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Y Gweinidog Gwasanaethau Cyhoeddus
Minister for Public Services



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: LF/LA/0387/15

Jocelyn Davies AM
Chair, Finance Committee
National Assembly for Wales

16 April 2015

During my attendance at Committee on 25 March to give evidence on the Local Government (Wales) Bill, I agreed to write to you with further information.

The Committee asked whether the Expressions of Interest in voluntary merger submitted by Local Authorities contained information on the cost of preparing the submissions themselves and the actual costs (and by implication savings) of voluntary merger.

The Expressions of Interest describe matters which the Authorities believe would have cost implications in working up a merger proposal, but these are not costed. Only the submission by Conwy and Denbighshire sets out specific costs and savings of voluntary merger. I enclose a copy of my Written Ministerial Statement on 27 January, which includes links to the Expressions of Interest published on the Local Authorities' own websites.

The Committee also asked whether the Welsh Ministers have powers to merge Local Government Pension Funds and for confirmation of the rules governing these funds. Section 7 of the Superannuation Act 1972 provides for the superannuation of persons employed in Local Government service. It confers on the Secretary of State a regulation-making power in respect of pensions, allowances or gratuities. The Local Government Pension Scheme Regulations 2013, which apply in relation to England and Wales, have been made in exercise of these powers. Functions under the Act have not been transferred to the Welsh Ministers and, therefore, remain functions of the Secretary of State.

Finally, I enclose a copy of the 'Staff Commission for Wales - Report to the Secretary of State for Wales: September 1996', which I believe will be of interest to the Committee. In particular, the Report records the concerns relayed to the Staff Commission (and the predecessor Advisory Committee) about the appointment and re-grading of staff by the existing local authorities during 1993 and 1994, prior to reorganisation (for example, see paragraph 24 on page 8 of the Report).

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Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE Voluntary Mergers: Update on Expressions of Interest Received
DATE 27 January 2015
BY Leighton Andrews AM, Minister for Public Services

My written statement on 11 December 2014 explained that I would delay announcing my decision on each of the Expressions of Interest submitted by Local Authorities wishing to develop a proposal for Voluntary Merger. I am announcing those decisions today.

I welcome the leadership shown by the political Leaders of each of the authorities concerned and their willingness to help shape their futures. I understand that securing agreement from their prospective partner councils took a good deal of work and personal commitment.

I received three formal Expressions of Interest submitted in accordance with the timetable set out in a Prospectus which I issued in September 2014¹. These were from the following authorities:

- Torfaen County Borough Council & Blaenau Gwent County Borough Council;
- Bridgend County Borough Council & Vale of Glamorgan Council; and
- Conwy County Borough Council & Denbighshire County Council.

¹ *Invitation to Principal Local Authorities in Wales to submit proposals for voluntary merger, Welsh Government, 18 September 2014*

I have considered each Expression of Interest carefully against the criteria set out in the Prospectus. I am disappointed to report that on the basis of this assessment I am not persuaded that any one of these Expressions of Interest sufficiently meets the criteria for moving ahead to prepare a full Voluntary Merger Proposal.

While there were some positive aspects to each Expression of Interest, the Prospectus was clear on what would be required. This included the need for both applicant authorities to set out a compelling vision for the new authority and to provide assurance that post merger arrangements would reduce complexity and increase coherence and coterminosity of public services. Where proposals diverged from our full preferred map (Williams Option 1), authorities were expected to provide evidence of exceptional circumstances as to why they should be approved. We also needed to have confidence that authorities would be able to develop comprehensive merger proposals by 30 June 2015.

Earlier, I spoke with the Leaders of all the authorities involved to advise them of my decision and will be writing to each one of them shortly setting out my reasons for each decision in more detail.

As Members will be aware the Local Government (Wales) Bill was published yesterday. It includes provisions to enable Voluntary Mergers to take place which would need to be agreed by 30 November 2015. I will give further consideration to these provisions as the Bill proceeds.

Note

The Expressions of Interest have been published by the councils involved and can be found at:

Bridgend County Borough Council and the Vale of Glamorgan :
http://www.google.co.uk/url?url=http://www.bridgend.gov.uk/web/groups/public/documents/agenda_moderngov/115948.pdf&rct=j&frm=1&q=&esrc=s&sa=U&ei=EnjGVJLRNLNCv7Ab40oHABQ&ved=OCBQQFjAA&usq=AFQjCNHq6MXAIHZ8DITshyG92L4dKUBkbw

Conwy County Borough Council and Denbighshire County Council:

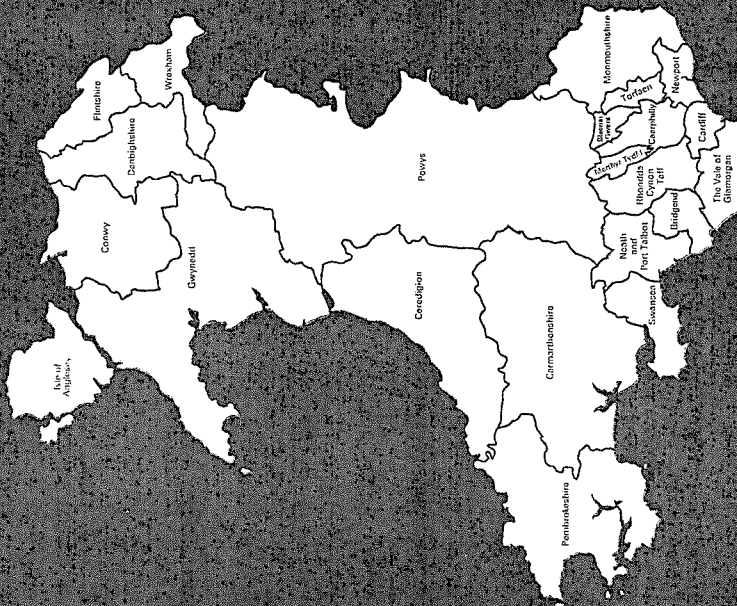
<https://moderngov.denbighshire.gov.uk/ieListDocuments.aspx?CId=134&MId=5052&LLL=0>

Torfaen County Borough Council and Blaenau Gwent County Borough Council (*draft version*):

<http://moderngov.torfaen.gov.uk/ieListDocuments.aspx?CId=137&MId=1165&Ver=4&LLL=0>

JS 3173(429)

The Staff Commission for Wales



Report to the Secretary
of State for Wales:
September 1996

STAFF COMMISSION FOR WALES

Chairman	Sir Richard Lloyd Jones KCB
Members	Mr Peter Bennett Mr Kevin Crowley Mrs Eleri Jones Mr Elwyn Morgan Mr Michael Towers
Secretary	Mr Roger Bollington (<i>to July 1995</i>) Ms Marie Knox (<i>from July 1995</i>)
Secretariat	Mr Robert Holt Mrs Julie Perry

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To: The Rt Hon William Hague MP
Secretary of State for Wales

I have the honour to present this report on the work of the Staff Commission and its predecessor Advisory Committee in the three years from September 1993. At this stage, six months after the establishment of the new unitary authorities on 1 April 1996, I expect that there will be little, if any, call on the Commissioners for advice. This may accordingly represent our final report. However we recognise that under the legislation the Commission will remain in existence until July 1997. It may be necessary to present a supplementary report to you at that point.

Richard Lloyd Jones
Chairman

30 September 1996

THE ROLE OF THE STAFF COMMISSION FOR WALES

INTRODUCTION

1. The Staff Commission was established on 5 July 1994, after the Local Government (Wales) Act 1994 received its Royal Assent, for a period of three years. It had already been in operation as a shadow Commission since 12 April 1994, following the completion of the work of the Advisory Committee on Staffing Matters. The Advisory Committee had been set up in September 1993 to ensure that staffing matters were taken into account throughout the legislative process, which began on 30 November 1993 with First Reading of the Local Government (Wales) Bill.

MEMBERSHIP

2. Three of the four members of the Advisory Committee, Sir Richard Lloyd Jones, Peter Bennett and Michael Towers, were appointed to the Commission. The fourth member of the Committee, D H Davies, was unfortunately unable to continue with his appointment due to ill health. The other three members of the Commission were Kevin Crowley, Eleri Jones, and Elwyn Morgan. This report at times refers to the work of the Advisory Committee in order to provide a full background to the Commission's approach to its duties.

CONTEXT

3. The context of the Commission's work was that the existing two tiers of local government, comprising 8 county councils and 37 district councils, were to be abolished in total and all their functions were to be merged and discharged by 22 new unitary authorities.

4. The new system was to come into force on 1 April 1996, having been postponed from 1 April 1995, and an upheaval so fundamental in nature was bound to affect the career prospects and pattern of life of many local government employees and to cause great stress and anxiety for them and their families. Staff employed in jobs which were specific to a particular location (for example care assistants and teachers) would see only a change of employer. The staff principally affected by the reduction in the number of authorities from 45 to 22 would be those clerical and administrative staff employed in local authority headquarters to provide central services, as well as staff working in county and district planning departments which were to be amalgamated. Staff working

in county council services such as education and social services, Powys apart, would see their departments divided up among the successor authorities and would, in many instances, be required to work in a new location.

5. The Government made clear in Parliament during consideration of the legislation that local government reorganisation was not expected to lead to a large reduction in the number of staff, and the Explanatory and Financial Memorandum to the Bill estimated a reduction in staffing levels of about 500. This compares with a local government workforce of some 150,000 employees (paragraph 5.1 of the White Paper "A Charter For The Future"). It had to be kept in mind, however, that any reduction in numbers would be likely to fall primarily within the comparatively narrow band of staff providing central services, where the impact would be proportionately greater. Throughout our work we were acutely conscious that the possibility of job losses was a source of great anxiety for staff, together with concern about the location and nature of their future employment for those staff whose jobs would be changing.

