

# **LOCAL GOVERNMENT (WALES) MEASURE 2011**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes relate to the Local Government (Wales) Measure 2011 as passed by the National Assembly for Wales on 15 March 2011 and approved by Her Majesty in Council on 10 May 2011.
2. They have been prepared by the Welsh Assembly Government's Department for Social Justice and Local Government in order to assist the reader of the proposed Measure and to help inform debate on it. They do not form part of the draft Measure and have not been endorsed by the National Assembly for Wales.
3. The Explanatory Notes should be read in conjunction with the proposed Measure. They are not, and are not meant to be, a comprehensive description of the Measure. So where a section or part of a section does not seem to require any explanation or comment, none is given.
4. There are 10 parts to the Explanatory Notes:
  - Parts 1-2 – Strengthening local democracy; Family absence for members of local authorities;
  - Parts 3-5 – Governance arrangements, changes to executive arrangements and discharge of functions by committees and councillors;
  - Part 6 – Overview and Scrutiny;
  - Part 7 – Communities and community councils;
  - Part 8 – Members: Payment and Pensions;
  - Part 9 – Collaboration and Amalgamation;
  - Part 10 – General.
5. The powers to make such a Measure are contained in Matters 12.1 and 12.5 to 12.17 of Schedule 5 to the Government of Wales Act 2006.
6. The following terms are used in these Notes:
  - Principal council – to refer to a county or county borough council in Wales;
  - Community council – to refer to a community or town council in Wales;
  - The 1972 Act – The Local Government Act 1972;
  - The 2000 Act – The Local Government Act 2000;
  - The 2009 Measure – The Local Government (Wales) Measure 2009;
  - The Welsh Commission – the Local Government Boundary Commission for Wales.

## **COMMENTARY ON SECTIONS**

### **Part 1 – Strengthening local democracy**

#### ***Section 1 - Duty to conduct a survey***

7. Requires each principal council in Wales to conduct a survey of unsuccessful candidates who have stood for election as councillors at ordinary elections to principal and community councils in Wales (normally held concurrently every four years), and also of those persons who have been successfully elected as councillors at these elections.
8. The survey is intended to cover various issues and help inform policy makers about the success or otherwise of initiatives to encourage a wider range of persons to stand for election to councils. The survey questions, the survey form and the manner of collating the information will be prescribed in regulations to be made by the Welsh Ministers.
9. The local authority undertaking the survey must ensure that councillors and candidates are able to provide the information anonymously; councillors and candidates are under no obligation to respond to the survey.

#### ***Section 2 – Completion of a survey and publication of information***

10. Requires local authorities to complete the survey and to have provided the collated information to the Welsh Ministers within six months of the date of the elections to which the survey relates. The local authorities may publish the information they have collated.
11. The Welsh Ministers must collate the information received and publish it within twelve months of the date of the elections to which the survey relates. The Welsh Ministers may share the information as received from the local authorities (i.e. before any further collation by the Welsh Ministers) with any representative body of local government in Wales.
12. In publishing or sharing any survey information, the Welsh Ministers and a local authority must ensure that no survey contributors are named or could be identified in any way.

#### ***Section 3 – Guidance about surveys***

13. Empowers the Welsh Ministers to issue guidance about surveys and requires local authorities to have regard to that guidance.

#### ***Section 4 – Remote attendance at meetings***

14. Has the effect of expanding a reference in any enactment (including contained in the Measure and in subordinate legislation) to a meeting of a local authority to include members of a local authority who are in remote attendance providing all the conditions, which are set out in subsection (3) are met.
15. The standing orders of a local authority must ensure that, in effect, the number of members in actual attendance (i.e. who is attending the meeting at the place where the meeting is held) are greater in number than those in remote attendance. In addition, the local authority may make other standing orders about remote attendance.
16. The change is intended to introduce more flexibility for meeting arrangements to accommodate the needs of councillors from more diverse backgrounds.
17. Local authorities must have regard to guidance which the Welsh Ministers may issue on remote attendance.

***Section 5 – Annual reports by members of a local authority***

18. Requires a local authority to make arrangements to publish annual reports by its members and by members of its executive upon their activities pursuant to either or both roles in the year to which the report relates.
19. The arrangements made by the authority may include conditions as to the content of a report that must be satisfied by the person making it and the authority must publicise those arrangements. Local authorities must have regard to guidance which the Welsh Ministers may issue on annual reports.

***Section 6 – Timing of council meetings***

20. Empowers the Welsh Ministers to issue guidance about the timing of meetings of a local authority (including meetings of any committee or sub-committee) with a view to introducing more flexible arrangements to accommodate councillors from more diverse backgrounds. It requires local authorities to have regard to that guidance.

***Section 7 – Training and development of members of a local authority***

21. Places a duty on principal councils to secure the provision of reasonable training and development opportunities for their members. Each principal council must make available to its members an annual review of their training and development needs, including an opportunity for an interview with a person considered suitably qualified to advise upon the same. Local authorities must have regard to guidance which the Welsh Ministers may issue on these matters.

***Section 8 – Head of democratic services***

22. Requires the Democratic Services Committee of each principal council to designate one of the authority's officers to be the Head of Democratic Services ("HDS"), but its head of paid service, monitoring officer or chief finance officer cannot be designated in this respect.
23. The HDS may arrange for the discharge of democratic services functions by staff and the HDS must be provided with such staff, accommodation and other resources as are, in the opinion of the HDS, sufficient to allow their functions to be discharged.
24. The purpose of the post is to ensure that councillors outside the executive are provided with sufficient support to enable them to carry out their duties effectively, with the necessary administrative and research provision.

***Section 9 – Democratic services functions***

25. Sets out the functions that the Head of Democratic Services is charged with, which include:-
  - a) providing support and advice to the authority in relation to its meetings;
  - b) providing support and advice to committees (including joint and sub-committees, but excluding overview and scrutiny committee and the democratic services committee);
  - c) promoting the role of the authority's overview and scrutiny committee/s;
  - d) providing support and advice to the authority's overview and scrutiny committee/s and the members of the same, and similarly to the authority's democratic services committee;
  - e) providing support and advice in relation to the functions of the authority's overview and scrutiny committee/s to the members of authority, members of the executive and officers of the authority;

- f) providing support and advice to members of the authority in carrying out their role as a member of the authority. This does not extend to support and advice to a member in discharging his/her functions as a member of the executive (save for those functions captured by (e) above), and/or advice about how the authority's functions should be, or should have been, exercised in relation to a matter under consideration/to be considered at a meeting or committee of the authority (including joint or sub-committee); and
  - g) making reports and recommendation in respect of staffing issues in relation to the discharge of democratic services functions.
26. Other functions of the HDS may be prescribed in regulation by the Welsh Ministers; such subordinate legislation to follow the affirmative procedure. "Advice" in (a) and (b) above does not include advice about whether or how the authority's function should be, or should have been, exercised. Nothing in this section affects the duty of the authority's head of paid service.

### ***Section 10 – Duty to adopt standing orders about management of staff***

27. Enables the Welsh Ministers to make regulations requiring local authorities to incorporate in standing orders prescribed provisions relating to the management of staff provided to the HDS and other modifications of the authority's standing orders relating to the management of staff. The regulations made by the Welsh Ministers could not cover the appointment, dismissal or disciplining of the staff referred to.

