



Ministry of Housing,
Communities &
Local Government

Local Government Reorganisation: Staffing Issues Guidance

Non-statutory guidance for local authorities across
England

Ministry for Housing, Communities and Local Government

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About this guidance

Who is this guidance for?

This guidance is for local authorities in England undergoing local government reorganisation under the [Local Government and Public Involvement in Health Act 2007](#) (“the 2007 Act”). An [overview of the guidance](#) to support communications with local authority employees is also available.

Status of the guidance

This is non-statutory guidance issued by the Ministry for Housing, Communities and Local Government. This publication replaces a previous version published in 2008 by the Department.

Purpose of the guidance

This non-statutory guidance is provided in addition to the [Local Government \(Structural and Boundary Changes\) \(Staffing\) Regulations 2008 \(the “Staffing Regulations”\)](#), which remain in force for local authorities undergoing reorganisation and new single tier councils. Further information regarding the policy background to the Staffing Regulations can be found in the [Explanatory Memorandum](#).

This guidance covers general issues relating to the appointment and transfer of employees to new single tier councils, which the Government expects all affected local authorities and implementation bodies to consider before, during and after the transfer to new single tier councils.

This guidance does not provide a definitive interpretation of the Staffing Regulations and nothing in this document should read as precluding the need for affected local authorities or implementation bodies to obtain their own legal advice and to fulfil their statutory obligations.

Glossary

The following terms are used in this guidance:

- *'Predecessor council'* means a local authority which, by or in consequence of a Structural Changes Order, will cease to exercise functions in relation to an area.
- *'Preparing Council'* means a local authority which, in accordance with a Structural Changes Order, becomes a single tier council on the reorganisation date (may also be known as a 'continuing council or continuing authority').
- *'Implementation Executive'* means a committee of a Preparing Council's executive established in pursuance of an order. Where in place, the Implementation Executive only exists during the first transitional period and will have certain preparatory responsibilities before it is dissolved in the second transitional period after the inaugural elections and subsequently replaced by the new Executive of the Preparing Council;
- *'Shadow Authority'* means an authority (not being a local authority) which, in accordance with an order, becomes a single tier council on the reorganisation date.
- *'Single tier council'* means a new local authority which on or after the reorganisation date is the sole principal authority for an area – the new unitary council (also the 'succeeding council').
- *'Structural Changes Order'* means an order under section 7 or 10 of the 2007 Act. It is legislation that will, on a specified date, dissolve the predecessor councils and establish new unitary authority/s in an area. The order sets out arrangements for the transitional period prior to the transfer to the new authority.
- *'Vesting day'* or *'reorganisation date'* means the date, as specified in a Structural Changes Order, when predecessor councils are dissolved and the new unitary authority assumes local government functions and full local authority powers.
- *'Transitional period'* means the period between a Structural Changes Order coming into force and the reorganisation date. In broad terms, it is the period when existing councils continue to deliver their services as normal while also preparing for the transfer to the new unitary council. Implementation bodies are put in place, with specific responsibilities outlined in the Structural Changes Order.
- *'Head of paid service'* means the person who is appointed or designated to discharge the duties imposed by subsections (2) and (4) of section 4 of the Local Government and Housing Act 1989 (designation and reports of head of paid service). The head of paid service may also be referred to as an authority's chief executive.

Chapter one: Background to local government reorganisation

- 1.1 The Government has committed to simplifying local government in England by ending the current two-tier system and replacing it with new single-tier unitary councils. These changes, known as local government reorganisation, will see one council in charge of each area.
- 1.2 The ambition is to deliver stronger local councils equipped to drive economic growth, improve local public services, and empower their communities. For local council staff this will mean services are joined up under one unitary council.
- 1.3 In July 2025, the Government set out a summary of the local government reorganisation process and indicative timetable¹ in those areas invited to submit proposals for new unitary councils². If the Secretary of State decides to implement a proposal for an area, the Department will prepare legislation for each area, called a Structural Changes Order, which will abolish the existing councils and establish new single-tier unitary councils. The Structural Changes Order also sets the arrangements for the transitional period in the lead up to the reorganisation date, also known as vesting day. This includes establishing implementation bodies responsible for carrying out the necessary preparations for the new council. The Department has provided separate [implementation guidance](#) on this.
- 1.4 There are two distinct statutory transitional periods. The first transitional period runs from the day after the Structural Changes Order is made until shortly after the inaugural elections to the new council. For this period, it is likely that a Joint Committee will be established. The Joint Committee is responsible for preparing, reviewing and revising an Implementation Plan and timetables deemed necessary to facilitate the new unitary council's discharge of functions from the reorganisation date. The exact duties of a Joint Committee are set out in the relevant Structural Changes Order for an area. It is likely Implementation Plans will include proposals for early preparations required for transferring staff to the new unitary councils on the reorganisation date.
- 1.5 An Implementation Executive may be established instead of a Joint Committee. The same responsibilities outlined for Joint Committees apply to Implementation Executives too.
- 1.6 The second transitional period runs from a defined date following the inaugural elections and up to the reorganisation date. The Joint Committee is replaced by the Shadow Authority following inaugural elections to the new unitary council. The Shadow Authority, as the incoming new council, is therein responsible for preparing for the new unitary authority to assume local government functions and full local authority powers on the reorganisation date. The Shadow Authority is responsible

¹ [Summary of the local government reorganisation process - GOV.UK](#)

² [Local government reorganisation: invitation to local authorities in two-tier areas - GOV.UK](#)

for reviewing, revising and implementing the Implementation Plan which details how the Shadow Authority is preparing for the transfer and ensuring that the predecessor councils are preparing to transfer all functions, property, rights and liabilities, and keeping the plan under review. The exact duties of a Shadow Authority are set out in the relevant Structural Changes Order for an area.

- 1.7 If an Implementation Executive was established for an area, it will be dissolved and replaced by the new executive of the Preparing Council following the inaugural elections.
- 1.8 The transfer of local council staff to new unitary councils (the TUPE transfer) will be a key part of an Implementation Plan. For example, ensuring that the appropriate representatives of affected staff are consulted long enough before the transfer is expected to take effect. This is to allow for meaningful consultation, as well as ensuring there is clear and regular communication with council staff about the transfer to the new council. The Structural Changes Order will also specify any other specific duties Shadow Authorities may have related to staffing, such as the designation or appointment of certain officers (see [Section 4.4](#)).
- 1.9 Accordingly, this document refers throughout to predecessor councils, Shadow Authorities and Preparing Councils, as they will be responsible for taking forward staffing decisions related to a Structural Changes Order. This guidance is however also relevant for any Joint Committees or Implementation Executives, to assist with their early stage plans.

Chapter two: Principles for staff transfers and appointments

- 2.1 Local government reorganisation will only succeed in delivering better outcomes for people if employees of new unitary councils share the vision and commitment to delivering high-quality public services in their area and shaping its future.
- 2.2 Ensuring staff feel informed, involved and valued during this process will be key to minimising disruption to services during the transitional period and also for building the right cultures for success in new unitary councils. Clarity and consistency in communications to staff will be an important part of the process (see [Chapter Six](#)).
- 2.3 Local authorities are responsible, as the employers, for the terms and conditions of their staff and, through the Shadow Authority or Preparing Council, for managing the transition to the new unitary councils.
- 2.4 The Government's approach has therefore been to adopt a regulatory framework which:
 - a. offers a high level of reassurance to staff in relation to the continuity of their employment and existing terms and conditions by providing a clear framework providing basic protections;
 - b. ensures staff are informed and consulted on the main changes relating to their employment as a result of local government reorganisation;
 - c. ensures as far as possible the new unitary council has the staffing it requires to deliver its operations; and
 - d. recognises that in addition to complying with the Staffing Regulations, TUPE Regulations and other relevant employment law, appointment decisions will be based on local circumstances and a diverse range of situations, as well as necessarily being driven by the need to ensure the right staff are in place to deliver the role of the new council and there are sufficient levels of business continuity.
- 2.5 This document relates primarily to the Staffing Regulations, which are the primary regulations that set out the principles governing the treatment of council employees affected by structural change. It contains guidance on general issues relating to the appointment and transfer of employees to the new single tier councils. It remains for all affected councils, Shadow Authorities or Preparing Councils to ensure they are working together constructively to successfully deliver the new unitary council while having regard to the requirements of:
 - the Staffing Regulations
 - the TUPE Regulations and relevant employment law
 - the Structural Changes Order (SCO) for an area
 - bespoke legal advice
 - local protocols on staffing
 - Implementation Plans produced by areas
 - bespoke HR tools and communication materials

Chapter three: The Staffing Regulations

- 3.1 This chapter provides an informal explanatory commentary to assist in the understanding and interpretation of the Staffing Regulations. It remains for each local authority and new council to take its own independent legal advice.

Preamble

- 3.2 [Section 14 of the 2007 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 any orders under section 7 or 10 of the 2007 Act, or for giving full effect to such orders. Section 14(2) provides for subsection 14(1) to be read with [section 15 of the 2007 Act](#). Section 15(1) provides that references to ‘incidental, consequential or supplementary provision’ include, in particular, provisions for the transfer of staff and other staffing matters and provisions for treating anybody to whom a transfer is made for some or all purposes as the same person in law as the body from whom the transfer is made. The 2007 Act also provides that regulations made under that Act may make different provision for different cases ([section 240\(10\)](#)).
- 3.3 Councils should be aware that in addition to the Staffing Regulations and TUPE Regulations, each area undergoing reorganisation is subject to its own individual Structural Changes Order made under the 2007 Act. As such, the Staffing Regulations and any other relevant local government reorganisation regulations made under Section 14 of the 2007 Act are subject to the specific provisions in an area’s Structural Changes Order. Structural Changes Orders will include requirements relating to staffing appointments, explained in [Chapter Four](#).

