

**Browne
Jacobson**

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A practical guide to...

Local Government Reorganisation

Time for a shakeup



Re-organisation and reform of local government is being actively driven by the Government. The English Devolution White Paper (the 'White Paper') and recent invitations from the Secretary of State to local authorities across England which are currently operating under two-tier systems of local government clearly demonstrates the impetus for change and a move to a consistent model across the country.

Local authorities have submitted interim plans, and as proposals for re-organisation are worked up, they will need to consider the likely impact on their areas and be on the front foot. The best options for any local government area will depend on the precise issues arising within that area. This document aims to serve as a guide in relation to the key issues which might need to be considered, providing information and guidance for local authorities considering a move to a unitary form of local government in their area.

This guide has been prepared for local authorities in England and does not address the particular circumstances arising in the other UK nations. It is a general guide only, and you should take full legal advice in advance of, and during, any re-organisation



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The Legal Mechanics

Introduction

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

Whilst an alternative route to creation of unitary authorities is contained in the Cities and Local Government Devolution Act 2016 (2016 Act), it is clear from the White Paper and the Government's approach to date that the route envisaged is under the 2007 Act.

The relevant mechanism for local government reorganisation is as follows:

- (1) the SoS can invite a local authority to make a re-organisation proposal under Section 2 of the 2007 Act; or
- (2) Authorities may themselves put together re-organisation proposals and submit these for consideration by the SoS without being invited to. The SoS will then review these and may then pass a statutory instrument (SI) under Section 15 of the 2016 Act to govern the re-organisation.

The SoS has proceeded to invite local authorities to make proposals. The proposals that can be made are either Type A, Type B, Type C or combined proposal.

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

It is worth noting that the SoS may specify in its invitation which proposals are being invited, but at this stage the SoS has left scope to the local authorities to choose which proposal they consider would best benefit their area.

The process – proposal

Receiving a proposal

When a proposal is received, the SoS can proceed to:

- (a) Implement a proposal as proposed;
- (b) Implement with modification(s); or
- (c) Not implement the proposal,

The SoS may also request further advice from the Local Government Boundary Commission (LGBC) who may recommend any of the above options.

The decision of the SoS to implement a proposal with or without amendment will result in an Order under Section 7 of the 2007 Act. The Order will address the transfer of powers, property, assets and staff as well as any boundary and electoral changes necessary to give effect to the re-organisation.

Whilst the SoS may not implement a proposal without consulting with all principal councils within the relevant local government area (unless they have been involved in making the proposal), the consent of those councils is not required. Considerations that authorities should have regard to when formulating proposals



Formulating a proposal

There are some key considerations that local authorities should bear in mind in formulating proposals. Government highlighted some of the key issues for consideration in their letters to local authorities inviting proposals, including:

- (1) Relevant geography and economic areas – Government seeks proposals that have sensible economic areas and geography so as to avoid disadvantage in any one point and help to meet local needs.
- (2) Size – Government anticipates unitary authorities will have, as a rule, populations of 500,000 or more. Whilst there may be exceptions to this rule where this doesn't make sense, a clear rationale will be required.
- (3) Prioritisation of delivery of high quality and sustainable services – proposals need to be clear about how the new structure will improve service delivery, including opportunities for public service reform.
- (4) Working together – councils are expected to be able to demonstrate how they have made efforts to work together to meet local need including consideration of how to engage locally and consider local identity as well as issues of cultural and historic importance
- (5) Supporting devolution – proposals will need to demonstrate either how an existing CCA or CA areas may need to change or how they can unlock devolution.

Once approval for the re-organisation has been secured, we anticipate that Government are likely to prescribe a timescale for implementing the new structure, which will cater for key issues such as shadow elections. We consider some of the particular issues that local authorities may face as they work towards implementing a new single-tier structure later in this report, but the complexity and the time necessary to embed the new structure properly should not be underestimated.

The process – consultation

Consultation during re-organisation

Local authorities are under no specific statutory duty to consult residents, or anyone else affected by a proposed re-organisation into a unitary system.

It is not yet clear whether the SoS will want to see that consultation has taken place locally, will pursue government led consultation or anticipate no formal consultation whatsoever. The SoS invitations do refer to 'engagement' but it is not yet clear what this would comprise.

Until a clear steer is given from Government, given the wide-ranging, and potentially controversial, consequences of local government re-organisation, we would always recommend that proposals should be developed in conjunction with stakeholders including neighbouring local authorities, local residents, community interest groups, local Councillors and MPs.



