

LOCAL GOVERNMENT AND ELECTIONS (WALES) ACT 2021

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Local Authority Executives, Members, Officers And Committees

Section 54 and Schedule 5 - Chief Executives

311. Section 4 of the 1989 Act requires principal councils to designate one of their officers as their “head of paid service”. This officer must, where they consider it appropriate, prepare a report to their council setting out their proposals in respect of a number of matters listed in that section. The principal council must provide this officer with the staff, accommodation and other resources to allow him or her to perform their duties.
312. The statutory role of head of paid service is often exercised by the officer more usually referred to as the chief executive or managing director. Whilst these terms are widely used to denote the head of a council’s administration throughout local government in Wales, neither title is found in local government legislation.
313. *Section 54* requires a principal council to appoint a chief executive. The provisions of section 4 of the 1989 Act are re-stated and the list of matters expanded to include those relating to performance and governance; namely financial planning, asset management and risk management. This brings the matters for which a chief executive is responsible in line with modern governance practices. Section 54 also makes clear that the matter relating to management of staff also encompasses training and development of staff.
314. This section introduces Schedule 5, which amends section 4 of the 1989 Act so as to disapply the requirement on principal councils to appoint a head of paid service. Schedule 5 also makes consequential amendments relating to chief executives.

Section 55 – Replacement of references to “salary” in section 143A of the 2011 Measure

315. Before amendment, section 143A of the 2011 Measure provided the Independent Remuneration Panel for Wales with powers in relation to the salaries of the heads of paid service in principal councils.
316. *Schedule 5* of the Act (discussed above) amends section 143A of the 2011 Measure to substitute references to “chief executive” in place of “head of paid service”, whilst section 55 substitutes the term “remuneration” in place of “salary” or “salaries”. This amendment will allow the Panel to make recommendations in respect of a broader range of payments to chief executives including salary, any bonuses and other benefits.
317. “Remuneration” has the meaning given in section 43 of the Localism Act 2011, which covers a range of remuneration including: salary or payments under a contract for services; bonuses; allowances; benefits in kind; increases to pension entitlement; and certain payments due where a chief executive ceases to hold office

Section 56 – Reconsideration of remuneration following direction by the Welsh Ministers

318. **Section 56** amends section 143A of the 2011 Measure. New subsection (5C) applies where the Welsh Ministers consider that the response of a “qualifying relevant authority” to a recommendation made by the Independent Remuneration Panel for Wales is inconsistent with the recommendation. This section provides that where Welsh Ministers direct, under section 143A(5B), a qualifying relevant authority to reconsider its response, the function of carrying out the reconsideration cannot be delegated and must be undertaken by the full council.
319. In section 143A of the 2011 Measure, “qualifying local authority” effectively means principal councils only. This is because it is defined by reference to the definition of “relevant authority” (see section 144 of the 2011 Measure, under which relevant authority covers a range of local government bodies), but only includes those:
- which are required to produce a pay policy statement (as to which see sections 38 and 43 of the Localism Act 2011); and
 - which have a statutory head of paid service or, following the commencement of section 54 of the Act, a statutory chief executive.

Section 57 and Schedule 6 - Appointment of assistants to executive

320. **Section 57** amends Schedule 1 to the 2000 Act to make provision for the appointment of members of principal councils as assistants to the executives of principal councils. The assistants will not be members of the executive but could act on their behalf in certain circumstances. These roles could be used to support greater diversity of councillors involved in executive decision making.
321. This section also introduces Schedule 6 which makes consequential amendments relating to assistants to executives, including provision extending certain limitations which apply to members of an executive to assistants to an executive; for example, removing their right to hold certain offices in their councils (such as chair, vice-chair etc.).

Section 58 and Schedule 7 - Job sharing: executive leaders and executive members

322. **Section 58** introduces Schedule 7 to the Act, which amends the 2000 Act to make provision in relation to job-sharing by executive leaders and executive members.
323. **Paragraph 2** of Schedule 7 amends section 11 of the 2000 Act to change the maximum number of members of an executive from 10 to:
- 12 when at least two of the members have been elected or appointed to share office;
or
 - 13 when at least three of the members have been elected or appointed to share office.
324. **Paragraph 5** of Schedule 7 to the Act inserts new paragraphs 2(2A) and 2A into Schedule 1 to the 2000 Act to require principal councils in Wales to include in their executive arrangements provision enabling two or more councillors to share office on an executive, including the office of executive leader.
325. The Schedule also inserts a new paragraph 2B, which makes provision about voting rights and quorum. Under that paragraph, job-sharers effectively count as one person for the purposes of voting and quorum.

