

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

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

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

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

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

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

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

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

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

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

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

26. This section outlines the process to be followed if the Welsh Ministers make a New Towns Order in accordance with the New Towns Act 1981. In such a circumstance,

the Commission having received notice from the Welsh Ministers of the New Towns Order must conduct a review in line with the provisions of section 23 of the Act of any principal areas specified within the notice of the Welsh Ministers.

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

27. **Section 25** provides that a principal council may decide to conduct a community review either at its own behest or at the request of a community council or community meeting. The principal council must not however conduct a review at the request of a community council or a community meeting if the principal council considers that by undertaking such a review it would impede the proper exercise of its functions.
28. Following such a review, the principal council should send a report to the Commission with recommendations for any changes to community boundaries and any consequential changes to any community councils or electoral areas as a result of the recommended changes to community boundaries. In line with the duty imposed by section 22, any recommendations made by the Council must seek to ensure effective and convenient local government.
29. A principal council and the Commission may agree to the council delegating its functions of conducting community reviews to the Commission. Any such arrangement is subject to any terms and conditions agreed between the two parties.

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

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

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

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

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

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

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

35. This section places the Commission under a duty to conduct an electoral review of each principal area at least every ten years, though it could decide, either at the request of a council or at its own behest, to conduct one at any time.

36. However, no recommendations should be made or report published by the Commission in the 9 months before an ordinary council election. Following a review, the Commission must send a report to the Welsh Ministers.
37. The section also requires the Commission to send their proposed timetable for conducting electoral reviews to the Welsh Ministers.

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

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

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

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

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

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

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

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

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

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

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

45. **Section 35** provides that the Commission or the principal council conducting the review (referred to in the Act as “the reviewing body”) must consult with the mandatory consultees and carry out such investigations as it considers appropriate.

46. Following the consultation process, the reviewing body must prepare and consult for between 6 and 12 weeks on a draft report, a copy of which must be made available for inspection at the offices of any principal council for the area which is under review.

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

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

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

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

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

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

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

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

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

55. [Section 40](#) provides that an order made by the Welsh Ministers, the Commission or a principal council, following a review, may make such other consequential provisions

on the changes being introduced as they feel necessary. This could include changing the name of an area, the assignment of existing councillors to new or altered areas and the number and distribution of councillors in a new or altered area.

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

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

#### ***Section 42 – Transfers of staff***

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

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

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

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

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

#### ***Section 45 – Police area change***

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

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

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

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

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

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

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

***Section 49 – Local inquiries***

66. This section enables either the Commission or a principal council to organise a local inquiry associated with any review they are conducting. It also enables the Welsh Ministers or a principal council to arrange for a local inquiry when considering making an order revoking a previous order. The person appointed to conduct the inquiry may require persons to attend or provide evidence under oath.