Overall approach – application of TUPE

- 3.4 The Staffing Regulations make provision in respect of the transfer of staff and other staffing matters during local government reorganisation. The Staffing Regulations provide that in the context of local government reorganisation, notwithstanding regulation 3(5) of TUPE, the transfer of functions from a predecessor council to a single tier council (the successor council) shall be treated as a “relevant transfer” within the meaning of the [Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(the “TUPE Regulations”\)](#)³. The TUPE Regulations make provision for the treatment of contracts of employment, employees and related matters. A [guide](#) to these regulations is available.
- 3.5 The Government takes a positive attitude towards TUPE, regarding it as an important aspect of employment rights legislation with the potential to promote a cooperative, partnership approach towards changes in the public sector, as set out

³ The TUPE Regulations were amended by the [Collective Redundancies and Transfer of Undertakings \(Protection of Employment\) \(Amendment\) Regulations 2014](#).

in [Cabinet Office Statement of Practice on Staff Transfers in the Public Sector](#). The Government remains committed 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, along with arrangements to protect occupational pension⁴, redundancy and severance terms.

- 3.6 This approach seeks to ensure that employees of predecessor councils who are in post immediately before the reorganisation date and whose terms and conditions of employment provide for their employment to continue beyond that date, become employees of the single tier council that succeeds their predecessor council, and that they shall transfer, subject to the operation of the TUPE Regulations, on the same terms and conditions as they had enjoyed immediately beforehand. It also seeks to ensure that employees of a Preparing Council, as affected employees, will benefit from prescribed protections under the TUPE Regulations.

Regulation 3 – Transfers of functions: staff

- 3.7 Regulation 3 of the Staffing Regulations provides that, subject to the requirement to recruit to the post of head of paid service (chief executive) of the new single tier council through open competition, the transfer of functions from a predecessor council to a single tier council (in connection with one or both of a structural change and a boundary change) shall be treated as a ‘relevant transfer’ for the purposes of the TUPE Regulations. Regulations 2 and 3(1) of the TUPE Regulations define as a relevant transfer the transfer of an economic entity which retains its identity. In this reorganisation, the council that will cease to exercise its functions will transfer both economic and non-economic entities to the new unitary council. This ensures employees assigned to economic and non-economic functions that transfer shall be treated as part of a ‘relevant transfer’ within the meaning of the TUPE Regulations.
- 3.8 By applying this approach, the Government is seeking to ensure that employees of predecessor councils, who are in post immediately before vesting day, and whose terms and conditions of employment provide for their employment to continue beyond that date, become employees of the new unitary council that succeeds their predecessor council, and they will transfer on the same terms and conditions as they had enjoyed immediately beforehand. This means:
- Staff are informed and consulted on the main changes relating to their employment as a result of local government reorganisation beforehand;
 - Employees will benefit from the associated protections afforded through the TUPE Regulations, in particular the continued protection of terms and conditions after the transfer; and

⁴ Affected staff will continue to have their occupational pension provision protected through the relevant public-sector pension scheme arrangements, including continued eligibility for the Local Government Pension Scheme.

- Employees of all predecessor councils have the same basic protections, regardless of which council they were employed by.

TUPE and continuity of employment

- 3.9 [Regulation 4 of the TUPE Regulations](#) preserves continuity of employment where there is a relevant transfer because (in brief) it provides that the contract of employment of any person employed by the predecessor council (the transferor and old employer) immediately before the transfer shall have effect after the transfer as if originally made between the employee and the new unitary council (the transferee and new employer). The transferee (the new unitary council) inherits the contracts of employment and the transferor's (the predecessor council) rights, powers, duties and liabilities under or in connection with the contract. In addition, any act or omission of the transferor in respect of a contract of employment is deemed to have been an act or omission of or in relation to the transferee.
- 3.10 With regards to staff employed by a Preparing Council, as responsibility for the terms and conditions of employment of staff employed by a Preparing Council lies with, and at all times remains with, that Preparing Council (both before the reorganisation date and when the Preparing Council becomes the new single tier council) and as the identity of the legal employer does not change, there can be no transfer of the terms and conditions of those staff. However, Preparing Councils should be aware that their staff are likely to be "affected staff" under the TUPE Regulations, and therefore Preparing Councils will need to fulfil their statutory obligations under the TUPE Regulations accordingly, seeking independent legal advice as necessary.

Regulation 4 – Heads of paid service and other chief officers

- 3.11 The Government recognises that the role of chief executive in a new unitary council is a new and distinct role. The post holder will manage a new organisation and work with the new Executive to develop the vision for the unitary council, as well as creating the culture and conditions for the workforce to deliver the new vision. The recruitment of the chief executive provides an opportunity to appoint a person with the right capabilities to run the new organisation, spearhead the new vision and seize the opportunities presented by local government reorganisation.
- 3.12 Regulation 4 of the [Staffing Regulations](#) requires the post of head of paid service (chief executive) of each new single tier council (both where the shadow council and Preparing Council model are used) to be recruited by means of open competition and that the competition must be held within 12 months from vesting day of the new unitary council.
- 3.13 The Government considers that recruiting the head of paid service by means of open competition will provide the greatest assurance of the appointment of the most suitable candidate for the role and will confer a greater legitimacy for the successful

candidate in leading the new unitary council, as well as working with the relevant Shadow Authority or Preparing Council to drive preparations.

3.14 In appointing a chief executive, the following regulations apply to Shadow Authorities and Preparing Councils, subject to any specific provisions made in an area's Structural Changes Order:

- [The Local Authorities \(Standing Orders\) \(England\) Regulations 2001](#) ('the 2001 Regulations') and the [Local Authorities \(Standing Orders\) Regulations 1993](#) ('the 1993 Regulations') apply to a Preparing Council, a Shadow Authority and a single tier council for the relevant period subject to the modifications provided in Regulation 4. The relevant period is defined in regulation 4(5)(d) of the Staffing Regulations as the period between a reorganisation order coming into force and 12 months after the reorganisation date.
- In order to ensure that the best possible leadership is in place, the Staffing Regulations require the post of head of paid service (chief executive) of the new single tier councils to be recruited via open competition, to in accordance with [Schedule 1, Part 1, Appointments \(paragraphs 1-2\) to the 1993 Regulations](#) (as modified by Regulation 4(1) of the Staffing Regulations). The 1993 Regulations require the council to draw up a job description, 'make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it' 'and' 'interview all qualified applicants for the post'.
- Regulation 4(1) of the 2008 Regulations provides that an authority to which this regulation applies must recruit to the position of head of paid service of the single tier council within the relevant period in accordance with the 1993 Regulations as modified. The appointment of a head of paid service of the single tier council may take effect before the reorganisation date (regulation 4(1)(b)(ii)).
- Regulation 4(2) of the Staffing Regulations provides, subject to the provisions of the relevant Structural Changes Order, that the functions of advertising, recruiting, appointing and dismissing a head of paid service shall, in respect of a Preparing Council or its succeeding single tier council, be discharged by the Implementation Executive until its dissolution. As per Regulation 4(3), the Preparing Council which replaces the Implementation Executive, or the new unitary council, will discharge the functions of advertising, recruiting, appointing and dismissing a head of paid service. As per guidance issued by the Department on implementation bodies, the Government does not envisage any recruitment or appointments will be carried out by an Implementation Executive. Where there are Preparing Councils put in place for an area, the Government may make alternative provision in the Structural Changes Order.
- Regulation 4(2) provides that, in respect of the appointment of a head of paid service of a Shadow Authority, the function shall be discharged by either the

Shadow Executive (up to the fourth day after the next election day of councillors to that council) or the Shadow Authority (from the fourth day after the next election day of councillors). As per guidance issued on implementation bodies, while Joint Committees are involved in preparing and laying the groundwork for future recruitment, they do not carry out recruitment or appointment to senior posts. These are matters that elected members of the new unitary council are involved in and who will not be in place until the dissolution of the Joint Committee which is replaced by the Shadow Authority.

- Regulation 4(2) also provides that, in relation to a both Preparing Council and a Shadow Authority the function shall thereafter be discharged by the local authority for the local government area.
- Regulation 4(3) of the Staffing Regulations provides that where a Preparing Council or a Shadow Authority has made an appointment under the 1993 Regulations (as modified by the Staffing Regulations), the succeeding single tier council is not under a duty to make a further appointment to that post.
- Regulation 4(4) of the Staffing Regulations specifies that certain items in regulation 2(1) of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, which provide that the appointment of staff is not a function of a council's executive, are disapplied in these circumstances.
- Regulation 4(5) of the Staffing Regulations defines the 'relevant period' during which the 1993 and 2001 Regulations (as modified) apply to a Preparing Council, a Shadow Authority and a single tier council. In order to allow the timing of the appointment of head of paid service to be decided upon in the light of local circumstances, the Staffing Regulations provide that the appointment may be made at any time up to 12 months after the reorganisation date, and make further provisions for Shadow Authorities. Paragraphs (a) to (c) of the definition are no longer relevant.
- Regulation 4(1) of the Staffing Regulations specifies that any proposal for dismissal of a head of paid service that arises from the requirement under that regulation to advertise, recruit and appoint to the post of head of paid service of the single tier council, is excluded from the definition of 'disciplinary action' in the 2001 Regulations for the relevant period. Therefore, during the relevant period, the authority will not require the advice, views or recommendation of the independent panel (pursuant to Regulation 6 and Schedule 3 of the 2001 Regulations).

Other chief officers

- 3.15 There are no requirements in the Staffing Regulations for any other posts aside from the head of paid service of the new unitary council to be subject to open competition.

