

# **LOCAL GOVERNMENT AND ELECTIONS (WALES) ACT 2021**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 7: Mergers and Restructuring Of Principal Areas**

##### ***Chapter 1: Voluntary Mergers of Principal Areas***

##### ***Section 121 – Merger applications***

527. **Section 121** enables two or more principal councils to make a joint application (referred to in this Part as a “merger application”) to the Welsh Ministers, asking them to make regulations to merge their principal areas to create a single new principal area.
528. Subsection (2) disapplies section 101 of the 1972 Act (by which a principal council may make arrangements for any of its functions to be discharged by a committee, a sub-committee or an officer of the council or by any other principal council) in relation to the function of making a voluntary merger application.
529. Subsection (3) provides that making an application is a function which may not be discharged by the executives of those councils. Accordingly, the decision to make an application for voluntary merger may only be made by the full council of each of the principal councils making the joint application.
530. If a merging council has a directly elected mayor, the mayor will be entitled to participate and vote in any meeting of the council to approve the application.
531. If the Welsh Ministers decide not to approve a voluntary merger application they must notify the councils concerned.

##### ***Section 122 – Consultation before making merger application***

532. Principal councils must have consulted about the proposal to merge before submitting a joint application for voluntary merger. The stakeholders to be consulted are listed in this section. Consultation undertaken before this section comes into force by councils seeking to merge satisfies this requirement to consult.

##### ***Section 123 – Guidance about merger applications***

533. The Welsh Ministers may issue guidance to principal councils in respect of a joint application for voluntary merger, and this section requires councils to have regard to such guidance.
534. The guidance could cover matters the principal councils will need to consider in formulating an application, including the intended benefits, costs and savings, impact assessments, the scope of consultations and any other relevant issues, for example (once the provisions in Part 1 about choosing the voting system have come into force),

identifying which voting system should be used for the first elections to the new council for the new principal area (see section 126)).

535. The duty to have regard to guidance applies in relation to guidance issued by the Welsh Ministers before this section comes into force, if the guidance was expressly issued as guidance on merger applications.

### ***Section 124 – Merger regulations***

536. Having received a voluntary merger application, the Welsh Ministers may decide to make regulations (“merger regulations”) to give effect to the merger proposed in the application. Section 124 sets out the specific issues which must be addressed in merger regulations, reflecting the fundamental matters relating to the establishment of a new county or county borough and its council.
537. The date on which the council for the new principal area will take over the full range of functions (referred to in the Act as “the transfer date”, commonly also called “Vesting Day”), is expected to be 1 April in the specified year, to coincide with the start of the local government financial year. It is anticipated that only in exceptional circumstances would the transfer date be set at a different date in the specified year. The merging areas and their councils will be abolished on the transfer date.

### ***Section 125 – Shadow councils and shadow executives***

538. Merger regulations must include provision about the establishment of the shadow council for the new principal area. As discussed below, the shadow council will exist before the council assumes its full range of functions, and will exist concurrently with the principal councils it will eventually replace. The shadow council will take steps to ensure that the council will be ready, on the transfer date, to assume all of the functions of a principal council.
539. It is intended that in almost all voluntary mergers, the shadow council will be an “elected shadow council”, elected by local government electors in the areas of the merging councils. The shadow council would normally be elected in May in the year before the transfer date, and the shadow councillors take office on the fourth day after the election.
540. Exceptionally, the shadow council may be constituted of all the councillors of the merging councils (a “designated shadow council”). The designated shadow council will be established from a date specified in the merger regulations.
541. The merger regulations must provide for the shadow council (whether elected or designated) to be organised to have a shadow executive in the form of an executive leader and cabinet.
542. The shadow council and its executive will work alongside the councils and executives of the merging authorities during the period (“the shadow period”) from the election or designation of the shadow council until the specified transfer date. The functions of the shadow council and the shadow executive will be set out in the merger regulations.
543. Arrangements for the funding of the shadow council must be included in the merger regulations and these could include placing responsibilities on one or more of the merging councils, particularly in respect of administering the shadow council’s finances.
544. In the case of an elected shadow council, on the transfer date the merging authorities and their councils will be abolished and the shadow council will automatically take over the full range of functions. No fresh elections will be held.
545. In the case of a designated shadow council, on the transfer date the merging authorities and their councils will be abolished and the designated shadow council will take over. For the initial period after the transfer date (“the pre-election period”), the council of

the new principal area will continue to be constituted of the members who were elected to the old merging councils, albeit their old, merging councils will have been abolished on transfer day. Generally, the first elections to the new council will be held as soon as possible, probably on the first Thursday in May after the transfer date. The newly elected councillors will then take over on the fourth day after the elections and those who served on the designated shadow council will retire (albeit some may well have been elected to the new council).

