

# LOCAL GOVERNMENT (WALES) ACT 2015

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## EXPLANATORY NOTES

### INTRODUCTION

1. These Explanatory Notes are for the Local Government (Wales) Act 2015 passed by the National Assembly for Wales on 20 October 2015 and which received Royal Assent on 25 November 2015. They have been prepared by the Department for Education and Public Services of the Welsh Government to assist the reader.
2. The Explanatory Notes should be read in conjunction with the Act. They are not meant to be a comprehensive description of the Act. Where an individual section of the Act does not require any explanation or comment, none is given.

### COMMENTARY ON SECTIONS

#### *Section 1 – Overview*

3. This section provides an overview of the key provisions of the Act.

#### *Section 2 – Main definitions*

4. This section defines the main terms used in the Act.

#### *Sections 3 to 10 – Voluntary mergers of local authorities*

5. These sections make provision for the voluntary merger of two or more principal local authorities to create a new principal local authority and the abolition of the existing authorities involved in the voluntary merger.

#### *Section 3 – Proposals for merger*

6. [Section 3](#) enables two or more principal local authorities to make a joint application to the Welsh Ministers, by 30 November 2015 or by another date specified by the Welsh Ministers through regulations, proposing that the authorities come together through voluntary merger to create a new principal local authority. The decision to make an application will have to be made by the full council of each of the local authorities making the joint application; subsection (3) means this is a function which may not be discharged by the executives of those local authorities.
7. [Section 3\(4\)](#) provides that an application under section 3(1) includes an application made to the Welsh Ministers before section 3 of the Act came into force.

#### *Section 4 – Consultation before making merger application*

8. [Section 4](#) requires principal local authorities, prior to submitting an application for merger, to consult with a range of stakeholders likely to be affected by the proposal to merge voluntarily. The stakeholders to be consulted are listed in subsection (1)(a) to (h). Consultation undertaken before section 4 came into force may satisfy the requirement of section 4(1).

### ***Section 5 – Guidance about merger applications***

9. **Section 5** concerns the power of the Welsh Ministers to issue guidance to principal local authorities in respect of a joint application for voluntary merger, including guidance in respect of objectives any proposal should be intended to achieve; guidance on matters the principal local authorities will need to consider in formulating an application; guidance on how the consultation detailed under section 4 should be carried out; and any other guidance pertinent to making an application under section 3(1). Subsection (2) requires principal local authorities to have regard to any guidance issued by the Welsh Ministers in respect of an application for a voluntary merger; subsection (3) explains that this requirement can be met by having had regard to guidance issued before this section came into force.

### ***Section 6 – Power to make merger regulations***

10. **Section 6** provides the Welsh Ministers with the power, where a joint application for voluntary early merger has been made to them, to make regulations to abolish two or more principal areas and dissolve their respective county/county borough councils and establish a new single principal area and council in their place.

### ***Section 7 – Shadow authorities***

11. **Section 7** provides that merger regulations must include provision for the establishment of a “shadow authority” (which is defined in section 2(7)), made up of all the members of the principal local authorities which submitted the joint application for voluntary merger. The merger regulations must include provision about the appointment by the shadow authority of a shadow executive, and must specify the functions of the shadow authority and shadow executive and address how these functions will be exercised during the shadow period. They must also make provision for the shadow authority and shadow executive to become the principal local authority and its executive for the “pre-election period” (which is defined in subsection (3)); “transfer date”, which is used in that definition, is itself defined in section 2(8)).
12. This means that between the time when a new principal local authority assumes responsibility for its functions (on 1 April 2018, to coincide with the start of the authority’s financial year), and the elections themselves taking place probably on the first Thursday in the following May (as to which, see section 8), the shadow authority will become the new principal local authority. This is necessary because, as noted, elections to the new principal local authority will not have occurred. So, for the initial period, the new authority will be constituted of the members who were elected to the old merging authorities, albeit the old, merging principal local authorities will have ceased to exist as separate entities, almost certainly on 31 March 2018, under the merger regulations made because of section 6(2).
13. The first ordinary elections will probably be on 7 May 2018 (the term “ordinary elections” means the election of all the councillors who will serve on the council). So, the shadow authority will be the new principal local authority from 1 April 2018 (the date for the transfer of functions) until the fourth day after the first ordinary elections (which is the normal gap after local government elections for the official handover, by virtue of section 26 of the Local Government Act 1972), whereupon the new councillors will comprise the new principal local authority and the councillors originally elected to the old, abolished authorities will stand down. This is subject to section 8(c).
14. **Section 7(2)** and (3) provide the definitions for “shadow period”, being the period from which the shadow authority and shadow executive first exercise functions under the merger regulations, until the transfer of full responsibilities on the transfer date (that is, 1 April 2018), and the “pre-election period”, discussed above.

