

LOCAL GOVERNMENT AND ELECTIONS (WALES) ACT 2021

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 9: Miscellaneous

Section 159 – Information sharing

686. Subsection (1) provides that, for the purposes of carrying out a specified function in relation to a principal council, a member of the information sharing group may request information or a document (“document” is defined in subsection (9)) from another member of the information sharing group.
687. Subsection (2) provides that the latter member is required to comply with such a request if the information or document was obtained or created in the exercise of that member’s specified functions, and if it is reasonably practicable to provide the information or document. The members of the information sharing group, and the specified functions of each member are set out in the table.
688. Subsection (3) confers a power on members of the information sharing group to provide information to the Auditor General or the Welsh Ministers for the purpose of exercising their functions under Part 4, Chapter 1 of Part 6 and Chapter 2 of Part 7 of the Act, if the Auditor General or the Welsh Ministers have requested the information or document. However, this power is conferred upon a member of the information sharing group only where the member is under no duty, and has no other power, to provide the information or document to the Auditor General or the Welsh Ministers.
689. The Welsh Ministers may make regulations to amend the table listing the members of the information sharing group and their specified functions. Before making any regulations to amend the table, the Welsh Ministers must consult with such persons (“persons” includes bodies – see Schedule 1 to the Legislation (Wales) Act 2019) representing principal councils as the Ministers think appropriate, the Auditor General, the person to whom a new or amended entry will relate and the person to whom an entry to be omitted relates.
690. Subsection (10) partially repeals section 33 of the 2009 Measure, which provides for the sharing of information and documents between certain regulators and overlaps to some extent with the provisions of this section.
691. This partial repeal retains the provisions relating to the sharing of information and documents in connection with the functions of the Auditor General under sections 17 and 19 of the 2009 Measure.
692. The full repeal of section 33 will be subsequently carried out by section 113 of the Act, which will also repeal subsection (10) of section 159 as that subsection will be redundant after section 33 of the 2009 Measure is fully repealed.

693. See section 175(1)(g) and the explanatory note to that section about the coming into force of section 159. Section 113 is to be brought into force by order.

Section 160 Amendment of the Public Audit (Wales) Act 2004 consequential on section 159

694. **Section 160** amends section 54 of the 2004 Act which restricts the purposes for which information obtained by, or on behalf of, the Auditor General under certain statutory provisions, including Part 1 of the 2009 Measure, may be disclosed. Section 33 is in Part 1 of the 2009 Measure but will be largely repealed by section 159(10) and subsequently fully repealed by section 113.
695. **Section 160** inserts into section 54 references to the new information sharing provision in section 159. This has the effect that the restrictions in section 54 will apply to information obtained by, or on behalf of, the Auditor General under section 159, and that information to which section 54 applies may be disclosed under section 159 or for the purposes of functions of the Auditor General which are specified functions within the meaning of section 159 (some of those specified functions are already covered by section 54(2)(b)).

Section 161 Head of democratic services

696. **Section 8** of the 2011 Measure requires a local authority (defined in section 175 of the Measure as a county or county borough council) to designate one of its officers as its head of democratic services. This officer is responsible for discharging the functions set out in section 9 of the Measure.
697. Under section 8(1)(b) of the 2011 Measure an authority is required to provide their head of democratic services with such staff, accommodation and other resources as are, in the opinion of the authority, sufficient to allow the head of democratic services to discharge their functions.
698. Subsection (1) amends the 2011 Measure so as to require an authority to have regard to any guidance issued by the Welsh Ministers about its function under section 8(1)(b) of the 2011 Measure.
699. Before amendment, section 8(4)(b) of the 2011 Measure prevented a local authority from designating their monitoring officer as their head of democratic services. Subsection (2) repeals paragraph (b) to remove this restriction.
700. Subsection (3) amends section 43 of the Localism Act 2011 to designate the post of head of democratic services as a chief officer for the purposes of the council pay policy statement.

Section 162 and Schedule 13 – Abolition of polls consequent on a community meeting

701. **Section 162** introduces Schedule 13 which amends the 1972 Act so as to abolish community polls, with the exception of community governance polls, which enable a community to hold a poll in respect of a proposal of the kind mentioned in sections 27A, 27C, 27E, 27G, 27I and 27K of the 1972 Act, including proposals to establish or dissolve a community council or to group with other communities under a common community council.
702. **Paragraph 6(5)** of Schedule 13 substitutes paragraph 34(5) and (6) of Schedule 12 of the 1972 Act, providing for a power that will allow the Welsh Ministers to make regulations about the conduct of community governance polls.
703. **Paragraph 12** of Schedule 13 repeals an amendment which is made to paragraph 34(5) of Schedule 12 to the 1972 Act in consequence of section 13 of this Act. The consequential amendment to paragraph 34(5) will be redundant when paragraph 6(5) of this Schedule

substitutes paragraphs 34(5) and (6) to provide for the new regulation making power for the Welsh Ministers.

