

# LOCAL GOVERNMENT ACT 2000

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## EXPLANATORY NOTES

### INTRODUCTION

#### Part II: Arrangements With Respect to Executives

##### Commentary on sections

32. By virtue of section 106, the powers under Part II exercisable by the Secretary of State in England will be exercisable in Wales by the National Assembly for Wales (NAW), except in respect of section 44 (power to make provision about elections) since the conduct of elections is not a devolved matter. The Parliamentary procedures set out in section 105 for orders and regulations do not apply to the NAW, which has its own procedures in relation to secondary legislation.

##### *Section 10: Executive arrangements*

33. *Section 10* provides that executive arrangements are arrangements for the setting up and operation by a local authority of an executive, which has responsibility for certain functions of the authority.

##### *Sections 11 and 12: Local authority executives*

34. *Section 11* specifies three possible forms of executive:
- a directly-elected mayor who appoints two or more councillors to the executive (referred to in Part II as a mayor and cabinet executive);
  - an executive leader, elected by the full council, plus two or more councillors appointed by the leader or the council (a leader and cabinet executive); or
  - a directly-elected mayor, with an officer of the authority appointed by the council as a council manager (a mayor and council manager executive).
35. This section also allows the Secretary of State to specify further forms of executive in regulations, including a form of executive with other members who are directly elected.
36. *Section 11* prevents the chair or vice-chair of the authority from being a member of the executive, in order to maintain his/her independence from the executive. It also limits the number of councillors who can be on the executive to ten, although this limit can be lowered by regulations made by the Secretary of State.
37. *Section 12* provides that the Secretary of State must have regard to certain matters when making new forms of executive available using the power in section 11, and when making regulations under *section 17* with respect to the discharge of functions in those new forms of executive. These matters are:
- any proposals put forward by local authorities;

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- the extent to which he considers the operation of executive arrangements involving the new form of executive would be likely to ensure that decisions are taken in an efficient, transparent and accountable way;
  - the extent to which the new form of executive differs from the forms of executive available at the time; and
  - the number and description of authorities for which he considers the new form of executive would be an appropriate one to consider.
38. This section also provides for councils to put forward proposals for further forms of executive arrangements to the Secretary of State. Such proposals must, in the opinion of the authority, satisfy the following conditions:
- that arrangements involving the proposed new form of executive would be a improvement on the arrangements the authority currently have in place to discharge their functions;
  - that the operation of executive arrangements involving the new form of executive would be likely to ensure that decisions are taken in an efficient, transparent and accountable way; and
  - that the new form of executive would be appropriate for either all or a particular description of authorities to consider.
39. In addition, such proposals must also include the following information:
- a description of the proposed form of executive;
  - a description of the provision which the authority consider should be made under section 17 in respect of the ways in which functions which are the responsibility of the executive should be discharged; and
  - an explanation of why the authority considers that the conditions above are met.

***Section 13: Executive functions***

40. *Section 13* provides the mechanism for determining which local authority functions are functions which are the responsibility of the executive. It allows the Secretary of State to make regulations to specify those functions which may, but need not, be the responsibility of the executive, and those functions which must not be the responsibility of the executive. The presumption is that all functions of the authority are to be the responsibility of the executive unless specified in regulations under this section. It is envisaged that certain functions, such as licensing functions, will be so specified.
41. *Section 13* also allows for regulations which specify that certain functions are, to some extent, the responsibility of the executive and to another extent not the responsibility of the executive. For example, regulations may specify that the executive is responsible for preparing a draft budget but that the council is responsible for approving the budget.
42. This section also enables regulations to specify cases or circumstances in which functions which would otherwise be the responsibility of the executive are not to be the responsibility of the executive. For example, regulations may specify that such functions are not to be the responsibility of the executive in the circumstance that the discharge of the functions would be contrary to the council's budget or certain of the councils' plans and strategies.
43. Section 101 of the Local Government Act 1972 may, through these regulations, be disapplied from any functions which are not to be the responsibility of the executive.

