

# **LOCAL GOVERNMENT (DEMOCRACY) (WALES) ACT 2013**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 1 - Introduction**

##### *Section 1 – Overview*

2. This section provides an overview of the key provisions of the Act and what the Act seeks to achieve. The Act has 6 Parts, 76 sections and 3 Schedules.

#### **Part 2 - Local Democracy and Boundary Commission for Wales**

##### *Section 2 – Local Democracy and Boundary Commission for Wales*

3. This section changes the name of the Local Government Boundary Commission for Wales to the Local Democracy and Boundary Commission for Wales (“the Commission”).

##### *Section 3 – Status*

4. This section makes clear that the Commission is not a Crown body.

##### *Sections 4 and 5 – Membership; Tenure*

5. These sections provide that the members of the Commission shall be the chair, deputy chair and up to three others, to be appointed on such terms and conditions as determined by the Welsh Ministers. The tenure of a member of the Commission will be set by the terms and conditions of their appointment.

##### *Sections 6 and 7 – Proceedings; Seal and validity of documents*

6. These sections set a quorum of three for meetings of the Commission and that the Commission may regulate its own procedure.
7. The Commission may also have a seal for use on documents and the use of the seal is authenticated by the signature of a member of the Commission or of another person authorised by the Commission for this purpose.

##### *Section 8 – Chief executive*

8. This section requires the Welsh Ministers to appoint, and decide on the terms and conditions of a chief executive to the Commission (as opposed to a secretary as required for the previous Commission), following consultation with the Commission. The functions of the Chief Executive will be the same as that of the previous Secretary. Prior to the appointment of a chief executive the Welsh Ministers are required to consult the Commission.

***Section 9 – Other staff***

9. This section enables the Commission to employ staff and to decide on their remuneration and terms and conditions. Prior to appointing staff and determining the remuneration, pensions, allowances and expenses payable the Commission must consult with the Welsh Ministers.

***Section 10 – Experts***

10. This enables the Commission to appoint expert advisers to assist in the exercise of their functions. Prior to appointing an expert and determining the remuneration, allowances or expenses payable the Commission must consult with the Welsh Ministers.

***Section 11 – Assistant commissioners***

11. This section allows the Commission to appoint assistant commissioners to assist in the conduct of reviews of local government areas or electoral arrangements or to chair local inquiries. Before appointing an assistant commissioner the Commission is required to consult with the Welsh Ministers. Similarly, the Commission must consult the Welsh Ministers prior to determining the remuneration or allowances payable to an assistant commissioner.

***Sections 12 to 14 – Powers; Delegation; Directions***

12. The Commission has the power to do anything which will facilitate or is conducive or incidental to the exercise of the Commission's functions. Section 12 makes clear however that the Commission is not allowed to borrow money, acquire land or property (except with Ministerial consent) or form or promote companies.
13. **Section 13** provides that the Commission may delegate its functions relating to reviews of local government areas or arrangements or conducting local inquiries to individual members or assistant commissioners, without negating the Commission's overall responsibility for the performance of these delegated functions.
14. **Section 14** provides the Welsh Ministers with a general power of direction of the Commission. The Commission must comply with any direction given by the Welsh Ministers and the Welsh Ministers may vary or revoke a direction by issuing a subsequent direction.

***Section 15 – Funding***

15. This section specifies that funding for the Commission will be provided through Welsh Minister grants. The amount of grant will be determined by the Welsh Ministers subject to any terms and conditions as specified by them.

***Section 16 – Accounting officer***

16. This section requires the Welsh Ministers to appoint an accounting officer from the Commission's staff with responsibilities specified by a direction of the Welsh Ministers, in relation to the Commission's financial arrangements.

***Sections 17 to 20 – Audit committee; Audit committee: membership; Accounts and external audit; Annual reports***

17. The Commission must establish an audit committee to keep under review their financial affairs and their corporate governance. It must report to the Commission and the Welsh Ministers. The Audit Committee must include at least two Commissioners and at least one lay member.
18. **Section 19** requires the Commission to prepare an annual statement of accounts for each financial year, the content of which must comply with any directions from Welsh

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Ministers. The statement must be sent to the Welsh Ministers and the Auditor General for Wales and must be laid, once certified by the Auditor General, before the National Assembly for Wales (“the Assembly”).

