

LOCAL GOVERNMENT AND ELECTIONS (WALES) ACT 2021

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Collaborative Working by Principal Councils

Chapter 2: Guidance about collaborative working

Section 69 – Guidance about collaborative working

378. This section requires principal councils to have regard to guidance issued by the Welsh Ministers about the exercise of their functions in collaboration with another principal council.
379. Subsection (2) sets out what it means to exercise a function in collaboration with another principal council.

Chapter 3: Establishing corporate joint committees where request has been made

Section 70 – Application by principal councils to establish a corporate joint committee

380. Under this section two or more principal councils may make a corporate joint committee application to the Welsh Ministers asking them to consider establishing, by regulations made under section 72, a corporate joint committee to exercise, in relation to the principal areas of those councils, a function or functions of those councils or the economic well-being function (see section 76 for the economic well-being function).
381. Principal councils may wish to make a corporate joint committee application if, for example, they consider there would be advantages in collaboratively exercising a particular function through a corporate body.
382. Subsection (2) sets out the actions the Welsh Ministers must take if, following the receipt of a corporate joint committee application, they decide not to make regulations establishing the corporate joint committee.

Section 71 – Consultation before making joint committee applications

383. This section requires principal councils to consult those persons listed in the section before making a corporate joint committee application. “Local people” is defined in section 171(1).

Section 72 – Requested joint committee regulations

384. This section gives the Welsh Ministers a regulation making power to establish a body corporate, called a “corporate joint committee”, in response to an application under section 70. The corporate joint committee will exercise the function or functions

specified in the regulations in relation to the areas of the councils that made the application (called the “relevant councils”).

385. Subsection (3) limits the type of functions that can be specified in the regulations; they can only be functions of the relevant councils or the economic well-being function (see section 76).
386. Subsection (4) requires that where regulations specify the former type of function, they must also state whether the function is to be exercised by the corporate joint committee instead of by the relevant councils, or whether it is to be exercised concurrently by the corporate joint committee and the relevant councils. If the function is to be exercised concurrently, it means that the corporate joint committee and a principal council may both exercise the function separately in relation to the principal council’s area.
387. An example of where subsection (5) would be relevant is where a principal council has a function under which a variety of things may be done, but a corporate joint committee is to be empowered to do only some of those things. The regulations may specify a function by means of specifying the particular things the corporate joint committee may do.
388. The Welsh Ministers will only be able to make regulations under this section if the conditions in section 73 are satisfied.
389. Regulations made under this section are referred to in this Part as “joint committee regulations” (as are regulations made under section 74).

Section 73 – Conditions to be met before making requested joint committee regulations

390. This section sets out the conditions which must be satisfied before the Welsh Ministers can make regulations to establish a corporate joint committee under section 72.

Chapter 4: Establishing corporate joint committees where no request has been made

Section 74 – Joint committee regulations where no request has been made

391. Subsection (1) gives the Welsh Ministers a regulation making power to establish a body corporate, called a “corporate joint committee”, to exercise the function or functions specified in the regulations in relation to the principal areas specified in the regulations (called the “relevant areas”). One of the ways in which this power differs from the power of the Welsh Ministers under section 72 is that a corporate joint committee can be established under this power without an application or consent from principal councils.
392. Subsection (3) limits the type of functions that can be specified in regulations made using this power; they can only be functions of the principal councils for the relevant areas that relate to transport, improving education, the function of preparing a strategic development plan or the economic well-being function (see section 76).
393. If the function of preparing a strategic development plan is specified in regulations under this section, Part 6 of the Planning and Compulsory Purchase Act 2004, as amended by Schedule 9 to this Act, applies and sets out that function and related provision.
394. For an explanation of subsection (5), see the note to section 72(4). For an explanation of subsection (6), see the note to section 72(5).
395. The Welsh Ministers will only be able to make regulations under this section if the conditions in section 75 are satisfied.
396. Regulations made under this section are referred to in this Part as “joint committee regulations” (as are regulations made under section 72).

Section 75 – Conditions to be met before making regulations under section 74

397. This section sets out the conditions which must be satisfied before the Welsh Ministers can make regulations to establish a corporate joint committee under section 74.

Chapter 5: Further provision relating to corporate joint committees and joint committee regulations

Section 76 - Economic well-being function

398. This section creates an economic well-being function for corporate joint committees. A corporate joint committee will have this function only if the function is specified in the joint committee regulations which establish the committee (including where the function is added to those regulations by amending regulations made under section 80).
399. Where a corporate joint committee has been granted the economic well-being function it may do anything which it considers is likely to promote or improve the economic well-being of its area. The function may be exercised in relation to or for the benefit of all or any part of its area, or all or any persons resident or present in its area.
400. Where the corporate joint committee considers it is likely to promote or improve the economic well-being of its area, it may also do anything in relation to or for the benefit of any person or area situated outside the corporate joint committee's area, including areas outside Wales.
401. Subsection (4) enables joint committee regulations made under section 72 or 74, including amendments to those regulations made under section 80(1), and supplementary etc. regulations made under section 83(2) to make the exercise of the economic well-being function subject to prohibitions, restrictions or other limitations.