### ***Section 11 – Local authorities to appoint democratic services committees***

28. Requires local authorities to appoint a committee of the council to designate the Head of Democratic Services, oversee the work of Democratic Services, ensure that the work is adequately resourced and report to the full council accordingly.

### ***Section 12 - Membership***

29. Sets out the membership of the democratic services committee. Membership of the committee is limited to councillors (no co-opted members), only one member of the council's executive may be a member, and the leader of the council executive may not be a committee member. The chair may not be a member of the executive group (save in authorities where all political groups were represented on the authority's executive in which case the chair may not be a member of the executive). The committee membership must reflect the political balance on the full council in line with section 15 of the Local Government and Housing Act 1989.

### ***Section 13 – Sub-committees***

30. Allows the democratic services committee to establish sub-committees, which may discharge its functions.

### ***Section 14 – Proceedings etc***

31. Sets out provisions governing the proceedings of democratic services committees, including: that the chair should be appointed by the full council; the chair must not be a member of a group which forms part of the council's executive, except where all groups are represented on the executive (in which case the chair must not be a member of the executive); the chairs of any sub-committees should be appointed by the democratic services committee; that there are no restrictions on voting for members of the committee or sub-committees; that the committee (and a sub-committee) may call witnesses (who will be under a duty to attend if they are members or officers of the authority, but a witness of any description will not be obliged to answer any question which they would be entitled to refuse to answer in, or in connection with, court

proceedings in England and Wales); and that committee (and sub-committee) meetings, papers and minutes will be subject to the requirements regarding access, publication and inspection as are set out in Part VA of the 1972 Act.

### ***Section 15 – Frequency of meetings***

32. Requires that the democratic services committee must meet at least once a calendar year, but may meet more frequently than that. In addition, the democratic services committee must meet if the local authority resolves that it should, or at least one-third of its members requisition a meeting in the manner set out.

### ***Section 16 – Discharging functions***

33. Limits the exercise of functions by the democratic services committee to those set out in this chapter of the measure; the committee (and any sub-committees) must have regard to any guidance which the Welsh Ministers may issue on the discharge of functions.

### ***Section 17 – Termination of membership on ceasing to be a member of authority***

34. A councillor's membership of a democratic services committee (or sub-committee) will cease if that councillor ceases to be a member of the council, but will not be affected if the councillor's membership of the council ceased because his/her term of office as a councillor has expired and he/she is re-elected at the next elections (this is subject to the standing orders of the authority or the democratic services sub/committee).

### ***Section 18 – Reports and recommendations by head of democratic services***

35. Requires the head of democratic services to send a copy of any report or recommendations he or she has prepared on the staffing issues in relation to the discharge of democratic services functions to all members of the democratic services committee. A meeting of the committee must be held to consider such reports or recommendations within three months of their being sent to committee members.

### ***Section 19 – Reports and recommendations by democratic services committees***

36. If a democratic services committee prepares any report or makes recommendations about the provision of staff, accommodation and other resources provided by the local authority for the discharge of democratic service functions, a copy must be sent to each member of the authority who is not a member of the committee, as soon as practicable. A meeting of the full council must be held to consider such reports or recommendations within three months of their being sent to authority members.

### ***Section 20 – Local authority functions not to be delegated***

37. This section ensures that the local authority is not permitted to delegate the duties and functions bestowed on it by this Measure in respect of: designating the head of democratic services; providing him/her with staff, accommodation and other resources; appointment of a democratic services committee, its members (in compliance with the provisions) and its chair; resolving that a democratic services committee should meet; and considering a report or recommendations prepared by the democratic services committee.

### ***Section 21 – Head of democratic services to be a politically restricted post***

38. Amends section 2(1) of the Local Government and Housing Act 1989 to include the head of democratic services as a politically restricted post. The effect is that the post-holder is prevented from having any active political role either in or outside the workplace. Politically restricted employees will automatically be disqualified from standing for or holding elected office and these restrictions must be incorporated

as terms in the employee's contract of employment under section 3 of the Local Government (Political Restrictions) Regulations 1990.

### ***Section 22 – Meaning of “member”***

39. Provides that in this Part of the Measure, a reference to an elected member includes a member of a local authority executive but does not include an elected mayor.

### **Part 2 - Family Absence for members of local authorities**

40. The provisions in this Part of the Measure make available to members of principal councils (including members of the executive) entitlement to maternity, newborn, adoption and parental absence (“family absence”) to support councillors and those wanting to stand for election who may have family responsibilities.

### ***Section 23 – Right to family absence***

41. Establishes an entitlement to councillors of a principal council to family absence and sets out the different types of family absence.

### ***Section 24 – Maternity absence***

42. Entitles a councillor to a period of up to 26 weeks maternity absence if the councillor has given birth to a child and satisfies prescribed conditions. The section provides for the details relating to maternity absence to be set out in regulations, thereby allowing the Welsh Ministers to respond to and reflect any changes made in the wider employment regime.

### ***Section 25 – Newborn absence***

43. Entitles a councillor to up to two weeks absence for a councillor who satisfies conditions in relation to “newborn absence”. The absence must be taken within a period of 56 days beginning with the birth of a child with which the councillor has a relationship as set down in prescribed conditions. The section provides for the details relating to newborn absence to be set out in regulations, thereby allowing the Welsh Ministers to respond to and reflect any changes made in the wider employment regime.

### ***Section 26 – Adopter’s absence***

44. This section entitles a councillor who satisfies prescribed conditions to a period of absence where that councillor (whether individually or jointly with another person) adopts a child. The period of absence is to be up to two weeks. The section provides for the details relating to adopter’s absence to be set out in regulations, thereby allowing the Welsh Ministers to respond to and reflect any changes made in the wider employment regime.

### ***Section 27 – New adoption absence***

45. This section entitles a councillor to a period of absence where that councillor is the partner of a person who is to adopt a child. New adoption absence is available to a person for the purpose of caring for a child who is adopted or supporting the person who is to adopt the child. Regulations are to set out the conditions that a person must satisfy about his or her relationship with a person who is to adopt a child and his or her relationship with the child that is to be placed for adoption in order to qualify for new adoption absence. The period of absence is to be up to two weeks. The section provides for the details relating to new adoption absence to be set out in regulations, thereby allowing the Welsh Ministers to respond to and reflect any changes made in the wider employment regime.

### ***Section 28 – Parental absence***

46. Entitles a councillor to a period of absence of up to three months if the councillor has or expects to have responsibilities for a child (“parental absence”). The section provides for the Welsh Ministers to make regulations setting out the details of parental absence.

### ***Section 29 – Regulations: supplemental***

47. Enables the Welsh Ministers to make regulations setting out certain administrative details and requirements for local authorities and members of local authorities in connection with the new entitlements introduced by the provisions in this Part.

### ***Section 30 – Guidance***

48. Empowers the Welsh Ministers to issue guidance on family absence entitlements, to which principal councils must have regard.

### ***Section 31 – Amendment of the Local Government Act 1972***

49. Amends section 85 of the 1972 Act so that a period of “family absence” (as provided for by this Measure) does not, in itself, leave a councillor liable to being required to vacate office by virtue of not having attended council meetings for six months.
50. The existing section 85 of the 1972 Act states that if a councillor fails to attend any meetings of his/her authority during a period of six consecutive months without a reason approved by the authority, he or she ceases to hold office. The new subsection (3C), inserted in section 85 of the 1972 Act, ensures that family absence will not be taken into account for calculating a six month period of absence. The new section (3D) provides that calculating the six month period of absence may take into account the periods immediately before and immediately after the period of family absence.