Section 163 – Appointment by Local Democracy and Boundary Commission of its chief executive

704. **Section 163** amends section 8 of the 2013 Act so that the appointment of the Boundary Commission’s chief executive will, other than in the circumstances set out in new subsection (2A) of section 8, no longer be a function of the Welsh Minister and will instead be a function of the Boundary Commission.
705. New subsection (2A) of section 8 allows the Welsh Ministers to appoint a chief executive on such terms and conditions as the Welsh Ministers decide, in circumstances where that office has been vacant for more than six months.
706. Neither the Boundary Commission nor the Welsh Ministers may appoint a person to the role of chief executive if that person holds one of the positions set out in new subsection (4) of section 8.
707. **Section 163(6)** removes unnecessary references to “in Wales” from sections 4(3)(c) and (d) and 11(2)(c) and (d) of the 2013 Act. See section 72 of the 2013 Act for the meaning of “local authority” in that Act.

Section 164 – Directions under section 48 of the Local Government (Democracy) (Wales) Act 2013

708. This section amends section 48 of the 2013 Act which allows the Welsh Ministers to give directions to the Boundary Commission and to principal councils, relating to the exercise of the functions of those bodies under Part 3 of the 2013 Act. Section 48 sets out particular things which the Welsh Ministers may direct the Boundary Commission or a principal council to do. Section 164 amends this list of particular things.

Section 165 and Schedule 14 – Merging and demerging public services boards under the Well-being of Future Generations (Wales) Act 2015

709. **Section 165** amends Chapter 3 of Part 4 of the WFG Act.
710. Subsection (2) removes section 47(3) of the WFG Act which states that Public Services Board (PSBs) may only merge if the same Local Health Board is a member of each board seeking or being directed to merge, and no other Local Health Board is a member of any of those boards.
711. Subsection (3) adds additional subsections to section 47 of the WFG Act. The new sections 47(7) to 47(9) provide that a merged board can demerge, or partially demerge (or be directed by Welsh Ministers to do so) if it is considered that it would assist in contributing to the achievement of the well-being goals. This mirrors the existing provisions for the merger of PSBs.
712. The WFG Act has previously been silent on what happens following a merger. The act of merger does not trigger the production of a new well-being plan. These are only triggered by local government elections (“ordinary elections” under section 26 of the 1972 Act).
713. This left doubt as to what local well-being plan a newly merged PSB would be working to until the next set of local government elections took place; which depending on the point at which a merger took place could be a number of years.
714. The new subsections (5), (6), (10) and (11) of section 47 of the WFG Act set out what steps need to be taken regarding the review and preparation of local well-being plans following the merger, demerger or partial demerger of boards.

715. Following a merger or demerger, the PSB is given the flexibility to adopt and adapt the local well-being plans in effect for its area immediately before it was established) to whatever extent the newly formed PSB considers appropriate (which could be entirely, not at all, or anything in between). There is no requirement to revisit the assessment of local well-being. This is only triggered by the production of a new local well-being plan published under section 39(7) of the WFG Act (i.e. in relation to a local government election).
716. On the whole the assessments are produced to provide a reliable evidence base for a whole government election cycle. PSBs are entitled to draw on evidence additional to the assessments so if there are factual changes which they think should be reflected in their plans post-merger/demerger, they are able to draw on that information without having to produce new assessments of well-being.
717. The new subsection (12) provides that before publishing a plan following a merger or demerger, a board must consult the Future Generations Commissioner and the Welsh Ministers. Since a merger or demerger may be triggered by a direction from the Welsh Ministers, being consulted on revised plans gives the Welsh Ministers a formal opportunity to satisfy themselves that, among other things, the revised plans are likely to promote the purpose behind any Ministerial direction.
718. The PSB will have discretion over whoever else it consults. Guidance under the WFG Act may give guidance about the bodies a board might consult.
719. If a PSB considers it appropriate to consult its invited partners, the duty to prepare and publish “as soon as reasonably practicable” must be read in the light of the time it will take for the board to consult them.
720. This section also introduces Schedule 14 which amends existing legislation in light of the changes made to section 47 of the WFG Act.
721. [Paragraph 1](#) makes consequential amendments to the WFG Act, for example, adding references to the demerger of PSBs where there is a reference to a merger.
722. Subsection (6) of section 39 is removed (and any other references to this subsection in the WFG Act) because boards have already produced their first well-being plans following commencement of the section.
723. [Paragraphs 2 to 9](#) make amendments to other Acts which refer to local well-being plans.