Section 59 – Content of, and duty to have regard to, guidance under section 38 of the 2000 Act

- 326. Part 2 of the 2000 Act makes provision in respect of principal council’s executives and executive arrangements. Section 38 of that Part requires a principal council to have regard to any guidance issued by the Welsh Ministers for the purposes of that Part.
- 327. This section inserts a new subsection (1A) into section 38 to clarify that guidance issued under this section may include provision designed to encourage good practise in relation to equality and diversity.
- 328. The meaning of equality and diversity is taken from section 8(2) of the Equality Act 2006; “diversity” means the fact that individual are different, and “equality” means equality between individuals.
- 329. **Section 59** also amends 38(1) of the 2000 Act to extend the duty to have regard to guidance to elected mayors and executive leaders of principal councils.

Section 60 - Job-sharing: non-executive offices in principal councils

- 330. **Section 60** provides the Welsh Ministers with a power to make regulations for the purpose of facilitating or enabling job-sharing in a “principal council office”.
- 331. Subsection (2) lists the principal council offices in respect of which regulations may be made, and they include the key offices provided for in Part 2 of the 1972 Act (such as chair, presiding member etc.), chair or vice-chair etc. of a committee or sub-committee, or deputy mayor. This means the provision does not apply to any office to which a person is elected by the public.
- 332. The Welsh Ministers’ power under this new section is not limited to enabling job-sharing in those offices. Regulations may also include provision regarding how job-sharing arrangements in those offices are to operate, including how certain functions may be exercised in a shared office. The Welsh Ministers may also, in regulations, require principal councils to facilitate job-sharing by removing any barriers contained in, for example, the authority’s standing orders.
- 333. Subsection (5) requires principal councils to have regard to any guidance issued by the Welsh Ministers to support regulations made under this section.

Section 61 – Family absence for members of local authorities

- 334. **Section 61** amends Part 2 of the 2011 Measure by removing the maximum number of weeks entitlement to the various kinds of family absence available to members of principal councils.
- 335. The provisions enable the maximum period of absence for each type of family absence to be specified in regulations (each kind of family absence is governed by regulations in any event). This provides flexibility to change the duration of the various periods of absence

Section 62 - Duties of leaders of political groups in relation to standards of conduct

- 336. Part 3 of the 2000 Act established a statutory framework to promote and maintain high standards of ethical conduct by members and employees of relevant authorities in Wales. A “relevant authority” is a principal council, community council, fire and rescue authority or National Park authority.
- 337. Engendering a culture within a local authority which embraces high standards of conduct requires both local leadership and all members to accept responsibility for their actions both individually and collectively.

338. Building on the existing arrangements, section 62 inserts a new section 52A into the 2000 Act which places a duty on leaders of political groups within a principal council to promote and maintain high standards of conduct by members of their group. Group leaders are required to co-operate with the council's standards committee in the exercise of its general and specific functions for promoting high standards (see below).
339. Subsection (3) amends section 54 of the 2000 Act to extend the specific functions of a standards committee to include monitoring compliance by leaders of political groups with the new duty imposed on them by the Act to promote and maintain high standards of conduct by members of their group. A standards committee must also provide advice or provide or arrange training for group leaders on the new duty.
340. Section 106(5) of the 2000 Act is redundant (see section 105(1) of that Act), and is therefore omitted by subsection (4)(a) of this section. The other amendments made by this section are consequential in nature, or reflect the possibility that section 63 of the Act may be commenced before this section.

Section 63 – Duty of standards committee to make annual report

341. A principal council, fire and rescue authority or National Park authority in Wales (but not a community council) is required by section 54 of the 2000 Act to establish a standards committee.
342. The general functions of a standards committee under section 54(1) of the 2000 Act are to promote and maintain high standards of conduct by members and co-opted members of a “relevant authority” and to assist them to observe the code of conduct.
343. In addition to the new function imposed by section 62(3) of the Act, a standards committee also has specific functions under section 54(2) of the 2000 Act, namely to:
- advise the authority on the adoption or revision of a code of conduct;
 - monitor the operation of the code of conduct; and
 - provide advice or provide or arrange training on the code of conduct for members of the authority.
344. Section 56(1) of the 2000 Act provides that a principal council's standards committee (or a sub-committee established for the purpose) also exercises these functions in relation to members of community councils in its area.
345. **Section 63** of the Act inserts a new section 56B into the 2000 Act which places a requirement on a standards committee to make an annual report to the authority concerned. In the case of a principal council, the requirement to report to “the authority” in this context includes any community councils in its area.
346. The report must:
- describe how the committee has discharged its functions during the preceding financial year;
 - include a summary of reports and recommendations made or referred to the committee by the Public Services Ombudsman for Wales relating to the investigation of alleged breaches of the member code of conduct, and any subsequent action taken by the committee;
 - include a summary of notices given to the committee by the Adjudication Panel for Wales, relating to the Panel's decisions on possible breaches of the member code of conduct; and
 - in the case of a principal council, include the committee's assessment of how political group leaders have complied with the new duty under section 52A of the 2000 Act (inserted by section 62 of this Act) to promote high standards of conduct.