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

- Do affected communities share common features, or will the plans involve bringing disparate communities together under one unitary authority? Urban and rural communities are likely to face unique issues, have different priorities and different expectations of local government. Early engagement with residents will enable local authorities to understand these issues and to tailor their plans accordingly.
- How do local residents currently access public services and how would this change under a unitary model? Transferring functions from a local district council to a more remote unitary authority may make it more difficult for residents to access the services they need. Particularly vulnerable residents and heavy users of local government services should be engaged with to ensure their needs will be met under the new structure.
- What are the political implications? If the intention is to bring together two neighbouring authorities which are currently under different control then early engagement with elected members will be essential. Political differences aren't necessarily a barrier to local government re-organisation, but they can make the process more difficult.

People form strong and complex bonds with their homes, communities and local areas. If communities are made to feel that changes to these are being imposed on them by outsiders then their reaction is likely to be strong and negative. Early engagement and participation in the decision-making process should ease these concerns and allow the authorities concerned to tailor their plans to address any particular issues.

The process – SI

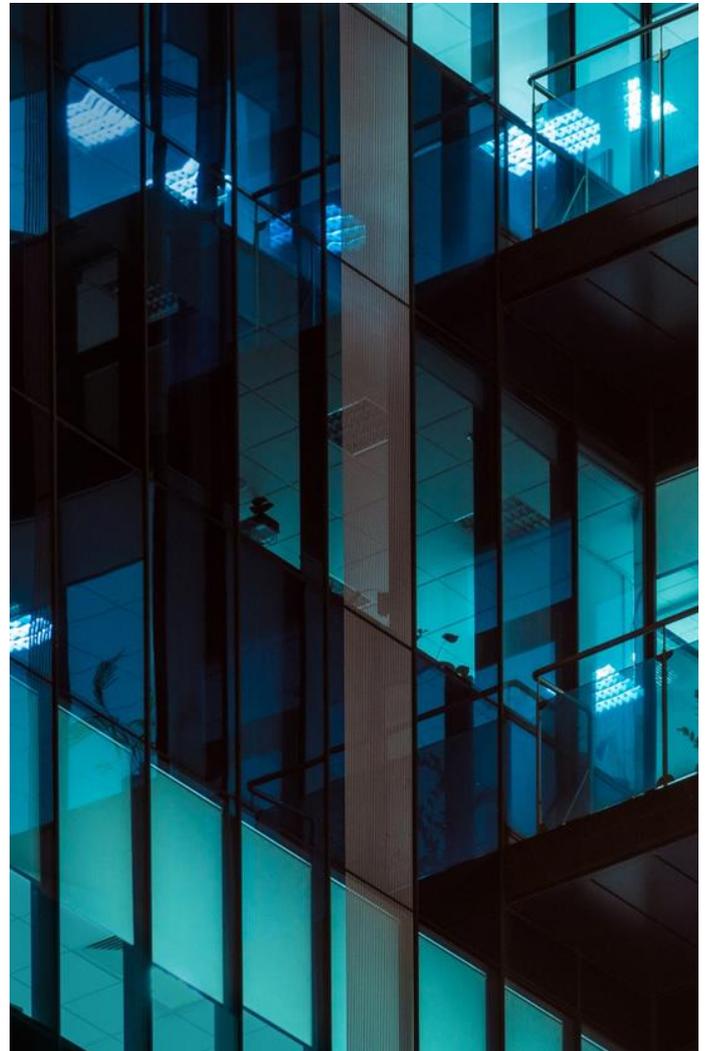
Key themes in the primary statutory instrument

Local government re-organisations necessarily require the passing of a new statutory instrument which provides an underpinning framework for the re-organisation. Whilst these of course vary on a case by case basis, there are some common themes which we consider below.

- **Shadow authorities:** Most SIs dealing with local authority re-organisation will take effect prior to the creation of the new unitary authority. For example, the Somerset (Structural Changes) Order 2022/329 came into force on 18 March 2022 but the new unitary authority created under that order did not come into existence until 1 April 2023. The SI therefore provided for interim arrangements including an Implementation Executive for the exercise of transitional functions.

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

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



Governance

Governance and Constitution

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

(1) Take a step back and plan a methodology to be followed when approaching the governance review. For example, it will be important to capture the views of all interested parties so the methodology will need to detail the relevant stakeholders and when it will be necessary to engage with them. This will include those working in the relevant authorities and the elected members, but residents and other interested parties should also be consulted.