- 3.16 The Chief Financial Officer, Monitoring Officer and other chief officer posts may be filled by existing council employees from relevant predecessor councils without open competition. Shadow Authorities and Preparing Councils will however need to ensure they are considering the relevant Standing Orders, the TUPE Regulations and any requirements for fair and transparent processes when filling such appointments within the new unitary council leadership structure. If these posts are not filled by existing members of staff employed by predecessor councils, they must be recruited via open competition. Further guidance on how councils approach appointments to the new unitary council senior leadership team is in [Chapter Four](#).

Regulation 5 – Redundancy Payments (head of paid service)

- 3.17 Any head of paid service employed by a Preparing Council or a single tier council and whose employment would have continued but for the appointment of another person to the post of head of paid service of the single tier council (in accordance with the 1993 Regulations, as modified by the Staffing 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 Regulations 2013](#).
- 3.18 An incumbent head of paid service does not need to compete for the post in the successor single tier council to be deemed to have been made redundant. This measure has been taken to ensure that as a result of the requirement to recruit to the post of head of paid service, an incumbent head of paid service of a Preparing Council is not unfairly deprived of the opportunity to be considered for compensation and will be eligible to be considered for redundancy compensation and early receipt of pension in the same way as their counterparts in predecessor councils who are highly likely to satisfy the definition of redundancy as a consequence of the reorganisation. No similar provision is included for other employees of a Preparing Council or any predecessor council, because there is no requirement for any other posts to be subject to open competition.

Regulation 6 – Local Government Pension Scheme (LGPS)

- 3.19 The Government's view is that staff employed by Shadow Authorities before reorganisation should be able to join the LGPS and build up pension rights. Normally, this is only possible if their employer is listed in [Schedule 2 of the Local Government Pension Scheme Regulations 2013](#). Regulation 6 of the Staffing Regulations deals with this by treating a Shadow Authority as if it were listed in Schedule 2, and so staff employed by a Shadow Authority can join the LGPS.

Chapter four: Practical Implementation of the Staffing Regulations

- 4.1 This chapter offers guidance on common issues relating to the transfer and appointment of employees to new unitary councils. It remains for each affected local authority to seek their own independent legal advice as to how the Staffing Regulations, TUPE Regulations, Structural Changes Orders or other relevant employment law applies in specific local or individual circumstances.
- 4.2 Councils will also need to ensure they have considered their Public Sector Equality Duty in making any decisions related to staffing, and whether equality impact assessments may be required for specific decisions. Councils can access [guidance](#) for public authorities on the Public Sector Equality Duty.

4.3 TUPE during local government reorganisation

- 4.3.1 Before existing council employees are transferred to new unitary councils, the predecessor councils and the Shadow Authority or Preparing Council will work together to consider how to assign council staff to the service and business activities which will be delivered by the new unitary council. The aim of this process is to ensure that when council staff transfer to a new unitary council, they continue to deliver, as much as possible, the same service or business activities they had been performing for their previous employer, and will subsequently need to be delivered within the new unitary council. Where necessary, this could also include assigning staff to other suitable service or business activities to be delivered by the new council. In making such assessments, councils must have regard to the Public Sector Equality Duty.
- 4.3.2 As required by the TUPE Regulations, the predecessor council and Shadow Authority or Preparing Council are both under a duty to inform, and where necessary consult, with the relevant representatives of council staff affected by the transfer. In practice, given that the predecessor council employs staff who will transfer to the new council, the obligation to inform staff who will be affected by the transfer about that fact, and carrying out any required consultation, will fall to the predecessor councils. Shadow Authorities or Preparing Councils will however need to provide the necessary information about any expected measures, which would need to be the subject of meaningful consultation with transferring staff. In any case, predecessor councils and Shadow Authorities or Preparing Councils will need to be assured of what their obligations are with regard to informing and consulting with affected staff and will need to work together during this process in order to effect a smooth transfer.
- 4.3.3 As per the TUPE Regulations, an employer cannot make redundancies before a TUPE transfer, where the reason is the transfer itself. Redundancies can only be made if they are not related to the transfer and local authorities must continue to follow the right process for managing redundancies. After the transfer, employers can only make redundancies related to the transfer if there is both a genuine

redundancy situation and an 'economic, technical or organisational' (ETO) reason entailing a change in the workforce. The Government recognises that after the transfer to the new council, and subject to local circumstances, there may be some need for the new council to implement some redundancies. Whether there can be said to be an ETO reason will depend on local circumstances and the outcome of the TUPE transfer process, and may be more likely to be a consideration around the new senior leadership structure for the new council.

4.3.4 Where required and practicable under the TUPE Regulations, there could arise a situation where predecessor councils and the Shadow Authority or Preparing Council may need to put in place arrangements which enable the appropriate consultation to be undertaken with any employees of predecessor councils that could be at risk of redundancy after the transfer to the new council, and having taken legal advice, to ensure no unfair dismissals are made by the new council.

4.3.5 Where the Preparing Council model is used, the employment of those staff employed by other predecessor authorities, assigned to transferring functions, will transfer to the new authority on vesting day via TUPE. For staff employed by the Preparing Council, as the identity of their legal employer does not change, legal responsibility for the employment of existing employees of the Preparing Council remains with the Preparing Council. However, these staff members are likely to be considered 'affected staff' under the TUPE regulations. The Preparing Council should determine its proposed organisational structure for the new unitary authority and statutory officer arrangements as soon as possible.

4.3.6 With regards to any agency workers or service level agreements with third parties, predecessor councils will need to seek their own legal advice as to any impact of the transfer and how the TUPE Regulations apply in specific circumstances. Councils will also need to consider the staffing implications of any future decisions relating to alternative delivery models, including Local Authority Trading Companies.

4.3.7 Clear and consistent messaging to staff about the transfer to the new unitary council will be crucial, not only for staff's wellbeing and morale throughout changes, but also to aid retention and, therefore, authorities' ability to maintain continuity of services in the run-up to the reorganisation date and for the new council in the period immediately afterwards.

4.3.8 **The Government therefore recommends that:**

- **Predecessor councils provide clear and regular messaging to their staff around the timeline for the TUPE transfer and any consultation;**
- **Shadow Authorities and Preparing Councils draw up proposals for the operational structure of the new unitary council early on and begin any necessary consultation with employees and their relevant representatives (e.g. recognised trade unions) as early as possible, in**

order to give as much clarity as possible in advance of the reorganisation date;

- **Shadow Authorities and Preparing Councils agree protocols with their affected authorities and local trade union representatives to enable them to quickly establish how staffing issues are to be handled, where they have not already done so (see [Section 5.8](#)).**

4.4 Requirements relating to specific appointments

4.4.1 While Shadow Authorities are not local authorities and do not have full local authority functions until vesting day, the Structural Changes Orders will ensure that Shadow Authorities are given local authority powers so far as needed to discharge their transitional functions during the transitional period. For example, this means that Shadow Authorities have a power to appoint under s.112 of the Local Government Act 1972. This will enable Shadow Authorities to make appointments (such as those required by the Order), and to make any other appointments they may need to make, following the TUPE process. In making any appointments, Shadow Authorities should be mindful of obligations under the Staffing Regulations and TUPE, and should take independent advice on whether such an appointment is permitted.

4.4.2 All councils concerned will need to note that predecessor councils are liable for the costs of Shadow Authorities. Where staff employed by predecessor councils are made available to work in the Implementation Team, they continue to be employed by their existing council. Costs associated with any recruitment to the Shadow Authority will be costs that predecessor councils are liable for provided they are properly incurred by the Shadow Authority in execution of its transitional duties, until the Shadow Authority becomes the new council. Predecessor council consent should be acquired for any such new appointment before it is made. To manage these issues, the Government recommends that local protocols on staffing are put in place to agree how decisions on appointments are to be made given the cost implications of appointing to the Shadow Authority.

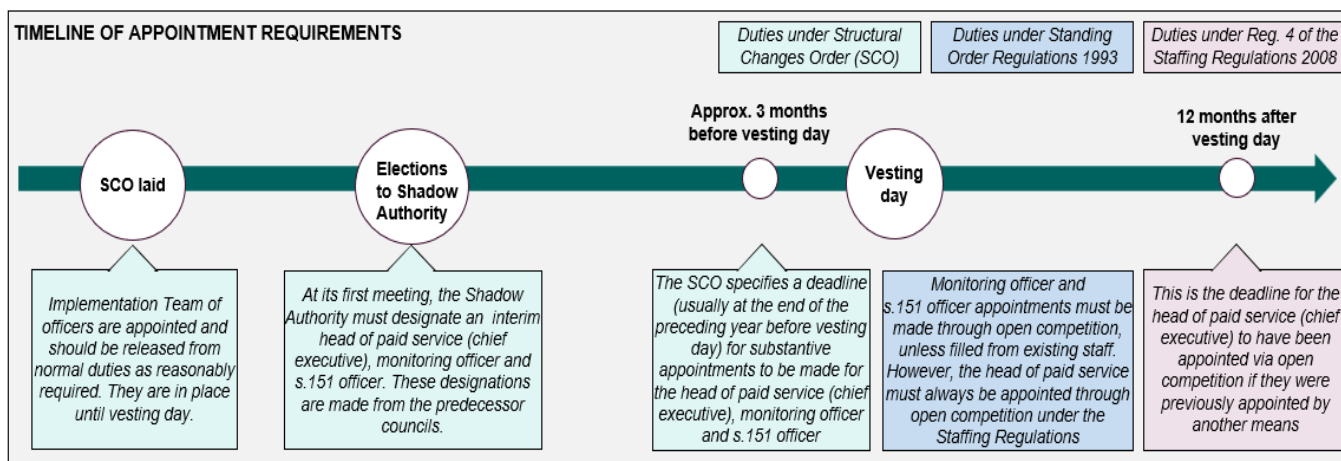
Structural Changes Orders and staffing appointments

4.4.3 Where a Shadow Authority model is put in place, the Government intends, through relevant Structural Changes Orders, to put Shadow Authorities under a duty to designate an interim chief executive, interim monitoring officer and interim chief financial officer from a relevant predecessor council during the first meeting of the Shadow Authority following the inaugural elections. This is to ensure someone is performing the duties of these three statutory roles on an interim basis following the inaugural elections to the new unitary council.