***Sections 14 to 20: Provisions with respect to executive arrangements***

44. These provisions set out in greater detail how decision-making within each form of executive is to take place. *Section 14* relates to a mayor and cabinet executive. It provides for the mayor to determine how functions which are the responsibility of the executive should be carried out. The options are for such functions to be discharged by the full executive, single members of the executive (including the mayor) acting alone, committees of the executive or officers. There is also some scope for further sub-delegation within the executive and to officers.
45. *Section 15* relates to a leader and cabinet executive. It allows for functions which are the responsibility of the executive to be delegated by the executive leader—in a way similar to the framework under section 14—or to be discharged as set out in the executive arrangements drawn up by the local authority, or for a mixture of the two.
46. *Section 16* relates to a mayor and council manager executive. It allows functions which are the responsibility of the executive to be carried out by the council manager or for that person to arrange for any such functions to be carried out by the executive or a nominated officer.
47. *Section 17* enables the Secretary of State to make regulations on how functions may be discharged in any new form of executive set out in regulations under *section 11(5)*.
48. *Sections 18 to 20* provide powers for the Secretary of State to make regulations intended to enable more flexibility in the way that functions which are the responsibility of the executive may be discharged. The regulations may provide for arrangements to be made for functions which are the responsibility of the executive:
  - to be discharged by an area committee (defined in *section 18(3) to (5)*);
  - to be discharged by another local authority; and
  - to be discharged jointly with one or more local authorities (under arrangements under section 101(5) of the Local Government Act 1972), including by way of joint committees or joint area committees.

The regulations may also provide for functions of another local authority to be discharged by the executive.

***Section 21: Overview and scrutiny committees***

49. *Section 21* requires authorities operating executive arrangements to set up overview and scrutiny committees in order to hold the executive to account; members of the executive are not able to be members of an overview and scrutiny committee.
50. *Section 21* also gives power to overview and scrutiny committees to make reports and recommendations, either to the executive or to the authority, on any aspect of council business. They also have the power to make reports and recommendations on other matters which affect the authority's area or the area's inhabitants. It is envisaged that the regulations under section 13 will also provide that they have power to carry out best value reviews (under section 5 of the Local Government Act 1999) where the local authority has decided that such a function is not to be the responsibility of the executive.
51. *Section 21* allows an overview and scrutiny committee to require officers and members of the executive to appear before it. It is also allowed to invite any other person to appear before it. This section gives the committee power to review or scrutinise any executive decisions which have been made and recommend that they are reconsidered by those responsible; or else to arrange for the authority to review the decision and, where necessary, ask those responsible for the decision to reconsider. Any member of an overview and scrutiny committee is able to ensure that any relevant matter is put on the agenda and discussed at a meeting of the committee.

52. Overview and scrutiny committees are able to co-opt people who are not members of the authority. However, in general, such co-optees will not have voting rights. *Schedule 1* contains the right for church and parent governor representatives to be appointed with voting rights onto an overview and scrutiny committee where the committee's functions relate wholly or partly to any education functions which are the responsibility of the authority's executive. These detailed provisions are set out in paragraphs 7 to 11 of Schedule 1.

***Section 22: Access to information etc.***

53. *Section 22* allows the Secretary of State to specify in regulations which meetings of the executive or its committees must be open to the public and which must be held in private. Other than where specified in regulations, it will be for the executive to choose whether to meet in private or in public. Written records of prescribed decisions made at meetings of the executive held in private or by individual members of the executive must be kept, including reasons for the decisions. These records, together with such reports and background papers as may be prescribed, must be made available to the public. Regulations could ensure that failure by the executive to cause to have such a record made and failure by the proper officer of the authority to make the record public would be criminal offences.
54. Regulations under section 22 would also be able to apply provisions of Part VA of the Local Government Act 1972, with or without modifications, to meetings of the executive and its committees, whether held in public or in private. The regulations may make provision requiring prescribed information about prescribed decisions to be made publicly available, and may also make provision about access to meetings of joint committees which are discharging functions which are the responsibility of the executive. (See also paragraphs 242 and 243 below, addressing sections 97 and 98.)

***Section 23 and Schedule 1: Executive arrangements: further provision***

55. *Schedule 1* sets out further details of the working of executive arrangements and makes provisions about the role of church and parent governors on overview and scrutiny committees.
56. For a mayor and cabinet executive, the arrangements must allow the mayor to determine the size of the executive (subject to the restriction in *section 11(8)*). The arrangements must also allow the mayor to appoint his or her own deputy from amongst the executive.
57. For a leader and cabinet executive, either the authority or the leader can determine the size of the executive, subject to the restriction in section 11(8). The arrangements may include provision with respect to the election and term of office of the executive leader and the appointment and term of office of members of the executive where the council appoints them.
58. For a mayor and council manager executive, the arrangements must allow the mayor to appoint a deputy from amongst the members of the authority, who cannot be the chairman or vice-chairman of the authority or be on an overview and scrutiny committee; this is to preserve independence between these three parts of the council. The council manager is entitled to attend and speak at council meetings and committee and sub-committee meetings. This allows him to carry out his duties, to advise the council and to be open to scrutiny. He will not, however, be allowed to vote, as he will not be an elected member of the authority. Schedule 1 also provides that the post of council manager is a politically restricted post, and that the post cannot be combined with that of chief finance officer or monitoring officer. Politically restricted posts are dealt with in Part I of the Local Government and Housing Act 1989 (sections 1 to 3).
59. The Schedule also allows committees to be set up by the elected mayor to advise the executive in the mayor and council manager executive. This will ensure that the executive has access to advice and that policy-making can be properly informed.