Section 77 – Provision that may or must be made in joint committee regulations

402. Subsection (1) sets out provision which must be included in all joint committee regulations. Subsection (2) sets out provision which must be included in the circumstances set out in that subsection. Subsection (3) sets out examples of provision which may be included in joint committee regulations.

Section 78 – Application by principal councils to amend or revoke joint committee regulations

403. Under this section the principal councils of a corporate joint committee may collectively make an application to the Welsh Ministers, asking them to consider making regulations under section 80 to amend or revoke the joint committee regulations which established the committee, whether made under section 72 or section 74. However, subsection (2) subjects applications under this section to certain restrictions.
404. The restrictions in paragraph (a) of subsection (2) relate both to applications to amend joint committee regulations which were made under section 72 and to applications to amend joint committee regulations which were made under section 74. An application may only ask for a new function to be specified in the joint committee regulations (so the function would become exercisable by the committee) if it is a function of the councils making the application or the economic well-being function.
405. The restrictions in paragraph (b) relate only to applications to amend joint committee regulations which were made under section 74. An application cannot ask for a function to be removed from the joint committee regulations (so it would no longer be exercisable by the committee), or modified, if it is a function which relates to transport or improving education.
406. Paragraph (b) also provides that an application cannot ask for the function of preparing a strategic development plan to be removed from joint committee regulations made

under section 74. That function is set out in Part 6 of the Planning and Compulsory Purchase Act 2004, as amended by Schedule 9 to this Act; the function may not be modified under section 80 in any case.

407. Paragraph (b) also provides that an application cannot ask for the economic well-being function to be removed from joint committee regulations made under section 74. That function is set out in section 76; it may not be modified under section 80 in any case.
408. The power in section 80 may be used to amend joint committee regulations to impose prohibitions, restrictions or other limitations on the exercise of the economic well-being function, or to omit or modify prohibitions, restrictions or other limitations which have already been imposed. However, the effect of paragraph (b) is that an application under this section cannot ask for such prohibitions etc. to be imposed or modified in, or omitted from, joint committee regulations made under section 74.
409. The effect of paragraph (c) of subsection (2) is that an application cannot ask for joint committee regulations made under section 74 to be revoked.
410. The effect of subsection (3) is that an application may be made under this section for a principal council and its area to join an existing corporate joint committee, but only if that council and all the existing councils of the committee make the application jointly.

Section 79 – Further provision in relation to applications

411. This section sets out the requirements principal councils must meet before making an application under section 78 to amend or revoke joint committee regulations, and the requirements placed on Welsh Ministers if they decide not to make the regulations.
412. Subsection (1) requires principal councils to consult such persons as they consider appropriate before they make an application to amend or revoke joint committee regulations.
413. Where, following the receipt of an application under section 78, the Welsh Ministers decide to not make regulations amending or revoking corporate joint committee regulations, subsection (2) requires they notify the principal councils that made the application.

Section 80 – Amendment and revocation of joint committee regulations

414. **Section 80(1)** enables the Welsh Ministers to make regulations to amend or revoke joint committee regulations, whether the joint committee regulations were made under section 72 or section 74.
415. Subsection (2) places conditions on the Welsh Ministers' exercise of the power to make regulations under section 80(1), but different conditions apply depending on what the Welsh Ministers are using the power to do.
416. In order to be able to use the power in section 80(1) to amend joint committee regulations made under section 72, the Welsh Ministers must satisfy the conditions set out in section 81. These conditions apply whatever type of amendment the Welsh Ministers make to the joint committee regulations. However, if the Welsh Ministers revoke joint committee regulations made under section 72 the conditions in section 82 apply.
417. The conditions in section 81 apply if the Welsh Ministers use the power in section 80(1) to amend joint committee regulations made under section 74 in certain ways: where the Welsh Ministers use the power to specify an additional function in the joint committee regulations or to modify or omit existing specified functions. However, there are exceptions to this rule, and these are set out in sub-paragraphs (i) to (iii) of subsection (2) (b).

