

LOCAL GOVERNMENT (WALES) MEASURE 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 9 – Collaboration and Amalgamation

Section 161 - Guidance about collaboration between Welsh improvement authorities

187. Amends Part 1 of the Local Government (Wales) Measure 2009 to allow the Welsh Ministers to issue comprehensive statutory guidance on all aspects of local authorities' powers and duties under that Measure.

Section 162 – Power to make an amalgamation order

188. Enables Welsh Ministers by order to amalgamate two or three (and no more) local authorities to create a single new local government area.
189. Before making an amalgamation order, the Welsh Ministers must be satisfied that effective local government is not likely to be achieved in at least one of the local government areas to be amalgamated.
190. In reaching their conclusion that amalgamation is necessary, the Welsh Ministers must consider whether effective local government could be achieved in the local authorities concerned by the exercise of the powers already conferred on those authorities and on the Welsh Ministers under specified provisions in the 2009 Measure.
191. The Welsh Ministers must therefore be satisfied that exercise of the following powers is unlikely to achieve effective local government:
- i. Section 9 of the 2009 Measure (powers to collaborate). This section confers on Welsh improvement authorities (which includes local authorities) powers to enable them to collaborate with each other and with other bodies, for the purpose of discharging or facilitating the discharge of the duties under section 2(1) of the 2009 Measure (general duty to make arrangements to secure continuous improvement in the exercise of their functions). Section 3(2) of the 2009 Measure requires a Welsh improvement authority, for each financial year, to set itself improvement objectives. These are objectives for improving the exercise of particular functions of the authority and section 8(7) of the 2009 Measure specifies that a Welsh improvement authority must make arrangements to exercise its functions so that any performance standards are met.
 - ii. Section 28 of the 2009 Measure (support for Welsh Improvement Authorities). This section empowers the Welsh Ministers to do anything they consider likely to assist a Welsh improvement authority to comply with the requirements of Part 1 of the 2009 Measure (Local Government Improvement). It also requires the Welsh Ministers to consider offering such support if requested to do so; and (unless they are requested) to consult the relevant local authorities and others before providing

support. It does not allow the Welsh Ministers to compel or direct a local authority or any other organisation to do anything.

- iii. Section 29 of the 2009 Measure (powers of direction). This section contains powers for the Welsh Ministers to intervene in and direct a local authority which is failing, or is at risk of failing, to comply with its duties in Part 1 of the 2009 Measure (essentially, duties to make arrangements to secure improvement).
 - iv. Section 30 of the 2009 Measure (powers of direction: collaboration arrangements). This section permits the Welsh Ministers to direct a Welsh improvement authority which may not itself be failing (or be at risk of failing) to collaborate with one that is.
 - v. Section 31 of the 2009 Measure (power of Welsh Ministers to modify enactments and confer new powers). This section provides Welsh Ministers with a power (by order) to make provision to modify or exclude the application of enactments which apply to Welsh improvement authorities, and to confer new powers on such authorities. The Welsh Ministers may do so only if they are satisfied that such an enactment prevents or obstructs a Welsh improvement authority from complying with the provisions of Part 1 of the 2009 Measure, or that conferring a new power would facilitate such compliance.
192. The Welsh Ministers will have to demonstrate that they are satisfied that exercise of the above powers is unlikely to achieve effective local government, and that an amalgamation would be likely to do so. Therefore, having first been satisfied that effective local government is not likely to be achieved by the exercise of powers under the 2009 Measure, it is only then that the Welsh Ministers may, if they are satisfied that it is necessary to achieve local government, make an amalgamation order.
193. The Welsh Ministers will have to explain a proposal for amalgamation in the documentation required under section 169 (see below); the explanation will have to demonstrate how the Welsh Ministers reached their conclusion.
194. [Section 162](#) also requires an amalgamation order to cover various issues fundamental to an amalgamation and the creation of a new authority, including abolition of the existing areas, the creation of the new area, its name, its designation as a county or county borough, the establishment of the new local authority as a county, or county borough, council and the winding up and dissolution of the councils of the existing areas.

Section 163 – Electoral matters

195. Enables the Welsh Ministers, when making an amalgamation order, to make provision in that order for the election of the council of the new local authority. The provision would include the power to cancel any elections scheduled for the authorities to be abolished.
196. If the election of the new authority had to take place on a day other than that scheduled for the ordinary local government elections and community council elections were also scheduled for that day in the areas concerned, the Welsh Ministers would be able to cancel the community council elections and order them to be held on another day (for example to coincide with the first elections to the new authority).
197. The amendment provides for a “shadow” period and the establishment of a shadow authority and shadow executive to make the necessary preparations for the new authority before it comes formally into being.

