

LOCAL GOVERNMENT REORGANISATION

A checklist of transitional arrangements for property where there are multiple successor councils

Note

This checklist is for in-house teams at existing local authorities that will be transferring property to more than one unitary successor council. If you are transferring property to a single unitary, you can find that checklist [here](#).

This checklist aims to provide you with a list of the key elements to consider. For more comprehensive support and advice, please contact **Client Director, Chris Kerr**, chris.kerr@djblaw.co.uk.

Introduction

For existing councils that need to transfer functions and assets to more than one new unitary, the key provisions can be found in Regulation 5 (functions) and Regulations 8-11 (property) of the [Local Government \(Structural Changes\) \(Transfer of Functions, Property, Rights and Liabilities\) Regulations 2008/2176](#).

It is important to note that these Regulations will only apply if agreements about property transfers have not already been reached between Councils (pursuant to [Section 16 Local Government and Public Involvement in Health Act 2007](#)). The explanatory note to the 2008 Regulations states that it expects transfers to take place in this manner. It is imperative, therefore, that you begin discussions with the new shadow authorities as soon as possible.

To optimise your portfolio for the new unitaries, your process should be:

1. Gain a full understanding of your existing portfolio
2. Help the shadow authorities to make strategic decisions about your portfolio: Retain, release or repurpose assets.
3. Action decisions before vesting day

The timeline to do this is tight: 1st April 2027 for Surrey, and 1st April 2028 for all other councils going through the LGR process.

1 - Gain a full understanding of your existing portfolio

Objective: To ensure you have a full understanding of your existing portfolio, including understanding all tenures, rights, liabilities, etc, with the ultimate objective of enabling the shadow authority to develop a sound property strategy for the new regime.

1.1	Identify the tenure: Within a portfolio, for example, which assets are freehold, leasehold, occupied under licence, tenanted, subleased or shared with other parties or agencies, etc?
1.2	Identify the asset's purpose: Are they for operational purposes, e.g. Town Hall, head office, depots, etc? Are they for continuing services, e.g. leisure centres, libraries, community centres, housing, etc? Are they for investment purposes? Are they for future redevelopment/regeneration plans?
1.3	Is any of the property held for charitable purposes? Do those charitable purposes mean the building is being held for the benefit for the particular area? What specific area are they to benefit? See 3.1.6 below.
1.4	Are any of the assets listed or registered as assets of community value?
1.5	Were any of the buildings or land acquired via CPO? Is it clear that they can be transferred to a new authority for a particular purpose or are they subject to the Crichel Down Rules or other buyback option?
1.6	Is any of the property subject to a clawback or overage agreement in the subject of a sale?
1.7	Is there any property under contract or that has an option to sell or buy?
1.8	Are any of the assets subject to particular liabilities, e.g. contaminated land, rights of way, third party interests, restrictive/positive covenants that dictate requirements over your land, PFI liabilities, etc?
1.9	Are any of these assets subjects to particular rights, e.g. the generation of income streams?
1.10	Are there any assets under contract or in negotiations? Will they complete before vesting day? Do the contracts cope with the vesting in the new unitaries? What are the exit provisions if needed? Does the transaction need to be completed for the new unitaries or can it be stopped beforehand?
1.11	Is there any ongoing litigation relating to your estate, for example, dilapidations claims, disputed rent reviews, title and boundary disputes, etc?
1.12	Are all deeds, insurance documentation and other relevant information pertaining to your estate, saved digitally in one place for the new unitaries to adopt from day one?

2 - Help the shadow authorities to make strategic decisions about your portfolio: Retain, release or repurpose assets

Objective: Although it is ultimately the responsibility of the shadow authorities to decide what assets they will retain, release or repurpose, this process will be smoother if you are able to provide them with the information they need to make the best decisions. If the new unitaries will be taking over areas covered by you and other councils, it would be best if this stage is undertaken in collaboration with them, to ensure the shadow authorities have a holistic view of the portfolio in its entirety. Here are some of the key questions that will need to be answered in this part of the process:

2.1	Where do the new unitaries need a physical presence to govern successfully? For example, if there are six head offices/town halls, which, if any, is best positioned to deliver? How will this decision impact communities, e.g. if your town hall is to be disposed of, what impact will that have on service delivery and employment in the area?
2.2	Is that building fit for the new era, e.g. does it have sufficient space for a bigger staff group? Does it inspire and support recruitment and retention?
2.3	Where do the new unitaries need a physical presence to successfully deliver local services? For example, is there a spread of infrastructure for social services, care, education and community needs across the new, larger area?
2.4	What is the initial property budget going to be for each new unitary? What is affordable within that budget?
2.5	If you have existing investment assets, which are performing well, enabling solid income streams for the new unitaries? Which are not generating sufficient yields? How will they be managed by the new unitaries? How will it be decided which new unitary gets the asset (by agreement hopefully, but there could be disputes and a need for arbitration ahead)?
2.6	If land/property has been acquired for future regeneration schemes or other strategic reasons, will the new unitaries be in a position to fulfil those aims?
2.7	On review of your existing portfolio, are there any 'red flag' issues to deal with before it goes to the new unitaries?
2.8	Do any of the assets fall outside the new unitaries requirements? If so, should they be released (via sale or lease termination, etc) or should they be redeveloped into housing or held for a regeneration or development scheme?
2.9	Is there an opportunity for some of the assets to be upgraded to support modern working practices or to be retrofitted to help with net-zero targets (perhaps using capital from disposals)?
2.10	If property is deemed to be surplus, is it best to sell before or after vesting day? Which new unitary would benefit from the receipts and be subject to any of the liabilities? Will they be spread between all of the unitaries? Is arbitration needed to decide?

