

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

---

## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes are for the Local Government and Elections (Wales) Act 2021 which was passed by Senedd Cymru on 18 November 2020 and received Royal Assent on 20 January 2021. They have been prepared by the Local Government Department of the Welsh Government in order to assist the reader of the Act.
2. The Explanatory Notes should be read in conjunction with the Act but they are not a part of it. They are not meant to be a comprehensive description of the Act, and where an individual section of the Act does not require explanation or comment, none is given.
3. The terms “local authority” and “local government” have different meanings in different parts of the Act and the reader should refer to the definition in each particular section or Part.
4. The term “principal council” means a county council or county borough council (see section 168).
5. The term “community council” includes a town council, this is not provided for in the Act, but occurs by virtue of section 245B of the Local Government Act 1972 (“the 1972 Act”) whereby a council of a community, which is not grouped with any other community may, resolve that the community shall have the status of a town. Where the community has the status of a town the council is known as a town council.

### **GENERAL OVERVIEW OF THE ACT**

#### **Part 1 – Elections**

6. Part 1 of the Act (including Schedules 1 and 2, though note that Schedule 1 also relates to Part 7 of the Act) contains provisions for the extension of the franchise for local government elections, provides for two voting systems for elections to principal councils; changes the electoral cycle for local government elections; provides for an alternative method to register local government electors; the qualification for, and disqualification from, membership of a local authority; returning officers’ expenditure; and accessibility of election documents.

#### **Part 2 – General Power of Competence**

7. Part 2 (including Schedule 3) contains provisions establishing a general power of competence. Chapter 1 of this Part provides principal councils and “eligible community councils” with a general power of competence, sets out the boundaries of the power and the limits on charging and use of the power for commercial purposes.

8. The conditions which community councils must meet, together with the procedure they must follow, in order to become an “eligible community council” are set out in Chapter 2 of this Part.

### **Part 3 – Promoting Access to Local Government**

9. Chapter 2 of this Part contains provisions requiring principal councils to encourage local people to participate in local government; requirements for petition schemes; and the publication of official addresses for members of principal councils.
10. Chapter 3 requires principal councils to publish their constitution and a constitution guide.
11. Chapter 4 makes provision about improving public access to local authority meetings; attendance of members at meetings; public participation at community council meetings; and, in Schedule 4, provision for notices of local authority meetings and venues for community council meetings.
12. Chapter 5 requires community councils to publish an annual report.

### **Part 4 – Local Authority Executives, Members, Officers and Committees**

13. The provisions within Part 4 of the Act (including Schedules 5 to 7) require a principal council to appoint a chief executive and makes provision about their role. They enable the appointment of members of principal councils as assistants to the executive, facilitate job-sharing by executive members and provide for the making of regulations to facilitate the sharing of specific principal council offices.
14. Part 4 also makes provision about the entitlement of members of principal councils to family absence; places a duty on leaders of political groups to take reasonable steps to promote and maintain high standards of conduct by the members of the group; and makes provision for the publication and consideration of annual reports by standards committees.
15. Schedule 8 makes provision about investigations by the Public Services Ombudsman for Wales into alleged failures to comply with a local government member code of conduct.
16. Provision is also made within Part 4 about overview and scrutiny committees and the training of members and staff of community councils.

### **Part 5 – Collaborative Working by Principal Councils**

17. The provisions within Part 5 of the Act (including Schedule 9) provide a framework for regional collaboration by principal councils. Chapter 2 of this Part requires principal councils to have regard to guidance about exercising their functions collaboratively.

18. Chapters 3 and 4 make provision for the establishment, through regulations, of corporate joint committees at the request of principal councils, or where no such request has been made.
19. Chapter 5 makes further provision in regard to joint committee regulations including providing for the amendment and revocation of joint committee regulations and providing Welsh Ministers with powers to make supplementary etc. regulations in relation to corporate joint committees.

### **Part 6 – Performance and Governance of Principal Councils**

20. Part 6 of the Act sets out arrangements for reviewing the performance of principal councils. Chapter 1 places a duty on principal councils to review and report on their performance. It also makes provision for panel performance assessments; special inspections by the Auditor General for Wales (“the Auditor General”); and support and intervention by the Welsh Ministers.
21. Chapter 2, including Schedule 10, makes provision for the membership and proceedings of governance and audit committees.
22. Chapter 3 provides for co-ordination between regulators.

### **Part 7 – Mergers and Restructuring of Principal Areas**

23. Part 7 of the Act (including Schedules 1 (mentioned above in relation to Part 1), 11 and 12) contains provisions for the merger and restructuring of principal councils. Chapter 1 makes provision for the voluntary merger of principal areas, including applications for voluntary merger, consultation requirements, powers for the Welsh Ministers to give effect to mergers, arrangements for shadow councils and executives, the voting system and elections and a duty on merging councils to co-operate.
24. Chapter 2 makes provision for restructuring principal areas, including conditions to be met, abolition requests, powers for the Welsh Ministers to give effect to restructuring proposals and a duty on restructuring councils to co-operate.
25. Chapter 3, including Schedules 11 and 12, makes provision for transition committees, restraints on transactions and recruitment, reviews of electoral arrangements, executive arrangements and the provision of information by councils.
26. Chapter 4 makes provision for remuneration arrangements for shadow councils and new principal councils established under Part 7, including provision about functions of the Independent Remuneration Panel for Wales, and pay policy statements.

### **Part 8 – Local Government Finance**

27. Provision is made in Part 8 relating to local government finance, including measures to tackle non-domestic rates avoidance, the removal of the power to provide for imprisonment of council tax debtors and the provision of a power to make regulations regarding joint and several liability for council tax.

## **Part 9 - Miscellaneous**

28. Provision is made in Part 9 about information sharing by regulators; heads of democratic services; abolition of community polls (Schedule 13); appointment of the chief executive and the powers of the Welsh Ministers to give directions to the Local Democracy and Boundary Commission (“the Boundary Commission”).
29. Part 9 also makes provision about the merger and demerger of Public Service Boards (Schedule 14); when public inquiries in relation to combined fire and rescue Authorities must be held; the performance and governance of fire and rescue authorities, including in terms of the application of the Local Government (Wales) Measure 2009 (“the 2009 Measure”) in relation to those authorities; the disapplication of that Measure in relation to National Park authorities; and the final repeal of that Measure in the light of its disapplication in relation to principal councils (see Part 6), fire and rescue authorities and National Park authorities.

## **Part 10 - General**

30. Part 10 contains general provisions regarding interpretation; directions given and regulations and orders made under the Act; power to make consequential etc. provision in regulations; the coming into force of the Act; and the short title of the Act.

## **COMMENTARY ON SECTIONS**

### **Part 1: Elections**

#### **Section 2 - Extension of right to vote in local government elections**

31. Section 2 of the Representation of the People Act 1983 (“the 1983 Act”) sets out who is entitled to vote as an elector at local government (principal councils and community councils) elections in any electoral area.
32. This section amends Section 2 of the 1983 Act to extend the franchise for local government elections in Wales to include persons who are aged 16 years or over and persons who are qualifying foreign citizens. A qualifying foreign citizen is a person who:
  - (a) is not a Commonwealth citizen, a citizen of the Republic of Ireland or a relevant citizen of the European Union, and
  - (b) either:
    - does not require leave under the Immigration Act 1971 to enter or remain in the UK, or
    - does require leave to enter or remain but for the time being has such leave (or is treated as having such leave by virtue of an enactment).

33. Before amendment, the position is that a person is entitled to vote as an elector at a local government election in any electoral area in Wales, if, on the day the poll takes place, that person is:
- on the register of local government electors for that area;
  - is not subject to any legal incapacity to vote (apart from their age);
  - is a Commonwealth citizen, a citizen of the Republic of Ireland or a relevant citizen of the European Union; and
  - is aged 18 years or over.
34. After amendment, the position in Wales is that a person is entitled to vote at a local government election if on the date of the poll that person is:
- on the register of local government electors for that area;
  - not subject to any legal incapacity to vote (apart from age);
  - is a qualifying foreign citizen, Commonwealth citizen, citizen of the Republic of Ireland or relevant citizen of the European Union; and
  - is over 16 years of age.
35. Section 4 of the 1983 Act sets out who is entitled to be on the register of local government electors for any electoral area. Before amendment, the position is that a person is entitled to be registered on the register of local government electors for the purposes of local government elections if, on the relevant date, that person is resident in that area; is not subject to any legal incapacity to vote (apart from age); is a qualifying Commonwealth citizen, a citizen of the Republic of Ireland or a relevant citizen of the Union; and is of voting age. The relevant date is the date on which an application for registration is made, or is treated as having been made or the date on which a service declaration or declaration of local connection is made.
36. Section 2 of the Act amends section 4 of the 1983 Act to specify that a person who is 16 years or over and who is a qualifying foreign citizen, Commonwealth citizen, citizen of the Republic of Ireland or relevant citizen of the European Union is qualified to be registered on the register of local government electors for any electoral area in Wales.

### **Section 3 – Transitional Provision**

37. The extension of the franchise will apply to local government elections and local referendums that take place on or after 5 May 2022. The provisions of the Act relating to the extension of the franchise in local government elections in Wales need to be in force before that date for the purposes of the preparatory work needed for such elections and referendums, such as arrangements for proxy or postal voting.

38. Section 171(3) of the Act provides for the coming into force of the following provisions of the Act two months after the day of Royal Assent:
- sections 2(1) and (3) (extension of right to vote in local government elections),
  - section 29 (translations etc. of documents at local government elections in Wales), and
  - paragraphs 2(11), 8(3)(b) and 20 of Schedule 2 to the Act (effect of registers and proxy voting).
39. This section makes transitional provision so that the provisions mentioned in subsection (2) only have effect in relation to local government elections and local referendums taking place on or after 5 May 2022, despite the coming into force of the provisions 2 months after Royal Assent. This means that they will be in effect for the purposes of making arrangements for things like proxy and postal votes for local authority elections and local referendums on or after 5 May 2022, but will not have effect for the purposes of local authority by-elections or local referendums that take place before 5 May.
40. The relevant local referendums are set out in subsection (3) and relate to mayoral referendums.

#### **Section 4 - Duty to promote awareness and provide assistance**

41. This section of the Act places a duty on a principal council to promote awareness of how to register to vote at local government elections amongst “relevant young people” and to take whatever action the council thinks is necessary to help them to register.
42. The term “relevant young people” is defined as those who are 14 years of age or older, but under 18 years of age and living in the principal council’s area. Young people of the same age who are not living in the principal council’s area but who are looked after by the council (within the meaning of the Social Services and Well-being (Wales) Act 2014) and young people in that age bracket who are not resident in the area of the principal council and are care leavers for whom the principal council has responsibilities under section 109 of the Social Services and Well-being (Wales) Act 2014 are also included in this definition.