The Schedule allows such committees not to be politically balanced, reflecting the provisions for the executive as a whole set out in [section 24](#).

60. The Schedule provides that, in the case of arrangements involving either the mayor and cabinet or mayor and council manager form of executive, a deputy mayor in Wales will be able to be called by the Welsh equivalent to the title in addition to the English language version.
61. The Schedule permits executive arrangements to cover such matters as the conduct of meetings, and similar matters in relation to committees of the executive. It also enables the Secretary of State to make regulations for appointment of an assistant for the mayor.
62. As a consequence of the provisions on access to information, the Schedule makes it clear that a member of a local authority who is not a member of the executive is only entitled to attend and speak at a meeting of the executive which is held in private if invited to do so.
63. The Schedule also makes detailed provision about the appointment of church and parent governor representatives to overview and scrutiny committees (see paragraph 52 above).

#### ***Section 24: Absence of requirement for political balance***

64. [Section 24](#) provides that executives and executive committees need not reflect the political balance of the authority.

#### ***Section 25 to 30: Procedure with respect to operation of executive arrangements***

65. [Section 25](#) requires every local authority (except those to whom [section 31](#) applies) to draw up proposals for moving to executive arrangements. Before drawing up proposals a local authority must consult widely with the local community on the proposals. This consultation should include local electors, but also other interested parties. In drawing up these proposals the local authority must decide which form of executive it intends to adopt and which functions would be the responsibility of the executive (where the local authority has a choice). The proposals must also include a timetable for implementation of the proposal; details of any transitional arrangements that will be put into place and such details of the executive arrangements as the Secretary of State may direct.
66. In drawing up proposals an authority must consider the extent to which the proposals, if implemented, are likely to assist in securing continuous improvement in the way in which the authority's functions are exercised, having regard to a combination of economy, efficiency and effectiveness. In addition, an authority must comply with directions from the Secretary of State.
67. A copy of the proposals must be sent to the Secretary of State accompanied by a statement describing the steps taken to consult and the extent to which the outcome of the consultation is reflected in the proposals. The aim is to ensure that the executive arrangements adopted by an authority reflect the aspirations of the community and are appropriate to that authority. The Secretary of State may, by order, specify a date by which every local authority must comply with this section.
68. [Section 26](#) provides that authorities which propose a form of executive that does not require a referendum must implement their proposals in line with the timetable included in their proposals. It also provides a definition of a form of executive for which a referendum is required.
69. If the proposals drawn up under section 25 involve a form of executive for which a referendum is required, [section 27](#) requires a local authority to:
  - hold a referendum; and

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- draw up and send to the Secretary of State an outline of fall-back proposals that they intend to implement if the proposals under section 25 are rejected in the referendum.
70. Fall-back proposals are proposals for executive arrangements for which a referendum is not required or for alternative arrangements within the meaning of [section 32](#). The outline fall-back proposals must include a timetable for implementation of detailed fall-back proposals (based on the outline) in the event that the proposals drawn up under section 25 are rejected by the referendum. An authority must consult local government electors and other interested parties when drawing up their outline fall-back proposals. The referendum decision would be binding on the authority. Where the proposals under section 25 are approved by the referendum they must be implemented. Where such proposals are rejected, the authority must not implement them; instead, it must draw up detailed fall-back proposals based on the outline fall-back proposals.
  71. Detailed fall-back proposals must include such details of the executive or alternative arrangements as the Secretary of State directs. In drawing up these proposals the local authority must consider (where the proposals are for executive arrangements and the authority has a choice) which functions would be the responsibility of the executive. The proposals must also contain details of any transitional arrangements that will be put into place. An authority must consult with the local community before drawing up the detailed fall-back proposals. This consultation must include local electors, but also other interested parties.
  72. In drawing up detailed fall-back proposals an authority must consider the extent to which the proposals are likely to assist in securing continuous improvement in the way in which the authority's functions are exercised, having regard to a combination of economy, efficiency and effectiveness. In addition, an authority must comply with directions from the Secretary of State when drawing up detailed fall-back proposals.
  73. A copy of the detailed fall-back proposals must be sent to the Secretary of State. The detailed fall-back proposals must be implemented in accordance with the timetable included in the outline fall-back proposals.
  74. [Section 28](#) allows an authority to apply to the Secretary of State for approval of outline fall-back proposals which are not available at that time, but which are of a type which could be made available by regulations under section 11(5) or section 32. Where the Secretary of State approves such fall-back proposals, the authority must implement their fall-back proposals in accordance with the timetable included in the outline fall-back proposals, subject to any delay in making the necessary regulations. The Secretary of State may give directions on the form and content of an application for approval.
  75. [Section 29](#) requires a resolution of the full council to adopt executive arrangements. Once adopted, details of the arrangements must be made available for inspection by the public and be widely publicised in the area of the authority. Such publicity should include the main features of how the arrangements will work and give a date on which the arrangements enter into effect.
  76. This section also makes clear that once an authority has adopted executive arrangements, it cannot revert to arrangements which are not based on a separate executive, unless the authority is operating alternative arrangements in place of executive arrangements under the provisions made under [section 33\(5\)](#).
  77. [Section 30](#) enables the Secretary of State to make regulations to cover all the eventualities where local authorities are changing their executive arrangements or moving from one form of executive arrangements to another, different, form of executive arrangements.

