

*Status: Point in time view as at 21/01/2021.*

*Changes to legislation: There are currently no known outstanding effects for the Local Government and Elections (Wales) Act 2021, SCHEDULE 12. (See end of Document for details)*

## SCHEDULE 12

(introduced by section 137)

### RESTRAINTS ON TRANSACTIONS AND RECRUITMENT ETC. BY MERGING COUNCILS AND RESTRUCTURING COUNCILS

#### *Restraining transactions and recruitment etc. by direction*

- 1 (1) After receiving a merger application or after giving notice as described in section 129(6), the Welsh Ministers may direct a merging council or restructuring council that—
- (a) the council must not carry out a restricted activity unless it has considered the opinion of a specified person or persons on the appropriateness of carrying out the activity;
  - (b) the council must not carry out a restricted activity unless the written consent of a specified person or persons has been given for the activity to be carried out.
- (2) The restricted activities are—
- (a) making a relevant land acquisition or disposal;
  - (b) entering into a relevant contract or agreement;
  - (c) making a relevant capital acquisition;
  - (d) giving a relevant grant or other financial assistance;
  - (e) making a relevant loan;
  - (f) including an amount of financial reserves in a calculation under section 32 of the Local Government Finance Act 1992 (c. 14);
  - (g) starting the process of recruiting (including by way of internal recruitment)  
—
    - (i) a non-statutory chief officer mentioned in section 2(7) of the Local Government and Housing Act 1989 (c. 42);
    - (ii) a deputy chief officer mentioned in section 2(8) of that Act.
- (3) The Welsh Ministers may direct a merging council or restructuring council seeking to appoint or designate a person to a restricted post (including from among its existing officers) to comply with specified requirements about the appointment or designation.
- (4) “Restricted post”, in relation to a merging council or restructuring council, means—
- (a) its chief executive appointed under section 54;
  - (b) its monitoring officer designated under section 5(1) of the Local Government and Housing Act 1989;
  - (c) a statutory chief officer mentioned in section 2(6) of that Act;
  - (d) its head of democratic services designated under section 8(1) of the 2011 Measure.
- (5) A merging council or restructuring council given a direction under sub-paragraph (1) must—
- (a) provide details of any proposal to carry out a restricted activity to any person or persons specified for the purpose of sub-paragraph (1)(a) or (b) in respect of that activity;

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- (b) provide the Welsh Ministers with details of a proposal to appoint or designate a person to a restricted post where any requirements apply in relation to the appointment or designation by virtue of a direction under sub-paragraph (3).
- (6) If an opinion given for the purposes of sub-paragraph (1)(a) is that it would not be appropriate for a merging council or restructuring council to carry out a restricted activity but the council decides to carry it out, the council must publish its reasons for making that decision.
- (7) Where a direction has been given under sub-paragraph (3), section 143A(1)(b) and (3) of the 2011 Measure (recommendations of Independent Remuneration Panel for Wales on remuneration) does not apply to a proposal to provide to the chief executive of a merging council or restructuring council remuneration which is different to that provided to the chief executive's predecessor.
- (8) A direction given under this paragraph takes effect from the date specified.
- (9) In this paragraph, “specified” means specified in a direction given under this paragraph.
- (10) Until section 54 comes into force—
  - (a) the reference in sub-paragraph (4)(a) to a council's chief executive appointed under section 54 is to be read as a reference to the council's head of paid service designated under section 4(1) of the Local Government and Housing Act 1989 (c. 42), and
  - (b) the references in sub-paragraph (7) to a council's chief executive are to be read as references to a council's head of paid service.

