

LOCAL GOVERNMENT AND ELECTIONS (WALES) ACT 2021

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7: Mergers and Restructuring Of Principal Areas

Chapter 2: Restructuring of Principal Areas

Section 129 – Conditions to be met before making restructuring regulations

559. **Section 129** enables the Welsh Ministers to make regulations for the restructuring of principal councils. This section also sets out the conditions which must be met before the Welsh Ministers may make restructuring regulations.
560. As set out in section 131, restructuring regulations will provide for the abolition of a principal council and its county or county borough, and also for:
- some or all of the abolished area to become part of the area of another existing county or county borough;
 - some or all of the abolished area to be merged with the area of one or more other counties or county boroughs, to create a new county or county borough.
561. The first condition imposed by section 129 is that the Welsh Ministers must have received either a report of a special inspection of a principal council by the Auditor General, under section 95 of the Act (relating to issues with the performance or governance of the council), or an abolition request submitted by a principal council under section 130 of the Act.
562. It is not necessary for there to have been a special inspection of, or for an abolition request to have been made by, any other council whose area may be affected by restructuring regulations.
563. The receipt of a special inspection report or an abolition request will not in itself require the Welsh Ministers to start a process which leads to restructuring regulations.
564. The Welsh Ministers will need to consider the content of the report or the request and draw on such other evidence and information as is appropriate and available to them before moving on to the next stage. Not every special inspection report will give rise to concerns which lead the Welsh Ministers to consider restructuring regulations as an option; it will depend entirely on the circumstances of the principal council in question.
565. If the Welsh Ministers wish to take forward the process of making restructuring regulations, they must comply with the second condition. The second condition is that the Welsh Ministers must give notice to affected councils that they have received a special inspection report or an abolition request.

566. The affected councils would be the principal council which was the subject of the special inspection report or had submitted the abolition request and any other principal council which could be affected by any proposal to restructure the principal council in question. The Welsh Ministers must publish such a notice.
567. The third condition is that the Welsh Ministers must then (if they wish to proceed) consult specified persons about the course of action which they are considering taking in respect of the council in question.
568. The persons who must be consulted are set out in this section and include the principal council which was the subject of the special inspection report or which submitted the abolition request (referred to as the “council under consideration”), and other potentially affected councils.
569. The fourth condition is that following such consultation the Welsh Ministers, on weighing up all the evidence and information, must conclude that effective and convenient local government is not likely to be achieved by the council under consideration before they may propose that restructuring regulations should be made in respect of the council.
570. If all the preceding conditions are fulfilled, the Welsh Ministers may move on to comply with the fifth condition.
571. The fifth condition is that if the Welsh Ministers propose to make restructuring regulations they must give notice of those proposals to the council under consideration and:
- any other principal council to which will be transferred part of the area of the council under consideration;
 - any other principal council which will be merged with all or part of the area of the council under consideration to form a completely new principal area; and
 - any other principal council which had been consulted under the third condition and might be affected by the consequences of the restructuring regulations.
572. All the conditions must be complied with before the Welsh Ministers may make restructuring regulations.

Section 130 – Abolition requests

573. **Section 130** enables a principal council to submit a written request (“an abolition request”) to the Welsh Ministers, asking them to consider abolishing the council and its area. The abolition request must spell out the councils reasons for the request and must be published by the council as soon as practicable.
574. Subsection (4) 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 an abolition request.
575. Subsection (5) provides that making an abolition request is a function which may not be discharged by the executive of a principal council. Accordingly, an abolition request may only be made by the full council concerned. If the council has a directly elected mayor, the mayor will be entitled to participate and vote in any meeting of the council to approve the abolition request.

Section 131 – Restructuring regulations

576. **Section 131** provides that restructuring regulations will provide for the abolition of the principal council under consideration and its principal area (that is, a council in relation to which the five conditions in section 129 have been met, and the county or county

borough for which it is the council) on a date specified in the regulations (“the transfer date”).

577. The regulations will specify the changes to local government structures which will lead to the replacement of the area of the principal council in question, which (as noted above in relation to section 129) must take the form of either or both of the following:
- (a) for parts of the abolished principal area on the transfer date to become parts of other existing principal areas;
 - (b) for the constitution of a new principal area on the transfer date by:
 - the abolition of one or more other principal councils and their principal areas, and
 - the merger of the principal area or areas abolished with all or part of the area of the (also abolished) principal council under consideration.