### ***Section 32 Amendment of Local Government Act 2000***

51. Amends section 11 of the 1972 Act to allow the statutory limit on the size of a local authority executive to be increased to allow the appointment of a temporary replacement for an executive member who is taking family absence as provided for in Part 2 of this measure. This is an enabling provision so there is no obligation to appoint an additional member.

### ***Section 33 – Interpretation of Part 2***

52. Provides interpretation of certain terms used in this Part of the Measure.

## **Part 3 – Available Governance Arrangements**

### ***Section 34 - Abolition of mayor and council manager executive***

53. Amends the 2000 Act to remove the elected mayor and council manager option from the executive arrangements available in Wales.

### ***Section 35 – Authorities to replace alternative arrangements with executive arrangements***

54. Requires a local authority in Wales which operates alternative arrangements (also referred to as “the Fourth Option”) to cease doing so and start to operate a permitted form of executive arrangements instead. The procedure for the transition from alternative to executive arrangements is set out in Schedule 1 to this Measure to which this section gives effect. In complying with this section and the Schedule, any local authority needing to make the change will have to comply with any directions issued by the Welsh Ministers. Paragraph 13(2) of Part 2 of the Schedule allows the Welsh

Ministers by order to provide for the local authority to cease to operate alternative arrangements and start operating executive arrangements in accordance with section 35.

### ***Schedule 1 – Change from alternative to executive arrangements***

55. **Section 35** gives effect to this Schedule which sets out in detail the procedure which a local authority which currently operates alternative arrangements will have to follow when it makes the change to executive arrangements as required in section 35 of this Measure. Paragraph 13(2) of Part 3 of the Schedule gives the Welsh Ministers a default power to require a local authority by order to cease operating alternative arrangements and to start to operate a specified form of executive arrangements where an authority fails to make the change in accordance with section 35.

### ***Section 36 - Consequential provision etc***

56. Makes consequential amendments to provisions in the 2000 Act to reflect the removal of the existing alternative arrangements in Wales. The existing section 29(3) of the 2000 Act which allows local authorities in Wales to change from executive arrangements to alternative arrangements is no longer required; the other changes remove references to procedures in relation to operating alternative arrangements which will be obsolete with the removal of that option.
57. Subsections (5) – (8) permit a local authority currently operating alternative arrangements to continue to do so after the provisions in the Measure come into force. The effect is to allow a transition period for an authority operating alternative arrangements; they link with the requirement in paragraph 2(4) of Schedule 1 to this Measure which requires a local authority to have changed from alternative to executive arrangements within six months of section 35 in this Measure coming into force.

## **Part 4 – Changes to Executive Arrangements**

### ***Section 37 – Power to adopt a different form of executive***

58. Makes new provision to simplify the procedure for a local authority already operating one form of permitted executive arrangements to change to another form of executive arrangements, but enable them to make such a change only once between ordinary elections. The new procedures mean that an authority will no longer need to formally consult local electors or prepare “fall-back” proposals.

### ***Section 38 – Proposals for adopting a different form of executive***

### ***Section 39 – Contents of proposals***

### ***Section 40 – Referendums***

### ***Section 41 – Timetable for implementation of proposals: no referendum***

### ***Section 42 – Timetable for implementation of proposals: referendum***

### ***Section 43 – Publicity for proposals***

### ***Section 44 – Implementing proposals***

### ***Section 45 – Action if referendum rejects a change***

59. These sections make provision for and set out the procedures required of a local authority wanting to change from one form of executive arrangements to another and the contents of the proposals for the change which it must prepare and send to the Welsh Ministers (see section 38).

60. If the proposed change is to a form of executive arrangements which involves an elected mayor, the proposals must include provision for a referendum of local government electors in the authority concerned to approve the proposed change, but a referendum must not be held if the change is to any other form of executive arrangements (section 40). A requirement to hold a referendum is subject to the constraint in section 45 of the 2000 Act that a referendum on executive arrangements may not be held more than once in any five years. The timetables for implementing an agreed change are set out in sections 41 and 42. If an authority approves a change which does not require approval in a referendum it must publicise the proposed change as set out in section 43.
61. If a referendum must be held and the change is rejected by voters, the authority may not implement the change (section 44). It must follow the procedure in section 45 and continue to operate its existing executive arrangements.

***Section 46 – Changes of executive arrangements requiring approval in a referendum***

62. This section provides that a change of executive arrangements requires approval in a referendum if either the existing model or the proposed model is a mayor and cabinet executive.

***Section 47 – Interpretation***

63. This section defines certain terms used in this Chapter of the Measure.

***Section 48 – Power to vary the existing form of executive***

***Section 49 – Proposals for varying the form of executive***

***Section 50 – Contents of proposals***

***Section 51 – Implementing proposals***

***Section 52 – Powers under which executive arrangements may be varied***

64. These sections introduce new provision to enable a local authority which is operating executive arrangements to vary the arrangements (so that these differ from the existing arrangements) but still operate with the same model.

***Section 53 – Forms of executive***

65. Clarifies that for the purposes of this Part there are two forms of executive in Wales.

***Section 54 – Consequential provision etc***

66. This section contains consequential amendments of sections of the 2000 Act relating to this Part of the Measure. Section 30 of the 2000 Act sets out the existing procedures for changing executive arrangements, which are superseded by the provisions in this Part about changing executive arrangements and varying them. The insertion of the new section 33ZA serves to direct readers to the provisions for changing governance arrangements in Wales to this part of the Measure. The amendment to section 45 of the 2000 Act expands the definition of referendum to accommodate the provisions inserted by this Measure.

## **Part 5 – Local Authority functions: Discharge by Committees and Councillors**

### ***Section 55 – Area covered and membership***

### ***Section 56 – Exercise of functions by councillors***

### ***Section 57 – Consequential provision***

67. These sections enable local authorities in Wales to have more flexibility in the way that functions of the executive of that authority may be discharged. Section 15 of the 2000 Act makes provision for the discharge of functions for a leader and cabinet executive in Wales. Section 15(2) of the 2000 Act provides that any functions which are the responsibility of the executive may be discharged by (a) the executive, (b) any member of the executive, (c) any committee of the executive and (d) any officers of the authority.
68. **Section 55** of the Measure amends the existing provision in section 18 of the 2000 Act to give authorities more flexibility about the membership of an area committee which discharges specified functions in its part of the area of the authority. Currently, an area committee satisfies the conditions if the members of the committee who are councillors are elected for electoral divisions which fall wholly or partly within that part. The existing area conditions are that the area covered by the area committee does not exceed two-fifths of the total area of the authority and the population of that part likewise.
69. **Section 56** makes new provision to enable a member of a local authority who represents the executive or the authority on an outside body to be able to make decisions in relation to functions which are the responsibility of the authority's executive, provided that the executive or the authority has formally discharged those functions to the member. There is no power to provide for this at present.
70. **Section 57** makes consequential changes to the 1972 Act and the 2000 Act. The amendments to the 1972 Act provide for members exercising functions to make written records of decisions and to provide them to the authority. The changes to the 2000 Act allow for the discharge of executive functions in accordance with the new provisions regarding members and for those members to be called before an overview and scrutiny committee to answer questions about those functions.