REMIT

6. Our terms of reference were set out in Section 40 of the Local Government (Wales) Act 1994 which required the Staff Commission for Wales to:

- a) advise the Secretary of State on the steps necessary to safeguard the interests of staff employed by
 - i) the old authorities;
 - ii) the new principal councils; or
 - iii) the Residuary Body;
- b) consider and keep under review
 - i) arrangements for the recruitment of the staff of any of those bodies; and
 - ii) the organisation, management and remuneration of the staff of the new principal councils;
- c) consider and keep under review the arrangements for the transfer of staff from any of the old authorities in consequence of any provision made by or under this Act; and
- d) consider such staffing problems and other staffing matters as may be referred to it by the Secretary of State as arising out of any provision made by or under this Act.

7. Guidance issued to us by the Secretary of State in August 1994 set out how he expected us to approach our task. In substance our remit was the same as the one given under Section 258 of the Local Government Act 1972 to the Staff Commission for Wales appointed in connection with the 1974 reorganisation of local government, except for the requirement to consider and keep under review the organisation, management and remuneration of the staff of the new principal councils. This latter requirement, which was new, controversial and unwelcome to local authorities, is discussed further in Chapter Four. In November 1995 the Secretary of State made an order bringing the new national park authorities within our remit. Our involvement with these authorities and other new bodies is discussed in Chapter Five.

8. Our role was advisory in nature; we could not direct local authorities to adopt a particular course of action. The Secretary of State could do so, but only acting on our advice: section 40(3) of the Act enabled him to give directions to any authority with respect to the supply of information requested, and the implementation of any advice given, by the Commission. Such action was required on only one occasion (described in paragraph 62).

9. Throughout our activities we sought, wherever possible, to work closely with local authorities to reach consensus on the best way forward. We had no role in advising on the non-staffing aspects of reorganisation and we sought to make it clear from the beginning that the Commission had no direct role in relation to political issues such as the number and size of authorities, the funding of reorganisation, or the compensation schemes. However we also made it clear to authorities, trade unions and other bodies that we would pass on their comments to the Welsh Office. We met the Secretary of State for Wales, the Parliamentary Secretary, and Welsh Office officials on various occasions and these provided valuable opportunities to communicate the concerns which we had heard.

ACTIVITIES

10. The early work of the Advisory Committee and the Shadow Commission, discussed in Chapter Two, together with the Secretary of State's guidance, gave us a clear view of our priorities and of the task before us. Broadly, the Commission's contribution to the transition from the old to the new structure of local government comprised:

- the exercise of controls over recruitment of staff by both the old and the new authorities, in the interests of the people currently employed in local government;
- the setting up and monitoring of machinery for dealing with appeals by individuals aggrieved by their assignment, on transfer orders, to one of the new authorities, or by their exclusion from prior consideration in competitions for posts with the new authorities;
- consideration of the organisation and remuneration of senior officers of the new

THE WORK OF THE ADVISORY COMMITTEE AND THE SHADOW COMMISSION

unitary authorities under Section 40 (2) (b) (ii) of the 1994 Act;

- the issue of guidance on a variety of matters relevant to local government and, on request, on matters specific to individual authorities;
 - advice to individuals, trade unions, and local authorities on matters of concern or doubt; and
 - distribution of staff bulletins informing staff of progress with reorganisation, of the Commission's latest guidance, and of any key issues of which they should be aware.
11. Our circulars provided a framework for authorities' preparations for reorganisation. While recognising the need for authorities to have the flexibility to respond to local circumstances with local solutions, our advice helped to bring about a consistent approach on matters of principle.
12. As work on reorganisation progressed, it became increasingly clear that the Commission offered a useful service both to individuals and authorities simply by acting as an independent and impartial source of information and advice. This was particularly true in the later stages of reorganisation where personnel departments, no doubt due to the volume and pace of work, were in some cases finding it difficult to respond promptly to staff with queries which were to them of the greatest urgency.

13. Reorganisation placed enormous pressure on local authority members, personnel departments and senior officers. Without their hard work and commitment, reorganisation would not have been possible. Their efforts are to be applauded.

THE ROLE OF THE ADVISORY COMMITTEE

14. As already indicated, the Advisory Committee laid the foundations for the work of the Staff Commission by identifying, and discussing with interested parties, the staffing issues which would need to be addressed in preparing for reorganisation. Its role was to:

- advise the Secretary of State on the draft guidance for the Staff Commission;
- consider what advice needed to be issued in advance of the establishment of the Staff Commission;
- consult interested parties; and
- consider any other issues referred to it by the Secretary of State.

15. The Committee met for the first time on 14 September 1993. At that early stage the proposed date for reorganisation was 1 April 1995. The subsequent postponement of that date by one year was not announced until 22 November during the Queen's speech debate. During that period there continued to be strong opposition to reorganisation from many quarters. The Assembly of Welsh Counties (AWC) and the Wales Trade Union Council (WTUC) had passed resolutions banning contact with the Welsh Office on reorganisation matters and, by implication, with the Committee. The district councils, in contrast, were willing to meet the Committee. The first in a series of meetings with district councils was held on 11 November when the Committee was reassured to discover that the key staffing issues which it had identified coincided broadly with those raised by councillors and officials. Despite the continuing AWC ban, the first in the Committee's round of meetings with the eight county councils was held on 2 December 1993.

16. In some instances during these early meetings the Committee met criticism from bodies which were strongly opposed to reorganisation and which viewed the Committee as an instrument of the Government. The Committee and later the Commission emphasised to authorities and trade unions that its only role was to protect the interests of staff; it could not and would not get involved in discussions of a political nature. In time these bodies acknowledged that we shared common goals and co-operated fully with us. By the end of March 1994 when the Advisory Committee was wound up, it had met 34 existing county and district councils and many other representative bodies eg UNISON, the Council of Welsh Districts (CWD), and AWC. We were especially grateful for the co-operation of local government throughout a most difficult time for officers and

councillors. These and our later consultations with local government and staff are discussed in more detail in paragraphs 34 - 40.

17. The main themes which emerged from the Committee's early meetings were:
 - uncertainty over the implications for reorganisation of the Transfer of Undertakings Protection of Employment (TUPE) Regulations (which implemented in the United Kingdom the European Commission's Acquired Rights Directive), and anxiety about the possible consequences of misinterpretation of these regulations;
 - debate as to whether all staff should be allowed to transfer to the new authorities;
 - concern over interim appointments and regrading, and payments for additional work in preparation for reorganisation;
 - agreement that guidance on competition and prior consideration (defined in paragraph 57) would be required;
 - agreement that an appeals mechanism would be required;
 - concern that the compensation for redundancy should be sufficiently generous to enable staff to leave local government voluntarily where appropriate (including those under 50, who formed the majority of staff) and to compensate for hardship encountered; and
 - concern that information on the compensation schemes should be made available promptly.

18. The Advisory Committee/Shadow Commission felt that early attention should be given to interim appointments, additional payments, and the principles of staff transfer. Accordingly consideration was given to these matters before the formal establishment of the Commission and the outcome of our deliberations is discussed below. The appeals mechanism and prior consideration, also viewed as high priorities, were dealt with in the weeks following formal establishment of the Commission and are discussed in Chapter Three, together with those issues which were identified in the Secretary of State's guidance to the Commission.

TUPE AND THE STAFF TRANSFER ORDERS

19. During its early round of meetings with local authorities in Autumn-Winter 1993 the Committee discovered that there was wide (but not unanimous) support for the principle of all staff transferring to the new authorities. Initially the Committee had a number of reservations about this concept. The Committee recognised that a reduction in the number of local authorities would lead to a reduction in the number of central

administration staff required. Long-term employment would not therefore be guaranteed for the staff transferring. In those circumstances it could be argued that transferring all staff, with or without a post, would merely prolong the period of uncertainty and anxiety for staff.

20. The Shadow Commission considered this question further at its early meetings. By this time more information had become available on the implications of TUPE for reorganisation. Potential complications arising from TUPE were mentioned at the Advisory Committee's initial briefing by the Welsh Office and were raised repeatedly by many interested parties at every stage of the reorganisation process.

21. Case law on the application of TUPE in the public sector was limited, and a variety of subjective interpretations of the regulations in relation to the local government reorganisation process in Wales were offered to us over the months. We made it clear throughout our work that we would not provide interpretations of TUPE; this could only be done by the courts. In view of this uncertainty over the implications of the regulations for the transfer rights of individual employees, the shadow Commission took a preliminary view in favour of transferring all staff, in spite of our earlier reservations, and informed the Welsh Office accordingly on 9 May 1994.

22. This view was reinforced in December 1994 when it emerged that, taking account of TUPE, the Welsh Office anticipated that staff of authorities whose areas were not split by reorganisation would automatically be included in the staff transfer order, but that inclusion would not be automatic for staff of the 13 authorities whose areas would be split. This situation appeared to us, regardless of TUPE, to be unfair to staff of the splitting authorities and to offer an unsatisfactory context for the transfer process and for discussions among authorities over the future destination of these individuals. We therefore followed up the Shadow Commission's earlier advice by writing to the Parliamentary Under Secretary of State for Wales on 8 December 1994 arguing for all staff to be treated on the same basis. We received many letters of support from local authorities for this stance, and we were pleased that the Minister responded positively to our request by agreeing to give effect to local authorities' decisions on the transfer of staff. Subsequently all local authorities in Wales, under a National Joint Council (NJC) agreement, made a commitment to transfer all staff who wished to be transferred.