347. The requirement to make an annual report is intended to ensure there is a regular and consistent approach to the reporting and consideration of standards of conduct by members of relevant authorities in Wales. This is intended to promote local ownership and collective responsibility by members for ensuring high standards of conduct within their authority. To this end, section 56B places an obligation on a relevant authority to consider the report and any recommendations made by its standards committee within three months of its receipt. The authority's consideration of a report will be a matter of public record through the published minutes of the meeting.

Section 64 and Schedule 8 – Certain investigations by the Public Services Ombudsman for Wales

348. The Public Services Ombudsman for Wales (“the Ombudsman”) has powers under section 69 of the 2000 Act to investigate allegations that a member or co-opted member, including former members and former co-opted members, of a “relevant authority” (see the note on section 62) has, or may have, failed to comply with their authority's code of conduct.
349. The Welsh Ministers have powers under section 70 of the 2000 Act to make an order which applies or reproduces any provisions of sections 60 to 63 of that Act, as those sections had effect immediately before their repeal by the Localism Act 2011, for the purpose of any investigation under section 69.
350. Prior to their repeal, sections 60 to 63 dealt with the procedure for investigating alleged code of conduct breaches in certain authorities in England. Those sections dealt with matters such as conflicts of interest, powers to obtain and disclose information, and protection from defamation proceedings.
351. The Public Services Ombudsman for Wales (Standards Investigations) Order 2006 (as amended) (2006 No. 949 (W. 98)) was made pursuant to the powers in section 70 of the 2000 Act and governs the procedure for investigations by the Ombudsman under section 69 of that Act.
352. The power in section 70 to apply law which has been repealed does not result in accessible law. Section 64 of, and Schedule 8 to, the Act address this problem by placing equivalent provision for investigations on the face of the 2000 Act in the form of new sections 69A to 69F and by substituting a new section 74. No substantial changes have been made to the effect of the law, but the provisions have, where appropriate, been aligned with the Ombudsman's powers relating to the investigation of maladministration and service failure in the Public Services Ombudsman (Wales) Act 2019 (“the 2019 Act”).
353. New section 69A(1) provides that where the Ombudsman has a conflict of interest, as defined in subsections (2) or (4), they must exercise the power under paragraph 14 of Schedule 1 to the 2019 Act to delegate:
- the decision as to whether to investigate a case (under section 69) and,
 - where a decision is taken to investigate, any investigation of that case.
354. Paragraph 14 of Schedule 1 to the 2019 Act provides that the Ombudsman may authorise any person to discharge the Ombudsman's functions on behalf of the Ombudsman. However, the Ombudsman cannot make arrangements, under the 2019 Act or otherwise, with the Welsh Ministers, the First Minister or the Counsel General for the exercise by one of the other's functions or for the provision of certain specified services by one to the other.
355. Subsections (2) and (3) provide that the requirement to delegate applies if the Ombudsman was a member or officer of the relevant authority or a member of a committee, sub-committee, joint committee or joint sub-committee of the relevant authority at any point within five years of:

*These notes refer to the Local Government and Elections (Wales)
Act 2021 (c.1) which received Royal Assent on 20 January 2021*