15. [Section 7\(4\)](#) concerns the Welsh Ministers' power to issue guidance to shadow authorities and shadow executives about their functions, and requires the shadow authority and shadow executive to have regard to such guidance.

### ***Section 8 – Elections and councillors***

16. [Section 8](#) enables merger regulations to include provision to cancel ordinary elections to principal local authorities merging voluntarily and (as a result) to extend the term of office for the councillors of these authorities; provision to disapply, for a period specified in the merger regulations, the requirements in section 89 of the Local Government Act 1972 which call for a by-election to be held to fill casual vacancies (for example, a vacancy arising due to the death or resignation of a councillor) in the council for a principal local authority merging voluntarily; and provision to set the date for the first ordinary elections to the new principal local authorities and the term of office for the councillors elected through that election. The provision to disapply the requirement to fill a casual vacancy is necessary to prevent a situation whereby a by-election may need to be held just days before the abolition of the existing principal local authorities, which would be a waste of money and resources.
17. [Section 8\(d\)](#) enables merger regulations to include provision to postpone ordinary elections to community councils in the new principal local authority and to extend the terms of office of existing community councillors. The usual practice is for ordinary elections for community councils to be combined with and held at the same time as ordinary elections for principal local authorities for efficiency purposes. Section 8(d) therefore enables ordinary elections to community councils in merging authorities to be moved to coincide with the new date for ordinary elections to the new principal authority, which should save money and resources.

### ***Section 9 – Mayor and cabinet executive model authorities***

18. Where one or more of the merging principal local authorities is operating or has made proposals to operate under a mayor and cabinet executive arrangement (as to which, see Part 2 of the Local Government Act 2000), section 9(1) enables the merger regulations to include provision requiring the shadow authority to hold a referendum on whether the new principal local authority should operate a mayor and cabinet executive arrangement. Section 9(2) enables merger regulations to include provision to prevent a merging authority developing and approving proposals to operate a mayor and cabinet executive arrangement, as this may cause delay to the merger process.

### ***Section 10 – Other consequential etc. provisions***

19. [Section 10](#) enables the Welsh Ministers to include such supplementary, incidental, consequential, transitional and saving provision as they consider appropriate within the merger regulations, and to make other regulations of general application (that apply beyond merging authorities which specific merger regulations apply to) containing supplementary, incidental, consequential, transitional and saving provision for the purposes of merger regulations or to give full effect to merger regulations. The section sets out a number of specific uses of these powers, and provides that the rights and liabilities which may be transferred in accordance with these regulations include rights and liabilities under a contract of employment and that the [Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#) (TUPE) apply to a transfer of staff made under these regulations, apart from regulations 4(6) and 10.
20. Excluding TUPE regulation 4(6) means that the liability of an abolished council to be prosecuted for, convicted of and sentenced for any offence will be transferred to the new council. Without this provision any criminal liability of an abolished council under or in connection with contracts of employment transferred to the new council would disappear on 1 April 2020 when the councils are abolished. Excluding TUPE regulation 10 preserves the occupational pension rights of staff being transferred under

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or by virtue of the Act. Without this provision, the new counties would not be under a legal obligation to honour pension rights, duties or liabilities under existing contracts of employment.

21. In Wales there are three combined fire and rescue authorities (FRAs) for areas made up of the 22 principal local authority areas, and these were created by combination orders made under the Fire Services Act 1947. Under section 4 of the Fire and Rescue Act 2004 the Welsh Ministers may by order vary or revoke schemes for the combination of fire and rescue authorities. . But before doing so, section 4(6) of the 2004 Act requires the Welsh Ministers to cause an inquiry to be held into the proposed variation. Section 10(10) suspends that where the proposed changes to the scheme are a consequence of a voluntary merger. This is to prevent delays to the merger programme.
22. **Section 10(11)** enables the Welsh Ministers to, by regulation, vary merger regulations (or regulations made under section 10(11)(a) varying merger regulations) and to vary or revoke regulations of general application made under section 10(2).

### ***Sections 11 to 15 – Transition committees***

23. These sections provide for the establishment of transition committees and for their composition and functions. These provisions apply to authorities merging by voluntary merger under the Act, to authorities which merge under other legislation before or passed by the National Assembly for Wales (this is because of the definition of “merging authority” in section 2(3)(b)).