23. We believed this commitment to transfer all staff who wished to be transferred to be fundamental to the achievement of a fair and smooth transfer process. It meant that transfer discussions focused on where staff were to transfer rather than whether they should transfer at all. We recognised that the process of appointing individuals to posts in the new authorities would always be an anxious period for staff but this transfer commitment would have a cushioning effect, allowing authorities time to reconsider their structures and to retrain staff where possible. But the over-riding benefit was that staff from splitting authorities would not be placed at a disadvantage from the very outset. Events proved the worth of the commitment to transferring all staff.

TAFF APPOINTMENTS AND REGRADING IN THE INTERIM

4. At its first meeting on 14 September 1993, the Welsh Office raised with the Advisory Committee the question of appointments and regradings of staff by existing authorities prior to reorganisation. It became apparent from the series of meetings which the Advisory Committee held with authorities that early advice on this issue would be welcome. We heard claims that some authorities were proposing to take action which would give their staff an advantage over their neighbours in the transfer process, as it was said had happened in the 1974 reorganisation. Although there appeared to be little evidence to support these claims, they were a source of anxiety for staff. The Shadow Commission therefore issued a draft circular, based on the Advisory Committee's earlier consultation with authorities, in June 1994. Our final guidance was published on 6 September 1994. It advised authorities to look for alternatives to permanent appointment when filling vacancies in those departments which were most likely to be subject to change as a result of reorganisation, and in general to avoid regradings. Its purpose was to avoid increases in staff numbers which could result in future redundancy and to avoid some staff being put at a disadvantage when it came to competing for particular posts with the new authorities. The guidance on filling vacancies did not apply to front-line posts which we recognised needed to be filled in order to maintain service delivery.

5. In response to representations from local government, we agreed that we would not vet all appointment proposals as this would very likely have led to considerable delay. Instead prior to the election of the shadow authorities we asked existing authorities to consult their colleagues in the transition committees which were being established for the unitary authority areas before making such appointments and to come to the Commission only if there was no agreement on the need for an appointment or regrading.

6. In general this arrangement seemed to work well and local authorities acted in a flexible and sensible way. The Commission received very few referrals although there was an occasional complaint from trade unions that an authority was, for example, applying for advice on temporary appointments too rigidly.

PAYMENTS TO STAFF FOR ADDITIONAL WORK ON REORGANISATION

7. During its discussions with authorities on interim appointments the Advisory Committee also raised the question of payments for additional duties in the interim period. As a result of these discussions, the Advisory Committee concluded that guidance on this would be of benefit to local government. We sought the then Secretary of State for Wales' views on this in January 1994. He indicated his reservations about the need for the Committee to give any guidance on the subject and asked the Committee to view its initial conclusions. This was done and the shadow Commission eventually concluded that there were valid arguments supporting the need for guidance. In June 1994 we again put this view to the Welsh Office. In response the Welsh Office informed us that, in commenting on the Secretary of State's draft guidance to the Commission,

authorities had been divided between those in favour of central guidance on this matter and those which wished to retain the flexibility to determine levels of payments themselves.

28. In view of this lack of consensus among authorities we decided against setting central guidance and instead circulated to authorities, in September 1994, a model scheme which had been drawn up in one county area and which authorities individually might decide to adopt. Believing as we had done that there would be advantage in bringing about a common approach, we asked transition committees in each area to reach an agreed view about the basis on which officers would become eligible for payments for additional responsibilities, and the level of those payments.

29. The Commission was not made aware of any dissatisfaction with this approach and was content that it had provided a practical framework for authorities' decisions. In practice it appeared to work well.

COMPENSATION FOR REDUNDANCY

30. It was not part of our remit to recommend a compensation scheme for those made redundant or taking voluntary early retirement due to reorganisation. However it was clear from the Advisory Committee's meetings with local authorities that a scheme would be an important element of the transfer process. In June 1994 the Department of the Environment consulted relevant bodies on the proposals drawn up by the Government. We considered the arguments carefully and supported the view taken by local authorities that these proposals compared unfavourably with the terms offered in previous reorganisations. There was therefore a real risk that they would impede a smooth transition in Wales. We believed that the compensation terms should be substantially the same as in the 1986 reorganisation of the London and Metropolitan authorities. We also argued that, whatever the terms, they should be mandatory rather than discretionary as the Government proposed, since it would be unfair for some staff in Wales possibly to be treated less favourably than others. The Government declined to improve the level of compensation but did make the scheme mandatory.

31. Subsequently, in August 1995, the Welsh Office invited us to comment on the length of the "prescribed period" during which redundancy compensation would be available. We felt that it would be advantageous for authorities to have more time to test their new staffing structures and to adjust them as appropriate and for staff who were changing roles to have more time to adapt to the new arrangements. The Commission therefore took the view that the prescribed period should be increased from 15 months to at least 18 months and proposed that there should be flexibility for the period to be further extended if necessary. In the light of the Commission's and other responses, the Welsh Office extended the "prescribed period" to 21 months, ending on 30 September 1997. This decision was welcome to us.

32. As the scheme does not end until 18 months after reorganisation, it will be some

time before a considered view can be taken of the consequences for local government and for individuals of the compensation terms which were offered.

COMPENSATION FOR LOSS OF REMUNERATION

33. As with compensation for redundancy, we were consulted on the Government's proposals to compensate those employees who suffered a loss of earnings (detriment) as a direct result of reorganisation. We warmly welcomed these proposals in principle but again we urged that the scheme should be mandatory and suggested a number of improvements. We are pleased to say that the final scheme was made mandatory for eligible employees and the proposed minimum requirement of 2 years local government service was omitted, as was the proposed cap on payments by reference to the potential redundancy payment. The Government did not accept the suggestion that the compensation should also cover loss of holiday entitlement.

AFTER ROYAL ASSENT - CONSULTATION ARRANGEMENTS

34. As noted above, the Advisory Committee began the process of consulting with local government shortly after it was set up, and when the Shadow Commission replaced the Committee in April 1994 we continued with this exercise. By early August 1994 we, or our predecessor, had met all 45 of the existing local authorities in Wales. These meetings in our view afforded a solid platform of information and opinion on which the Commission was able successfully to build.

35. Shortly after the Act received Royal Assent in July 1994 local authorities were required to set up transition committees for each of the unitary authority areas. Although our visits to the 45 authorities had given us a useful insight into the problems facing different areas, we felt it was important for the Commission to meet the transition committees which would be coordinating preparations for reorganisation until the election of the 22 shadow authorities in May 1995. Accordingly we began a further round of visits in November 1994 and met 20 of the 22 transition committees; those in South Glamorgan declined our offer of a meeting. These discussions were helpful in confirming that we had identified the key issues of concern and that transition committees strongly supported the concept of an all-staff transfer. They also gave us an insight into how authorities were working together to prepare for reorganisation.

Trade Unions and Staff Representatives

36. During each of our rounds of meetings with authorities and transition committees - and later with shadow authorities (paragraph 8.5 below) - we also arranged to meet staff representatives and trade unions. We found these discussions particularly useful. Once initial suspicions about the objectives of the Commission had been overcome, staff representatives came to regard its members for the most part as a helpful source of

information and advice, a useful safety valve, and a convenient unofficial sounding board. For our part the meetings with staff representatives enabled us to compare employer perceptions with employee perceptions over particular issues in the same place on the same day, to clear up any obvious misunderstandings between them, and provide feedback where requested, always acting impartially. In two cases where employer/employee tensions had risen to a serious level we acted, in effect, as unofficial mediators with positive results in both cases.

37. These meetings were useful for another reason. We viewed it as essential that authorities should maintain good communications with staff and their representatives - this was a message which we constantly pressed upon authorities - and our meetings with staff and trade unions demonstrated, in a clear and concrete way, the importance we attached to communication with staff.

38. During these early meetings with staff representatives we learned that the impact of the reintroduction of compulsory competitive tendering on the reorganisation process was a source of great anxiety. While this was outside our remit, we agreed to pass their concerns on to the Secretary of State. We did so at a meeting with the Parliamentary Secretary held in November 1994 and continued to make the point to Welsh Office officials. We were pleased when the Secretary of State announced in June 1995 that the reintroduction of compulsory competitive tendering would be postponed for a further six months to 1 April 1997 and 1 October 1997, according to the type of service.

Commission Circulars

39. Following the establishment of the Commission we undertook a series of formal consultations with local authorities, trade unions and other bodies, on the questions about which we had been invited to produce guidance. It was clear to us that it was vital for systems to be put in place which could support a smooth and transparent transfer process and which would protect staff from the threat of unfair or unequal treatment. The key areas where we felt guidance was required were:

- the process of allocating staff to successor authorities;
- the appointments process, including decisions on whether competition was required and who should be eligible to apply for posts; and
- the appeals mechanism.

40. The outcome of our consultations on these, and other matters, are discussed in Chapter Three.

**PREPARING FOR TRANSFER -
DISAGGREGATION, COMPETITION,
PRIOR CONSIDERATION AND APPEALS**

THE STAFF TRANSFER ORDER

41. Initially it had been envisaged by the Welsh Office that the Commission would take a leading role in identifying staff for inclusion in the staff transfer order. This could have involved consideration of how TUPE would apply to different categories of staff. As noted above we considered any distinction to be inherently unfair and were fully in support of the agreement, which was reached by authorities early in 1995, to transfer all staff who wished to be transferred. This commitment radically altered our role in relation to the staff transfer order. Instead of needing to take a direct role in its preparation, we were able to concentrate on ensuring that appropriate systems were in place to underpin authorities' preparation of the order and to provide safeguards for staff. The national appeals mechanism clearly provided the key safety net for staff and our advice on prior consideration, competition, and recruitment and selection procedures, discussed in the following pages, underpinned these arrangements.

