



# **Local Government Restructuring**

## **Guidance on Staffing Issues**

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## 1. Purpose of this Guidance

- 1.1. This document sets out the issues and approaches that affected local authorities and Implementation Executives and Shadow Councils will need to consider when taking decisions relating to staffing arising from the Structural Changes Orders for unitary local government made under Part 1 of the Local Government and Public Involvement in Health Act 2007.
- 1.2. It is provided in addition to the Staffing (Structural and Boundary Changes) (England) Regulations 2008, to set out the Government's expectations on how staffing issues will be handled.
- 1.3. This document does not provide any definitive interpretation of the Staffing Regulations, and nothing in this document should read as precluding the need for affected authorities to obtain their own legal advice and to fulfil their statutory obligations.

## 2. Overall approach

### *Application of TUPE*

- 2.1. The Government is committed under the Cabinet Office *Statement of Practice on Staff Transfers in the Public Sector* to ensuring that transfers within the public sector 'at the instigation and under the control of Central Government ... make provision for staff to transfer and on a basis that follows the principles of TUPE.' Furthermore, the Government's discussion paper, [\*Councils' Proposals for Unitary Local Government: An Approach to Implementation\*](#)<sup>1</sup> published in August 2007 ('the August 2007 consultation document') confirmed '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.'
- 2.2. The Staffing (Structural and Boundary Changes) (England) Regulations 2008 ('the Staffing Regulations'), *[which are being circulated to key stakeholders in draft alongside this draft Guidance Document]* apply to the seven areas subject to structural change orders (the 'orders') made under section 7 of the Local Government and Public Involvement in Health Act ('the 2007 Act'). The drafting of the Staffing Regulations allows for them to be applicable to any future Orders made under s.7 or s.10 of the Act.
- 2.3. **The Staffing Regulations therefore provide that any transfer of functions from a predecessor council<sup>2</sup> (which will cease to exist on the reorganisation date) to a new single tier council occurring as a result of the orders shall be treated for all purposes as a relevant transfer under the Transfer of Undertaking (Protection of Employment) Regulations 2006 ('TUPE').**
- 2.4. **This will ensure that employees of predecessor councils (which will cease to exist on the reorganisation date), who are in post immediately prior to that date, will become employees of the new single tier councils, and that employees will transfer on terms and conditions which will be no less favourable than those they enjoyed immediately before the transfer.**

<sup>1</sup> <http://www.communities.gov.uk/publications/localgovernment/unitarycouncilsimplementation>

<sup>2</sup> Definition of terms can be found at paragraph 5.3

*Senior management board posts*

- 2.5. Moreover, in relation to the appointment of each new single tier council's senior management board<sup>3</sup>, the Government attaches great importance to open competition for such posts. This is a recognition of the reality of the new start that these single tier councils signify, where senior officers with fresh skills, experiences and different perspectives will be vital in designing new service delivery models and innovative ways of empowering the most local communities. Alongside the elected councillors, such senior officers will also provide the vision necessary to take full advantage of the opportunity that the establishment of the new single tier councils provides for creating genuine flagship councils leading the future of local government.
- 2.6. Accordingly, Ministers stated during the Parliamentary debates on the structural changes orders that 1 April 2009 must be a genuinely 'new start' for authorities for which local people will have wholly different expectations. Nowhere is it a case of one local authority taking on the functions of another – nor must it be perceived as such. In those debates, the Government made clear that it would be essential that in each new single tier council there is a new or refreshed senior management team.
- 2.7. The Government also recognises that the process of transition may require a degree of continuity on the senior management board, and hence that there may indeed be specific cases where appointments might need to be made by means other than open competition. It may, for example, be appropriate for an appointment to be made to a post immediately, perhaps on a fixed term contract, which will be followed by a fresh appointment through open competition.
- 2.8. **The proposed Staffing Regulations thus require the post of chief executive (head of paid service) of each new single tier council to be recruited by means of open competition, to be held by 1 April 2010 at the latest.**
- 2.9. **Similarly, the Government expects to see open competition as the means of recruiting to all other senior management board posts, unless there are clear and specific circumstances on the basis of which the council considers there is a compelling case for an alternative approach, which would not detract from both the reality and the perception of the authority being genuinely new. In any event, the Government's expectation is that, in every authority, a majority of senior management board posts will, over a period, be subject to open competition.**

### **3. Background to local government restructuring**

- 3.1. Structural change orders providing for the creation of new single tier councils in the counties of Cornwall, Durham, Northumberland, Shropshire and Wiltshire were approved by Parliament and came into effect on 26 February 2008<sup>4</sup>

<sup>3</sup> For these purposes, 'senior management board' should be taken as referring to those directors, directors-general or other senior postholders who form the executive board of the new single tier council and report directly to the head of paid service.

