cheshire and Bedfordshire have confirmed they intend to maintain these existing coronial districts, and the Department is confident that they will reach agreement with Halton Borough Council and Luton Borough Council respectively on the accommodation, staff and payment of their Coroners.**
- 7.61 The Department is grateful to all those who commented on the August 2007 discussion document and on the draft Staffing Regulations, and particularly to the Joint Implementation Teams, trades unions and the LGE for their continuous assistance in refining the policy and improving the quality of the Guidance and the Staffing Regulations.
- 7.62 **Other issues raised:** Stakeholders have raised a number of further issues during the course of our discussions with them which the Department does not consider appropriate to be dealt with in the Staffing Regulations, including: the disaggregation of employees in areas where there will be two single tier councils, in what is currently one county area; equalities duties including equal pay issues; and retention and detriment arrangements. The Government has addressed these issues by highlighting in Guidance the key points that the Implementation Executives and Shadow Councils will wish to consider, and certain recommended approaches in relation to these and other important issues.

## 8 Impact

- 8.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

- 8.2 There will be no additional impact on the public sector above that already identified in the Impact Assessments accompanying the seven structural change orders providing for the creation of the nine new single tier councils, which were based on the figures provided by the local authorities in their proposals.

## **9 Contact**

- 9.1 Mark Doran at the Department for Communities and Local Government, tel: 020 7944 6729 or e-mail: [mark.doran@communities.gsi.gov.uk](mailto:mark.doran@communities.gsi.gov.uk) can answer any queries regarding the Staffing Regulations.