- the date on which the Ombudsman received the written allegation (if the case is within subsection (1)(a)); or
 - the date on which the Ombudsman received the written allegation investigated under subsection (1)(a) (if the case is within subsection (1)(b)).
356. Under subsection (4) the requirement to delegate also applies if the Ombudsman considers that they have, or are likely to have, an interest in the matters which may be investigated or the outcome of any investigations which may be undertaken. Subsection (5) requires the Ombudsman to disclose the nature of the interest to the person to whom any investigation under section 69 would or does apply. The Ombudsman must also disclose this information to any person that has made an allegation as described in section 69(1)(a)
357. Subsection (6) provides that should the Ombudsman, in contravention of subsection (1), decide whether to investigate a case or investigate a case the validity of anything done by the Ombudsman if not effected.
358. New section 69B sets out the requirements for investigations under section 69. Subsection (1) requires the Ombudsman to give the person to whom the investigation relates the opportunity to comment on whether they have failed to comply with the code of conduct of the authority of which they are, or were, a member or co-opted member
359. New section 69B(2) requires all investigations to be conducted in private.
360. Subsection (3) provides that, subject to the other requirements set out in this section, it is for the Ombudsman to decide the procedure for conducting an investigation. The Ombudsman could, for example, establish different procedures for different types of complaints and could, in any particular case, depart from any such established procedures if the Ombudsman considered it appropriate.
361. New section 69B(4)(a) provides that the Ombudsman may make such inquiries as the Ombudsman thinks appropriate. Subsection (4)(b) provides that it is for the Ombudsman to decide whether a person may be legally represented or be represented in some other way (e.g. by an independent advocate).
362. New section 69B(6) empowers the Ombudsman to make payments towards the expenses of persons assisting the Ombudsman in an investigation, provided that they are properly incurred, and to pay certain allowances. It is for the Ombudsman to determine whether it is appropriate to make such payments or to impose any conditions on such payments
363. New section 69C(1) of the 2000 Act empowers the Ombudsman to require a person to supply information or produce documents relevant to an investigation under section 69 of that Act. This includes information or documents held in an electronic format.
364. New sections 69D(1) and (2) enable the Ombudsman to certify to the High Court that, in the Ombudsman's opinion, a person has without lawful excuse obstructed the Ombudsman (or a member of the Ombudsman's staff) in the discharge of functions under this Part or that the person has acted in a way that, if the act was done in relation to High Court proceedings, would amount to a contempt of court.
365. If the Ombudsman issues such a certificate then the High Court may inquire into the matter and if the High Court finds that the person concerned has obstructed the Ombudsman, the High Court may deal with the person as if that person had committed contempt in relation to the High Court (section 69D(5)).
366. New section 69E provides that the Ombudsman, a member of their staff, or a person assisting the Ombudsman, may only disclose information obtained in the exercise of the Ombudsman's functions under Part 3 of the 2000 Act:

- (a) for the purposes of:
- the Ombudsman’s functions under Chapter 3 or 4 of Part 3 of the 2000 Act or Part 3 or 5 of the 2019 Act;
 - the functions of the Adjudication Panel of Wales including the functions of its President, Deputy President and tribunals, under Chapter 4 of Part 3 of the 2000 Act;
 - criminal proceedings or the investigation of a criminal offence;
- (b) if the disclosure is made to:
- the Auditor General for the purposes of their functions under Part 2 of the 2004 Act;
 - the Electoral Commission for the purposes of any of its functions.

367. New section 69F enables the Welsh Ministers to amend Chapter 3 of Part 3 of the 2000 Act to make further or different provision about the exercise of the Ombudsman’s functions under section 69.

368. New section 74 provides that, for the purposes of the law of defamation, the publication of a matter is absolutely privileged if it is done in exercise of the Ombudsman’s functions under Chapters 3 and 4 of Part 3 of the 2000 Act; or in communications with the Ombudsman or a person exercising a function of the Ombudsman for the purposes of, or in connection with, those functions. “Publication” bears its usual meaning under the law relating to defamation.

Section 65 – Making information available to overview and scrutiny Committees

369. Section 22(10) of the 2000 Act enables the Welsh Ministers to make regulations requiring the provision of information to the public or members of a principal council about decisions of the executive of that council.

370. **Section 65** amends section 22(10) so that regulations may also require that overview and scrutiny committees and their sub-committees are given information about such decisions. Greater knowledge of the decision the executive intends to make will enable these committees to better plan their work.

Section 66 – Power to require authorities to appoint joint overview and scrutiny Committees

371. **Section 66** amends a regulation making power in section 58 of the 2011 Measure so that regulations may require principal councils to establish a joint overview and scrutiny committee. The amended regulation making power could be used to require councils to establish a joint overview and scrutiny committee where services are being provided across those councils’ areas.

Section 67 – Community council training plans

372. **Section 67** requires a community council to make a plan setting out what it proposes to do to address the training needs of its councillors and staff.

373. The intention is that, by considering training provision in this way, community councillors, as a group, and the staff supporting the council, will come to collectively possess the knowledge and awareness needed for the council to operate effectively. It is not necessary for all councillors and staff to have received the same training and develop the same expertise.

374. Subsections (2) and (3) specify the timetable for making a community council’s first training plan, and when they are subsequently required to make a new one. The timing

for making the first plan is determined by the date the subsection comes into force, and allows up to 6 months for a community council to comply. This provides a reasonable period for a community council to consider the current skillsets of its councillors and staff, having regard to any guidance, in accordance with subsection (7), and to make a plan about the provision of training.

375. A new training plan must be put in place after each ordinary election of community councillors to reflect changes in training needs resulting from changes in councillors, and potentially staff too. Subsection (4) requires a community council to review its training plan from time to time. How often a plan is reviewed is at the discretion of a community council, to reflect local circumstances.
376. The training plan, and any revised plans, must be published, this requirement is intended to facilitate accountability on this matter.
377. Subsection (6) requires that the training plan must be considered by the full council by providing that section 101 of the 1972 Act does not apply. This means the functions of determining the content of a training plan, or reviewing a plan, cannot be delegated to a committee etc., or an officer of the community council.