## **Part 6 – Overview and Scrutiny**

### ***Section 58 – Joint overview and scrutiny committees***

71. This section empowers the Welsh Ministers to provide by regulation that two or more principal councils may set up one or more joint overview and scrutiny committees (JOSC), and arrange for the committee or committees to make reports or recommendations to any of the principal councils setting up the committee, and to the executives of those councils.
72. The JOSCs may make reports and recommendations about any matter, but not about crime and disorder matters, about which a crime and disorder committee could make a report or recommendations by virtue of section 19(1)(b) or (3)(a) of the Police and Justice Act 2006.
73. The regulations may make provision for JOSCs to have equivalent powers to non#joint overview and scrutiny committees, as set out in existing legislation and as provided for in this Measure.

***Section 59 – Scrutinising designated persons***

***Section 60 – Notifying designated persons of report or recommendations***

74. These sections strengthen the position of overview and scrutiny committees (and by extension, JOSCs) by building on the existing power to make reports and recommendations in section 21(2)(e) of the 2000 Act, so that committees are required to scrutinise and report on matters which relate to a “designated person” (see section 61). The other main changes are new powers for a committee: to require information to be given (a requirement that must be complied with); to send a copy of a report or recommendations to a designated person; and to request such a person to have regard to the report or recommendations.

***Section 61 – Designated persons***

75. Allows the Welsh Ministers to designate by order those persons or categories of persons (a “designated person”) whose responsibilities or functions may be scrutinised by an overview and scrutiny committee of a local authority. The conditions in subsections (3) to (5) have the effect of limiting the designation to persons providing the public with services, goods or facilities, even if not carried out directly by those persons.

***Section 62 – Taking into account the views of the public***

76. Introduces provision to require local authorities to make arrangements to enable the public to express their views in relation to any matter being considered by the committee.

***Section 63 – Reference of matters to overview and scrutiny committee etc***

77. Amends section 21A of the 2000 Act to enable a councillor of a principal council in Wales to refer a matter to an overview and scrutiny committee which relates to the discharge of any of the functions of the council or which affects all or part of the electoral area which the councillor represents. The committee must consider the matter and report back to the member.

***Section 64 – Duty to respond to overview and scrutiny committee***

78. Applies in relation to Wales the provision in section 21 B of the 2000 Act setting out the steps an overview and scrutiny committee must take to inform the authority or executive of a report it has produced and the steps the authority or executive must take to respond.

***Section 65 – Provision consequential on sections 63 and 64***

79. Extends the definition of information which is exempt from publication in reports etc of overview and scrutiny committee to include that exempted under section 186 of the National Health Service Act 2006.

***Section 66 – Provision in standing orders about appointment of persons to chair committees***

***Section 67 – When appointments to be made by committee***

***Section 68 – When appointments to be made by non-executive group***

***Section 69 – How appointments to be made in other cases***

80. These sections require a local authority to make provision in its standing orders for the appointment of chairs for the authority’s overview and scrutiny committees (the appointment procedure”). The sections also set out who will appoint the chairs, a decision which depends on the number of political groups represented on that authority

and the composition of the authority's executive. The committees themselves will appoint their chairs in the circumstances described in section 67; the non-executive political group will do so if the circumstances are those in section 68. Section 69 introduces the arrangements to apply in other cases.

***Section 70 – Appointments to be made by political groups***

***Section 71 – Failure to make appointments in accordance with section 70***

***Section 72 – Changes in composition of executive***

***Section 73 – Occasional vacancies in committee chairs***

***Section 74 – Appointment provision determined by authority***

81. These sections set out the procedures for authorities where sections 67 or 68 do not apply, which in general will be those authorities where the membership is divided among several political groups.
82. The broad aim of these sections is the requirement for local authorities to make provision for the allocation of scrutiny committee chairs on a proportionate basis, with the additional proviso that the political group (or groups) which comprises the executive of the council cannot allocate a greater number of scrutiny chairs to its group(s) than is proportionate to its (combined) representation on the full council (i.e. all members, whether or not they are members of political groups). If the entitlement to chairs of the group(s) in the executive is not a whole number, the entitlement is to be rounded down to the nearest whole number. The principles for allocating scrutiny chairs to political groups comprising the executive are in the new subsection (3) of section 70.
83. The remaining scrutiny chairs are then to be allocated to opposition political groups, each opposition group's allocation being in proportion to that group's numerical strength within the combined total of opposition groups (subsection (4) of section 70). The calculation of scrutiny chairs for opposition groups should not take any account of councillors who are not members of political groups on the authority.
84. **Section 71** sets out what is to happen if any committee chairs are not appointed in accordance with section 70. The executive group(s) cannot get more appointments. The opposition groups that have fully used their initial appointment allocation get additional appointments in proportion to their initial appointments. If all of the opposition groups have failed to fully use their initial appointment allocation or if an opposition group is entitled to an additional appointment, but does not use it, the power of appointment in these cases falls to the committees.
85. If the composition of the executive changes, the allocation of the scrutiny chairs must be re-visited and changes may need to be made to the allocations, as set out in section 72. The procedure if a scrutiny chair falls vacant is set out in section 73.
86. **Section 74** permits a local authority to waive the requirement to follow the procedures above if an alternative appointment procedure is agreed by all political groups, with the proviso that the alternative procedure does not result in the majority party allocating a greater number of scrutiny chairs from its party than the section 70 procedure would permit.

***Section 75 – Supplementary provision and interpretation***

87. Enables the Welsh Ministers to make regulations about the appointment procedure for allocating scrutiny committee chairs and to issue guidance or directions. The section also defines certain terms used in sections 66 to 75 and inserts new subsection (10A) in section 21 of the 2000 Act to refer readers to sections 66 to 75 of the Measure.

***Section 76 – Guidance and directions about co-option***

88. This section requires a local authority to have regard to any guidance or direction about co-option issued by the Welsh Ministers.

***Section 77 – Forward plans and other information***

89. Enables the Welsh Ministers by regulations to make provision to require the publication of forward plans of overview and scrutiny committees and sub-committees.

***Section 78 – Prohibition of whipped votes & declaration of party whips***

90. Prohibits the application of whipping at meetings of overview and scrutiny committees. The section sets out a procedure for declaring, determining and recording a prohibited party whip at scrutiny committee meetings and the consequences of a prohibited party whip being given.

***Section 79 - Guidance and directions***

91. Enables the Welsh Ministers to issue guidance or give directions about overview and scrutiny committees.

***Section 80 – Interpretation of this Chapter***

92. This section defines certain terms used in this Chapter.

***Section 81 – Local authorities to appoint audit committees***

***Section 82 – Membership***

***Section 83 – Proceedings etc***

***Section 84 – Frequency of meetings***

***Section 85 - Guidance***

***Section 86 – Termination of membership on ceasing to be member of authority***

***Section 87 – Interpretation etc***

93. These sections require a local authority to appoint an audit committee to review and scrutinise the authority's financial affairs and the other functions set out in section 81, including the making of reports and recommendations in relation to these. There is currently no statutory requirement upon local authorities in Wales to have such a committee.
94. The chair of the audit committee must not be a member of a group which forms part of the council's executive, except where all groups are represented on the executive (in which case the chair must not be a member of the executive).
95. The sections make provision for the audit committee's membership, chair, proceedings, frequency of meetings, discharge of functions and termination of membership. Section 85 allows the Welsh Ministers to issue guidance about the functions and membership of audit committees, to which local authorities and audit committees must have regard. Section 87 defines certain terms used in this Chapter.