19. Before the end of November in each year, the Commission must also publish an annual report on their activities during the previous financial year, which the Welsh Ministers must also lay before the Assembly.

### **Part 3 - Arrangements for local government**

20. This part describes the types of review of local government areas and arrangements that may be conducted, and details the procedure which is to be followed in conducting a review. It also deals with the manner in which any recommendations made as a result of the review are to be implemented.

#### ***Section 21 – Duty of the Commission to monitor arrangements for local government***

21. This section outlines the general duty of the Commission to keep local government arrangements under review. In doing so, the Commission must seek to ensure that local government is effective and convenient.

#### ***Section 22 – Duty of principal councils in relation to area***

22. This section outlines that a county council or a county borough council (defined in the Act as “principal councils”) is required to keep the communities in its area and the electoral arrangements of such communities under review, and must produce a report on this matter at least once in every period of 10 years and to have regard to the Commission’s timetable of electoral reviews when deciding on the appropriate timing of the review.
23. In carrying out that duty, and when conducting any reviews under this Part, each principal council must seek to ensure that local government is effective and convenient.

#### ***Section 23 – Review of principal area boundaries***

24. This section enables the Commission, either at its own behest or if so requested by a principal council, to conduct a review of a county or county borough (defined in the Act as “principal areas”). Following a review, the Commission must make proposals to the Welsh Ministers. In their proposals, the Commission may propose such principal area change as appropriate and consequential changes to community boundaries or electoral arrangements within communities. The possible changes are defined at subsection (4).
25. In line with the duty imposed under section 21, any recommendations that the Commission makes in connection with such a review should seek to secure effective and convenient local government.

#### ***Section 24 – Review of principal areas following new town order***

26. This section outlines the process to be followed if the Welsh Ministers make a New Towns Order in accordance with the New Towns Act 1981. In such a circumstance, the Commission having received notice from the Welsh Ministers of the New Towns Order must conduct a review in line with the provisions of section 23 of the Act of any principal areas specified within the notice of the Welsh Ministers.

#### ***Section 25 – Review of community boundaries by principal council***

27. [Section 25](#) provides that a principal council may decide to conduct a community review either at its own behest or at the request of a community council or community meeting. The principal council must not however conduct a review at the request of a community

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council or a community meeting if the principal council considers that by undertaking such a review it would impede the proper exercise of its functions.

28. Following such a review, the principal council should send a report to the Commission with recommendations for any changes to community boundaries and any consequential changes to any community councils or electoral areas as a result of the recommended changes to community boundaries. In line with the duty imposed by section 22, any recommendations made by the Council must seek to ensure effective and convenient local government.
29. A principal council and the Commission may agree to the council delegating its functions of conducting community reviews to the Commission. Any such arrangement is subject to any terms and conditions agreed between the two parties.

### ***Section 26 – Review of community boundaries by the Commission***

30. This section enables the Commission to carry out a community review in certain circumstances, namely: if a principal council asks them to conduct it on their behalf; if they are not content with a report provided to them by a principal council for the reasons detailed at section 26(2), or if a principal council has failed to conduct such a review in accordance with a direction issued by the Welsh Ministers.
31. The Commission must send to the Welsh Ministers any recommendations it makes in relation to such a review, which can include changes to community boundaries and consequential changes to community councils or electoral areas. The section also describes circumstances in which the Commission can recover costs from the principal council.

### ***Section 27 – Review of preserved counties***

32. This section provides that the Commission may conduct a review of a preserved county or counties. In doing so, the Commission may recommend changes to the area of the preserved county as it deems appropriate. The Commission when considering whether changes to the area of the preserved county may be appropriate are required to have regard to the purposes for which the preserved counties are retained.
33. Preserved counties are not local authorities but are areas, largely based on the pre-1996 Welsh county authority areas, which are used for certain administrative purposes e.g. Lord Lieutenancies. Changes to local government areas may result in the need to review and change preserved county areas in the interests of administrative efficiency.