4.4.4 The Government also intends to put Shadow Authorities under a duty, through relevant Structural Changes Orders, to appoint a chief executive, monitoring officer

and chief financial officer by the end of the year which precedes the reorganisation date. This provision is included to ensure the duties of chief executive, monitoring officer and chief financial officer are being effectively discharged and that there is extant leadership able to drive through the final preparations for vesting day. The Structural Changes Order will prescribe particular dates by when the Shadow Authority must have appointed a chief executive, monitoring officer and chief finance officer. In the [Surrey Structural Changes Order](#), this date is 31 December 2026. For other areas undergoing reorganisation, if the reorganisation date specified in the relevant Structural Changes Order is April 2028, then the date specified for making these appointments is likely to be 31 December 2027.

- 4.4.5 With regards to chief executives, where a Structural Changes Order places a duty on a Shadow Authority to appoint a chief executive prior to the reorganisation date, this will be a requirement in addition to Regulation 4 of the Staffing Regulations – the requirement for the chief executive of the new unitary council to be appointed by open competition within 12 months of the reorganisation date. The purpose of the requirement in the Structural Changes Order for the Shadow Authority to appoint a chief executive before vesting day is to ensure someone is in post and discharging the statutory duties of head of paid service in the lead up to and immediately following the reorganisation date.
- 4.4.6 Alongside the requirement in the Structural Changes Order to appoint a chief executive, Regulation 4 of the Staffing Regulations will continue to apply. This means that a Shadow Authority, or, the new unitary council after vesting day, will need to ensure it has run an open competition to permanently fill the post of the substantive chief executive within 12 months of the reorganisation date. The effect of a Structural Changes Order will be to ensure the post of chief executive is not vacant on vesting day and someone is performing those duties, irrespective of how that appointment had been made. This means, as per Regulation 4, if a Shadow Authority made the required appointment before vesting day (as per the Structural Changes Order) through alternative approaches to an open competition, the Shadow Authority or new unitary council after vesting day will need to ensure it runs an open competition in accordance with the 1993 Regulations. A process could be run either alongside the initial appointment which was required by the Order, or, following that appointment, within 12 months from the reorganisation date.
- 4.4.7 If the Shadow Authority or Preparing Council already made that appointment prior to the reorganisation date in accordance with the requirements of the Staffing Regulations and the 1993 Regulations, the succeeding unitary council is not under a duty to make a further appointment to that post. The interplay between these requirements is captured in the diagram below:



4.4.8 Under a Preparing Council model, the Government will not place the Preparing Council under a duty to designate an interim chief executive, interim monitoring officer or interim chief financial officer. The existing postholder remains in post through the transitional period. However, as per the Staffing Regulations, a new unitary council established through the Preparing Council model will also be under a duty to appoint a chief executive through open competition within twelve months of the Structural Changes Order coming into force. This means that the monitoring officer and chief financial officer may be appointed from existing staff or recruited via open competition if based on local circumstances it is necessary to do so – whereas the new chief executive must be appointed via open competition in accordance with the Staffing Regulations.

4.4.9 In making any appointments, in addition to staffing decisions generally, Shadow Authorities and Preparing Councils will need to have regard to the requirements of the Public Sector Equality Duty.

4.5 TUPE and recruitment to new senior leadership teams

4.5.1 This section provides illustrative commentary on the approaches and issues affected authorities will need to consider during the TUPE transfer to the new unitary council, with regards to making any appointments to the new council senior leadership structure. There will undoubtedly be a variety of local factors at play and specific details that each council will need to consider in making any decisions about how to fill posts in the new senior leadership structure, which will necessitate councils taking their own legal advice.

4.5.2 Forming the new senior leadership team for the new unitary council is a key part of setting up the council for success. Alongside elected members, the new senior leadership team will promote the new vision, ensure the new organisation is able to deliver high-quality public services and seize the opportunities of reorganisation. For

the purpose of this guidance, senior leadership team should be taken as referring to those directors (including statutory officers) or other senior postholders who (together with the chief executive) form the executive team of the new unitary council, and who report directly to that chief executive.

Filling the new council senior leadership structure and making appointments

- 4.5.3 Given that local government reorganisation involves the transfer and subsequent integration of several councils, their services and staff, to create a new unitary authority, there will need to be a new senior leadership structure put in place to drive that new unitary council. Therefore, it is reasonable to anticipate that, at the senior leadership level, there may be a surplus of staff performing the same roles across the existing councils due to be wound up, when compared to the number of posts that will sit within the new senior leadership structure established for the new council. Predecessor councils and Shadow Authorities or Preparing Councils will need to consider their obligations under the TUPE Regulations in making any decisions as to the approach to filling posts in the senior leadership structure of the new council.
- 4.5.4 Generally, in making decisions about appointments to individual posts, the Preparing Council or Shadow Authority will need to have regard to the particular circumstances of the TUPE transfer and operate within the relevant legislative requirements (including the Staffing Regulations, the TUPE Regulations and other relevant employment law). In some cases, during the TUPE process it may be judged that the post has not changed substantially or it may be clear that there are no employees transferring into the authority who have been performing an equivalent role in their predecessor council. In such cases, it is likely that the existing postholder will be confirmed in their post. Where reorganisation involves disaggregating employees, there will be other issues to consider (see [Sections 4.6](#) and [4.7](#)).
- 4.5.5 The Government recognises that Shadow Authorities and Preparing Councils will, having regard to the overarching obligations of the TUPE Regulations, need to consider their own independent legal advice and local factors, when roles may be filled through ringfencing exercises or when it may be appropriate to use open competition as a means of recruiting to certain posts, or, where the council considers there is a compelling case for an alternative approach. The Government also recognises that the process of transition may require a degree of continuity on the senior management board, and this will also be a key consideration in any decisions around how appointments are made. In any case, the Government expects that the starting point for any Shadow Authority or Preparing Council will be fulfilling its obligations under the TUPE Regulations and identifying the most suitable and fair route to appointing the right person to an individual post, and, devising an approach that ensures the retention of staff with the right capabilities to deliver the role of the new unitary council and securing the best person for specific roles.

- 4.5.6 As a general rule, if a Shadow Authority or Preparing Council, decides to run an open competition to appoint to a post, the Government considers that, provided an employee of a predecessor council has had the opportunity to be considered for that post, or to apply for suitable alternative posts in the new unitary council, if they fail to be appointed to these or other suitable alternative posts following fair competition (whether open or ringfenced), then their employment is likely to come to an end by reason of redundancy⁵. Where an employee chooses not to apply for a role in the new council, this will not inevitably prevent a redundancy dismissal. This will be so, where the Shadow Authority or Preparing Council can demonstrate that reasonable alternative opportunities have been considered and made available and, where roles are refused by employees, this is a reasonable refusal. Decisions around which roles constitute a suitable alternative should be agreed, as far as practicable, with council employees and their relevant representatives, taking into account the business needs of the new council as well as the employee's circumstances, skills and experience.
- 4.5.7 To illustrate the potential practical effects of the Staffing Regulations and TUPE Regulations, the paragraphs below set out some examples in general terms. Each individual case will be subject to an assessment by the employer, and the examples should not be read as implying any judgement about individual cases.
- 4.5.8 Using the illustrative example of a HR director in a district council that will be dissolved on 1 April 2028, based on the type of local government reorganisation in the area, there may be a scenario where there are several employees performing the same role across the existing councils. It follows there may be a reduction in the number of HR directors posts available across the new unitary councils to be established. In consideration of these circumstances and obligations under the TUPE Regulations, a Shadow Authority or Preparing Council will need to determine the appropriate routes to filling the post of the new HR director role in the relevant new unitary council. If the Shadow Authority conducted a ringfencing pool exercise or based on other relevant local factors decided to subject the post of HR director in the new unitary council to open competition in summer 2027, the district HR director might apply for that post. Subsequently, if they were not successful in a fair ringfencing exercise, or, were not appointed to the post through the open competitive process (or did not apply) and their contract provided for continued employment after 1 April 2028 (the reorganisation date), they would transfer on 1 April 2028 along with other district employees into the new council. Following the reorganisation date, after staff had transferred from the predecessor council, the new unitary council would then be required to identify other alternative posts, if possible, similar to their previous post, and suitable to the individual's level of skills, experience and qualifications, and consider them for any such posts (including allowing them to compete for posts subject to an open or ringfenced competition). If no suitable

⁵ In making any redundancies, councils must ensure they are complying with relevant duties on collective consultation.

alternative posts were available, it is likely that the individual's employment would be terminated, possibly by reason of redundancy. This outcome will however be dependent upon the individual circumstances and the TUPE process.