42. In the event it was necessary for the Commission directly to advise the Secretary of State on the staff transfer order only when authorities failed to reach agreement on the destination of individual employees. This occurred in four instances only and they were dealt with in the staff transfer no 2 order. The Commission maintained close contacts with the Welsh Office concerning the staff transfer no 3 order, but formal advice was not necessary.

43. In a few instances the staff transfer order transferred individuals to the joint employment of more than one authority. We recognised that in each case there was a particular reason for this decision - for example the authorities were planning to set up a joint committee to oversee a particular activity - but we were concerned that joint employment could lead to uncertainty for staff. In each case we urged the individuals' current employer to broker an agreement between the successor authorities as to which one of them would act as designated employer for the purposes of law for that group of staff. The authorities then confirmed that appropriate arrangements had been agreed among the successor authorities.

DISAGGREGATION

44. Where existing authorities were to be split among two or more new authorities, it was necessary for authorities to decide the relevant criteria for apportioning posts and staff to

each successor authority and we were asked to offer advice. We discussed these issues with those transition committees which were already getting to grips with them. We concluded that for the great majority of staff it would be readily apparent, by virtue of their job location, to which new authority they should transfer. For others the new authority would be readily identifiable by reference to the proportion of their work that was attributable to a particular location or area. For the remainder of staff with no ready geographical identity, apportionment could be in proportion to the share of the existing Council's budget spent in the new authority area, or in proportion to population. We suggested that authorities should agree locally the approach to be adopted with staff representatives, but that in the event of difficulty we would be inclined to adopt the share of budget criterion. The staff disaggregation process was an area where we felt that it was in the interests of staff for procedures to be developed and agreed in the light of local circumstances. We made it clear that we would be available to help through discussion and advice in the event of any difficulties.

45. Once agreement had been reached on the number of staff to transfer, authorities then had to develop, and agree with staff, the criteria to be used to determine which individuals would transfer to which authority. The criteria generally included personal preferences, domestic circumstances, length of service and the skills mix required by authorities. This was an anxious period for staff covered by this procedure. Decisions on disaggregation would affect not only their new place of work but also, potentially, their future employment prospects. Staff were anxious to avoid expressing a preference for an authority which might prove not to require their particular skills and some argued that they should not be obliged to express a preference for one authority or another until the unitaries had developed their staffing structures. While we sympathised with these anxieties we felt that delay was impracticable - in many instances personal preference would not in any case be the crucial factor in deciding where an individual would be assigned - as well as carrying risk to the whole transfer process. We also recognised that it would never be possible for all staff to be allocated to the authority of their first choice. We therefore placed a higher priority on ensuring that staff who were unhappy with the disaggregation would have the opportunity to make an appeal to transfer to a different unitary authority and to apply for jobs in other authorities.

THE APPOINTMENTS PROCESS

46. Our guidance on prior consideration, discussed in paragraphs 57 to 72, applied to posts where a competition was required. However we recognised that the time available for authorities to fill posts in their new structures would be limited. It would not be possible or necessary to fill every post by means of a competition. In many areas of local government activity, staff would be transferred to the new authority in their existing jobs. In other areas, however, authorities would have to decide in each case whether a competition was required or whether a post could be filled by an individual whose existing responsibilities provided a good match with the new job.

47. We recognised that decisions on whether a post needed to be filled by competition or by some form of job-matching would, of necessity, be for authorities to take locally. However we were also conscious that such decisions could be critical for an individual's future employment prospects, that individuals might fear that the job-matching approach could be open to abuse, and that the Commission could be asked to intervene in any dispute over such decisions. We concluded that we should offer our views on this matter but, in doing so, we felt that the experience of local authorities in this field should be given due weight and we sought not to encroach on authorities' responsibilities and proper discretion.

48. In our guidance, therefore, we identified some instances where a competition might be required: namely where job-matching (also referred to as "slotting-in") could disadvantage other staff. We emphasised the need for clear, transparent and agreed procedures, and drew authorities' attention to the possibility of appeals. We also made it clear that where we did receive queries from staff we would contact the authority concerned and would expect to uphold their decision only if good personnel practice had been followed. We felt that sufficient knowledge and experience of good recruitment practices existed in local government and for this reason we did not include any detailed guidance on selection procedures in our advice dated 13 March 1995.

49. Subsequent feedback from authorities suggested that the process of filling posts in the new authorities would have been an impossible task if job-matching had not been used to reduce significantly the number of competitive interviews which had to be held. Feedback from members of staff confirmed that it is vital, first, that arrangements exist locally for individuals to appeal against job-matching decisions and, secondly, that the criteria to be used in determining whether a job-match exists or whether a competition is required are clear and transparent enough to allow an objective debate to be held in the event of an appeal.

Equal Opportunities

50. The Secretary of State's guidance invited the Commission to consider issuing guidance on equal opportunities responsibilities. Authorities were, of course, already under a duty to comply with the law on avoiding sex and racial discrimination. We believed it was right to consider whether additional guidance would be of benefit to authorities during the transition process. We had discussions with the Equal Opportunities Commission Wales who agreed to prepare appropriate guidelines for local authorities on the issues which were likely to arise in the context of reorganisation. We also consulted the Commission for Racial Equality and as a result we drew authorities' attention to their responsibilities under the Race Relations Act 1976 when we circulated the Equal Opportunities Commission's guidance to authorities in April 1995.

51. Following representations from the Equal Opportunities Commission in January 1996 and from the Chairmen of the Welsh Committees for the Employment of People with Disabilities we issued a further letter on 31 January 1996 drawing authorities' attention

once again to their statutory responsibilities for avoiding discrimination.

The Welsh Language

52. We received representations from UNISON regarding the stipulation of Welsh language ability as a requirement for certain posts; the union expressed concern that potential candidates could be unfairly excluded from consideration. We made clear our view that it was for local authorities to determine in each instance, within the relevant legislation, the validity of a requirement to speak Welsh.

Recruitment and Selection Procedures - Complaints

53. Having given due weight to local authorities' personnel experience, we were disappointed when, during the period of making appointments at chief officer level, we received representations from unions and individuals expressing concern that authorities were not in all circumstances following best personnel practice or the Equal Opportunities Commission's guidance. We considered these representations and in September 1995 we issued circular 6/95 on recruitment and selection procedures. This circular drew authorities' attention to the importance of good personnel procedures and made it clear that we would follow up any complaints we received about departures from good practice.

54. Between August 1995 and March 1996 we received and investigated 10 formal written complaints about decisions taken by authorities during the process of shortlisting candidates. We were made aware, by a number of informal representations, that these formal complaints did not constitute the sum total of individuals who were unhappy with their treatment; there may have been many more who did not feel able to complain for fear of jeopardising their chances of employment elsewhere in the organisation or in other authorities. However we could only act if complainants supplied written evidence to us.

55. It would not be right to publish correspondence or advice which relates to an identifiable individual; this report therefore cannot discuss the cases which we dealt with in any great detail. Our approach was to ask the unitary authority for its comments on the complaint. In most cases there were satisfactory explanations and we did not find grounds to take the matter further. However we were unable to uphold the authority's approach in two of these cases and in each instance we considered whether to draw our concerns to the attention of the Secretary of State. While we had reservations about the procedures which had been adopted, we did not have evidence that this had materially affected the final outcome of the selection process. As a result we did not find grounds to advise the Secretary of State (under section 40(3) of the Act) to direct an authority to re-run an appointment. To do so, we would have had to provide the Secretary of State with evidence that it would be fair and reasonable for him to overrule the authority and any contract of employment already entered into: otherwise the direction might not be sustainable in a court of law.

56. While the ten cases which we dealt with comprised only a tiny fraction of the staff who were transferred to the new authorities, we were nevertheless disappointed that, either as a result of poor communication with staff, or a lack of transparency in the selection procedures, or of actual bad practice, some individuals had felt sufficiently aggrieved by the appointment process to approach us formally. Fair and transparent appointment procedures were absolutely vital to maintaining morale among staff transferring to a new authority.

PRIOR CONSIDERATION

57. Prior consideration was the name given to the arrangement where authorities gave priority, in the first instance, to a particular group of staff when advertising and filling vacancies. This arrangement was designed to offer protection to staff during the transfer and appointment process. It did not guarantee that individuals would be shortlisted for, or successful at, interview; but it gave them the right to have their applications considered before candidates from outside the prior consideration group could apply.

58. Recognising that prior consideration arrangements could have a significant impact on individuals' employment prospects, we made an early start on debating this question. We issued our first consultation circular on prior consideration on 16 September 1994. This set out the Commission's views on competition for chief executives and on which groups of staff should be eligible to apply for posts where competition was required at chief officer level and below. The Welsh Office had indicated that chief executive appointments should be subject to full open competition and the Commission supported this view. We discovered that prior consideration was a subject on which authorities held a range of views, and debate on this matter continued well into 1995. In January 1995, having considered the responses to the consultation exercise, we issued circular 1/95 on prior consideration. This was followed by circular 3/95 in March and by further advice to the Secretary of State in April and to authorities in May and August. The contents of our guidance are discussed in more detail in paragraphs 59 to 72 below.

