

LOCAL GOVERNMENT AND ELECTIONS (WALES) ACT 2021

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 of Schedule 11: Transition committees of merging councils and restructuring councils

Chapter 5: Supplementary

Section 146 – Guidance

659. The bodies listed in section 146 must have regard to guidance issued by the Welsh Ministers for the purposes of the Part.

Section 147 - Other consequential etc. provision

660. [Section 147](#) enables the Welsh Ministers to include in merger and restructuring regulations supplementary, incidental, consequential, transitional and saving provision (see subsection (5)). They may also make separate regulations containing supplementary etc. provision in order to give full effect to the specific merger or restructuring regulations, or for the purposes of or in consequence of specific regulations.
661. The Welsh Ministers may make regulations of general application (that is, applying in relation to all merger or restructuring regulations) for the same reasons. The section identifies some of the specific uses of these powers, including for the transfer of staff, property and liabilities (including criminal liabilities) from merging or restructuring authorities to the successor authority or authorities.
662. Subsection (8) provides that the Transfer of Undertakings (Protection of Employment) Regulations 2006 ([S.I. 2006/246](#)) (commonly referred to as “TUPE”) apply to a transfer of staff made under these regulations, apart from regulations 4(6) and 10.
663. Excluding TUPE regulation 4(6) means that the liability of an abolished council to be prosecuted for, convicted of and sentenced for any offence will be transferred to the new council. Without this provision any criminal liability of an abolished council under or in connection with contracts of employment transferred to the new council would disappear when the councils are abolished.
664. Excluding TUPE regulation 10 preserves the occupational pension rights of staff being transferred under or by virtue of merger or restructuring regulations. Without this provision, the new council would not be under a legal obligation to honour pension rights, duties or liabilities under existing contracts of employment.

Section 148 – Initial procedure for restructuring regulations

665. **Section 148** sets out an enhanced procedure for the approval of restructuring regulations by the Senedd (this section does not apply to merger regulations).
666. The Welsh Ministers must lay before the Senedd a proposed draft of the restructuring regulations, an explanation of why the Welsh Ministers are satisfied that, unless restructuring regulations are made, effective and convenient local government is not likely to be achieved in the area of the council under consideration and details of the consultation undertaken about the restructuring proposal.
667. The proposed draft of the restructuring regulations and the required accompanying documents must be laid before the Senedd no less than 60 days before laying the final draft of the regulations before the Senedd for the purpose of obtaining the Senedd's approval by way of affirmative resolution (see section 174(4)).
668. At the end of the 60 days, if the Welsh Ministers lay before the Senedd the final draft of the restructuring regulations, they must be accompanied by a statement which sets out what representations have been received since the proposed draft regulations were laid and what changes, if any, have been made in the final draft regulations.
669. The enhanced procedure does not apply to regulations made only for the purpose of amending restructuring regulations.

Section 150 – Repeals of other enactments

670. **Section 150** repeals certain specified legislation, namely:
- Chapter 2 of Part 9 of the 2011 Measure, to remove the existing power and procedure under which the Welsh Ministers may amalgamate two or three principal councils;
 - Section 23(4)(e)(ii) and (iii) of the 2013 Act – section 23 of the 2013 Act enables the Boundary Commission, of its own initiative or at the request of a principal council, to conduct a review of the boundaries of principal areas. In relation to such a review the Boundary Commission may recommend the making of “principal area boundary changes”, as defined in section 24(4)(e) of that Act. This amendment means that the Boundary Commission cannot recommend abolishing a principal area or constituting a new principal area;
 - Section 1(1), 2 to 39 and 44 of the Local Government (Wales) Act 2015. These provisions provided for voluntary mergers, and paved the way for a proposed reorganisation of counties and county boroughs to be achieved by 1 April 2020. That programme is not being pursued so the specified provisions are now either redundant or effectively spent.