



# *Councils' Proposals for Unitary Local Government*

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An Approach to Implementation





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# Chapter 1: Introduction

- 1 On 25 July 2007 John Healey, the Minister for Local Government, announced that the Secretary of State was minded to implement 9 unitary proposals which councils had submitted in response to the Government's Invitation to Councils issued on 26 October 2006. If and when the Local Government and Public Involvement in Health Bill is enacted the Secretary of State will take final decisions as to which unitary proposals are to be implemented.
- 2 To facilitate any such implementation this Paper sets out, as a basis for dialogue with the potentially affected councils, the Government's current intentions as to the approach to be adopted for implementing any unitary proposals. In the case of Norwich the Secretary of State is minded to request the Boundary Committee of the Electoral Commission to advise on their proposal but we envisage that a similar implementation approach will be taken to any proposal made by the Boundary Committee as a result of that request.
- 3 We expect councils to involve their local and regional stakeholders and partners in their consideration of this Paper. We are also making this Paper available to national key stakeholders (listed at Annex A), to the members of our Group of Experts (membership and Terms of Reference at B), and on the Communities and Local Government website at <http://www.communities.gov.uk/index.asp?id=1504065>. We would welcome comments and these should be submitted as described in paragraph 19 below.
- 4 The members of the Expert Group include all the major local government Trade Unions as well as the Local Government Association (LGA) the Local Government Employers and other professional bodies of local government. This Paper builds on the work to date of the Group of Experts and on our discussions with a number of local authorities affected by change. We are grateful to the Group for their work and for the constructive approach and advice of the many people in local government that we have been talking to over recent months, including the help and support of the Local Government Association. The Paper sets out the broad approach to establishing new unitary authorities which we currently intend to adopt, and on certain matters identifies options on which views are invited. Through a process of dialogue with the potentially affected local authorities, and of having regard to the comments and contributions of key stakeholders and to any other comments received in response to the Paper, the Department intends to put in place an implementation regime which will involve both principles to be followed in all cases and also flexibility enabling different solutions to be adopted in different places.
- 5 The aim of this Paper is to facilitate this process, enabling the development and timely adoption of the implementation regime once the necessary legislative provisions have been enacted. In particular it will be the basis of discussions over the coming weeks with potentially affected local authorities, helping councils with us to work up their local plans for implementation, as well as assisting Government to develop the general principles and the future secondary legislation which we expect will be needed. The Government will also look to the continued input of the Group of Experts, along with the contribution from potentially affected authorities, as it takes forward work on the general principles and associated secondary legislation.

## Glossary

- 6 Throughout this document we use the following terms:

*Existing authority* – a county or district authority exercising functions in relation to an area prior to reorganisation;

*New authority* – any authority (shadow or transitional) taking on all local government functions at the date of reorganisation;

*Shadow authority* – an authority established (with either appointed or elected members) to prepare for the full transfer of functions to itself, as a new authority, from the reorganisation date;

*Transitional authority* – an existing authority given additional powers and responsibilities to prepare for the full transfer of functions to itself, as a new authority, from the reorganisation date.

## Context

- 7 In order to ensure the smooth transition from the existing to the new authorities assets and liabilities need to be identified and agreements reached about their transfer; provision needs to be made for the continuity of local services; staff need to be consulted and decisions taken about their future role and all of this without disruption to services. We know from our initial meetings with local authorities that they are aware of the issues and are already beginning to plan accordingly.
- 8 This is essential. The experience of the 1990s reorganisations was that delays in starting preparatory work tended to have an adverse impact on the quality of the implementation process. Ideally therefore we want to put authorities in a position where they are able to start their preparations for reorganisation as soon as practicable. Things will go more smoothly if all the existing authorities start now such preparatory work as they are able. This Paper draws on the experience of previous reorganisations which clearly demonstrated the value of early preparatory work, and on the work of the Expert Group that has been considering the options and issues since March of this year.
- 9 So we would like to take this opportunity to encourage all potentially affected local authorities, where they have not done so already, to begin to work together without delay. The more early dialogue there is between all local authorities involved in an area the more likely that, if a decision to implement a unitary proposal is finally taken, the necessary transitional measures can be quickly effected, protecting the interests of service users and residents and providing both staff and stakeholders with the reassurance and certainty they need.

## Statutory Framework

- 10 The statutory framework comprises:
- the primary legislation, once enacted. Subject to the Parliamentary process, we envisage Royal assent to the Local Government and Public Involvement in Health Bill in the Autumn;

- Implementation Orders. These will be the vehicle for defining the new structures; and
  - General Regulations covering matters common to all the reorganisations.
- 11 The intention is that, alongside the Implementation Orders that will bring the new unitary authorities into being there will also be a number of General Regulations to aid local authorities in preparing for change. Precisely what is covered in Orders and what is covered in Regulations may vary from area to area, but some indication of how the Bill powers might be used is set out below.

## Implementation Orders

- 12 The scope of the Implementation Orders is defined in the Local Government and Public Involvement in Health (LGPIH) Bill. It includes structural matters such as:
- the constitution or abolition of local government areas and boundaries of those areas;
  - the establishment of an authority for any local government area, (this would be a shadow or transitional authority which becomes a fully fledged local authority exercising all local government functions on the reorganisation date), or the winding up and dissolution of existing authorities;
  - transfer of functions;
  - electoral matters including the membership of authorities and electoral arrangements; and
  - appointments by the Secretary of State to shadow authorities during the transitional period and in advance of subsequent elections.
- 13 The Orders will also establish the date by which all functions (duties and powers) will transfer to the new authority (the reorganisation date) currently planned to be by 1 April 2009.

## General Regulations

- 14 The General Regulations will largely cover matters common to all the implementations and those matters not covered in the Implementation Orders (but some provisions of the Regulations may not apply in a particular area because specific provision is made in the relevant Implementation Order). These might include:
- staffing arrangements including the transfer and appointment of staff;
  - finance matters including budgeting powers, establishing grant allocations, reserves and assets, and pension fund responsibilities;
  - the transfer of assets and liabilities;
  - provision to ensure authorities can plan the implementation;

- provision for the appointment of shadow authorities and Joint Committees;
  - provision for the appointment of Joint Implementation Teams;
  - establishment of implementation milestones;
  - provision to ensure co-operation between authorities; and
  - provision to ensure continuity – that anything being undertaken by an existing authority immediately before reorganisation can be continued by the relevant new authority post-reorganisation. This includes service delivery, contracts and any decisions, licences, approvals etc made or granted by the existing authorities which should have continuing effect as if they had been made or granted by the new authority.
- 15 This is not meant to be an exhaustive list; there may be a requirement that we have missed so comments are welcome on the above.

## **Confidentiality and Data Protection**

- 16 Any responses to this Paper may be made public by Communities and Local Government. If you do not want all or part of your response or name made public, please state this clearly in the response. Any confidentiality disclaimer that may be generated by your organisation's IT system or included as a general statement in your fax cover sheet will be taken to apply only to information in your response for which confidentiality has been specifically requested.
- 17 Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
- 18 In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

## Responses and Further Information

- 19 Any responses to this Paper, and queries about it or about this exercise more generally, should be addressed to:

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Any responses should be received on or before 28 September 2007.

