



# Local Government and Elections (Wales) Act 2021

2021 asc 1

## PART 7

### MERGERS AND RESTRUCTURING OF PRINCIPAL AREAS

#### CHAPTER 2

#### RESTRUCTURING OF PRINCIPAL AREAS

##### *Conditions to be met*

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

- (1) If the conditions set out in this section are satisfied, the Welsh Ministers may make restructuring regulations (as to which, see section 131).
- (2) The first condition is that the Welsh Ministers have received—
  - (a) a report of a special inspection of a principal council by the Auditor General for Wales under section 95(7), or
  - (b) an abolition request under section 130 from a principal council.
- (3) The second condition is that the Welsh Ministers have—
  - (a) given notice to the affected councils that the Welsh Ministers have received the report or abolition request, and
  - (b) published the notice.
- (4) The third condition is that the Welsh Ministers have consulted—
  - (a) the council which was the subject of the report mentioned in subsection (2) (a) or which made the abolition request mentioned in subsection (2)(b) (“the council under consideration”),

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- (b) every other principal council whose area will be, or is likely to be, affected by any restructuring regulations made in respect of the council under consideration, and
  - (c) such other persons as the Welsh Ministers consider appropriate,
- about the steps that the Welsh Ministers are considering taking as a consequence of receipt of the report or request.
- (5) The fourth condition is that, following consultation in accordance with subsection (4), the Welsh Ministers are satisfied that, unless restructuring regulations are made, effective and convenient local government is not likely to be achieved in the area of the council under consideration.
- (6) The fifth condition is that, if each of the conditions in subsections (2) to (5) are satisfied and the Welsh Ministers propose to make restructuring regulations, they have given notice of their proposals to the council under consideration and—
- (a) if the transfer of a part or parts of the area of the council under consideration is proposed, the principal council for the principal area which is (or the principal councils for the principal areas which are) to include a part of the area of the council under consideration;
  - (b) if the creation of a new principal area is proposed, the principal council for a principal area which is (or the principal councils for principal areas which are) to be merged with all or part of the area of the council under consideration into a new principal area;
  - (c) every other principal council consulted as described in subsection (4)(b).

#### *Abolition requests*

### **130 Abolition requests**

- (1) A principal council may, by notice in writing (“an abolition request”), ask the Welsh Ministers to consider abolishing the council and its principal area.
- (2) An abolition request must set out the principal council’s reasons for seeking abolition.
- (3) The principal council must publish the abolition request as soon as reasonably practicable after making the request.
- (4) Section 101 of the 1972 Act (arrangements for discharge of functions by local authorities) does not apply to the function of making an abolition request.
- (5) The function of making an abolition request is not to be the responsibility of an executive of the principal council under executive arrangements.
- (6) An elected mayor is to be treated as a councillor of the principal council for the purposes of the function of making an abolition request.

#### *Restructuring regulations*

### **131 Restructuring regulations**

Restructuring regulations are regulations which provide for the abolition of the principal area of a council under consideration on a date specified in the regulations (“the transfer date”), and either or both of the following—

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- (a) for a part or parts of the principal area being abolished to become, on the transfer date, part of another existing principal area or parts of other existing principal areas;
- (b) for the constitution of a new principal area on the transfer date by—
  - (i) abolishing the principal area of one or more other principal councils (as well as the area of the council under consideration), and
  - (ii) merging, to create a new principal area, all or part of the area of the council under consideration with the area of the other principal council or councils (whether or not the other council or councils are also councils under consideration).

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

- (1) Restructuring regulations which include provision under section 131(a) must—
  - (a) specify, by reference to each part of the area being abolished which is transferred to an existing principal area, the new area of that principal area,
  - (b) provide for the transfer of functions from the council under consideration to another principal council,
  - (c) provide for the winding up and dissolution of the council under consideration, and
  - (d) provide for the voting system (see section 134(4)) which applies in relation to a part of the area of the council under consideration which is transferred to another principal area (“principal area A”) to be, at the first ordinary election of councillors after the transfer date, the voting system applying in the rest of principal area A.
- (2) Restructuring regulations may, for the purposes of providing for part of the area of the council under consideration to become part of another principal area, make provision about—
  - (a) the assignment of councillors of the council under consideration to another principal council;
  - (b) the election and terms of office of councillors of a restructuring council;
  - (c) the voting system which is to apply, in relation to a part of the area of the council under consideration which is transferred to another principal area, at an election to fill a casual vacancy held after the transfer date and before the first ordinary election of councillors to the council after the transfer date;
  - (d) the election and terms of office of councillors to community councils in the area of a restructuring council;
  - (e) the executive arrangements of a restructuring council;
  - (f) the form of executive operated by a restructuring council;
  - (g) the area, term of office and election of an elected mayor of a restructuring council;
  - (h) the arrangements for the remuneration of members of a restructuring council, including provision conferring functions on the Independent Remuneration Panel for Wales;
  - (i) a change to the name of a restructuring council;
  - (j) whether the principal area of a restructuring council is a county or county borough.