***Part 7 – Communities and Community councils***

96. The sections in Chapters 1 and 2 of Part 7 of the Measure revise the arrangements set out in the 1972 Act for the calling and organisation of community meetings and community polls in Wales to make them more representative of local opinion.

***Section 88 - Convening of community meetings by local government electors***

97. **Section 88** amends the existing provision in paragraph 30 of Schedule 12 to the 1972 Act for convening community meetings.
98. Subsection (1) of the new section 88 re-enacts the existing provisions in paragraph 30(1) of Schedule 12 insofar that in communities which have a community council, a community meeting may be convened by the chair of the council or by two councillors representing the community on the council. These triggers for convening a community meeting are unchanged. The effect of subsections 1(b)–(e) is that where community meetings are convened in this way, the existing requirements for giving public notice are re-applied. Accordingly, if the business of the community meeting is a general issue, at least seven days notice must be given; if the business concerns the existence of a community council or the grouping of a community with other communities (i.e. pursuant to sections 27A-27L of the 1972 Act as inserted by the Measure) at least thirty days notice must be given.
99. The amendment to paragraph 30(1) of Schedule 12 also removes the existing provisions whereby a community meeting may be convened by six local government electors (whether or not the community in question has a community council). Subsection (2) of the new section 88 introduces new thresholds, namely 10% of the local government electors for that community or 50 of the electors, whichever is the lower.

***Section 89 – Notice of community meeting convened by local government electors***

100. Inserts a new paragraph 30B in Schedule 12 to the 1972 Act which sets out the information required to be provided to enable the relevant local council to decide whether a community meeting has been duly convened when the convenors of the meeting are local government electors. The relevant local council, to which the notice of a community meeting must be given, is a community council in communities where one exists and the principal council where one does not.
101. The information required to support a notice is set out in subsections (2)-(7). The provisions allow for the notice to be given in electronic form to a principal council (provided it meets technical requirements set by the principal council under section 90) and for the supporting electors to retain anonymity if they are registered anonymously in the register of local government electors.

***Section 90 – Facility for the provision of electronic notices of the convening of community meetings***

102. Requires a principal council to make available facilities so that notices for community meetings may be delivered electronically. The council is also required to set, and appropriately publicise, the requirements for electronic notices scheme, such as the authentication of an electronic signature.

***Section 91 – Action following receipt of notice of a community meeting***

103. Requires the recipient council of the notice detailed in section 89 to consider whether the stipulated requirements and initial trigger threshold have been met. If the council considers they have, then the council must give public notice in accordance with the new section 92. If the council considers that the requirements have not been met, it must give notice to the convenors and state why it is of that opinion.

***Section 92 – Public notice of community meeting***

104. Requires that within thirty days of deciding that the requirements for convening a community meeting have been met, the relevant council must give public notice that the community meeting will be held.

105. If the business of the community meeting is a general issue, at least seven days notice of the meeting must be given; if the business concerns the existence of a community council or the grouping of a community with other communities at least thirty days notice of the meeting must be given (i.e. pursuant to sections 27A-27L of the 1972 Act as inserted by the Measure). The section also specifies details which are required to be included in the notice and how the notice should be published.

***Section 93 – Demands for community polls***

106. This section substitutes paragraph 34(4) of Schedule 12 to the 1972 Act with a provision which raises the thresholds required for a community meeting to demand a community poll. The existing thresholds require a demand for a poll to be supported by no less than ten or one-third of the local government electors present at the community meeting, whichever is the lower. This is replaced with a majority of the local government electors present, the said majority constituting 10% of the local government electorate for that community or 150 of the electors, whichever is the less.

***Section 94 - Notice to be given by returning officer following taking of a poll consequent on a community meeting***

107. Introduces a new provision which sets out the notice procedure following a community poll which was triggered by a community meeting and where a majority of electors voting were in favour of the question posed. The notice requirements need not be applied if the poll were on a question of a type which would be inappropriate for the council to respond to and that type had been specified in regulations by the Welsh Ministers (the new sub-paragraph 38A(2) of Schedule 12 to the 1972 Act).

***Section 95 - Determination of monitoring officer as to the council to whose functions a poll relates***

108. Requires the monitoring officer to whom the notice of the result of the community poll has been delivered to determine, within 14 days of receiving notice, the council to whose functions the poll question relates. The monitoring officer must then give notice, as set out in the new paragraph 38B, to the relevant council as soon as reasonably practicable.

***Section 96 – Consideration of result of community poll by community council***

109. Requires a community council to consider the results of a poll, following notification under the new paragraph 38B of Schedule 12 to the 1972 Act, in a meeting of the council.

***Section 97 – Action to be taken following community council’s consideration of results of certain community polls***

110. Requires the community council to inform the convenors of the community meeting which triggered the poll of what action (if any) the council intends to take in response to the poll. Sub-paragraph 1(a) of the new paragraph 29A of Schedule 12 to the 1972 Act makes clear that there is no legal expectation that the community council will take any action in response to the poll. This action need be taken only where the community poll was triggered at a community meeting of local government electors.

***Section 98 – Consideration of result of community poll by principal council***

111. Introduces a new section 33B to the 1972 Act which requires a principal council, which has received notice under the new paragraph 38B, to consider the result of the community poll and decide what actions it will take. The council is required, within two months of receiving notice, to perform at least one of the actions set out in the new subsection (4), but may perform more than one.

***Section 99 – Principal council’s explanation of its response to a community poll***

112. Requires a principal council to give notice, as soon as is reasonably practicable, of the action which it has taken and, possibly intends to take, in response to the community poll. The section sets out the possible recipients of such a notice, to be determined by the circumstances.

***Section 100 – Repeal of existing provisions about establishment and dissolution of community councils, etc***

113. Repeals the existing provisions in sections 28 to 29B of the 1972 Act governing the procedures for establishing and dissolving community councils (including for groups of communities), to make way for the new provisions set out in this Measure. The Welsh Assembly Government considers that the existing provisions are unnecessarily complex and the development of community councils is hindered by the existing thresholds which apply to some of the procedures for the establishment or dissolution of a community council. The Welsh Assembly Government considers that the existing thresholds for establishing a community council are too high and those for dissolving a community council are too low.

***Section 101 – Power of community meeting to apply for an order establishing a community council***

114. Introduces a new section 27A in the 1972 Act to set out the conditions which must be met before a community meeting may apply to the principal council for its area for an order to establish a community council for the area. The new subsections (4)-(6) re-enact conditions which apply under the existing provisions. The new subsections (2) and (3) lower the threshold for a community meeting voting to establish a community council to require 10% of the local government electors for the community or 150 of the electors (whichever is the lower) to be present and voting at the meeting. The existing threshold is 30% of the local government electors for the community or 300 of the electors (whichever is the lower).

***Section 102 – Orders establishing separate community councils for communities***

115. Introduces a new section 27B in the 1972 Act to set out the action a principal council must take when it has received an application from a community meeting for an order to establish a separate community council for the area of the community.

***Section 103 – Power of community meeting to apply for an order dissolving its separate community council***

116. Introduces a new section 27C in the 1972 Act to set out the conditions which must be met before a community meeting may apply to the principal council for its area for an order to dissolve an existing separate community council for the area. The new subsections (2)-(5) re-enact conditions which apply under the existing provisions. The threshold for a community meeting voting to dissolve a community council remains 30% of the local government electors for the community or 300 of the electors (whichever is the lower) to be present and voting at the meeting. A new threshold is introduced by the new subsection (6) which requires that at least two-thirds of those voting in the community poll support the proposal to dissolve a community council. A bare majority is required at present.