## Chapter 2: Method of Implementation

- 20 The Government is clear that the current restructuring of local government is about creating new authorities – authorities with new functions and responsibilities but just as importantly with revitalised and strengthened local leadership and governance arrangements with a new innovative approach to service delivery in their area. It will be essential to put in place from the outset the engagement arrangements, the strengthened leadership models and devolved service responsibilities envisaged in the unitary proposals.
- 21 Any unitary authority established following the current invitation process will therefore be a new authority in any commonly understood meaning of the word. It will have in place a wholly new style including innovative community engagement arrangements, such as community areas with forums having delegated responsibilities for certain services, as set out in the unitary proposal. Equally its service delivery arrangements will be new, involving for example Community Access Points (one-stop shops), local councillors having allocated funds to get things done at the most local level, or such other innovative arrangements as set out in the original proposal. We will expect local authorities to be developing and building upon their proposals for new and enhanced governance, strengthened leadership and new ways of working and engaging with local people, during this transition process and beyond. In short, nowhere will the unitary authority, or how it serves the local people, simply be a continuation of what went before.
- 22 Nevertheless, where there is an existing authority which covers the same area as the proposed new unitary authority implementation arrangements will certainly be more straightforward if the new unitary authority is treated, in technical terms, as a continuation of that existing district or county council – in other words as a transitional authority. Experience from the previous reorganisation in the 1990s strongly supports this as a method of implementing change that ensures less disruption and a smooth transition.
- 23 To create a new authority in the technical/legal sense will require the abolition of the existing authority and the establishment of a new one on identical borders. This is likely to create additional work for no practical gain. It would also mean that during the transitional period there would be an existing authority operating alongside a shadow authority which covers exactly the same area, which is likely to lead to an unnecessary duplication of effort and confusion for citizens and service users.
- 24 It is clear to us that, even if we chose to implement change by means of a transitional authority where it is possible to do so, this is not a “takeover“ by the existing members and officers of the bidding authority. For instance there will be a new set (and in most cases a different number) of councillors for the new authority with new responsibilities including that of implementing change. The post of Chief Executive and perhaps other senior posts will be advertised and subject to open competition. This will ensure that there is new leadership with the drive and determination to take things forward and provide opportunities for those who wish to, to take part in the transition process to new and improved local government in their area.

- 25 We therefore intend that where the most pragmatic and sensible way to manage the transition process is for an existing authority to become a transitional authority which will take on unitary functions on the reorganisation date, then that will be the method of implementation. We will not, except where unavoidable, opt for the establishment of shadow authorities to take on unitary functions on the reorganisation date. Instead, where there is an obvious candidate, an existing authority will continue in existence, becoming the transitional and then the new unitary authority for the area. This has the benefit of significantly simplifying transfer arrangements.
- 26 For the individual local authorities this might mean that:-
- In Cornwall, Durham, Northumberland, Shropshire and Wiltshire, the county council would become a transitional authority then a new authority taking on district functions on 1 April 2009 (or possibly earlier).
  - In Exeter and Ipswich the existing district council would become a transitional authority then a new authority taking on county functions from 1 April 2009. In Bedford the existing district council would likewise not be abolished, and would take on county functions; the approach in the remaining area of Bedfordshire would depend on the unitary proposals received in response to the invitation that the Secretary of State is now minded to issue.
  - In the case of the 2 Cheshire unitaries, we would create a shadow authority for each, which would become the new authority from 1 April 2009, when all the existing authorities in Cheshire would cease to exist.

## **Chapter 3: Representation for the new authorities**

### **Introduction**

- 27 This Chapter considers the membership and representational arrangements of shadow authorities, transitional authorities and new authorities in order for them to take effective, accountable, and timely decisions. Time is of the essence; many decisions will be needed to prepare for reorganisation and a body of councillors needs to be in place as soon as possible to take those decisions.

### **Appointed shadow council and Joint Committees**

- 28 Prior to the coming into force of any Implementation Orders, authorities in all affected areas should establish a Joint Committee which can begin preparing for reorganisation. All councils need to be working together on this, so we believe that the body should be formed of representatives of all the existing local authorities in the area concerned.
- 29 Once the Implementation Orders come into force they will either provide for the establishment of a shadow authority or for an existing authority to take the role of transitional authority.

### **Shadow authorities**

- 30 Where a shadow authority is established, the Orders will provide it with the necessary functions to prepare for the reorganisation date. Once elections have been held, the new councillors can exercise those functions. Prior to elections, councillors from existing authorities will need to be appointed to the authority to avoid a potential "dead period" between the Implementation Orders being made and the elections.
- 31 We intend that such councillors should be drawn from both counties and district councils in the affected area. The power to appoint to a shadow authority rests with the Secretary of State. However, our intention is that the membership of these bodies should as far as possible be a matter for local negotiation and agreement, reflecting the arrangements already put in place (see paragraph 28), with the Secretary of State's appointments based on recommendations by affected authorities.

### **Transitional authorities**

- 32 For transitional authorities the Implementation Order will give additional functions to the existing authority so that it can prepare for reorganisation. However that authority – like any appointed shadow authority – needs to have representation from councillors in the existing authorities that are to be abolished – we need to ensure their representation in some way.
- 33 The Secretary of State cannot appoint councillors to a transitional authority. To ensure the representation of other affected authorities we intend that the transitional authority will be required to establish a Joint Committee to perform its functions related to preparation for reorganisation, upon which other affected local authorities should be invited to sit.

- 34 We intend that, in advance of any elections to the transitional or new authority, the Implementation Order would require that a number of existing councillors are appointed to the Joint Committee. As noted above we also intend that such councillors should be drawn from both counties and district councils in the affected area but otherwise to leave membership of these bodies to local negotiation and discretion as far as possible.
- 35 Where no agreement is forthcoming on the membership of a Joint Committee we would first look to the Local Government Association to broker an agreement. Failing that, the Secretary of State will, as a fall-back, make the appointments i.e. the Orders will not only call for the establishment of the body but will also provide for the Secretary of State to be able to stipulate its membership. In other words the Secretary of State will take the decision as to who sits on the body.

## Membership of shadow and transitional authorities

- 36 We could provide further guidance as to what the membership of the appointed shadow or Joint Committee might be but have the following suggestions:
- since the bidding authority is in the lead in ensuring that the plans and proposals upon which their bid has been considered and deemed acceptable are put in place, it is suggested that the Leader of the appointed shadow or Joint Committee is the Leader of the bidding authority;
  - the appointed shadow or Joint Committee should include representatives from all the affected local authorities; and
  - as far as possible the body should reflect the political balance of the area concerned.
- 37 We would welcome views on the above proposals and on the suggested make up of the appointed shadow or Joint Committee and what appropriate scrutiny arrangements are required for these bodies, bearing in mind that any such appointed councillors or Joint Committee members will have limited functions and would only sit until such time as an election is held (see below).

## Elections

- 38 Appointing existing councillors to take on the preparations for change, might be seen to be very much a “second-best” solution particularly as they will be making decisions which will effectively bind the new unitary authority. It would be preferable to give legitimacy to those decisions by the holding of an election. The question is when the elections to the new authorities (or, prior to the reorganisation date, to the shadow or transitional authorities) are best held.
- 39 In considering the options it must be borne in mind that, under the Local Government Act 1972, the electoral cycle for county based unitaries must revert to the existing county cycle (2013, 2017) and district based unitaries to the district cycle (all out elections in 2011, 2015 etc or elections by thirds in 2010, 2011 and 2012).

40 The Options for elections are:

**For county unitaries**

- No elections until May 2009 with the next elections in the council cycle in 2013. New councillors would have the usual 4 year term. This would provide for existing Councillors to take part in the transition process but would not provide a fresh electoral mandate until after the reorganisation date. It would also enable the Electoral Commission to review the electoral arrangements before the elections.
- Elections to a transitional authority in May 2008 with existing councillors standing down with shortened terms of office and subsequent elections in 2013. This would provide a fresh electoral mandate for the change. However, it would result in 5 year terms for councillors. The elections would have to be held on a transitional basis, i.e. in accordance with temporary arrangements made by the Secretary of State (based on those contained in the proposals made by local authorities) as it will not be possible for the Electoral Commission to review the arrangements before May 2008.

**For district unitaries**

- No elections until May 2009, when whole council elections are held. Existing councillors stand down, some after two years (whole council elections) some after only one year. Subsequent elections returning to the district cycle in 2011 (all out) or 2010, 2011 and 2012 (by thirds). This would provide for existing councillors to take part in the transition process but would not provide a fresh electoral mandate until after the reorganisation date. It would enable the Electoral Commission to review the electoral arrangements before the elections.
- Whole council elections in May 2008 to transitional authority. Existing councillors stand down, some possibly after only one year. Return to district cycle with three year term to 2011 where all out elections held or by thirds from 2010. This would provide a fresh electoral mandate for the change. The elections would have to be held on transitional basis as it will not be possible for the Electoral Commission to review the arrangements before May 2008.