(2) Derive several potential systems of governance that should be explored and to conduct a detailed assessment of their respective strengths and weaknesses using the views collated. It is important to think about what procedural steps would be needed to arrive at each potential design and the impact that each would have on the unitary authority's culture. This should also feed into considerations of whether one or possibly more unitary authorities may be necessary and how and where the boundaries should be drawn.

It is important to deal with the proposed governance arrangements at an early stage in the process as the opportunity to change the structure of the new unitary authorities once the statutory order for the re-organisation has been carried out will be limited.

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

Applicable SIs

General Statutory Instruments

Whilst many of the specific obligations regarding a particular re-organisation are derived from the primary SI passed under S7 of the 2007 Act, (see 'key themes in the primary statutory instrument' section of this guide) the Secretary of State has also passed a series of more generic regulations applicable to all re-organisations under S14 of that Act.

These cover the common practical issues that arise when implementing a re-organisation including finance requirements, the transfer of assets and employees and other necessary transitional arrangements. We have sought to outline these general SIs and their impacts throughout this guide, as well as providing further practical guidance to assist councils to prepare for the effects of these SIs.



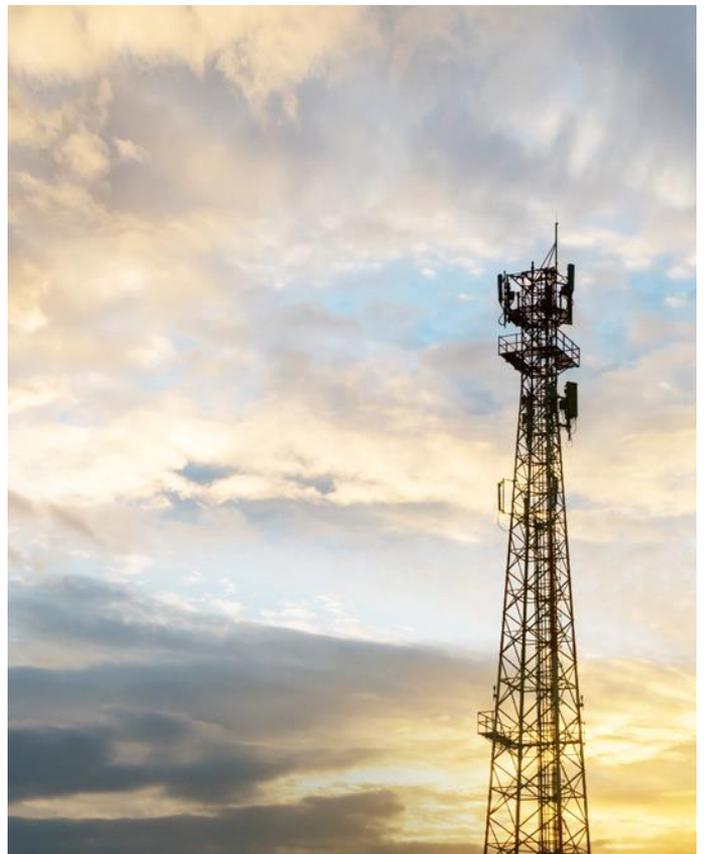
Transitional Arrangements

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

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

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

Additionally, the new unitary must adopt its own local development plan within 5 years of the re-organisation date.



Transfer of Assets – the 2008 Regs

Transfer of property, rights and liabilities (the 'Assets')