### ***Section 11 – Transition committees***

24. **Section 11** places a duty on the Welsh Ministers to make regulations to require the merging authorities to establish a transition committee (one for each proposed new principal area).

### ***Section 12 – Composition of transition committees***

25. **Section 12** makes provision for the composition of the transition committees. A transition committee is to be made up of representatives of the merging authorities. There must be an equal number of members from each merging authority on the committee, with a minimum number of 5 members per authority. The total number of members must be agreed by the merging authorities, but where an agreement cannot be reached, the Welsh Ministers will determine the size of the committee. The executive leader of each of the merging authorities must be a member of the transition committee; and where the executive leader of an authority does not have executive responsibility for finance, both the executive member responsible for finance and the executive leader must be appointed to the transition committee by the merging authority in question. A transition committee may co-opt additional persons to serve as members on the committee, but without voting rights. A merging authority’s membership of a transition committee must reflect the political balance of the merging authority, in accordance with the requirements set out in Schedule 1 to the Local Government and Housing Act 1989.

### ***Section 13 – Functions of transition committees***

26. **Section 13** makes provision for the functions of a transition committee. It requires a transition committee to advise and make recommendations to the merging authorities and to the shadow authority for the new principal area :
  - on the economic, effective and efficient transfer of functions, staff and property rights and liabilities from the merging authorities to the new principal local authority,

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- on ensuring the new principal local authority and its staff are in a position to carry out its functions effectively from the time when it assumes them; and
  - for any other purpose which the Welsh Ministers specify in directions.
27. **Section 13(2) to (4)** enables the Welsh Ministers to give a direction to one or more transition committees, requiring them to exercise their functions in accordance with the direction. A transition committee must comply with any direction given and a direction can, at any time, be revoked or varied by the Welsh Ministers by giving another direction.
28. **Section 13(5)** concerns the power of Welsh Ministers to issue guidance to transition committees on the exercise of their functions; and a transition committee must have regard to any such guidance.
29. **Section 13(6)** prevents an audit committee or an overview or scrutiny committee of a merging authority from carrying out its functions in respect of anything done by the transition committee. Transition committees will not be empowered to take decisions on policy, strategic or operational matters in respect of the new or existing authority; their roles will be advisory and to make recommendations. The relevant audit and scrutiny committees would be able to consider any decisions taken by new or existing authorities in light of advice or recommendations from the transition committees.

#### ***Section 14 – Sub-committee of transition committees***

30. **Section 14** enables a transition committee to establish one or more sub-committees to provide the transition committee with advice on matters the transition committee refers to it. The membership of a sub-committee is to be determined by the transition committee, but any appointed person who is not a member of one of the merging local authorities will not be entitled to vote on matters before the sub-committee.

#### ***Section 15 – Provision of funding, facilities and information to transition committees***

31. **Section 15** requires the merging authorities to meet the costs of the transition committee. The merging authorities must agree the apportionment of the cost between each of the merging authorities, and where an agreement cannot be reached, the Welsh Ministers will determine the proportion of cost to be borne by each authority. This section also requires the merging authorities to provide facilities, resources including staff, and information reasonably requested, to the transition committee or any sub-committee of a transition committee to enable the committee to undertake its functions.

#### ***Sections 16 to 24 – Electoral arrangements etc. for the new principal areas***

32. **Sections 16 to 24** make provision in respect of the Local Democracy and Boundary Commission for Wales (the Commission) and the conduct of initial reviews of electoral arrangements for proposed new principal areas. The purpose of an initial review is to make recommendations for the electoral arrangements for a proposed principal area. In undertaking an initial review, the Commission may (as well as making recommendations about electoral arrangements) also propose and recommend changes at a community level, but only where such changes are consequential on what is proposed or recommended for the proposed principal area's arrangements. These provisions apply in relation to authorities merging by voluntary merger under the Act and mergers given effect by other legislation. The Commission's structure and functions are set out in the Local Government (Democracy) (Wales) Act 2013 and its role is to keep all local government areas in Wales and the electoral arrangements for the principal areas under review.
33. Currently, under section 29 of the 2013 Act, the Commission can conduct reviews of the electoral arrangements of an *existing* principal area. Section 16 enables the

Welsh Ministers to direct the Commission to conduct an initial review of the electoral arrangements of a *proposed* principal area.