### ***Section 126 – Voting system***

546. **Section 7** of this Act makes provision enabling a principal council to choose its voting system, the choices being between first past the post or single transferable vote. Section 126 requires merger regulations to specify which system is to be used for the first elections of a council created by voluntary merger.
547. It will fall to the merging councils in the first instance to agree among themselves which system should be used for the first elections to the new authority, and to make that choice known to the Welsh Ministers (probably in the merger application).
548. If the merging councils fail to agree the formula set out in subsection (2)(b) will apply. The Welsh Ministers would first specify the voting system used in all or the majority of the merging councils immediately before the date of the merger application; if both systems were used in an equal number of merging councils, the Welsh Ministers would take the decision after consulting the merging councils.
549. Under section 175(6), the provisions in Part 1 of this Act, relating to the choice of voting system, come into force on 6 May 2022 (the day after the first scheduled ordinary local government elections after the passing of the Act). If a voluntary merger application is submitted before the choice of voting system provisions in Part 1 come into force, the first elections to the resulting new council must be held using the first past the post system (subsection (4)).

### ***Section 127 – Elections***

550. **Section 127** requires merger regulations to specify the date for the first ordinary elections to the new principal council and the length of the term of office for the councillors elected at that election.
551. Merger regulations may also include provision to cancel the ordinary elections to the principal councils which are the subject of the merger and, if necessary, to extend the term of office for the councillors of those councils until the transfer date. No useful purpose is served by holding elections to councils which are scheduled to be abolished in the near future. Similarly, if one or more of the merging councils has a directly elected mayor, provision could be included in the merger regulations extending the term of a sitting mayor and cancelling a scheduled election.
552. The merger regulations may also make provision about by-elections, including provision to disapply or modify, for a period specified in the merger regulations, the requirement (in section 89 of the 1972 Act) by which a by-election must be held to fill a casual vacancy in the council of a merging council. Section 89(3) of the 1972 Act also suspends by-elections if a casual vacancy occurs within six months of the next scheduled ordinary elections in the council concerned.
553. Provision would generally need to be made in merger regulations to specify the last date on which a by-election in a merging council would be held; there will usually need to be a cut-off date to prevent a situation whereby a by-election would otherwise be required to be held just days before the abolition of the existing principal local councils, which would be a waste of money and other resources.
554. Merger regulations could also include provision disapplying or modifying (in respect of a merging council) section 88 of the 1972 Act, which sets requirements and time

limits for filling a casual vacancy in the office of chair of a principal council. There would be little purpose in holding a special meeting of a merging council to fill such a vacancy if it occurs within a few weeks of the council's abolition.

555. [Section 127\(2\)\(c\)](#) also enables merger regulations to make provision for the conduct of by-elections, filling of casual vacancies etc. in shadow councils; this would include, for example, arrangements for specifying the returning officer for by-elections in the period up until the shadow council has appointed its own returning officer.
556. Ordinary elections for community councils are usually combined with ordinary elections for principal councils for efficiency purposes. Subsection (2)(d) enables community council elections to be postponed, and could be used to make them coincide with the date of the first ordinary elections to the new principal council.
557. Subsection (3) enables merger regulations to specify who will be responsible for the various arrangements about the first elections to the new council and the first meeting of the new council. In most circumstances, these would be shared between the merging councils and their officers, but if need be the regulations may provide that the Welsh Ministers may direct a principal council (under subsection (4)) as to the appointment of a returning officer.

### ***Section 128 - Duty on merging councils to facilitate effective transfer***

558. This section places a duty on merging councils to take all reasonable steps to facilitate the transfer of functions, staff etc. to give effect to the merger. The Welsh Ministers may direct a merging council to take, or not take, action relating to discharging its duty under this section.

## ***Chapter 2: Restructuring of Principal Areas***

### ***Section 129 – Conditions to be met before making restructuring regulations***

559. [Section 129](#) enables the Welsh Ministers to make regulations for the restructuring of principal councils. This section also sets out the conditions which must be met before the Welsh Ministers may make restructuring regulations.
560. As set out in section 131, restructuring regulations will provide for the abolition of a principal council and its county or county borough, and also for:
- some or all of the abolished area to become part of the area of another existing county or county borough;
    - some or all of the abolished area to be merged with the area of one or more other counties or county boroughs, to create a new county or county borough.
561. The first condition imposed by section 129 is that the Welsh Ministers must have received either a report of a special inspection of a principal council by the Auditor General, under section 95 of the Act (relating to issues with the performance or governance of the council), or an abolition request submitted by a principal council under section 130 of the Act.
562. It is not necessary for there to have been a special inspection of, or for an abolition request to have been made by, any other council whose area may be affected by restructuring regulations.
563. The receipt of a special inspection report or an abolition request will not in itself require the Welsh Ministers to start a process which leads to restructuring regulations.
564. The Welsh Ministers will need to consider the content of the report or the request and draw on such other evidence and information as is appropriate and available to them before moving on to the next stage. Not every special inspection report will give rise

to concerns which lead the Welsh Ministers to consider restructuring regulations as an option; it will depend entirely on the circumstances of the principal council in question.

