



# Local Government (Democracy) (Wales) Act 2013

2013 anaw 4

## PART 3

### ARRANGEMENTS FOR LOCAL GOVERNMENT

#### CHAPTER 5

##### IMPLEMENTATION FOLLOWING REVIEW

*Further provision about implementation and implementation orders*

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

- (1) An order made by the Welsh Ministers, the Commission or a principal council under section 37, 38, 39 or 43 may make such incidental, consequential, supplemental or transitional provision as they consider necessary or expedient.
- (2) Such orders may, in particular, make provision about—
  - (a) the name of any altered area or electoral ward;
  - (b) the total number of councillors, the apportionment of councillors among electoral wards, the assignment of existing councillors to new or altered electoral wards and the first election of councillors for any new or altered electoral ward;
  - (c) the holding of a fresh election of councillors for all electoral wards in the local government area in question;
  - (d) the order of retirement of councillors for an electoral ward;
  - (e) the constitution, election to and membership of any public body in any area or electoral ward affected by the order;
  - (f) any of the matters described in section 41(2).

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- (3) Provision of the type described in subsection (2)(c) may only be made in consequence of a change to the electoral arrangements for an area made following a review under Chapter 3.
- (4) An order made by the Welsh Ministers under section 37 or 43 may apply or modify any enactment or charter.
- (5) Nothing in this section prejudices the generality of section 71 (orders and regulations).
- (6) In this section—
  - “councillor” means an elected member of a local authority;
  - “public body” includes—
    - (a) a local authority,
    - (b) any trustees, commissioners or other persons who, for public purposes and not for their own profit, act under any enactment or instrument for the improvement of any place, for the supply of water to any place, or for providing or maintaining a cemetery or market in any place, and
    - (c) any other authority having powers of levying or issuing a precept for any rate for public purposes.

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

- (1) The Welsh Ministers may by regulations make such incidental, consequential, supplemental or transitional provision as they consider necessary or expedient for the purposes of, or in connection with, giving full effect to orders made under section 37, 38, 39 or 43.
- (2) Regulations under this section may, in particular, make provision about—
  - (a) the functions, area or jurisdiction in or over an area (or part of an area), of any public body or office within an area (or electoral ward) affected by an order made under this Part;
  - (b) the costs and expenses of a public body or office affected by such an order;
  - (c) the transfer of staff of affected public bodies or offices;
  - (d) the transfer, management or custody of property (whether real or personal) and the transfer of rights and liabilities;
  - (e) the transfer of legal proceedings.
- (3) Regulations under this section may apply or modify any enactment or charter.
- (4) Nothing in this section prejudices the generality of section 71 (orders and regulations).
- (5) In this section, “public body” has the same meaning as it has in section 40(6).

#### **42 Transfers of staff**

An order under section 37, 38, 39 or 43 or, as the case may be, regulations under section 41 which makes provision about the transfer of staff must include provision to secure that —

- (a) a person who is transferred to a new employer remains on terms and conditions not less favourable than those to which the person was subject prior to the transfer until such time as the person—
  - (i) leaves the employment of the new employer, or

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- (ii) is served with a statement in writing referring to the order or regulations and specifying new terms and conditions of employment, and
- (b) provided the person is engaged in duties reasonably similar to those held immediately prior to the transfer, any new terms and conditions that are specified in a notice under paragraph (a)(ii) are not less favourable than those the person had prior to the transfer.

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

- (1) Other than as provided for by this section, orders made under this section or section 37, 38 or 39 may not be varied or revoked.
- (2) The Welsh Ministers, the Commission or, as the case may be, a principal council may by order vary or revoke—
  - (a) any provision contained in an order made under this section or section 37, 38 or 39 which is of a type described in section 40(2);
  - (b) any similar provision contained in an order made under section 67 (consequential and transitional arrangements) or made by virtue of section 255 (transfer of officers) of the 1972 Act.
- (3) Except as provided for in subsections (4) and (5), an order to vary or revoke provisions of the type described in subsection (2) may be made only by the persons who, or body which, made the order containing the provision to be varied or revoked (“the original order”).
- (4) The Welsh Ministers make make an order under this section where the original order—
  - (a) was made by the Secretary of State and relates to Wales, or
  - (b) was made by the National Assembly for Wales (as constituted under the Government of Wales Act 1998).
- (5) A principal council may make an order under this section where the original order was made by a predecessor council which no longer exists.
- (6) But an order made in pursuance of subsection (5) may vary or revoke provision in the original order only in so far as it relates to the principal council's area.
- (7) Before making an order under subsection (2) the Welsh Ministers, the Commission or, as the case may be, the principal council must comply with subsections (8) and (9).
- (8) The Welsh Ministers, the Commission or, as the case may be, the principal council must—
  - (a) send a copy of a draft of the order to any local authority or public body they or it consider likely to be affected by the order,
  - (b) publish the draft order in such manner as they or it consider likely to bring it to the attention of persons who may have an interest in the order,
  - (c) secure that a copy of the draft order is available for inspection by interested persons at such places as they or it consider appropriate, and
  - (d) invite representations in relation to the draft order within the period of 2 months beginning on the date of publication under paragraph (b).
- (9) The Welsh Ministers, the Commission or, as the case may be, the principal council must consider any representations received within the 2 month period and may modify the order in light of such representations.

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- (10) Where the Welsh Ministers, the Commission or, as the case may be, a principal council is satisfied that a mistake has occurred in the preparation of an order under this section or sections 37, 38 or 39 the Welsh Ministers, the Commission or the principal council may by order make such provision as they or it consider necessary or expedient to rectify the mistake.
- (11) In subsection (10), “mistake”, in relation to an order, includes a provision contained in or omitted from the order in reliance on information supplied by any public body which is inaccurate or incomplete.
- (12) The Welsh Ministers, the Commission or, as the case may be, a principal council may not exercise the power in subsection (10) in relation to an order made by someone else.
- [<sup>F1</sup>(12A) The Welsh Ministers may by order vary or revoke an order under this section or section 37, 38 or 39 (regardless of whether they made the order) in consequence of regulations under paragraph 9 or 10 of Schedule 1 to the Local Government and Elections (Wales) Act 2021.]
- (13) In this section, “public body” has the same meaning as it has in section 40(6).

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**Textual Amendments**

- F1** S. 43(12A) inserted (21.1.2021) by [Local Government and Elections \(Wales\) Act 2021 \(asc 1\)](#), s. 175(1)(f)(2), [Sch. 1 para. 14](#)

**Changes to legislation:**

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