### ***Section 28 – Review of seaward boundaries***

34. [Section 28](#) enables the Commission to review a local government boundary which lies beneath the sea and does not adjoin another local government boundary, and report to the Welsh Ministers if they feel the boundary should be changed.

### ***Section 29 – Review of electoral arrangements for principal area***

35. This section places the Commission under a duty to conduct an electoral review of each principal area at least every ten years, though it could decide, either at the request of a council or at its own behest, to conduct one at any time.
36. However, no recommendations should be made or report published by the Commission in the 9 months before an ordinary council election. Following a review, the Commission must send a report to the Welsh Ministers.
37. The section also requires the Commission to send their proposed timetable for conducting electoral reviews to the Welsh Ministers.

***Section 30 – Considerations for a review of principal area electoral arrangements***

38. The Commission, when considering whether to make recommendations for changes to the electoral arrangements for a principal area, must make efforts to ensure that the number of electors represented by each councillor within a principal council is as close to the same as possible. Recommendations should also be in keeping with the need to secure effective and convenient local government, that electoral wards have recognisable boundaries and that community ties are respected.

***Sections 31 and 32 – Review of electoral arrangements for community by principal council; Review of electoral arrangements for community by the Commission***

39. These sections provide that a principal council may conduct reviews of community electoral arrangements either on its own initiative or when requested by a community council or by at least 30 electors in a community. This is to be read in line with the duty in section 22 which requires a principal council to keep its area under review.
40. The Commission (rather than the principal council) may conduct a review of the electoral arrangements for a community in certain circumstances, namely: if it is requested to conduct a review by the principal council, a community council or 30 electors within a community; if a principal council has failed to carry out a direction from the Welsh Ministers to conduct such a review. Where the Commission has conducted a review because a principal council has failed to do so, it may recover the cost from the principal council.

***Section 33 – Consideration for a review of community electoral arrangements***

41. This section provides that where a principal council or the Commission are considering making changes to the electoral arrangements for a community, regard should be given as to whether a community should be divided into wards and also the appropriate distribution of electors within those wards.

***Chapter 4 - Procedure for local government reviews***

42. This chapter details the procedure of consultation and publication of reports to be adopted for reviews.

***Section 34 – Pre-review procedure***

43. Prior to starting a review, the Commission or the principal council conducting the review must notify the mandatory consultees (listed in the section) that a review is about to take place.
44. The section also requires the Commission to advise the mandatory consultees of the procedure and methodology it is going to follow in conducting an electoral review of a principal area. In particular this will deal with its approach to determining the appropriate number of members for the council for that area.

***Section 35 – Consultation and investigation***

45. **Section 35** provides that the Commission or the principal council conducting the review (referred to in the Act as “the reviewing body”) must consult with the mandatory consultees and carry out such investigations as it considers appropriate.
46. Following the consultation process, the reviewing body must prepare and consult for between 6 and 12 weeks on a draft report, a copy of which must be made available for inspection at the offices of any principal council for the area which is under review.

### ***Section 36 – Reporting on review***

47. **Section 36** provides the procedure for reporting on a review by a reviewing body following the consultation period under section 35. Once the reviewing body has considered the representations received during the consultation period they must then prepare a further report. This section makes detailed provision regarding what the further report should contain dependent on the type of review undertaken.
48. The reviewing body must then submit the report and its recommendation to the person or body who has the power to implement the recommendations (except when the reviewing body is itself the implementing authority). It must also ensure that the report is published electronically and is available for public inspection for a period of at least 6 weeks beginning with the date of publication.
49. The reviewing body must also ensure a copy of the further report is sent to the mandatory consultees, Ordnance Survey and the Welsh Ministers. Any other person who has submitted evidence or made representations in relation to the report under section 35 of the Act must be informed of how to obtain a copy.

### ***Section 37 – Implementation by the Welsh Ministers***

50. This section provides that, on receiving a report on boundary changes from the reviewing body, Welsh Ministers may make an order either in keeping with the recommendations or modifying them. Alternatively, the Welsh Ministers could decide to take no action in light of the report.
51. There must be at least 6 weeks between the time when a report is received by the Welsh Ministers and the time when any order is made.