418. The conditions in section 82 apply if the Welsh Ministers use the power in section 80(1) to amend joint committee regulations made under section 74 in a way which does not involve specifying additional functions or modifying or omitting existing specified functions, or in a way which does involve one of those things but it falls within one of the exceptions in sub-paragraphs (i) to (iii) of subsection (2)(b).
419. Example 1: if regulations under subsection 80(1) were to add, to joint committee regulations made under section 74, a function relating to housing, the conditions in section 81 would apply. Among other things, the Welsh Ministers would need to have received an application under section 78 from the principal councils whose areas are covered by the corporate joint committee, and obtained the consent of those councils.
420. Example 2: if regulations under subsection 80(1) were to add, to joint committee regulations made under section 74, a function relating to transport, the conditions in section 82 would apply because the exception in sub-paragraph (i) of subsection (2)(b) is engaged. Those conditions require consultation and notification but not an application or consent.
421. Example 3: if regulations under subsection 80(1) were to amend provisions about membership in joint committee regulations made under section 74, the conditions in section 82 would apply.
422. Example 4: if regulations under subsection 80(1) were to revoke joint committee regulations made under section 74, the conditions in section 82 would apply.
423. Subsection (3) limits the types of function that can be specified in joint committee regulations using the power in section 80(1). These are limited to:
- a function of the principal councils in the corporate joint committee's area;
 - the economic well-being function (see section 76);
 - in the case of regulations amending joint committee regulations made under section 74, the function of preparing a strategic development plan. This function cannot be given to a corporate joint committee established under section 72.
424. For an explanation of subsection (4), see the note to section 72(4). For an explanation of subsection (5), see the note to section 72(5).
425. Subsection (6) applies where regulations made under this section revoke joint committee regulations so as to abolish the corporate joint committee which was established by those regulations, or where they amend joint committee regulations to remove a function from a corporate joint committee. Such regulations under this section may provide that the function or functions which were exercised by the corporate joint committee are to be exercisable by another person. However, such provision cannot be made in respect of the economic well-being function or the function of preparing a strategic development plan.

Section 81 – Conditions to be met before amending joint committee regulations: application required from principal councils

426. **Section 81** sets out the conditions which apply where the Welsh Ministers exercise the power in section 80(1) in certain ways. See the note to section 80 for an explanation of when these conditions will apply.

Section 82 - Conditions to be met before amending or revoking joint committee regulations: no application required from principal councils

427. **Section 82** sets out the conditions which apply where the Welsh Ministers exercise the power in section 80(1) in certain ways. See the note to section 80 for an explanation of when these conditions will apply.

Section 83 – Supplementary etc. provision in certain regulations under this Part.

428. Subsection (1) provides that joint committee regulations and regulations under section 80 (subsections (1) or (7)) may include supplementary, incidental, consequential, transitional or saving provision.
429. Subsection (2) enables the Welsh Ministers to make separate regulations containing supplementary, incidental, consequential, transitional or saving provision, applying in relation to all corporate joint committees, a particular corporate joint committee or corporate joint committees falling within a particular description. The Welsh Ministers may also use the power under this subsection to impose prohibitions, restrictions or other limitations on the exercise of the economic well-being function (see section 76).
430. Subsection (5) sets out examples of supplementary, incidental etc. provision which may be included in joint committee regulations, regulations under section 80, regulations under subsection (2) and regulations under subsection (7).

Section 84 – Power of the Welsh Ministers to amend, repeal etc. enactments

431. Subsection (1) sets out what joint committee regulations, regulations under section 80 and regulations under section 83 may do in relation to enactments. For the meaning of “enactment” see Schedule 1 to the Legislation (Wales) Act 2019 and section 171 (interpretation) of this Act.
432. Subsection (2) is a separate regulation making power to do the things set out in paragraphs (a) and (b) in relation to enactments, for the purposes of or in connection with this Part.

Section 85 – Requirement to provide information etc.

433. This section gives the Welsh Ministers powers to direct a principal council, a National Park authority or a corporate joint committee to provide them with any information or documents (see the definition in section 68) they consider appropriate for the purposes of considering whether to make regulations under this Part or giving effect to such regulations or in connection with such regulations.

Section 86 – Guidance

434. Under subsection (1), principal councils and corporate joint committees must have regard to any guidance issued by the Welsh Ministers for the purposes of Chapters 3, 4 and 5 of this Part of the Act.
435. Subsection (2) requires National Park authorities to have regard to any guidance issued by the Welsh Ministers for the purposes of Chapter 4 and Chapter 5 of this Part.

Section 87 – Exercise by principal councils of functions under this Part

436. Section 87 provides that section 101 of the 1972 Act does not apply to the functions set out in subsection (4) of this section. As such the principal council may not arrange for these functions to be discharged by a committee, sub-committee or officer of the council or by another principal council.
437. Subsection (2) prohibits these functions being the responsibility of an executive of a principal council whilst subsection (3) provides that an elected mayor is to be treated as a councillor of a principal council for the purposes of those functions.

Section 88 – Amendments relating to strategic planning and joint transport authorities and Schedule 9 - Amendments related to corporate joint committees

438. Section 88 introduces Schedule 9.