<sup>4</sup> The Structural Change Orders can be found under statutory instruments made on 25 February 2008 on the website of the Office of Public Sector Information [www.opsi.gov.uk](http://www.opsi.gov.uk), SI Numbers 2008/490-495.

- 3.2. These structural change orders establish an Implementation Executive as a committee of the existing county council executive in each of the five areas to discharge the functions of 'preparing for and facilitating the economic, effective, efficient and timely transfer [to itself] of the district councils' functions, property, rights and liabilities ('the main transitional function').'
- 3.3. Under the structural change orders, the Implementation Executive discharges this function until the fourth day after the elections to the new council. In Durham and Northumberland, the orders provide for the elections to take place on the ordinary day of election of councillors in 2008, while in Cornwall, Shropshire and Wiltshire the orders provide for this to be on the ordinary day of election of councillors in 2009. References in the rest of this document to the 'Implementation Executive' should be taken to mean, therefore, the Implementation Executive so long as it exists and thereafter the newly elected single tier council, or its executive as the context requires.
- 3.4. The Cheshire (Structural Changes) Order 2008<sup>5</sup>, which was approved by Parliament and subsequently came into effect on 5 March 2008, provides for the creation of two new single tier councils in Cheshire: Cheshire West & Chester and Cheshire East. In advance of 1 April 2009, however, Cheshire West & Chester and Cheshire East exist as Shadow Authorities, with council elections to be held on the ordinary day of election of councillors in 2008. The orders confer on these councils the duty to 'prepare for the assumption... of local government functions and full local authority powers' and to liaise with the County Council and the district councils for the purpose of ensuring continuity of the delivery of public services. Accordingly, the paper refers throughout to an 'Implementation Executive and/or Shadow Council'. Any reference to a Shadow Council includes a reference to that council's executive if the context requires it.
- 3.5. The Bedfordshire (Structural Changes) Order 2008<sup>6</sup>, which was approved by Parliament and subsequently came into effect on [29] March 2008, provides for the creation of a new single tier council for Central Bedfordshire and for Bedford Borough to become a single tier council on its existing boundaries. In Central Bedfordshire, the 'main transitional function' is to be discharged by a Shadow Authority which will form a Shadow Executive (though note that the elections are to be held on the ordinary day of election of councillors in 2009), and in Bedford Borough by an Implementation Executive consisting of members of both the Borough and of Bedfordshire County Council. References in the rest of this document to a 'Shadow Council' should, therefore, be taken to include in its application to Central Bedfordshire Shadow Council, to be a reference to its Shadow Executive exercising the transitional functions as provided for in the order.
- 3.6. The Government's August consultation document set out proposed approaches to staffing and human resources-related matters in relation to local government reorganisation. The responses to this consultation, along with subsequent discussions, have greatly shaped our approach and we are grateful to everyone who has contributed their thoughts and advice.

<sup>5</sup> The Cheshire (Structural Changes) Order 2008, SI 2008/634, may be viewed on the OPSI website at [http://www.opsi.gov.uk/si/si2008/uksi\\_20080634\\_en\\_1](http://www.opsi.gov.uk/si/si2008/uksi_20080634_en_1)

<sup>6</sup> The Bedfordshire (Structural Changes) Order 2008, SI 2008/907, may be viewed on the OPSI website at [http://www.opsi.gov.uk/si/si2008/uksi\\_20080907\\_en\\_1](http://www.opsi.gov.uk/si/si2008/uksi_20080907_en_1)

3.7. Since then and particularly since Government announced its initial 'minded to' decisions about which proposals to implement, we have worked closely with the Joint Implementation Team established in each area under the orders, the Local Government Employers and trades unions, to identify the key issues for staff and hone our approach. Their advice and co-operation have been greatly appreciated.