3 - Optimise the estate before vesting day

Objective: To ensure the strategic decisions on the existing portfolio are actioned, giving the new unitaries an estate that delivers quality outcomes for staff and the communities they serve from day one.

3.1 - Where assets are to be transferred to the shadow authorities

The default position here, as set out in Regulation 7, is that all property of the predecessor council shall vest in, and transfer to, the successor council on the reorganisation date, although there may be some “excluded assets”. However, it is sensible at this stage to consider ways to ‘iron out’ any issues before the transfer takes place. For example:

3.1.1	Where properties are tenanted, are all rent reviews up to date?
3.1.2	Are there any informal arrangements in place with third parties?
3.1.3	What contracts are needed for the running of the estate, for example, facilities management and utilities contracts? Which can be extended? Which can be stopped? Which, if any, require third party consent? Is there a “Change of Control” clause that could be triggered by LGR? Do those clauses lead to automatic price increases, etc? Have you updated insurance companies about the change of ownership yet to come?
3.1.4	If there are any ongoing disputes, is there provision to reach a settlement or decision?
3.1.5	Are all statutory compliance documents (Fire Risk Assessments, EPCs, MEES) up to date?
3.1.6	If any buildings are held for charitable purposes, which (if any) new unitary do they need to be transferred to? Regulation 9 – charitable property shall vest on the re-organisation date in whichever unitary authority covers the whole, or the largest part, of that area or the whole, or the largest part, of the predecessor authority’s total area – or by agreement. Is there a need to consider whether the charitable purposes can be achieved under the new unitary? If there is any doubt, has it been cleared with the Charity Commission prior to vesting day?
3.1.7	If you own the building, do you have other tenanted occupiers in it? How do they fit with the needs of the new unitaries, e.g. do they need that space? When are the break clauses or what are the termination rights to facilitate that (if at all possible prior to vesting day)?
3.1.8	Will land be transferred to more than one successor authority? If so, it will need to be as joint tenants, not tenants in common. Other property will be held jointly and severally.

3.2 - Where assets are surplus and can be released

Be aware that a Section 24 direction ([s.24\(1\)\(a\) Local Government and Public Involvement in Health Act 2007](#)) requires written consent from the shadow authority before any disposal of land over £100,000 can take place. Other key considerations include:

3.2.1	Should the asset be sold before or after the reorganisation? Are prevailing market conditions suitable for the disposal? Is there time before vesting day to complete and resource a disposal before vesting day, particularly if it is overly complex?
3.2.2	If third party consents are required for the disposal to take place, do you have them? Can you get them in time for the disposal to occur before vesting day?
3.2.3	Do any statutory procedures need to take place? For example, is it an asset of community value? Is it subject to rules around open space?
3.2.4	Was the land being disposed of acquired by CPO? Is it subject to Crichel Down or other processes? If so, how do you approach the previous owners before vesting day?
3.2.5	Have the s123 'best consideration' rules been complied with as part of the sale process?
3.2.6	What is the most appropriate form of disposal? Is it best to do a straight transactional sale to a purchaser? Does it need an option or buyback or overage/clawback provision to be negotiated? Is there a better disposal option available to the new unitaries, e.g. long leaseholds, development agreements to facilitate regeneration, joint ventures, etc?
3.2.7	Where you are a tenant, what options are available for exit/termination? Is the lease due to expire? Is there a break clause upcoming? Can you meet all of the requirements of the break clause on time?
3.2.8	If the lease can be exited, have you negotiated any dilapidations claims down? If it is to be disputed, will this be resolved before vesting day or will it carry over?

3.3 - Where assets are to be retained but need to be repurposed

As part of the strategic review, the shadow authorities may wish to keep assets but repurpose them for their new needs, for example, upgrading existing workspaces to retain and attract talent, to meet climate change objectives, or to use a building for a new need entirely (e.g. a change of service, a change of use, etc). Here are the key things that must be resolved:

3.3.1	Before architects or designers are engaged, have you reviewed title documents? Title restrictions on use are common and can be found in both historic and new documents. If the asset in question is under a headlease, restrictions may be found but could be renegotiated.
3.3.2	Is the building owned by you, but you have other existing occupiers, for example, under sublease? Can any repurposing work fit around other occupiers? What do their leases say about repurposing work? Often it is permitted but safeguards must be put in place, e.g. maintaining access etc.
3.3.3	Are all relevant consents in place for alterations?
3.3.4	Do the changes require any planning permission? Is the repurposing of the building likely to move it out of the agreed use class? Can alterations take place without planning permission or, for example, is the work likely to need it? For example, even the slightest change to facades will need planning permission?
3.3.5	Are there any planning conditions in place, that may interfere with plans? For example, conditions can prevent certain physical changes, such as prohibiting the subdivision or amalgamation of spaces.
3.3.6	If assets are to be kept for repurposing into residential use to increase affordable housing stock, is it best to go down the permitted development rights route? Have all building regulation requirements been considered? What does this mean for the new unitaries budget?

These are the key considerations you should have in mind when going through the transition process. If you require specialist support on any or all of the matters listed above or you need additional capacity to get you over the line before vesting day, please contact [] for a free consultation.

For other information on the LGR process, please visit our Devolution and Local Government Reorganisation Hub here: <https://www.djblaw.co.uk/devolution-hub>