Appointment of the Chief Executive

59. When considering what advice we needed to issue to local authorities we recognised that the first step each authority would need to take would be to appoint its head of paid service. Any delays in making this appointment could have a knock-on effect on other appointments, holding up the recruitment of chief officers and thus the preparation of departmental organisation structures. Indeed at one point some authorities argued that the Commission should establish a timetable setting out the date on which each unitary authority would conduct its interviews, and should itself supervise the process. We did not consider this to be practical.

60. We were conscious that the appointment of the head of paid service would set the tone for subsequent appointments. In November 1994 therefore (some ten months

before our later advice on avoiding bad practice in recruitment procedures) following discussions with the Society of Local Authority Chief Executives (SOLACE), we issued a consultation circular on the appointment of the chief executive, which included an advertisement checklist and suggestions for information to be given to prospective candidates. It did not include specific advice on selection procedures but it did emphasise that the process should be, and should be seen to be, fair. We recommended that each new authority should have an independent appointment observer to give impartial advice on procedures. This was controversial at the time but all authorities complied with our guidance and appointed an independent observer.

61. We were concerned to ensure that nothing was done by the existing authorities to prejudice the consideration by the new authorities of applications for posts. We initially advised local government that it was for the new authorities to determine the job descriptions for their heads of paid service and to place advertisements in the press. However some transition committees argued that valuable time could be saved if advertisements were placed before the elections, even if only on a provisional basis and subject to confirmation by the new authorities afterwards. We agreed that if transition committees wished to take this step, without prejudice to the ultimate decision of the new authority, we would not seek to prevent them. The majority of transition committees published advertisements in advance. We asked to see copies of the advertisements before they were published and copies of the draft job descriptions and person specifications which were prepared, and these were supplied.

62. Responses to our consultation circular on prior consideration indicated that there was wide, but not unanimous, support for recruitment of the chief executive by means of full open competition. Some bodies thought competition should be restricted to Wales, or to existing chief executives in Wales, in the first instance. In the course of our meetings with transition committees and local authorities we gained an impression that there was a feeling of uncertainty as to whether every new authority would apply fully open competition arrangements. We concluded that it would be in the interests of all new authorities and of potential candidates for the posts if the process was put beyond all doubt. Given that a new authority could otherwise decide at very short notice after the election not to follow our guidance, we requested the Secretary of State, in April 1995, to make open competition mandatory, as advised in our circulars on prior consideration. He agreed and issued a direction accordingly under section 40(3) of the Local Government (Wales) Act 1994.

Prior Consideration - Chief Officer Posts

63. We took a view at a very early stage that, for posts at first tier chief officer level, prior consideration should be given to serving local government officers in Wales. The majority of responses to the consultation supported this view and this remained our position throughout the reorganisation process. There was some debate as to what constituted a chief officer post and we defined it as a first tier post:

- directly responsible to the head of the authority's paid service; or
- included in the corporate management team (where such a structure was being adopted); or
- required by statute.

Prior Consideration - Posts Below Chief Officer Level

64. For posts below chief officer level we felt that prior consideration could either be given to staff in the predecessor authorities or to staff in authorities in the former county area. In Powys there was no difference between these two options, as all authorities in the former county area would form part of the new unitary authority. However in Aberconwy and Colwyn (Conwy) for example it would have made a significant difference to the number of staff eligible for consideration for posts in that authority. This was because the authority was made up of two district council areas located in two neighbouring counties. In this case restricting prior consideration to predecessor authorities would mean that staff in four authorities (Gwynedd CC, Clwyd CC, Aberconwy BC and Colwyn BC) would be eligible for prior consideration, while extending prior consideration to all staff in the former county area would mean that staff in an additional nine district councils (Ynys Môn, Arfon, Dwyfor, Meirionnydd, Delyn, Alyn & Deeside, Wrexham Maelor, Rhuddlan and Glynwdr) would be eligible. This example shows clearly the tension which existed in some areas between the wish to give as many staff as possible an opportunity to apply for vacancies and the practical difficulties which could arise in doing so.

65. In our consultation circular of September 1994 we had taken the view that prior consideration should be limited to the smaller (predecessor) authority area. The responses to our consultation showed that there was no consensus among local government and a number of other approaches were also put forward. Each approach had its advantages and disadvantages, and in some cases the arguments were finely balanced. However we were persuaded that overall it would be fairer to more staff to set the broader, county-wide, area and we informed authorities of our conclusion in January 1995. At that early stage the commitment to the principle of all-staff transfer had not yet been made formal and we believed that, without a guarantee of transfer, the interests of staff would be better protected by a wider prior consideration field. In reaching this decision we were very conscious of the lack of unanimity of opinion within local government on this issue, and when we were approached by authorities with alternative proposals for handling prior consideration in their areas we listened to their representations sympathetically.

Local Arrangements

66. After it had been confirmed that it would be possible for all staff to transfer if they wished to be transferred, authorities in some areas became more interested in pursuing a third option. They concluded that the fairest approach would be to limit prior

consideration, not only to staff in the predecessor authorities, but to limit it further to those staff who would be transferring to the employment of that unitary authority. This view arose because in some areas prior consideration on a predecessor authority basis would offer county council officers the opportunity to apply for posts in three or more unitary authorities, while staff in those district councils which were not being split could apply for posts in only one authority. This third approach, which was generally referred to as the "pool" approach, also had the advantage, for unitary authorities, of restricting the number of staff to whom they had to circulate vacancies.

67. The Commission considered these proposals carefully. We were conscious that there were some disadvantages associated with this approach. In particular, with this arrangement staff who were unhappy at being allocated to a particular unitary authority would have fewer opportunities to apply for posts in the neighbouring unitary authorities than they would have had under the county-wide arrangement. For this reason it was important for authorities to take particular care to ensure that their disaggregation procedures were clear, equitable, and endorsed by staff. Staff who were dissatisfied with the outcome of the disaggregation exercise would, of course, have the opportunity to appeal against their assignment to a particular authority. In order to be fair to these individuals therefore, authorities would need to be certain that no such appeals were outstanding when circulating vacancies to staff. This made it all the more important for the appeals mechanism to operate quickly and effectively.

68. We discussed these concerns with the authorities involved and, taking account of the commitment to transfer staff which had just been confirmed, we concluded that, where there was unanimous support for local arrangements in a particular area, we would not object to such agreements. We set out some criteria for these arrangements in our circular 3/95 in March 1995: the agreement of all the existing and new authorities in the area and that of staff and trade union representatives was required before we would approve local prior consideration arrangements departing from our guidance.

69. Local authorities' recent agreement to transfer all staff was crucial to our decision to accept local arrangements. Without this commitment the "pool" arrangement would have been unacceptable to us. It would have meant that staff excluded from the STO (for example because they were judged not to be covered by TUPE) would also have been denied the opportunity to apply for posts when vacancies were first advertised. We could not have consented to an approach with such implications.

Consideration of "Placed" and "Unplaced" Staff

70. Another difference of view on prior consideration emerged within local government, after the publication of our guidance, as a result of a National Joint Council agreement stating that staff transferring on a "placed" basis - which we understood to mean staff who would be transferred in their existing jobs or who had been allocated to specific jobs with the new authority without competition - should be entitled to prior consideration only after "unplaced" staff had been considered. We took the view that in general "placed"

staff should not be excluded from prior consideration but we recognised that the NJC agreement carried much weight with local authorities and trade unions and, in May 1995, accepted that, subject to the safeguards set out in paragraph 68, the local arrangements referred to above could also cover this issue. By early January 1996 we had approved local agreements in all eight counties. These local arrangements appeared to work well in practice.

Wider Advertisement

71. Where unitary authorities wished to advertise vacancies outside the prior consideration field, on an all-Wales or open competition basis, we asked councils to approach the Commission before taking this step. We were thus able to satisfy ourselves that authorities were giving proper consideration to local government employees before looking to appoint external candidates.

72. Prior to 1 April 1996 we received approaching 200 requests from local authorities to proceed to open advertisement, the majority of which we were able to agree immediately. In a small number of cases there appeared to be qualified local candidates and we asked authorities to interview them before proceeding to the second stage. The prior consideration arrangements which operated after 1 April 1996 are discussed in Chapter Six.

APPEALS

73. Our guidance from the Secretary of State required us to determine the most effective appeals mechanism for individuals wishing to challenge decisions affecting them as a direct result of reorganisation. We considered this one of our highest priorities and in September 1994 we took steps to set up an informal working group involving trade unions, the local authority associations and the Local Government Management Board (LGMB).

74. The Secretary of State's guidance invited us to consider the existing Provincial Councils machinery, adapted to suit the particular needs of the reorganisation in Wales, as had happened in the last local government reorganisation. We believed that the fundamental nature of the changes proposed on this occasion meant that it was vital that an effective and speedy mechanism was put in place. We were concerned therefore that the special appeals mechanism should focus on those issues which would have the greatest impact on individuals' future employment prospects and which would be most difficult to resolve locally. A rapid response would be essential, particularly in relation to staff transfer order issues, and the working group considered carefully what changes were required to the existing Provincial Councils arrangements to enable them to cover those groups of staff not previously covered by them and to work more quickly.

