

# Binsted Parish Council's Governing Constitution

- 1) All Parish Councils are governed by [The Local Government \(Parishes and Parish Councils\) \(England\) Regulations 2008 \(legislation.gov.uk\)](#), details of which are copied below.
- 2) Articles (7) – (9) of these Regulations set out what will happen with Binsted Parish Council's remaining funds should the organisation wind up.

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## STATUTORY INSTRUMENTS

### 2008 No. 625

#### LOCAL GOVERNMENT, ENGLAND AND WALES

### The Local Government (Parishes and Parish Councils) (England) Regulations 2008

*Made*

3rd March 2008

*Laid before Parliament*

11th March 2008

*Coming into force*

8th April 2008

The Secretary of State, in exercise of the powers conferred by sections 97 and 98 of the Local Government and Public Involvement in Health Act 2007<sup>(1)</sup>, makes the following Regulations:

#### **PART 1 GENERAL**

##### **Citation and commencement and application**

1.—(1) These Regulations may be cited as the Local Government (Parishes and Parish Councils) (England) Regulations 2008 and shall come into force on 8th April 2008.

(2) These Regulations apply in relation to England.

##### **Interpretation**

2. In these Regulations—

“the Act” means the Local Government and Public Involvement in Health Act 2007;

“the 1992 Act” means the Local Government Act 1992<sup>(2)</sup>;

“the 1972 Act” means the Local Government Act 1972<sup>(3)</sup>;

“abolished authority” means a parish council which is wound up and dissolved by a reorganisation order(4);

“enactment” includes a local and personal Act, a private Act and any subordinate legislation within the meaning of the Interpretation Act 1978(5);

“existing”, in relation to an area affected by a reorganisation order, means the area as it exists on the date the order is made;

“order date” means the date (being 1st April in any year) which is specified as such in the reorganisation order;

“proper officer”, in relation to any purpose and any body, means the person appointed for that purpose by that body;

“transferor authority” means a parish council which, in consequence of a reorganisation order, ceases to exercise functions in relation to an area (“transferred area”) on the order date; and

“transferee authority” means—

(a)

a parish council by which, in consequence of a reorganisation order, functions in relation to a transferred area are exercisable on and after the order date;

(b)

where there is no such council, the principal council in whose area the transferred area is situated.

### **Application of Regulations**

3. These Regulations (which make incidental, consequential, transitional and supplementary provision for the purposes and in consequence of reorganisation orders) apply in relation to every reorganisation order.

### **Matters not affected**

4. Nothing in these Regulations shall affect—

(a) the status of any city;

(b) the status of any person who is an honorary freeman of any parish having the status of a city or entitled to be called or styled a royal town;

(c) any person’s status, or the right of any person to be admitted, as a freeman of any place;

(d) any right—

(i) of burial; or

(ii) to construct a grave or vault; or

(iii) to place maintain or inscribe a tombstone or memorial.

### **Continuity of matters**

5.—(1) Any thing which, at the order date, is in the process of being done by or in relation to a transferor authority in the exercise of, or in connection with, any of its functions in relation to a transferred area may be continued by or in relation to the transferee authority.

(2) Any thing done before the order date by or in relation to a transferor authority in the exercise of, or in connection with, any of its functions in relation to a transferred area shall, so far as is required for continuing its effect on and after that date, have effect as if done by or in relation to the transferee authority.

(3) References in paragraphs (1) and (2) to things done by or in relation to a transferor authority include references to things which, by virtue of any enactment, are treated as having been done by or in relation to that authority.

(4) So far as is required for giving effect to paragraphs (1) and (2), any reference in any document to a transferor authority shall be construed as a reference to the transferee authority.

### **Maps**

6.—(1) A print of any map referred to in a reorganisation order shall be deposited in—

- (a) the office of the Secretary of State;
- (b) the principal office of the principal council in whose area a parish affected by the order is situated.

(2) The prints deposited in accordance with paragraph (1) shall be available for inspection by any person at any reasonable time.

(3) Prints of any such map shall also be supplied to—

- (a) Ordnance Survey;
- (b) the Registrar General;
- (c) the Land Registry;
- (d) the Valuation Office Agency;
- (e) the Boundary Commission for England; and
- (f) the Electoral Commission.

## **PART 2 PROPERTY, RIGHTS AND LIABILITIES**

### **Transfer of property, rights and liabilities**

7.—(1) Nothing in this regulation shall apply to—

- (a) any property held by an authority, as sole trustee, exclusively for charitable purposes;
- (b) any rights or liabilities of an authority in respect of such property.