### ***Section 38 – Implementation of community boundary change***

52. This section provides that when the Commission receives a report of a community boundary review from a principal council, it may make an order implementing the recommendations as they stand, or with modifications agreed with the principal council. No consequential changes to electoral arrangements of the principal area may be made without the consent of the Welsh Ministers. If, however, the Commission and the principal council cannot agree on any proposed modifications, or if the Commission considers that it should not implement any of the council's recommendations, it may conduct its own review.
53. Following that review, the Commission must publish its recommendations and submit them to the Welsh Ministers.

### ***Section 39 – Implementation of community electoral arrangements change***

54. This section provides that a principal council may make an order implementing changes to electoral arrangements for a community. The changes may either be those on which the principal council had reported under section 26 or those recommended by the Commission under section 32. No consequential changes to electoral arrangements of the principal area may be made without the consent of the Welsh Ministers. In certain circumstances the Commission may request the Welsh Ministers to implement its recommendations.

### ***Section 40 – Implementation orders: consequential provision***

55. **Section 40** provides that an order made by the Welsh Ministers, the Commission or a principal council, following a review, may make such other consequential provisions on the changes being introduced as they feel necessary. This could include changing the name of an area, the assignment of existing councillors to new or altered areas and the number and distribution of councillors in a new or altered area.

***Section 41 – General consequential and transitional provision***

56. The Welsh Ministers may, under section 41, also make regulations (of general application) providing for incidental, consequential etc. matters so as to give full effect to review orders: for example, transfer of staff, property and liabilities.

***Section 42 – Transfers of staff***

57. [Section 42](#) provides that any transfers of staff must not result in a deterioration of the terms and conditions of the transferred staff.

***Section 43 – Variation and revocation of orders***

58. [Section 43](#) provides a procedure for the Welsh Ministers, the Commission or a principal council to vary or revoke a review order and to correct mistakes.

***Section 44 – Transitional agreements as to property and finance***

59. [Section 44](#) enables public bodies affected by a review to enter into an agreement with other public bodies about any transfers of property and any financial arrangements consequential on the area changes. The parties to such an agreement are required to deal with any failure to agree by arbitration.

***Section 45 – Police area change***

60. If, as part of a boundary review in accordance with section 23 of the Act, a change of police area boundaries appears desirable, the Commission may recommend that the Secretary of State makes such change by order. This circumstance would arise if a change to a county boundary resulted in part of a county being partly inside or outside a police area.
61. The Secretary of State's order can change the police area so that a new area falls within the area of a particular Police and Crime Commissioner. It would also enable the holding of a fresh election for a Commissioner if the Secretary of State so decided.

***Section 46 – Extent of seaward boundaries***

62. This section provides that communities which border the sea extend to the low water mark of the shore and that any accretion from the sea forms part of the community and county bordering on the shore.

***Section 47 – Boundary change following the alteration of water-course***

63. This section provides that Welsh Ministers may make an order to change a local government area boundary as a result of a change in water course, following consultation with the Commission.

***Section 48 – Directions and guidance relating to [Part 3](#)***

64. This section enables the Welsh Ministers to give directions to the Commission and principal councils in relation to reviews of local government area and electoral arrangements.
65. The section also requires the Commission and principal councils, when conducting reviews or implementing recommendations, to have regard to any relevant guidance that the Welsh Ministers have issued.

***Section 49 – Local inquiries***

66. This section enables either the Commission or a principal council to organise a local inquiry associated with any review they are conducting. It also enables the Welsh

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Ministers or a principal council to arrange for a local inquiry when considering making an order revoking a previous order. The person appointed to conduct the inquiry may require persons to attend or provide evidence under oath.

#### **Part 4 - Reviews of public body membership**

##### ***Section 50 – Reviews of qualifying public bodies***

67. The Welsh Ministers are enabled, following consultation, to direct the Commission to review the membership of particular public bodies. This could cover the number of members of the body and the attributes and qualifications which they should have. The power would not cover local authorities and is otherwise limited to bodies: (a) whose membership must include a member or appointee of a local authority; and (b) which exercise functions conferred by an Assembly Act.
68. Following a review, the Commission must report to the Welsh Ministers with any proposals for change.

