

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

Paragraph 5 – Sub-committees of transition committees for merging councils or restructuring councils

609. **Paragraph 5** enables a transition committee (whether established under Part 1 or Part 2 of this Schedule) to establish one or more sub-committees, to provide the transition committee with advice on matters the transition committee refers to it. Anyone appointed to a sub-committee, who is not an elected member of one of the merging or restructuring councils, will not be entitled to vote on matters before the sub-committee.

Paragraph 6 - Provision of funding, facilities and information to transition committees for merging councils or restructuring councils

610. The merging councils or restructuring councils must meet the costs of the transition committee. If the councils fail to agree the apportionment of costs between themselves the Welsh Ministers will determine the proportion of cost to be borne by each council.
611. The merging or restructuring councils must provide the committee with facilities and resources, including staff and information, if reasonably requested by the committee or any of its sub-committees.

Paragraph 7 - Transition committees for merging councils or restructuring councils: further provision

612. The Welsh Ministers may direct a transition committee to exercise its functions in accordance with the direction, and under section 172 a transition committee must comply with any direction given.
613. Neither an audit committee nor an overview or scrutiny committee of a merging council or a restructuring council may exercise its functions in respect of anything done by the transition committee.
614. Transition committees will generally not be empowered to take decisions on policy, strategic or operational matters in respect of a new or existing council; their role will be advisory, and to make recommendations (and in relation to merging councils, paragraph 3 expressly sets out their functions). The relevant audit and scrutiny committees are able to consider any decisions taken by the existing councils in light of advice or recommendations from the transition committees.

Section 137 and Schedule 12 – Restraint of transactions and recruitment

615. **Section 137** introduces Schedule 12, which enables the Welsh Ministers to impose restraints and certain controls on specified activities of merging councils and restructuring councils.

Paragraph 1 - Restraining transactions and recruitment etc. by direction

616. The Welsh Ministers may direct a merging council or a restructuring council not to undertake a “restricted activity” without considering the opinion of a person specified in the direction, or (as the case may be) without obtaining the written consent of a person specified in the direction. The persons who may be specified in the direction are such persons (including authorities) as the Welsh Ministers consider appropriate, which may include the Welsh Ministers themselves, transition committees and shadow councils (see paragraph 2(2)).
617. **Paragraph 1(2)** describes the restricted activities in respect of which directions under this Schedule can be issued.
618. **Paragraph 1(3)** enables the Welsh Ministers to direct a merging council or a restructuring council seeking to appoint or designate a person to a “restricted post” to comply with specified requirements about the appointment or designation; the “restricted posts” are set out in paragraph 1(4).
619. **Paragraph 1(5)** requires a merging council or a restructuring council to provide details of a proposal to carry out a restricted activity to the person specified in a direction under sub-paragraph (1), and to provide the Welsh Ministers with details of a proposal to appoint or designate a person to a restricted post where a direction has been given under sub-paragraph (3).
620. **Paragraph 1(6)** requires a merging council or a restructuring council to publish its reasons for determining to proceed with a restricted activity when the person specified in a direction, which imposes the requirement in sub-paragraph (1)(a), has given the opinion that it would not be appropriate for the merging council or restructuring council to do so.

Paragraph 2 - Directions under paragraph 1: supplementary

621. **Paragraph 2** makes further provision about what may be contained in a direction under paragraph 1. In particular, sub-paragraph (3) enables a direction under paragraph 1 to be tailored so different persons may be specified for the purposes of providing an opinion or consent in relation to different matters.
622. Under sub-paragraph (4), directions can also provide for different requirements in relation to the same restricted activities of differing values; for example, the direction could provide that land purchases of a lower value may require the consent of a shadow council whereas higher value purchases may require the consent of the Welsh Ministers.

Paragraph 3 - Directions under paragraph 1: further provision about reserves

623. **Paragraph 3** allows for a direction under paragraph 1 to permit the inclusion by the council, without the opinion or consent (as the case may be) of the person specified in the direction, in the mandatory calculation of the council’s budget requirements of-
- specified descriptions of financial reserves, or
 - financial reserves up to an amount determined under the direction.

Paragraph 4 - Directions under paragraph 1(3): supplementary

624. **Paragraph 4** enables a direction under paragraph 1(3) (concerning restricted posts) to be tailored so that different requirements may be specified for different descriptions of

posts in the same council. The requirements may relate to remuneration and the length of any appointment or designation of a person.

Paragraph 5 - Directions: enforcement and consequences of contravention

625. The consequences of failing to comply with a direction issued under paragraph 1 are set out in paragraph 5:
- a contract, including an employment contract, or agreement entered into in breach of a direction will be unenforceable;
 - a land transaction or capital acquisition made in breach of a direction will be void;
 - any grant, or provision of other financial assistance or a loan, in breach of a direction will be repayable; and
 - the use of reserves in breach of a direction when making the mandatory calculation of the council's budget requirement means that the calculation will be treated as though it had not been made.