75. We concluded that the main issues which an individual member of staff might want

to contest were, first, exclusion from the transfer order or secondly, inclusion in the transfer order but, from the individual's point of view, assigned to the wrong new authority. We were also persuaded that there needed to be a right of appeal against failure to include an individual in the appropriate group to be given prior consideration for posts where competition was taking place. The local government representatives on the working group identified certain other matters which they wished the machinery to cover, but accepted that these should not be monitored by the Commission and should not delay consideration of appeals in respect of the main issues. We were concerned that before the Provincial Councils machinery was brought into play every effort should have been made at local level to resolve the dispute, and that once the Provincial Councils machinery was activated appeals would be decided quickly. We therefore recommended a strict timetable for submission and consideration of the relevant documentation and for arranging a hearing. We thought it important that the panel set up to hear an appeal should have an independent chairman, as, although the appeal panel members would have no personal interest in the case, the panel would consist of an equal number of representatives from the employer and employee sides.

76. We issued our circular (4/95) on appeals arrangements on 5 May 1995. This set out the two appealable issues with which the Commission was concerned and the additional three issues put forward by local government. It described the procedures and deadlines which would apply and indicated that the LGMB would be undertaking further work to make the arrangements fully operational.

77. Accordingly, the LGMB and UNISON drew up a list of independent appeals chairpersons in consultation with local government which the Commission was able to endorse in August 1995. We held a meeting with independent chairpersons in September to discuss the appeals mechanism and any issues which they wished to raise. The matters discussed included local prior consideration arrangements, staff covered by the appeals mechanism, and the role of the independent chairpersons.

78. The LGMB also produced, again in consultation with unions and local government, standard appeals documentation for use by authorities and steps were taken to ensure that the specially adapted Provincial Councils arrangements were extended to cover all local government employees as we had envisaged.

79. By September 1995 a framework was in place at national level for appeals to be heard. We then focused on urging authorities to ensure that effective local mechanisms were in place so as to ensure that only those appeals which could not be resolved at local level came to national level. During our meetings with unitary authorities in September - October 1995 we received assurances from all authorities on this point but subsequently learned of delays in one county. We successfully pressed this authority to make swift progress in agreeing a mechanism with staff.

80. Subsequently, the majority of appeals were dealt with at local level and twelve

80. Subsequently, the majority of appeals were dealt with at local level and twelve reached the national level. Of these, eight related to the staff transfer order, of which two were upheld by the appeals panels. The low number of national appeals which were lodged suggests that the local appeals arrangements worked effectively. We would like to offer our thanks to the Provincial Secretaries and to the independent chairpersons for their support and assistance in developing and running the appeals arrangements.

TRAINING AND COUNSELLING

81. The Secretary of State's guidance invited us to consider whether advice on training and counselling was required. We were concerned to ensure that local authorities should put in place arrangements for preparing staff for the changes they would be facing. We discussed what might be needed with representative local government officers and with the Local Government Management Board in Wales, and in January 1995, were able to issue advice to local authorities for them to consider when planning their training programmes and counselling arrangements.

82. In August 1995 we followed this up with a questionnaire seeking information on the steps the existing authorities were taking to prepare staff for reorganisation. Less than half of authorities responded and some were of the view that it would not be possible for authorities to take decisions on their training strategies until the process of slotting staff into posts had been largely completed and the outcome of the local government revenue settlement had been made known - ie in December or January. The Commission therefore issued a follow-up circular in January 1996 encouraging new authorities to avoid redundancies wherever possible by retraining staff. Again this elicited a low response, but events were to prove that authorities did indeed seek at all times to keep compulsory redundancies to a minimum.

AFTER THE SHADOW AUTHORITY ELECTIONS

83. The shadow unitary authorities were elected on 4 May 1995, by which time the Commission had consulted, and issued guidance, on all the major issues which affected the interests of staff - ie interim appointments, payments for additional duties, the principle of all-staff transfer, competition and prior consideration, disaggregation, equal opportunities, and appeals arrangements.

84. After the elections of the shadow authorities our main remaining tasks were:

- our duty under section 40(2)(b)(ii) of the Act to consider and keep under review the organisation, management and remuneration of staff of the new authorities (see Chapter Four);
- monitoring the implementation of the prior consideration arrangements;

**SECTION 40 (2) (b) (ii) -
ORGANISATION, MANAGEMENT AND
REMUNERATION OF
STAFF IN THE NEW AUTHORITIES**

- ensuring that the special appeals mechanism was in place before the publication of the draft staff transfer order;
- keeping track of authorities' progress in preparing contributions to the draft staff transfer order;
- dealing with queries and complaints from staff, in particular in relation to the appointments process.

85. During September and October 1995 we met all 22 shadow unitary authorities, and trade union and staff representatives, to discuss their progress in each of the above areas. The preceding paragraphs have already described what action was required in relation to all but the first of the tasks listed above. Our approach to our responsibilities under section 40(2)(b)(ii) is discussed in Chapter Four.

86. The requirement for the Staff Commission to "consider and keep under review the organisation, management and remuneration of the staff of the new principal councils" was unexpected, and appeared only when the Local Government Bill was published. The Commission was concerned both at the nature and apparent breadth of the requirement as drafted, being unclear whether it was intended to be an on-going review of management structures and pay in the new authorities, as many of the existing councils feared.

87. In response to an urgent request by the Committee for consultations, the Welsh Office clarified - and subsequently included in their published guidance to the Commission - that in discharging this duty the Commission should "keep a particularly close watch on the number and remuneration of senior managers [and would be] unlikely to need to concern itself with staff in lower grades". Even this narrower role brought with it concern about the risk of the Commission encroaching inappropriately on authorities' discretion and responsibilities in this area, and concern that it could lead to disputes with authorities at a time of turmoil for them. We were most anxious not to jeopardise our prime duty, which was to oversee a smooth transfer process while safeguarding the interests of staff and avoiding any risk to the provision of services to the public; and which we sought to carry out in partnership with authorities.

88. Moreover we recognised that we would be working under a number of constraints. The first of these were the statutory powers of, and relationships between the Commission, the Secretary of State and local authorities. The Commission did not have the power to direct local authorities to adopt a particular course of action. The Secretary of State could do so, but only on the advice of the Commission. It was essential therefore that such advice was precisely worded and clear in its purpose and also that the Secretary of State could demonstrate, in a court of law if necessary, that he had acted reasonably in making a direction based on that advice. For their part, local authorities had the legal responsibility for determining the management structures and salary levels to be adopted. We were acutely conscious that we would need to have a strong justification for any intervention in local authorities' decisions, and to have complete confidence in any advice and supporting evidence we presented to the Secretary of State.

89. The second constraint was the lack of formally recognised benchmarks or guidelines on appropriate staffing structures, salary levels and management costs.

This meant that any judgement about whether a particular salary or group of salaries were set too high would be highly subjective. The only framework for authorities' decisions on salaries of senior managers were the salary bands for chief executives and senior officers which had been earlier agreed by the appropriate Joint Negotiating Committees at UK level. These very broad salary scales were grouped into bands according to the authority's population size. As the population bands overlapped and authorities had the freedom to pitch salaries anywhere within their particular band, it was possible within the JNC agreement for a small authority to set higher salary levels for similar posts than a larger authority. We did not believe that it would have been reasonable for us to recommend that all local authorities, as a matter of principle, work within lower or narrower salary scales than those set by the JNC. This left each of the unitary authorities free, if it so chose, to set relatively high salaries for an authority of its size, within the JNC agreement and within its discretion.

90. In view of these considerations we concluded that we would need to have very solid grounds for taking any action with authorities and we decided to adopt a pragmatic approach: if we were to advise the Secretary of State to intervene in local authorities' decisions, it would need to be shown that such intervention was necessary in order to safeguard the interests of staff.

91. Our continuing concern throughout was that if an authority incurred relatively high costs on the salaries and fringe benefits of senior management and later found itself in financial difficulties, structures at more junior levels could suffer, resulting in otherwise avoidable redundancies. Given the subjective nature of the work and the lack of reliable comparators, it was a difficult task to assess whether authorities' senior management structures did carry this risk.

92. We obtained information from unitary authorities on their structures as they developed, examining them for any apparent anomalies which we then discussed with the authority concerned. We sought to work with authorities on an informal basis, and indeed in many cases we contacted authorities simply for the purpose of clarifying our understanding of their proposals. At that early stage our concerns were necessarily very tentative. Examples of the points we raised with unitary authorities included: apparently high numbers of senior managers either in total or relative to the population served, salaries which were higher than might be expected for the associated level of responsibility, and overall management costs which appeared to be high either in total or relative to the population served. These very informal contacts proved useful as in a number of instances our early discussions led to unitary authorities reviewing their structures and identifying scope for savings.

93. In broad terms, we found it unnecessary to contact just over one third of authorities, we had informal contacts with another third, while, with the remaining third, our concerns were more serious. Where these concerns persisted, we entered into correspondence or held formal meetings with these authorities. In most cases they either provided a justification

for the particular staffing structure being adopted or stated their intention of exercising tight control over staffing costs generally and we were thus persuaded that it would not be right to seek to intervene.

94. However in a very small number of instances, and despite such assurances, we continued to have serious concerns about the cost burden arising out of a particular structure and its potential implications for junior staff. These were cases where, in small authorities, a higher than average proportion of the budget had been allocated to senior management costs. In each case we made our views clear to the authority concerned and considered whether to draw these cases to the attention of the Secretary of State. In considering this step we recognised that our calculations had to be treated with caution for a number of reasons:

- due to the diseconomies of scale, management costs were likely to be higher, as a proportion of the budget, in smaller authorities;
 - other factors such as the authority's socio-economic position, geography, or recruitment difficulties might drive up salaries; and
 - the information we had was being constantly updated with the result that our data and calculations were indicative at best, making it impossible to be certain at any one point that a particular authority's costs were significantly in excess of the average.
95. There were also considerable constraints over the nature of the direction which we could ask the Secretary of State to issue, should we conclude that this was justified in a particular instance. If, for example, an authority had been required by us to reduce its management costs by a given amount or percentage, it could have argued, with some justification, that the reduction was subjective or even arbitrary. Similarly a requirement on an authority to remove a given post from its structure could have led to claims that such action would affect its ability to deliver services effectively.

