

Local government re-organisation in England

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If COVID-19 hadn't hit the country like a tonne of bricks, the number of local government restructuring proposals being looked at right now by the Secretary of State (SoS) would be considerably higher than three (North Yorkshire, Somerset and Cumbria).

In some ways most councils should benefit from a two-stage approach. Hopefully more scrutiny can be given to the proposals on the table and with fewer councils impacted in the short-term, fewer issues will need to be dealt with.

It is also an opportune time to look at some of the potential risks restructuring can bring and how they can be mitigated against.

Getting the right organisational structure

Currently two legal mechanisms are used to effect local government re-organisation:

1. **Route one** The SoS can invite or direct a council to make a re-organisation proposal, like the current proposals from Somerset, Cumbria and North Yorkshire under the Local Government and Public Involvement in Health Act 2007.
2. **Route two** Councils may put together re- organisation proposals themselves and submit these for consideration by the SoS under the Cities and Local Government Devolution Act 2016.

Both routes end up at the same point, with a proposed structure for the geographic area and the governance (for example, executive and leader model), and the legislation used to finalise the proposals is the same: Section 7 of the Local Government and Public Involvement in Health Act 2007¹.

The first risk to a re-organisation is that the SoS will not approve the proposals because they cannot see that the authorities, citizens and other stakeholders have bought into the change. Councils are under no statutory duty to consult residents or others affected by proposals. However, as the consequences of local government re-organisation can be wide ranging (and potentially controversial) it is recommended that proposals are developed in conjunction with stakeholders. These can include neighbouring councils, residents, community interest groups, local councillors and members of Parliament.

Aside from public consultation, some considerations link to the tests that must be met to secure SoS approval.

As a minimum, councils should consider:

- Accountability under the new structure from national to neighbourhood scales, democratic oversight of any new powers, and how residents will engage with decision-making.
- The financial impact of the proposals, the costs involved and funding, recovery of initial costs, long-term savings and how anticipated savings may be used.
- The geographical logic of the plan, considering the location of economic hubs and local populations (urban/ rural/combination of the two), and how services may be delivered across the areas affected by the re-organisation.
- How the council will approve the proposals and coordinate with neighbouring councils to reduce the risk of challenge.

In addition, we would suggest that councils consider the proposed new council's ability to engage in and drive systems which will deliver key policy goals, such as integrated care systems and net zero carbon.

A realistic timetable for implementation must be set. The complexity and the time necessary to embed the new structure properly should not be underestimated.

Governance

Governance is one of the most important considerations. It needs to be dealt with at an early stage in the process as the opportunity to change once the new council is formed is limited. Each council involved in the re-organisation will have its own governance arrangements and each may be fundamentally different in structure, whether an executive model, committee structure or mayoral. It is necessary to undertake an internal exercise early on to decide which structure to use.

Implementing the revised governance arrangements will require work from the start, preparing documentation to govern the new council. This includes the constitution but also other pertinent documents such as the code of conduct for members and the scheme for members' allowances.

The best way to ensure smooth running once the new council is established is to run a shadow board.

Transfer of property rights and liabilities

The mechanism for transfer of property rights and liabilities (assets) depends on the type of asset and whether the re-organisation is to a single new council or multiple councils.

In most instances, agreements detailing how assets will be dealt with will be made prior to the re-organisation date. A significant amount of work is needed to identify all combined assets and to complete these agreements. Regulations exist to enact a transfer if not all assets are dealt with under such agreements, but this should be a backstop only.

Land and buildings which the councils have an interest in will need specific thought. Re-organisation is likely to result in surplus and underutilised property, and how best to rationalise assets will depend on different factors. As we come out of the pandemic, the question as to how buildings, particularly large, urban ones are used, will be a critical question.

Commercial considerations

Re-organisation can result in duplication of service contracts with suppliers for the same or similar services. A thorough review of all existing contracts must identify where overlaps exist and evaluate which are surplus. Dealing with duplication can be tricky and time consuming. Some agreements can be terminated and some services can be repurchased after re-organisation.

The new council will need a new name and logo, which should be registered as a trademark.

Councils should take stock of their intellectual property portfolio prior to re-organisation. This includes identifying which intellectual property is required post-re-organisation and a decision taken on how to deal with those that are surplus to requirements.

Additionally, data held by each council will need to be transferred to new systems and managed carefully to avoid failure of IT systems or breach of data protection laws.

Staff and employees

A re-organisation of local government structure into a unitary system constitutes a relevant transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006². There are also some specific situations unique in the context, including recruiting a head of paid service through open competition, the Local Government Pension Scheme.

It will impact on employees across the councils and involves many practical considerations. Consultation and communication (including with union representatives) as well as planning are key to ensuring a successful re-organisation; from identifying any cultural barriers to engaging staff in the process.

Financial considerations and risk

There are detailed statutory provisions governing the exercise of functions and how council tax is to be managed during the period of re-organisation and the years immediately following. Depending on the councils involved and levels of council tax payable in the different areas, it may be necessary to equalise council tax across the new council area.

There will be many considerations regarding a council's risk position, and the potential transfer of risks, including reported and incurred but not reported. Priority risks include recent incidents involving children or vulnerable adults, instances of disease and abuse where delayed notification can be common, and financial abuse.

Consider external service providers.

Management of information on risk will need to be systematic and key items should be identified and secured. File destruction policies should be preserved to evidence the basis of destruction of documents, and formal handovers between changing personnel in advance of the re-organisation will help to ensure as much knowledge is retained as possible.

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References

¹legislation.gov.uk/ukpga/2007/28/section/7

²legislation.gov.uk/uksi/2006/246/contents/made

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