**For unitaries based on the merger of district councils there is only one option**

- Whole council elections in May 2008 to a shadow authority with same electoral cycle as above. The elections would have to be held on transitional basis as it will not be possible for the Electoral Commission to review the arrangements before May 2008. Councillors in the existing local authorities remain in post until 1 April 2009.

41 None of the options for new county or district based unitaries are ideal. If we wait until May 2009 to hold elections we are concerned that the shadow or transitional authorities will lack a democratic mandate for the preparations necessary to make the transition process a success. There will be significant decisions to be made, for example in terms of setting the budget for the new authority. These concerns were shared by the Expert Group, although in many ways elections in 2009 would be the easiest option and, for the county councils, the least disruptive of councillors terms of office. It would also allow the Electoral Commission to undertake electoral

reviews and put in place new electoral arrangements for the elections in 2009. But it means only existing councillors will have the opportunity to take decisions prior to reorganisation, for an area that they might not be representing after the reorganisation date.

- 42 For district based new unitary authorities, elections in May 2008 (or indeed May 2009) have some problems given all district councils have held elections this year and May 2009 is a county council election year. Elections in May 2008 do not involve longer terms (next whole council elections for district councils are due in 2011) which means that the Electoral Commission could undertake a review of the electoral arrangements in time for the next elections in 2011.
- 43 The arguments are quite finely balanced; it might be that the right answer in one area is not the right answer in another. On balance we favour the option of elections in May 2008 (with a 5 year term for county councillors) to give a fresh democratic mandate to the transition process.
- 44 We recognise that this means that the first elections would be held in accordance with electoral arrangements based on those proposed by authorities which bid for unitary status, without the Electoral Commission first having the opportunity to review those arrangements. However, whilst arguments about securing the most effective democratic representation suggest that the terms of councillors elected on interim warding arrangements should be minimised, this position has a major downside. We believe that the initial few years of a new unitary should be as stable and conducive as possible to councils providing the leadership and taking the hard decisions necessary to get the new councils off to a good start. In the circumstances, although unusual, we believe that in county unitary areas a 5 year term for new county councillors would be acceptable.
- 45 For the first year the council elected will either be a transitional council or a shadow council until 1 April 2009 (or perhaps an earlier date) when all local government functions are transferred to the new authority. It will then become the council for the new local authority.
- 46 For all options, where existing district councils are to cease to exist and they elect by thirds we propose that the only elections which should take place in that district in 2008 are elections to a shadow or transitional authority. Otherwise elections in the surrounding areas will continue on their usual cycle.
- 47 We would welcome views on the above, in particular whether 5 year terms are acceptable and whether there should be different election dates in different areas.

## Parish Elections

- 48 Parish councils currently generally hold elections on the district (whole council) election cycle although there are a number – in district councils that elect by thirds – that do not. Where the new local authority is to be county based we will need to provide in secondary legislation that parish council election years are moved to reflect the county council cycle so that the parishes can hold elections in the same year as the county. The affected local authorities will need to draw up a list of the parish councils in the relevant area and the years in which elections are held and provide it to the Department, so that provision can be made as necessary.

## Chapter 4: Co-operation and Continuity

### Introduction and General Provisions

- 49 This Chapter sets out our proposals for arrangements to avoid any disruption to the work of existing local authorities caused by the preparations for the new authority or by the establishment of shadow authorities to prepare for the transfer itself. A principal aim of this co-operation framework is to encourage the production and sharing of information in a timely and helpful manner.
- 50 We intend to make general provision in secondary legislation for continuity and co-operation between existing, shadow/transitional and new authorities. All local authorities would be required to co-operate in preparations for the reorganisation date, including by providing and sharing information with each other and with the transitional/shadow authority during the shadow/transitional period and until the reorganisation date. The information which might be shared would include information in relation to, for example, proposed approaches to staffing issues, and could be for information to be provided in a particular form (where that is reasonable).
- 51 Once the shadow/transitional council is in place, we intend that existing authorities will no longer have the power to:
- prepare budgets or plans; or
  - consult any person in connection with the preparation of such budgets or plans,
  - in respect of functions that after the reorganisation date will be discharged by the new authorities. The shadow/transitional local authority will become responsible for meeting this requirement.
- 52 We will need to ensure that where the requirement to prepare a budget relates to a county council whose functions are to be split between a number of new unitaries, the requirement to prepare budgets and plans is discharged by each of those shadow/transitional authorities only in respect of the geographical area over which they will ultimately discharge the function.
- 53 The Bill provides that authorities can reach agreement with respect to incidental property, income, rights, liabilities, expenses and financial relations (where those matters are not already dealt with in secondary legislation). Under clause 16 of the Bill, where they cannot do so, and where a matter is not resolved by Regulations or Orders, authorities can refer the matter to an arbitrator. If they cannot agree on an arbitrator then the Secretary of State can appoint one.

### Letting of Contracts

- 54 The Bill contains a power (clause 24) which enables the Secretary of State to direct that a relevant authority may not, without the written consent of a specified person (likely to be the authority to which functions are to be transferred on the reorganisation date):

- dispose of land if the consideration for it exceeds £100,000;
  - enter into a capital contract where the authority concerned would be required to pay consideration of more than £1,000,000 or where the contract includes a term allowing the consideration to be varied;
  - enter into any non-capital contract where the consideration exceeds £100,000 and the contract extends beyond a date specified in the direction, or under the terms of the contract, the period of the contract may be extended beyond that date;
  - include an amount of reserves in the calculation of its budget requirement for council tax purposes.
- 55 Whether such directions will be issued is yet to be decided but the direction-making power is not intended to prevent the legitimate on going business of local government. It is designed to prevent new authorities becoming responsible for long term liabilities that are not consistent with their plans for the future. In this regard local authorities should note the provision in clause 27 of the Bill which means that, if a direction is issued, contracts let after the 31 December 2006 will count against the limits given above.
- 56 We would encourage all local authorities, when considering entering into contracts that will have a life beyond April 2009, to discuss their proposals with the shadow/transitional authority as early as possible (and note that once the relevant secondary legislation is in place, they are likely to be under a duty to co-operate with the shadow/transitional authority, including on such matters).
- 57 On top of this general framework and to give more structure and specificity to these provisions the Government intends to provide:
- In secondary legislation for the establishment of Joint Implementation Teams (JITs). These are teams of officers – from all the affected local authorities – tasked with overseeing the necessary preparations for the transfer of functions to the new local authorities;
  - In secondary legislation or in guidance a number of “Milestones” to be met in a certain timeframe.
- 58 The rest of this Chapter deals with these two issues.

## **Joint Implementation Teams**

- 59 To ensure that the shadow authority or Joint Committee preparing for reorganisation has support, and so that work can begin in earnest as soon as possible, we have considered whether Joint Implementation Teams (JITs) should be established comprising suitable officers from the counties and districts involved (including the shadow or transitional authority).

- 60 Local authorities are familiar with the establishment of such project teams and no doubt in many areas such teams have already been established. Government would hope to see them set up by local agreement and established ahead of the Implementation Orders coming into force.
- 61 In considering whether such a Team is required we should do so with an understanding of what such a Team should be responsible for.