34. **Section 16(1)** enables Welsh Ministers to issue directions to the Commission to carry out initial reviews of a proposed principal area. Subsections (2) to (5) of section 16 provide definitions of key terms used within these sections of the Act. An “initial review” of a proposed principal area is the first such exercise of the Commission in respect of the area concerned. “Relevant consequential changes” are changes to community areas and councils within a principal area. “Electoral arrangements” refers to the number of members in a council and their distribution into electoral wards (or community wards in the case of a community council). Electoral wards may be either “single member” where it is represented by only one councillor or “multi-member” where there is more than one.

### ***Section 17 – Directions and guidance to Commission***

35. **Section 17** makes provision for the matters which must or can be addressed within a direction made under section 16. Within any such direction, the Welsh Ministers must specify the date by which the Commission must provide its report on its initial review of a proposed principal area. A direction may specify matters to which the Commission must have regard when conducting an initial review. The Welsh Ministers are also enabled to issue general directions to the Commission on carrying out initial reviews, including the order in which the Commission must carry out the individual reviews; however, before issuing a general direction, the Welsh Ministers must consult the Commission and any association which the Welsh Ministers consider to be representative of local authorities.
36. **Section 17** also provides that the Welsh Ministers may vary or revoke any direction issued to the Commission by way of a subsequent direction. It also enables the Welsh Ministers to issue a further direction under section 16 to the Commission in relation to a proposed principal area after the Commission has conducted and reported on an initial review of that proposed principal area.
37. The Commission is required to comply with a direction given to it under section 16 or 17 and must also have regard to any guidance the Welsh Ministers issue about initial reviews of proposed principal areas.

### ***Section 18 – Conduct of initial review***

38. **Section 18** makes provision for the conduct of an initial review of a proposed principal area by the Commission. When undertaking an initial review the Commission must seek to ensure effective and convenient local government, and directions and guidance issued under section 17 may specify what this means in practice.
39. In conducting an initial review, the Commission must aim to ensure that the ratio of local government electors to elected members for a proposed principal area is, as much as possible, the same in every electoral ward of the proposed principal area, resulting in each elected member representing the same number of electors. The Commission is also required to have regard to the desirability of fixing electoral ward boundaries which are and will remain easily identifiable, and of not breaking existing local ties when fixing those boundaries. Differences in the number of eligible electors and the actual number of persons registered to vote, along with any likely change in the number or distribution of local government electors (as defined in subsection (9)) within a proposed principal area that is likely to take place within 5 years of the recommendations of the report being published, must also be taken into account by the Commission.
40. If the Commission considers that “relevant consequential changes” (addressed above in relation to section 16) are appropriate in relation to communities which will be in the area of the proposed principle area, it must take account of considerations similar to those which apply in relation to its review of arrangements at the principal area level.

The considerations in respect of such consequential changes are set out in subsections (5) to (8) of section 18.

### ***Section 19 – Pre-review procedure***

41. **Section 19** requires the Commission, during the period before conducting an initial review, to make “mandatory consultees”, as defined by subsection (3), and other individuals interested in the review, aware of the direction from the Welsh Ministers to conduct the review and any other directions issued relating to the review. During the pre-review period the Commission is also required to consult the mandatory consultees on the intended procedure and methodology for the initial review, particularly in relation to the proposed method of determining the appropriate number of members of the principal local authority for the proposed principal area.

### ***Section 20 – Consultation and investigation***

42. In conducting an initial review of a proposed principal area the Commission must undertake whatever investigations it considers appropriate and prepare a report containing the proposals for the electoral arrangements of the proposed principal area, and any proposals for relevant consequential changes. The report must also contain details of the review itself.
43. The Commission is required to publish online its initial report, send it to the Welsh Ministers and the mandatory consultees, make it available for inspection in specified places during the period for representations (which must be a period of not less than 6 weeks and not more than 12 weeks), inform anyone it considers appropriate of how to obtain a copy of the report and invite representations on its proposals within that report from the Welsh Ministers, the mandatory consultees and any other person it considers appropriate.

### ***Section 21 – Reporting on initial review***

44. Following the period for representations the Commission is required to consider its proposals in light of any representations it has received, and must then prepare a further report including the recommendations for the electoral arrangements for the proposed principal area, any consequential recommendations to community boundaries and wards, details of the review and subsequent consultation, and details of any changes made to the initial report in light of any representations made to it.
45. The Commission must submit the report and its recommendations to the Welsh Ministers, publish the report online, make it available for inspection in specified places for at least 6 weeks without charge, send a copy of the report to the mandatory consultees and Ordnance Survey, and inform those persons who submitted evidence or made representations in connection with the initial report of how to obtain a copy of the report.
46. Ordinarily no recommendations are to be made or published in connection with reviews relating to electoral arrangements in the 9 months before an ordinary election. However, because the period of time during which the Commission will be conducting reviews of proposed principal areas is likely to include the period leading up to the ordinary elections of 2017, section 21(5) suspends the relevant provision of the Local Government (Democracy) (Wales) Act 2013 in relation to recommendations made by the Commission under section 21 in relation to a proposed principal area. Without this suspension, it would be extremely difficult for the Commission to carry out its review programme in good time before the first elections of Shadow Authorities.