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

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

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

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

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

Re-organisation to a single unitary authority

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

Re-organisation to more than one unitary authority

Asset	Effect of 2008 Regulations
Functions	<p>Functions of the predecessor authorities will transfer to both of, or all of, the new unitary authorities on the re-organisation date. However, where a particular function was exercisable only in respect of a particular geographical area then that function will only transfer to a unitary authority that includes that area within its boundary. (Regulation 5).</p>
Property held for charitable purposes	<p>If property is held for the benefit of a particular area (or for the benefit of residents of that area) then it shall vest on the re-organisation date in whichever unitary authority covers the whole, or the largest part, of that area. Otherwise, property shall vest on the reorganisation date in whichever unitary authority covers the whole, or the largest part, of the predecessor authority's total area. Any property which has not vested in a unitary authority by the mechanisms above shall vest on the re-organisation date in whichever unitary authority is agreed not less than 3 months before the re-organisation date, or as determined by the Charity Commissioners. (Regulation 9)</p>
Financial Reserves	<p>On the re-organisation date the financial reserves, or a proportion of the financial reserves agreed between the successor authorities, shall vest in the successor authority nominated by the Secretary of State on trust for itself and the other unitary authorities concerned. Within three months of the re-organisation date, the nominated authority shall divide the financial reserves as agreed by the unitary authorities concerned or, failing agreement, as determined by the Secretary of State. (Regulation 10)</p>
Other Property	<p>Other property is a broad description but includes land as well as other less obvious forms of property such as intellectual property rights and commercial contracts. These are listed in detail in Regulation 11(1). There is an obligation on successor authorities to agree how property (including land) will be divided amongst the successor authorities. These agreements do not actually give effect to the property transfers which shall occur automatically on the re-organisation date (under Regulation 12). However, this does mean that the property agreements must be completed before that date.</p> <p>In addition to determining which property will transfer to which successor authority, the agreements must:</p> <ul style="list-style-type: none"> • Identify land judged to be surplus to the requirements of the successor authorities; and • Express how land disposal receipts should be distributed amongst the successor authorities. Where land is transferred to more than one successor authority, the default position is that such land will be held by those authorities as joint tenants rather than tenants in common. In all other cases, other property transferred to more than one unitary shall be held jointly and severally.

Commercial considerations

Contract management

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

Streamlining into a unitary authority will therefore necessitate a thorough review of all existing contracts to identify where overlaps exist and to evaluate which of the contracts are surplus. A number of reorganisations have led to the successor bodies running several systems for some years after they have come into existence however, the authorities will need to consider how best to deal with this duplication. Factors to consider will be:

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

It is also worth encouraging procurement teams from predecessor bodies to collaborate on procurement in the run up to reorganisation. This can ensure that contracts being awarded don't duplicate and can operate across the new geography both before and after completion of the reorganisation.

Branding

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

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

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

- What the logo will represent. It can be assumed that each individual authority will have well-established logos that they may want to use moving forward, therefore it is important that all entities agree the new name and logo moving forwards.
- How will the name/logo be protected, and which entity will pay for its registration (if the decision is made to register the trademarks to one of the current authorities prior to the re-organisation date)? In order to be registerable a trademark must be:
 - Capable of being represented graphically.
 - Distinctive.
 - Capable of distinguishing goods or services.
 - Not excluded by statute.

