

Charities

The Effect of a Local Authority Reorganisation Order on a Charity

Radcliffe Chambers

Matthew Mills*

☞ Charity trustees; Community governance reviews; Local authorities' powers and duties; Reorganisation; Transfer of assets; Transfer of land

Approximately 10% of all local authorities act as a trustee of at least one charity. Every year, many such local authorities are created, merged, expanded, or abolished. This article explains the impact which such reorganisations have on the charities of which the local authorities are trustee.

Introduction

A basic search of the Charity Commission's list of charity trustees suggests that at least 1,000 local authorities (approximately 10% of all local authorities¹) act as a charity trustee of at least one charity.²

The Charity Commission has produced detailed guidance on how a local authority should conduct itself when deciding whether to become a charity trustee and when acting as a charity trustee.³ However, one question which is not answered by that guidance is: what happens if a local authority which acts as a trustee of a charity is merged, expanded, or abolished? This issue is also not discussed in any depth in any of the leading charity law textbooks.⁴ No reported case has discussed the relevant statutory provisions, and the explanatory notes to the relevant legislation do not discuss the position of charities in any depth.⁵

This lack of clarity is somewhat surprising because local authority reorganisations are not unusual. For example, from a brief internet search, it appears that in 2023 at least 50 local authorities started or concluded a reorganisation.⁶ At least two of those reorganisations expressly transferred land which was held on charitable trust.⁷

This article aims to provide the first comprehensive guide to the impact of local authority reorganisation on a charity. First, this article will explain the background to the current legislation. Second, this article will explain how a local authority can be created, merged, expanded or abolished by a "community governance review" and a "reorganisation order". Third, this article will explain the effects of a reorganisation order on a charity of which a relevant local authority is trustee.

* Matthew Mills is a barrister who specialises in (among other things) charity law at Radcliffe Chambers, 11 New Square, Lincoln's Inn, London WC2A 3QB.

¹ The National Association of Local Councils suggests that there are approximately 10,000 local authorities in the UK: see <https://www.nalc.gov.uk/about-local-councils>.

² The data can be downloaded from <https://register-of-charities.charitycommission.gov.uk/>.

³ Operational Guidance 56, a "Councillor's Guide", and "Local Authorities as Charities", all available online.

⁴ Only W. Henderson et al, *Tudor on Charities* (London: Sweet & Maxwell, 2022), para.19-082, summarises the rules in outline.

⁵ See the explanatory notes to the Local Government and Public Involvement in Health Bill, available at: <https://publications.parliament.uk/pa/ld200607/ldbills/074/en/07074x-c.htm>.

⁶ In a similar vein, for a list of the orders which have been made to alter the boundaries of existing parishes, see S. Bailey, *Encyclopaedia of Local Government Law* (London: Sweet & Maxwell), para.3-999.36.74.2.

⁷ See The Chelmsford City Council (Reorganisation of Community Governance) Order 2023 and The Leeds (Reorganisation of Community Governance) (No.2) Order 2023.

Background

Up until the mid-2000s, all parishes were created by central government and the Electoral Commission based on a local authority review.⁸

In 2006, the government produced a local government white paper which, among other things, proposed a simplification of the process which would allow local authorities to implement the reviews themselves.⁹

These recommendations were enacted in ss.79–102 Local Government and Public Involvement in Health Act 2007 (“the Act”), which came into force on 13 February 2008.¹⁰

The Act applies to “principal councils”, which are defined in s.102(2) as district councils, county councils, or London borough councils.¹¹

In short, the Act empowered principal councils to alter, abolish, or create parishes through a two-stage process: a “community governance review” and a subsequent “reorganisation order”.¹²

Stage 1: community governance reviews

Technically, a community governance review is a review of the whole or part of the principal council’s area for the purpose of making recommendations to create, alter or abolish one or more parishes.¹³ In practice, “[t]he review is the process of discovering all the facts and opinions required to draw up a recommendation on which changes can be implemented by way of a reorganisation order”.¹⁴

A community governance review is started by the principal council of its own volition or in response to a local petition or an application by a neighbourhood forum.¹⁵

In any case, the principal council decides the terms of reference of the review.¹⁶ The review begins when the local authority publishes the terms of reference.¹⁷ The review ends when the local authority publishes its recommendations.¹⁸