### ***Section 22 – Implementation by Welsh Ministers***

47. **Section 22** enables the Welsh Ministers, having received a further report from the Commission, to make regulations to implement the recommendations, or a modified form of the recommendations, contained within the further report. Such regulations

may not be made until at least 6 weeks after the further report is published. If the Welsh Ministers wish to modify the recommendations before implementing them, they must consider the matters set out in section 18 and must be satisfied that the modification is appropriate. The Commission is required to provide the Welsh Ministers with any relevant information about the recommendations that they may reasonably require, and the Welsh Ministers are able to vary or revoke regulations implementing recommendations through subsequent regulations.

### ***Section 23 – Electoral regulations if no recommendations made***

48. Should the Commission fail to provide a further report including recommendations within the time limit set by the Welsh Ministers in their initial direction, section 23 enables the Welsh Ministers to make regulations setting out the electoral arrangements of a proposed principal area, and any relevant consequential changes, in the absence of recommendations from the Commission. Where such circumstances arise, the Commission must provide the Welsh Ministers with any information gathered to date in respect of the initial review. The Commission would also be required to conduct its first review of the electoral arrangements for the proposed principal area, as required by section 29 of the Local Government (Democracy) (Wales) Act 2013, as soon as possible after the first ordinary election of the council for that area, and in any event before the next elections of the council for that area.
49. The Welsh Ministers may, by subsequent regulations, vary or revoke regulations made under this section.

### ***Section 24 – Future review periods***

50. Section 29(3) of the Local Government (Democracy) (Wales) Act 2013, requires the Commission to conduct a review of the electoral arrangements of each of the principal areas at least once every 10 years, starting from the day that section came into force (which was 30 September 2013, under section 75(2)(b) of that Act). Section 24 enables the Welsh Ministers to re-set the start of the Commission's 10-year review period, so that it will run from a new date following the completion of local authority mergers.

### ***Sections 25 to 28 - Remuneration etc. arrangements for new principal local authorities***

51. [Sections 25 to 27](#) make provision in respect of the Independent Remuneration Panel for Wales (the Panel) and its functions in relation to payments to members of shadow authorities and new principal local authorities, whether established through voluntary merger or otherwise. The Panel was established in 2007 and has statutory responsibility for determining the range and level of allowances payable to elected members of principal local authorities, members of National Park Authorities, Fire and Rescue Authorities and community and town councils.
52. [Section 28](#) requires transition committees to make recommendations about the pay policy statements that the shadow authorities must prepare.

### ***Section 25 – Directions to the Independent Remuneration Panel for Wales to perform relevant functions***

53. [Section 25](#) enables the Welsh Ministers to direct the Panel to carry out its functions under sections 142 and 143 of the Local Government (Wales) Measure 2011, (which concern the payments which may or must be made to members of certain local authorities and their entitlement to pensions), in relation to members of a shadow authority, and members of a proposed principal local authority for the first financial year of its operation.
54. In making determinations about payments to members of shadow authorities, section 25(4)(a) has the effect of requiring the Panel to take into account the financial



impact of doing so on the shadow authorities themselves; a similar consideration will apply to making determinations for new principal local authorities.

55. **Section 25(4)(b)** has the effect that the Panel will be required to impose requirements to avoid the duplication of payments to those who are members of more than one authority at the same time (such as being members of a merging authority and of the related shadow authority at the same time).
56. In the case of a voluntary merger, the new principal local authority will come into being on 1 April 2018. Under regulations made under section 7(1)(f), the members of the shadow authority will become the members of the new principal local authority for the first few weeks of its existence, exercising the functions of that new authority. Following the first elections to the new authority (probably to be held in May 2018), a new body of elected members will take over, and the members inherited from the shadow authority will stand down. Subsection 25(5) addresses this by enabling the Panel, in making determinations for the first financial year of the new authority, to make different determinations for the periods before and after the first set of elections.