96. In addition we were conscious, first, that intervention by the Secretary of State could have resulted in delays prejudicial to a unitary authority's preparations for reorganisation; and, secondly, that to intervene effectively we would need to do so at an early stage in the process of developing structures and appointing officers. However we could not have a full picture of all authorities' structures until the end of the appointment process, at which stage the time for effective intervention would already have passed.

97. Taking all these considerations into account we concluded that, while we had good reason for anxiety in some cases (of which we made those authorities fully aware), there were too many doubts over the quality of the information which we had available to allow us to identify any authority for public scrutiny. Without clear and incontrovertible evidence that the interests of junior staff would be jeopardised by decisions on senior

LOCAL GOVERNMENT STAFF TRANSFERRING TO OTHER BODIES

NATIONAL PARK AUTHORITIES

101. In November 1995 the Secretary of State made an order bringing the new national park authorities (NPAs) within the remit of the Commission. Our advice to NPAs focused on three areas:

- recruitment of the national park officer/head of paid service;
- salary of the national park officer/head of paid service;
- prior consideration arrangements for recruitment to other posts in the NPA.

102. We consulted on the arrangements for the appointment of the head of paid service/national park officer. The options were competition, open or ring-fenced, or direct transfer of the existing national park officer. The arguments were finely balanced but in the light of the responses to the consultation - and in particular some strong representations that a competition at this late stage in the reorganisation process would put existing national park officers at an unfair disadvantage because other comparable posts in unitary authorities would already be filled - we concluded that the post should be filled by direct transfer of the existing national park officer. In reaching this conclusion, we did, in fact, have sympathy with the view that an open competition would be preferable and, had we been considering this issue at an earlier stage in the process, we would have advised accordingly. However we felt that the stage reached in the reorganisation timetable effectively ruled this out.

103. In advising on the salaries of national park officers, we took account of representations received during the earlier consultation exercise to the effect that existing national park officers' responsibilities would not be changing significantly under the new regime and that a direct transfer could be justified on these grounds. On that basis we advised that the existing salary should not be improved without a convincing case being made for an increase. Our view was that an independent job evaluation would be the appropriate means of determining whether such evidence existed. It would enable a consistent approach to be adopted by the three park authorities and we advised accordingly. In the event Snowdonia National Park Authority found it possible, on the retirement of the existing officer, to appoint a national park officer at the previously established salary level. Brecon Beacons and Pembrokeshire Coast national park authorities appointed the existing officers on their existing salaries and confirmed that an independent job evaluation would be carried out in due course.

management structures, we were not in a position to advise the Secretary of State to intervene in local authorities' decision-making processes. As a result of all these factors, there was no instance in which we felt we could have justified advising the Secretary of State to issue a direction to an authority.

98. We informed the Secretary of State of our preliminary conclusion in August 1995. We then confirmed that the position had not changed once we had to hand a fuller picture of the senior structures and salaries for all 22 unitary authorities in December 1995. We continue to have no evidence that intervention by the Secretary of State could have been justified.

99. At the start of the exercise we had serious reservations about how far it was appropriate and feasible for the Commission to carry out its Section 40(2)(b)(ii) duty. It could be argued that our decision not to recommend intervention demonstrates that these reservations were justified and that this duty should never have been placed at our door. We have given this question careful consideration. Our conclusion is that our work in this area did have some measure of success, mainly in underlining to authorities the importance of protecting junior staff. We doubt whether it would have been feasible to conduct a comprehensive review into management structures at a time when shadow authorities were having to move very quickly to recruit their senior managers. The key factor was the very wide flexibility allowed by the JNC agreement, which itself had been properly entered into through established negotiating procedures between employers and employees.

100. We have concluded that this task, even in the restricted manner in which we carried it out, was not wholly compatible with our responsibility for working with authorities to safeguard the interests of staff during the transfer process. Furthermore we believe that it was not feasible for an organisation with our remit, size and resources to carry out this task in a comprehensive and effective way.

ACTIVITIES AFTER 1 APRIL 1996

104. Our advice on prior consideration arrangements for vacancies below national park officer level was that prior consideration should apply to all staff in the former county area or areas covered by the national park. If NPAs wished to pursue a different approach they were free to agree a local arrangement with staff and authorities in the area.

COMBINED FIRE AUTHORITIES

105. In a separate exercise to local government reorganisation, the Home Office undertook a reorganisation of fire authorities in Wales. The existing eight county-based fire authorities were merged into three combined authorities. The Welsh Office guidance invited the Commission to consider the position of support staff who worked wholly or partly for the fire service, although not under the direct management of the chief officer. We consulted county councils on the numbers of central support staff working wholly or mainly on fire authority matters. The responses indicated that the numbers were in single figures and we wrote to county councils in July 1995 suggesting that an agreement should be reached locally on whether the individuals concerned should transfer to the fire authority or to the unitary authority. The establishment of the new authorities and the transfer of staff to them was then effected through three combination orders made by the Home Secretary in December 1995.

STAFF TRANSFERRING TO THE ENVIRONMENT AGENCY

106. As a result of the establishment of the Environment Agency on 1 April 1996, a number of waste regulation staff working in district councils were to be transferred to the Agency by means of a transfer scheme prepared by the Secretary of State for Wales. There was a possibility that a small number of these individuals - who were covered by the Welsh Office's dispute mechanism relating to the Environment Agency - would also wish to make an appeal under the Provincial Councils special appeals mechanism. In October 1995 therefore we issued advice on the links between these two procedures. In the event no such appeals were lodged.

MONITORING THE TRANSFER

107. We were conscious that, while the commitment to transfer all staff who wished to be transferred offered important protection to staff, it could not guarantee their long term employment position. Accordingly in the weeks before and after 1 April 1996 we were in regular contact with authorities concerning their progress in finding posts for "unplaced" staff. In the event the local authorities informed the Commission that there were 233 unplaced staff as at 1 April 1996. At the time of writing (September 1996) this had been reduced to 21 and authorities were continuing their efforts to accommodate those staff. The redundancy compensation scheme will continue to operate until 30 September 1997; the full extent of redundancies arising from reorganisation will not, therefore, be known for some time. Nevertheless it is noteworthy that authorities have sought, as far as possible, to effect reductions in staffing levels by means other than compulsory redundancy.

PRIOR CONSIDERATION ARRANGEMENTS AFTER 1 APRIL 1996

108. In February 1996 we considered what prior consideration arrangements should apply after 1 April 1996 and issued a consultation circular inviting authorities' and others' comments on our views. We proposed that if an authority was unable to fill a vacancy from within its existing staff complement it should then invite applications from all staff of authorities in the former county area and that this arrangement should apply until 31 March 1997. Our view was that this approach would cover any remaining "unplaced" staff in neighbouring authorities while also giving staff who had been transferred to a new location, or who were receiving detriment compensation, the opportunity to apply for any vacancies which were of interest to them.

109. In the light of the responses we received we concluded that this was the right approach but we recognised that in some areas authorities might wish to continue with their existing local prior consideration arrangements, or with a modified version of them. Our circular (4/96) therefore allowed for authorities to operate local arrangements provided that they had the agreement of all authorities and staff representatives in the former county area.

110. Our circular gave authorities discretion to decide when it would be appropriate to advertise posts on an all-Wales basis and when to proceed to fully open competition. Our monitoring of these arrangements to date indicates that authorities are operating within the spirit of the agreement and seeking to give priority to local government staff in Wales where appropriate.

TRAINING AND COUNSELLING

111. Following reorganisation training and employment were now matters for the new authorities to determine in the usual way. We remained convinced of the importance of training and counselling and in May 1996 we drew authorities' attention to this in Circular 5/96.

APPEALS ARRANGEMENTS AFTER 1 APRIL 1996

112. In May 1996 we consulted authorities and other bodies on the period during which the special appeals arrangement should continue to apply. We concluded that the appeals mechanism should continue to operate for up to 18 months according to the subject of the appeal as follows:

- appeals against the staff transfer order should continue to be available for six months after 1 April;
- appeals concerning prior consideration could be made until 31 March 1997, when the prior consideration arrangements would cease to have effect; and
- an appeal mechanism concerning compensation would be required for the duration of the "prescribed period" for compensation payments relating to reorganisation, that is until 30 September 1997.

FUTURE ARRANGEMENTS

113. Since 1 April we have received decreasing numbers of queries from individuals and authorities. These have reached a sufficiently low level for the staffing levels of the Secretariat to be reduced to one part-time member of staff. We do not expect that further guidance from the Commission will be necessary in the coming months, but we will continue to be available until July 1997, should our services be required.

CONCLUSIONS

114. In a reorganisation of this nature and scale, it was vital for some mechanism to be developed to consider how the interests of staff could best be safeguarded. This was particularly so during the early stages when uncertainty and anxiety was prevalent (see Chapter Two). We believe that the Staff Commission, and its predecessor the Advisory Committee, were well placed to perform this task. We also believe that our remit - other than our duty under Section 40(2)(b)(ii) of the Act, for the reasons set out in Chapter Four - provided the right framework for us to work together with authorities and other bodies to protect staff. We regard it as beneficial to this process that our role was advisory in nature, with the Secretary of State's power of direction available as a last resort. It was necessary for us to advise the Secretary of State to use this power on no more than one occasion (paragraph 62), which we regard as a measure of the success we had in our endeavours to reach a consensus with authorities wherever possible.