#### **Commencement Information**

**II** Sch. 12 para. 1 in force at 21.1.2021 for specified purposes, see s. 175(1)(f)(2)(b)(ii)(m)(7)

#### *Directions under paragraph 1: supplementary*

- 2 (1) This paragraph applies in relation to a direction under paragraph 1.
- (2) A person specified in the direction as a person whose opinion or consent is required may be such authority or other person as the Welsh Ministers consider appropriate, and this may include the Welsh Ministers, any transition committee (as to which, see Schedule 11) and any shadow council.
- (3) A direction may specify different persons—
  - (a) in relation to different matters for which an opinion or consent is required;
  - (b) in relation to different merging councils or restructuring councils.
- (4) A direction may specify, in relation to the same restricted activity, different requirements in respect of transactions of different values and in respect of different periods of time.
- (5) A direction may specify, in relation to the recruitment of a non-statutory chief officer or deputy chief officer—
  - (a) different requirements in respect of different levels of proposed remuneration;
  - (b) different requirements in respect of different descriptions of officer.

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- (6) An opinion or consent for the purposes of a direction may be given in respect of a particular transaction or transactions of any description.
- (7) Any consent for the purposes of a direction may be given unconditionally or subject to conditions.
- (8) For the purposes of a direction relating to the recruitment of a non-statutory chief officer or deputy chief officer, an opinion given, or conditions to which a consent is subject, may in particular relate to—
  - (a) the remuneration to be provided to a recruited person;
  - (b) the duration of an appointment.
- (9) Any enactments relating to acquisitions or disposals, entering into contracts or agreements, giving grants or other financial assistance, making loans, or the recruitment or appointment of persons by merging councils or restructuring councils have effect subject to any direction.
- (10) Consent required by a direction is in addition to any consent required by any of those enactments.

**Commencement Information**

**I2** [Sch. 12 para. 2](#) in force at 21.1.2021 for specified purposes, see [s. 175\(1\)\(f\)\(2\)\(b\)\(ii\)\(m\)\(7\)](#)

*Directions under paragraph 1: further provision about reserves*

- 3 (1) A direction under paragraph 1—
  - (a) may provide that the opinion or consent of the person or persons specified in the direction is not required for the inclusion, in a calculation under section 32 of the Local Government Finance Act 1992 (c. 14), of financial reserves of a description specified in the direction;
  - (b) may, in relation to a merging council or restructuring council, provide that an opinion or consent is not required for the inclusion in such a calculation of an amount of financial reserves not exceeding an amount specified in or determined under the direction.
- (2) If a direction contains provision by virtue of sub-paragraph (1), the reference in paragraph 1(2)(f) to an amount of financial reserves is to be read as a reference to an amount of financial reserves other than an amount permitted by the direction.

**Commencement Information**

**I3** [Sch. 12 para. 3](#) in force at 21.1.2021 for specified purposes, see [s. 175\(1\)\(f\)\(2\)\(b\)\(ii\)\(m\)\(7\)](#)

*Directions under paragraph 1(3): supplementary*

- 4 (1) This paragraph applies in relation to a direction under paragraph 1(3).
- (2) A direction may specify different requirements for different descriptions of post.
- (3) Requirements imposed on a merging council or restructuring council by a direction may, in particular, relate to—

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- (a) the remuneration to be provided to an appointed or designated person;
  - (b) the duration of an appointment or designation.
- (4) Any enactments relating to the recruitment, designation or appointment of persons by merging councils or restructuring councils have effect subject to any direction.

**Commencement Information**

**I4** [Sch. 12 para. 4](#) in force at 21.1.2021 for specified purposes, see [s. 175\(1\)\(f\)\(2\)\(b\)\(ii\)\(m\)\(7\)](#)

*Directions: consequences of contravention*

- 5
- (1) An acquisition or disposal made in contravention of a direction given under paragraph 1 is void.
  - (2) A contract (including a contract for employment) or agreement entered into in contravention of a direction given under paragraph 1 is unenforceable.
  - (3) A grant or other financial assistance given, or a loan made, in contravention of a direction given under paragraph 1 is repayable.
  - (4) If a merging council or restructuring council includes financial reserves in a calculation under section 32 of the Local Government Finance Act 1992 (c. 14) in contravention of a direction given under paragraph 1, the council is to be treated for the purposes of section 30(8) of that Act as not having made the calculations required by Chapter 3 of Part 1 of that Act.