### ***Section 26 – Reports of Panel***

57. **Section 26** requires the Panel to include its first determinations on pay and pensions for members of a new principal local authority in the annual report of the Panel relating to the first financial year of the authority. Subsection (1) refers to section 146(3) of the Local Government (Wales) Measure 2011; this means that the Panel must include in the report its determinations on payments to members of shadow authorities for official business and for family absence (this is addressed in section 142(2) to (4) of the 2011 Measure). The Panel must also include its determinations on the members of an authority to whom, or in respect of whom, pensions will be payable.
58. The matters relating to members of a shadow authority may be included in either an annual or supplementary report. However, if they are included in a supplementary report, it must be published no later than 6 weeks before the shadow authority is established or elected.

### ***Section 27 - Directions and guidance to Panel***

59. **Section 27** provides that a direction under section 25 may be varied or revoked by a subsequent direction, and requires the Panel to comply with any direction given by the Welsh Ministers under section 25. It also addresses the Welsh Ministers' power to issue guidance to the Panel about exercising its functions under sections 25 and 26, and requires the Panel to have regard to any such guidance.

### ***Section 28 - Pay policy statements***

60. **Section 28** requires a shadow authority to prepare and approve a pay policy statement (as provided for in sections 38 and 39 of the Localism Act 2011) for the period set out in subsection (3). The purpose is to ensure the shadow authority has in place a public statement which articulates the authority's policies on a range of issues relating to the pay of its future workforce, particularly its chief officers (addressed below) and its lowest paid employees. To assist the shadow authority, subsection (1) requires a transition committee to publish recommendations for the shadow authority on the pay policy statement to be prepared by the shadow authority, no later than 42 days before the day the shadow authority is established or elected. Shadow authorities are prohibited from appointing a chief officer until the pay policy statement for the period mentioned in subsection (3)(a) has been prepared and approved.
61. The term "chief officer" has the same meaning as in section 43(2) of the Localism Act 2011 and covers the following officers of a principal local authority:

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- the head of paid service (designated under section 4(1) of the Local Government and Housing Act 1989 (“the 1989 Act”))
  - a monitoring officer (designated under section 5(1) of the 1989 Act)
  - a statutory chief officer mentioned in section 2(6) of the 1989 Act, i.e.:
    - director of children’s services
    - director of public health
    - chief education officer
    - director of social services
    - officer responsible for the administration of the authority’s financial affairs
  - a non-statutory chief officer mentioned in section 2(7) of the 1989 Act, i.e.:
    - a person for whom the head of paid service is directly responsible
    - a person who, as respects all or most of their duties, is required to report directly or is directly accountable to the head of paid service
    - any person who, as respects all or most of their duties, is required to report directly or is directly accountable to the local authority themselves or any committee or sub-committee of the authority
  - a deputy chief officer mentioned in section 2(8) of the 1989 Act, i.e. a person who, as respects all or most of their duties, is required to report directly or is directly accountable to one or more of the statutory or non-statutory chief officers. This does not include a person whose duties are solely secretarial or clerical or otherwise in the nature of support services.
62. Subsection (6) concerns the Welsh Ministers’ power to issue guidance to transition committees and shadow authorities in respect of the performance of their duties under this section, and shadow authorities and transition committees must have regard to any such guidance when performing those duties.

### ***Sections 29 to 36 – Restraints on transactions and recruitment etc. by merging authorities***

63. **Sections 29 to 36** provide the Welsh Ministers with powers to restrain and control certain activities of merging local authorities. These provisions apply to authorities merging by voluntary merger under the Act, and to mergers given effect by other legislation before or passed by the National Assembly for Wales (this is because of the definition of “merging authority” in section 2(3)(b)).

### ***Section 29(1) – Directions in relation to restricted activities***

64. Under section 29(1) the Welsh Ministers may direct a merging authority not to undertake a “restricted activity” without either considering the opinion, or obtaining the written consent, of a person specified in the direction. The persons that may be specified are such authorities or persons as the Welsh Ministers consider appropriate, which may include the Welsh Ministers themselves, transition committees and shadow authorities (section 30(3)).
65. **Section 29(2)**, describes the restricted activities in respect of which opinion/consent directions can be issued:
- the selling or buying of land, interests in land, or granting an option to buy land or interests in land (threshold – above £150,000);