- 4.5.9 Using the illustrative example of a Director of Adult Social Services (DASS) in an area where the establishment of new unitary councils means there will be an increase in the number of Director of Adult Social Services posts, these will be several posts that require filling. In these circumstances, in consideration of their obligations under the TUPE Regulations, a Shadow Authority will need to determine the appropriate routes to filling the post of the new Director of Adult Social Services of a new unitary council. If a Shadow Authority decided it needed to recruit to the post of Director of Adult Social Services in a new unitary council in advance of the reorganisation date, in order to prepare for the assumption of those functions on the reorganisation date, it would be necessary for the Shadow Authority to run a suitable appointment process or advertise that post. If an existing DASS was not successful or did not apply for the post, and their contract provided for continued employment after 1 April 2028 (the reorganisation date), they would transfer on 1 April 2028 along with other employees into a new council. Following the reorganisation date, after staff had transferred from the predecessor council, the new unitary council would then be required to identify other suitable alternative posts and consider them for any such posts (including allowing them to compete for posts subject to an open or ringfenced competition). If no such suitable posts existed, it is likely that the individual's employment would be terminated, possibly by reason of redundancy. The outcome will be dependent upon individual circumstances and TUPE process.
- 4.5.10 Ultimately, councils will need to consider their approach to appointments to the new senior leadership team or any other roles having regard to the requirements of the TUPE Regulations and a variety of relevant local factors, such as the existing cadre and the number of senior leadership posts which need to be filled across new unitary councils in an area. The Government is clear that the objective of reorganisation is ensuring that new unitary councils have the staffing they need to deliver their role and statutory duties, and, securing the staff with the capabilities and knowledge to do deliver the new council, as well as seizing the opportunities of reorganisation.
- 4.5.11 **The Government encourages Implementation Executives and Shadow Authorities to draw up proposals for the operational structure of the new single tier council early on and begin consultation with employees and their recognised trades unions as early as possible, in order to give as much certainty as possible in advance of the reorganisation date.**

Chief executives

- 4.5.12 The Government encourages Shadow Authorities and Preparing Councils to hold the competition for the permanent chief executive of the new unitary council as soon as possible following the inaugural election to the new authority which takes place during the transitional period. While the Staffing Regulations allow for a 12 month period from vesting day to hold a competition, experience from previous local government reorganisations has demonstrated that running an open competition for the chief executive post as soon as possible following the election to the new authority, and ahead of the reorganisation date, helps set up new authorities for success. It allows the newly appointed chief executive to work with the new Executive to build the vision for the new council and drive through preparations for vesting day. The appointment also unlocks decisions around the new senior leadership for the new unitary council, development of the pay scale for the senior leadership team and ensures there is strong leadership and stability as soon as possible from vesting day.
- 4.5.13 The Government however recognises that the particular circumstances of any individual reorganisation will vary case-by-case, including the timing of a competition to appoint a permanent chief executive for the new unitary council. Whilst the Government does not intend to prescribe a rigid timetable applicable to each organisation, this guidance outlines expectations for Shadow Authorities and Preparing Councils designed to ensure there are no gaps in leadership in the period up to vesting day for new unitary authorities.
- 4.5.14 In relation to the chief executives of predecessor councils, the Government expects all parties concerned to take a reasonable approach. It may be that some such chief executives would like to be considered for posts in the new single tier council – perhaps the chief executive post or a senior leadership post. The requirement in the Staffing Regulations for the post of head of paid service of the new single tier council to be recruited by means of open competition clearly enables chief executives of predecessor councils to apply for this post.
- 4.5.15 Where there are chief executives of predecessor councils who are not appointed to the post of chief executive of a new unitary authority, as part of the TUPE consultation and process, the Government encourages the Shadow Authority or Preparing Council to consider where the knowledge and capabilities of existing chief executives could be required to deliver the role of the new unitary council, ensure its success and seize the opportunities of reorganisation. If a Shadow Authority or Preparing Council decides, after having had regard to their obligations under TUPE, a senior leadership post will need to be recruited by means of open competition, this would enable a chief executive of a predecessor council to apply for the post. In other circumstances, the Shadow Authority or Preparing Council may decide to run a ringfenced competition for a particular post in the new council

senior leadership structure. In such cases, an assessment will need to be made of which posts, both in the predecessor councils and (if appropriate) in the Preparing Council, are broadly similar in nature, and those employees should be allowed to compete in the ringfenced competition.

4.5.16 Following such considerations, any chief executive of a predecessor council for whom there is no suitable alternative post on transfer on vesting day is likely to be made redundant. There is, however, nothing to prevent a chief executive (or other senior officer) of a predecessor council from reaching agreement with their existing employers on terms of severance, if they wish to leave before the reorganisation date. In these circumstances, the Government expects predecessor councils – working with the Shadow Authority or Preparing Council – to prioritise retaining senior staff in key posts where their skills and capabilities are required to drive through preparations for vesting day and where their capabilities may be required to deliver the new role of the new unitary council, as well as the transformation opportunities of reorganisation. Prior to agreeing to the early exit of any chief executive (or any other senior officer), the Government expects the predecessor council would obtain agreement from the Shadow Authority or Preparing Council, within the context of any local protocols on staffing issues (see [Section 5.8](#)).

4.5.17 Whilst this guidance sets out the Government's interpretation and some general examples of the practical application of the Staffing Regulations, TUPE Regulations and employment law generally, it is, of course, for local authorities to obtain their own legal advice, in light of case law concerning TUPE.

Considerations for senior roles in children's, adults' and public health services

4.5.18 Across all parts of the council, continuity in senior leadership posts will be critical to ensure the continued delivery of quality services and to foster the culture of the new organisation. This will be even more so the case for social care leadership roles, given the particular need for service continuity. Where there is service disaggregation or aggregation of care services, early planning during the reorganisation transitional period will be key for the roles of Directors of Children's Social Care (DCS), Directors of Adults Social Services (DASS) and Directors of Public Health (DPH), as well as other key posts which usually sit in the tiers immediately below these posts.

4.5.19 For the Director of Adult Social Services (DASS), Director of Children's Services (DCS) and Director of Public Health (DCS)⁶, where employees will be working with members to deliver statutory services from the reorganisation date, the

⁶ Under section 73A(1) of the [National Health Service Act 2006](#), the local authority and Secretary of State for Health and Social Care must jointly appoint the Director of Public Health. Therefore Shadow Authorities be required to make appointments jointly with senior DHSC officials (i.e. the relevant Regional Director for OHID) who are delegated to act on behalf of the Secretary of State. In making the joint appointment of Director of Public Health, Shadow Authorities should follow [guidance](#) on the appointment of Directors of Public Health.

Government expects there to be a leadership transition plan to ensure these statutory duties are being discharged effectively during the transitional period, and the post-holder is confirmed as soon as possible before vesting day, to ensure these duties are being discharged safely from day one. This is also key to ensuring someone is in place to help drive preparations for the new structures and play a key role in the transfer of staff into new unitary authorities where adults' or children's services are being disaggregated as part of the reorganisation.

- 4.5.20 The approach to senior staffing appointments in children's and adults' services and public health teams will need to be considered in light of the different set of scenarios which may occur depending on the type of reorganisation implemented in an area, and following the requirements of the TUPE Regulations. If an existing county council and district councils are reorganised to create one new unitary council, it is likely the relevant serving DASS, DCS and DPH of the county council would transfer to the new unitary authority via the TUPE process. This would be on the basis that the district council did not have a comparable role to the DCS, DASS or DPH of the new unitary authority, when compared to the county council.
- 4.5.21 In some areas, the services of an existing county council or unitary council may be disaggregated in order to create several new unitary councils over the area of a predecessor council and this could result in a scenario where there are fewer existing staff across the current councils performing the role of DASS, DCS or DPH compared to the number of these posts that would be required across the newly created councils. As such, there would be additional vacancies to fill across the area. Under this illustrative scenario, it is likely a decision will need to be taken on which of the new unitary councils the existing post-holder would transfer to, to perform the role of DASS, DCS or DPH of the new unitary council. There would then need to be a plan for filling the post of DASS, DCS and DPH of the other new unitary councils.
- 4.5.22 In some areas, the services of an existing county council and unitary council may be aggregated in order to create a new unitary council, and therefore there may be more than one person performing the role of DASS, DCS or DPH across the different predecessor councils in an area being reorganised. In this case, there would need to be a decision on how to fill the post of the new DASS, DCS or DPH of the new unitary council. Where an existing post-holder in a predecessor council had not been appointed to the role of DASS, DCS or DPH in the new council, there will need to be a decision as to whether there are other suitable alternative roles they could perform in the new council.
- 4.5.23 Under all illustrative scenarios, the predecessor councils and Shadow Authority or Preparing Council will need to work together to determine how to fill the post of the new DASS, DCS or DPH of the new unitary council, in consideration of their obligations under the TUPE Regulations, and, with the objective of ensuring

someone with the right experience and capabilities is in post for vesting day and beyond. The Government encourages councils to prioritise retaining staff with the experience and capabilities required to deliver the role of the new unitary council and to ensure service levels. Councils should also communicate to staff at the earliest opportunity how senior posts in care and public health services will be covered over the transition, the timing of any relevant consultation and discussions about how posts in the new authorities will be filled, and the expected timing of decisions about appointments.

- 4.5.24 Whilst this guidance sets out the Government's interpretation and some general examples of the practical application of the Staffing Regulations, TUPE Regulations and employment law generally, it is, of course, for local authorities to obtain their own legal advice, in light of case law concerning TUPE.