#### **Section 5 - Two voting systems**

43. This section of the Act establishes that, in Wales, a simple majority system (commonly known as “first past the post”) or a single transferable vote system can be used in polls at contested elections for electing the councillors of a principal council.
44. Under section 36A of the 1983 Act (as inserted by section 13 of this Act), the Welsh Ministers have powers to make rules about how each system will work. The system that applies to a particular election is determined by section 7 and provision for principal councils to change from one system to another is made in sections 10 to 12.



### **Section 7 - The voting system that applies**

45. The simple majority system provided for under the rules made under the 1983 Act will apply unless a principal council chooses to change the voting system.
46. Where a new principal council area is formed as a result of merger or restructuring regulations the voting system will be specified in the regulations and this will apply until such time as the council may make a resolution to change it after the new principal area is constituted.
47. If a principal council changes its voting system, the system to which the council has most recently made a resolution to change applies. The change takes effect at the first ordinary election of councillors that takes place after the resolution to change is passed. It continues in effect until there is a resolution to change it again.
48. If, after the council has passed a resolution to change the system, a poll for an election to fill a casual vacancy in the office of councillor takes place before the first ordinary election of councillors under the new system, the voting system that applied at the last ordinary election must be used for that by-election.

### **Section 8 - Power to change the voting system**

49. Section 8(1) of the Act gives principal councils the power to change the voting system that applies to the election of councillors in its area. The remaining provisions of sections 8 and 9 of the Act then set out how it should set about making that change.
50. If the voting system that applies to a council is the simple majority system, the council may change it to the single transferable vote system, if the voting system that applies to a council is the single transferable vote, the council is able change it to the simple majority system.
51. The power to change the voting system is the responsibility of the full council; subsection (4) makes clear that the power:
  - is not to be the responsibility of an executive of the council;
  - cannot be delegated to any committee or sub-committee of the council.
52. Subsection (5) places a duty on principal councils to consult those who are entitled to vote as electors at a local government election in its area, each community council in its area and such other persons as the council considers appropriate (which might include bodies such as the Electoral Commission) before it changes the voting system that currently applies.

### **Section 9 - Resolutions to exercise the power to change the voting system**

53. Section 9 provides that a principal council's power to change the voting system must be exercised by resolution of the council and in accordance with the remaining provisions of this section.

54. A resolution to change the voting system for the election of councillors of a principal council is not passed unless the number of councillors voting in favour of it is at least two-thirds of the total number of councillor seats on the council, i.e. there is no reduction in the number of affirmative votes required if there are vacant seats on the council at the time of the vote.
55. If the principal council has a directly elected mayor, the mayor will not be entitled to vote on a resolution to change the voting system, by virtue of subsection (2) which restricts voting to elected councillors of the principal council.
56. A resolution to change the voting system for the election of councillors of a principal council must be considered at a meeting convened for that purpose. The meeting must be held after the end of a period of 21 days, beginning with the day on which all councillors are given written notice that the meeting will take place.
57. A valid resolution to exercise the power to change the voting system for the election of councillors of a principal council may only be passed before 15 November of the year that is three years before the next ordinary election of that council.
58. After a principal council has exercised the power to change the voting system for the election of councillors of a principal council, a further resolution to exercise the same power has no effect unless two ordinary elections of the council have been held under the voting system to which it was changed.
59. Where a council has previously voted on a resolution to change the voting system for the election of councillors of a principal council, during the period between two consecutive ordinary elections of the council, any further resolution to change the voting system passed during the same period will have no effect.

### **Section 10 - Duty to notify when resolution passed**

60. Section 10 places a duty on principal councils which have validly voted to change the voting system, that applies to the election of councillors, to notify the Welsh Ministers and the Boundary Commission of the change within a period of 14 days beginning on the day on which the resolution was passed. This section also specifies the information the notification must contain.

### **Section 11 and Schedule 1 - Initial review by the Local Democracy and Boundary Commission**

61. Section 11 provides that the Welsh Ministers, on being notified that a principal council has made a resolution to change the voting system, may direct the Boundary Commission to conduct an initial review of the principal area of the council. Section 11 (and section 137) also introduces Schedule 1 to the Act, which makes provision for the conduct of an initial review by the Boundary Commission. An “initial review” is a review conducted for the purpose of recommending electoral arrangements for the area under review.



62. Schedule 1 provides for the conduct of initial reviews of electoral arrangements by the Boundary Commission in the circumstances where the Boundary Commission has been directed by the Welsh Ministers to undertake such reviews under:
- section 11 of this Act, where the Welsh Ministers have received notice that a principal council has resolved to change its voting system; or
  - section 137 of this Act, where either the Welsh Ministers have received a voluntary merger application or the Welsh Ministers have given notice under section 128(6) that they propose to make regulations to restructure the principal councils specified in the notice.

### **Paragraph 1 - Initial reviews**

63. Paragraph 1 defines the term “initial review” for the purposes of this Act and also enables the Boundary Commission, in undertaking an initial review, to make recommendations for relevant consequential changes (defined in paragraph 3).

### **Paragraph 2 - Area under review**

64. Paragraph 2 defines what is meant by “area under review” in relation to an initial review of electoral arrangements as may be undertaken by virtue of a direction under section 11 of this Act or section 137 of this Act.
65. Where a principal council has resolved to change its voting system, the area under review is the area of the council in question.
66. Where the Welsh Ministers have received a voluntary merger application, the area under review is the new principal area which would be created by the merger in question.
67. Where the Welsh Ministers have given notice under section 128(6) that they propose to make regulations to restructure the principal councils specified in the notice and the restructuring involves the transfer of part of the abolished principal area to another principal area, the area under review is the area specified in the direction (which may be the area being transferred only, but may also cover some or part of the receiving principal area).
68. Where the Welsh Ministers have given notice under section 128(6) that they propose to make regulations to restructure the principal councils specified in the notice and the `is the new principal area to be constituted by the restructuring regulations.

### **Paragraph 3 - Other key terms used in this Schedule**

69. Paragraph 3 defines certain terms relating to the conduct of an initial review undertaken by the Boundary Commission for the area specified in a direction under section 11 or under section 137.

70. Reviews undertaken in response to such directions may also include electoral arrangements for communities in the areas specified, since the Boundary Commission will be able to propose and recommend changes at community level, but only where such community changes are relevant and consequential on what is proposed or recommended by the Boundary Commission at principal area level. The scope of what may be considered by the Boundary Commission as “relevant consequential changes” is set out in paragraph 3(1). Paragraph 3(2) defines the terms multiple member ward and single member ward.

#### **Paragraph 4 - Directions and guidance to the Commission**

71. Paragraph 4 requires that a direction under section 11 or section 137 must specify the date by which the Boundary Commission must submit its final report, with recommendations, to the Welsh Ministers and that a direction may include specific matters to which the Boundary Commission must have regard when conducting an initial review. The Welsh Ministers are also enabled to issue general directions to the Boundary Commission on carrying out initial reviews; this might be necessary if the Boundary Commission is undertaking several initial reviews at the same time, in which case the general direction might specify the order in which the Boundary Commission must carry out the individual reviews.

#### **Paragraph 5 - Conduct of initial review**

72. Paragraph 5 requires that when undertaking an initial review, the Boundary Commission must try to ensure that the ratio of local government electors to elected members for the area under review remains, as much as it can, the same in every electoral ward of the council in question; the aim is that each elected member in the council in question represents approximately the same number of electors. The Boundary Commission must take account of any discrepancy between the number of people registered to vote and the number who are eligible to be local government electors, and any change in the distribution of local government electors which is likely to take place in the five years immediately after they make their recommendations.
73. The Boundary Commission must also have regard to setting boundaries for electoral wards which are, and will remain, easily identifiable, and avoid breaking local ties.
74. For the purposes of an initial review, the Welsh Ministers are able to direct the principal council for the area being reviewed or a community council in an area under review to provide the Boundary Commission with any information which the Welsh Ministers consider appropriate.

#### **Paragraph 6 - Pre-review procedure**

75. Paragraph 6 requires the Boundary Commission, before conducting an initial review, to make the mandatory consultees, as defined by sub-paragraph (2), aware of the direction from the Welsh Ministers to conduct the review or any other directions issued relating to the review. The Boundary Commission is required to consult the mandatory consultees on the intended procedure and methodology of the initial review, particularly in relation to the proposed method of determining the appropriate number of elected members for the area under review.

### **Paragraph 7 - Investigation and interim report**

76. Paragraph 7 requires that, in conducting an initial review, the Boundary Commission must undertake whatever investigations it considers appropriate and prepare an interim report containing its proposals for the electoral arrangements of the area under review. The interim report must also include details of the review which has been conducted.
77. The Boundary Commission must send the report to the Welsh Ministers and mandatory consultees, publish it and tell any person it thinks appropriate how to access the report. The Boundary Commission must also invite representations on the report, notifying the Welsh Ministers, mandatory consultees and any other person it considers appropriate of the period during which representations can be made.
78. The Boundary Commission is required to publish the interim report, send it to certain specified persons and advise persons of how to access the report. There follows a period of 6 to 12 weeks (starting no earlier than 1 week after notice of the period of representations is given) during which representations may be made about the proposals contained in the interim report.

### **Paragraph 8 - Final report**

79. Paragraph 8 requires that, following the period for representations, the Boundary Commission must re-consider its initial report, in light of the representations received. It must then prepare a final report including its recommendations for the electoral arrangements for the area under review, any consequential recommendations to community boundaries and wards, details of the review and details of any changes made to the initial report in light of representations and explanations for the changes made.
80. The Boundary Commission is required to submit the final report to the Welsh Ministers and publish it, providing copies for mandatory consultees and other persons it considers appropriate. The Boundary Commission must also inform persons who provided evidence or made representations with regard to the interim report preceding the final report and such other persons the Boundary Commission considers appropriate, how to access the report.
81. A principal council which has been sent a final report must publish it, make it available for inspection at its offices, free of charge, for six weeks after receiving it and make local government electors in its area aware of how to access the report.
82. Ordinarily no recommendations may be made or published in connection with electoral arrangements reviews in the nine months before an ordinary election to ensure preparations for an ordinary election are not confused by the publication of alternative electoral arrangements. The timescales for initial reviews under this Act may not be consistent with the standard electoral cycles, so paragraph 8(5) suspends the relevant provision of the Local Government (Democracy) (Wales) Act 2013 ("the 2013 Act") for recommendations made by the Boundary Commission under this Act.