#### 4. Principles for staff transfers and appointments

- 4.1. The Government remains of the view, as set out in our August 2007 consultation document, that a detailed national scheme for staffing issues is neither appropriate nor possible. Each restructuring is the result of a locally developed proposal for one or more councils accountable to their own electorates and with their own structures and circumstances; equally, there is a need for local flexibility to enable these local variances to be fully addressed.
- 4.2. Local authorities are responsible, as the employers, for the terms and conditions of their staff and, through the Implementation Executive or Shadow Council, for managing the transition to the new single tier councils.
- 4.3. Our approach, therefore, has been to adopt a regulatory framework which:
  - a. offers a high level of reassurance to staff in relation to their employment and associated terms and conditions;
  - b. ensures as far as possible equal opportunities for existing employees to secure jobs in the new single tier council;
  - c. recognises the financial implications of staffing decisions and avoids *imposing* costs on the new single tier councils while providing flexibility to allow them to deal with the diverse range of situations with which they will inevitably be faced; and
  - d. recognises the need to strike the right balance between the need for competition for key senior appointments to ensure the right staff are in place to enable the new single tier councils to fulfil their new roles and the need for a sufficient level of business continuity.
- 4.4. Clarity and consistency for all staff are important, not only for staff welfare and productivity, but also to aid retention and, therefore, authorities' ability to maintain service levels in the run-up to the reorganisation date and for the new single tier councils in the period immediately afterwards.
- 4.5. The Government *[is therefore laying before Parliament]* the Staffing (Structural and Boundary Changes) (England) Regulations 2008, setting out the principles governing the treatment of employees in the authorities affected by restructuring. This document contains guidance on general issues relating to the transfer of employees to the new single tier councils.
- 4.6. Within this framework of regulation and guidance, it is for all the councils - their members and employees - to work constructively and imaginatively together to deliver a new single tier council that will achieve its full potential for local residents.
- 4.7. The Government encourages Implementation Executives and Shadow Councils to draw up proposals for the structure of the new single tier council early on and begin

consultation with employees as early as possible, in order to give as much certainty as possible in advance of the reorganisation dates.

- 4.8. The Government strongly encourages Implementation Executives and Shadow Councils to agree with their affected authorities and local trades unions representatives protocols to establish quickly, where they have not already done so, how staffing issues are to be handled (see paragraph XX below).

## 5. Staffing Regulations

*[Key changes since first draft of Staffing Regulations*

*The first draft of the Staffing Regulations as circulated on 12 February 2008 has been amended in light of the comments and suggestions received from stakeholders. This second draft builds upon the first draft and provides for the application of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE); arrangements to be followed with regards the advertisement, recruitment and appointment of a head of paid service to a new single tier council, the discharge and relevant period for effecting that function; redundancy payments and access to the Local Government Pension Scheme (LGPS).*

*In respect of appointing a head of paid service to a new single tier council this second draft requires recruitment through open, national competition in line with the Local Authorities (Standing Orders) Regulations 1993. Provisions are also made with regards the incumbent heads of paid service of those 'preparing councils' i.e. the County Councils of Cornwall, Durham, Northumberland, Shropshire and Wiltshire, and Bedford Borough Council, to ensure that if a person other than an incumbent head of paid service is appointed to that position in the single tier council, they will be considered to have been dismissed by reason of redundancy for the purposes of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 and the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007. The requirement for a recommendation in a report from a designated independent person to effect the dismissal of a head of paid service arising from the requirement in the Staffing Regulations to advertise, recruit and appoint a new head of paid service is disapplied. Provision is made as to which body shall be responsible for appointing and/or dismissing the head of paid service in these circumstances.*

*The Staffing Regulations also make provision as to which body is responsible for appointing other senior employees who would usually be appointed by full council or a committee of the council.]*

- 5.1. The following paragraphs provide an informal explanatory commentary to assist in the understanding and interpretation of the Staffing Regulations. It remains for each local authority, each Implementation Executive and Shadow Council to take its own legal advice.

*Preamble*

- 5.2. Sections 14 and 15 of the Act gives the Secretary of State the power, by regulations of general application, to make incidental, consequential, transitional or

supplementary provisions for the purposes of, or in consequence of, effecting orders made under section 7 or 10 of the Act.

### *Interpretation*

5.3. The terms used in the Staffing Regulations (and also in this document) are defined within those Regulations, but of particular note are:

- 'predecessor council', means a local authority which by or in consequence of a structural or boundary change (or both such changes) effected by an order will cease to exercise functions in relation to an area;
- 'preparing council' means a local authority which will become a single tier council on the reorganisation date;
- 'single tier council' means a local authority which by virtue of a structural change or a boundary change (or both such changes) will become the sole principal authority for an area in pursuance of an order on the reorganisation date.

### *Regulation 3 – Application of TUPE*

5.4. *[In light of stakeholder feedback, regulations 4 and 5 of the first draft have been replaced with new regulation 3.]*

5.5. Regulation 3(1) of the Staffing Regulations provides that the transfer of functions from a predecessor council to a single tier council on the reorganisation date shall constitute a 'relevant transfer' within the meaning of regulation 3(1) of TUPE. This is because regulation 3(1) of TUPE defines as a relevant transfer the transfer of an economic entity which retains its identity. In this reorganisation the authority that will cease to exercise its functions will transfer both economic and non economic entities to the single tier council and this approach ensures that all the functions transferred fall within the scope of a 'relevant transfer' within the meaning of TUPE.

