

LOCAL GOVERNMENT AND ELECTIONS (WALES) ACT 2021

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7: Mergers and Restructuring Of Principal Areas

Chapter 1: Voluntary Mergers of Principal Areas

Section 121 – Merger applications

527. **Section 121** enables two or more principal councils to make a joint application (referred to in this Part as a “merger application”) to the Welsh Ministers, asking them to make regulations to merge their principal areas to create a single new principal area.
528. Subsection (2) disapplies section 101 of the 1972 Act (by which a principal council may make arrangements for any of its functions to be discharged by a committee, a sub-committee or an officer of the council or by any other principal council) in relation to the function of making a voluntary merger application.
529. Subsection (3) provides that making an application is a function which may not be discharged by the executives of those councils. Accordingly, the decision to make an application for voluntary merger may only be made by the full council of each of the principal councils making the joint application.
530. If a merging council has a directly elected mayor, the mayor will be entitled to participate and vote in any meeting of the council to approve the application.
531. If the Welsh Ministers decide not to approve a voluntary merger application they must notify the councils concerned.

Section 122 – Consultation before making merger application

532. Principal councils must have consulted about the proposal to merge before submitting a joint application for voluntary merger. The stakeholders to be consulted are listed in this section. Consultation undertaken before this section comes into force by councils seeking to merge satisfies this requirement to consult.

Section 123 – Guidance about merger applications

533. The Welsh Ministers may issue guidance to principal councils in respect of a joint application for voluntary merger, and this section requires councils to have regard to such guidance.
534. The guidance could cover matters the principal councils will need to consider in formulating an application, including the intended benefits, costs and savings, impact assessments, the scope of consultations and any other relevant issues, for example (once the provisions in Part 1 about choosing the voting system have come into force),

identifying which voting system should be used for the first elections to the new council for the new principal area (see section 126)).

535. The duty to have regard to guidance applies in relation to guidance issued by the Welsh Ministers before this section comes into force, if the guidance was expressly issued as guidance on merger applications.

Section 124 – Merger regulations

536. Having received a voluntary merger application, the Welsh Ministers may decide to make regulations (“merger regulations”) to give effect to the merger proposed in the application. Section 124 sets out the specific issues which must be addressed in merger regulations, reflecting the fundamental matters relating to the establishment of a new county or county borough and its council.
537. The date on which the council for the new principal area will take over the full range of functions (referred to in the Act as “the transfer date”, commonly also called “Vesting Day”), is expected to be 1 April in the specified year, to coincide with the start of the local government financial year. It is anticipated that only in exceptional circumstances would the transfer date be set at a different date in the specified year. The merging areas and their councils will be abolished on the transfer date.

Section 125 – Shadow councils and shadow executives

538. Merger regulations must include provision about the establishment of the shadow council for the new principal area. As discussed below, the shadow council will exist before the council assumes its full range of functions, and will exist concurrently with the principal councils it will eventually replace. The shadow council will take steps to ensure that the council will be ready, on the transfer date, to assume all of the functions of a principal council.
539. It is intended that in almost all voluntary mergers, the shadow council will be an “elected shadow council”, elected by local government electors in the areas of the merging councils. The shadow council would normally be elected in May in the year before the transfer date, and the shadow councillors take office on the fourth day after the election.
540. Exceptionally, the shadow council may be constituted of all the councillors of the merging councils (a “designated shadow council”). The designated shadow council will be established from a date specified in the merger regulations.
541. The merger regulations must provide for the shadow council (whether elected or designated) to be organised to have a shadow executive in the form of an executive leader and cabinet.
542. The shadow council and its executive will work alongside the councils and executives of the merging authorities during the period (“the shadow period”) from the election or designation of the shadow council until the specified transfer date. The functions of the shadow council and the shadow executive will be set out in the merger regulations.
543. Arrangements for the funding of the shadow council must be included in the merger regulations and these could include placing responsibilities on one or more of the merging councils, particularly in respect of administering the shadow council’s finances.
544. In the case of an elected shadow council, on the transfer date the merging authorities and their councils will be abolished and the shadow council will automatically take over the full range of functions. No fresh elections will be held.
545. In the case of a designated shadow council, on the transfer date the merging authorities and their councils will be abolished and the designated shadow council will take over. For the initial period after the transfer date (“the pre-election period”), the council of

the new principal area will continue to be constituted of the members who were elected to the old merging councils, albeit their old, merging councils will have been abolished on transfer day. Generally, the first elections to the new council will be held as soon as possible, probably on the first Thursday in May after the transfer date. The newly elected councillors will then take over on the fourth day after the elections and those who served on the designated shadow council will retire (albeit some may well have been elected to the new council).