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

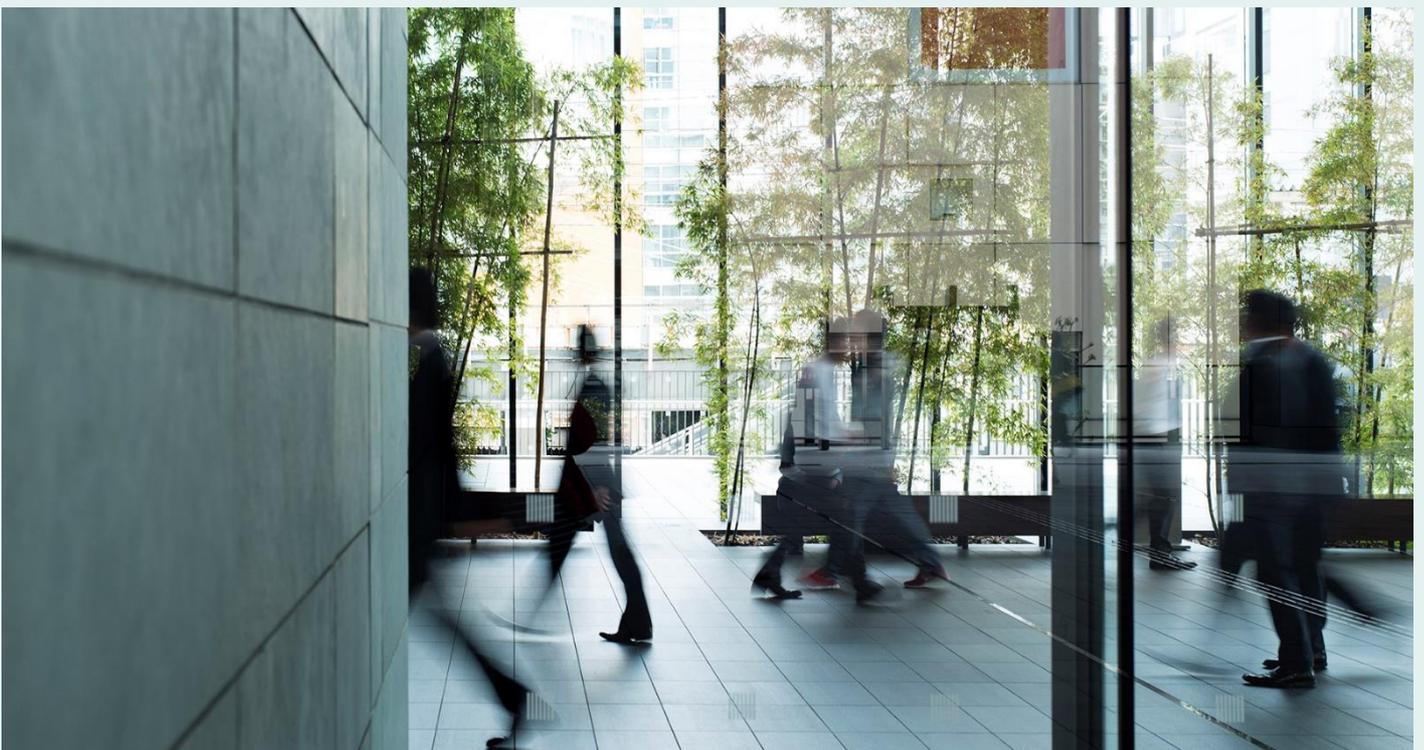
Intellectual

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

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

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

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



Property considerations

On any local government re-structure, the local authorities involved will need to have regard to their property assets, in both practical and strategic terms.

A statutory instrument will usually be put in place to give effect to the transfer of property from the relevant authorities into the name of the 'new' authority.

Prior to any statutory transfer though, any local authorities that are being re-organised should ask two key questions:

1. What do we own...

Authorities should 'take stock' on what properties they already own, noting any key assets (for example, properties that generate substantial income, with high development potential or historic/local significance).

Within each portfolio, authorities should check:

- Whether the properties are owned freehold or leasehold (or under more informal arrangements, e.g. under licence).
- Whether the properties are tenanted or shared with other parties.
- If any buildings are listed or registered as Assets of Community Value.

Beyond the land/buildings that they actually own or occupy, authorities should also consider any property that they have under contract or option to sell or buy, or which is still under negotiation.

2. ...and what do we need?

Some buildings will need to remain in the re-structured authority's ownership to facilitate continuity of its services – for example, libraries and leisure centres. Where property is to be retained post re-structure, the relevant authority should consider whether there are any steps that it could take to 'tidy up' its ownership in advance, for example:

- Documenting any informal arrangements that it may have in place with third parties (including other authorities).

Where properties are tenanted – ensuring that all rent reviews are up to date and relevant consents (e.g. for alterations) are in place.

There will inevitably be some local authority-owned sites that become 'surplus to requirement' on re-organisation. For example, where a unitary authority is formed, the new authority would likely only need one Town Hall or head office location. It may therefore become necessary to dispose of these surplus or under-utilised sites. Key points to consider include:

- Whether to sell before or after re-organisation (in addition to the prevailing market, also take into account practical matters such as time and resources to handle larger, more complex sales).
- Whether any third-party consents need to be obtained for a disposal, or any statutory procedures need to be followed (e.g. open space, assets of community value).
- Where property is tenanted – are any leases due to expire soon, or with upcoming break clauses?

...and remember, the s123 'best consideration' rules will still apply.

Where property is under contract or under negotiation for purchase or disposal by a predecessor authority:

- Again, query whether the transaction should/can complete before or after the re-structure or indeed at all.
- Does the intended transaction fit with the strategic objectives of the new authority, or does it need to be amended or re-negotiated?
- Do the existing contracts cater for a scenario where the relevant land or buildings will become vested in a new local authority owner?
- Where contracts are no longer required or viable post re-organisation, what are the termination/exit options?

Staff and employment considerations

Staff transfers

The incorporation of one organisation into another, or the merger of more than one organisation into an entirely new entity will normally result in the automatic 'transfer' of employment of the affected staff under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE).