#### **Part 5 - Other changes to local government**

##### ***Section 51 – Presiding member of principal council***

69. This section amends the Local Government Act 1972 so as to allow principal councils to appoint a “presiding member”. A presiding member would be able to carry out any of the functions of a council chairman so decided by the council. In particular this provision will enable councils who wish to separate the ceremonial and civic functions associated with the council chairman or mayor from those of presiding over meetings of the council.
70. No member of the council’s executive may be the presiding member. The term of appointment is a matter for the principal council subject to the limitation that it cannot extend past the next council election.
71. A council may also appoint a deputy presiding member who, again, must not be a member of the executive.

##### ***Sections 52 to 54 – Private Bills***

72. These sections enable a principal council to promote a Private Bill either in Parliament or the National Assembly for Wales, and enable a community and principal council to oppose a Private Bill in Parliament or the National Assembly for Wales. It prevents a principal council from promoting a local Bill which concerns the formation or alteration of a local government area or the political structure of a local authority. It prevents a local authority from paying one of its members for acting as counsel or agent as part of that process.

##### ***Sections 55 to 57 – Community council websites; Requirement to give public notices electronically; Meetings and proceedings of communities***

73. **Section 55** requires a community council to publish certain information electronically (e.g. on a website), including details of the council’s membership and business and make provision for members of the public to contact the council or its clerk electronically. The requirement to make information available is subject to normal rules on access to information.
74. A community council must have regard to any guidance issued by the Welsh Ministers in relation to this matter.
75. **Section 56** requires community councils to also publish public notices electronically (e.g. on its website).



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76. **Section 57** requires a community council to publish agendas and public reports for forthcoming meetings electronically (e.g. on its website).

***Section 58 – Registers of members’ interests***

77. This section provides that registers of interests, required to be maintained by county and county borough councils, community councils, fire and rescue authorities and national park authorities under the Local Government Act 2000, must be published and available to access electronically (e.g. on the council or authority’s website).

***Section 59 – Remote attendance at meetings of principal councils***

78. **Section 4** of the Local Government (Wales) Measure 2011 provides that the reference in any enactment to a meeting of a local authority includes members attending remotely (i.e. not being at the actual meeting place but connecting to the meeting electronically), and the standing orders of a local authority must ensure that the number of members attending remotely must not be equal or greater to those in actual attendance for the meeting to be quorate. **Section 59** amends section 4 of the Local Government (Wales) Measure 2011 so that, unless principal councils make different provision in their standing orders, at least 30% (instead of the original requirement in the Measure for at least 51%) of the total number of members at a remotely attended meeting of a council will have to be present at the main meeting place for that meeting to be quorate.

***Section 60 – Democratic services committees***

79. This section amends the Local Government (Wales) Measure 2011 so as to broaden the scope of a democratic services committee so that, if requested by the authority, they can review anything connected with the support and advice made available to elected members and their terms and conditions.

***Section 61 – Audit committees***

80. **Section 61** amends the Local Government (Wales) Measure 2011 so as to provide that an audit committee of a local authority is one to which the rules of political balance (which are set out in section 15 of the Local Government and Housing Act 1989) apply.

***Section 62 – Functions relating to payments to members***

81. **Section 62** enables the Independent Remuneration Panel (“the Panel”), when considering entitlement to a particular payment, to set a limit on the number of councillors who may receive it. This enhances the Panel’s existing power to set a limit on the proportion of councillors who may receive a particular payment.