The review must make recommendations as to what new parish(es), if any, should be created in the area under review.¹⁹ If the review recommends the creation of one or more new parishes, the review must also make recommendations as to whether the existing parish(es) within the review area should be retained, altered or abolished.²⁰

Section 93 of the Act sets out a local authority’s general duties when undertaking a review. In addition, the Local Government Boundary Commission has produced detailed guidance pursuant to s.100(1) of the Act on how a local authority should conduct a community governance review.²¹ A local authority must have regard to that guidance.²² A reorganisation order can be quashed if the local authority fails to adhere to its duties²³ or fails to take into account or understand the guidance.²⁴

⁸ Local Government and Rating Act 1997 Pt 2.

⁹ *Strong and Prosperous Communities* (2006, cmd 6939-1), para.2.56, available at <https://www.gov.uk/government/publications/strong-and-prosperous-communities-the-local-government-white-paper>.

¹⁰ Local Government and Public Involvement in Health Act 2007 (Commencement No.3, Transitional and Saving Provisions and Commencement No.2 (Amendment)) Order 2008 (SI 2008/337), para.2.

¹¹ On the differences between types of local authority, see generally the Local Government Act 1972.

¹² Local Government and Public Involvement in Health Act 2007 ss.79(1) and 86(2). See generally Bailey, *Encyclopaedia of Local Government Law* (London: Sweet & Maxwell), para.3–999.36.61.2, and R. Taylor, *Arnold Baker on Local Council Administration* (London: LexisNexis Butterworths, 2022), paras 4.3–4.10.

¹³ Local Government and Public Involvement in Health Act 2007 s.79(1).

¹⁴ Taylor, *Arnold Baker on Local Council Administration* (2022), para.[4.3].

¹⁵ Local Government and Public Involvement in Health Act 2007 ss.82, 80 and 80A, respectively.

¹⁶ Local Government and Public Involvement in Health Act 2007 s.81(4).

¹⁷ Local Government and Public Involvement in Health Act 2007 s.102(3).

¹⁸ Local Government and Public Involvement in Health Act 2007 s.102(4).

¹⁹ Local Government and Public Involvement in Health Act 2007 s.87(1).

²⁰ Local Government and Public Involvement in Health Act 2007 s.88.

²¹ The Local Government Boundary Commission for England, *Guidance on Community Governance Reviews* (2010), available at <https://www.gov.uk/government/publications/community-governance-reviews-guidance>.

²² Local Government and Public Involvement in Health Act 2007 s.100(4).

²³ E.g. *R. (Campbell Park Parish Council) v Milton Keynes Council* [2012] EWHC 1204 (Admin).

²⁴ E.g. *R. (Britwell Parish Council) v Slough Borough Council* [2019] EWHC 998 (Admin); [2019] P.T.S.R. 1904.

Stage 2: reorganisation orders

General principles

Once the community governance review has been completed, the principal council may give effect to its recommendations by an order known as a “reorganisation order”.²⁵ The Secretary of State and the Local Government Boundary Commission for England have produced a model reorganisation order.²⁶

A local authority can amend an earlier reorganisation order by making another order.²⁷

A reorganisation order and an accompanying map must be stored at the local authority’s principal office for inspection by the public.²⁸

A reorganisation order may be made at any time of the year, but it must come into force on 1 April. This is known as the “order date”.²⁹

The transfer: express provision

Section 98(3) of the Act provides that:—

“A reorganisation order may include such incidental, consequential, transitional or supplementary provision as may appear to the principal council to be necessary or proper for the purposes of, or in consequence of, or for giving full effect to, the order.”

In particular, a reorganisation order can include provisions relating to “the transfer and management or custody of property (whether real or personal)” and “the transfer of functions, property, rights and liabilities”.³⁰ This includes “provision for treating any body 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”.³¹

In short, s.98 of the Act gives the principal council a very wide power to expressly transfer title to property, rights, and duties to a new or different local authority. For example, cl.28 of the model reorganisation order provides that:—

“The land, property, rights and liabilities described in Schedules [numbers] shall transfer from the [name of principal council or parish council] to the [name of parish council or principal council] on the date specified in column (2) of [those Schedules].”

Schedule 3 then includes a two-column table with the headings “Land and property to be transferred” and “date”.