**Paragraph 9 - Power to make regulations where recommendations are made**

83. Paragraph 9 provides that having received a final report from the Boundary Commission, the Welsh Ministers may make regulations to implement the recommendations (with or without modifications) or make other provision they consider appropriate for the electoral arrangements of the area under review. Such regulations may not be made until at least 6 weeks after the further report is published.
84. In considering the electoral arrangements for an area under review, for the purpose of making regulations, the Welsh Ministers must consider the matters set out in paragraph 5(1)(a) and (b). The Boundary Commission is required to provide the Welsh Ministers with such information gathered to date in respect of the initial review that the Welsh Ministers consider appropriate.

**Paragraph 10 - Power to make regulations if no recommendations are made**

85. Paragraph 10 provides that, if the Boundary Commission is unable to submit a final report by the deadline set by the Welsh Ministers in their initial direction, the Welsh Ministers may make regulations setting out the electoral arrangements of the area under review, and any relevant consequential changes, in the absence of recommendations from the Boundary Commission.
86. In considering the electoral arrangements for an area under review, for the purpose of making regulations, the Welsh Ministers must consider the matters set out in paragraph 5(1)(a) and (b). Where such circumstances arise, the Boundary Commission must provide the Welsh Ministers with any information gathered to date in respect of the initial review that the Welsh Ministers may consider appropriate.

**Paragraph 11 - Regulations under paragraph 9 or 10: supplementary**

87. Paragraph 11 provides that the Welsh Ministers may direct the principal council for an area under review or a community council in an area under review to provide them with such information as they consider appropriate for the purposes of making regulations under paragraphs 9 and 10 or sub-paragraph 11(3). This is to ensure that if the Welsh Ministers have to make regulations under, for example paragraph 10 (where no recommendations have been made by the Boundary Commission), they are able to obtain all relevant information.
88. Paragraph 11(2) sets out the requirements for the Welsh Ministers in publishing regulations made following initial reviews under this Act.
89. Paragraph 11(3) enables the Welsh Ministers to make regulations to amend or revoke regulations made under paragraphs 9 or 10 of this Schedule, or regulations made under paragraph 11.

**Paragraph 12 - Subsequent reviews by the Commission where regulations are made under paragraph 9(1)(b) or 10(2)**

90. Paragraph 12 requires that, if the Welsh Ministers have had to make electoral arrangements regulations under paragraph 9(1)(b) or paragraph 10(2) of this Schedule, the Boundary Commission must conduct a review of the principal area's electoral arrangements under section 11(1) as soon as possible after:
- the first ordinary elections of a council under the new voting system (if the regulations were made in respect of a council which had changed its voting system); or
  - the first ordinary elections for a council following the coming into force of merger or restructuring regulations.
91. In any event, the Boundary Commission must undertake the review required by this paragraph before the next ordinary elections of the council in question.

**Paragraph 13 - Delegation by the Commission of functions under this Schedule**

92. Paragraph 13 amends section 13(1) of the 2013 Act so the Boundary Commission may delegate to one or more of its members or an assistant commissioner (who may be appointed under section 11 of the 2013 Act) such of its functions in respect of Schedule 1 as the Boundary Commission may consider appropriate.
93. Without this amendment to the 2013 Act, the Boundary Commission would be able to delegate functions in the way described and to the persons specified in respect of its functions under the 2013 Act only, which could at some point restrict its ability to fulfil its responsibilities set out in this Schedule.

**Paragraph 14 - Orders under Part 3 of the Local Government (Democracy) (Wales) Act 2013**

94. Paragraph 14 amends section 43 of the 2013 Act so the Welsh Ministers may by order vary or revoke (electoral arrangements) orders made under sections 37, 38, 39 or 43 of the 2013 Act, in consequence of regulations made under paragraphs 9 or 10 of Schedule 1. Section 43 of the 2013 Act provides for the variation and revocation of orders made under the 2013 Act and sets out the circumstances in which orders under the specified sections in the 2013 Act may be varied or revoked.
95. Without this amendment there would be no mechanism for varying or revoking orders made under the 2013 Act, even though the electoral arrangements (or community boundaries, if a consequential) in the area in question had been re-defined by regulations made under paragraphs 9 or 10 of this Schedule.

**Section 12 - Restriction on number of councillors if single transferable vote system applies**

96. This section provides that the number of members which can be elected for each electoral ward where the single transferable vote system is used is to be no less than three and no more than six.



### **Section 13 - Rules about the conduct of local elections in Wales**

97. Section 36 of the 1983 Act provides the existing power under which the rules are made for elections of councillors for local government areas in England and Wales. Section 13(1) amends section 36(1) of the 1983 Act so that the power to make rules under that section is limited to rules about elections of councillors for local government areas in England only.
98. Section 13(3) inserts a new section 36A into the 1983 Act, by which the Welsh Ministers may make rules for the conduct of local government elections in Wales (subsection (1)). Rules made under the new section 36A(1), whether for principal councils or for community councils, must:
- require polls to be conducted if elections are contested;
  - establish the requirements for becoming a candidate for election; and
  - require votes at polls to be given by ballot.
99. Rules made under the new section 36A(1) for the election of councillors to a principal council must provide for polls to be conducted under the two voting systems authorised by the Act (a simple majority system and a single transferable vote system).
100. Rules made under the new section 36A(1) for the election of community councillors in Wales must provide for polls to be conducted under a simple majority system.
101. Rules made under the new section 36A may make any other provision for the conduct of local government elections (subsection (4)) and may, for the purposes of, in consequence of, or for giving full effect to rules make supplementary, incidental, consequential, transitional, transitory or saving provision (subsection (5)). Rules made under subsection (5) may amend, modify, repeal or revoke any enactment (including an enactment contained in the Act).
102. Section 13(4) provides that existing rules, made under section 36 of the 1983 Act, which are in force immediately before the coming into force of the power to make new rules, will continue to have effect after that date as if they were made under the new section 36A.
103. Until provisions made in the Act which enable a principal council to change its voting system come into force (sections 5 to 9), section 36A provides that rules must only outline how polls are to be conducted under the simple majority system.
104. This section also requires the Welsh Ministers to consult with whomever they consider appropriate before any rules are made under the new section 36A of the 1983 Act. Any rules must be laid and approved by Senedd Cymru.



#### **Section 14 - Change of electoral cycle for principal councils from four years to five years**

105. Section 14 amends section 26 of the 1972 Act in order to change the electoral cycle for principal councils from four to five years.
106. Section 26 of the 1972 Act, as amended by the Local Authorities (Change to the Years of Ordinary Elections) (Wales) Order 2019 (S.I. 2019/1269 (W. 220)), provides that the next ordinary election of councillors is to be in 2022. Before amendment, the situation was that ordinary elections would then take place every fourth year after an election. Subsection (2) amends section 26 to provide that ordinary elections are to be in every fifth year.
107. Subsection (3) changes the term of office of councillors of principal councils from four years to five years.

#### **Section 15 - Change of electoral cycle for community councils from four years to five years**

108. Section 15 amends section 35 of the 1972 Act in order to change the electoral cycle for community councils from four to five years.
109. The Local Authorities (Change to the Years of Ordinary Elections) (Wales) Order 2019 (S.I. 2019/1269 (W. 220)) amended section 35 of the 1972 Act to provide that the next ordinary election of community councillors is to be in 2022. Before amendment, the situation was that ordinary elections of community councils would then take place every fourth year after an election. This section amends section 35 to provide that ordinary elections would be every fifth year.
110. Section 15 changes the term of office of community councillors to five years.

#### **Section 16 - Change of electoral cycle for elected mayors from four years to five years**

111. Section 16 amends section 39 of the Local Government Act 2000 (the "2000 Act") in order to change the term of office of an elected mayor from four to five years.

#### **Section 17 - Extension of power to change ordinary day of local elections in Wales**

112. This section amends section 37ZA of the 1983 Act to enable the Welsh Ministers, by order, to change the day on which ordinary elections for one or more county or county borough councils, or one of more community councils, in Wales are held.

#### **Section 18 - Registration of local government electors without application**

113. Section 18 of the Act enables registration officers to add electors to the register of local government electors without an application being made by that person, subject to certain conditions, where they are satisfied that they should be entered.

114. Section 18(3) of the Act inserts a new section 9ZA into the 1983 Act with the effect that the registration officer is able to add electors to the register of local government electors without the need for them to apply in certain circumstances. Section 9ZA sets out the conditions and circumstances under which a registration officer may add a person to the register.
115. Section 18(2) amends section 9 of the 1983 Act to provide that the name, address and electoral number of any person whom the registration officer has decided to register in accordance with section 9ZA must be contained in the register of local government electors.
116. Section 18(4) amends section 9E of the 1983 Act so that the duty in section 9E does not apply where a registration officer intends to register a person under section 9ZA. The duty under section 9E is a duty on a registration officer to invite a person who may be entitled to do so to apply to be registered to vote.
117. Section 18(5) of the Act amends section 10ZE of the 1983 Act. Section 10ZE sets out the circumstances under which a person must be removed from the register of local government electors. Section 10ZE(1) provides that where a person is entered in a register in respect of an address in Great Britain, the person is entitled to remain registered until the registration officer concerned determines that –
- the person was not entitled to be registered in respect of the address,
  - the person has ceased to be resident at the address or has otherwise ceased to satisfy the conditions for registration set out in section 4, or
  - the person was registered as the result of an application under section 10ZC made by some other person or the person's entry has been altered as the result of an application under section 10ZD made by some other person.
118. Where a person's entitlement to remain registered terminates by virtue of section 10ZE(1), section 10ZE(2) of the 1983 Act requires the registration officer to remove the person's entry from the register.
119. The amendment made by section 18(5)(a) of the Act adds a further duty to remove an entry in consequence of the new section 9ZA authorising entries without an application. It inserts a new subsection (2A) into section 10ZE requiring a registration officer to remove an entry made by virtue of the new section 9ZA if the officer determines that a person registered is not entitled to be registered for reasons other than those mentioned in section 10ZE(1).
120. Section 18(5)(c) inserts a new subsection (4A) into section 10ZE of the 1983 Act to provide the Welsh Ministers with the power to make regulations about the procedure for determining whether an entry must be removed from the register where it has been made without application under section 9ZA.