Section 166 – Combined Fire and Rescue Authorities: inquiries

724. This section amends sections 2 and 4 of the Fire and Rescue Services Act 2004 to remove the requirement for the Welsh Ministers to hold an inquiry before varying a Fire and Rescue Authority’s (“FRA”) combination scheme, except where the variation would alter the area served by the FRA, or would revoke the combination scheme.
725. As a result of amendments made by this section to section 2(9)(c) and 4(7)(b) of the Fire and Rescue Services Act 2004, no inquiry will be required if a combination scheme is to be made, varied or revoked solely for the purpose of giving effect to an order under Part 3 of the 2013 Act (arrangements for local government) or regulations under Part 7 of this Act (mergers and restructuring of principal areas).
726. As a result of the amendment to section 2(10), a scheme under section 2 may be made (but not come into force) in advance of an order made under Part 3 of the 2013 Act or regulations made under Part 7 of this Act coming into force.
727. [Section 166](#) also amends section 34(3) of the 2013 Act to require the Boundary Commission to consult any FRA for an area which may be affected by a proposed review of local government arrangements under Part 3 of that Act.

Section 167 – Performance and governance of fire and rescue authorities

728. This section inserts a new section 21A into the Fire and Rescue Services Act 2004 to provide powers for the Welsh Ministers to make regulations relating to the performance and governance of FRAs in Wales.
729. **Section 21A(1), (2) and (3)** gives the Welsh Ministers powers to make regulations requiring FRAs in Wales to make a plan in relation to the exercise of their functions, and to impose requirements in respect of that plan, including its content, preparation and revision, publication and the period to which it relates.
730. In relation to the plans' content, the Welsh Ministers may, in particular, impose a requirement to set out:
- the authority's priorities and objectives;
 - an explanation of the extent to which the plan reflects the Fire and Rescue National Framework prepared by the Welsh Ministers under section 21;
 - the actions the FRA will take to, for example, deliver its priorities and objectives; and
 - how it intends to assess its performance.
731. **Section 21A(4)** enables the Welsh Ministers to make regulations making provision for assessing and reporting on an FRA's performance, including imposing related requirements on FRAs. This may include specifying a range of performance measures, for example, performance indicators, qualitative techniques (case studies and surveys) and analytical techniques (benchmarking) for FRAs to use to assess their performance and progress against their plans. It may also include information on the appropriate timing of, and audience for, performance reporting.
732. **Section 21A(5)** requires the Welsh Ministers to consult FRAs (or persons representing FRAs), employee representatives, and any other persons whom the Welsh Ministers consider appropriate before making regulations under that section.

Section 168 – Fire and rescue authorities: disapplication of the 2009 Measure

733. Subsection (1) removes "fire and rescue authorities" from the definition of "Welsh improvement authority" in section 1 of the 2009 Measure and makes other amendments so that the improvement regime set out in Part 1 of the 2009 Measure ceases to apply to FRAs.
734. Subsection (2) removes fire and rescue authorities in Wales from the application of section 93 of the Local Government Act 2003 (power of certain authorities to charge for discretionary services) by removing "Welsh improvement authorities" from the definition of relevant authority in section 93(9) and replacing it with two new references to "a county or county borough council in Wales" and "a National Park authority for a National Park in Wales".
735. Fire and rescue authorities have a power to charge a person for action taken otherwise than for a commercial purpose, under section 18A of the Fire and Rescue Services Act 2004 (subject to certain limitations – see sections 18A and 18B of that Act).
736. In consequence of the disapplication of Part 1 of the 2009 Measure to fire and rescue authorities, subsection (3) removes from section 24 of the Fire and Rescue Services Act 2004 provisions which had applied certain provisions of the 2009 Measure with modifications in relation to the duty of fire and rescue authorities under section 21(7) of the Fire and Rescue Services Act 2004 to have regard to the Fire and Rescue National Framework in carrying out their functions.

Section 169 – National Park authorities: disapplication of the 2009 Measure

737. **Section 169** removes “a National Park authority for a National Park in Wales” from the definition of “Welsh improvement authority” in section 1 of the 2009 Measure and makes other amendments so that the improvement regime set out in Part 1 of the 2009 Measure ceases to apply to National Park authorities in Wales.

Section 170 – Repeal of the 2009 Measure

738. This section repeals the 2009 Measure and amends other enactments to remove references to the provisions of the 2009 Measure. This section is to be brought into force by order simultaneously with the coming into force of section 113 (disapplication of 2009 Measure to principal councils), section 168 (disapplication of 2009 Measure to fire and rescue authorities) or section 169 (disapplication of 2009 Measure to National Park authorities), whichever is the last of those section or sections to be brought into force.