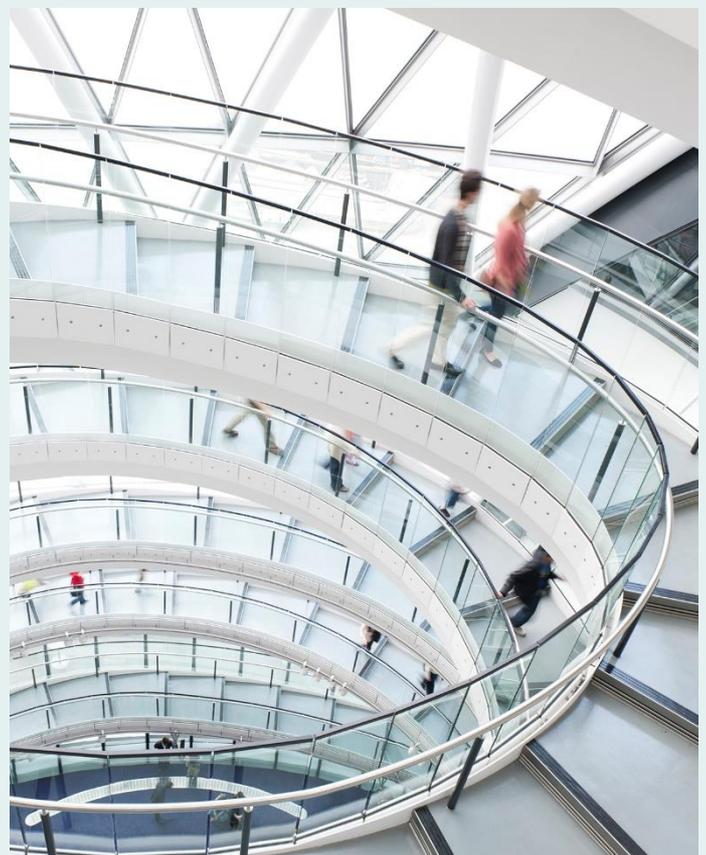
However, Regulation 3(5) TUPE provides that an administrative re-organisation of public administrative authorities or the transfer of administrative functions between public administrative authorities is not a relevant transfer.

In the context local government structural and boundary changes in England a number of statutory instruments have been made including the Local Government (Structural and Boundary Changes) (Staffing) Regulations 2008 (the Staffing Regulations).

Regulation 3 of the Staffing Regulations creates a right for staff to transfer by virtue of TUPE into a single tier council which might not otherwise exist due to restriction contained in Regulation 3(5) TUPE. A notable exception of the Regulations applies to the statutory office of 'head of paid service'. Some understand this restriction to mean that it removes all the protection afforded by TUPE and the person who holds that office does not transfer. There are a number of considerations that flow from this restriction that require careful consideration:

- The head of paid service is a statutory office, normally held by the employee who is employed as the Chief Executive. The Regulations do not reference the employment of the Chief Executive and arguably do not restrict the transfer of the Chief Executive's employment. Accordingly, the Regulations and TUPE are not aligned and consultation with the Chief Executive should take place. The explanatory memorandum to the Staffing Regulations are helpful and should be referenced. Equally, the Local Government Restructuring, Guidance on Staffing Issues (DCLG 2008) also provides useful guidance. In particular, paragraph 6.3.6 provides that "In relation to the chief executives of predecessor councils, the Government expects all parties concerned to take a reasonable approach. It may be that some such chief executives would like to be considered for posts in the new single tier council – perhaps the chief executive post or a senior management board post."

- Regulation 5 of the Staffing Regulations provides that a head of paid service whose employment would have continued but for the appointment of another person to the post of head of paid service of the single tier council, is to be treated as dismissed by reason of redundancy for the purposes of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 and the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007.
- Local authorities will need to consider whether the Restriction of Public Sector Exit Payments Regulations 2020 (Exit Payments Regulations) apply to any proposed exit payments made to any staff who are leaving as part of the re-organisation. The Exit Payments Regulations may limit the amount of an exit payment and/or require additional procedural steps and reporting obligations to be complied with.



Staff and employment considerations

Practical tips for dealing with the transfer

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

Communication and planning are key to ensuring a successful re-organisation. This can be a time-consuming process but a structured approach can ensure that employees receive timely and accurate messages about the process to ensure that speculation and unnecessary concerns are avoided. A communications plan can also ensure that appropriate consultation is scheduled whilst allowing delivery of day-to-day services to continue.

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

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

Authorities should be aware of the need to provide accurate employee data if their staff will be transferring.

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

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



Finance considerations and council tax

The Local Government (Structural Changes) (Finance) Regulations 2008 (Finance Regulations) make provision for the exercise of functions under the Local Government Finance Act 1988 (1988 Act) and the Local Government Finance Act 1992 (1992 Act) where re-organisation occurs.