121. Section 18(5)(d) inserts a new subsection (5A) into section 10ZE of the 1983 Act to place a duty on a registration officer to consider whether to make a determination to remove a name from the register (where registered under section 9ZA) if they receive an objection to that person's registration, or they become aware of any reason that the person is not entitled to be registered.
122. Section 13A (alteration of registers) of the 1983 Act requires a registration officer to issue a notice in the circumstances set out in subsection (1) of that section.
123. Section 18(6) of the Act adds a new paragraph (zc) to section 13A(1) of the 1983 Act requiring a notice be issued by a registration officer if the officer registers a person under the new section 9ZA. Notices must be issued on the first day of the month after the registration officer decides to register a person or, if the first day of the month is less than 14 days after the day on which they decided to register the person, on the first day of the month immediately following.
124. Section 13AB (alteration of registers: interim publication dates) of the 1983 Act provides for there to be interim publication dates on which alterations to the register take effect where they would otherwise take effect on or after the interim publication dates. There are two interim publication dates:
  - the first is the last day on which nomination papers may be delivered by the returning officer for the purposes of an election; and
  - the second is a day, to be determined by the registration officer, which must be after the first interim publication date and before the sixth or fifth day before the date of the poll (as the officer determines).
125. Section 13AB of the 1983 Act applies where, at any time before an interim publication date section 13A of the 1983 Act applies to a registration officer in connection with a determination, requirement or decision relating to an entry in the register that has yet to take effect. Where it applies, section 13AB requires the registration officer to issue a notice specifying the appropriate alteration in the register and the alteration takes effect from the beginning of the interim publication date.
126. Section 18(7) of the Act adds a reference to paragraph (zc) of section 13A(1) in section 13AB(1). This means that where a registration officer has made a decision within the new section 13A(1)(zc) before the interim publication date that is not due to take effect until a day on or after the interim publication date, the registration officer must issue a notice specifying the appropriate alteration in the register and the alteration takes effect from the beginning of the interim publication date.
127. Section 13B(1) (alteration of registers: pending elections) of the 1983 Act provides that alterations to a register due to take effect after the fifth day before the date of the poll for an election do not have effect for the purposes of the election.

128. Subsection (3) of section 13B requires a registration officer to issue a notice specifying alterations in the register to which the subsection applies on the sixth or fifth day before the date of the poll (as the registration officer determines) (“the appropriate publication date”) and the alteration takes effect from the beginning of that day.
129. Subsection (3) applies where, at any time before the appropriate publication date, section 13A applies to a registration officer in connection with a determination, requirement or decision relating to an entry in the register that has yet to take effect (whether under section 13A(2), 13AB(3) or 13BC(3) or (6)).
130. Section 18(8) of the Act adds a reference to the new sub-paragraph (zc) of section 13A(1) of the 1983 Act into section 13B(2)(a) of the 1983 Act, which has the effect of including a situation where a registration officer has decided to register a person under the new section 9ZA (without that person making an application) to the list of circumstances in which a notice must be issued under section 13B(3).
131. Section 56(1) of the 1983 Act sets out the decisions and determinations under the Act relating to registration of electors that may be appealed to the county court.
132. Section 18(9) of the Act adds new paragraph (azaa) into section 56(1) of the 1983 Act to provide that an appeal lies to the county court from any decision of a registration officer for a local government area in Wales to register a person under the new section 9ZA.

### **Section 19 - Qualification for election and holding office as a member of a local authority in Wales**

133. Section 79 of the 1972 Act sets out the criteria that qualifies a person to be elected and to be a member of a local authority in Wales (i.e. in relation to Wales, a county council, county borough council or community council).
134. Section 19 of the Act amends section 79 of the 1972 Act to change this criteria to enable a “qualifying foreign citizen” to qualify to be elected and to be a member of a local authority in Wales (subject to the remaining criteria in section 79 being satisfied).
135. Section 19 of the Act inserts a definition of a “qualifying foreign citizen” into section 79 of the 1972 Act for this purpose.
136. In effect, this extends the qualification to any resident foreign citizen in Wales who requires leave under the Immigration Act 1971 to enter or remain in the UK and who has, or is treated as having, indefinite leave to remain in the UK.
137. A person is not a qualifying foreign citizen if the person does not require leave only as a result of section 8 of the Immigration Act 1971.

138. Section 8 of the Immigration Act 1971 provides that certain categories of persons, including those specified in an order made under that section, seamen, aircrews or persons in the diplomatic service do not require leave to enter and remain in the United Kingdom.
139. The definition of “qualifying foreign citizen” in section 79 differs from the definition in section 203(1) of the 1983 Act (the definition that applies in relation to the enfranchisement of foreign citizens) in two material respects:
- firstly, under section 79 if a person is required to have leave to enter or remain in the UK under the Immigration Act 1971 that leave must be indefinite; and
  - secondly there is no equivalent provision to subsection (2E) of section 79 (exception for persons with leave only by virtue of section 8 of the Immigration Act 1971) in section 203(1) of the 1983 Act.

### **Section 20 - Disqualification for election and being a member of a local authority**

140. This section inserts new sections 80A, 80B, and 80C into the 1972 Act, setting out the circumstances under which a person is disqualified for election or for being a member of a local authority in Wales (i.e. a county council, county borough council or community council in Wales).
141. Section 80A (disqualification for election or being a member of a local authority in Wales) lists the circumstances under which a person is disqualified for being elected or being a member of a local authority in Wales
142. The provisions in section 80A(1)(a),(b) and (d), (2), (4) and (5) restate the grounds for disqualification in section 80(1)(b), (e) and (d), and (5) of the 1972 Act respectively. (Section 80 of the 1972 Act no longer applies to local authorities in Wales by virtue of paragraph 1(3) of Schedule 2 to the Act.)
143. Section 80A(1)(c) provides new grounds for disqualification, namely being subject to the notification requirements of or an order under Part 2 of the Sexual Offences Act (orders made or requirements imposed by a court in response to specified sexual conduct.)
144. Section 80A(6) is also new and prohibits members of a local authority in Wales from acting in that office if, but for subsections (3), (4) or (5) (time allowed for appeal against conviction, order etc.), they would be disqualified under section 80A(1).
145. Section 80B (disqualification for being a member of local authority in Wales and holding local office or employment) disqualifies certain employees and office holders of a local authority in Wales (or a connected body) from being a member of that authority but does not prevent such persons from standing for election to that authority.

146. A person becomes disqualified from being a member of the local authority under section 80B at the time they make a declaration of acceptance of office under section 83 of the 1972 Act. The person may instead chose to resign from the relevant paid office of employment for the purpose of taking office as a member. In this case, the resignation will have immediate effect irrespective of any notice requirement in the terms and conditions under which the paid office or employment is held.
147. Under section 1 of the Local Government and Housing Act 1989 (“the 1989 Act”), a person is disqualified from being elected or being a member of a local authority if they hold a politically restricted post. Section 80B has no effect on this provision.
148. Section 80C (paid office or employment to which disqualification applies) defines the term “relevant paid office or employment”.

### **Section 21 - Disqualification of member of a local authority in Wales for appointment to paid office**

149. This section inserts a new section 116A into the 1972 Act.
150. Section 116 of the 1972 Act provides that while a person is a member of a local authority and for twelve months after they cease to be a member, they are disqualified from being appointed or elected by that authority to any paid office, other than:
- the office of chairman or vice-chairman; or
  - in the case of a local authority which is operating executive arrangements which involve a leader and cabinet executive, the office of executive leader or member of the executive.
151. Paragraph 1(7) of Schedule 2 to the Act amends section 116 of the 1972 Act so that it applies to England only.
152. Section 116A (membership of local authorities in Wales not to be appointed as officers) restates the provision in section 116 in relation to disqualification while the person is a member of a local authority in Wales, however it does not disqualify former members. A person is therefore no longer disqualified for being appointed or being elected by a local authority in Wales to any paid office once he or she ceases to be a member of that authority.

### **Section 22 – Translations etc. of documents at local government elections in Wales**

153. Section 22 of the Act makes provision about making documents relating to voting at local government elections more accessible to voters who might experience difficulty with understanding the standard form and content of such documents.
154. The section amends section 199B of the 1983 Act so that it does not apply to local government elections in Wales (it continues to apply to parliamentary elections in Wales).



155. New section 199C of the 1983 Act restates the provision in section 199B(1) to (4) of the 1983 Act with one exception: where the person responsible for making the election documents available thinks that it is appropriate to make them available in other languages under section 199C(2)(b) the document is to be made available in languages other than English “and Welsh”.

### **Section 23 – Minor and consequential amendments and Schedule 2 – Minor and Consequential Amendments Relating to Part 1: elections**

156. Schedule 2 (introduced by section 23) sets out the minor and consequential amendments to existing legislation relating to Part 1 of the Act.
157. Paragraph 2(2) amends subsections (2A) to (2D) of section 7B of the 1983 Act as inserted by section 19 of the Senedd and Elections (Wales) Act 2020 (“the 2020 Act”).
158. Subsections (2A) to (2D) of section 7B enables a local government elector in Wales who is or has been a child looked after by a local authority or is being kept in secure accommodation to make a declaration of local connection under section 7B as a local government elector. Where a person provides an address in a declaration of local connection the person is to be regarded as resident in the address given in the declaration for the purposes of electoral registration
159. Paragraph 2(2) makes three principal changes to the provision inserted by the 2020 Act. It removes the requirement inserted by section 19 of the 2020 Act for persons kept in secure accommodation to be under the age of 18. It also removes the power in what was section 7B(2B)(b) for the Welsh Ministers to make regulations specifying the types of secure accommodation to which the section applies. Instead, paragraph 2(2) amends section 7B(2D)(b) so that a more detailed description of “secure accommodation” is given.
160. Paragraph 2(5) is consequential on the provision in section 13(2) of the Act (disapplication of section 36 of the 1983 Act to local government elections in Wales). Section 36B(1) to (4) restates the provision in section 36(3AB),(3A),(3B) and (3C) of the 1983 Act and section 36C(1) to (3) restates the provision in section 36(4), (5A) and (6) of the 1983 Act.
161. Paragraph 19 makes amendments to the Local Elections (Principal Areas) (England and Wales) Rules 2006 which are related to the changes made by section 22 of this Act.. The paragraph restates the provision made in section 199B (5), (7) and (8) of the 1983 Act but where there is a requirement in section 199B to provide a document in a language other than English that becomes a requirement to provide the document in a language other than English “and Welsh”.

## **Part 2: General Power Of Competence**

### **Chapter 1: The General Power**

#### **Section 24 - Local authority’s general power of competence**

162. Section 24 provides a general power of competence to qualifying local authorities in Wales. The term “general power” is used throughout these notes to refer to the general power of competence.