5.6. This ensures that employees of a predecessor council in post immediately prior to the reorganisation date will become employees of the new single tier council on terms and conditions that are no less favourable than those they enjoyed beforehand. Paragraph [XX] below provides guidance to be used in determining which new single tier council employees shall transfer to in cases where there is more than one new single tier council for a former county area.

5.7. Regulation 3(2) provides that if a function transfers before the reorganisation date to a preparing or shadow council, that transfer shall for the purposes of TUPE be treated as taking place on the reorganisation date and as being a relevant transfer.

### *Continuity of employment*

5.8. Regulation 4 of TUPE preserves continuity of employment where there is a relevant transfer as (in brief) it provides that the contract of employment of any person employed by the transferor immediately before the transfer shall have effect after the transfer as if originally made between the employee and the transferee. The transferee inherits the contracts of employment and the transferor's rights, powers, duties and liabilities under or in connection with any such employment contract. In addition to this any act or omission of the transferor in respect of a contract of employment is deemed to have been an act or omission of or in relation to the transferee.



***Regulation 4 – Appointment of Head of Paid Service***

5.9. Following the making of a restructuring order, the Local Authorities (Standing Orders) (England) Regulations 2001 ('the 2001 Regulations') and the Local Authorities (Standing Orders) Regulations 1993 ('the 1993 Regulations') shall apply to a relevant authority for the relevant period subject to the amendments provided in regulation 4. 'Relevant authority' means a preparing or shadow council or a single tier council. The relevant period is also defined in the regulations.

Reg 4(a) A relevant authority must recruit to the position of head of paid service (as designated under section 4(1) of the Local Government and Housing Act 1989) within the relevant period in accordance with Schedule 1, Part 1, Appointments (paragraphs 1-2) of the 1993 Regulations.

The Government therefore expects that the post of head of paid service should be advertised in such *national* publications as will adequately serve to bring it to the attention of such persons as would be suitably qualified to apply.

Where a preparing or shadow council has made this appointment the single tier council is no longer under a duty to appoint to the post of head of paid service.

Reg 4(b) The functions of advertising, recruiting, appointing and dismissing a head of paid service shall in respect of a preparing council be discharged by the Implementation Executive; and in respect of the appointment of head of paid service of a shadow council be discharged by either the shadow executive (in advance of elections to the council) or the shadow council (where elections to the council have already taken place), for the specified period, and thereafter shall be exercised by the local authority for the local government area. Where the function is the responsibility of an Implementation Executive, if this committee has been dissolved and no longer exists at the time the Staffing Regulations come into force (as is the case for areas where elections took place in May 2008) then the powers will be exercised by the local authority for the local government area in accordance with its constitution.

5.10. Any proposal for dismissal of a head of paid service that arises from the requirement in the Staffing Regulations to advertise, recruit and appoint to the post in the single tier council is excluded from the definition of 'disciplinary action' in the 2001 Regulations for the relevant period. Therefore a recommendation in a report from a designated independent person (pursuant to regulations 6 and 7 and schedule 3 of the 2001 Regulations) will not be required for a proposal to dismiss a head of paid service during this period.

5.11. The requirement to recruit a head of paid service through open, national competition does not preclude suitably-qualified members of the existing officer cadre from applying for the post, or being selected following open competition.

***Regulation 5 – Redundancy Payments***

5.12. Any head of paid service employed by a preparing council or single tier council, whose employment would continue but for the appointment of another person to that post in accordance with these regulations, shall be treated as if they had been

dismissed by reason of redundancy by their employing authority for the purposes of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 and the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007. An incumbent head of paid service does not need to compete for the post in the successor single tier council to be deemed to have been made redundant. This measure has been taken to ensure an incumbent head of paid service of a preparing council is not unfairly deprived of compensation that other employees who are made redundant would be eligible for receiving, and to avoid unnecessary bureaucracy and delay.

*Regulation 6 – Access to Local Government Pension Scheme*

5.13. To ensure that persons employed directly by a shadow council are eligible for membership to the LGPS, this regulation provides that a shadow council shall be treated for the purpose of the LGPS as a district council or as a county council. A person can only be an active member of the LGPS if he is employed by a body listed in Schedule 2 of the Local Government Pension Scheme (Administration) Regulations 2008 i.e. a district council or a county council. Shadow councils are not expressly listed in the 2008 Regulations and will not become local authorities until such time as specified in an order. This regulation therefore provides certainty for staff appointed to a shadow council by ensuring that such staff will be eligible for membership to the LGPS.

## **6. Practical implementation of the regulations**

### **6.1. Disaggregating employees where there is more than one new single tier council for the county area**

**6.1.1.** In areas where there is more than one new single tier council covering a former county area, namely in Cheshire and Bedfordshire, the Government expects that the shadow councils will work closely with the predecessor councils in determining to which of the new single tier councils individual employees should transfer. In particular, predecessor councils should provide such information as is requested by the Implementation Executive or Shadow Council, or as may be material to this process. This should be done having regard to the requirements of the relevant structural change orders, the Staffing Regulations, the TUPE Regulations 2006 and relevant employment law.