Paragraph 6 - Interpretation of paragraphs 1 and 7

626. Paragraph 6 provides further detail on the terms used in the Schedule, including on the nature of the restricted activities specified in paragraph 1. It sets out the minimum financial thresholds in relation to those activities, below which the activity is not a "restricted activity" and therefore cannot be subject to control under a direction under paragraph 1.
627. The Welsh Ministers may by regulations amend the thresholds set out in this paragraph.

Paragraph 7 - Determining whether financial limits have been exceeded

628. Paragraph 7 sets out various matters to be taken into account when determining whether the financial thresholds have been exceeded. They include, for example, a requirement to take into account not only the land acquisition in question, but other land acquisitions which took place within a related timeframe and which relate to the same or similar matter as the acquisition in question. These requirements are intended to guard against councils splitting acquisitions etc. in order to reduce their value below the financial thresholds in paragraph 6, and so avoid having to comply with the requirements of a direction under paragraph 1.

Paragraph 8 - Financial limits: further provision

629. This paragraph provides that, if there is disagreement about whether a threshold has been exceeded or not, the matter will be decided by the Welsh Ministers. It also provides that where a transaction, in whole or part, involves consideration (that is, a benefit promised by one party to the transaction to another party, in relation to the transaction) which is not money, the value of the consideration is still subject to the financial thresholds in paragraph 6.

Paragraph 9 - Guidance in relation to transactions, recruitment etc.

630. If the Welsh Ministers issue guidance about the matters in this Schedule, the person specified in a direction under paragraph 1 must have regard to that guidance.
631. Principal councils are subject to a duty to have regard to guidance issued by the Welsh Ministers by virtue of section 146, and such guidance can concern the matters set out in paragraph 9(1).

Section 138 – Reviews of electoral arrangements

632. The Welsh Ministers may direct the Boundary Commission to conduct an ‘initial review’ of electoral arrangements for principal areas which are the subject of a merger application, or a proposal for restructuring.
633. If the review relates to a restructuring which involves the transfer of part of an area to be abolished to another principal area, the direction must specify the area which is to be subject to the initial review (since it may not be necessary to include the whole of the receiving area in the review). A direction for an initial review of such areas may also specify that certain matters set out in paragraph 3(1) of Schedule 1 to the Act (which would normally be considered in an initial review of whole principal area) are not to be considered in the review of what is a more limited area.
634. A direction under this section must specify the voting system in relation to which the electoral arrangements are to be reviewed.
635. This section (along with section 11) introduces Schedule 1 (as to which, see paragraphs 63 to 94 of these Notes) which makes provision for the conduct of an initial review by the Boundary Commission in respect of mergers and restructurings (as well as in respect of changes to the voting system in an area not subject to a merger or restructure).
636. Subsection (6) empowers the Welsh Ministers to amend, by regulations, section 29(3) of the 2013 Act. This enables the Welsh Ministers to re-set the start of the 10-year review period, during which the Boundary Commission must undertake a review of electoral arrangements for all principal councils in Wales. The 10-year review cycles started on 30 September 2013, when section 29(3) of the 2013 Act came into force.

Section 139 – Prohibition of changes to executive arrangements

637. Following receipt of a voluntary merger application or having given notice of a restructuring proposal under section 129(6), the Welsh Ministers may direct the merging councils or the restructuring councils that they must not take any steps to change their executive arrangements (including holding a referendum on a proposal to change those arrangements) until merger or restructuring regulations have come into force or the Welsh Ministers have given notice to the principal councils concerned that they do not propose to make such regulations.
638. While a direction is in force, a council is not subject to any duty imposed by or under another enactment to take steps to change its form of executive. A council subject to such a direction would therefore not, for example, be required by any regulations made under section 34 of the 2000 Act to act on a petition calling for a referendum on a proposal to introduce a directly elected mayor.

Section 140 – Requirement on principal councils to provide information etc. to the Welsh Ministers

639. The Welsh Ministers may direct any principal council which is involved in a voluntary merger or a restructuring to provide the Welsh Ministers with any information or documents relating to a possible or ongoing merger or restructuring.

Section 141 – Requirement on principal councils to provide information etc. to other bodies

640. The Welsh Ministers may direct any principal council which is involved in a voluntary merger or a restructuring to provide to the bodies specified in this section any information or documents relating to a possible or ongoing merger or restructuring.

Chapter 4: Remuneration arrangements for new principal councils

641. These sections make provision for the remuneration arrangements for new principal councils (including shadow councils) established under this Part, with reference to the existing arrangements under which the Independent Remuneration Panel for Wales exercises functions under Part 8 of the 2011 Measure. The Panel has statutory responsibility for determining the range and level of allowances payable to elected members of principal local authorities and in relation to the salaries of chief executives of principal councils.