163. The general power gives all principal councils and certain community councils (see Chapter 2), referred to in this Part as “qualifying local authorities”, the same powers to act that an individual generally has, thus enabling them to do things that are unlike anything they, or any other public body, have done before. “Individual” is defined in subsection (5) so as to avoid any doubt that it means an individual with full powers and does not include individuals with reduced capacity; for example, a child.
164. Subsections (2) and (3) further define the extent of the power. It is not necessary for activities undertaken using the general power to benefit the qualifying local authority itself, its area or residents; however, there is no restriction on the activities doing so. In using the general power a qualifying local authority may undertake activities anywhere, including both in and outside of Wales.
165. The general power can be used by qualifying local authorities to, for example, act in their own financial interests with subsection (2)(b) stating that the general power may be used to do things for a commercial purpose, or for a charge.
166. The exercise of the general power is subject to the restrictions provided for in sections 25 (general boundaries of the power), 26 (limits on charging) and 27 (limits on doing things for a commercial purpose), and any regulations made by the Welsh Ministers under section 28(3) or (4).
167. Amendments to the 2000 Act, provided for in Schedule 3 to the Act, mean that the well-being power provided in section 2 of that Act will no longer apply to Welsh local authorities once the general power is commenced.

### **Section 25 – Boundaries of the general power**

168. This section sets out the boundaries of the general power.
169. The general power does not provide qualifying local authorities with the ability to bypass existing prohibitions, limitations or restrictions in legislation passed by the Senedd or UK Parliament on, or before, the day on which this section comes into force.
170. Nor will the general power provide qualifying local authorities with the ability to bypass prohibitions, limitations or restrictions in legislation passed by the Senedd or UK Parliament after this section comes into force, if that legislation states that it applies to:
- the general power;
  - all of the qualifying local authority’s powers; or
  - all of the qualifying local authority’s powers except for certain powers, and the general power is not listed as one of the excepted powers.
171. Subsection (3) prevents a qualifying local authority from using the general power to delegate or contract out any of its functions or to alter its governance arrangements. These matters remain subject to separate statutory provision.

## **Section 26 – Limits on charging in exercise of general power**

172. This section restricts the ability of a qualifying local authority to charge for providing a service to a person using the general power. It provides that where a qualifying local authority is using the general power to provide a service, it may only charge for that service if:
- that service is discretionary, i.e. not a service the authority is under a statutory duty to provide; and
  - the recipient has agreed to the provision of the service.
173. Subsection (4) prevents a qualifying local authority from making a profit in any financial year when using the general power to charge for a service, unless the service is provided for a commercial purpose. However, subject to that limitation of not making a profit, subsection (6) enables a qualifying local authority to set charges as it sees fit, including only charging some people for the service or charging different people, or groups of people, different amounts.
174. Section 93 of the Local Government Act 2003 deals with the powers of qualifying local authorities (and other bodies) to charge for things done other than in the exercise of the general power.

## **Section 27 – Limits on doing things for commercial purpose in exercise of general power**

175. This section provides that a qualifying local authority may use the general power to carry out an activity for a commercial purpose only if the activity is one the authority could also rely on the general power to carry out for a non-commercial purpose.
176. The effect of subsection (3) is that a qualifying local authority cannot carry out an activity in respect of someone for a commercial purpose, if the authority is required by legislation to carry out that activity.
177. Also, if a qualifying local authority wishes to use the general power to do something for a commercial purpose, it must do so through a company, as defined in section 1(1) of the Companies Act 2006, or a registered society as defined in the Co-operative and Community Benefit Societies Act 2014, or registered under the Co-operative and Community Benefit Societies Act (Northern Ireland) 1969.
178. Subsection (5) imposes a duty on principal councils and eligible community councils to have regard to guidance issued by the Welsh Ministers about exercising the general power of competence to do anything for a commercial purpose.
179. Section 95 of the Local Government Act 2003 deals with the powers of qualifying local authorities (and other bodies) to do things for a commercial purpose other than in the exercise of the general power.

### **Section 28 – Power to make supplementary provision**

180. Section 28(1) provides the Welsh Ministers with a power to make regulations removing or changing statutory provisions that they think prevent qualifying local authorities from using the general power, or obstruct them when using the general power.
181. Subsection (2) enables the Welsh Ministers to make regulations removing overlaps between the general power and other powers (although the effect of subsection (9)(a) is that they cannot achieve this by revising or cutting back the general power itself).
182. Subsections (3) and (4) allow the Welsh Ministers to make regulations restricting what a qualifying local authority may do under the general power, or making its use subject to conditions.
183. The Welsh Ministers may make regulations under this section in respect of all qualifying local authorities, specific qualifying local authorities, or a type of qualifying local authority.
184. The effect of subsections (7) and (8) is that before exercising any of these powers, the Welsh Ministers must consult with whichever qualifying local authorities they consider appropriate, any representatives of principal councils and community councils they consider appropriate, and any other persons they consider appropriate.
185. The duty to consult does not apply in respect of any regulations which merely amend earlier regulations so as to:
- extend their application to a specific authority or group of authorities;
  - reduce their application so they stop applying to a specific authority or group of authorities.

### **Section 29 and Part 1 of Schedule 3 – Amendments relating to Chapter 1 of Part 2: the general power**

186. Schedule 3 provides for consequential amendments in relation to the general power of competence (also see the notes in respect of section 37).
187. The Schedule is divided into two parts to accommodate a phased commencement of the general power of competence. This phased commencement recognises the need to make regulations specifying a qualified clerk and also to prepare and issue guidance under Chapter 2.
188. Part 1 makes provision related to the creation of the general power in its application to principal councils whilst Part 2 makes provision in relation to the application of the general power to eligible community councils.
189. Part 1 of Schedule 3 makes amendments to this Act and other legislation relating to this Chapter, including removing the well-being power for principal councils.

190. Generally speaking, the amendments in this Part of the Schedule relate to the creation of the general power of competence for:
- all qualifying local authorities, or
  - in its application to principal councils

## **Chapter 2: Eligible community councils**

### **Section 30 - Becoming an eligible community council**

191. Section 30 sets out the criteria a community council must meet, and the procedure it must follow, in order to become an “eligible community council”. Becoming an eligible community council enables a council to exercise the general power of competence provided for in Chapter 1 of this Part (because “eligible community councils” fall within the definition of “qualifying local authorities”).
192. Subsection (1) provides that in order to become an eligible community council a council must pass a resolution that it meets all of the eligibility conditions set out in subsections (2) to (4) and that it is an eligible community council.
193. The first eligibility condition is that at least two-thirds of the members of the community council must have been declared elected. This means that they must have stood for election at an ordinary election or by-election, even if they stood unopposed, rather than having been co-opted.
194. The second eligibility condition is that the council’s clerk must hold one of the qualifications specified by the Welsh Ministers in regulations made under subsection (5). An example of a qualification that may be specified is CiLCA (Certificate in Local Council Administration), a Level 3 qualification in the National Qualifications Framework.
195. The final eligibility condition relates to the annual audit of the accounts of a community council. For a council to be able to resolve that it is an eligible community council it must have received two unqualified auditor’s opinions for two consecutive financial years, the latest of which must have been received during the 12 month period ending on the day on which the council’s resolution is passed.
196. A community council’s accounts are audited annually by, or on behalf of, the Auditor General, who provides an opinion on the accounts under section 23 of the Public Audit (Wales) Act 2004 (“the 2004 Act”).
197. For an Auditor General opinion to be unqualified, the Auditor General must be satisfied as to the matters set out in section 17 of the 2004 Act, including that:
- the accounts have been prepared in accordance with regulations under section 39 of the 2004 Act;
  - they comply with the relevant statutory requirements (such as the date by which the accounts must be submitted and the information the accounts must contain); and
  - proper practices have been observed.

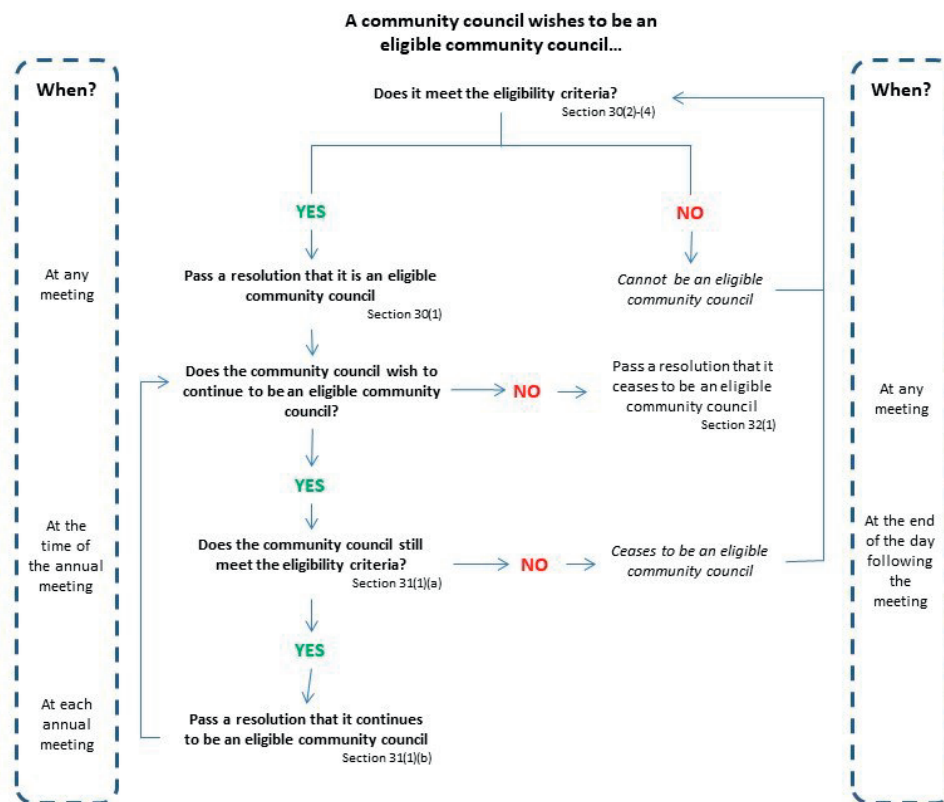


### Section 31 - Continuing to be an eligible community council

198. Once a community council has resolved itself to be an eligible community council it will need to reaffirm on an annual basis that it continues to meet the eligibility criteria. A council will do so by passing a resolution at its annual meeting.
199. If a community council does not pass a resolution at an annual meeting that it is an eligible community council then it ceases to be one at the end of the day following the annual meeting in question.
200. A community council may determine not to pass a resolution that it continues to be an eligible community council because it no longer meets all of the eligibility conditions. Alternatively a council may decide that, despite meeting the conditions, it no longer wishes to be an eligible community council.

### Section 32 - Ceasing to be an eligible community council

201. Section 32 provides that an eligible community council may resolve at any time that it is no longer to be an eligible community council. Where such a resolution is made the council would cease to be an eligible community council at the end of the day following the meeting at which the resolution was passed.
202. The diagram below sets out the processes by which a community council becomes, and ceases to be, an eligible community council.





