



# Local Government (Democracy) (Wales) Act 2013

2013 anaw 4

## PART 3

### ARRANGEMENTS FOR LOCAL GOVERNMENT

#### CHAPTER 5

##### IMPLEMENTATION FOLLOWING REVIEW

###### *Implementation by the Welsh Ministers*

### **37 Implementation by the Welsh Ministers**

- (1) The Welsh Ministers may, after receiving a report containing recommendations from the Commission in relation to a review conducted under section 23, 26, 27, 28 or 29, or a request for implementation of its recommendations under section 39(7)—
  - (a) by order implement any recommendation, with or without modification, or
  - (b) decide to take no action.
- (2) But the Welsh Ministers may only implement a recommendation with modification if—
  - (a) in a case involving recommendations for change to electoral arrangements for a principal area, they have considered the matters described in section 30 and are satisfied that it is appropriate to make the modification,
  - (b) in a case involving recommendations for change to electoral arrangements for a community, they have considered the matters described in section 33 and are satisfied that it is appropriate to make the modification, and
  - (c) in any case, they are satisfied that the modification is in the interests of effective and convenient local government.

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- (3) No order may be made under subsection (1)(a) until the expiry of a period of 6 weeks beginning with the date on which the Welsh Ministers receive the recommendations.
- (4) The Commission must provide the Welsh Ministers with such further information in relation to its recommendations as the Welsh Ministers may reasonably require.

#### *Non-ministerial implementation*

### **38 Implementation of community boundary change**

- (1) The Commission may, after receiving a report containing recommendations for change from a principal council in relation to a review conducted under section 25—
  - (a) by order implement the recommendations without modification,
  - (b) by order implement the recommendations with such modification as may be agreed with the principal council, or
  - (c) in the circumstances described in section 26(2)(b)(ii) or (iii), conduct its own review.
- (2) No order may be made under subsection (1) until the expiry of a period of 6 weeks beginning with the date on which the Commission receives the principal council's recommendations.
- (3) An order under subsection (1) which contains changes to the electoral arrangements of a principal area may be made only with the consent of the Welsh Ministers.
- (4) The principal council which made the recommendations must provide the Commission with such further information in relation to the recommendations or the procedure followed as it may reasonably require.

### **39 Implementation of community electoral arrangements change**

- (1) A principal council may by order implement the changes described in a report prepared by the council under section 36(4).
- (2) No order may be made under subsection (1) until the expiry of a period of 6 weeks beginning with the date on which the principal council published its report.
- (3) A principal council may, after receiving a report containing recommendations for change from the Commission in relation to a review under section 32—
  - (a) by order implement the recommendations without modification,
  - (b) by order implement the recommendations with such modification as may be agreed with the Commission,
  - (c) decide to take no action and notify the Commission accordingly.
- (4) No order may be made under subsection (3) until the expiry of a period of 6 weeks beginning with the date on which the council receives the report.
- (5) An order under subsection (1) or (3) which contains changes to the electoral arrangements of a principal area may be made only with the consent of the Welsh Ministers.
- (6) Subsection (7) applies where—

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- (a) the principal council has notified the Commission that it does not intend to take any action in respect of the recommendations, or
  - (b) the principal council has not made an order (with or without modification) within the period of 6 months beginning with the date on which the council received the Commission's recommendations.
- (7) The Commission may request the Welsh Ministers implement the recommendations under section 37.

*Further provision about implementation and implementation orders*

#### **40 Implementation orders: consequential provision**

- (1) An order made by the Welsh Ministers, the Commission or a principal council under section 37, 38, 39 or 43 may make such incidental, consequential, supplemental or transitional provision as they consider necessary or expedient.
- (2) Such orders may, in particular, make provision about—
  - (a) the name of any altered area or electoral ward;
  - (b) the total number of councillors, the apportionment of councillors among electoral wards, the assignment of existing councillors to new or altered electoral wards and the first election of councillors for any new or altered electoral ward;
  - (c) the holding of a fresh election of councillors for all electoral wards in the local government area in question;
  - (d) the order of retirement of councillors for an electoral ward;
  - (e) the constitution, election to and membership of any public body in any area or electoral ward affected by the order;
  - (f) any of the matters described in section 41(2).
- (3) Provision of the type described in subsection (2)(c) may only be made in consequence of a change to the electoral arrangements for an area made following a review under Chapter 3.
- (4) An order made by the Welsh Ministers under section 37 or 43 may apply or modify any enactment or charter.
- (5) Nothing in this section prejudices the generality of section 71 (orders and regulations).
- (6) In this section—
  - “councillor” means an elected member of a local authority;
  - “public body” includes—
    - (a) a local authority,
    - (b) any trustees, commissioners or other persons who, for public purposes and not for their own profit, act under any enactment or instrument for the improvement of any place, for the supply of water to any place, or for providing or maintaining a cemetery or market in any place, and
    - (c) any other authority having powers of levying or issuing a precept for any rate for public purposes.

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#### **41 General consequential and transitional provision**

- (1) The Welsh Ministers may by regulations make such incidental, consequential, supplemental or transitional provision as they consider necessary or expedient for the purposes of, or in connection with, giving full effect to orders made under section 37, 38, 39 or 43.
- (2) Regulations under this section may, in particular, make provision about—
  - (a) the functions, area or jurisdiction in or over an area (or part of an area), of any public body or office within an area (or electoral ward) affected by an order made under this Part;
  - (b) the costs and expenses of a public body or office affected by such an order;
  - (c) the transfer of staff of affected public bodies or offices;
  - (d) the transfer, management or custody of property (whether real or personal) and the transfer of rights and liabilities;
  - (e) the transfer of legal proceedings.
- (3) Regulations under this section may apply or modify any enactment or charter.
- (4) Nothing in this section prejudices the generality of section 71 (orders and regulations).
- (5) In this section, “public body” has the same meaning as it has in section 40(6).