***Sections 31 to 33: Alternative arrangements***

78. **Section 31** provides that certain authorities may decide whether to draw up proposals for executive arrangement or proposals for alternative arrangements. The authorities who have this choice are district councils whose area is within the area of a county council and whose resident population is less than 85,000 (as estimated by the Registrar General on 30 June 1999), and any other description of authorities specified in regulations under this section.
79. **Section 31** requires that authorities must consult widely with the local community in deciding whether to draw up proposals for executive or alternative arrangements and each authority must consider, in drawing up its proposals, the extent to which the proposals are likely to assist in securing continuous improvement in the way in which the authority's functions are exercised, having regard to a combination of economy, efficiency and effectiveness. Authorities which draw up proposals for alternative arrangements under this section must also comply with other requirements in regulations, such as requirements as to the implementation of the proposals.
80. **Section 32** allows the Secretary of State to specify in regulations alternative arrangements for the discharge of functions which do not involve an executive. Such arrangements cannot include a separate executive, must include overview and scrutiny arrangements and must, in the Secretary of State's opinion, be likely to ensure that decisions are taken in an efficient, transparent and accountable way. Alternative arrangements may also include provision for the discharge of functions by individual members of the authority, or appointment of committees whose membership does not reflect the political balance of the authority.
81. **Section 33** provides that an authority may not operate alternative arrangements unless required or permitted to do so by virtue of this Part of the Act, and that once an authority is operating alternative arrangements it may not cease to do so unless it operates executive arrangements in their place. A resolution of the full council is necessary to adopt executive arrangements and, once adopted, details of the arrangements must be made available for inspection by the public and be widely publicised in the area of the authority. Such publicity should include the main features of how the arrangements will work and a date on which the arrangements come into effect.
82. This section also enables the Secretary of State to make regulations which provide for all the eventualities where:
- authorities to which section 31 applies are changing from executive arrangements to alternative arrangements;
  - any authorities are changing their alternative arrangements or moving from one form of alternative arrangements to another, different, form of alternative arrangements; and
  - any authorities are changing from alternative arrangements to executive arrangements.

***Sections 34 to 36: Referendums***

83. **Section 34** gives the Secretary of State a power to make regulations concerning public petitions in relation to whether a local authority should have a form of executive involving a directly-elected mayor or such other form of executive for which a referendum is required. It provides that regulations made under this section could require a local authority to hold a referendum where they have received a petition signed by at least 5% of local electors. Regulations may specify matters such as the form of petitions (including electronic petitions), their verification, the timing of referendums, the action to be taken by a local authority on receipt of a petition, and the manner in which and times at which the number of electors required to sign the petition is to be calculated and publicised. Regulations may also vary the 5% threshold for petitions.

84. *Section 35* gives the Secretary of State a regulation-making power which enables him to direct a local authority to hold a referendum on whether they should adopt executive arrangements involving a form of executive described in or under section 11. The regulations will specify the circumstances in which the Secretary of State will be able to invoke this power, and may include provisions for the timing of a referendum and the action to be taken by the authority before and after the referendum.
85. *Section 36* enables the Secretary of State, by order, to require all local authorities, or all authorities of a particular description, to hold a referendum on a particular form of executive described in or under section 11.
86. Any requirement to hold a referendum arising under these sections will be subject to the constraint in *section 45* that a referendum on executive arrangements may not be held more than once in any five years.