Section 132 – Restructuring regulations which provide for part of a principal area to become part of another existing principal area

578. If restructuring regulations include provision which effectively transfers a part or parts of the principal area under consideration to another existing principal area, the regulations must include the provision set out in subsection (1) of this section.
579. Subsection (1)(d) requires the regulations to provide that the voting system to be used in the first ordinary elections following the transfer date is to be that which is used for elections to the principal council of the area to which the part or parts of the abolished council were transferred. In other words, there will be no change of voting system in a principal area to which a part of an abolished principal area is added.
580. Subsection (2) lists the matters which may be included in restructuring regulations involving the transfer of part or parts of the area under consideration to another existing principal area. The inclusion in restructuring regulations of the matters listed in subsection (2) will depend on the circumstances of the restructuring. They may include the re-assignment of councillors for a transferred area to the council of the receiving principal area; this would allow the transferred area to be represented on the council of the receiving area until the next ordinary elections, by which time there will have been time for a review of the electoral arrangements of the enlarged receiving area (see section 138 and Schedule 1).
581. Subsections (2)(b) to (h) enable restructuring regulations to make provision about a range of issues concerned with elections, executives, terms of office and remuneration in restructuring councils.
582. Restructuring councils are the council under consideration and those councils which will receive part of the area of that council or be merged with part or all of that area.
583. It may be necessary, for example, to cancel ordinary elections in the area being abolished, postpone ordinary elections in one or more of the receiving areas and extend the terms of councillors serving on the councils. If a council being abolished has a directly elected mayor it may be necessary to extend their term of office to end on the transfer date; if a receiving council has a directly elected mayor, it may be necessary to re-define the area of their jurisdiction to accommodate the new parts of the council area and it may also be appropriate to consider the remuneration arrangements of elected members in the councils.
584. It may also be appropriate in some circumstances to change the name and status of a receiving area to also acknowledge the name and status of the area from which the incoming part was transferred (as to which, see subsection (2)(i) and (j)).

Section 133 – Restructuring regulations which constitute a new principal area

585. If restructuring regulations include provision which entails the creation of a new principal area (by virtue of abolishing one or more other principal areas and merging it or them with all or part of the area under consideration), the regulations must include the provision set out in subsection (1) of this section. In this circumstance, not only will the principal area under consideration be abolished, but also any other principal area or areas with which all or part of the area of the council under consideration will be merged.
586. The new area must have a shadow council, and subsection (1)(e) provides that the shadow council will be an elected shadow council, but subsection (4) enables the Welsh Ministers, if they consider it appropriate, to provide that the shadow council will be a designated shadow council.
587. Subsection (7) defines the two types of shadow council which may be provided for.

Section 134 – Restructuring regulations: supplementary

588. **Section 134** enables restructuring regulations to include provision in addition to that set out in sections 132 and 133 to help give effect to a restructuring of any description.
589. Subsection (1) enables restructuring regulations to apply specified provision which applies to voluntary mergers, as set out elsewhere in the Act.
590. Subsection (1)(a) allows such tailoring of the provisions in Chapter 4 of this Part (remuneration arrangements (see below)) so they are appropriate to, and practicable in, the circumstances of a restructuring which entails the creation of a new principal area (as provided for under section 131(b)).
591. Subsections (1)(b) and (1)(c) enables restructuring regulations to include provision which tailors the provision set out in section 127 (elections and councillors) and paragraphs 2 and 3 of Schedule 11 (membership and functions of transition committees (see below)) so they can be made appropriate to, and practicable in, the circumstances of all types of restructuring.
592. The discretion given in section 134(1) to tailor other provision does not enable the regulations to include completely new provision; it must be intended to achieve fundamentally the same objectives as the provision set out in the sections specified and any adaptation etc. is intended merely to accommodate the circumstances of the restructuring in question.
593. Subsection (2) enables restructuring regulations to include provision for the establishment of a committee (or other body) to provide advice and recommendations to specified persons about the transfer (from one principal council to another) of functions and liabilities etc..
594. Such a committee might be needed in the circumstances of restructuring regulations where a principal council was abolished and its area was allocated among several other existing principal councils. A transition committee as provided for in Schedule 11 (as would be established where a new principal area is created) might not be practicable and a committee (potentially including the abolished council and all the receiving councils) might be established under this provision to consider the range of issues involved.
595. Subsection (2) also enables restructuring regulations to include provision for the establishment of a body corporate with the responsibilities and powers described in paragraph (b). Such a body (known in practice as “a residuary body”) would not be needed where the area of the principal council under consideration, is merged in its entirety with the area of another principal council to create a new principal area and council. In a restructuring where the area of the council under consideration is allocated between two or more other principal councils, the appropriate successor council would

not always be readily determinable. A residuary body might be established to take over the ownership and disposal of surplus property.

596. If, following consultation under section 129(4) or having received an abolition request, the Welsh Ministers decide not to make restructuring regulations, they must notify all the principal councils which have been involved in the process up to that point.
597. Subsection (4) effectively provides that, in specifying the voting system to be used at the first ordinary elections to a new principal council, established under restructuring regulations, the restructuring regulations may specify only the first past the post or single transferable vote systems.
598. The choice of voting systems reflects the systems set out in section 7 of this Act. Under section 175(6), the provisions relating to the choice of voting system come into force on 6 May 2022 (the day after the first scheduled ordinary local government elections taking place after the passing of the Act).
599. If the Welsh Ministers have given notice of their proposals in respect of a restructuring under section 129(6) before the choice of voting system provisions come into force, the first elections to the resulting new council will have to be held using the first past the post system (subsection (5)).

Section 135 – Duties on restructuring councils to facilitate transfer

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