### **Section 33 - Community councils that cease to be eligible: exercise of the general power of competence**

203. Section 33 provides that a community council which ceases to be an eligible community council (and so loses the general power) can continue to rely on the general power in relation to things it has done in the exercise of that power while it was an eligible community council. This means, for example, that a contract entered into in the exercise of the general power may continue, and is not necessarily frustrated, despite the fact that the community council otherwise no longer has the power to enter into that contract.

### **Section 34 - Common community councils established after this Act is passed**

204. Under sections 27E and 27F of the 1972 Act community meetings have the power to apply for an order grouping their communities together under a common community council.
205. When such a common community council is formed it is effectively a new council; even if it is comprised in full or in part of communities which previously had separate community councils (and this section of the Act only applies where at least half of the communities in question had separate community councils).
206. Although a new common community council may be able to meet the eligibility conditions relating to the proportion of elected members (since the order made by the principal council would make provision for an election) and could have a qualified clerk from the offset, it would be unable to satisfy the third eligibility condition of having two unqualified Auditor General audit opinions.
207. This could mean, for example, that the new council, despite being constituted of councils which had previously been able to resolve themselves to be eligible community councils, would not be able to do so for at least two years.
208. To ensure there is no disincentive to forming a common council where communities feel it would best serve the interests of their community, subsection (2) disapplies the eligibility condition set out in section 30(4) for a fixed period for certain common community councils.
209. A common community council in which at least half of the communities had separate community councils that, immediately before the order grouping them met the third eligibility condition, will not have to meet the third eligibility condition until it has received two Auditor General audit opinions (but if the first opinion is qualified, it will be treated as no longer meeting the eligibility conditions).

210. This section only applies to common community councils formed since the Act was passed. Any common community councils in place before the Act was passed have been in place for sufficient time to build up an audit record in their own right (though section 35(3) provides a more general power, not specific to new community councils, to modify or disapply eligibility conditions during the first two years after the Chapter comes into force).

### **Section 35 - Power to amend or modify this Chapter**

211. This section gives power to the Welsh Ministers to make regulations (following consultation with any bodies representing community councils they think appropriate) to amend the Chapter. They may add a new eligibility condition, remove an eligibility condition or change any of the eligibility conditions.
212. The Welsh Ministers may also make regulations to specify circumstances, other than those specified in section 30, in which a community council will stop being an eligible community council if any of the conditions are not met. For example if a significant problem was identified by the Public Services Ombudsman for Wales.

### **Section 36 - Guidance on exercise of functions under this Chapter**

213. Community councils must have regard to any guidance issued by the Welsh Ministers about how to exercise functions under this Chapter. For example, the Welsh Ministers might issue guidance about the actions a council might consider taking if it found it no longer met one of the eligibility conditions or matters a community council should consider if it continued to exercise the general power after having ceased to be an eligible community council.

### **Section 37 and Part 2 of Schedule 3 - Amendments relating to this Chapter 2 of Part 2: eligible community councils**

214. Section 37 introduces Part 2 of Schedule 3 which makes amendments, relating to this Chapter, to Part 1 of Schedule 3 and other legislation, including fully repealing the well-being power in section 2 of the 2000 Act.
215. This will mean the well-being power ceases to apply to all community councils, regardless of whether or not they are eligible to exercise the general power, in addition to principal councils (as provided for in Part 1 of the Schedule).
216. The well-being power is being repealed in full, even though community councils which have not resolved themselves eligible will not be able to use the general power. This is on the grounds that having both the general power of competence and the well-being, in addition to section 137 of the 1972 Act, could add to existing confusion reported by the community council sector about the powers available to them.
217. Retaining the well-being power would also reduce the incentive for community councils to meet the eligibility criteria in order to access the general power.

218. These criteria require a community council to demonstrate consistent sound financial management, to receive guidance and input from a clerk with particular qualifications, and to publicly keep under review whether it meets the criteria, and whether it should become or remain an eligible community council.
219. Part 2 of Schedule 3 amends the 1972 Act to as to restrict the power of local authorities to incur expenditure for certain purposes not otherwise authorised to community councils that are not eligible community councils. This amendment is made as eligible community councils will be able to rely on the (wider) general power to incur expenditure that would otherwise be incurred under this power.
220. The Schedule also repeals the power the Welsh Ministers have under Chapter 9 of Part 7 of the Local Government (Wales) Measure 2011 (“the 2011 Measure”) to provide for a scheme under which the Welsh Ministers may grant accreditation to a community council if the criteria set out in the regulations are met.
221. This power has not been used, on the ground that it would be preferable to have a situation where the local government sector retains control of determining ‘quality’ rather than being dependent on the Welsh Ministers for the conferral of that status. Instead, the criteria for accreditation of quality in community government envisaged in the 2011 Measure form the basis of the criteria for eligibility to use the general power of competence. The need for councils to resolve themselves to be eligible by reference to an objective set of criteria will provide a means of assuring the quality of community councils and incentivising councils to improve.
222. The Schedule also adds references to the general power of competence to legislation which had previously referred to the well-being power, and makes other consequential amendments.

### **Part 3: Promoting Access to Local Government**

#### **Chapter 2: Public participation in decision-making by principal councils**

##### **Section 39 - Duty to encourage local people to participate in decision-making by principal councils**

223. Section 39 of the Act places a duty on principal councils to encourage local people to participate in their decision making. This includes where the council is making decisions in partnership with another individual or body, such as another principal council or in conjunction with another individual or body, such as a local health board.
224. For the purposes of this section, a decision includes where a decision is delegated to an individual by a principal council.

##### **Section 40 - Strategy on encouraging participation**

225. Section 40 of the Act places a duty on principal councils to prepare and publish a public participation strategy detailing how it will meet the duties imposed by section 39.

226. Section 62 of the 2011 Measure imposes a duty on principal councils to make arrangements for anybody living or working in the local authority's area to bring their views on any matter under consideration by an overview and scrutiny committee to the attention of that committee. The public participation strategy must also address the arrangements made in line with the duty imposed by section 62 of the 2011 Measure.

#### **Section 41 - Public participation strategy: consultation and review**

227. This section places a duty on principal councils to consult local people (defined in section 171 as people who live, work or study in the council's area) and anyone else it thinks appropriate when preparing its public participation strategy. The first strategy must be published as soon as reasonably practicable after section 40 comes into force.
228. The council can review its public participation strategy at any point, but it must do so as soon as reasonably practicable after an ordinary election of councillors. Again, when reviewing the strategy, the council must consult local people and anyone else it thinks appropriate.
229. Following a review, a council can revise or replace its public participation strategy but must first consult local people and anyone else it thinks appropriate. If it revises or replaces a public participation strategy, it must publish the revised or new version as soon as it is reasonably practicable to do so.

#### **Section 42 - Duty to make petition scheme**

230. Section 42 places a duty on principal councils to produce a petition scheme, stating how it will handle and respond to petitions, including electronic petitions.

#### **Section 43 - Duty on principal councils to publish official addresses**

231. Section 43 places a duty on principal councils to publish an electronic and postal address for correspondence for each council member. This may be an official rather than a home address.

#### **Section 44 - Guidance on exercise of functions under this Chapter**

232. This section requires principal councils to have regard to guidance issued by the Welsh Ministers when exercising their functions under Chapter 2, including those of encouraging public participation in decision-making by principal councils, developing a strategy on encouraging participation and making and publishing a petition scheme.

### **Chapter 3: Constitution Guides**

#### **Section 45 - Principal councils' duty to publish constitution and constitution guide**

233. Section 45 of the Act amends section 37 of the 2000 Act (local authority constitution).

234. Section 37 of the 2000 Act places a duty on principal councils to prepare and keep up to date a document (referred to in that section as their constitution) which contains copies of the council's standing orders and code of conduct, any information which the Welsh Ministers may direct them to keep and any other information which the authority considers appropriate.
235. Section 45 of the Act places a further duty on principal councils to prepare, and keep up to date, a constitution guide which explains the content of their constitution in ordinary language.
236. Before amendment, section 37 of the 2000 Act places a duty on principal councils to ensure copies of their constitution are available at their principal office for inspection by members of the public at all reasonable hours. A council must supply a copy of their constitution to anyone who requests a copy, in exchange for a reasonable fee determined by the authority.
237. Section 45 amends section 37 of the 2000 Act so as to require principal councils to ensure copies of their constitution and constitution guide are published electronically and made available at their principal office for inspection by members of the public at all reasonable hours. A council must supply a copy of their constitution and constitution guide to anyone who requests a copy either free of charge or at a charge representing no more than the cost of providing the copy.

#### **Chapter 4: Access to Meetings of Local Authorities**

##### **Section 46 - Electronic broadcasts of meetings of certain local authorities**

238. Section 46(1) requires principal councils to make, and publish, arrangements that ensure that the proceedings of certain types of council meeting are broadcast electronically in a way that allows members of the public, not in attendance, to see and hear proceedings. The proceedings must be broadcast live (subject to any exceptions that may be specified in regulations) and they must be available electronically after the meeting for a period specified in regulations.
239. Subsection (2) specifies the types of council meeting to which the duty to make arrangements applies. It only applies to meetings, or parts of meetings that are open to the public. And the only type of meeting to which it applies by direct operation of the subsection is a meeting of a principal council, which means meetings of the full council (subsection (2)(a)).
240. The duty may be extended to meetings of bodies operating within the council by the Welsh Ministers specifying such bodies in regulations (subsection (2)(a) and subsection (4)).
241. The types of body that may be specified are :
- the executive of a principal council;
  - a committee or sub-committee of the executive of a principal council;
  - a committee or sub-committee of a principal council;
  - a joint committee or a sub-committee of a joint committee of two or more principal councils.

242. Subsection (3) enables the Welsh Ministers to make regulations including further provision in connection with the electronic broadcast of meetings of a principal council or a body specified in regulations under subsection (2).
243. Subsection (6) requires a principal council to have regard to guidance made by the Welsh Ministers about its duty to make and publish arrangements under subsection (1).
244. Subsection (8) gives the Welsh Ministers a wide power to require the electronic broadcast of the meetings of other specific bodies, including by way of amendment, revocation or repeal of primary and secondary legislation. The power is exercisable by regulations.
245. The bodies that may be made subject to such requirements are:
- fire and rescue authorities for an area in Wales,
  - National Park authorities for a National Park in Wales,
  - a joint committee of one or more principal councils and one or more fire and rescue authorities or National Park authorities, or
  - a joint board which is constituted under any enactment as a body corporate and discharges functions of two or more principal councils.
246. All regulations under this section must be approved by Senedd Cymru before being made (see section 174(5)(d)).