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- entering into contracts or agreements whose period extends, or could be extended, beyond the transfer date (threshold – above £500,000 if a capital contract; all other contracts £150,000);
  - making certain acquisitions of share or loan capital (threshold – above £500,000);
  - giving a grant or other financial assistance (threshold – above £150,000);
  - making a loan whose period extends, or could be extended, beyond the transfer date (threshold – above £150,000);
  - including an amount of reserves in the calculation of its budget;
  - starting the recruitment of a non-statutory chief officer or deputy chief officer.
66. ‘Relevant contract or agreement’ is defined as including a framework agreement under the [Public Contracts Regulations 2006 \(SI 2006/5\)](#); and a capital contract is one where the consideration payable by the authority in respect of the contract is capital expenditure for the purposes of the Local Government Act 2003 (section 34(3) and (4)).
67. Whilst section 34 sets out the minimum thresholds over and above which the Welsh Ministers may issue directions in relation to restricted activities, any direction issued by the Welsh Ministers will set the actual threshold; this could be different from the minimum. Section 35 sets out how to determine whether the financial thresholds have been exceeded and also enables the Welsh Ministers to amend the current thresholds.
68. [Section 29\(5\)](#) requires a merging authority to provide details of a restricted activity to the person specified in a direction, and section 29(6) requires a merging authority to publish its reasons for determining to proceed with a restricted activity when the person specified in a direction has given the opinion that it would not be appropriate for the merging authority to do so.
69. [Section 30\(2\)](#) enables directions under section 29(1) to be issued in relation to a single merging authority, two or more specified authorities, or authorities of a specified description. Similarly, section 30(4) enables the Welsh Ministers to specify that different persons are to provide an opinion/consent in relation to different matters or in relation to different merging authorities or descriptions of authorities. Directions can also provide for different requirements in relation to the same restricted activities of differing values; for example, land purchases of a lower value may require the consent of a shadow authority whereas higher value purchases may require the consent of the Welsh Ministers.
70. In relation to reserves section 31 allows for a direction issued under section 29(1) to permit the inclusion of specified descriptions of reserves, or reserves of up to a specified threshold, in a calculation of the budget requirement without needing the opinion/consent of a specified person. This is intended to enable the Welsh Ministers to exercise control over the appropriate use of reserves, whilst stopping short of preventing merging authorities from using these monies.
71. The consequences of failing to comply with a direction issued in relation to a restricted activity are set out within section 33. A contract or agreement entered into will be unenforceable; a land transaction or capital acquisition will be void, any grant or other financial assistance or a relevant loan will be repayable, and the use of unauthorised reserves in setting a budget requirement will be treated as though the budget calculation had not been made thereby preventing the merging authority from setting and collecting its council tax.

***Section 29(3) – Directions in relation to the appointment/designation to restricted posts***

72. **Section 29(3)** enables the Welsh Ministers to direct merging authorities to comply with specified requirements when seeking to appoint or designate persons to restricted posts, i.e., head of paid service, monitoring officer and statutory chief officer. The specified requirements may relate to matters such as the remuneration to be paid or the duration of the appointment. If a direction under section 29(3) has been issued, a merging authority is required to provide the Welsh Ministers with details of any proposal to appoint or designate a person to the post covered by the direction (section 29(5)(b)).
73. **Section 32** enables directions under section 29(3) to be given in respect of a single merging authority, two or more specified authorities, and authorities of a specified description, and a direction may specify different requirements in relation to different posts. Failure to comply with a direction issued under section 29(3) will render the contract of employment (or a contract for services) entered into unenforceable (section 33(2)).

***Section 36 - Guidance***

74. **Section 36** concerns the Welsh Ministers' power to issue guidance in relation to the operation of the opinion/consent regime set out within sections 29 to 35, and merging authorities and specified persons must have regard to any guidance issued.

***Sections 37 and 38 – Information requirements***

75. **Section 37** enables the Welsh Ministers to require merging authorities to provide them with any information which the Welsh Ministers consider appropriate for the purpose of giving effect to the transfer of functions of the merging authority to the new principal local authority. Section 38 allows, for the same purpose, the Welsh Ministers to require a merging authority to share information with other relevant bodies - the other authorities involved in the merger, the appropriate transition committee and the appropriate shadow authority.

***Section 39 – Temporary extension of functions of Panel relating to heads of paid service to chief officers***

76. **Section 39** extends the application of Section 143A of the Local Government (Wales) Measure 2011, which applies in relation to the salaries of heads of paid service, to cover all chief officers of all principal local authorities in Wales until 31 March 2020.
77. Thus, the Independent Remuneration Panel will be able to make recommendations in relation to any policy, outlined in an authority's pay policy statement, relating to the salary of an authority's chief officer and any proposed change to the salary of a chief officer; and the authority must have regard to any such recommendation from the Panel. In addition, a local authority will be required to consult the Panel about any proposed change to the salary of a chief officer which is not commensurate with a change to the salaries of the authority's other staff. The authority must have regard to any recommendation received from the Panel when deciding whether or not to proceed with the change. The section also addresses the Welsh Ministers' power to issue guidance to the Panel in respect of exercising its extended functions, and the Panel is required to have regard to any such guidance.