565. If the Welsh Ministers wish to take forward the process of making restructuring regulations, they must comply with the second condition. The second condition is that the Welsh Ministers must give notice to affected councils that they have received a special inspection report or an abolition request.
566. The affected councils would be the principal council which was the subject of the special inspection report or had submitted the abolition request and any other principal council which could be affected by any proposal to restructure the principal council in question. The Welsh Ministers must publish such a notice.
567. The third condition is that the Welsh Ministers must then (if they wish to proceed) consult specified persons about the course of action which they are considering taking in respect of the council in question.
568. The persons who must be consulted are set out in this section and include the principal council which was the subject of the special inspection report or which submitted the abolition request (referred to as the “council under consideration”), and other potentially affected councils.
569. The fourth condition is that following such consultation the Welsh Ministers, on weighing up all the evidence and information, must conclude that effective and convenient local government is not likely to be achieved by the council under consideration before they may propose that restructuring regulations should be made in respect of the council.
570. If all the preceding conditions are fulfilled, the Welsh Ministers may move on to comply with the fifth condition.
571. The fifth condition is that if the Welsh Ministers propose to make restructuring regulations they must give notice of those proposals to the council under consideration and:
- any other principal council to which will be transferred part of the area of the council under consideration;
  - any other principal council which will be merged with all or part of the area of the council under consideration to form a completely new principal area; and
  - any other principal council which had been consulted under the third condition and might be affected by the consequences of the restructuring regulations.
572. All the conditions must be complied with before the Welsh Ministers may make restructuring regulations.

### ***Section 130 – Abolition requests***

573. [Section 130](#) enables a principal council to submit a written request (“an abolition request”) to the Welsh Ministers, asking them to consider abolishing the council and its area. The abolition request must spell out the councils reasons for the request and must be published by the council as soon as practicable.
574. Subsection (4) disapplies section 101 of the 1972 Act (by which a principal council may make arrangements for any of its functions to be discharged by a committee, a sub-committee or an officer of the council or by any other principal council) in relation to the function of making an abolition request.
575. Subsection (5) provides that making an abolition request is a function which may not be discharged by the executive of a principal council. Accordingly, an abolition request may only be made by the full council concerned. If the council has a directly elected

mayor, the mayor will be entitled to participate and vote in any meeting of the council to approve the abolition request.

### ***Section 131 – Restructuring regulations***

576. **Section 131** provides that restructuring regulations will provide for the abolition of the principal council under consideration and its principal area (that is, a council in relation to which the five conditions in section 129 have been met, and the county or county borough for which it is the council) on a date specified in the regulations (“the transfer date”).
577. The regulations will specify the changes to local government structures which will lead to the replacement of the area of the principal council in question, which (as noted above in relation to section 129) must take the form of either or both of the following:
- (a) for parts of the abolished principal area on the transfer date to become parts of other existing principal areas;
  - (b) for the constitution of a new principal area on the transfer date by:
    - the abolition of one or more other principal councils and their principal areas, and
    - the merger of the principal area or areas abolished with all or part of the area of the (also abolished) principal council under consideration.

### ***Section 132 – Restructuring regulations which provide for part of a principal area to become part of another existing principal area***

578. If restructuring regulations include provision which effectively transfers a part or parts of the principal area under consideration to another existing principal area, the regulations must include the provision set out in subsection (1) of this section.
579. Subsection (1)(d) requires the regulations to provide that the voting system to be used in the first ordinary elections following the transfer date is to be that which is used for elections to the principal council of the area to which the part or parts of the abolished council were transferred. In other words, there will be no change of voting system in a principal area to which a part of an abolished principal area is added.
580. Subsection (2) lists the matters which may be included in restructuring regulations involving the transfer of part or parts of the area under consideration to another existing principal area. The inclusion in restructuring regulations of the matters listed in subsection (2) will depend on the circumstances of the restructuring. They may include the re-assignment of councillors for a transferred area to the council of the receiving principal area; this would allow the transferred area to be represented on the council of the receiving area until the next ordinary elections, by which time there will have been time for a review of the electoral arrangements of the enlarged receiving area (see section 138 and Schedule 1).
581. Subsections (2)(b) to (h) enable restructuring regulations to make provision about a range of issues concerned with elections, executives, terms of office and remuneration in restructuring councils.
582. Restructuring councils are the council under consideration and those councils which will receive part of the area of that council or be merged with part or all of that area.
583. It may be necessary, for example, to cancel ordinary elections in the area being abolished, postpone ordinary elections in one or more of the receiving areas and extend the terms of councillors serving on the councils. If a council being abolished has a directly elected mayor it may be necessary to extend their term of office to end on the transfer date; if a receiving council has a directly elected mayor, it may be necessary to re-define the area of their jurisdiction to accommodate the new parts of the council area

and it may also be appropriate to consider the remuneration arrangements of elected members in the councils.