However, it is not mandatory for a reorganisation order to deal with these matters expressly. Regulations have been passed pursuant to s.97(1) of the Act which provide for default incidental, consequential, transitional, or supplementary clauses in a reorganisation order. Crucially, those regulations have effect *subject to* the terms of the reorganisation order in question.³² In other words, the terms of the reorganisation order take priority, and the regulations only have effect to the extent that the reorganisation order is silent on the issue.³³

²⁵ Local Government and Public Involvement in Health Act 2007 s.86.

²⁶ The Local Government Boundary Commission for England, *Guidance on Community Governance Reviews* (2010), available at <https://www.gov.uk/government/publications/community-governance-reviews-guidance>.

²⁷ Local Government and Public Involvement in Health Act 2007 s.86(5).

²⁸ Local Government and Public Involvement in Health Act 2007 s.96(4).

²⁹ Local Government (Parishes and Parish Councils) (England) Regulations 2008 (SI 2008/625) reg.2 (“2008 Regulations”).

³⁰ Local Government and Public Involvement in Health Act 2007 s.98(4).

³¹ Local Government and Public Involvement in Health Act 2007 s.98(5)(e).

³² Local Government and Public Involvement in Health Act 2007 s.97(2).

³³ Cf. Taylor, *Arnold Baker on Local Council Administration* (2022), para.12.13.

Therefore, the first port of call for a charity or those advising a charity should be the reorganisation order itself. If the reorganisation order does not expressly deal with the charity in question, those investigating the position will need to consider the effect of the rather fiddly regulations. The next three subsections will explain the relevant parts of those regulations.

The transfer: the Regulations

The relevant regulations in England³⁴ are the Local Government (Parishes and Parish Councils) (England) Regulations 2008 (SI 2008/625) (the Regulations).³⁵ The Regulations are in materially identical form to the Local Government (Parishes and Parish Councils) Regulations 1999, which were passed pursuant to Pt II of the Local Government and Rating Act 1997. However, even though some form of these regulations has existed for over 20 years, there are no reported cases on how the Regulations affect the transfer of charitable property. Furthermore, the explanatory notes to the Act³⁶ and the Regulations³⁷ are silent on this issue, the underlying white paper does not address the issue,³⁸ and the only textbook which even mentions the point merely repeats or rephrases the legislation.³⁹ As a result, the only guidance on the default transfer rules comes from the Regulations and it is necessary to consider the terms of the Regulations carefully.

Regulation 2 distinguishes three types of local authority:—

- (1) An “abolished authority” is a parish council which will be wound up and dissolved by a reorganisation order.
- (2) A “transferor authority” is a parish council which will cease to exercise functions in relation to an area as a result of a reorganisation order (e.g. where an area is moved from Parish A to Parish B, Parish A is a “transferor authority”).
- (3) A “transferee authority” is a parish council which can exercise functions in relation to a transferred area after a reorganisation order (or, if no such authority exists, the principal council in whose area that land is situated). In other words, a transferee authority is the new or different local authority which will be responsible for a particular area after the order date.

The substance of the Regulations is contained in regs 7 and 8. Although it is not immediately obvious, it is submitted that regs 7(1) and 8(1) distinguish two different situations. First, if property is held by a local authority as *sole* charity trustee, reg.8 applies. Second, if property is held by a local authority as *one of multiple* charity trustees, reg.7 applies.⁴⁰

Regulation 7: one of multiple charity trustees

The basic rule is that all property, rights, and liabilities of a transferor authority or an abolished authority which relate exclusively to a transferred area shall on the order date automatically transfer to the transferee

³⁴ The equivalent statutory provisions in Wales are Local Government (Wales) Act 1994 s.49; Local Government Reorganisation (Wales) (Charities) Order 1996 (SI 1996/183); and Local Government Reorganisation (Wales) (Property) Order 1996 (SI 1996/532). In the interests of space, this article does not consider the position in Wales.

³⁵ The Local Government Finance (New Parishes) Regulations 2008 (SI 2008/626) have also been passed pursuant to s.97(1) of the Act. However, those regulations are not relevant to this article because they deal only with financial issues like calculating budget requirements.

³⁶ See the explanatory notes to the Local Government and Public Involvement in Health Bill, available at <https://publications.parliament.uk/pa/ld200607/ldbills/074/en/07074x-c.htm>.