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

- (1) Restructuring regulations which include provision as described in section 131(b) 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 paragraph (e) or subsections (4) to (7)),
  - (e) (subject to subsection (4)) there to be an elected 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),
  - (f) the functions of the shadow council,
  - (g) the funding of the shadow council,
  - (h) the appointment of a shadow executive by the shadow council, in the form of a leader and cabinet executive (which, from the transfer date, is and has all the functions of, the executive for the principal council),
  - (i) the functions of the shadow executive,
  - (j) the transfer of functions to the new principal council from the restructuring councils whose areas are to be merged to create the new principal area,
  - (k) the winding up and dissolution of the restructuring councils whose areas are to be merged to create the new principal area,
  - (l) which of the voting systems (see section 134(4)) is to apply to the first ordinary election of councillors to the new principal council,
  - (m) the date of the first ordinary election of councillors to the new principal council, and
  - (n) the terms of office of councillors returned at that election.
- (2) Where a new principal area constituted by restructuring regulations is to be a county, the 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”.
- (3) Where a new principal area constituted by restructuring regulations is to be a county borough, the 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”.
- (4) The Welsh Ministers may, if they consider it appropriate, make provision in the restructuring regulations for the shadow council to be a designated shadow council until the pre-election period.
- (5) If the Welsh Ministers make such provision, they must also, in the restructuring regulations—
- (a) make provision specifying the composition of the shadow executive to be appointed by the shadow council;
  - (b) provide that 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.
- (6) In subsections (4) and (5), “pre-election period” means the period—
- (a) beginning with the transfer date, and

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- (b) ending immediately before the fourth day after the holding of the first ordinary election of councillors to the new principal council.
- (7) For the purposes of this section—
- (a) an elected shadow council—
    - (i) consists of the councillors elected in the first ordinary election of councillors to the new principal council, and
    - (ii) is established on the fourth day after that election, when those councillors assume office as shadow members;
  - (b) a designated shadow council—
    - (i) consists of such members of the restructuring councils as are specified in the restructuring regulations, appointed in accordance with the regulations, and
    - (ii) is established on the date specified in the restructuring regulations as the date on which those members assume office as shadow members.

### **134 Restructuring regulations: supplementary**

- (1) Restructuring regulations may make provision that corresponds to, or applies (with or without modifications) provision made by or under, or that may or must be made under—
- (a) Chapter 4 (remuneration arrangements), where the regulations make provision in accordance with section 131(b);
  - (b) section 127 (elections);
  - (c) paragraphs 2 and 3 of Schedule 11 (transition committees).
- (2) Restructuring regulations may provide for—
- (a) the establishment of a committee or other body to provide advice and recommendations to persons specified in the regulations about the transfer of functions, liabilities and property, and about staffing matters;
  - (b) the establishment of a body corporate for the purpose of taking over, and disposing of, any property, rights or liabilities of a principal council which is to be abolished under the regulations, and exercising any related functions of such a council; and restructuring regulations may—
    - (i) provide for such a body to acquire property, make levies, borrow and lend money, and
    - (ii) make provision about the winding up of such a body;
  - (c) the provision of information or documents by a restructuring council to persons specified in the regulations;
  - (d) the giving of directions by the Welsh Ministers to persons specified in the regulations for purposes connected to a restructuring, and for their enforcement;
  - (e) the Welsh Ministers to determine, in circumstances specified in the regulations, matters connected to the restructuring.
- (3) If the Welsh Ministers decide not to make restructuring regulations after—
- (a) having received a report of a special inspection of a principal council by the Auditor General for Wales under section 95(7) and having consulted as described in section 129(4), or
  - (b) having received an abolition request,

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they must notify the council under consideration and any other principal council they have given notice or consulted as described in section 129.

- (4) For the purposes of sections 132 and 133, the voting systems are—
- (a) the simple majority system provided for by rules made, or having effect as if made, under section 36A of the 1983 Act;
  - (b) the single transferable vote system provided for by rules made under section 36A of the 1983 Act.
- (5) If, before section 7 comes into force, notice is given as described in section 129(6) and the creation of a new principal area is proposed—
- (a) section 133(1) does not apply in relation to the restructuring regulations relating to the notice, 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.

#### *Facilitating restructuring*

### **135 Duties of restructuring councils to facilitate transfer**

- (1) A restructuring council must, for the purposes of the restructuring, co-operate with the Welsh Ministers, the other restructuring council or councils and any other person exercising functions in relation to the restructuring.
- (2) A restructuring council whose area is to be abolished must take all reasonable steps to—
  - (a) facilitate the economic, effective and efficient transfer of its functions, staff, property, rights and liabilities to the other restructuring councils and any new principal councils, and
  - (b) ensure that the other restructuring councils and any new principal councils, and their staff, are in a position to perform their functions effectively.
- (3) A restructuring council other than one whose area is to be abolished must take all reasonable steps to—
  - (a) facilitate the economic, effective and efficient transfer to it of the functions, staff, property, rights and liabilities of the council under consideration, and
  - (b) ensure that it and its staff are in a position to perform their functions effectively.
- (4) The Welsh Ministers may direct a restructuring 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.