115. When the Local Government (Wales) Bill was first published it was anticipated by the Welsh Office that local government staffing levels would reduce by approximately 500 as a result of reorganisation. From the earliest days and throughout the reorganisation, there were widespread fears that the number of redundancies would be significantly higher than that estimate. It is not possible at this stage to arrive at an accurate assessment of the impact reorganisation had, or will have, on local government staffing levels. We have explored this matter and drawn the following, tentative, conclusions.

116. Part III of the Local Government (Compensation for Redundancy) Regulations 1994 provided for compensation to be paid to qualifying individuals "whose loss of employment was attributable to any provision made by or under" the 1994 Act. A total of 1,640 of the staff who left local government employment prior to 1 April 1996 were eligible for compensation under this scheme; their departures have thus been clearly identified as resulting from reorganisation.

117. It is impossible to say how many of the remaining 124 staff who left on voluntary severance or voluntary early retirement terms prior to 1 April 1996, but were not covered by Part III of the Regulations, would have remained with local government had reorganisation not been implemented. We can assume, however, for the great majority, that reorganisation was a factor in their decision to leave local government, either wholly or in part. These figures give an indication of the scale of the upheaval in staffing arrangements which accompanied reorganisation. Nevertheless it is noteworthy that these reductions in staffing levels were, on the whole, achieved voluntarily and that compulsory redundancies, at this stage, have been kept to a minimum.

118. The preceding pages have described in detail how we set about fulfilling our duties

under Section 40 of the 1994 Act. In these concluding paragraphs we wish simply to draw attention to those aspects of the reorganisation process which we consider to be of particular significance.

* We believe that the commitment to transfer all staff who wished to be transferred (paragraphs 19 to 23) was fundamental to the promotion of a smooth disaggregation and transfer of staff to the new authorities. In the circumstances of the reorganisation it was, in our view, also the fairest course.

* The appeals mechanism and our guidance on prior consideration (paragraphs 57 to 80) provided an important safety net for staff who were unhappy with their assignment to a particular authority.

* Although we received a small number of formal complaints concerning selection procedures (paragraphs 53 to 56), we believe that in the majority of cases staff were treated fairly during the appointment process. It should be emphasised that the adoption of clear, transparent and agreed criteria for determining whether a job-match existed or a competition was required was crucial to achieving a fair outcome, together with the establishment of a clear and agreed mechanism for staff to appeal against shortlisting decisions.

* A related issue was that of communication with staff and trade unions. In some instances difficulties could have been avoided, and the anxieties of staff relieved, by those authorities adopting a pro-active approach to communicating with staff. At times the pace of events could make it difficult for official channels of communication to work more effectively than the unofficial channels. But this simply underlined the importance of a conscious effort being made to keep staff informed of developments, especially to explain why delays in the decision-making process had occurred. The Staff Commission was able to perform a useful role in circumstances where a breakdown in communication had occurred by drawing the concerns of staff to the attention of management and urging them to address these concerns.

119. We believe it was especially helpful to our work that the six Commissioners represented a wide spectrum of experience. With hindsight we judge that it would have been advantageous for all six to have been appointed at the outset of the task, as members of the Advisory Committee.

120. In drawing our report to a close we wish to emphasise that our work was greatly assisted by the goodwill and help that we received throughout from local government and staff representatives. We may be forgiven for restating our respect and admiration for the personnel officers; the pressures they faced should not be underestimated. Thanks are also due to the Local Government Management Board (Wales), the national and regional officers of the trade unions, the Equal Opportunities Commission and many

others whose advice was invaluable. A final and special vote of thanks is reserved for our Secretariat for their loyal and effective service - whenever extra effort was required it was given willingly and enthusiastically - and for their valuable contributions to our discussions.

GLOSSARY

AWC	Assembly of Welsh Counties
CWD	Council of Welsh Districts
Disaggregation	Process of allocating staff from authorities whose areas were being split to the successor authorities.
JNC	Joint Negotiating Committee(s) - part of the local government mechanism for reaching agreement on matters relating to pay and terms and conditions of service.
Job-matching	Process of determining whether posts in the new authorities' staffing structures provided a suitable match with the responsibilities of postholders in the old authorities.
LGMB	Local Government Management Board
NJC	National Joint Council(s) - part of the local government mechanism for reaching agreement on matters relating to pay and terms and conditions of service.
Prior consideration	The arrangement where authorities gave priority, in the first instance, to a particular group of staff when advertising and filling vacancies.
Slotting-in	Process where an authority, having determined that a job-match exists, allocates an individual to a post in the new structure without requiring a competitive interview to be held.
STO	Staff transfer order - an order made under section 42 of the 1994 Act transferring staff to the employment of the relevant successor authority.
TUPE	The Transfer of Undertakings (Protection of Employment) Regulations.
WTUC	Wales Trade Union Council
Unplaced	The term commonly used to describe an individual for whom a post in the successor authority has not yet been identified.

LIST OF COMMISSION CIRCULARS AND GUIDANCE

Date	Subject
21 October 1993	Advice to existing authorities about recruitment and related matters prior to reorganisation - Advisory Committee circular
9 May 1994	Staff transfer - Advisory Committee advice to Secretary of State
24 June 1994	Membership and role of the Staff Commission - circular 1/94
27 June 1994	Staff appointments and regradings in existing authorities in the interim period - draft circular
8 July 1994	Proposed compensation for redundancy scheme - letter to Department of the Environment
6 September 1994	Staff appointments and regradings in existing authorities in the interim period - circular 2/94
6 September 1994	Additional payments for additional responsibilities - guidance letter
16 September 1994	Staff bulletin no 1
16 November 1994	Appointment of head of paid service - draft circular
8 December 1994	Staff transfer - letter to Secretary of State
19 December 1994	Compensation for redundancy scheme - letter to Department of the Environment
3 January 1995	Prior consideration - circular 1/95
13 January 1995	Staff bulletin no 2
13 January 1995	Training - circular 2/95
20 January 1995	Proposed compensation for loss of remuneration scheme - letter to Department of the Environment

20 January 1995 Staff transfer - Parliamentary Secretary's response to the Commission's letter of 8 December

7 February 1995 Appointments: head of paid service - Commission circular

28 February 1995 Prior consideration: position of trainees - Commission guidance

1 March 1995 Appeals arrangements for local government reorganisation - draft circular

13 March 1995 Prior consideration: local agreements - circular 3/95

13 March 1995 Staff transfer process: disaggregation and appointments - Commission guidance

13 March 1995 Prior consideration: placed and unplaced staff - consultation letter

28 March 1995 Staff bulletin no 3

21 April 1995 Open competition for head of paid service posts - direction sought from the Parliamentary Secretary

27 April 1995 Open competition for head of paid service posts - Secretary of State agrees to issue direction

28 April 1995 Equality implications of local government reorganisation - Commission circulates guidance prepared by Equal Opportunities Commission

4 May 1995 Shadow authority elections are held

5 May 1995 Role of Staff Commission and guidance issued - letter to proper officers of shadow authorities

5 May 1995 Appeals arrangements for local government reorganisation - circular 4/95

5 May 1995 Head of paid service: salaries - Commission letter to shadow authorities

16 May 1995 Staff eligible for prior consideration - guidance on "placed" and "unplaced" staff

19 May 1995 Staff bulletin no 4

26 May 1995 Senior management salaries and structures - letter to Secretary of State

4 July 1995 Fire service support staff - guidance letter

9 August 1995 Senior management structures and salaries - letter to Secretary of State

25 August 1995 Training questionnaire issued

30 August 1995 Staff bulletin no 5

31 August 1995 Prior consideration: confirmation of the Commission's guidance - circular 5/95

14 September 1995 Prior consideration and the staff of the WJEC - consultation letter

15 September 1995 Recruitment and selection procedures - circular 6/95

18 September 1995 National park authorities: appointment of head of paid service - consultation letter

28 September 1995 National park authorities - guidance from Welsh Office

18 October 1995 Prior consideration and staff of the WJEC - confirmation of guidance

23 October 1995 Transfer of waste regulation staff to the Environment Agency: dispute arrangements - circular 7/95

31 October 1995 National park authorities: recruitment arrangements - Commission guidance

27 November 1995 National park authorities: salaries of head of service - Commission guidance

1 December 1995 Senior management structures and salaries - final advice to Secretary of State

6 December 1995	National park authorities: prior consideration - circular 8/95
6 December 1995	National park authorities: application of Section 40(2)(b)(ii) - circular 9/95
6 December 1995	Staff bulletin no 6
23 January 1996	Training - circular 1/96
31 January 1996	Avoiding discrimination - circular 2/96
12 February 1996	Prior consideration arrangements after 1 April 1996 - consultation circular 3/96
14 March 1996	Staff transfer no 2 order - Commission advice to the Welsh Office
26 March 1996	Prior consideration arrangements after 1 April 1996 - Commission guidance, circular 4/96
2 April 1996	Staff bulletin no 7
3 May 1996	Training - circular 5/96
13 May 1996	Duration of the provincial councils appeals arrangements - consultation circular 6/96
15th July 1996	Appeal Arrangements - Duration of the Special Provincial Councils arrangements
15th July 1996	Winding down the Commission.

Copies of the circulars and guidance letters listed above can be
obtained from

LGRG Division 1, Welsh Office, Cathays Park, Cardiff, CF13NQ.