Section 142 - Directions to Independent Remuneration Panel for Wales

642. **Section 142** enables the Welsh Ministers to direct the Independent Remuneration Panel for Wales to perform “the relevant functions” in relation to shadow councils, and new principal councils for the financial year in which the transfer date falls (i.e. the date on which the shadow council assumes the full range of principal council functions and replaces the merging or restructuring councils which are abolished).
643. The relevant functions are those set out in section 142 of the 2011 Measure (which concerns payments to be made to elected members) and section 143 of the 2011 Measure (pensions for elected members).
644. The Panel must follow the procedures set out in Part 8 of the 2011 Measure (other than section 143A of that Measure) subject to the provisions in subsection (4) of this section, which modify and disapply aspects of Part 8 of the 2011 Measure.
645. Subsection (4)(a) provides that the shadow council is a “relevant authority” for the purposes of Part 8 of the 2011 Measure; “relevant authority” being defined in section 144(2) of the 2011 Measure. Subsection (4)(b) relates to the requirements in sections 147 and 148 of the 2011 Measure about the dates by which the Panel must publish its annual report and drafts of the annual report.
646. As noted above, the transfer date for a new principal council will generally be 1 April, but the annual report and draft annual report in which the Independent Remuneration Panel will set out its determinations for the first year of that council will be published in the months before the transfer takes place. Subsection (4)(b) means that in this circumstance the Panel may make determinations in respect of “the council-in-waiting” before it is established, as if it were already established.
647. Subsection (5) will allow the Panel to address the circumstances where a designated shadow council has become the fully vested council on the transfer date (almost always 1 April) and is not replaced by the elected council for the new area until the first ordinary elections are held, probably in May of the same year. Subsection (5) enables the Panel, in making determinations for the first financial year of the new authority, to be able to make different determinations for the periods before and after the first set of elections.

Section 143 - Reports of Panel relating to shadow councils and new principal councils

648. **Section 143(2)** requires the Independent Remuneration Panel for Wales to include its first determinations on pay and pensions for members of the shadow council in a report which must be published by a date set out in the direction given to the Panel by the Welsh Ministers under section 142(1).
649. The “first report” in respect of the shadow council may be an annual report or a supplementary report; this will enable the report to be published at a time which is appropriate in relation to the establishment of the shadow council, rather than be conditioned by the timetable required under section 147 of the 2011 Measure. Additionally, section 148(1A)(b) of the 2011 Measure is dis-applied if the first report is a supplementary report, so the period for representations on a draft report in this

circumstance is not conditioned by the restrictions in section 148(1A)(b) and may be as long as is considered appropriate.

650. Subsection (5) sets out to whom the Panel must send a draft of a report (whether an annual or a supplementary report) which relates to a shadow council or the council for a new principal area.
651. Where the first report is a supplementary report, subsections (6) to (8) provide that the specified requirements which may be applied by an annual report under the 2011 Measure may be applied in this particular circumstance by the supplementary report.

Section 144 – Guidance to Panel

652. **Section 144** requires the Independent Remuneration Panel for Wales to have regard to guidance issued by the Welsh Ministers about the exercise of its functions under sections 142 and 143.

Section 145 - Pay policy statements

653. **Section 145** requires a shadow council to prepare and approve a pay policy statement (as provided for in sections 38 and 39 of the Localism Act 2011) for the periods set out in subsection (3).
654. The purpose is to ensure the shadow council has in place a public statement which articulates the shadow council's policies on a range of issues relating to the pay of its future workforce, particularly its chief officers and its lowest paid employees.
655. To assist the shadow council, subsection (1) requires a transition committee to publish recommendations for the pay policy statement to be prepared by the shadow council, no later than six weeks before the day the shadow council is elected or established. Shadow councils are prohibited from appointing a chief officer until the pay policy statement for the period mentioned in subsection (3) has been prepared and approved.
656. The term “chief officer” has the same meaning as in section 43(2) of the Localism Act 2011 and covers the following officers of a principal council:
- (a) its chief executive (appointed under section 54 of this Act; but until that section comes into force, it will include a principal council's head of paid service);
 - (b) a monitoring officer (designated under section 5(1) of the 1989 Act);
 - (c) a statutory chief officer mentioned in section 2(6) of the 1989 Act, i.e.:
 - the director of children's services;
 - the director of public health;
 - the chief education officer;
 - the director of social services;
 - an officer responsible for the administration of the authority's financial affairs;
 - (d) a non-statutory chief officer mentioned in section 2(7) of the 1989 Act, i.e.:
 - a person for whom the chief executive is directly responsible;
 - a person who, as respects all or most of their duties, is required to report directly or is directly accountable to the chief executive;
 - any person who, as respects all or most of their duties, is required to report directly or is directly accountable to the local authority themselves or any committee or sub-committee of the authority;

- (e) a deputy chief officer mentioned in section 2(8) of the 1989 Act, i.e. a person who, as respects all or most of their duties, is required to report directly or is directly accountable to one or more of the statutory or non-statutory chief officers. This does not include a person whose duties are solely secretarial or clerical or otherwise in the nature of support services.
657. Subsection (6) applies section 143A of the 2011 Measure to shadow councils. Accordingly, the Independent Remuneration Panel for Wales may make recommendations to a shadow council about any policy in the shadow council's pay policy statement and any proposed change to the salary of the shadow council's chief executive.
658. A shadow council must have regard to any recommendation from the Panel when performing its functions under section 38 and 39 of the Localism Act 2011. If the shadow council proposes to make a change to the salary of its chief executive which is not commensurate with a change to the salaries of the council's other staff, the shadow council must consult the Panel about the change, and have regard to any recommendation received from the Panel.

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.