## Role of the JIT

- 62 One of the main early responsibilities of the JIT will be to ensure that the existing local authorities draw up accurate and comprehensive records of assets, and liabilities, staffing, IT etc. A prime requirement for a successful transfer of functions must be the collection of information and ensuring that records are up to date and in a format where disaggregation and manipulation of data is possible. It will be essential that these records are kept up to date and major or significant amendments – for instance new acquisitions or disposals of property – are notified to the shadow/transitional authority (and its consent obtained where appropriate).
- 63 So the pulling together of relevant records including information on assets and liabilities and staff is an essential function of the JIT. Whilst it is recognised that the individual existing authorities will do the bulk of the work, the key is to do this work collaboratively.
- 64 One of the other main purposes of the JIT might be to report to the existing authorities and to the shadow or transitional authority on progress made in the preparations for the reorganisation including support and progress on finance and service delivery issues, plans for which will need JIT involvement.
- 65 Chapter 5 outlines the arrangements for staff but it is suggested that the JIT, in support of the shadow/transitional authority, be responsible for establishing relations with the relevant trade unions and opening negotiations on the detailed terms of transfer or severance for individual members of staff within the framework to be established by any regulations and national protocols. As part of this work the JIT might also take the lead in ensuring that all the authorities in an area agree local protocols about how they will deal with staff vacancies that arise before 1 April 2009.
- 66 The JIT will be also be responsible for undertaking preparatory work such as the setting up of initial structures and systems so that the appointed shadow authority/ Joint Committee can be quickly established and up and running as soon as possible.
- 67 The JIT might also provide advice to the shadow/transitional authority as to which local authority will act as the “caretaker” authority (see Chapter 6).
- 68 It will also be important that arrangements are made to ensure local partnerships as well as councils are involved in LAA negotiations – ideally based on existing district and county Local Strategic Partnerships. It will be the responsibility of the JIT, in support of the shadow/transitional authority to ensure that representatives of the key local partners (public, private and the third sectors) are given opportunities to influence the priorities determined.

## Who should lead and be in the Team

- 69 It is suggested that, for new local authorities that are to be formed from the merger of existing district councils and to whom county council functions will be transferred, decisions as to who is to sit upon the JIT and who is to lead the Team should ideally be reached by agreement between the local authorities involved. We would not be prescriptive if all the affected local authorities agree a Team.
- 70 We would suggest that, in the case of the new county and district based unitaries the Team might be led by the Chief Executive of the bidding authority until such time as the post is filled following an open competition. Given its role it is also suggested that the HR Directors in each of the existing local authorities should sit on the JIT. Otherwise, again we would not wish to be prescriptive if all the affected local authorities agree the Team membership.

## Conclusion

- 71 We do not intend to stipulate how Joint Implementation Teams are established – this will be a matter for local discretion. As a fallback, where such joint teams are not already established by the time we are ready to lay the necessary Orders or cannot be agreed, we intend that the secondary legislation will require their establishment and provide for a means of determining the identity of the staff who will be in the Joint Implementation Team.
- 72 Local authorities are asked to consider if these arrangements are appropriate and to offer any views on the detailed mechanisms proposed, including the role and staffing of the JITs.

## Milestones

- 73 Although generally it is felt that a statutory duty to co-operate should be sufficient to ensure local authorities work together in most instances, there may be some areas where something more is required to keep momentum in the process, to create an expectation of progress and show that everyone is required to aim for a common goal. It is for this reason that we intend to establish “milestones” – set out either in secondary legislation or guidance – i.e. suggested timescales for when certain activities should be completed/achieved if the reorganisation date is to be met.
- 74 There are of course difficulties in setting prescribed timetables when there could be legitimate reasons for departing from them (especially given the local flexibility there might be different approaches to the transition process).
- 75 The Bill provides that where local authorities cannot agree on a particular matter (which is not resolved by the secondary legislation), it will be referred to an arbitrator and in default of agreement as to who to appoint as arbitrator, the Secretary of State will appoint one. Where the failure to meet a milestone arises from a lack of agreement between authorities, arbitration may be the appropriate course of action.

76 Milestones are intended as a mechanism for ensuring progress for local government rather than informing central Government. It is not for Government to micro manage the local transition process – if milestones are not met it will be for the local authorities to address the issue. But they will at least act as a “barometer” of change – an indicator of where progress is not being made or where issues might need to be addressed or re-phased.

## Conclusion

77 After consideration of all the issues we consider that there may be merit in considering a small number of high-level milestones common to all those authorities involved in the reorganisation process. The milestones should provide a framework to enable all those involved in the process to have a clear understanding of where they should be by specific points in time, and need to:

- be “fit for purpose”;
- be set at an appropriate level and kept to a minimum; and
- should not constrain different implementation approaches.

78 Accordingly, we currently intend that we place in secondary legislation or in guidance specific milestones for certain high level and strategic activities to be met in the run-up to reorganisation. At Annex C is a list of the type of milestone we might consider and a suggested timeframe for meeting them.

79 When considering the issues it should be borne in mind that there are 3 distinct periods in the transition process and any milestones might usefully reflect that fact i.e:

- those required to be met in the months **before a shadow authority is established or preparatory functions are conferred on a transitional authority**

80 During this period the opportunity should be taken to start thinking about the vision, structures, values and culture of the new authority. Work should begin on information collection, issue identification and option appraisal. Work should also begin on disaggregating the budget (where necessary) and estimating any new financial base.

- Those required to be met in **the shadow/transitional period**

81 During this period the opportunity should be taken to develop the thinking about the vision, structures, values and culture of the new authority; to decide on options and draft service plans and arrange transfer of services.

82 In this period the shadow/transitional authority has a lot of work to do in the development of structures and deciding the priorities for the new authority. It needs to prepare plans and arrange the transfer of services and decide upon future budgets. In the meantime the existing authorities (including transitional authorities) continue to have responsibilities and powers to deliver services, manage the council etc and within any consent regime (see paragraph 54 above) can take decisions that might have a profound effect on the new authority.

- Those required to met **post establishment of the new local authority**

- 83 During this period the opportunity should be taken to finalise any outstanding work from the handover process and close the accounts of the predecessor local authorities.
- 84 Views are welcomed as to the draft milestones suggested, the dates upon which each milestone is to be achieved and whether any need to be added or indeed removed.

## Transfer of Functions date

- 85 Our aim is to have the new unitary authorities up and running by 1 April 2009. On that same day the existing authorities will cease to exist where necessary and transfer their functions to the new authorities.
- 86 Some local authorities are contemplating a transfer of some, or all, functions before 1 April 2009. This would be an extremely challenging timetable given all of the preparatory work needed, but might be possible for some of the county unitaries (where the transfer of functions is likely to be more straight forward).
- 87 At present we are not ruling out the possibility of transfer of functions before 1 April 2009, if this can be done without significant risk. Any local authority which is considering this as a possibility should raise this in its dialogue with us.

## Local Area Agreements (LAAs)

- 88 New LAAs will need to be in place for the new geographical areas for 2009-10 onwards. We recognise that there are implications for new unitary authorities and therefore wish to avoid a 'one size fits all' approach to negotiation of LAAs in areas undergoing restructuring.
- 89 From 2008-09, LAAs will be the only place where targets can be agreed between central government and local areas for outcomes delivered by local government alone or in partnership. So it is important that every area is covered by the new arrangements. It is also the case that in 2008-09 the new area-based grant will be paid to the existing county authority as the Accountable Body – responsible for distribution of funding and signing off the LAA.
- 90 We would expect the county to fully involve the shadow or transitional authorities, (as currently they involve district councils) as well as with broader partnerships. All counties and districts will have existing community strategies in place from which the LAA priorities are developed. There is therefore a base from which to draw priorities in 2008-09 while also beginning to forward plan for the new arrangements. There does not seem to be a need to set up different negotiating mechanisms with the new unitary but a set of priority outcomes for 2008-09 need to be agreed – treating it as a transitional year.
- 91 Our preferred approach would be to agree with individual local partnerships, ideally through Local Strategic Partnerships, on how best to approach negotiating a new-style LAA in the transition year within a limited number of options reflecting the nature of change in an area. We will take this forward with the individual authorities.

92 The options are:

**Option 1**

*For new County Unitaries:*

- A single LAA is negotiated for the existing geographical area for 3 years (2008-2011) as this area will not change from 2009-10 – i.e. single LAA for County X.

**Option 2**

*For new District Unitaries/Split County Unitaries:*

- A single LAA is negotiated with the County covering the existing geographical area for one year (2008-2009).
- For new District Unitaries: from 2009-10, County X and District Y will have two separate two-year LAAs covering the new geographical areas i.e. One LAA for County X minus District Y and one LAA for District Y
- For split county unitaries: from 2009-10, each new unitary will have a separate two-year LAA.

93 Once shadow or transitional authorities are in place they could still start working with partners to develop priorities for the new unitary LAA.