**6.1.2.** By applying TUPE through the Staffing Regulations, the Government is ensuring the same basic level of protection to all employees of local authorities which will cease to exist on 1 April 2009 as a result of local government restructuring, regardless of whether they work in a district or county council. that all employees of predecessor councils (which will cease to exist on the reorganisation date), who are in post immediately prior to that date, will become employees of the new single tier councils, and that employees will transfer on terms and conditions which will be no less favourable than those they enjoyed immediately before the transfer.

- 6.1.3. However, while there are many employees for whom it will be clear which new single tier council the work function to which they are assigned will transfer to (such as teachers and social workers), it is likely that there will be some employees who cannot be so readily assigned to functions transferring to a particular new single tier council (such as staff engaged in corporate functions and senior managers).
- 6.1.4. Attention is drawn, though, to the practical implications of TUPE where, by convention, where possible an assessment has been carried out at an individual level of which transferee organisation has occupied more than 50% of that individual's time. Where this has been very difficult to determine, an assessment has been undertaken using a number of criteria, including the proportion of the work of the relevant corporate function which relates to each transferee organisation or the likely full time equivalent needs of each transferee organisation, and the team disaggregated on that basis. Senior managers have similarly been transferred on the basis of an approximate assessment of time allocation, on an individual and/or corporate level, and sometimes by agreement where that is possible.
- 6.1.5. Where there is particular difficulty in identifying which new single tier council an individual employee should transfer to, or disagreement on the employee's part owing to their personal circumstances, the shadow councils should work with employees and take all reasonable steps to agree a way forward.
- 6.1.6. In particular, consideration should be given to the wide variety of local and individual circumstances which might influence the decision of which is the most appropriate new single tier council to which the individual should be transferred. Shadow councils should draw up a list of criteria they intend to use in such cases and the Government would expect these criteria to be discussed with local trades unions. Such criteria might include, but would not be not limited to:
- distance from the employee's home to the proposed places of work;
  - method of transport;
  - consequent travelling time from home to work;
  - possibility of employment being found in other local government organisations nearer to the employee's home.
- 6.1.7. Particular consideration should be given to those who have caring responsibilities, and those who have mobility or other disabilities, and every opportunity should be taken to explore the possibilities of flexible working.
- 6.1.8. The Government does not believe that any additional legislative provision is necessary to assist with disaggregation of employees between the two new single tier councils. We consider that a pragmatic approach based on the practical application of TUPE will be sufficient to ensure that the employment contracts of employees of a predecessor council in post immediately before the reorganisation date, shall on that date transfer to one or other of the new single tier councils.

## **6.2. Appointments to posts in the new single tier councils**

- 6.2.1. The Government encourages Implementation Executives and Shadow Councils to emphasise that all employees in affected authorities have equal rights and opportunities when applying for roles within the new structure. It should not be assumed that those previously employed by the preparing council would be more likely to secure similar or equivalent roles in the new single tier council than those transferred from a predecessor council which is being dissolved. The Government would not expect any group of staff to be treated preferentially simply because they have been employed by the preparing council.

### **6.3. Open competition and preferential consideration**

- 6.3.1. As explained earlier, the Staffing Regulations provide for the post of head of paid service to be recruited by means of open competition and there is an expectation to see open competition as the means of recruiting to other senior management posts.
- 6.3.2. The Government considers that, provided an employee has had the opportunity to apply for suitable alternative posts, if they fail to be appointed to any suitable alternative posts following fair competition (whether open or ringfenced), then their employment shall come to an end by reason of redundancy.
- 6.3.3. Take, for example, a finance director of a district council which is be wound up and dissolved on 1 April 2009. If the relevant county council advertised the post of director of finance in the new single tier council in summer 2008, the district finance director might consider himself suitable and therefore apply for that post. Subsequently, if he were not appointed to the post, or if he did not apply, on 1 April 2009 he would transfer along with all other district employees to the new single tier council. The single tier council would then need to identify alternative posts, if possible similar to his previous post, and suitable to the individual's level of skills, experience and qualifications, and allow him to compete for them (by means of either ringfenced or open competition). If no suitable alternative posts were available, the former district finance director would be made redundant by the new single tier council.
- 6.3.4. Similarly, if a Shadow Council wished to employ a director of adult services in advance of the reorganisation date, in order to prepare for the assumption of those functions, the Shadow Council would be entitled to advertise that post. If the existing county director of adult services was not successful or did not apply for the post, he would transfer on 1 April 2009 and suitable alternative posts in the single tier council would need to be identified and, if none existed, that person would be made redundant.
- 6.3.5. Where ringfenced competition is considered the most appropriate means of filling a post, an employee should be considered by the Implementation Executive or Shadow Council for any post in the new single tier council which is broadly similar to the post he has been fulfilling in any of the predecessor councils in the area, and for which he is deemed to possess the appropriate skills and experience to undertake. Authorities should then take all reasonable steps in such situations to identify other suitable posts. In the absence of any