***Section 104 – Orders dissolving separate community councils for communities***

117. Introduces a new section 27D in the 1972 Act to set out the action a principal council must take when it has received an application from a community meeting for an order to dissolve a separate community council for the area of the community.

***Section 105 – Power of community meeting to apply for an order grouping its community with other communities under a common community council***

118. Introduces a new section 27E in the 1972 Act to set out the conditions which must be met before a community meeting may apply to the principal council for its area for an order grouping its community with other communities under a common community council. The provisions are essentially the same as those for establishing a community council under the new section 27A, with the additional condition at subsection (7) requiring applications to be made jointly with the other communities involved in the prospective grouping.

***Section 106 – Orders grouping a community with other communities under a common community council***

119. Introduces a new section 27F in the 1972 Act to set out the action a principal council must take when it has received an application from a community meeting for an order to group a community with other communities under a common community council.

***Section 107 – Power of community meeting to apply for an order adding its community to a group of communities with a common council***

120. Introduces a new section 27G in the 1972 Act to set out the conditions which must be met before a community meeting may apply to the principal council for its area for an order adding its community to a group of communities under a common community council. The provisions require the consent of all the communities involved in the prospective new grouping with the same thresholds applying as are introduced for establishing a community council under the new section 27A.

***Section 108 – Orders adding a community to a group of communities with a common council***

121. Introduces a new section 27H in the 1972 Act to set out the action a principal council must take when it has received an application from a community meeting for an order to add a community to a group of communities with a common community council.

***Section 109 – Power of council for a group of communities to apply for an order dissolving the group***

122. Introduces a new section 27I in the 1972 Act to set out the conditions which must be met before a council for a group of communities may apply to the principal council for its area for an order dissolving the group. The provisions are essentially the same as those for dissolving a separate community council under the new section 27C, with each community in the group being required to consider and vote on the proposal separately.

***Section 110 – Orders dissolving a group of communities***

123. Introduces a new section 27J in the 1972 Act to set out the action a principal council must take when it has received an application from a council for a group of communities for an order dissolving the group.

***Section 111 – Power of community meeting to apply for order separating community from a group of communities***

124. Introduces a new section 27K in the 1972 Act to set out the conditions which must be met before a community meeting may apply to the principal council for its area for an order separating the community from a group of communities. The provisions are essentially the same as those for dissolving a separate community council under the new section 27C.

***Section 112 – Orders separating a community from a group of communities***

125. Introduces a new section 27L in the 1972 Act to set out the action a principal council must take when it has received an application from a community meeting for an order separating the community from an existing group of communities.

***Section 113 – Power of Welsh Ministers to alter voting threshold in connection with organisation of community councils***

126. Introduces a new section 27M in the 1972 Act to enable the Welsh Ministers by order to alter the thresholds for the various establishment and dissolution procedures introduced by this Measure, thereby enabling them to make changes in the light of experience of applying the new thresholds.

***Section 114 – Organisation of communities and their councils: consequential amendments***

127. Amends other existing provision to reflect the substitution of various sections in the 1972 Act by the appropriate new provisions introduced in this Part of the Measure.

***Section 115 – Transitional provision***

128. Clarifies that the new procedures set out in Chapter 2 of this Measure will not apply if certain existing procedures, as set out in subsections (a) and (b) of this section, were undertaken before the provisions in this Chapter have been brought into force.

***Section 116 – Requirement of public notice where vacancies in community council membership are to be filled by co-option***

129. Introduces a requirement that where a community council intends filling a vacancy by co-option, the council must give public notice of the co-option opportunity. It is accepted good practice that opportunities for co-option are advertised openly, but there is no requirement at present. This will avoid the perception of community councils being ‘closed shops’ and raise awareness of opportunities for greater participation by under-represented groups. The requirements of the public notice are set out in subsection (5), which includes provision for Welsh Ministers to set other requirements for the notice in the light of experience.

***Section 117 – Guidance about giving public notice of co-option***

130. Empowers the Welsh Ministers to issue guidance about giving public notice about co-option, to which community councils and councillors must have regard.

***Section 118 – Appointment of community youth representatives by community councils***

131. Enables a community council to appoint up to two community youth representatives to the community council. The appointments will give a platform for a youth voice, encourage communication between different sectors of society and incite a greater interest in politics and local government by young people.
132. The criteria for a community youth representative are set out in subsection (2). Subsection (3) enables the community council to determine the terms of appointment, including those relating to the vacation of office.

***Section 119 – Notice requirements in connection with youth representative appointments***

133. Requires that where a community council intends appointing a community youth representative, it must first give public notice of its intention to do so and specifically to the persons and in the manner set out at subsections (4-5). The requirements of

the public notice are set out in subsection (6). The Welsh Ministers may set other requirements for the notice in the light of experience.

***Section 120 – Guidance about appointment of community youth representatives***

134. Empowers the Welsh Ministers to issue guidance about the appointment of community youth representatives, to which community councils must have regard.

***Section 121 – Effect of appointment as a community youth representative***

135. The community youth representatives will not have any of the statutory rights, privileges and obligations of a community council extended to them at this time; but this section enables the Welsh Ministers, by regulations, to provide for a community youth representative to be treated as a member of the council for purposes specified in the regulations.

***Section 122 – Reports about discharge of a principal council’s function of keeping community areas under review***

136. Introduces new subsections (2A)-(2D) in section 55 of the 1972 Act to require a principal council to publish every 15 years (and send to the Local Government Boundary Commission for Wales – the “Welsh Commission”) a report of how it has discharged its existing function of keeping community areas under review. The existing legislation has no such timeframe for publishing reports and some councils have not published reports.

***Section 123 – Reports about discharge of a principal council’s function of keeping electoral arrangements for communities under review***

137. Introduces new subsections (4A)-(4D) in section 57 of the 1972 Act to require a principal council to publish every 15 years (and send to the Welsh Commission) a report of how it has discharged its existing function of keeping electoral arrangements for community areas under review. The existing legislation has no such timeframe for publishing reports and some councils have not published reports.

***Section 124 – Exercise of functions by the Local Government Boundary Commission for Wales on behalf of principal councils***

138. Introduces a new section 57A in the 1972 Act to enable the Welsh Commission and a principal council to agree arrangements by which the Welsh Commission may exercise the principal council’s functions of reviewing the community areas or electoral arrangements for communities and considering requests received from community meetings and councils in this respect.
139. The existing legislation enables the Welsh Commission to undertake these functions at present, but the Welsh Commission must first be directed to do so by Welsh Ministers. The cost of undertaking reviews currently falls to the Welsh Commission as the existing legislation does not allow it to charge any fee to the principal council concerned. The new provision alleviates the need for a direction from the Welsh Ministers where a principal council and the Welsh Commission have reached agreement about the arrangements for the review.

***Section 125 – Sums payable in respect of reviews carried out by the Local Government Boundary Commission for Wales***

140. Introduces new subsections (4A)-(4C) in section 56 of the 1972 Act for circumstances where the Welsh Ministers have had to direct the Welsh Commission to undertake a review on behalf of a principal council (perhaps because the Welsh Commission and the council have failed to reach agreement about the arrangements for the review).