***Section 63 – Functions relating to salaries of heads of paid service***

82. **Section 63** amends the Local Government (Wales) Measure 2011 by inserting a new section 143A. It provides the Independent Remuneration Panel with powers in relation to the salaries of the heads of paid service in principal councils and fire and rescue authorities (defined in the section as “qualifying relevant authorities”). The Panel will be able to make recommendations to an authority about that authority’s policies in relation to the salary paid to its head of paid service as well as any proposed change to that salary. In circumstances where an authority proposes a change to the salary of its head of paid service that isn’t commensurate with a change to the salaries of its other staff, that authority will have to consult the Panel about the proposal before making the change. Any relevant recommendations made by the Panel may be published by it and should be taken into account by an authority when it makes decisions in connection with the salary of its head of paid service. The Welsh Ministers may produce guidance regarding the exercise of its functions under this section to which the Panel must have regard when exercising those functions.

### ***Section 64 – Relevant authorities***

83. **Section 64** provides that the Welsh Ministers may add to the public bodies whose remuneration should be considered by the Panel. Any such additional body must be one which Welsh Ministers have responsibility for and which includes members of local authorities in its membership. This power is to be carried out by order of Welsh Ministers.

### ***Section 65 – Subsequent annual reports***

84. **Section 65** changes the date by which the Panel must produce their annual report from 31 December to the 28 February. This has the effect of reducing the time between publication of a report and its implementation the following April. The provisions will also enable the Panel to decide when its reports shall come into force and to backdate its decisions for up to three months.

### ***Section 66 – Consultation on draft reports***

85. **Section 66** provides that consultation times on draft supplementary reports, currently set at 8 weeks, would be varied to between 4 and 8 weeks.

### ***Section 67 – Publicity requirements in reports***

86. **Section 67** provides that the Panel may require local authorities to publish details of any income received by their members from specified public bodies.

### ***Section 68 – Joint standards committees***

87. **Section 68** amends section 53 of the Local Government Act 2000 (“the 2000 Act”) so that one or more relevant authorities (i.e. a county or county borough council, national park authority or a fire and rescue authority in Wales) may establish a joint standards committee. An authority considering establishing a joint standards committee must have regard to any guidance issued by the Welsh Ministers.
88. **Section 68** also amends section 54 of the 2000 Act to provide that a standards committee must, in exercising any of its functions, have regard to any relevant guidance issued by the Welsh Ministers.

### ***Section 69 – Referral of cases relating to conduct***

89. Section 73 of the Local Government Act 2000 enables the Welsh Ministers to make regulations in relation to the investigation of matters relating to the conduct of local authority members and consideration by the local authority’s standards committee. Section 69 amends section 73 of the 2000 Act to enable regulations to be made relating to the monitoring officer or standards committee of one authority being able to refer a matter to the standards committee of another authority.

## **Part 6 - Miscellaneous and general provision**

90. This Part deals with general provisions about the Act. In particular they:
- Enable the Welsh Ministers to make changes to other legislation if necessary to give effect to the provisions of this Act;
  - Explain the procedure for making items of secondary legislation under this Act;
  - Provide for the definition of terminology used throughout the Act and introduce the index of defined expressions in Schedule 3;
  - Introduce Schedules 1 and 2 which include amendments to and repeals of other legislation required to make certain provisions take effect;

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- Deal with any review by the Commission or principal council which is ongoing at the time the Act comes into force to be completed under the previous legislation and provides a saving for the regulations which are currently in force under the Local Government Act 1972 in relation to reviews to remain in force until such time as new regulations are made under the Act;
- Contains provision regarding commencement of sections of the Act;
- Provides the short title of the Act for the purposes of citation.

### ***Schedule 1***

91. **Schedule 1** includes consequential amendments arising from the main provisions of the Act and other relevant minor amendments. In particular, Schedule 1 contains an amendment to the Public Services Ombudsman (Wales) Act 2005 which adds the Commission to the listed authorities for whom the ombudsman has responsibility to investigate complaints.

### ***Schedule 2***

92. **Schedule 2** includes the repeals required to other enactments in order to give full effect to the provisions of the Act. It includes the repeal of the restriction preventing co-opted members of a committee or sub-committee from attending remotely. It also repeals the provisions of the Local Government Act 1972 relating to a principal and community council determining the pay of its chairman and vice chairman. These provisions pre-date the Local Government (Wales) Measure 2011 which confers functions on the Independent Remuneration Panel, including setting the amount an authority must pay its members.