other suitable posts being identified, however, ultimately the pragmatic course of action may lead to the employee being made redundant. No employee has any absolute right to any particular post following restructuring. The Government sees this situation as being analogous to that which other employees may find themselves in as a result of the TUPE transfer: having taken part in a fair competition for available accountancy posts, it is likely that some employees may need to be made redundant if the number of accountancy posts in the authorities subject to the reorganisation for an area before the reorganisation date is larger than the number of accountancy posts required in the new single tier council. We consider this to be the most pragmatic and sensible way of resolving the situation.

**6.3.6.** The Government encourages Implementation Executives and Shadow Councils to draw up proposals for the structure of the new single tier council early on and begin consultation with employees as early as possible, in order to give as much certainty as possible in advance of the reorganisation dates.

**6.3.7.** This paper sets out the Government's interpretation and it is, of course, for local authorities to obtain their own legal advice.

#### **6.4. Voluntary Early Redundancy**

**6.4.1.** The Government recognises that Implementation Executives and Shadow Councils may, in the interests of staff morale and in order to effect a smooth and efficient transition to single tier councils, wish to offer employees of all affected councils the opportunity of taking voluntary early redundancy in advance of 1 April 2009, to include an appropriate financial package. If the redundancy is to take place prior to the reorganisation date, the Implementation Executive or Shadow Council should consider co-ordinating the offering of a VER scheme with the existing employers (though of course the decision to actually make any redundancy would ultimately rest with the existing employer). The Government would expect any predecessor council to co-operate fully with the Implementation Executive or Shadow Council in arranging for a VER scheme to be offered to its employees.

### **7. Consultation and involvement of trades unions**

**7.1.** The constructive engagement of the trades unions in the restructuring process has been, and will continue to be, essential to ensuring that staff can be confident their interests are being protected.

**7.2.** We intend through the application of TUPE that trades unions will enjoy their full rights in relation to the transfer of functions to the new single tier councils, including consultation, continued trades unions recognition, and the continuation of collective agreements.

**7.3.** TUPE provides that employers are required to inform and consult staff representatives (such as the recognised trades unions) over various key decisions. Duties under the Employment Relations Act 1999 and the Information and

Consultation of Employees Regulations 2004 also place obligations on employers to inform and consult employees in relation to certain changes to the workforce.

7.4. Furthermore, we recommend that Implementation Executives and Shadow Councils consult on all relevant aspects of staff transfers and the human resources implications of the new single tier council with the appropriate local staff representatives, even where this would not be required under TUPE.

**7.5. The Government strongly encourages affected authorities and Implementation Executives / Shadow Councils to engage constructively with trades unions early on and consistently throughout the transition, in order to facilitate the creation of new single tier councils that will effectively achieve their full potential for local residents.**

## **8. Issues and Approaches**

### **8.1. Equalities duties**

8.1.1. The new single tier councils will be subject to the same statutory equalities duties as all other local authorities.

8.1.2. The Implementation Executives and Shadow Councils will, therefore, need to consider their equalities obligations at every stage in discharging their main transitional function. This will include the need to ensure that assessments have been made of the structures and policies of the new single tier council for their impact on different sections of the workforce, and appropriate policies are in place.

### **8.2. Equal Pay**

8.2.1. The Government will expect new single tier councils, as all other local authorities, to identify and address equal pay issues proactively and affordably. The new single tier councils will, of course, be subject to the requirements of the Equal Pay Act 1970.

8.2.2. The original Invitation to councils in England in October 2006 to come forward with proposals for unitary local government in their area made clear that all proposals needed to be fully costed and there would be no additional funding from central Government – and nor should there be any additional pressure on council tax as a result of restructuring.

8.2.3. The August 2007 consultation document stated that the new single tier councils would take on all the employer responsibilities from the existing authorities, including equal pay responsibilities and liabilities.

8.2.4. This approach is being provided for in regulations. Firstly, under the Staffing Regulations 2008 TUPE provides that 'a relevant transfer shall not operate so as to terminate the contract of employment of any person employed by the transferor... but any such contract shall have effect after the transfer as if originally made between the person so employed and the transferee' and that

'all the transferor's rights, powers, duties and liabilities under or in connection with any such contract shall be transferred by virtue of this regulation to the transferee.' In addition, the Government intends to make further regulations during 2008 to provide that all assets and liabilities of the predecessor councils which will cease to exist by virtue of an order made under the 2007 Act shall transfer to the new single tier council on the reorganisation date.