#### **42 Transfers of staff**

An order under section 37, 38, 39 or 43 or, as the case may be, regulations under section 41 which makes provision about the transfer of staff must include provision to secure that —

- (a) a person who is transferred to a new employer remains on terms and conditions not less favourable than those to which the person was subject prior to the transfer until such time as the person—
  - (i) leaves the employment of the new employer, or
  - (ii) is served with a statement in writing referring to the order or regulations and specifying new terms and conditions of employment, and
- (b) provided the person is engaged in duties reasonably similar to those held immediately prior to the transfer, any new terms and conditions that are specified in a notice under paragraph (a)(ii) are not less favourable than those the person had prior to the transfer.

#### **43 Variation and revocation of orders**

- (1) Other than as provided for by this section, orders made under this section or section 37, 38 or 39 may not be varied or revoked.
- (2) The Welsh Ministers, the Commission or, as the case may be, a principal council may by order vary or revoke—
  - (a) any provision contained in an order made under this section or section 37, 38 or 39 which is of a type described in section 40(2);
  - (b) any similar provision contained in an order made under section 67 (consequential and transitional arrangements) or made by virtue of section 255 (transfer of officers) of the 1972 Act.

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- (3) Except as provided for in subsections (4) and (5), an order to vary or revoke provisions of the type described in subsection (2) may be made only by the persons who, or body which, made the order containing the provision to be varied or revoked (“the original order”).
- (4) The Welsh Ministers make make an order under this section where the original order—
  - (a) was made by the Secretary of State and relates to Wales, or
  - (b) was made by the National Assembly for Wales (as constituted under the Government of Wales Act 1998).
- (5) A principal council may make an order under this section where the original order was made by a predecessor council which no longer exists.
- (6) But an order made in pursuance of subsection (5) may vary or revoke provision in the original order only in so far as it relates to the principal council's area.
- (7) Before making an order under subsection (2) the Welsh Ministers, the Commission or, as the case may be, the principal council must comply with subsections (8) and (9).
- (8) The Welsh Ministers, the Commission or, as the case may be, the principal council must —
  - (a) send a copy of a draft of the order to any local authority or public body they or it consider likely to be affected by the order,
  - (b) publish the draft order in such manner as they or it consider likely to bring it to the attention of persons who may have an interest in the order,
  - (c) secure that a copy of the draft order is available for inspection by interested persons at such places as they or it consider appropriate, and
  - (d) invite representations in relation to the draft order within the period of 2 months beginning on the date of publication under paragraph (b).
- (9) The Welsh Ministers, the Commission or, as the case may be, the principal council must consider any representations received within the 2 month period and may modify the order in light of such representations.
- (10) Where the Welsh Ministers, the Commission or, as the case may be, a principal council is satisfied that a mistake has occurred in the preparation of an order under this section or sections 37, 38 or 39 the Welsh Ministers, the Commission or the principal council may by order make such provision as they or it consider necessary or expedient to rectify the mistake.
- (11) In subsection (10), “mistake”, in relation to an order, includes a provision contained in or omitted from the order in reliance on information supplied by any public body which is inaccurate or incomplete.
- (12) The Welsh Ministers, the Commission or, as the case may be, a principal council may not exercise the power in subsection (10) in relation to an order made by someone else.
- [<sup>F1</sup>(12A) The Welsh Ministers may by order vary or revoke an order under this section or section 37, 38 or 39 (regardless of whether they made the order) in consequence of regulations under paragraph 9 or 10 of Schedule 1 to the Local Government and Elections (Wales) Act 2021.]
- (13) In this section, “public body” has the same meaning as it has in section 40(6).

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**Textual Amendments**

- F1** S. 43(12A) inserted (21.1.2021) by [Local Government and Elections \(Wales\) Act 2021 \(asc 1\)](#), s. 175(1)(f)(2), [Sch. 1 para. 14](#)

*Agreements between public bodies to deal with change*

**44 Transitional agreements as to property and finance**

- (1) Any public body affected by the alteration, abolition or constitution of an area or electoral ward by an order under section 37, 38, 39 or 43 <sup>F2</sup>... may enter into an agreement with another affected public body about—
  - (a) any property, income, rights or liabilities affected by the change;
  - (b) any financial relationships between the parties to the agreement;
  - (c) any expenses of the parties arising in consequence of the change.
- (2) An agreement under this section may provide—
  - (a) for the transfer or retention of any property, rights and liabilities, with or without conditions, and for the joint use of any property;
  - (b) for the making of payments in respect of any property, rights or liabilities transferred or retained, or of such joint use, and in respect of the remuneration or compensation payable to any person;
  - (c) for the making of any such payment by way of a capital sum or terminable annuity.
- (3) Where the parties cannot reach agreement on any matter, the matter is to be referred to the arbitration of a single arbitrator agreed on by the parties or, failing such agreement, appointed by the Welsh Ministers.
- (4) The arbitrator's award may provide for any matter for which an agreement under this section may provide.
- (5) Any sum which requires to be paid by a public body may be paid—
  - (a) out of the fund or rate from which the general expenses of the public body are paid, or
  - (b) out of such other fund or rate as the public body may determine.
- (6) In this section, “public body” has the same meaning as it has in section 40(6).

**Textual Amendments**

- F2** Words in s. 44(1) omitted (1.4.2021) by virtue of [Local Government and Elections \(Wales\) Act 2021 \(asc 1\)](#), [ss. 150\(2\)\(b\)](#), 175(7); S.I. 2021/297, reg. 2(d)

**Changes to legislation:**

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