Section 164 – Requirement to hold a referendum involving an elected mayor

198. Requires the Welsh Ministers, when making an amalgamation order, to require the shadow authority for the new local government area to hold a referendum on whether the new authority (when it comes into being formally) should operate the elected mayor

and cabinet form of executive arrangements. The requirement to hold such a referendum will apply only where at least one of the authorities to be amalgamated is already operating with an elected mayor and cabinet executive.

Section 165 – Power to direct a referendum involving an elected mayor

199. Enables the Welsh Ministers to make regulations by which they may direct the shadow authority of a new local government area to hold a referendum on whether or not the new local authority should operate the elected mayor and cabinet form of executive arrangements.
200. The circumstances where this power might be invoked would be where the residents of one of the local authorities to be amalgamated had voted in a referendum in favour of having an elected mayor, but the election of the mayor had not yet been held. The power will enable the Welsh Ministers to extend the procedure for introducing an elected mayor over the whole of the new local government area.

Section 166 – Supplementary, incidental, consequential, transitional and saving provision

201. Enables the Welsh Ministers to make supplementary, incidental, consequential, transitional and saving provision in connection with an amalgamation order.
202. This section will enable the Welsh Ministers to make provision in an amalgamation order to address other key issues such as the transfers of staff, properties, liabilities and rights and any other matter arising out of the amalgamation. It may be impractical to try and capture all of these details in the amalgamation order, so the section also enables the Welsh Ministers to make regulations to cover such provision.

Section 167 – Review of electoral arrangements

203. Enables the Welsh Ministers to direct the Welsh Commission to undertake a review of the electoral arrangements for the new local government area.
204. The provisions introduced by section 163 enable the Welsh Ministers to specify the initial electoral arrangements for a new authority in the amalgamation order.
205. In most cases the amalgamation order would be made sufficiently in advance of the scheduled date of the first elections for the electoral arrangements to have been reviewed by the Welsh Commission. A review can take between 12 and 18 months, so if an amalgamation order is close to the scheduled date of elections there may not be time for the Commission to complete the review before the first elections.
206. In these circumstances, section 163 enables the Welsh Ministers to determine the electoral arrangements to be used for the first elections. Ministers would seek out informed opinion in doing so; the arrangements would then be subject to review by the Welsh Commission as soon as possible after the first elections. This is what happened for the first elections to the new authorities created by the Local Government (Wales) Act 1994.

Section 168 – Amendment to the Local Government Act 1972

207. Amends provisions in the Local Government Act 1972 (the “1972 Act”) which govern the procedure to be followed by the Welsh Commission when undertaking a review of electoral arrangements. This will ensure that the usual procedures are followed in the event of the Commission undertaking a review of a new local government area under direction from the Welsh Ministers following an amalgamation order.
208. Subsection (5) also amends section 68(1) of the 1972 Act so the provisions of section 68 (which concerns transitional agreements with respect to property and finance in respect of those public bodies affected by the alteration, abolition or constitution of any area

by an order under Part IV of the 1972 Act) also apply in the event of an amalgamation order.

Section 169 – Procedure applicable to an amalgamation order

209. Requires that an amalgamation order will be subject to the Assembly's super-affirmative resolution procedure. The section sets out each step in the procedure.
210. Once the Welsh Ministers have announced that they propose to amalgamate two or three local authorities, they must consult on their proposals. The consultees must include: the county and county borough councils for the areas to be amalgamated; the community and town councils in the areas concerned; and such other persons as are likely to be affected by the proposals.
211. Following the consultation, if the Welsh Ministers wish to proceed with the proposals, they must lay before the Assembly a document which provides an explanation for the proposals, gives details of the consultation and presents a draft order giving effect to the proposals.
212. The document has to lay before the Assembly for no less than 60 days – during which time anyone with an interest in the proposals may make representations and Assembly committees may take up the opportunity to call in the proposals for consideration.
213. The final draft order may then be laid before the Assembly, accompanied by a statement which sets out what representations have been received since the first draft order was laid and what changes, if any, have been made in the final draft order.
214. The final draft order must be approved by the Assembly, by simple majority of those AMs voting.

Section 170 – Correction of orders

215. Enables the Welsh Ministers, by order, to correct an error made in an amalgamation order.

Section 171 – Interpretation

216. Provides definitions of certain terminology used in the new sections.