The direction may include a requirement on the principal council concerned to pay the Welsh Commission a sum specified or to be calculated.

***Section 126 – Community councils’ powers to promote well-being***

141. Amends section 1(b) of the 2000 Act to include community councils in the list of local authorities on which the power of well-being is conferred by section 2(1) of that Act.
142. Part I of the 2000 Act provides a power for local authorities to do anything that they consider is likely to achieve the promotion or improvement of the economic, social or environmental well-being of their area. In relation to Wales, this power is currently conferred on county councils and county borough councils only. The Assembly Government considers that extending the power of well-being to community councils will enhance the opportunities for them to develop their role in promoting and improving the well-being of their areas.

***Section 127 – Modifications of enactments preventing or obstructing a community council from exercising their well-being power***

143. Enables the Welsh Ministers by order to make modifications to any enactment which they think prevents or obstructs community councils from exercising their power under section 2(1) of the 2000 Act.

***Section 128 - Transitional provision***

144. This transitional provision is to deal with the situation where a community strategy pursuant to section 39(4) of the Local Government (Wales) Measure 2009 has not yet been published.

***Section 129 – Welsh Ministers’ power to pay grant to community councils***

145. Enables the Welsh Ministers to pay grants to community councils. The developing role of community councils may create new demands on their finances but the current legislation does not enable the Welsh Ministers to make grant payments to community councils for any purposes.

***Section 130 - Power to set out model charter agreement***

146. Enables the Welsh Ministers to set out a model charter agreement in an order. The Assembly Government already encourages collaborative arrangements between principal and community councils, usually set out in an agreed “charter”, through which the two tiers of government would work together in a mutually supportive and co-operative way for the benefit of their communities. The Welsh Ministers consider that, in the first instance, the development and adoption of collaboration arrangements/ charters is best achieved on a voluntary basis at the local level. There is, however, no power currently available to the Assembly Government to require reluctant councils to come together, address the issues and agree a charter for the benefit of their areas.

***Section 131- Directions requiring the adoption of model charter agreements***

147. Enables the Welsh Ministers to issue directions requiring the adoption of a model charter.

***Section 132- Guidance about model charter agreements***

148. Empowers the Welsh Ministers to issue guidance about charter agreements, to which principal and community councils acting under a direction of the Welsh Ministers must have regard.

### ***Section 133 - Consultation***

149. Requires the Welsh Ministers to consult the bodies, persons or local government institutions stipulated before making an order or issuing a direction about model charter agreements.

### ***Section 134 – Schemes for the accreditation of quality in community government***

150. Enables the Welsh Ministers to make regulations to provide for an accreditation of quality scheme for community councils.
151. There is currently no national accreditation of quality scheme to assess the competence of community councils in Wales. The Welsh Ministers consider that there is value in developing such a scheme to help raise standards of local government by community councils.
152. The intention of the Welsh Ministers is that, in the first instance, a national accreditation of quality scheme in Wales should be developed and operated on a non-statutory basis. However, the Welsh Ministers consider that it would be beneficial to have a “reserve” power to introduce a statutory accreditation scheme should this be considered appropriate at some future point. This section provides this power.

### ***Section 135 – Accreditation of quality in community government: criteria***

### ***Section 136 – Accreditation of quality in community government: applications***

### ***Section 137 – Accreditation of quality in community government: fees***

### ***Section 138 – Accreditation of quality in community government: removal of accreditation***

### ***Section 139 – Applications for accreditation of quality in community government: delegation of functions***

### ***Section 140 – Accreditation of quality in community government consequences***

153. These provisions support section 134. If the Welsh Ministers make regulations for an accreditation scheme, the regulations:
- must set criteria to be met on an application for accreditation. These may cover the matters listed in section 135(2), but would not be limited to these;
  - must set out the requirements for a valid application for accreditation (section 136);
  - may set fees for an application for accreditation (section 137);
  - must set out the grounds for the removal of accreditation status awarded and for the review of accreditation status awarded (section 138).
154. **Section 139** would allow the Welsh Ministers to arrange for another person (which need not be a public authority) to operate the accreditation scheme.
155. **Section 140** enables the Welsh Ministers, by regulations, to remove or alter statutory impediments from accredited community councils (for example, because they have achieved a certain standard of performance) and to place impediments in the way of unaccredited community councils (for example, because they are unable to show that they have achieved a certain standard).

## **Part 8 – Members: Payment and Pensions**

156. This Part of the Measure makes provision in respect of the remuneration of councillors so that an independent panel has responsibility for determining adequate recompense

for councillors in respect of the responsibilities they carry and for maintaining a remuneration system which keeps pace with the many developments in recent years in terms of the leadership, governance, scrutiny and regulatory duties incumbent upon a councillor.

### ***Section 141 – The Panel***

157. Provides for the continued existence of the Independent Remuneration Panel for Wales (the “IRP”).
158. The IRP was established under regulation 26 of the [Local Authorities \(Allowances for Members\) \(Wales\) Regulations 2007 \(S.I. 2007/1086\)](#) (the “2007 Regulations”) to prescribe, amongst other things, the maximum levels of allowances payable by county and county borough councils. The IRP’s current remit only extends to county and county borough councils and does not encompass community councils, National Park authorities or fire and rescue authorities.
159. The new provision maintains the statutory basis of the IRP and introduces Schedule 2 which sets out the detail for membership, tenure and organisation of the IRP.

### ***Schedule 2 – The Panel***

160. Introduced by section 141. Sets out the appointment, administrative and support procedures for the IRP (including disqualification from membership). Paragraphs 18-20 set out the obligations of the Welsh Ministers in terms of providing support to the IRP.

### ***Section 142 – Functions relating to payments to members***

161. Sets out the functions of the IRP, in particular giving it a greater degree of flexibility in respect of defining the duties and responsibilities which may qualify councillors to receive payments, to describe the types of payments and to set levels of payments for those authorities described in section 144. The Assembly Government considers that this flexibility is necessary to allow the IRP to respond to different circumstances of councillors and of authorities.
162. The provisions in this section will enable the IRP to stipulate the actual amount of payment an authority may make to a member, set the maximum level of payment to a member of the authority or limit the proportion of members of the authority who can receive a certain type of payment. The IRP could, in relation to one or more or all authorities of different descriptions or different authorities of the same description decide to set payments which could include maxima and actual rates.
163. The provision in subsection (2) defines the relevant matters which the IRP may decide under subsection (1). Relevant matters are those that relate to the official business of councillors as defined in subsection (8) and includes payments to councillors who are exercising an entitlement to family absence (as provided for in Part 2 of this Measure).
164. Under subsection (4) the IRP can set indices and maximum rates of adjustment which authorities may apply or refer to in adjusting their payment rates from year to year. The IRP can also determine the proportion of members who can receive a certain type of payment although the consent of the Welsh Ministers is needed if the IRP wish to fix the proportion at more than fifty per cent.
165. Subsection (6) requires the IRP, when setting an amount or maximum rate of adjustment or index, to take into account the likely financial impact of its decisions on the authority in question.

### ***Section 143 – Functions relating to members’ pensions***

166. Enables the IRP to determine which elected members (not co-opted members) of such authorities as are or become eligible members of the Local Government Pension

Scheme (LGPS) shall be entitled to pensions. The current remit of the IRP is limited to recommending which elected members of a county or county borough council should be entitled to pensions under section 18 of the Local Government and Housing Act 1989.