(2) Subject to paragraph (5), all property vested in, and all rights and liabilities acquired, accrued or incurred by, an authority described in column (1) of the Table below and specified in relation to that authority

in column (2) shall transfer to and vest in or, as the case may be, become rights and liabilities of, the authority specified in column (3).

**Table**

(1)	(2)	(3)
Transferor authority	Specified property, rights and liabilities	Transferee authority
An abolished authority	Property, rights and liabilities of the abolished authority which related to the transferred area	The transferee authority to which the transferred area transfers
The council of a parish which is subject to an alteration in its administrative area consisting of the loss of a transferred area	Property, rights and liabilities of that council which relate to the transferred area	The council of the transferee parish or, if there is no such parish, or the parish has no council, the principal council within whose area the transferred area lies

(3) All contracts, deeds, bonds, agreements, licences and other instruments subsisting immediately before the order date in favour of, or against, and all notices in force immediately before that date which were given, or have effect as if given, by or to a transferor authority in respect of any transferred area shall be of full force and effect in favour of, or against, the transferee authority.

(4) Any action or proceeding, or any cause of action or proceeding, pending or existing at the order date by or against a transferor authority in respect of any transferred property may be continued, prosecuted or enforced, as the case may be, by or against the authority to which such property is transferred.

(5) Where, in relation to an abolished authority, there is more than one transferee authority an amount equal to the appropriate proportion of the balances of the abolished authority as shown immediately before the order date in the authority’s capital and revenue accounts shall be transferred to the capital and revenue accounts, respectively, of each of the transferee authorities.

(6) In paragraph (5), the “appropriate proportion”, in relation to a transferee authority, means the same proportion as the population of the area transferred to that authority bears to the population of the area of the abolished authority; and the population of an area shall be taken to be the number estimated by the proper officer of the principal council within whose area of the abolished authority is situated by reference to the day immediately before the order date.

(7) For the purposes of this regulation, property, rights and liabilities of an authority are to be treated as property, rights and liabilities in relation to a transferred area if—

- (a) in the case of land, it is situated in, or held exclusively for the purposes of, or in connection with, the exercise of functions in, or in relation to, the area;
- (b) in the case of liabilities, they are liabilities incurred exclusively in respect of the area;
- (c) in the case of contracts, deeds, bonds, agreements and other instruments, and notices, they relate exclusively to the area;

(d) in the case of actions and proceedings and causes of action or proceedings, they relate exclusively to the area.

(8) In this regulation “transferred property” means any property, rights or liabilities transferred by virtue of this regulation.

**Charitable property, etc**

8.—(1) In this regulation—

“charity”, “charity trustees”, “company”, “the court” and “trusts” have the same meanings as in the Charities Act 1993(6);

“charitable property” means property (of whatever description) which, immediately before the order date is held as sole trustee—

(a)

by an abolished authority; or

(b)

by a transferor authority other than an abolished authority,

exclusively for charitable purposes; and

“relevant charity” means a charity other than a charity incorporated by charter of a company.

(2) Charitable property held by an abolished authority for the benefit of—

(a) a specified area, or

(b) the inhabitants of that area, or

(c) any particular class or body of persons in that area,

shall, on the order date, vest (on the same trusts) in the transferee authority within whose area the whole or the greater part of that specified area is situated immediately before that date.

(3) Other charitable property held by an abolished authority shall, on the order date, vest (on the same trusts)—

(a) in the transferee authority within whose area the whole or the greater part of the area of the abolished authority is situated immediately before that date; or

(b) if sub-paragraph (a) does not apply, in such one of the transferee authorities as may be agreed between them not later than three months before the order date or, in default of such agreement, in such transferee authority as the Charity Commission may determine.

(4) Where—

(a) charitable property is held by a transferor authority which is not an abolished authority for any such benefit as is mentioned in paragraph (2); and

(b) the whole or the greater part of the specified area so mentioned is situated within the transferred area,

that property shall, on the order date, vest (on the same trusts) in the transferee authority.

(5) Charitable property held as mentioned in paragraph (1)(b) which is not vested in accordance with paragraph (4) shall continue to be held by the transferor authority.

(6) Any rights and liabilities in respect of charitable property which vests in accordance with any of paragraphs (2) to (4) shall on the order date become rights and liabilities of the transferee authority in which that property vests.

(7) Where, immediately before the order date, any power with respect to a relevant charity is, under the trusts of the charity, or by virtue of any enactment, exercisable by a transferor authority in relation to a transferred area or by the holder of an office connected with such an authority, that power shall, on and after the order date, be exercisable by the authority in which property of the charity would have vested if it had been charitable property or, as the case may be, by the holder of the corresponding office connected with that authority or, if there is no such office, by the proper officer of that authority.