Principally, the Finance Regulations make provision for:

- The exercise of functions under Part 3 of the 1988 Act (in relation to non-domestic rates) and Part 1 of the 1992 Act (in relation to council tax).
- The equalisation of council tax rates across the reorganised area.

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

Transition Period

Regulations 3 and 4 concern responsibility for functions exercised under Part 3 of the 1988 Act and Part 1 of the 1992 Act, as well as those exercised in relation to council tax equalisation under Part 4 of the Finance Regulations (together, the Finance Functions).

Where an entirely new unitary authority will be established (and a shadow authority will be appointed or nominated in accordance with an order), the shadow authority's executive shall be responsible for discharging the Finance Functions across the reorganisation area during the transition period (per Regulation 3).

Where an existing local authority will become a unitary authority following a local government reorganisation, the discharge of the Finance Functions during the transition period will fall to the 'relevant executive'. The relevant executive is either an implementation executive (where elections are yet to be held) or the executive of a preparing authority (where there has been an election to that preparing council) .

Shadow authorities

During the transition period, the shadow authority is the billing authority for the reorganisation area and responsible for discharging the Finance Functions in relation to the new unitary authority's first financial year (which begins on the reorganisation date). These functions include; calculating the aggregate of the expenditure the unitary authority expects to incur (including allowances for contingencies and reserves), calculating the aggregate of the income the authority expects to receive, calculating the contributions to the non-domestic rating pool, calculating the council tax requirement, and issuing non-domestic rating and council tax demand notices.

Preparing Authorities

Once elections to the preparing authority have been held, that preparing authority is the billing authority for the reorganisation area and is responsible for exercising the Finance Functions in relation to the new unitary authority's first financial year.

Where elections are yet to be held, and by virtue of regulation 4(3) an implementation executive is responsible for exercising the Finance Functions for the reorganisation area, the estimated budget and council tax calculations prepared by the implementation executive must be presented to a meeting of the preparing council for consideration. However, the preparing authority may only elect to use its own budget estimates (rather than those prepared by the implementation executive) if a two-thirds majority of members of the preparing council present and voting at the meeting vote to do so.

Transitional Arrangements

On the reorganisation date, the unitary authority will become the billing authority for the reorganisation area for the purposes of Part 1 of the 1992 Act. From that point, the unitary authority is also treated as the billing authority for the predecessor authorities' areas prior to the reorganisation date. This ensures that the new unitary authority can deal in the first year with any adjustments required to the contributions made by the predecessor authorities prior to the reorganisation date.

Equalisation

In areas where reorganisation is occurring under a 2007 Act order, there may (for a variety of reasons) be differences in the basic amounts of council tax calculated by predecessor authorities for their areas in the year leading up to the reorganisation date. Application of the standard rules under the 1992 Act could, in those circumstances, result in large increases in council tax in some predecessor areas between the preceding year and the first year following the reorganisation date.

Part 4 of the Finance Regulations modifies the operation of the council tax provisions in the 1992 Act, thereby allowing newly constituted unitary authorities (and shadow authorities and preparing authorities) to determine different basic amounts of council tax for different predecessor areas forming part of the reorganisation area for up to seven years and to equalise council tax rates over time.

Once the basic amounts of council tax have been equalised across the whole reorganisation area, Part 4 of the Finance Regulations no longer has any application.



Risk and insurance considerations

Reorganisation Risks

There are a range of risks inherent in the reorganisation process, which may directly or indirectly impact risk for existing and new unitary authorities:

- Organisational capacity will be stretched. Reorganisation will demand people and financial resource, which will impact existing functions and may increase risk in other areas. Improvement projects (such as cyber risk reduction, estate improvements) may be delayed or shelved in the expectation the new unitary will have different solutions or needs.
- Staff recruitment and retention is inevitably impacted when an organisation has an uncertain future. Existing staff may be unsettled or experience increased workload, leading to wellbeing impact and possible departures. The best staff are often most mobile, and so most difficult to retain or recruit in these circumstances.
- Cyber and physical security may be put at risk by bringing organisations with different systems and protocols together. Legacy assets may be at risk unless they are fully decommissioned or receive investment in up-to-date security. Malign actors will be looking for weaknesses arising from reorganisation.
- Whistleblowing, safeguarding and other risk management protocols may experience a period of reduced effectiveness, as organisational cultures and processes are brought together.
- Transition from existing delivery models to new models (as discussed above) may impact on services and associated risk.