94 We will negotiate directly with all the affected local authorities in a county area on these arrangements. It is not envisaged that any legislation will be required to put the above in place.

95 The new national indicator set which will underpin the performance framework and new LAAs, will be introduced from April 2008. In order to provide the information required for future identification of priorities and negotiation of targets in new district unitary LAAs, we propose that the indicator set will be collected on the basis of new authority boundaries during 2008-09. We will consider further, with local authorities and other stakeholders, how best this can be managed.

## **CPA/Comprehensive Area Assessments**

96 In 2009 Comprehensive Area Assessment (CAA) will supersede the Comprehensive Performance Assessment (CPA) of local government and bring together the assessment of other local services. CAA will continue to provide assurance about how well run local public services are and how effectively they use taxpayers' money. But it also aims to be more relevant to local people by focusing on issues that are important to their community. It will develop a shared view about the challenges facing an area, such as crime, community cohesion, a sustainable environment or public health issues such as obesity, and will also create a more joined up and proportionate approach to public service regulation.

97 The Audit Commission and other inspectorates intend to publish a consultation document on the development of CAA later this year. In developing CAA, the Commission recognises that the implementation of local government restructuring is an issue that needs careful consideration as part of the transition to the new framework. The Commission will be in touch with those local authorities which will be affected by local government restructuring in due course.

## Police Authorities

98 New Home Office regulations regarding Police Authorities are expected to come into force on 1 April 2008; prior to then selection panels will be putting in place arrangements to appoint members to Police Authorities from April 2008. Regulations will provide for a Police Authority to consist of persons who are members of a relevant council and, other persons, including at least one lay justice. We are presently considering with the Home Office how this will be dealt with in the transitional period and whether councillors for the shadow/transitional authorities can be considered and so what might need to be in secondary legislation The Home Office are currently consulting the Association of Police Authorities on these changes.

## Fire and Rescue Authorities

99 Fire and Rescue Authority (FRA) membership is currently unlikely to require amendment in the 5 unitary county areas. For new district based unitary authorities we intend to provide for a change to the relevant Fire and Rescue Service (Combination Scheme Order) to reflect the new membership of the FRA.

100 In summary, although it is for the authorities to consider their governance arrangements in the light of the creation of new unitary authorities, we expect that the Combined Fire and Rescue Authorities of Shropshire and Wrekin, Wiltshire and Swindon and Durham and Darlington will be unaffected as will the Cornwall FRA and the Northumberland FRA. We may need to make a Fire and Rescue Service (Combination Scheme Order) for the Suffolk County Fire Authority area and make changes to the relevant combination orders for three Combined Fire and Rescue Authorities (Devon and Somerset Combined Fire and Rescue Authority, Bedfordshire and Luton Combined Fire and Rescue Authority and Cheshire Combined Fire and Rescue Authority) to reflect any proposed change in elected membership of the Fire and Rescue Authorities.

## National Parks

101 Three National Park Authorities (Northumberland, Peak District and the New Forest) have some of their members appointed by existing district or county councils in the areas proposed for unitary status. The then Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Barry Gardiner) announced on 19 June that where unitary local government might lead to a single new unitary authority appointing eight or more members to a national park authority, the Government would review the membership of that Authority, with a view to reducing the number of local authority appointees.

102 The Department for Environment, Food and Rural Affairs intend to bring forward specific proposals for each of the three affected National Park Authorities and will consult as appropriate on any changes.

## Chapter 5: Staffing

### Introduction

103 This Chapter covers the following HR issues:

- employment rights and the application of TUPE;
- staff transfers and appointments to new authorities;
- redundancy and compensation;
- the impact of restructuring on the Local Government Pension Scheme; and
- claims in connection with Contracts of Employment.

104 Time will be required for proper consultation with staff and that this work needs to start now. Staff need to be kept informed and decisions on their individual futures need to be made as soon as possible. As outlined in Chapter 4 this will be a primary role of the JIT in support of the existing and shadow/transitional authorities.

105 We do not believe that a national framework for staffing issues is appropriate or possible. Each restructuring is the result of a locally developed proposal for one or more councils accountable to their local electorates and equally there is a need for local flexibility given the diversity of the areas and circumstances of each of the possible reorganisations. However, clarity and consistency for staff is important and we intend to use the statutory and wider implementation framework to establish certain key principles that would apply consistently everywhere there is restructuring, and which all authorities should honour. This Chapter sets out what they might be.

106 At the national level we intend protocols should be agreed, within the established principles, that can apply in all areas. Such protocols will be for negotiation between the Unions and the Local Government Employers and some work has already been done on this approach.

107 At the local level, authorities and their local TU representatives will need to agree, within the nationally agreed principles and protocols, the details of staff transfer, including as appropriate an appeals mechanism and other issues specific to restructuring in their area.

### Employment rights and the application of TUPE

108 Local authorities as employers are responsible for the terms and conditions of their staff and for managing the implementation of the new unitary authorities.

109 Although the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) do not apply to the transfer of local authority functions between authorities, the Government has committed to apply TUPE- like terms to any transfer within the public sector, in order to ensure that staff are guaranteed continuity of employment (Cabinet Office Guidance on staff transfers in the public sector – statement of practice, January 2000). We intend that the legislation will therefore provide that staff who transfer do so on terms no less favourable than those they enjoy immediately before the transfer.

## Staff transfers

110 The LGPIH Bill allows us to make regulations about staff transfers and we will be able to make different provision for different cases and circumstances. The possible use of these powers is discussed below.

## Front line staff

111 We are clear that between 80% and 90% of staff in affected authorities will transfer to the new local authority, principally staff dealing directly with the public whose services would continue to be required regardless of reorganisation or the identity of the employing authority.

112 In the last reorganisation, these staff were defined in a circular<sup>1</sup> as “Employees who deliver services direct to the community or the major part of whose work involves regular and substantial contact with members of the community”. That circular listed examples of such staff in an Annex and included:

- teachers and ancillary staff working in specific schools and other educational establishments;
- supply teachers (if on permanent contracts) and peripatetic teachers normally working in specific schools or groups of schools;
- museum art and library employees;
- area social workers;
- other social services staff providing services direct to clients in particular areas eg meals on wheels or home helps;
- development and building control officers;
- environmental health and Trading Standards Officers;
- housing officers on estates;
- housing benefit employees dealing directly with the public;
- employees dealing with billing and collection of revenue; and
- employees dealing with local land charges.

<sup>1</sup> Staff Commission Circular No3, 9 May 1994

- 113 In addition, the circular suggested that where such direct service staff transferred their immediate managers and any clerical, admin and support staff wholly engaged in supporting those services and reporting to those managers should also transfer.
- 114 The same circular also set out rules for the destination of staff transferring automatically where this was an issue i.e. where county functions were disaggregated as follows:
- where the whole or a clear majority of the community being served is within the area of the new authority, the employee will transfer to that authority unless all relevant new authorities and the employee agree that a transfer to a different new authority would be more appropriate;
  - where no clear majority of the community being served is in the area of any new authority, the employee will transfer to whichever new authority is agreed amongst all relevant authorities, taking into account as far as possible the employee's preferences; and
  - where no agreement can be reached under the previous bullet point the transferor authority (i.e. the employee's present employer) should determine the destination using such reasonable criteria as it may decide.
- 115 Although it is recognised that staffing frameworks and employment categories have changed since this circular was issued it is considered nonetheless that an approach based on these principles would be helpful in defining the position and allaying uncertainty.
- 116 We therefore intend that similar rules should be agreed this time although in the county unitary model, this would be simplified to suggest that all service delivery staff as defined would transfer to the new unitary. For the two unitary model and the single district unitary model, the second bullet above would apply although in the absence of a Staff Commission authorities would need to agree an appropriate arbitrator. We intend that these arrangements would be established in secondary legislation and reflected in the protocols – i.e. all such staff in post on the reorganisation date and in the relevant area will automatically transfer (for new district based local authorities this will require negotiation with the county council and in these cases we will need more detailed arrangements).
- 117 We would welcome views on this approach.