(8) References in paragraph (7) to a power with respect to a relevant charity do not include references to the powers of any person by virtue of being a charity trustee of the charity.

(9) Where, under the trusts of a relevant charity, the charity trustees immediately before the order date include—

(a) an abolished authority;

(b) the transferor authority in relation to a transferred area; or

(c) the holder of an office connected with an authority mentioned in subparagraph (a) or (b),

on and after the order date those trustees shall include the authority in which property of the charity would have vested as mentioned in paragraph (7) or, as the case may be, the holder of the corresponding office connected with that authority or, if there is no such office, the proper officer of that authority.

(10) Nothing in this regulation shall affect any power of Her Majesty, the court or any other person to alter the trusts of any charity.

### **Land held or used for purposes of the Allotments Acts 1908 to 1950**

9. Where immediately before the order date land in an area constituted as a parish by a reorganisation order—

(a) is held by a principal council for any purpose of the Allotments Acts 1908 to 1950<sup>(Z)</sup>; or

(b) is vested in a principal council and used for those purposes,

it shall on the order date transfer to and be vested in the parish council for that parish or, if there is no such council, the parish meeting for that parish.

## **PART 3 OTHER CONSEQUENTIAL AND TRANSITIONAL PROVISIONS**

10.—(1) Any person in office immediately before the order date as a parish councillor for an area which is altered by the order (“an altered area”) shall, unless he resigns his office or it otherwise becomes vacant, continue as parish councillor for the area as so altered until the date on which he would ordinarily have retired had the order not been made.

(2) Where any casual vacancy for the office of parish councillor arises in an altered area on or before the order date, that vacancy shall be treated as a vacancy for a parish councillor of the altered area.

(3) Notwithstanding subsection (3) of section 16 of the 1972 Act (parish councillors), any persons in office as parish councillors of an abolished authority immediately before the order date shall retire on that date.

### **Electoral registers**

11. Each registration officer shall make such rearrangement or adaptation of the register of local government electors as may be necessary for the purposes or in consequence of any reorganisation order.

### **Staff: continuity of employment**

12.—(1) This regulation applies to any person who ceases to be employed by an abolished authority or a transferor authority (“the authority”) where—

(a) the termination of his employment is attributable to the winding-up and dissolution of the authority;

(b) within four weeks of the date of the termination of that employment he is employed by another parish council (“the new employer”); and

(c) by virtue of section 138 of the Employment Rights Act 1996(8) (no dismissal in cases of renewal of contract or re-engagement) (“the 1996 Act”) that subsequent employment precludes his receiving any redundancy payment under Part 11 of that Act with respect to his terminated employment.

(2) The period during which a person to whom this regulation applies was employed by the authority shall count as a period of employment with the new employer for the purposes of computing his period of continuous service for the purposes of the 1996 Act and the change of employer shall not break the continuity of his employment.

(3) A person to whom this regulation applies shall be entitled to count the period of his employment with the authority as a period of employment with his new employer for the purposes of any provision of his contract which depends on his length of service.

### **Minutes of last meeting**

13.—(1) This regulation applies to the minutes of the last meeting of—

(a) an abolished authority;

(b) a committee or sub-committee of such an authority; and

(c) a joint committee which ceases to exist by reason of the winding-up and dissolution of such an authority.

(2) Where practicable, the minutes shall be signed at the conclusion of the last meeting by the person who chaired that meeting (“the chairman”).

(3) In every other case, as soon as practicable after the last meeting, the minutes shall be circulated to the chairman and every other member present at the meeting; and

(a) the chairman may sign the minutes after taking into consideration any representations made by any such member within seven days of the date on which those minutes were sent to him; or

(b) if the chairman is unable to sign the minutes, the proper officer of the principal council in whose area the area of the abolished authority is situated may nominate another person who was present at the meeting to sign the minutes.

(4) Any minutes purporting to be signed in accordance with paragraph (2) or (3) shall be received in evidence without further proof and, unless the contrary is proved—

(a) the meeting shall be deemed to have been duly convened and held;

(b) those present at the meeting shall be deemed to have been qualified to attend and vote; and

(c) where the meeting was of a committee, a sub-committee or a joint committee, it shall be deemed to have been duly constituted and to have had power to deal with the matters referred to in the minutes.

