



# Local Government and Elections (Wales) Act 2021

2021 asc 1

## PART 7

### MERGERS AND RESTRUCTURING OF PRINCIPAL AREAS

#### CHAPTER 1

##### VOLUNTARY MERGERS OF PRINCIPAL AREAS

###### *Applications for mergers*

#### **121 Merger applications**

- (1) Any two or more principal councils may jointly make an application (“a merger application”) to the Welsh Ministers, asking them to consider making merger regulations under section 124(1) merging their principal areas into a new principal area.
- (2) Section 101 of the 1972 Act (arrangements for discharge of functions by local authorities) does not apply to the function of making a merger application.
- (3) The function of making a merger application is not to be the responsibility of an executive of the principal council under executive arrangements.
- (4) An elected mayor is to be treated as a councillor of the principal council for the purposes of the function of making a merger application.
- (5) If, following receipt of a merger application, the Welsh Ministers decide not to make merger regulations under section 124(1), they must notify the principal councils that made the application.

*Status: Point in time view as at 21/01/2021.*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, CHAPTER 1. (See end of Document for details)*

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

- (1) Before making a merger application the principal councils must consult—
  - (a) local people in the principal councils' areas,
  - (b) each of the councils for communities in the principal councils' areas,
  - (c) the National Park authority for a National Park any part of which is in one or more of the principal councils' areas,
  - (d) the fire and rescue authority for an area any part of which is in one or more of the principal councils' areas,
  - (e) the public services board or boards for the principal councils' areas,
  - (f) the Local Health Board for an area any part of which is in one or more of the principal councils' areas,
  - (g) every trade union which is recognised (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52)) by one or more of the principal councils,
  - (h) every other principal council for a principal area which is likely to be affected by the proposal for merger, and
  - (i) such other persons as the principal councils consider appropriate.
- (2) The requirement in subsection (1) may be satisfied by consultation undertaken before the coming into force of this section.

## **123 Guidance about merger applications**

- (1) Principal councils must have regard to any guidance issued by the Welsh Ministers about the making of a merger application.
- (2) The requirement in subsection (1) may be satisfied by having regard to any guidance issued by the Welsh Ministers before the coming into force of this section, and which was issued expressly for the purpose of this section.

### *Merger regulations*

## **124 Merger regulations**

- (1) If the Welsh Ministers receive a merger application they may make regulations which provide for the constitution of a new principal area on a date specified in the regulations (“the transfer date”) by—
  - (a) abolishing the principal areas of the merging councils on the transfer date, and
  - (b) merging, to create a new principal area, the principal areas of the merging councils.
- (2) In this Part, regulations under subsection (1) are referred to as merger regulations.
- (3) Merger regulations must provide for—
  - (a) the boundary of the new principal area,
  - (b) the name of the new principal area,
  - (c) whether the new principal area is to be a county or a county borough,
  - (d) the establishment of a council for the new principal area (in accordance with section 125),

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- (e) the transfer of functions of the merging councils to the new principal council, and
  - (f) the winding up and dissolution of the merging councils.
- (4) Where the new principal area is to be a county, merger regulations must provide for the new principal council to have the name of the county with the addition of the words “County Council” or the word “Council”.
- (5) Where the new principal area is to be a county borough, merger regulations must provide for the new principal council to have the name of the county borough with the addition of the words “County Borough Council” or the word “Council”.

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

- (1) Merger regulations must provide for there to be a shadow council for the new principal area.
- (2) A shadow council must be an elected shadow council unless the Welsh Ministers consider it appropriate to provide for there to be a designated shadow council.
- (3) An elected shadow council—
- (a) consists of the councillors elected in the first ordinary election of councillors to the new principal council, and
  - (b) is established on the fourth day after that election, when those councillors assume office as shadow members.
- (4) A designated shadow council—
- (a) consists of all the members of the merging councils, and
  - (b) is established on the date specified in the merger regulations as the date on which those members assume office as shadow members.
- (5) The merger regulations must make provision—
- (a) for the appointment of a shadow executive by the shadow council, in the form of a leader and cabinet executive,
  - (b) in the case of a designated shadow council, specifying the composition of the shadow executive,
  - (c) specifying the functions of the shadow council and the shadow executive, and about the exercise of those functions, during the shadow period, and
  - (d) about the funding of the shadow council.
- (6) Provision made in accordance with subsection (5)(d) may confer functions on a merging council, including in relation to the administration of the shadow council's finances.
- (7) In subsection (5)(c), “shadow period” means the period—
- (a) beginning with the date on which the shadow council is first authorised or required to exercise any functions in accordance with the merger regulations, and
  - (b) ending immediately before the transfer date.
- (8) The merger regulations must provide that an elected shadow council is the shadow council for the new principal area until the transfer date (from when it is, and has all the functions of, the principal council for the new principal area; and the shadow executive is, and has all the functions of, the executive for the principal council).