584. It may also be appropriate in some circumstances to change the name and status of a receiving area to also acknowledge the name and status of the area from which the incoming part was transferred (as to which, see subsection (2)(i) and (j)).

### ***Section 133 – Restructuring regulations which constitute a new principal area***

585. If restructuring regulations include provision which entails the creation of a new principal area (by virtue of abolishing one or more other principal areas and merging it or them with all or part of the area under consideration), the regulations must include the provision set out in subsection (1) of this section. In this circumstance, not only will the principal area under consideration be abolished, but also any other principal area or areas with which all or part of the area of the council under consideration will be merged.
586. The new area must have a shadow council, and subsection (1)(e) provides that the shadow council will be an elected shadow council, but subsection (4) enables the Welsh Ministers, if they consider it appropriate, to provide that the shadow council will be a designated shadow council.
587. Subsection (7) defines the two types of shadow council which may be provided for.

### ***Section 134 – Restructuring regulations: supplementary***

588. **Section 134** enables restructuring regulations to include provision in addition to that set out in sections 132 and 133 to help give effect to a restructuring of any description.
589. Subsection (1) enables restructuring regulations to apply specified provision which applies to voluntary mergers, as set out elsewhere in the Act.
590. Subsection (1)(a) allows such tailoring of the provisions in Chapter 4 of this Part (remuneration arrangements (see below)) so they are appropriate to, and practicable in, the circumstances of a restructuring which entails the creation of a new principal area (as provided for under section 131(b)).
591. Subsections (1)(b) and (1)(c) enables restructuring regulations to include provision which tailors the provision set out in section 127 (elections and councillors) and paragraphs 2 and 3 of Schedule 11 (membership and functions of transition committees (see below)) so they can be made appropriate to, and practicable in, the circumstances of all types of restructuring.
592. The discretion given in section 134(1) to tailor other provision does not enable the regulations to include completely new provision; it must be intended to achieve fundamentally the same objectives as the provision set out in the sections specified and any adaptation etc. is intended merely to accommodate the circumstances of the restructuring in question.
593. Subsection (2) enables restructuring regulations to include provision for the establishment of a committee (or other body) to provide advice and recommendations to specified persons about the transfer (from one principal council to another) of functions and liabilities etc..
594. Such a committee might be needed in the circumstances of restructuring regulations where a principal council was abolished and its area was allocated among several other existing principal councils. A transition committee as provided for in Schedule 11 (as would be established where a new principal area is created) might not be practicable and a committee (potentially including the abolished council and all the receiving councils) might be established under this provision to consider the range of issues involved.

595. Subsection (2) also enables restructuring regulations to include provision for the establishment of a body corporate with the responsibilities and powers described in paragraph (b). Such a body (known in practice as “a residuary body”) would not be needed where the area of the principal council under consideration, is merged in its entirety with the area of another principal council to create a new principal area and council. In a restructuring where the area of the council under consideration is allocated between two or more other principal councils, the appropriate successor council would not always be readily determinable. A residuary body might be established to take over the ownership and disposal of surplus property.
596. If, following consultation under section 129(4) or having received an abolition request, the Welsh Ministers decide not to make restructuring regulations, they must notify all the principal councils which have been involved in the process up to that point.
597. Subsection (4) effectively provides that, in specifying the voting system to be used at the first ordinary elections to a new principal council, established under restructuring regulations, the restructuring regulations may specify only the first past the post or single transferable vote systems.
598. The choice of voting systems reflects the systems set out in section 7 of this Act. Under section 175(6), the provisions relating to the choice of voting system come into force on 6 May 2022 (the day after the first scheduled ordinary local government elections taking place after the passing of the Act).
599. If the Welsh Ministers have given notice of their proposals in respect of a restructuring under section 129(6) before the choice of voting system provisions come into force, the first elections to the resulting new council will have to be held using the first past the post system (subsection (5)).

### ***Section 135 – Duties on restructuring councils to facilitate transfer***

600. This section places a duty on restructuring councils to take all reasonable steps to facilitate the transfer of functions, staff etc. to give effect to the restructuring. The Welsh Ministers may direct a restructuring council to take, or to not take, action relating to discharging its duty under this section.

## ***Chapter 3: Functions Relating to Mergers and Restructuring***

### ***Section 136 and Schedule 11 – Transition Committees***

601. **Section 136** introduces Schedule 11, which make provision about the establishment of transition committees for merging and restructuring authorities.