³⁷ See p.8 of the PDF version of the Regulations, available at https://www.legislation.gov.uk/uksi/2008/625/pdfs/uksi_20080625_en.pdf.

³⁸ Department for Communities and Local Government, *Strong and Prosperous Communities* (The Local Government White Paper, 2006), cmd 6939–1, available at <https://www.gov.uk/government/publications/strong-and-prosperous-communities-the-local-government-white-paper>.

³⁹ Henderson et al, *Tudor on Charities* (2022), para.19-082.

⁴⁰ 2008 Regulations reg.8(9) appears to apply to a situation in which the local authority is one of multiple trustees of a charity. However, this is inconsistent with regs 7(1), 8(1). Furthermore, reg.8(9) cross-refers to reg.8(7), which uses the phrase “charitable property”. Regulation 8(1) defines “charitable property” as property “held as sole trustee”. Therefore, it appears that reg.8 was intended only to apply to sole trustee situations.

authority for that area (or, if no such authority exists, the principal council).⁴¹ Similarly, the following provisions apply to a transferor authority from the order date:—⁴²

- (1) All agreements, deeds and notices which relate to a transferred area will be effective in favour of or against the transferee authority.⁴³
- (2) All pending proceedings and causes of action by or against the transferor authority in relation to any property transferred may be continued or enforced by or against the transferee authority.⁴⁴

Where there is more than one transferee authority for an abolished authority, the abolished authority's capital and revenue accounts shall be split proportionately between the transferee authorities based on an estimate of the population of the area transferred to each transferee authority compared to the population of the entire abolished authority.⁴⁵

Importantly, reg.7 applies only where the property is held *exclusively* for the benefit of a transferred area.⁴⁶ Therefore, if the property is held for the benefit of other areas as well, reg.7 does not apply. For example, reg.7 would not apply if the governing document permits the trustees to use the charity's assets to benefit people nationwide.

Regulation 8: sole charity trustee

Although this is not made express, it is submitted that reg.8 addresses four distinct situations. Some of those situations relate only to *either* abolished authorities specifically *or* transferor authorities generally, and some of them relate to both. Similarly, some of these four situations apply only to particular *types* of charity.

First, if charitable property is held by either an abolished authority or a transferor authority for the benefit of a specified area or people within a specified area, on the order date that property is automatically transferred to the transferee authority within whose area the whole or the greater part of the specified area is situated.⁴⁷ There is no guidance on what “the greater part of that specified area” means, the natural and ordinary meaning is clear—it means “more than half” of the area of benefit. All rights and liabilities in respect of that charitable property also automatically transfer.⁴⁸ This first set of principles applies to all types of charity.

Second, if the charity property is not limited to benefiting a specified area (e.g. anyone nationwide could benefit), there are two options depending on whether a parish is abolished or merely altered by the reorganisation order:—

- (1) For abolished authorities, the property, rights, and liabilities automatically transfer to the transferee authority within whose area the whole or the greater part of the abolished authority itself is situated. If there is more than one such transferee authority (e.g. because the area of benefit is being split equally between two parishes), those transferee authorities must

⁴¹ 2008 Regulations regs 7(2), 7(7).

⁴² For four reasons, it is argued that these principles only apply to transferor authorities (even though an abolished authority arguably meets the definition of transferor authority: cf. reg.8(4)(a)). First, regs 7(3) and 7(4) refer only to a “transfer authority” and do not mention an “abolished authority”. Second, reg.7(2) treats transferor authorities and abolished authorities slightly differently. Third, regs 7(5) and 7(6) apply only to abolished authorities. Fourth, reg.12(1), which deals with the transfer of employment contracts, expressly refers to “an abolished authority or a transferor authority” when the same result is intended to apply to both types.

⁴³ 2008 Regulations reg.7(3).

⁴⁴ 2008 Regulations reg.7(4).

⁴⁵ 2008 Regulations regs 7(5) and 7(6).

⁴⁶ 2008 Regulations reg.7(7).

⁴⁷ 2008 Regulations regs 8(2) and 8(4), for abolished authorities and transferor authorities respectively.