4.6 Disaggregating employees where there is more than one new unitary council for the area of a predecessor council

- 4.6.1 In areas where there is more than one new unitary council covering the area of a predecessor council, resulting in the need for disaggregation of services and employees as part of the transfer to new unitary councils, the Government expects all predecessor councils and the Shadow Authority or Preparing Council to work together collaboratively and proactively to determine which of the new unitary councils' individual employees should transfer to. Councils should have regard to local and individual circumstances, whilst assuring that the primary obligation of reorganisation to ensure a balanced and operationally viable workforce, is achieved and maintained.
- 4.6.2 The predecessor council should provide such information as is requested by the Shadow Authority or Preparing Council, so they can fulfil their obligations as the 'transferee' organisation. Similarly, Shadow Authorities and Preparing Councils should provide the predecessor council with such information as may be necessary for it to meet its obligations as the 'transferor' organisation. This should be done having regard to the requirements of the relevant Structural Changes Order, the Staffing Regulations, the TUPE Regulations and any other relevant employment law.
- 4.6.3 By applying the TUPE Regulations through the Staffing Regulations, the legislation is seeking to ensure, subject to the requirement to recruit to the post of chief executive of the new unitary council, the same basic level of protection to employees of all local authorities that will cease to exist on the reorganisation date, regardless of whether they work in a district or county council. Such employees, who are in post immediately prior to that date and whose terms and conditions of employment provide for their employment to continue beyond the reorganisation date, will become employees of the new single tier councils, and shall transfer on the same terms and conditions as they had enjoyed immediately beforehand.

- 4.6.4 While assigning employees of predecessor councils to roles in new unitary councils, it may be clear for many employees which new unitary council the work function to which they are assigned will transfer to. However, there could be some employees where it is less clear which work function they are assigned and transfer to in the new unitary council, and so they cannot be so readily assigned to functions transferring to a particular new unitary council.
- 4.6.5 In appropriate cases, the Government considers that a careful assessment will need to be carried out to determine which of the new single tier councils the individual will transfer to. This assessment should be conducted for the purposes of TUPE and having regard to all the provisions of TUPE, as well as other relevant employment law. On a practical level, the Government recognises that councils will be assisted by developing a set of criteria to assist with interpreting and applying TUPE to local circumstances.
- 4.6.6 For example, an assessment may be carried out at an individual level to see which new council (the transferee organisation) would have occupied more than 50 per cent of that individual's work and time, along with an assessment of the proportion of the work of that organised grouping of resources that relates to each transferee organisation. This is a general and illustrative practical approach and does not fully reflect the complexity of some individual circumstances, whose working arrangements or particular task at a given point in time might not be fully and accurately considered on a '50%' assessment. Each affected council, Shadow Authority or Preparing Council should take its own legal advice as to how the legislation and case law may apply in individual circumstances, and make decisions based on individual cases. In any event, the likely full-time equivalent needs of each transferee organisation for employees with the relevant, particular skills and experience required is likely to be a major factor in any assessment and ensuring each new unitary council has the staffing it needs to deliver its services.
- 4.6.7 In cases where there is particular difficulty in identifying which new unitary council an individual employee should transfer to, the employing (transferor) council and Shadow Authority or Preparing Council (transferee) should take all reasonable steps to agree a way forward with affected employees. The individual employee's preferences should be noted, while not always possible to accommodate when balanced with the business needs of the new council. Personal circumstances will play a part in any reasonable consideration and the transferor council will therefore wish to ensure the employee and their trade union representative are given the opportunity to make their views known and are kept informed. An internal appeal mechanism should form part of the reasonable approach which the relevant councils will wish to adopt.
- 4.6.8 In devising a criteria, consideration should be given to the wide variety of business need factors and individual factors which might influence the determination of the

most appropriate new council to which the individual should be transferred. In cases where there is particular difficulty in identifying the transferee council, the councils concerned 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 trade unions. The criteria should include the approximate time allocation on both an individual and corporate level (as described above), and the relevant skills and experience of the individual employee in relation to the business needs of each potential transferee organisation. In making such assessments, councils must have regard to their Public Sector Equality Duty and take reasonable steps in making decisions. As well as business need factors, relevant individual factors are likely to include, but would not be limited to:

- Staff with caring responsibilities;
- Staff with mobility or other disabilities;
- Method of transport;
- Distance from the employee's home to the proposed places of work and consequent travel time; and
- Flexible working patterns, including working from home, as may be appropriate for the individual's post.

4.6.9 The Government is of the view that, while the decision is one for councils to make, ultimately, it will be vital that each new unitary council receives an appropriate number of employees on the reorganisation date, with the right expertise and capacity to enable each new unitary council to continue to deliver public services of the highest standard as well as meeting their statutory duties. In any event, generally, decisions regarding which new council staff transfer to will need to take regard to local and individual circumstances, whilst assuring that the primary obligation of reorganisation is to ensure a balanced and operationally viable workforce, is achieved and maintained, as well as meeting their duties under the TUPE Regulations. A consistent and workable approach across the entire area should be identified to ensure no new councils are left under resourced in key services, and this should rightly count as a key criterion in any assessment during process if allocating certain staff to new councils. This will also need to include consideration of any existing partnership working agreements or shared staffing arrangements.

4.6.10 Where a reorganisation will result in more than one new single tier council for the area of a predecessor council, the Government does not believe that any additional legislative provision is necessary to assist with disaggregation of employees between the new single tier councils. We consider that a pragmatic approach based on the practical application of the TUPE Regulations will be sufficient to ensure that, if employment continues after the reorganisation date under the terms

of the contract, 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.

- 4.6.11 Providing that the disaggregation or aggregation of employees is carried out on the basis of a careful assessment of local circumstances and the business needs of the transferee councils and against a clear set of criteria (which have been discussed with the trade unions in advance), an appropriate number of employees with the right expertise should transfer to each new council on the reorganisation date. However, in the unlikely event that one of the new councils receives, by comparison with the other council, a significantly larger number of employees in relation to the posts available in that council and to its share of the financial resources (following the disaggregation of the predecessor councils' rights and liabilities), the Government expects Shadow Authorities or Preparing Councils to agree a protocol setting out how any redundancy costs will be shared fairly and reasonably between the new councils. It will of course be for each transferee council to take all reasonable steps to identify suitable posts for these employees and provide equality of opportunity for them to apply for such posts before any redundancies are made.

4.7 Specific issues and approaches for disaggregating or aggregating social care and public health employees

- 4.7.1 The Special Educational Needs and Disabilities (SEND), children's social care, adult social care and public health workforce is broad and there will be a range of factors to consider during the TUPE transfer process when allocating employees working in these services to roles in new unitary authorities and obtaining the goal of ensuring that those in charge of these statutory services can continue to discharge their statutory duties effectively in new councils. As well as the suggested considerations above, it is recommended the following factors are taken into account when considering where social workers, family support workers, other qualified practitioners and public health practitioners (including specialists and practitioners) will transfer to. These include but are not limited to:

- Ensuring continuity of service provision to individual service users already using these services provided by the predecessor councils or other commissioned services. For example, taking into account the location of service users. This will be the most crucial factor for transition planning in order to minimise disruption or risks to service users;
- The demographics of new unitary authorities and subsequent business needs of the new unitary councils;
- Workforce planning and building a talent pipeline for the relevant service area across the breadth of the workforce and types of roles to ensure that the

statutory officers (i.e. DPH, DASS, DCS) have adequate support to discharge their duties;

- Existing partnership working arrangements that are in place, shared staffing arrangements or regional workforce agreements;
- Whether the employee's current or future role involves multi-statutory duties and close working with partner agencies, for example police, health and regional adoption agencies; and
- Ensuring there is sufficient retention of corporate memory and capabilities when there is disaggregation, to avoid a scenario where a new unitary authority has most of the transferees from the predecessor council, and the other new unitary authority in the area has significantly less transferees from the predecessor councils, in a way that means that new council has more limited corporate memory and capabilities on vesting day.

4.7.2 During the transitional period, new unitary councils may also decide to put in place Shared Staffing Arrangements (SSA). In such cases, the predecessor councils and Shadow Authority or Preparing Council will need to work together to ensure clarity on which local authority is the host employer to the transferee.

4.7.3 All new unitary authorities must comply with the statutory guidance [Working Together to Safeguard Children](#), which sets out multi-agency safeguarding arrangements and the roles and responsibilities of safeguarding partners (local authority, police, and health) and duty to protect and safeguard children. Councils should ensure continuity of these arrangements during the transition, including any multi-agency front door models and existing partnership agreements. Councils will also want to consider any relevant available guidance and information from relevant workforce regulators, such as Social Work England, as well as ensure they comply with any relevant statutory guidance, such as on [Agency Rules](#).

4.8 Voluntary Exit Schemes (VES)

4.8.1 Some councils may choose, based on local circumstances, to offer their staff the opportunity to voluntarily exit their employment with a predecessor council before their employment transfers to a new unitary council, as part of an offered voluntary exit scheme. Under such a scheme, an employer offers their employees, or certain groups of employees, the opportunity to apply to the scheme if they wish to terminate their employment and receive a financial severance package. The employer can set criteria for eligibility to the scheme and, subject to employment legislation, can select which contracts of employment amongst those who have applied it wishes to terminate. If the employer and employee enter into a voluntary exit agreement, the contract will be terminated by mutual agreement.

4.8.2 The Government recognises that Shadow Authorities and Preparing Councils may, in the interests of staff morale and in order to effect a smooth and efficient transition

to new unitary councils, decide to offer employees of affected councils the opportunity of taking voluntary exit in advance of the reorganisation date (though not required) and receive a financial package. Councils should however be mindful that any dismissals where the reason is the transfer itself, which is not an ETO reason entailing changes in the workforce, would be automatically unfair. When exploring voluntary exit schemes, councils may wish to use suitable settlement agreements to record the terms of any agreed departure. Furthermore, whether such a scheme or exercise must be run will depend upon material, factual sensitivity, in individual situations, including when the redundancy is intended to take place, who will be responsible for implementing it and what contractual and/or policy provision applies in those circumstances. Where offered, the Government recommends the Shadow Authority or Preparing Council co-ordinates the offer of a scheme with the existing employers (though the decision to make any redundancy ultimately rests with the existing employer). The Government expects predecessor councils to co-operate fully with the Shadow Authority or Preparing Council in arranging for a voluntary exit scheme, where it has been decided this may be offered to its employees.