### **Other staff – Open competition and prior consideration**

- 118 Senior officers and staff engaged in 'back office' functions or whose work is primarily involved with providing support to members or senior officers will not transfer in this way. In these cases, the shadow or transitional authority will need to define the organisational structure that will be required from the reorganisation date. As in the past, those staff not subject to automatic transfer should be invited to apply for the posts.

- 119 In the last reorganisation, appointments to the senior posts – Head of Paid Services, statutory Chief Officers (Directors of Education, Finance and Social Services) and non statutory chief officers were required by regulations to be appointed by open competition.
- 120 We intend that the Chief Executive post for the new authority should be filled through open competition. We have still to take a final view on the extent to which the other senior posts should be subject to the same process and we would welcome views on this issue.
- 121 We also have yet to develop a final view on prior consideration. The same 1994 Staff Commission circular set out arrangements for filling posts that were not subject to automatic transfer or open competition. Eligibility to apply for vacancies in new authorities or in outgoing authorities that needed to fill posts prior to abolition was initially limited to existing employees and we would welcome views on the pros and cons of this.

## Transfer Orders

- 122 In the last reorganisation, staff transfers were put into effect by listing affected staff or posts, or by reference to lists held by authorities, in Transfer Orders made by the Secretary of State. As noted above we may not need lists in the same way as last time except perhaps in the district based cases (Bedford, Exeter, Ipswich and in Cheshire).
- 123 In any cases where there are lists, as before, there will need to be a process by which the affected authorities (existing and shadow or transitional authorities) consult upon and agree the lists of staff that will automatically transfer and this must be a role for the JIT and perhaps the subject of a milestone in the Regulation (see Chapter 5).

## Redundancy Compensation

- 124 Following detailed discussions and a formal consultation exercise involving employers and trades unions the Government has only recently issued new Regulations that provide local government employers with powers to award compensation to local government employees whose employment is terminated through redundancy or in the efficient exercise of the authorities' functions (the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006). These provide for a lump sum payment of up to 104 weeks pay. Each employing authority is required to formulate, publish and review policy statements on the application of this discretion.
- 125 It is recognised that in reorganising areas, affected authorities may have different arrangements in place under these regulations and that this could cause uncertainty amongst staff which could have implications for recruitment and retention at a vital time for the development of the new unitaries. It will therefore be one of the first tasks of the JIT and shadow/transitional authority to examine this issue.

126 We believe that this is one of the areas where local discretion and flexibility are valuable. It is therefore our intention that, given Regulations already exist for such issues, any compensation and severance arrangements should be agreed under the existing 2006 compensation regulations. These were designed to allow individual employers to have flexibility to determine locally what is appropriate for their workforce and what is affordable to taxpayers.

## **Equal Pay**

127 The new unitary authority will take on all the employer responsibilities from the existing authorities, including equal pay responsibilities and liabilities. Decisions about new pay and grading structures will be a matter for the new unitary; this will include addressing what happens if a constituent authority has agreed, but not implemented, new pay and grading. Any increase in the pay-bill arising from the need to introduce a single pay and grading structure for the new authority must be factored into the financial plans for restructuring.

128 The resolution of this issue will be a major activity and require a significant resource in the year of transition and beyond and robust planning will be needed to take things forward and keep staff informed. All affected authorities will need to share intelligence, and the shadow or transitional authority will need to do a risk assessment prior to the reorganisation date. The new authority will need to do an early pay and grading review. It might be that there should be a specific milestone for this activity.

## **Pension Schemes**

129 Pension funds will not be split as a result of restructuring. In the previous reorganisation, where a new unitary authority was established from an existing district, the district was scheduled as a new employing authority assigned to the administering (county) authority. Where a county council was abolished and new authorities created, one of the new unitary authorities took over as the administering authority for all the unitary authorities in the old county area. We intend to follow this precedent and make the necessary adjustments to the relevant Scheme regulations.

## **Claims in connection with contracts of employment**

130 As in the past, we intend secondary legislation to provide that outstanding claims relating to an existing authority will transfer to the new authority as if the claim was with that authority.

# Chapter 6: Finance Issues

## Budget and Council Tax Requirements

- 131 In the Invitation to Councils, the Government made clear that proposals for unitary structures of local government should deliver value for money and be self-financing. Councils currently estimate that the nine unitary proposals could save over £150 million per year which can be used to directly improve front line services or to reduce council tax bills.
- 132 For the financial years after 2009-10, we expect council tax legislation will work without the need for any specific modification. New authorities will either be billing or precepting authorities for the purposes of the Local Government Finance Act 1992 and that Act, and subordinate legislation made under that Act, will apply accordingly. In particular, specific provision has been made for this issue in clause 19 (certain county councils to be billing authorities) of the LGPIH Bill.
- 133 A key task for the shadow/transitional authorities will be to establish what the budget requirement, the council tax requirement and the Band D council tax would have been for the year before restructuring came into effect for:
- the new unitary authority (comprising part or all of a county council and one or more constituent district councils);
  - the new combined fire and rescue authority, where applicable; and
  - the remaining county council, where applicable.
- 134 These figures will be needed by authorities for budget purposes. They will also be needed to provide notional budget requirement, notional council tax requirement and notional Band D council tax figures to inform the calculation of Alternative Notional Amounts (ANA) and associated information that central government uses for capping comparisons.
- 135 It will be for the authorities concerned to determine these figures between themselves. The figures should be considered in conjunction with the indicative grant figures and ought to be finalised by the end of the summer of the year before restructuring takes place, sufficiently in advance of budgeting processes for the following year and in time for Alternative Notional Amounts to be issued and approved by Parliament (at the time of the local government finance settlement).
- 136 We believe that the best approach to adopt would be to follow that set out in the Local Government Finance Act 1992 by starting with the calculation of the budget requirement and ending with the calculation of the Band D council tax for the new unitary authority for the financial year immediately before restructuring. Under such an approach, the shadow/transitional authority and the affected existing authorities will need to:

- negotiate and agree what portion of the existing county council's total budget requirement is spent in the area covered by the new unitary authority and what portion is spent in the remaining county area (this would be the whole of the county council's budget requirement if the new unitary authority takes over the whole area of a county council);
- add together the component district councils' budget requirements and the agreed proportion of the county's budget requirement that is spent in the area to arrive at the budget requirement for the new unitary authority;
- subtract the agreed formula grant allocation for the new unitary authority from its budget requirement;
- calculate the amount that would need to be funded through council tax, by also taking account of the new unitary authority's share of any collection fund surplus or deficit, and of any community charge income received. This is the amount that would need to be funded from the new unitary authority's council tax requirement for its budget requirement to be fully funded;
- the Band D council tax for the new unitary authority would then be calculated by dividing the new unitary authority's tax requirement by its tax base.

137 To carry out these calculations, it would be necessary to know:

- how much formula grant the new unitary authority will receive. This is considered separately;
- the size of the collection fund surplus or deficit attributable to the new unitary authority. In addition, any community charges received by the collection funds of billing authorities would need to be split between the new unitary authority and any continuing billing authorities, although the amounts involved would be very small in almost all cases; and
- the council tax base of the new unitary authority. For county unitaries, the full county council tax base would be transferred to the new authority. For partial county unitaries, the tax base would be the sum of the tax bases for the individual district councils whose areas comprise the area of the new unitary authority.

138 Similar calculations would need to be made for any remaining county council and, as necessary, for new or existing fire and rescue authorities.

139 In terms of timing, budgets for 2009-10 (the first year of the new unitary authorities) would, under current legislation, need to be in place by 11 March 2009. However, in practical terms, the numbers informing the budgets would need to be resolved in the period between July and September 2008.

140 It will be important that authorities work together and agree budget requirement splits. Authorities will be subject to a general duty to co-operate in preparing for reorganisation (Chapter 5) but the Secretary of State also has the necessary powers to impose a solution by Regulations and will do so in cases of difficulty.