#### **Audit**

14.—(1) Any functions under Part 2 (accounts and audit of public bodies) of the Audit Commission Act 1998<sup>(9)</sup> (“the 1998 Act”) exercisable by or in relation to an abolished authority in respect of any financial year ending before the order date shall be exercisable on or after that date by or in relation to the transferee authority or, if there is more than one transferee authority, such one of them as is specified for the purposes of this paragraph in the reorganisation order.

(2) In the following paragraphs “the relevant authority” means the transferee authority by which functions under Part 2 of the 1998 Act are exercisable on or after the order date.

(3) Without prejudice to the generality of paragraph (1), the relevant authority—

(a) shall ensure that the accounts of the abolished authority are made up, balanced and audited; and

(b) may recover any sum or amount which, but for the reorganisation order, would have been recoverable for the benefit of the abolished authority in accordance with section 18(2) of the 1998 Act.

(4) For the purposes of paragraph (1), anything done before the order date by or in relation to an abolished authority in the exercise of its functions under Part 2 of the 1998 Act shall be treated on and after that date as if it had been done by or in relation to the relevant authority.

(5) A transferee authority which is not a relevant authority shall provide the relevant authority with such information as it may reasonably require to enable it to discharge its functions under paragraph (1); and shall,



if so requested, provide copies of, or otherwise afford access to, such documents or other material in their possession or under their control as the relevant authority may specify.

### **Charter trustees**

15.—(1) The following provisions of this regulation apply in any case where, in consequence of a reorganisation order, a city or town for which charter trustees have been constituted by or under any enactment becomes wholly comprised in a parish or in two or more parishes.

(2) On the date on which the first parish councillors for the parish or parishes (as the case may be) come into office—

(a) the charter trustees shall be dissolved;

(b) the mayor and deputy mayor (if any) shall cease to hold office as such;

(c) the appointment of any local officer of dignity shall be treated as if it had been made by the parish council;

(d) all property, rights and liabilities (of whatever description) of the charter trustees shall become property, rights and liabilities of the parish council; and

(e) any legal proceedings to which the charter trustees are party may, subject to rules of court, be prosecuted or defended (as the case may be) by the parish council.

(3) Without prejudice to paragraph (2), regulation 5 (continuity of matters) shall apply in a case to which this regulation applies as if the charter trustees were a transferor authority and the parish council were a transferee authority.

(4) In paragraphs (2) and (3) “the parish council”—

(a) in relation to a city or town which becomes comprised in the area of a single parish, means the council of that parish;

(b) in relation to a city or town which becomes comprised in the area of more than one parish, means the council of such one of those parishes as is specified in the reorganisation order.

(5) The accounts of the charter trustees and of its committees and officers shall be made up to the date referred to in paragraph (2), and shall be audited in the same manner, and subject to the same procedures and penalties, as if the charter trustees had not been dissolved.

Signed by authority of the Secretary of State for Communities and Local Government

*John Healey*

Minister of State

Department for Communities and Local Government

3rd March 2008

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

Chapter 3 of Part 4 of the Local Government and Public Involvement in Health Act 2007 (“the 2007 Act”) authorises principal councils (as defined in section 102(2) of the 2007 Act) to undertake community governance reviews in their areas and make recommendations for matters such as the creation of new parishes and parish councils, the electoral arrangements for parish councils, the abolition of existing parishes and parish councils and changes to parish boundaries. It also requires a principal council which has received a valid community governance petition to undertake a community governance review. Section 86 of the 2007 Act enables a principal council to make an order to give effect to recommendations made in a community governance review (a “reorganisation order”).

These Regulations make incidental, consequential, transitional and supplementary provision of general application for the purposes of, and in consequence of, reorganisation orders. The Regulations apply subject to the provisions of the individual orders (as provided by section 97(2) of the 2007 Act).

These Regulations deal with the distribution of property, rights and liabilities of parish councils affected by a reorganisation order; the continuity of certain general and local matters; transitional issues including those affecting councillors, staff and charter trustees; and other matters such as accounts and audit and the minutes of last meetings of parish council which cease to exist in consequence of reorganisation orders.

**(1)**

[2007 c.28](#)

**(2)**

[1992 c.19](#)

**(3)**

[1972 c.70](#)

**(4)**

See section 102(2) of the Act for the definition of “reorganisation order”.

**(5)**

[1978 c.30](#)

**(6)**

[1993 c.10](#)

**(7)**

[1908 c.36](#); [1922 c.51](#); [1925 c.61](#); [1926 c.52](#); [1950 c.31](#).

**(8)**

[1996 c.18](#)

**(9)**

[1998 c.18](#)