8.2.5. At the point of transfer, the constituent authorities may have unresolved equal pay claims placed before Employment Tribunals. The constituent authorities may also be at different stages of progress towards implementing pay and grading reviews. Any ongoing legal proceedings will be included in the transfer of rights and liabilities.

8.2.6. There is also a potential risk that pay differentials following staff transfers will open a new avenue for future claims. Planning for and resolving this issue affordably is likely to be a major activity for the Implementation Executives and Shadow Councils and, subsequently, for the new single tier councils themselves. Implementation Executives and Shadow Councils, and the single tier councils themselves post-reorganisation date, should take affordable steps to avoid future pay inequalities which may potentially arise from restructuring. Good communication with staff and workforce representatives will be needed, and Government expects that affected authorities will share information on progress.

#### **8.2.7. The Government therefore:**

**8.2.7.1. expects Implementation Executives and Shadow Councils to make delivery and affordability of equal pay a high priority, and put in place detailed project proposals for achieving this; and**

**8.2.7.2. recommends that Implementation Executives and Shadow Councils obtain their own legal advice when considering their approaches to the issue of pay equalisation in the context of local government restructuring.**

### **8.3. Pensions**

8.3.1. County councils are currently the administering authorities for the pension funds of all county and district staff within the county administrative area. The August 2007 consultation document made clear the Government saw no reason to split pension funds as a result of restructuring. In Cheshire and Bedfordshire, however, the dissolution of the county councils will result in one of the two new single tier councils in each area becoming the administering authority for both. The Government will consult interested parties in due course on the statutory changes that may be required.

### **8.4. Discretionary compensation arrangements**

8.4.1. Under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, local authorities have discretionary powers to award compensation where an employee who is eligible for the Local Government Pension Scheme (though

not necessarily a member) has their employment terminated early by reason of redundancy. The authorities can consider making a payment which must not exceed 104 weeks' pay.

- 8.4.2. Local authorities are required to formulate, publish and keep under review their policy with any changes to the policy only coming into effect one month after publication.
- 8.4.3. Accordingly, redundancy compensation arrangements are at the discretion of the employer and the employee does not have an entitlement to compensation before an award is made. Furthermore, a public authority should not fetter its discretion by undertaking always to exercise its discretion in any particular way.
- 8.4.4. The Government advises the Implementation Executives and Shadow Councils to take their own legal advice as to whether and to what extent the published policies might be protected as part of an employee's terms and conditions following transfer.
- 8.4.5. As is recommended in *Local Government Reorganisation: Interim People Management Issues* by the Local Government Employers, **we encourage the Implementation Executive or Shadow Council in each affected area to explore with the predecessor councils whether it may be desirable to harmonise their discretionary compensation arrangements in advance of 1 April 2009** by way of local protocols and in consultation with the trades unions, and in accordance with TUPE.
- 8.4.6. In doing so, Implementation Executives, Shadow Councils and predecessor councils must under the 2006 Compensation Regulations:
  - have regard to the extent to which the exercise of their discretionary powers (in accordance with their policy), unless properly limited, could lead to a serious loss of confidence in the public service; and,
  - be satisfied that the policy is workable, affordable and reasonable having regard to the foreseeable costs.
- 8.4.7. In order to ensure that chief executives of preparing councils are treated fairly and in the same way as other employees, provision is made in the Staffing Regulations for a head of paid service of a preparing council to be treated as if made redundant for the purposes of entitlement to early receipt of pension under the Local Government Pension Scheme and eligibility under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006.

## 8.5. Recruitment, retention and detriment

- 8.5.1. We recognise it is likely that some local authorities, particularly those that will cease to exist on 1 April 2009, might experience difficulties in retention of staff up until that date. However, it is essential that all affected local authorities are able to continue delivering high-quality services to the public and run their day-to-day business in the period prior to 01 April 2009.