## Formula Grant

- 141 The formula grant implications of this restructuring exercise have been considered in the Settlement Working Group. The Government issued a general consultation document on formula grant distribution, which includes a section on restructuring, on 17 July (responses due 10 October).
- 142 It is intended that the three-year settlement would be calculated and not re-opened for any authority, with the exception of those in restructured areas. In a restructured area, all of the formula grant currently going to the constituent authorities would be allocated to the new unitary authority/ies or fire and rescue authority as appropriate. For partial county unitaries (i.e. new authorities based on the merger of districts) we will seek agreement between the county and the shadow authority/ies about how much of the county's formula grant allocation should be transferred to the new authority to support functions transferred from the county.
- 143 It will be important for the relevant authorities to have negotiated the appropriate splits of formula grant by the end of October 2008 at the very latest; in practice, they will be needed before then to inform negotiations on budgets and council tax requirements between July and September 2008. In the absence of any negotiated settlement by the end of November 2008, the Government will impose a split. There will still be a requirement for Government to carry out a formal consultation on grant allocation by the end of November.

## Specific Grants

- 144 Most specific grants are allocated to single tier and county councils, although a number of specific grants are paid to district councils (the largest of which is the Housing Benefit Administration Grant, totalling some £550 million in 2007-08). Some are paid to fund authorities' core services (grants within aggregate external finance (AEF)) and others are, for example, simply passed on to a third party such as mandatory student awards (grants outside AEF).
- 145 The relative impact might be limited as the proposals are based on existing local authority boundaries but each specific grant will need to be looked at in order to assess the best way to allocate the funding and identify any possible legislative barriers which would need to be overcome. Area based grants (previously funding directed to Local Area Agreements) will need particularly careful consideration.
- 146 Consultation with local authorities will be key in relation to many of the larger specific grants. For instance, DCFS would certainly expect to consult the Schools Finance Issues Group (a forum for liaison with local government on school funding issues) in relation to the Dedicated Schools Grant.
- 147 It will be important to resolve and split the relevant specific grant budgets well ahead of March 2009. It would be preferable for these to be agreed during the July-September 2008 "window".

## **Council Tax and Non-Domestic Rates Billing, Collection and Enforcement**

- 148 This exercise will not result in the splitting of any billing authorities. The new authorities will be empowered to carry out the normal responsibilities of a billing authority under primary legislation (clause 19 of the LGPIH Bill), including the collection of outstanding council tax and non-domestic rates debt and repayment of amounts owed to taxpayers. Secondary legislation will provide for the transfer of outstanding liabilities etc and would also ensure that authorities have the relevant powers to enforce orders made by and in favour of existing authorities which have been abolished. The overall objective would be simplicity and flexibility.
- 149 All the existing authorities will need to work with the shadow/transitional authorities to amalgamate potentially different discretionary policies employed by those authorities, for example policies on second homes, and discretionary reliefs and discounts. We may provide further guidance on these issues in due course to aid this process.
- 150 The Demand Notice Regulations will be amended to ensure that taxpayers can compare amounts of council tax set by existing authorities in the year prior to reorganisation and new authorities in the first year of their operation.

## **Liabilities and Assets**

### **Liabilities**

- 151 Outstanding liabilities which relate to a new unitary area will be transferred to the new authority on the reorganisation date. We will be working with local government representatives in shadow and transitional authorities to develop proposals for the management of outstanding debt for new unitary authorities based on the merger of district councils. One option we are considering is that one of the new authorities becomes the designated authority managing any outstanding debt on behalf of the other constituent authorities. Which local authority that might be, could be agreed between them. If agreement cannot be reached, provision could be made for authorities to refer the matter to an arbitrator (and in default of agreement on the identity of the arbitrator, that person could be appointed by the Secretary of State).
- 152 It will be important for any splits to be agreed to inform notional budgets – notional budgets would not be correct without knowledge of debt. It will be preferable for arrangements on the split of debt to be negotiated and agreed by relevant authorities between July and September 2008 – this could then be used to inform notional budgets.

### **Assets**

- 153 All of the assets held by the existing authorities will need to be identified and transferred to the new unitary authority or authorities. We intend that the secondary legislation will provide that:

- in the case of county unitaries, that all of the property, rights and liabilities of the existing authorities will be transferred to the new authority (subject to any specific provisions);
  - for other types of change, the transfer of property and of rights and liabilities should be agreed by negotiation between existing authorities and the shadow or transitional authority (this is after identifying property situated in the shadow or transitional authority's area which will be required by the new authority for the exercise of its functions).
- 154 Where no agreement can be reached, the secondary legislation could provide that the authorities must refer the matter to arbitration.
- 155 Where property is surplus to requirements, it will vest in a "caretaker" authority – one of the first tasks of the shadow/transitional authority would be to decide who this caretaker authority should be, after discussion with the affected local authorities. The secondary legislation would provide that, in the event that a caretaker authority cannot be agreed, the authorities could appoint an arbitrator.
- 156 The "caretaker" authority will have the task of arranging for disposal of surplus property. In the first instance it should be for authorities to agree on the division of the proceeds of sale and for the caretaker authority to recover its costs. In the absence of agreement between existing authorities, the Government could make such provision in secondary legislation.
- 157 More generally, as outlined in Chapter 4, information on assets and liabilities should be supplied by existing authorities to shadow and transitional authorities according to certain high level milestones. The milestones could set out by when authorities would have to reach agreement about the property which will vest in each new authority and the property that will be surplus to requirements.
- 158 We would expect all the local authorities involved to continue to operate best practice as set out by the Local Authority Asset Management Guidance jointly published by RICS and ODPM in 2005 and the new Public Sector Property Asset Management Guidance – Practitioners' Handbook<sup>2</sup>.

<sup>2</sup> To be published in Autumn 2007

## Chapter 7: Ceremonial Arrangements

- 159 For those areas that are to be subsumed into a larger authority or where an existing local government area becomes single tier we will need to ensure that the historic traditions associated with that area are protected as far as possible. We can make provision in orders or in regulations to ensure the preservation of privileges or rights belonging to the citizens of an existing city or borough which might become amalgamated into a larger area. We aim to allow the preservation of such traditions or status as easily and seamlessly as possible.
- 160 The traditions which may attach to a local authority area are:
- charters or other Crown grants of city or borough status;
  - ceremonial mayors;
  - insignia (mace, badges, robes, chains of office, swords etc);
  - armorial bearings (e.g. a local coat of arms);
  - local officers of dignity (e.g. town criers, stewards and honorary freemen) and admission to guilds of freemen; and
  - sheriffs and Lord Lieutenants.
- 161 Local authorities should note that where an existing local authority area is abolished, such traditions or status may disappear unless specific provision is made to retain them in secondary legislation. The existing, shadow or transitional authorities will therefore need to consider these issues and advise us of any local privileges and rights which might be affected, so that we can take the necessary steps outlined in this Chapter to ensure their retention.
- 162 For new unitary authorities formed when functions are transferred to an existing district authority, we intend to provide in secondary legislation that reorganisation does not affect any current privileges or traditions. This should ensure, for instance, that Exeter City Council does not lose its city status. However more may be needed to ensure continuity of any traditions where an existing district authority is abolished, and its area becomes part of a larger unitary authority.
- 163 Where a district authority has a Charter, the privileges attached to that Charter, such as borough status, could be lost when the authority is abolished. In order to avoid that situation arising, there must be an incorporated body to which the Charter and its associated privileges can be transferred. The provisions in the Local Government and Public Involvement in Health Bill would allow us to establish Charter Trustees for an area within a new unitary authority by orders or regulations (clause 15 of the Bill). So we could create Charter Trustees for an area (following the precedent set in the 1972 Act) from the reorganisation date.