Section 126 – Voting system

546. **Section 7** of this Act makes provision enabling a principal council to choose its voting system, the choices being between first past the post or single transferable vote. Section 126 requires merger regulations to specify which system is to be used for the first elections of a council created by voluntary merger.
547. It will fall to the merging councils in the first instance to agree among themselves which system should be used for the first elections to the new authority, and to make that choice known to the Welsh Ministers (probably in the merger application).
548. If the merging councils fail to agree the formula set out in subsection (2)(b) will apply. The Welsh Ministers would first specify the voting system used in all or the majority of the merging councils immediately before the date of the merger application; if both systems were used in an equal number of merging councils, the Welsh Ministers would take the decision after consulting the merging councils.
549. Under section 175(6), the provisions in Part 1 of this Act, relating to the choice of voting system, come into force on 6 May 2022 (the day after the first scheduled ordinary local government elections after the passing of the Act). If a voluntary merger application is submitted before the choice of voting system provisions in Part 1 come into force, the first elections to the resulting new council must be held using the first past the post system (subsection (4)).

Section 127 – Elections

550. **Section 127** requires merger regulations to specify the date for the first ordinary elections to the new principal council and the length of the term of office for the councillors elected at that election.
551. Merger regulations may also include provision to cancel the ordinary elections to the principal councils which are the subject of the merger and, if necessary, to extend the term of office for the councillors of those councils until the transfer date. No useful purpose is served by holding elections to councils which are scheduled to be abolished in the near future. Similarly, if one or more of the merging councils has a directly elected mayor, provision could be included in the merger regulations extending the term of a sitting mayor and cancelling a scheduled election.
552. The merger regulations may also make provision about by-elections, including provision to disapply or modify, for a period specified in the merger regulations, the requirement (in section 89 of the 1972 Act) by which a by-election must be held to fill a casual vacancy in the council of a merging council. Section 89(3) of the 1972 Act also suspends by-elections if a casual vacancy occurs within six months of the next scheduled ordinary elections in the council concerned.
553. Provision would generally need to be made in merger regulations to specify the last date on which a by-election in a merging council would be held; there will usually need to be a cut-off date to prevent a situation whereby a by-election would otherwise be required to be held just days before the abolition of the existing principal local councils, which would be a waste of money and other resources.
554. Merger regulations could also include provision disapplying or modifying (in respect of a merging council) section 88 of the 1972 Act, which sets requirements and time

limits for filling a casual vacancy in the office of chair of a principal council. There would be little purpose in holding a special meeting of a merging council to fill such a vacancy if it occurs within a few weeks of the council's abolition.

555. [Section 127\(2\)\(c\)](#) also enables merger regulations to make provision for the conduct of by-elections, filling of casual vacancies etc. in shadow councils; this would include, for example, arrangements for specifying the returning officer for by-elections in the period up until the shadow council has appointed its own returning officer.
556. Ordinary elections for community councils are usually combined with ordinary elections for principal councils for efficiency purposes. Subsection (2)(d) enables community council elections to be postponed, and could be used to make them coincide with the date of the first ordinary elections to the new principal council.
557. Subsection (3) enables merger regulations to specify who will be responsible for the various arrangements about the first elections to the new council and the first meeting of the new council. In most circumstances, these would be shared between the merging councils and their officers, but if need be the regulations may provide that the Welsh Ministers may direct a principal council (under subsection (4)) as to the appointment of a returning officer.

Section 128 - Duty on merging councils to facilitate effective transfer

558. This section places a duty on merging councils to take all reasonable steps to facilitate the transfer of functions, staff etc. to give effect to the merger. The Welsh Ministers may direct a merging council to take, or not take, action relating to discharging its duty under this section.