- 4.8.3 As previously explained, Government's view is that retaining staff who possess the knowledge and skills required for overseeing preparations for the transfer to the new unitary authority and delivering the role of the new unitary authority, will be a key consideration in any decisions made. Predecessor councils, Shadow Authorities and Preparing Councils should discuss with employees their preferences and how a package could be agreed, where necessary, to keep staff in post until vesting day, or beyond vesting day (see [Section 5.5](#) on 'golden handcuffs'). In making such assessments, councils must have regard to the Public Sector Equality Duty.

Chapter five: Other implementation issues

5.1 Equalities duties

5.1.1 Local authorities, Shadow Authorities, Preparing Councils and new unitary councils are subject to the requirements of the Equality Act 2010, including upholding their Public Sector Equality Duty. Shadow Authorities and Preparing Councils will, therefore, need to consider their equalities obligations at every stage in discharging their main transitional functions and ensure the statutory duties as set out in section 149 of the Equality Act 2010 are not undermined. This will include the need to ensure that assessments have been made of the structures and policies of the new unitary council for their impact on different sections of the workforce, and that appropriate policies are in place.

5.2 Interim pay policies and developing the new council pay policy

5.2.1 As per the TUPE Regulations, staff employed by predecessor councils will transfer to new councils along with their protected existing terms and conditions. Employees who have transferred into the new unitary council will remain on protected pay and terms, upon which they transferred from a predecessor council. Those employees will retain those entitlements until such time as new terms and policies are settled by the new unitary authority and the transferring staff either voluntarily elect to assume those terms, or apply for an alternative post in the new structure on the new terms offered.

5.2.2 In advance of the transfer and vesting day for the new unitary council, Shadow Authorities or Preparing Councils will need to develop their interim arrangements regarding pay for any appointments that will be made by Shadow Authorities or Preparing Councils in advance of vesting day. This ensures the salary of the newly appointed chief executive officer is agreed, and there is a clear starting point for agreeing any further salary bands which need to be appointed to during the transitional period or soon after vesting day. Having a clear interim policy in place during the transitional period also means that prior to the transfer, relevant employees considering their next steps during the pre-transfer consultation can take an informed decision about the degree to which they might want to commit to the new unitary council, move on or consider any offered voluntary exit scheme.

5.2.3 At the point of transfer, following vesting day, the new unitary council will need to take steps to develop and agree the new pay policy for the unitary council, subject to the relevant national agreements, formal consultation requirements and any negotiation processes with recognised trade unions. This is an important aspect in support of the development of a 'one council' culture, as well as minimising future equal pay risks. At such time the new council policy is agreed, due to the protections the TUPE Regulations provide, it will apply only to new staff recruited to work for the

new council and will only apply to staff who transferred if they voluntarily sign up to the new council terms or voluntarily move into a new role on new terms.

5.2.4 The Government therefore encourages the Shadow Authority or Preparing Council to develop the interim pay policy for the new unitary council as early as possible.

5.3 Equal pay

5.3.1 The Government expects all affected local authorities and new unitary councils to identify and address equal pay issues proactively and affordably.

5.3.2 New unitary councils take on the employer responsibilities for employees transferred from the predecessor councils, including equal pay responsibilities and liabilities, such as unresolved claims. This is provided for through the Staffing Regulations, which ensure that the transfer of functions from a predecessor council to a single tier council in connection with a structural and/or boundary change shall be treated as a 'relevant transfer' within the meaning of regulation 3(1) of the TUPE Regulations, and also the [Local Government \(Structural Change\) \(Transfer of Functions, Property Rights and Liabilities\) Regulations 2008](#). These Regulations provide that all rights and liabilities of the predecessor councils which cease to exist by virtue of an order made under the 2007 Act shall transfer to the succeeding single tier council on the reorganisation date. This includes the transfer of any act or omission on the part of the predecessor councils and the transfer of legal proceedings commenced by or against a predecessor council, to the single tier council that will succeed the predecessor council.

5.3.3 At the point of transfer, the predecessor councils may have unresolved equal pay claims placed before Employment Tribunals or Civil Courts. The predecessor councils may also be at different stages of progress towards implementing pay and grading reviews. As stated above, any ongoing legal proceedings will be included in the transfer of rights and liabilities. Planning for and resolving the issue of equal pay affordably is likely to be a major activity for the Shadow Authority or Preparing Council and, subsequently, for the new single tier councils themselves.

5.3.4 With regards to potential new equal pay claims against new unitary authorities, Shadow Authorities or Preparing Councils and new unitary councils should take affordable steps to avoid future pay inequalities which may potentially arise from local government reorganisation. New unitary councils must work towards pay equalisation as soon as possible following vesting day. Settling the new pay and grading policy for the new unitary council, as early as possible following vesting day, will ensure staff transferred into the new organisation (or newly recruited staff) are clear on what the new organisation's policy is. Good communication with staff and trade unions will be needed, and Government expects that affected authorities will share information on progress.

5.3.5 For any new unitary authority, due to the protection the TUPE Regulations provide against changes to staff's terms and conditions when they transfer to the new authority, TUPE can be a material factor defence to an equal pay claim due to pay protection, however all councils concerned will need to seek discrete legal advice on these matters as necessary. There is a six-month time limit to bring an equal pay claim in respect of employment with the transferor which runs from the date of the transfer.

5.3.6 Learning from previous reorganisations has demonstrated that the longer it takes a new unitary authority to address pay disparity following TUPE, the higher the degree of risk of challenge to the council, as well as culture issues which can manifest amongst the workforce when there are team members with different levels of pay or working practices linked to their terms.

5.3.7 **The Government therefore:**

- **Expects Shadow Authorities and Preparing Councils to make delivery and affordability of equal pay a high priority and put in place detailed plans for achieving this.**
- **Recommends that Shadow Authorities and Preparing Councils obtain their own legal advice when considering their approaches to the issue of pay equalisation in the context of local government reorganisation.**

Preservation of employment

5.3.8 The Government wishes to ensure that all employees transferring to a new single tier council retain the right to bring an equal pay claim against their employer in relation to their employment with the transferor (predecessor council). We do not consider that an explicit provision for preservation of employment for the purposes of the Equality Act 2010 is necessary or appropriate. The Government is of the opinion that the TUPE Regulations fully provide for the continuity of employment of employees that transfer from a transferor to transferee authority. Regulation 4 of the TUPE Regulations 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.

5.3.9 Regulation 4(1) of TUPE Regulations clearly states: 'a relevant transfer shall not operate so as to terminate the contract of employment of any person employed by the transferor and assigned to the organised grouping of resources...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.'

- 5.3.10 In addition, the Local Government (Structural Changes) (Transfer of Functions, Property, Rights and Liabilities) Regulations 2008 provide that all the rights and liabilities in relation to a predecessor council transfer on the reorganisation date to the succeeding single tier council.

5.4 Discretionary compensation arrangements

- 5.4.1 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 discretionary payments under the 2006 Compensation Regulations which must not exceed 104 weeks' pay. Predecessor councils, Shadow Authorities and Preparing Councils should refer to the statutory guidance on the making and disclosure of Special Severance Payments⁷.
- 5.4.2 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. 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 in making decisions about redundancy compensation, by always exercising its discretion in any particular way.
- 5.4.3 The Government advises the Shadow Authority or Preparing Council 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.
- 5.4.4 We encourage the Shadow Authority or Preparing Council in each affected area to explore with the predecessor councils whether it may be desirable to harmonise their discretionary compensation arrangements, prior to vesting day for new unitary councils, by way of local protocols and in consultation with the trade unions, and in accordance with the TUPE Regulations and other relevant employment law. In doing so, Shadow Authorities, Preparing Councils and predecessor councils must under the 2006 Compensation Regulations:

⁷ [Statutory guidance on the making and disclosure of Special Severance Payments by local authorities in England - GOV.UK](#)

- 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.

5.4.5 As mentioned above, in order to ensure that chief executives of Preparing Councils are treated fairly and in the same way as other employees in this regard, 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 2006 Compensation Regulations.

5.5 Recruitment, retention and detriment

5.5.1 Retaining capabilities and experience in key roles, especially in statutory officer roles, will be crucial during the process of reorganisation. We recognise it is likely that some local authorities, particularly those that will cease to exist on the reorganisation date, 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 the reorganisation date.

5.5.2 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 Shadow Authorities and Preparing Councils to consider retention issues and seek common approaches in light of the local situation. In doing so, authorities will need to consider the equalities and equal pay implications of any ‘golden handcuffs’ before making use of them. Offering such a benefit to a particular group or individual employees has the potential to create equal pay issues and such decisions will need to be objectively justifiable. Councils will need to comply with their Public Sector Equality Duty in relation to any golden handcuff policy or approach before implementation. Such a step should help test the defensibility of the measures proposed and ought to demonstrate that the use of any inducement is a proportionate means of achieving a legitimate aim.

5.5.3 Similarly, when employees are offered posts in the new unitary 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 Shadow Authorities and Preparing Councils to discuss the principles of detriment arrangements (if any) with local trade unions as part of their main transitional functions.