**Commencement Information**

**I5** [Sch. 12 para. 5](#) in force at 21.1.2021 for specified purposes, see [s. 175\(1\)\(f\)\(2\)\(b\)\(ii\)\(m\)\(7\)](#)

*Interpretation of paragraphs 1 and 7*

- 6
- (1) In paragraphs 1 and 7, “relevant land acquisition or disposal” means the acquisition or disposal of land where the consideration for the acquisition or disposal exceeds £150,000.
  - (2) In sub-paragraph (1), the reference to the acquisition or disposal of land includes—
    - (a) the acquisition or grant or disposal of any interest in land,
    - (b) entering into a contract to acquire or dispose of land or to acquire or grant or dispose of any interest in land, and
    - (c) acquiring or granting an option to acquire any land or any interest in land.
  - (3) In paragraphs 1 and 7, “relevant contract or agreement” means—
    - (a) any contract, other than a capital contract, under which the consideration exceeds £150,000 where—
      - (i) the period of the contract extends beyond the transfer date, or
      - (ii) under the terms of the contract, that period may be extended beyond the transfer date,
    - (b) any capital contract under which the consideration exceeds £500,000, or

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- (c) any framework agreement within the meaning of regulation 33(2) of the Public Contracts Regulations 2015 (S.I. 2015/102) where—
  - (i) the period of the framework agreement extends beyond the transfer date, or
  - (ii) under the terms of the framework agreement, that period may be extended beyond the transfer date.
- (4) In sub-paragraph (3), “capital contract” means a contract in respect of which the consideration payable by the merging council or restructuring council is expenditure which is capital expenditure for the purposes of Chapter 1 of Part 1 of the Local Government Act 2003 (c. 26) (capital finance; see section 16 of that Act).
- (5) In paragraphs 1 and 7, “relevant capital acquisition” means an acquisition of share capital or loan capital in any body corporate in respect of which the consideration exceeds £500,000, other than an acquisition of loan capital where—
  - (a) the acquisition of the loan capital is an investment for the purposes of the prudent management of the financial affairs of the merging council or restructuring council, and
  - (b) the investment is admitted to—
    - (i) the official list (within the meaning of the Financial Services and Markets Act 2000 (c. 8); see section 103(1) of that Act), or
    - (ii) an equivalent list maintained by an authority of an EEA State.
- (6) In paragraphs 1 and 7, “relevant grant or other financial assistance” means a grant or other financial assistance (other than a loan) of more than £150,000.
- (7) In paragraphs 1 and 7, “relevant loan” means a loan of more than £150,000 where—
  - (a) the period of the loan extends beyond the transfer date, or
  - (b) under the terms of the loan, that period may be extended beyond the transfer date.
- (8) The Welsh Ministers may by regulations substitute a different figure for that for the time being set out in sub-paragraph (1), (3)(a) or (b), (5), (6) or (7).

#### **Commencement Information**

**I6** Sch. 12 para. 6 in force at 21.1.2021 for specified purposes, see s. 175(1)(f)(2)(b)(ii)(m)(7)

#### *Determining whether financial limits have been exceeded*

- 7 (1) For the purpose of making a determination as to whether a land acquisition or disposal is a relevant land acquisition or disposal, the consideration for the acquisition or disposal in question is to be treated as including the consideration for any other land acquisition or disposal that—
  - (a) is made by the merging council or restructuring council either—
    - (i) after the relevant date but before the acquisition or disposal in question, or
    - (ii) on the same day as that acquisition or disposal, and
  - (b) relates to the same or a similar description of matter as that acquisition or disposal.