⁴⁸ 2008 Regulations reg.8(6).

agree between themselves in which authority the land shall vest. If no agreement can be reached within three months, the Charity Commission will decide.⁴⁹

- (2) For transferor authorities, the property, rights, and liabilities do not transfer.⁵⁰

This second set of principles applies to all types of charity.

Third, if a transferor authority or an officeholder of a transferor authority has a power under a charity's constitution or legislation *other than* a power as charity trustee (e.g. a power to approve or appoint trustees), then on the order date that power becomes exercisable by the transferee authority identified above.⁵¹ In other words, by analogy to the principles above:—

- (1) If the power relates to a charity which benefits a specified area, the power passes to the transferee authority within whose area the whole or the greater part of the specified area is situated; and
- (2) In all other cases, the power does not pass.

This third set of principles has a restricted application. These principles do not apply to abolished authorities, and they do not apply to royal charter charities or charitable companies.⁵² It is submitted that this exclusion does not apply to charitable incorporated organisations (CIOs). Regulation 8 cross-refers to the definition of “company” in s.97(1) of the Charities Act 1993, which is “a company formed and registered under the Companies Act 1985 or to which the provisions of that Act apply as they apply to such a company”.⁵³ This does not refer to CIOs. Furthermore, although a CIO “is a body corporate, it should not be assumed that beyond its corporate status the law of companies applies to it”.⁵⁴

Fourth, where an abolished authority, a transferor authority, or the holder of an office “connected with” either authority is a charity trustee, then from the order date the trustees “shall include” the transferee authority or the corresponding officeholder (or if no such officeholder exists, the proper officer of that authority) in accordance with the first and second set of principles above.⁵⁵ In other words, by analogy to the principles above:—

- (1) An abolished authority is replaced as trustee by the transferee authority within whose area the whole or the greater part of the abolished authority itself is situated. If there is more than one potential transferee authority, they must agree between themselves or the Charity Commission will decide.
- (2) A transferor authority is only replaced if the charity's assets are held for the benefit of a specified area which will mostly be within the transferee authority's parish.

Technically, the words “shall include” do not expressly replace the existing trustee; they merely add a new trustee. However, it is submitted that there is no reason for an abolished authority to remain as trustee after the order date. It is therefore likely that the court would interpret this provision as replacing the old authority with the transferee authority.

These principles also do not apply in relation to charitable companies or royal charter charities.⁵⁶

⁴⁹ 2008 Regulations regs 8(3) and 8(6). This author is not aware of any guidance published by the Charity Commission specifically on this issue.

⁵⁰ 2008 Regulations reg.8(5).

⁵¹ 2008 Regulations regs 8(7) and 8(8).

⁵² 2008 Regulations regs 8(1) and 8(7).

⁵³ The modern definition is in similar terms: Charities Act 2011 s.353(1).

⁵⁴ Henderson et al, *Tudor on Charities* (2022), para.6-125.

⁵⁵ 2008 Regulations reg.8(9).

⁵⁶ 2008 Regulations regs 8(1) and 8(8).

The impact of a reorganisation order on a charity

As the above analysis shows, the law in this area is fiddly and unclearly drafted. To assist charities and practitioners, seven overarching points will be made.

First, the difficult Regulations can be avoided entirely if the reorganisation order deals with the charity expressly. Therefore, the first thing for any charity or advisor to do is to obtain a copy of the reorganisation order. Reorganisation orders can often be found online. If not, they are accessible at the principal council's office.⁵⁷

Second, whatever the reorganisation order or the Regulations provide, the terms of the charity's governing document will be unaffected.⁵⁸ For example, the Regulations expressly confirm that they do not affect the power of any person, the King, or the courts to amend the governing document.⁵⁹ However, in practice, a reorganisation order may give rise to the need to amend the governing document, e.g. if the charity's area of benefit is defined by reference to a particular local authority which has ceased to exist.⁶⁰ After a reorganisation order has been made, a charity which has a connection to an affected local authority should review its governing document.