***Section 40 – Changes to duty to have regard to Panel recommendations about salaries***

78. **Section 40** amends section 143A of the Local Government (Wales) Measure 2011. That section required principal local authorities, among other authorities, to consult the Panel, and have regard to any recommendation made by the Panel, before making a

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change to the salary of its head of paid service which was not commensurate with a change to the salary of the authority's other staff.

79. The amended section 143A will enable a principal local authority that has consulted the Panel about a proposed reduction in salary payable to its head of paid service to implement the reduction in advance of receiving a recommendation regarding the change. But such a reduction in salary may be made only if the contract under which the salary is payable does not prevent the authority from changing the salary following the Panel's recommendation.
80. Once a recommendation has been received from the Panel, the authority will have to reconsider the salary, having regard to the Panel's recommendation. The principal authority must notify the Welsh Ministers of any decision they reach in relation to a recommendation from the Panel; and the Welsh Ministers, if they feel the decision is not in keeping with the Panel's recommendation, may direct the authority to reconsider its decision.

***Section 41 – Panel membership***

81. **Section 41** amends paragraph 1 of Schedule 2 to the Local Government (Wales) Measure 2011 to enable the Welsh Ministers to appoint between 3 and 7 members to the Independent Remuneration Panel. This is intended to provide flexibility as to the number of Panel members (currently 5) in order to manage and take on the extra responsibilities required by the Act. It also makes clear that employees of local authorities are not eligible to be members of the Panel.

***Section 42 – Survey of councillors and unsuccessful candidates for election as councillors***

82. This section amends section 1 of the Local Government (Wales) Measure 2011, a duty of principal local authorities to conduct a survey of councillors and unsuccessful candidates for election as councillors. It allows local authorities to arrange for the survey to be conducted by a third party, to permit the survey to be conducted entirely after an election or by asking candidates to answer questions before the election and collating the information afterwards. It also removes the requirement on local authorities to arrange for information to be provided anonymously.

***Section 43 – Proposal submitted before commencement of Part 3 of Local Government (Democracy) (Wales) Act 2013***

83. This section amends section 74(2) of the Local Government (Democracy) (Wales) Act 2013 which saves Part 4 of the Local Government Act 1972. The 2013 Act allowed reviews by the Commission being conducted under the procedures provided in the 1972 Act at the time of enactment to be continued in accord with those provisions. This section will allow the Welsh Ministers to consider wholly completed reports made under 1972 procedures that were submitted to them by the Local Government Boundary Commission for Wales before the enactment of the 2013 Act.

***Section 44 – Regulations***

84. This section provides that any power to make regulations conferred on the Welsh Ministers under the Act is exercisable by statutory instrument.
85. Merger regulations, regulations of general application relating to voluntary mergers, and regulations requiring the establishing of transition committees may not be made unless a draft of the statutory instrument containing the regulations is laid before and approved by the National Assembly for Wales.
86. Regulations to amend the start date for the Local Democracy and Boundary Commission for Wales's 10-yearly review period for electoral arrangements of

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principal areas and to amend the thresholds for transactions covered by the opinion/consent regime involving the Welsh Ministers and other specified persons will be subject to the negative resolution procedure of the National Assembly for Wales.

**Section 46 - Commencement**

87. This section provides for sections 25 to 28 and 37 to 43 to come into force two months after the Act receives Royal Assent and for all other provisions to come into force on the day following receipt of Royal Assent.

**RECORD OF PROCEEDINGS IN NATIONAL ASSEMBLY FOR WALES**

88. The following table sets out the dates for each stage of the Act's passage through the National Assembly for Wales. The Record of Proceedings and further information on the passage of this Act can be found on the National Assembly for Wales' website at:

<http://senedd.assembly.wales/mgIssueHistoryHome.aspx?IIId=11809>

<i>Stage</i>	<i>Date</i>
Introduced	26 January 2015
Stage 1 - Debate	19 May 2015
Stage 2 Scrutiny Committee – consideration of amendments	24 June 2015
Stage 3 Plenary - consideration of amendments	29 September 2015
Stage 4 Approved by the Assembly	20 October 2015
Royal Assent	25 November 2015