- 164 Charter Trustees are formed of the members of the new authority elected for the electoral areas covering the area that is to be abolished. Charter trustees can elect one of their number to act as town or city mayor, and hold historic and ceremonial property (a decision would need to be taken as to what property should be transferred to the Charter Trustees). The type of property which might be vested in Charter Trustees includes the charter, insignia and plate of the former borough or city. They might also be given the role of exercising historic ceremonial rights, for example the appointment of local officers of dignity. They can issue a precept to the district for their expenses (as a special expense, chargeable only on the relevant area).
- 165 At a later stage the new unitary authority can, if it so desires, create a parish for the area covered by the Charter Trustees. The secondary legislation can provide that, if an area or part of an area for which charter trustees have been constituted becomes a parish the area ceases to qualify for charter trustee status. Any mayor or deputy mayor shall cease to hold office, and property and liabilities held by the charter trustees would be transferred to the parish.
- 166 If the proposal is that a new authority based on the merger of existing district councils wishes to have borough status for the whole of its area, then we could provide powers that enable the shadow authority to petition for borough status under s245 of the 1972 Act. If one of the existing local authorities already has city status and if the new authority wants that city status attributed to the whole of its area then the shadow or transitional authority would need to apply for a grant of Letters Patent<sup>3</sup> (to seek approval for the new authority to have city status attributed to the whole of its area). It would be for the Privy Council Office and the Ministry of Justice to consider such requests.
- 167 We do not intend that there should be changes to the ceremonial/traditional counties and so any new district unitary authorities will remain part of the county they are in geographically for ceremonial purposes. We would therefore make the necessary provision in secondary legislation to preserve these traditions. In Cheshire, it is likely that one of the new unitary authorities would need to provide a clerk for the Lieutenancy.

<sup>3</sup> A type of legal instrument issued by the Crown to confer (amongst other things) a right or privilege.

## Chapter 8: Guidance

- 168 Linked to the approach outlined in this document, we intend that there should be guidance to local authorities on the steps that they should be taking to prepare for reorganisation. As agreed by the Expert Group we would hope that much of the guidance might be sector led or provided with the support of those in the local government family.
- 169 Consideration has already been given to the provision of a Protocol document prepared by the Local Government Employers, accepted, in principle, by the trade unions at national level and within which local authorities could establish their own local protocols with local trade union representatives.
- 170 Local Government Employers will also be asked to provide advice and guidance on staffing issues through the National Joint Council (NJC), following consultation with unions. One area in which sector led guidance might be useful is how affected authorities should approach pay and grading issues in the light of latest developments on equal pay.
- 171 But we will play our part. It is our challenge to ensure that we provide authorities with the help and support they need to see the plans through.
- 172 This Consultation Paper is a start; local authorities and others are invited to suggest other areas in which they would find guidance helpful.
- 173 Government could act as a facilitator in aiding local government and local authorities to meet their own local aspirations – perhaps working with the Local Government Association. We propose to hold regular meetings with the Joint Implementation Teams (together and singly) once they are established so that all can share their plans and their own detailed milestones, experiences and ideas. Representatives of those teams will be invited to sit on the Expert Group.
- 174 There will also be other support to local authorities through the local government sector with advice and guidance from bodies such as the Audit Commission, the LGA, Local Government Employers, the IDeA and the Unions. An event has already been organised by the IDeA on 21 September which Ministers may be attending and there is to be a national HR event on LGR issues for HR leads in affected authorities sponsored by the Local Government Employers. The event is to be on 2 October – representatives of all affected authorities will be invited to attend.
- 175 If local authorities thought it useful Government could also consider brokering a mentor/critical friend arrangement to support those going through the process from existing high performing unitary authorities or from the Government Offices. Such a friend could provide a sounding board for all local authorities in an area, airing problems and promoting co-operation and understanding between the existing authorities and support to the Joint Implementation Teams.

# ANNEX A

## List of National Stakeholders

Arts Council England  
Association of Charter Trustee Towns and Charter Town Councils  
Association of Chief Police Officers  
Association of Council Secretaries and Solicitors  
Association of County Chief Executives  
Association of Directors of Social Services  
Association of Electoral Administrators  
Association of Freemen  
Association of Lord Lieutenants  
Association of Police Authorities  
Association of Directors of Children's Services  
Audit Commission  
CBI  
Chartered Institute of Public Finance and Accountancy  
Chief Cultural and Leisure Officers Association  
County Councils Network  
Electoral Commission  
English Heritage  
Environment Agency  
Health and Safety Executive  
Highways Agency  
Jobcentre Plus  
Learning Skills Council  
Local Government Association  
Museums, Libraries & Archives Council  
National Association of Local Councils  
National Park Authorities  
Natural England  
New Local Government Network  
Public Sector People Managers Association  
Regional Assemblies  
Regional Development Agencies  
Society of County Treasurers  
Society of District Council Treasurers  
Society of Local Authority Chief Executives  
Society of Local Council Clerks  
Sport England  
Youth Justice Board

## **ANNEX B**

### **TERMS OF REFERENCE**

To consider practical arrangements for implementing structural change, including arrangements for finance, staffing, continuity of functions and assets and liabilities, within the legal, financial and administrative framework described in the Invitation document issued on 26 October 2006 and which is to be established by the Local Government and Public Involvement in Health Bill, having regard to:

- the need
  - to minimise any risk of disruption to the exercise of an authority's functions;
  - to reflect local flexibility wherever possible;
  - not to create barriers to transformational change and service re-engineering; and
  - to secure value for money for the local and national taxpayer; and
- the implications of change for staff, service users, and other partners and stakeholders.

### **Membership of the Expert Group**

AMICUS

Association of Council Secretaries & Solicitors

Association of County Chief Executives

Association of Local Authority Chief Executives

Audit Commission

Chartered Institute of Public Finance & Accountancy

GMB

Local Government Association

Local Government Employers

National Association of Regional Employers

Public Sector People Managers' Association

Society of County Treasurers

Society of District Council Treasurers

Society of Local Authority Chief Executives

Transport and General Workers Union

Trades Union Congress

Union of Construction, Allied Trades and Technicians

UNISON

# Annex C

## Milestones

### Introduction

- 1 Whether provision for milestones is made in secondary legislation and/or guidance, it is clear from our discussions that local authorities would welcome most of the detail being left to individual authorities to sort out through negotiation and working together. On the other hand they saw some merit in the Government providing a default position should this not prove possible and perhaps some milestones that Government would expect to be met to give focus to their planning. We need to take care to strike the right balance particularly in the setting of milestones – to enable authorities to come to their own arrangements without being overly prescriptive and perhaps to permit different solutions/target dates in different areas.

### Suggested High level Milestones

- 2 To ensure that milestones are met, that work begins in earnest as soon as possible, and that all local authorities make the necessary preparations, **Joint Implementation Teams (JITs)** should be established so that existing authorities work together. The existing authorities, along with the shadow or transitional authority once in place, will provide staff and resources for the JITs, whose task will be to assist the shadow or transitional authorities to prepare for reorganisation.
- 3 **Milestone – that a JIT is established within one month of the Implementation Order coming into force if not established already.**
- 4 A prime requirement for a successful transfer of functions must be the collection of information and ensuring that records are up to date and in a format where disaggregation and manipulation is possible. It will be important that in preparing for the transfer of functions, local authorities as soon as possible get their records straight and in a format agreed with their neighbours (records on staff, assets and liabilities, property, finances etc). The aim of any milestone or target must be to encourage the production of the necessary information in a timely and helpful manner.
- 5 **Milestone – the JIT to compile relevant information on the staff, buildings, liabilities and assets of the existing authorities by [1st?] May 2008.**
- 6 The JIT working with the shadow authority/Joint Committee will also need to put in place sound project management procedures and delivery plans to meet a reorganisation date of 1 April 2009.
- 7 **Milestone – Project Plan and Risk Analysis to be prepared within one month of the JIT being established (if not prepared already) to be updated every two months.**
- 8 It will be important for a senior management team to be in place as soon as possible.
- 9 **Milestone – the appointment of the Chief Executive as soon after May 2008 (elections to the shadow/transitional authority) as possible.**

- 10 One of the more difficult issues will be around the actions of the existing authorities regarding assets and staffing. It is suggested that it will be important, as soon as possible, for all the affected local authorities to agree a "protocol" regarding such issues. Decisions of existing authorities relating to the disposal of high value assets are likely to require the consent of the shadow or transitional authority, if and when directions are made under clause 24 of the Bill.
- 11 **Milestone – signing an agreed Protocol on how local authorities should work together.**