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- (2) For the purpose of making a determination as to whether a contract or agreement is a relevant contract or agreement, the consideration under the contract or agreement in question is to be treated as including the consideration under any other contract or agreement that—
- (a) is entered into by the merging council or restructuring council either—
    - (i) after the relevant date but before the contract or agreement in question, or
    - (ii) on the same day as that contract or agreement, and
  - (b) relates to the same or a similar description of matter as that contract or agreement.
- (3) For the purpose of making a determination as to whether the acquisition of share capital or loan capital in a body corporate is a relevant capital acquisition, the consideration in respect of the capital acquisition in question is to be treated as including the consideration in respect of any other acquisition of share capital or loan capital (other than an acquisition of loan capital where the conditions set out in paragraphs (a) and (b) of paragraph 6(5) are met) that—
- (a) is made by the merging council or restructuring council either—
    - (i) after the relevant date but before the capital acquisition in question, or
    - (ii) on the same day as that capital acquisition, and
  - (b) is made in the same body corporate as that capital acquisition.
- (4) For the purpose of making a determination as to whether a grant or other financial assistance (other than a loan) is a relevant grant or other financial assistance the amount of the grant or financial assistance in question is to be treated as including the amount of any other grant or financial assistance (other than a loan) that—
- (a) is given by the merging council or restructuring council either—
    - (i) after the relevant date but before the grant or financial assistance in question, or
    - (ii) on the same day as that grant or financial assistance, and
  - (b) is given to the same person as that grant or financial assistance.
- (5) For the purpose of making a determination as to whether a loan is a relevant loan, the amount of the loan in question is to be treated as including the amount of any other loan that—
- (a) is given by the merging council or restructuring council either—
    - (i) after the relevant date but before the loan in question, or
    - (ii) on the same day as that loan, and
  - (b) is given to the same person as that loan.
- (6) In this paragraph—
- “contract or agreement” (“*contract neu gytundeb*”) (other than in “relevant contract or agreement”, as to which see paragraph 6(3)) means—
- (a) any contract, other than a capital contract, where—
    - (i) the period of the contract extends beyond the transfer date, or
    - (ii) under the terms of the contract, that period may be extended beyond the transfer date;
  - (b) any capital contract (within the meaning of paragraph 6(4));

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- (c) any framework agreement within the meaning of regulation 33(2) of the Public Contracts Regulations 2015 (S.I. 2015/102) where—
- (i) the period of the framework agreement extends beyond the transfer date, or
  - (ii) under the terms of the framework agreement, that period may be extended beyond the transfer date;
- “land acquisition or disposal” (“*caffaeliad neu warediad tir*”) includes the things set out in paragraph 6(2);
- “loan” (“*benthyciad*”) (other than in “relevant loan”) means a loan where—
- (a) the period of the loan extends beyond the transfer date, or
  - (b) under the terms of the loan, that period may be extended beyond the transfer date;
- “the relevant date” (“*y dyddiad perthnasol*”) means—
- (a) the date on which the Welsh Ministers receive the merger application, or
  - (b) the date on which notice is given as described in section 129(6).

#### Commencement Information

**I7** Sch. 12 para. 7 in force at 21.1.2021 for specified purposes, see s. 175(1)(f)(2)(b)(ii)(m)(7)

#### *Financial limits: further provision*

- 8 (1) Where the consideration, or any of the consideration, in respect of a transaction is not in money, the limits set out in paragraph 6 apply to the value of the consideration.
- (2) Where, in determining whether a limit set out in paragraph 6 is exceeded, a question arises as to the value of the consideration in relation to a transaction and the persons concerned fail to reach agreement, for the purposes of the determination the question is to be decided by the Welsh Ministers.

#### Commencement Information

**I8** Sch. 12 para. 8 in force at 21.1.2021, see s. 175(1)(f)(2)

#### *Guidance in relation to transactions, recruitment etc.*

- 9 (1) A person specified in a direction under paragraph 1 must have regard to any guidance issued by the Welsh Ministers (and see section 146 in relation to guidance issued to principal councils)—
- (a) as to the operation of paragraphs 1 to 8;
  - (b) in relation to any direction given under paragraph 1;
  - (c) on carrying out restricted activities;
  - (d) on appointing and designating persons to restricted posts.
- (2) For the purposes of sub-paragraph (1), “restricted activities” and “restricted posts” are to be interpreted in accordance with paragraph 1.

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**19** [Sch. 12 para. 9](#) in force at 21.1.2021, see s. 175(1)(f)(2)



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