- 8.5.2. We are aware that some predecessor and preparing councils may, therefore, make use of retention techniques such as 'golden handcuffs' for key staff. **The Government encourages Implementation Executives and Shadow Councils to consider retention issues and seek common approaches in light of the local situation.**
- 8.5.3. Similarly, when employees are offered posts in the new preparing council which becomes their employer on the reorganisation date, it is likely that issues of detriment may arise, particularly in terms of geographical location and travel to work times. **The Government encourages Implementation Executives and Shadow Councils to discuss the principles of detriment arrangements with local trades unions as part of their main transitional functions.**
- 8.5.4. In relation to recruitment in the period leading up to the reorganisation date, we strongly encourage Implementation Executives and Shadow Councils to agree with their affected local authorities a common approach to filling vacancies that might arise in key areas. In the first instance, we suggest such posts might be filled from within the organisation or using secondments from other local authorities in the area.
- 8.5.5. However, all local authorities should bear in mind the directions which have been issued on behalf of the Secretary of State under section 24 of the 2007 Act to those predecessor councils which will cease to exist on the reorganisation date, providing that they must seek the consent of specified persons before: disposing of any land with a value over £100,000, entering into certain capital and non-capital contracts and using reserves as part of budget calculations. Employment contracts are likely to fall within this direction once the criteria provided for in the directions are met, and so new employment contracts may need the consent of the person(s) specified.<sup>7</sup>
- 8.5.6. The Government also highlights to predecessor and preparing councils affected by restructuring that to make material changes in terms and conditions of service in the period before the reorganisation date that are very different from prevailing practice or terms will leave them open to legal challenge. Under the Local Government Act 1972, the employing authority decides upon terms and conditions for its staff, including as to remuneration, but those terms and conditions must be 'reasonable'. These powers must, of course, be exercised reasonably and in good faith and for proper purposes. Material changes in terms and conditions made without local agreement could, therefore, leave an authority open to challenge as being an abuse of discretion in its fiduciary duty to ratepayers.
- 8.5.7. We would strongly encourage Implementation Executives and Shadow Councils to agree early on a common basis for changes to terms and conditions and recruitment and retention procedures across the affected

<sup>7</sup> The directions issued to district councils in Bedfordshire, Cheshire, Cornwall, Durham, Northumberland, Shropshire and Wiltshire may be viewed on the CLG website at: [www.communities.gov.uk/publications/localgovernment/disposalscontractsreserves](http://www.communities.gov.uk/publications/localgovernment/disposalscontractsreserves). Directions were issued to Cheshire and Bedfordshire on 9<sup>th</sup> April 2008, and are available at: <http://www.communities.gov.uk/publications/localgovernment/directionscheshirebedfordshire>.

authorities in each area, perhaps by means of a local protocol (see paragraph XX below).

## 8.6. Protocols

- 8.6.1. Since the Government is taking a different approach to previous local government restructuring and is not putting in place a detailed, national, legislative scheme for the treatment of staff, many decisions will fall to the Implementation Executives and Shadow Councils to determine in the light of local circumstances.
- 8.6.2. In order to ensure clarity, consistency and fairness, many Implementation Executives and Shadow Councils are already in the process of agreeing protocols with their affected authorities and trades unions. These cover such issues as the involvement of trades unions, recruitment procedures for the new authority, and recruitment, vacancy management and secondments in and between existing authorities prior to 1 April 2009.
- 8.6.3. The Government strongly encourages Implementation Executives and Shadow Councils to consider drawing up such protocols in collaboration with affected authorities and local trade union representatives.**

## 8.7. Communication with employees

- 8.7.1. Local government restructuring will only succeed in delivering better outcomes for local people if the employees of the new single tier councils share the vision and commitment to providing high-quality public services in their area and shaping its future. Ensuring staff feel informed, involved and valued throughout the process will go a long way to achieving this.
- 8.7.2. The Government of course recognises that the process of local government reorganisation may have an unsettling effect upon many local government staff who might be uncertain as to what their position, terms and conditions are likely to be in the new single tier council.
- 8.7.3. The framework we are putting in place will provide reassurance about the basic protections that will govern the transfer to the new single tier councils.
- 8.7.4. The extent to which the Implementation Executives and Shadow Councils actively engage trades unions and keep staff involved and informed throughout the process will, however, be of vital importance.
- 8.7.5. The Government strongly encourages Implementation Executives and Shadow Councils to consider establishing a means of direct communication with employees across all affected authorities, to keep them regularly informed of progress in creating the new organisation, communicate key messages and assist in the creation of a new and homogenous corporate identity for the new single tier council.**

**8.7.6. The Government expects that all predecessor councils will co-operate fully in facilitating the means for the Implementation Executive or Shadow Council to communicate directly with all employees.**

**9. Conclusion**

- 9.1. It is clear that the current restructuring of local government is about creating new single tier councils – 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 key to the success of the new single tier councils that staff are supported and valued over this critical period.
- 9.2. Overall, through the structural changes orders and the Staffing Regulations, the Government is creating a clear and consistent framework for implementation. Within that framework, in each area concerned, it is now for all the councils - their members and employees - to work constructively and imaginatively together to deliver a new single tier council that will be fair and affordable for tax payers and achieve its full potential for local residents.

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