***Section 144 – Relevant authorities, members etc***

167. Provides definitions of certain terms used in this Part of the Measure. The definition of “relevant authority” in subsection (2) has the effect of extending the remit of the IRP to cover community councils, National Park Authorities and fire and rescue authorities in Wales, in addition to county and county borough councils.

***Section 145 – Annual reports***

***Section 146 – First annual report***

***Section 147 – Subsequent annual reports***

***Section 148 – Consultation on draft reports***

168. These sections require the IRP to publish an annual report about the exercise of its functions for each forthcoming financial year.
169. **Section 146** stipulates: that the first financial year for which the IRP must publish an annual report is the year beginning 1 April 2012; that the report must be published by 31 December 2011; and the requirements of the report. The provisions also allow for the IRP to produce supplementary reports to the first annual report. The requirements of subsequent annual reports (and supplementary reports) are similar to those for the first annual report (and any supplementary reports to the first report). (Section 147.)
170. The IRP must allow a minimum period of eight weeks for consultation on a draft report and place a copy of the draft report on its web-site at the same time as it is circulated to the Welsh Ministers, etc.

***Section 149 – Directions to vary reports***

171. Enables the Welsh Ministers to direct the IRP to reconsider a provision of a draft report. The Welsh Ministers must specify their reasons for issuing the direction and give a date for a response. The IRP is not obliged to vary the draft, but must respond and explain if it decides not to vary.

***Section 150 – Administrative requirements in reports***

***Section 151 – Publicity requirements in reports***

172. Enable the IRP to require local authorities to put in place administrative systems to avoid the duplication of claims for payments and to keep records in relation to payments made to their members, and to stipulate in an annual report the publicity arrangements that should be put in place by authorities in relation to the payments made by an authority.

***Section 152 – Publicising reports***

173. Sets out steps the IRP must take to publicise its reports, including draft reports.

***Section 153 – Compliance with panel’s requirements***

174. Requires authorities to comply with decisions of the IRP set out in an annual report and empowers the IRP to monitor the implementation and management of the payments made by the authorities affected by its decisions. The IRP is empowered to require

authorities to provide it with details of their payments and actual rates in payment. The authority must comply with such a request.

***Section 154 – Members wishing to forgo payments***

175. Enables a member of an authority to waive his or her entitlement to such payments as that member determines. Since authorities will be required to make certain payments to members, it is considered necessary to make provision to permit authorities not to pay allowances in circumstances where a member has elected to forgo payment.

***Section 155 – Withholding payments***

176. Requires an authority to withhold payments to persons who have been suspended from being a councillor (or partially suspended) by virtue of Part 3 of the Local Government Act 2000 as a result of an adjudication by a local standards committee or by a case tribunal or interim case tribunal on whether the councillor had complied with the local authority's code of conduct.
177. Subsection (2) also empowers the Welsh Ministers to issue directions, following consultation with the IRP, to an authority requiring it to withhold payments as determined by the Welsh Ministers, to a member of an authority for reasons specified in the direction. The Welsh Ministers may apply to the Court for an order enforcing the direction.
178. Subsection (5) permits local authorities to recover payments made in error to members of their authority who had been suspended or partially suspended by virtue of part 3 of the Local Government Act 2000, were the subject of a direction from the Welsh Ministers or had ceased to be a member of the authority.

***Section 156 – Directions to comply with requirements***

179. If the Welsh Ministers are satisfied that an authority has failed to discharge any duty imposed on it by the IRP for the purposes of the Measure, the Welsh Ministers may issue a direction requiring the authority to comply. Any such direction must explain the reason for its issue and set out the steps that need to be taken by the authority, including a timetable by which the authority should respond.
180. The Welsh Ministers may apply to the Court for an order enforcing the direction.

***Section 157 - Guidance***

181. Empowers the IRP to issue, vary and revoke guidance on complying with its requirements set out in annual and supplementary reports.

***Section 158 – Power to modify provision about Panel***

182. Empowers the Welsh Ministers to modify, by order, the provisions in this Part of the Measure relating to the appointment of members of the IRP or its functions and to make any consequential modifications to other enactments as a result.

***Section 159 – Interpretation of Part 8***

183. Sets out the interpretation of certain terms used in this Part.

***Section 160 - Consequential amendments***

184. Introduces Schedule 3. (Payments and pensions: minor and consequential amendments.)

### ***Schedule 3 – Payments and Pensions: Minor and consequential amendments***

185. Makes amendments of a technical nature to existing legislation to reflect the provision introduced in Part 8 of the Measure. For example, in relation to the Local Government Act 1972, School Standards and Framework Act 1998, Education Act 2002 and Education and Skills Act 2008, for those references that relate to allowances payable under the current legislation, there is a need to substitute references to payments to members under the provisions of the Measure.
186. Whilst the majority of subsections in section 18 of the Local Government and Housing Act 1989 are to be repealed, an amendment is required to section 18 (3A) to retain the power of the Welsh Ministers to make regulations enabling local authorities, i.e., county and county borough councils, to determine gratuities in relation to members.

### **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.

**Part 10 - General**

***Section 172 – Orders and regulations***

217. This section provides for orders and regulations under the Measure to be made by statutory instrument and sets out the Assembly procedures in respect of these instruments.

***Section 173 - Procedure applicable to certain orders under section 127***

218. Sets out the procedure the Welsh Ministers must follow if they make an order under section 127 to make modifications to any enactment which they think prevents or obstructs community councils from exercising their power (of well-being) under section 2(1) of the 2000 Act.

***Section 174 – Guidance and directions***

219. Clarifies the powers of the Welsh Ministers to give guidance and to give directions under this Measure.

***Section 175 – Interpretation***

220. Provides interpretation of certain terms used in this Measure.

***Section 176 – Consequential amendments and repeals***

221. This section inserts new subsections (5) to (7) to section 106 of the 2000 Act to make provision for orders and regulations under the new sections of that Act inserted by the Measure to be made by statutory instrument and sets out the Assembly procedures in respect of these instruments.
222. Also introduces Schedule 4 (repeals and revocations) and makes provision for the IRP to prescribe a scheme for a local authority using the current regulations for a transitional period for the financial year from 1 April 2011 until 31 March 2012. The IRP is to publish its first annual report under the Measure by 31 December 2011 and the report is to relate to the financial year 1 April 2012 to 31 March 2013.

***Schedule 4 – Repeals and revocations***

223. Repeals and revokes existing provision to accommodate the new provision made in the Measure.

***Section 177 - Power to make supplementary provision***

224. Empowers the Welsh Ministers to make supplementary, consequential, incidental, transitional, transitory and saving provision to the parts of the Measure to take account of future developments in local government and any future legislation which may have to be accommodated by local authorities.

***Section 178 – Commencement***

225. This section makes provision about the commencement of the provisions in the Measure.

***Section 179 – Short Title***

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

226. The following table sets out the dates for each stage of the Measure’s passage through the National Assembly for Wales. The Record of Proceedings and further information on the passage of this Measure can be found on the National Assembly for Wales’ website at: <http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislation-measures-localgov.htm>.

<i>Stage</i>	<i>Date</i>
Introduced	12 July 2010
Stage 1 – Debate	11 January 2011
Stage 2 Scrutiny Committee – consideration of amendments	2, 9 February 2011
Stage 3 Plenary – consideration of amendments	15 March 2011
Stage 4 Approved by the Assembly	15 March 2011
Royal Approval in Privy Council	10 May 2011