- 5.5.4 In relation to recruitment in the period leading up to the reorganisation date, we strongly encourage Shadow Authorities and Preparing 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.
- 5.5.5 With regards to the financial package offered as part of any retention tool or voluntary exit offer, the Government believes it is essential that staffing decisions do not compromise the future sustainability of new councils. For example, early release terms that are more favourable than normal redundancy terms may not represent value for money or could fetter the future decisions by new councils. The Government strongly encourages predecessor councils to carefully consider and share information with other councils in the area about possible decisions around staff terms and conditions and decisions about recruitment to senior leadership roles – and subsequent severance payments – where decisions should ensure value for money for council taxpayers and support the future success of new councils.
- 5.5.6 Furthermore, all local authorities must consider any directions which are issued on behalf of the Secretary of State under section 24 of the 2007 Act to predecessor councils that will cease to exist on the reorganisation date. These directions provide that predecessor councils 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. New employment contracts or changes made to existing employment contracts where consideration payable by the local authority exceeds £100,000 are likely to fall within this direction once the criteria provided for in the direction are met, and so new employment contracts may need the consent of the person(s) specified. If unsure, councils will need to seek their own advice as to whether individual decisions about employment contracts and costs would fall within such a direction.
- 5.5.7 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 could 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. Furthermore, the terms and conditions of an individual employee can only ordinarily be varied where those existing terms and conditions give the employer the right to make a change of the kind envisaged or where the consent from the employee for any contractual terms is received. Additionally, predecessor councils and implementation bodies should be aware that in the lead up to the transfer date, attempts at pre-transfer harmonisation of terms could be found to be void if the sole or principal reason for the change is the transfer and there is no

economic, technical or organisational reason. Material changes in terms and conditions could, therefore, leave an authority open to challenge as being an abuse of discretion in its fiduciary duty to council taxpayers.

5.5.8 The Government strongly encourages Shadow Authorities and Preparing Councils to agree early on a common basis for changes to terms and conditions and recruitment and retention procedures across the affected authorities in each area, perhaps by means of a local protocol. Local recognised trade unions will also need to be engaged and consulted as required on any proposed changes to employee terms.

5.6 Developing new council HR and operational policies

5.6.1 Under the TUPE Regulations, the new unitary council inherits the contracts of employment from staff who transfer from the predecessor council, along with their protected contractual terms and conditions.

5.6.2 During the transitional period the Shadow Authority or Preparing Council will need to design its suite of operational policies which document and include (amongst other matters) how the new unitary authority will handle matters of discipline, grievances raised by members of staff, absence management and reporting, recruitment and development. This will be required to ensure staff are clear on what processes to expect when they start working for the new council. However, the Shadow Authority or Preparing Council cannot unilaterally replace or harmonise any HR or operational policies which are deemed to have contractual force and therefore may transfer along with staff from the predecessor council.

5.6.3 Predecessor councils, Shadow Authorities and Preparing Councils should note that an HR policy deemed to have contractual force could transfer under TUPE and as such predecessor councils may need to determine if any specific HR policies may be deemed as having contractual force or are expressed as being non-contractual, discretionary or subject to variation over time. Whether an HR policy is a contractual entitlement, and may or may not transfer under TUPE, is a matter councils should seek their own independent legal advice on if not clear.

5.6.4 With regards to developing any HR or operational policies to be adopted on day one by the new council (excluding those contractual terms protected under TUPE), these are measures which both predecessor councils and new unitary authorities will need to consult with staff prior to the transfer, given the likelihood of variance between policies and processes across the predecessor councils and, consulting on any subsequent steps that might be taken to harmonise these or to adopt new policies.

5.6.5 The Government strongly encourages Shadow Authorities and Preparing Councils to agree protocols with the affected authorities and local trade union

representatives to enable them to establish quickly how staffing issues are to be handled.

5.7 Pensions

5.7.1 Affected staff will continue to have their occupational pension provision protected through the relevant public-sector pension scheme arrangements, including continued eligibility for the Local Government Pension Scheme.

5.7.2 In areas with a county council, county councils are currently the administering authorities for the pension funds of all county and district council staff within the county administrative area. As part of local government reorganisation, where the county council and district council will be wound up and a new unitary council or councils for the county area established, authorities will need to determine which new unitary council will become the new administering authority. They may also consider whether to consolidate all pension funds in a strategic area into a single Fund. This will necessitate updates to the Local Government Pension Scheme Regulations 2013 to ensure the property, rights and liabilities of the Fund transfer to the new administering authority to ensure the continuation of the administration of the fund and avoid crystallisation of any pension liability. Authorities should engage the Department once a decision has been made about the new unitary council structure, how they intend to organise the administration of the LGPS for the new councils.

5.7.3 Whichever new unitary authority in an area becomes the administering authority, or if an alternative model is preferred, each local authority can determine its own policies in relation to discretions available within the Local Government Pension Scheme Regulations 2013⁸, and will need to consider the formulation and publication of policy statements as required by those regulations.

5.7.4 Whichever authority becomes the administering authority, employers and administering authorities must comply with all LGPS Regulations from day one. In particular, employers must comply with auto-enrolment and contractual enrolment and make members aware of their options for their pension after reorganisation.

5.7.5 Further guidance to councils on administering authorities during reorganisation will be issued separately in due course.

5.8 Local protocols on staffing issues

5.8.1 As the Government is continuing the approach from recent local government reorganisations and is not putting in place a detailed, national, legislative scheme for the treatment of staff, many decisions will fall to the Shadow Authority or Preparing Council to determine in the light of local circumstances.

⁸ [List of discretions available within the Local Government Pension Scheme Regulations 2013](#)

5.8.2 In order to ensure clarity, consistency and fairness, Shadow Authorities and Preparing Councils should agree protocols with their affected authorities and trade unions. These can cover such issues as the involvement of trade unions, recruitment procedures for the new authority, and recruitment, retention of staff in key posts, vacancy management and secondments in and between existing authorities prior to the reorganisation date.

5.8.3 **The Government strongly encourages:**

- **Shadow Authorities and Preparing Councils to consider drawing up such protocols in collaboration with affected authorities and local trade union representatives.**
- **Protocols should include clear arrangements for dispute resolution to ensure disagreements are handled constructively and without delaying key decisions.**

Chapter six: Communication with employees

- 6.1 Local government reorganisation will only succeed in delivering better outcomes for local people if the employees of the new unitary 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 is key to achieving this.
- 6.2 The Government also 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 unitary council.
- 6.3 The framework of the Staffing Regulations and Structural Changes Orders provides reassurance about the basic protections that govern the transfer to the new unitary councils and is intended to enable predecessor councils and new councils together to plan their route map for key decision points relating to staffing matters and planning a regular rhythm of communications for their employees.
- 6.4 As set out earlier in this guidance, the Government encourages all predecessor councils and Shadow Authorities or Preparing Councils to work together to draw up proposals for the new operational structure for the new council. Communication will be key to provide as much clarity as possible for employees prior to the transfer date about roles in the new council and any planned recruitment to senior posts. As well, there is a need to consult with staff affected by a relevant transfer long enough before that transfer is expected to take effect, to allow for meaningful consultation with employees, their recognised trade unions, as well as engagement with workforce regulators, and communication around this will support staff to understand the timeline and next steps as it gets closer to vesting day (and beyond). We also encourage predecessor and successor councils to signpost employees to their staff wellbeing services and resources.
- 6.5 **The Government strongly encourages Shadow Authorities and Preparing 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. Such communication should be in addition to any communications with Trade Union representatives, given their role as the appropriate representatives during the TUPE process.**
- 6.6 **The Government expects all predecessor councils to co-operate fully in facilitating the means for the Shadow Authority or Preparing Council to communicate directly with all current council employees.**

6.7 Trade unions will need to be informed and consulted on developments. Furthermore, the Government encourages Shadow Authorities or Preparing Councils to consider issuing joint communications to employees together with the employing council and trade unions on key issues where possible.

Chapter seven: Consultation and Involvement of Trade Unions

- 7.1 The constructive engagement of the trade 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 The Government intends that through the application of the TUPE Regulations that trade unions will enjoy their full rights in relation to the transfer of functions to new unitary councils, including information and consultation, continued trade union recognition, and the continuation of collective agreements. After vesting day, it will be for the new unitary council and relevant staff representatives (e.g. trade unions) to make arrangements to agree recognition and facility arrangements under the new unitary council. Both Shadow Authorities and Preparing Councils should ensure that discussions with trade unions take place as early as possible so there is clarity on the route and timings for recognition by new unitary councils and relevant collective agreements can be formed.
- 7.3 Regulation 13 of the TUPE Regulations places duties on the employer of affected employees to provide their representatives (namely, the recognised trade unions) with various categories of information in relation to the relevant transfer and measures they envisage taking in respect of it, long enough before the transfer to enable the necessary consultation to take place. That consultation should take place in relation to the measures envisaged and with a view to seeking agreement to the intended measures.
- 7.4 Agreements made under the Information and Consultation of Employees Regulations 2004 may also place obligations on employers to inform and consult employees in relation to certain changes to the workforce.
- 7.5 Existing facility arrangements remain in place, in the usual way, throughout the transitional period up to vesting day. The Government does recognise that local government reorganisation will require support from staff representatives throughout the process. Under the [Trade Union and Labour Relations \(Consolidation\) Act 1992](#) (amended by the [Employment Rights Act 2025](#)) employers are expected to grant reasonable requests for facility time made by staff representatives.
- 7.6 The Government recommends that Shadow Authorities or Preparing Councils discuss all relevant aspects of staff transfers and the human resources implications of the new single tier council with local trade unions, even where this would not be required under the TUPE Regulations.
- 7.7 **Finally, the Government strongly encourages affected local authorities, Shadow Councils and Preparing Councils to engage constructively with trade unions at every stage, both before and consistently throughout the transitional period leading to the establishment of a new unitary council, in order to facilitate the creation of new single tier councils.**