Risk and insurance managers should be embedded in reorganisation projects to support management of these risks and, where available, ongoing protection against them. Browne Jacobson have commissioned research on effective risk management which is available here:

<https://www.brownejacobson.com/insights/report-risk-management-in-local-government>

Liability and Asset Transfer

Liabilities will include risks that have materialised and many that have not. Assets will include liabilities to the predecessor authority, contractual protections and indemnities. Transfer will include many long tail liabilities, and some assets such as in relation to disease and abuse, latent defects and, potentially, concealed liabilities and fraud. Therefore, arrangements to transfer assets and liabilities of this type:

- May involve risks significantly greater than are currently apparent, or which emerge in the future (such as those associated with planned legislative changes to relax limitation in childhood sexual abuse claims: Limitation in claims for Child Sexual abuse | Childcare law
- Are likely to be relevant for many decades, as long tail liabilities emerge.

The practical upshot of this is that organisations must approach liability asset transfer on a basis of the clearest possible understanding of existing risk exposure, and with an eye to supporting the new unitary for the long term. It should approach this assessment taking into account new and emerging risks, such as child sexual exploitation, financial abuse, data risks and disease.

Knowledge capture & retention policies

Responding to risks requires an understanding of organisational structures and processes, which is often deeply embedded in existing operational and risk and insurance teams but can be rapidly lost on reorganisation.

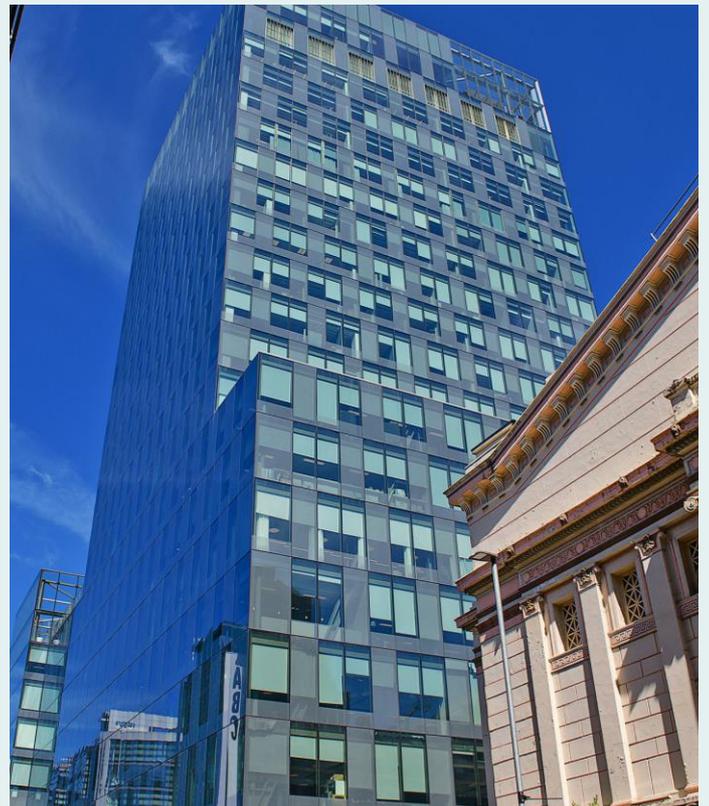
There is a well-established trend that where harm has been caused by a person or organisation acting on behalf of a local authority then attempts will be made to pursue the local authority instead. This may reflect lack of understanding of how the service was delivered or arise because the person or organisation that delivered the service no longer exist, cannot be traced, or lack assets or identifiable insurance. While arrangements may be capable of reconstruction years after the event, capturing and retaining knowledge at the point of reorganisation is often more efficient.

Key information includes an archive of key policies and processes (such as child and adult safeguarding, arrangements for working with providers) and contracts (such as insurer and provider contracts). Having an insight into provider insurance history can make a real difference in terms of being able to pass claims to other indemnifiers in years to come.

Clear file retention policies, archived for future use, can be a powerful tool for a new unitary to understand what evidence is and is not available. Ensuring data is migrated to new systems, or that clear processes are maintained to access legacy systems ensures key data is not overlooked.

Relationship Building

Effective management of risk and insurance is founded on strong, organisation wide, and external relationships. Ensuring risk and insurance teams are embedded in reorganisations projects and then implement purposeful plans to build relationships with new colleagues, insurers, brokers and lawyers who they will be working with will minimise the change impact of reorganisation on these essential functions.



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

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