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- (9) In the case of a designated shadow council, the merger regulations must provide that—
- (a) the designated shadow council is the shadow council for the new principal area until the pre-election period, and
  - (b) during the pre-election period the shadow council is, and has all the functions of, the principal council for the new principal area; and the shadow executive is, and has all the functions of, the executive for the principal council.
- (10) In subsection (9), “pre-election period” means the period—
- (a) beginning with the transfer date, and
  - (b) ending immediately before the fourth day after the holding of the first ordinary election of councillors to the new principal council.

## 126 Voting system

- (1) Merger regulations must specify whether the voting system that applies to the first ordinary election of councillors to the principal council for the new principal area is to be—
- (a) the simple majority system provided for by rules made, or having effect as if made, under section 36A of the 1983 Act, or
  - (b) the single transferable vote system provided for by rules made under section 36A of the 1983 Act.
- (2) The voting system specified in the merger regulations must be—
- (a) the voting system agreed by the merging councils, or
  - (b) in the absence of agreement—
    - (i) the voting system used in both, or where there are three or more merging councils, all or the majority of, the merging councils immediately before the application date, or
    - (ii) if neither of the merging councils used, or (where there are three or more merging councils) the majority of the merging councils did not use, the same voting system immediately before the application date, the voting system determined by the Welsh Ministers after consulting the merging councils.
- (3) In subsection (2)(b), “application date” means the date on which the merger application is made.
- (4) If a merger application is made before section 7 comes into force—
- (a) subsections (1) and (2) of this section do not apply in relation to the merger regulations relating to the application, and
  - (b) those regulations must provide that if section 7 is in force on the day of the first ordinary election of councillors to the principal council for the new principal area, the simple majority system applies to that election.

## 127 Elections

- (1) Merger regulations must set—
- (a) the date of the first ordinary election of councillors to the principal council for the new principal area, and
  - (b) the terms of office of councillors returned at that election.

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- (2) Merger regulations may include provision—
- (a) cancelling an ordinary election of councillors to one or more of the merging councils and extending the existing terms of office of councillors;
  - (b) cancelling an election of an elected mayor to one or more of the merging councils and extending the existing terms of office of elected mayors;
  - (c) relating to requirements to fill casual vacancies in the office of councillor, vice-chair or chair, and the holding of elections in any of the merging councils or the shadow council to fill casual vacancies;
  - (d) postponing an ordinary election of councillors to community councils in the new principal area and the extension of the existing terms of office of councillors.
- (3) Merger regulations may also include provision about—
- (a) the appointment of a returning officer at the first ordinary election of councillors to the principal council for the new principal area;
  - (b) meeting expenditure incurred in holding that election, including provision for the making of determinations by the Welsh Ministers about how expenditure is to be met;
  - (c) declarations of acceptance of the office of councillor of the new principal council;
  - (d) the holding of the first meeting of the new principal council.
- (4) Provision made under subsection (3)(a) may include provision for the Welsh Ministers to give directions to a principal council as to the appointment of a returning officer, and for the enforcement of such directions.

### *Facilitating mergers*

## **128 Duties of merging councils to facilitate transfer**

- (1) A merging council must—
- (a) for the purposes of the merger, co-operate with the Welsh Ministers, the other merging council or councils and any other person exercising functions in relation to the merger, and
  - (b) take all reasonable steps to—
    - (i) facilitate the economic, effective and efficient transfer of its functions, staff, property, rights and liabilities to the new principal council, and
    - (ii) ensure that the new principal council and its staff are in a position to perform the new principal council's functions effectively.
- (2) The Welsh Ministers may direct a merging council to take, or not to take, any action the Welsh Ministers consider appropriate for the purpose of discharging the council's duty under this section.

**Status:**

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**Changes to legislation:**

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