#### **Section 47 - Attendance at local authority meetings**

247. Section 47 requires local authorities to make arrangements that ensure their meetings can take place in a manner which enables persons who are not in the same place to attend the meeting. The authority must publish these arrangements, if the arrangements are revised or replaced the new arrangements must also be published.
248. Under the arrangements meetings will have to be capable of being held virtually. Section 47 does not however require meetings to be held in a certain format. Whether they are held fully virtually, partially virtually - whereby some participants are in the same physical location whilst others join the meeting virtually - or as physical meetings will be a matter for those responsible for arranging the meetings.
249. Authorities must, in making these arrangements, have regard to guidance issued by the Welsh Ministers.
250. The type of equipment or other facility to be used to facilitate virtual meetings is not specified but must, under subsection (2), enable all participants in the meeting to speak to each other and be heard by each other.
251. Section (2) further specifies that where the meeting is required to be broadcast under section 46 of the Act, all participants in the meeting must be able to see, and be seen, by each other in addition to being able to speak to each other and be heard by each other.



252. Subsection (6) specifies the bodies that, for the purpose of this section, fall within the definition of a “local authority” and also defines “local authority meetings”, which are the meetings to which the duty set out in subsection (1) applies.
253. Subsection (7) provides that where an enactment refers to the attendance, presence or appearance of a person at a local authority meeting (as defined in subsection (6)), it includes their participation via the arrangements put in place to satisfy the requirements of this section. This subsection also provides that a reference to “the place at which a local authority meeting is held” is not limited to a physical location.
254. Subsection (8) enables the Welsh Ministers, by regulations to make changes to the conditions set out in subsection (2), for example, to accommodate technological advances in how meetings can be held virtually and to add a joint board to the definition of local authority in subsection (6).

### **Section 48 - Participation at meetings of community councils**

255. Section 48 amends Part 4 of Schedule 12 to the 1972 Act, which sets out requirements with regard to meetings and proceedings of community councils.
256. An additional paragraph (27A) is added which provides that members of the public attending a community council meeting must be given reasonable opportunity to make representations about any item of business due to be discussed at the meeting.
257. As a matter of good practice a number of community and town councils already give the public an opportunity to make representations, without a statutory obligation to do so. However this practice is at the discretion of the council and is not currently applied universally.
258. The duty to give members of the public the opportunity to make a representation is qualified in 27A(2) to the extent that the person chairing the meeting has the ability to curtail that opportunity if they consider someone’s use of it is likely to prejudice the effective conduct of the meeting.
259. The person chairing would have wide discretion to decide what amounts to a “reasonable opportunity” but would have to have regard to any guidance on this matter issued by the Welsh Ministers under 27A(3).

### **Section 49 - Notices etc. of local authority meetings and Schedule 4 -Notice of local authority meetings, access to documents and attendance at meetings**

260. Schedule 4, introduced by section 49 of the Act, makes provision about arrangements for local authority meetings, documents for local authority meetings and attendance at such meetings

261. Part 1 of Schedule 4 complements the changes introduced by section 47 in respect of attendance at local authority meetings (including remote attendance) and makes provision about the electronic publication of certain local authority meeting documents. Part 2 of Schedule 4 makes amendments which are consequential upon section 47.

**Part 1 of Schedule 4 - Notice of local authority meetings and access to documents**

262. Part 5A of the 1972 Act (sections 100A to 100K) makes provision about access to meetings of principal councils (and certain other local government bodies), and access to documents relating to those meetings and their publication.
263. Paragraph 1 amends section 100A of the 1972 Act (new subsection (6)(aa)), so that the public notice of meetings of principal councils in Wales (as defined in section 100J) must be published electronically and must include information providing details of the arrangements for a meeting (including whether it is open to the public, being held through remote means and how to access a remote meeting). The notice is no longer required to be posted in the offices of the principal council.
264. Paragraph 2 amends section 100K(3) of the 1972 Act and is consequential on the new subsection (6)(aa) in section 100A; the existing power in section 100K(3), enabling the Welsh Ministers by order to substitute the reference in section 100A(6)(a) (a subsection which will no longer apply in Wales) to three days with a greater number of days, applies to the new section 100A(6)(aa).
265. Schedule 12 to the 1972 Act makes further provision about the meetings and proceedings of principal councils and other local government bodies.
266. Paragraph 3 amends paragraph 4 of Schedule 12 to the 1972 Act, so as to make its provisions about publishing public notice of meetings of principal councils consistent with the requirements set out in the amended section 100A of the 1972 Act. The new sub-paragraph (2B) defines “a meeting held through remote means”.
267. Paragraph 4 amends paragraph 26 of Schedule 12 to the 1972 Act, so that public notices of meetings of community councils must contain the information set out in new sub-paragraph (2ZA) (including whether the meeting is open to the public, is being held through remote means and if so how to access the meeting). The new sub-paragraph (2ZB) defines “a meeting held through remote means”. No change is made to the existing requirements that notices of community council meetings must be published electronically and must be posted in a conspicuous place in the community.
268. The Public Bodies (Admission to Meetings) Act 1960 (“the 1960 Act”) makes provision about the admission of the public and the press to meetings of local authorities and other public bodies, and also about documents relating to those meetings.

269. Paragraph 5 amends section 1 of the 1960 Act so that notices of meetings of the bodies listed in new subsection (4ZA) must comply with the requirements set out in new subsection (4ZB).
270. The requirements are similar to those inserted into section 100A of the 1972 Act (requiring electronic publication and information on how to access meetings held through remote means). The new subsection (4ZC) defines “a meeting held through remote means” and also provides that a requirement to publish a notice electronically is a requirement to publish on the body’s website if that body has a website.
271. Paragraph 6 amends section 100B of the 1972 Act (access to agenda and connected reports), so it applies to principal councils in England only.
272. Paragraph 7 inserts into Part 5A of the 1972 Act a new section 100BA (access to agenda and connected reports: principal councils in Wales). This new section provides that copies of the agenda and connected reports, for a meeting of a principal council in Wales, must be published electronically. The restrictions concerning publication of certain exempt information (as set out in Schedule 12A to the 1972 Act) continue to apply (see sections 100BA(2) and (7)).
273. Where a meeting is not held by remote means only and members of the public are present, a reasonable number of copies of the agenda and reports must be provided for their use. Subsection (9) provides for the supply (on request and subject to payment) of certain meeting documents to any newspaper.
274. Paragraph 8 amends section 100C of the 1972 Act (inspection of minutes and other documents after meetings) so that subsection (1) applies to principal councils in England only and new subsections (1A) to (1C) apply to principal councils in Wales.
275. Subsection (1A) provides that the documents listed in subsection (1B) must be published electronically and must remain accessible electronically for six years from the date of the meeting, whilst subsection (1C) requires a principal council, after a meeting, to publish electronically a note setting out the information listed in subsection (1C).
276. Paragraph 9 amends section 100D of the 1972 Act (inspection of background papers) to provide that copies of any documents included in the list of background papers for a report at a meeting of a principal council in Wales must be published electronically.
277. New subsection (1)(c) provides that if the proper officer considers that it is not reasonably practicable to publish a background document electronically, for example a background document that is very lengthy, at least one copy of the document must be made available for inspection at the offices of the council (a “proper officer” is one appointed for this purpose by the council: see section 270(3) of the 1972 Act).

278. New subsection (2A) provides that copies of the documents included in the list of background papers (whether published electronically or open to inspection) must remain accessible for six years from the date of the meeting; the period of retention for such background papers is increased from 4 to 6 years to be consistent with the retention requirements for other meeting documents.
279. Paragraph 10 amends section 100H of the 1972 Act (supplemental provision about access to meetings and documents); if a document is open to inspection under Part 5A of the 1972 Act, a person may make a copy or request a copy be provided of part, or all, of the document, and may be charged a reasonable fee.
280. New subsection (3A) provides that, in publishing documents, a principal council must not do anything which infringes copyright (except where the owner of the copyright is the council).
281. New subsection (5)(aa) provides that where any accessible document is published electronically, the publication of any defamatory matter will be privileged unless the publication is proved to be made with malice.
282. New subsection (8) requires a principal council in Wales to put in place facilities to enable members of the public who would otherwise be unable to do so, to access documents which are required to be published electronically. The types of facilities that could be put in place may include access to computers, arrangements for providing copies of document, access to offices for inspections etc.
283. New subsection (9) requires principal councils to have regard to any guidance issued by the Welsh Ministers about the exercise of functions relating to publication, provision and inspection of documents under Part 5A of the 1972 Act.
284. Section 228 of the 1972 Act includes provision about the inspection of certain local authority documents. Paragraph 11 amends section 228(1) (minutes of community council meetings) so as to remove the requirement for the minutes of community councils in Wales to be open to inspection. Community councils are already required, under section 55(1)(c) of the 2013 Act, to publish electronically the minutes of meetings and (in so far as is reasonably practicable) any documents which are referred to in the minutes. The requirements under the 2013 Act are unchanged.
285. Paragraph 12 inserts a new paragraph 26ZA into Schedule 12 to the 1972 Act to require community councils, after a meeting, to publish electronically a note setting out the information listed in sub-paragraph (1) and in compliance with sub-paragraph (2).

286. Paragraph 13 amends section 100E of the 1972 Act (application to committees and sub-committees) so as to provide for how the new duties included in the amendments to sections 100A to are to be discharged in relation to committees and sub-committees of principal councils. In the case of a joint committee, the requirements must be met by each constituent council of the joint committee.
287. Paragraph 14 amends section 100J of the 1972 Act to clarify that references to a "principal council in Wales" in Part 5A of the 1972 Act, include a National Park authority for a National Park in Wales, a fire and rescue authority for an area in Wales and a joint board or joint committee of principal councils in Wales.
288. Paragraph 15 amends section 100K of the 1972 Act to define what is meant by a "meeting held through remote means" in Part 5A of the 1972 Act.
289. Section 270 of the 1972 Act contains general provisions about the interpretation of terms and expressions used in the 1972 Act. Paragraph 16 amends section 270 to provide that a requirement to publish a notice electronically, imposed by the 1972 Act on a local authority in Wales, or by Part 5A of the 1972 Act on any other body or authority in Wales, is a requirement to publish on the authority's website, if it has one.
290. Under section 232 of the 1972 Act, local authorities must give public notices which are required to be given, by posting them in a conspicuous place in their area and in any other way desirable to give publicity. This applies unless there is express provision to the contrary.
291. Paragraph 17 amends section 232 so that a public notice must also be published electronically. The existing subsection (1ZA), which required community councils to publish such notices electronically, is omitted because community councils are included in the new subsection (1)(c).
292. Paragraph 17(4) inserts new provision in section 232 of the 1972 Act, enabling the Welsh Ministers to make, in regulations, further or different provision about the manner of giving public notice required to be given by a local authority. Such regulations may also make provision about the manner of giving public notice by National Park authorities in Wales and fire and rescue authorities in Wales. Regulations made under these powers are subject to the affirmative procedure in the Senedd.
293. Section 232 of the 1972 Act is applied to National Park authorities by paragraph 17(2)(d) of Schedule 7 to the Environment Act 1995. Paragraph 18 provides that new subsection (1)(c) in section 232 of the 1972 Act (see paragraph 17) does not apply to National Park authorities. A requirement on National Park authorities in Wales to publish public notices electronically could be achieved by the exercise of the regulation making powers under the new subsections (3) and (4) of section 232 of the 1972 Act (see paragraph 17).