Third, the assets which a local authority holds as charity trustee will be transferred as follows:

- (1) If the local authority is the sole trustee, the outcome depends on the charity's area of benefit:
 - (a) If the charity's property is held for the benefit of a specified area, the property is automatically transferred to the transferee authority within whose area the majority of the area of benefit is located.
 - (b) If the charity's property is held for a specified area:
 - (i) The assets of a transferor authority do not pass; and
 - (ii) The assets of an abolished authority are automatically transferred to the transferee authority within whose area the majority of the area of benefit is located. If there is more than one potential transferee authority, they must agree between themselves which authority shall receive the assets. If they cannot agree, the Charity Commission will decide.
- (2) If the local authority is one of multiple trustees, the charity's property will only transfer if it is held exclusively for the benefit of a transferred area. In that situation, the property will automatically transfer to the transferee authority within whose area the majority of the area of benefit is located. In any other case, there will be no transfer.

Fourth, where the local authority acts merely as a custodian or holding trustee of some charity land, it is submitted that only the Regulations relating to the transfer of assets apply. The parts of reg.8 which deal with the transfer of trusteeship apply to "charity trustees". This is defined in reg.8(1) in the same way as in s.97(1) Charities Act 1993, "the persons having the general control and management of the administration of a charity". It is settled law that "holding and custodian trustees aren't charity trustees".⁶¹ In fact, holding trustees are not permitted to run the charity even if there are no managing charity trustees.⁶² This means that holding trustees fall outside the scope of the change of trustee rules in the Regulations. However, holding trustees still have legal title to the charity's property. Therefore, it is submitted that it is appropriate for the rules which govern the transfer of assets to apply.

⁵⁷ Local Government and Public Involvement in Health Act 2007 s.96(4).

⁵⁸ 2008 Regulations regs 8(2), 8(3) and 8(4), and Taylor, *Arnold Baker on Local Council Administration* (2022), para.13.13.

⁵⁹ 2008 Regulations reg.8(10).

⁶⁰ D. Cracknell at al, *Charities: Law and Practice* (London: Sweet & Maxwell), para.E.73.

⁶¹ Charity Commission, "CC3: The essential trustee: what you need to know, what you need to do" s.11.2, and "Operational Guidance 56" s.B1.5.

⁶² D. Bawtree and K. Kirkland, *Charity Administration Handbook* (London, Bloomsbury, 2018), para.11.12.

Fifth, if a freehold or long lease of land is transferred pursuant to a reorganisation order or the Regulations, it is likely to be necessary to register that transfer.⁶³ Until this is done, the transfer may not operate at law.⁶⁴ An application for registration “must be accompanied by sufficient evidence of the disposition”.⁶⁵ In practice, it is likely that the trustees will need to provide a copy of the reorganisation order and, if necessary, an explanation of how the Regulations apply.

Sixth, the local authority’s position as trustee or as a third party may be summarised as follows:

- (1) A local authority’s rights under the governing document as third-party (e.g. to appoint new trustees) will only automatically pass if all four of the following criteria are met:
 - (a) The local authority is a transferor authority (not an abolished authority);
 - (b) The local authority holds assets on trust for a specified area (not nationwide);
 - (c) More than half of the specified area is being transferred to a transferee authority; and
 - (d) The charity is not a royal charter charity or a charitable company (a charitable incorporated organisation is fine).
- (2) If the local authority is sole trustee, that trusteeship will only transfer if the charity is not a royal charter charity or a charitable company and in accordance with the following rules:
 - (a) If the local authority is an abolished authority, trusteeship will pass to the transferee authority within whose area the majority of the charity’s area of benefit is located. If there is more than one potential transferee authority, they must agree between themselves which authority shall become the trustee. If they cannot agree, the Charity Commission will decide.
 - (b) If the local authority is a transferor authority, trusteeship will only pass if the charity’s assets are held for the benefit of a specified area which will mostly be within the transferee authority’s parish.
- (3) If the local authority is one of multiple trustees, that trusteeship will automatically transfer only if the charity’s property is held *exclusively* for the benefit of a transferred area. If the charity’s area of benefit extends beyond the transferred area, no transfer of trusteeship will occur.

Seventh, if a transfer of trusteeship has occurred, the Register of Charities should be updated within 28 days.⁶⁶

With the above principles in mind, charities should be able to navigate the reorganisation of a local authority trustee with greater confidence.

⁶³ Land Registration Act 2002 s.27(5).

⁶⁴ Land Registration Act 2002 s.27(1).

⁶⁵ Land Registration Rules 2003 r.161(1).

⁶⁶ Charities Act 2011 s.35(3).