### ***Section 37: Local authority constitution***

87. *Section 37* requires an authority which is operating executive arrangements or alternative arrangements under this Part of the Act to maintain a document (referred to as their constitution) and ensure that it is available for inspection by members of the public. The authority will have to supply a copy to anybody who requests one, upon payment of a reasonable fee. The constitution is to include the standing orders and councillor code of conduct of the authority and such other information as the Secretary of State may direct.

### ***Sections 39 to 41: Elected mayors and elected executive members***

88. *Section 39* provides that an “elected mayor” means an individual elected to that post by the local government electors in the authority’s area. “Elected executive members” are also to be elected by the local government electors for the authority’s area. Elected executive members are individuals who are directly elected to an executive or to a particular post in an executive, where an executive including such members has been provided for in regulations under section 11(5). The section also provides that the Secretary of State may make regulations specifying those enactments in respect of which elected mayors are to be treated as a local authority councillor or member.
89. The normal term of office for an elected mayor or an elected executive member will be four years, except as otherwise provided for in regulations made by the Secretary of State under *section 41*.
90. *Section 40* provides that no one may be the elected mayor and a councillor for an electoral division or ward in the same authority. *Subsection (1)* provides that if anyone stands for election to be, and is elected as, both the elected mayor and a councillor for an electoral division or ward in the same authority in elections held at the same time, a vacancy will arise in the office of councillor.
91. *Subsection (2)* provides that where the election for the elected mayor is not held at the same time as elections for councillors for an electoral division or ward and a sitting councillor is elected as the elected mayor of the authority, a vacancy will arise in the office of councillor.
92. *Subsections (3) and (4)* provide that an elected mayor may not stand in an election to be a councillor for an electoral division or ward unless the elections are to be held at the same time in which case the elected mayor may stand in one, the other, or both elections. If he or she stands in both elections and is elected in both, a vacancy will arise in the office of councillor.
93. *Section 41* enables the Secretary of State to make regulations providing for the dates, years, and intervals at which elections for elected mayors or elected executive members can take place. This enables the Secretary of State, for example, to provide for elections which are consistent with the different electoral cycles operated by local authorities,

and could allow initial terms of office for directly elected members of greater or less than four years so that the cycle can be brought into step with the normal electoral cycle.

### ***Sections 42 to 44 and Schedule 2: Elections***

94. *Section 42* and *Schedule 2* describe the method for electing a directly-elected mayor. This will normally be the supplementary vote system (SV), unless there are less than three candidates in which case the simple majority system is used.
95. Under the SV system, the elector has two votes—a first preference vote cast for the elector’s preferred candidate, and a second vote cast for the elector’s second preference from among the remaining candidates. *Schedule 2* specifies the procedure for returning an elected mayor under the SV system. If any candidate receives more than half of the first preference votes cast, that candidate is the winner. Otherwise, all but the two candidates who received the greatest number of first preference votes are eliminated. Any second preference votes among the votes for the eliminated candidates which have been cast for the two remaining candidates are then added to those candidates’ total votes, and the candidate with the highest number of votes overall is elected mayor. *Schedule 2* also provides procedures for dealing with an equality of votes at any stage of the process.
96. *Section 43* provides that entitlement to vote at elections of elected mayors or elected executive members is the same as the electoral franchise for normal local government elections.
97. *Section 44* provides for the Secretary of State to make regulations regarding the conduct of elections for elected mayors and elected executive members. This includes a power to apply or modify any statutory provisions relating to the conduct of elections. This allows the Secretary of State to provide for the existing statutory framework for the conduct of elections to be applied to mayoral (and any elected executive) elections appropriately.

### ***Section 45: Provisions with respect to referendums***

98. *Section 45* provides that a local authority may hold only one referendum on proposals for executive arrangements in any five-year period. This includes referendums triggered by a public petition under section 34, or required by the Secretary of State under section 35 or 36. The people eligible to vote in a referendum will be those people who would normally be entitled to vote at local government elections in the authority conducting the referendum.
99. *Section 45* also provides for the Secretary of State to make regulations on the conduct of referendums, and for the application of electoral and referendum legislation to the holding of these referendums.

### ***Section 46 and Schedule 3: Amendments to the Local Government Act 1972***

100. *Schedule 3* contains amendments and modifications to certain provisions of the Local Government Act 1972 which are consequential upon the provisions of Part II of the Act. These amendments and modifications in particular provide for the integration of references to an elected mayor into the various provisions in the 1972 Act which set out the ways in which local authorities are constituted.

### ***Section 47: Power to make further provision***

101. *Section 47* allows the Secretary of State, by order, to make such incidental, consequential, transitional or supplemental provision as he considers necessary or expedient to give full effect to Part II. This includes a power to modify, apply, extend, or repeal any legislation.