294. Paragraph 19 amends paragraphs 4 and 26 of Schedule 12 to the 1972 Act so that summonses to attend principal council meetings and community council meetings must be sent electronically to members, and must be authenticated by the relevant proper officer in such manner as they consider appropriate (a “proper officer” is one appointed for this purpose by the council: see section 270(3) of the 1972 Act). If a member of a principal council or a community council requests, the summons must instead be sent to or left at a postal address specified by the member.
295. Paragraph 20 amends paragraph 26 of Schedule 12 to the 1972 Act to enable a community council to meet at any place the council directs, whether within or outside the council’s area. The restrictions on community councils holding meetings in licensed premises (previously in sub-paragraph 26(1) of Schedule 12 to the 1972 Act) is thereby removed.
296. Paragraph 21 amends paragraph 26 of Schedule 12 to the 1972 Act to provide that notice of meetings of committees and sub-committees of community councils must be published in the manner described in the new sub-paragraphs (2D) and (2E).
297. Sections 100A to 100D and 100H of the 1972 Act are applied to community health councils and community health committees by section 1 of the Community Health Councils (Access to Information) Act 1988. That Act is repealed by the Health and Social Care (Quality and Engagement) (Wales) Act 2020. Paragraph 22 makes a saving provision so that (until the repeal has effect) sections 100A to 100D and 100H of the 1972 Act continue to apply to community health councils and community health committees as if the amendments made to those sections by paragraphs 1, 2 and 6 to 10 of this Schedule 4 had not been made.

**Part 2 of Schedule 4 - Attendance at local authority meetings: consequential amendments**

298. Paragraph 23(1) substitutes a new paragraph 29(1) of Schedule 12 to the 1972 Act to provide that a community council may decide for itself the manner of voting at its meetings, rather than be required to vote by show of hands (as previously required in paragraph 29(1)), which is inconsistent with community council meetings being held by remote means.
299. Sub-paragraphs (2) and (3) respectively repeal section 4 of the 2011 Measure (remote attendance) and section 59 of the 2013 Act (remote attendance at meetings of principal councils) as a result of section 47 of the Act.
300. Sub-paragraph (4) has the effect that making and publishing arrangements for holding meetings of a principal council or its executive under section 47 of this Act is not a function of a local authority executive.



## **Section 50 - Regulations about conduct of local authority meetings, documents relating to meetings and publication of information**

301. Section 50 enables the Welsh Ministers to make regulations about the conduct of local authority meetings, documents relating to such meetings and the publication of certain information.
302. Subsection (1) enables the Welsh Ministers to make regulations in relation to the conduct of local authority meetings and the requirements concerning notices and documents produced for such meetings including, but not limited to, the matters listed in subsection (2).
303. Subsection (3) enables the Welsh Ministers to make regulations concerning the publication by local authorities of, and rights of access to, information which sets out certain details as listed in the subsection.
304. Subsection (5) defines “local authority” and “local authority meeting” for the purposes of this section.
305. The regulation making powers in subsections (1) and (3) are subject to the affirmative procedure in the Senedd.

## **Section 51 - Regulations about community meetings**

306. Section 51 inserts new paragraphs 36A and 36B into Schedule 12 to the 1972 Act:
- to enable the Welsh Ministers to make regulations about community meetings; and
  - concerning the issue of guidance in relation to such meetings.
307. Paragraph 36A(1) enables the Welsh Ministers to make regulations in relation to the conduct and holding of community meetings and the requirements concerning notices and documents relating to such meetings, including, but not limited to, the matters listed in sub-paragraph (2). Regulations under the new paragraph 36A(1) are subject to the affirmative procedure in the Senedd.
308. The new paragraph 36B provides that a principal council and a community council exercising functions in relation to community meetings must have regard to any guidance about the exercise of those functions issued by the Welsh Ministers.

## **Section 52 - Annual reports by community councils**

309. This section requires community councils to prepare and publish an annual report about the council’s priorities, activities and achievements during the preceding financial year.

310. Subsection (3) dis-applies section 101 of the 1972 Act (by which a community 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 certain other authorities) to the decision as to the final content of the annual report. This does not prevent, for example, an officer from preparing a draft of the report for the full community council to consider and decide upon.

#### **Part 4: Local Authority Executives, Members, Officers And Committees**

##### **Section 54 and Schedule 5 - Chief Executives**

311. Section 4 of the 1989 Act requires principal councils to designate one of their officers as their “head of paid service”. This officer must, where they consider it appropriate, prepare a report to their council setting out their proposals in respect of a number of matters listed in that section. The principal council must provide this officer with the staff, accommodation and other resources to allow him or her to perform their duties.
312. The statutory role of head of paid service is often exercised by the officer more usually referred to as the chief executive or managing director. Whilst these terms are widely used to denote the head of a council’s administration throughout local government in Wales, neither title is found in local government legislation.
313. Section 54 requires a principal council to appoint a chief executive. The provisions of section 4 of the 1989 Act are re-stated and the list of matters expanded to include those relating to performance and governance; namely financial planning, asset management and risk management. This brings the matters for which a chief executive is responsible in line with modern governance practices. Section 54 also makes clear that the matter relating to management of staff also encompasses training and development of staff.
314. This section introduces Schedule 5, which amends section 4 of the 1989 Act so as to disapply the requirement on principal councils to appoint a head of paid service. Schedule 5 also makes consequential amendments relating to chief executives.

##### **Section 55 - Replacement of references to “salary” in section 143A of the 2011 Measure**

315. Before amendment, section 143A of the 2011 Measure provided the Independent Remuneration Panel for Wales with powers in relation to the salaries of the heads of paid service in principal councils.
316. Schedule 5 of the Act (discussed above) amends section 143A of the 2011 Measure to substitute references to “chief executive” in place of “head of paid service”, whilst section 55 substitutes the term “remuneration” in place of “salary” or “salaries”. This amendment will allow the Panel to make recommendations in respect of a broader range of payments to chief executives including salary, any bonuses and other benefits.

317. “Remuneration” has the meaning given in section 43 of the Localism Act 2011, which covers a range of remuneration including: salary or payments under a contract for services; bonuses; allowances; benefits in kind; increases to pension entitlement; and certain payments due where a chief executive ceases to hold office

### **Section 56 - Reconsideration of remuneration following direction by the Welsh Ministers**

318. Section 56 amends section 143A of the 2011 Measure. New subsection (5C) applies where the Welsh Ministers consider that the response of a “qualifying relevant authority” to a recommendation made by the Independent Remuneration Panel for Wales is inconsistent with the recommendation. This section provides that where Welsh Ministers direct, under section 143A(5B), a qualifying relevant authority to reconsider its response, the function of carrying out the reconsideration cannot be delegated and must be undertaken by the full council.
319. In section 143A of the 2011 Measure, “qualifying local authority” effectively means principal councils only. This is because it is defined by reference to the definition of “relevant authority” (see section 144 of the 2011 Measure, under which relevant authority covers a range of local government bodies), but only includes those:
- which are required to produce a pay policy statement (as to which see sections 38 and 43 of the Localism Act 2011); and
  - which have a statutory head of paid service or, following the commencement of section 54 of the Act, a statutory chief executive.

### **Section 57 and Schedule 6 - Appointment of assistants to executive**

320. Section 57 amends Schedule 1 to the 2000 Act to make provision for the appointment of members of principal councils as assistants to the executives of principal councils. The assistants will not be members of the executive but could act on their behalf in certain circumstances. These roles could be used to support greater diversity of councillors involved in executive decision making.
321. This section also introduces Schedule 6 which makes consequential amendments relating to assistants to executives, including provision extending certain limitations which apply to members of an executive to assistants to an executive; for example, removing their right to hold certain offices in their councils (such as chair, vice-chair etc.).

### **Section 58 and Schedule 7 - Job sharing: executive leaders and executive members**

322. Section 58 introduces Schedule 7 to the Act, which amends the 2000 Act to make provision in relation to job-sharing by executive leaders and executive members.

323. Paragraph 2 of Schedule 7 amends section 11 of the 2000 Act to change the maximum number of members of an executive from 10 to:
- 12 when at least two of the members have been elected or appointed to share office; or
  - 13 when at least three of the members have been elected or appointed to share office.
324. Paragraph 5 of Schedule 7 to the Act inserts new paragraphs 2(2A) and 2A into Schedule 1 to the 2000 Act to require principal councils in Wales to include in their executive arrangements provision enabling two or more councillors to share office on an executive, including the office of executive leader.
325. The Schedule also inserts a new paragraph 2B, which makes provision about voting rights and quorum. Under that paragraph, job-sharers effectively count as one person for the purposes of voting and quorum.

### **Section 59 - Content of, and duty to have regard to, guidance under section 38 of the 2000 Act**

326. Part 2 of the 2000 Act makes provision in respect of principal council's executives and executive arrangements. Section 38 of that Part requires a principal council to have regard to any guidance issued by the Welsh Ministers for the purposes of that Part.
327. This section inserts a new subsection (1A) into section 38 to clarify that guidance issued under this section may include provision designed to encourage good practise in relation to equality and diversity.
328. The meaning of equality and diversity is taken from section 8(2) of the Equality Act 2006; "diversity" means the fact that individual are different, and "equality" means equality between individuals.
329. Section 59 also amends 38(1) of the 2000 Act to extend the duty to have regard to guidance to elected mayors and executive leaders of principal councils.

### **Section 60 - Job-sharing: non-executive offices in principal councils**

330. Section 60 provides the Welsh Ministers with a power to make regulations for the purpose of facilitating or enabling job-sharing in a "principal council office".
331. Subsection (2) lists the principal council offices in respect of which regulations may be made, and they include the key offices provided for in Part 2 of the 1972 Act (such as chair, presiding member etc.), chair or vice-chair etc. of a committee or sub-committee, or deputy mayor. This means the provision does not apply to any office to which a person is elected by the public.

332. The Welsh Ministers' power under this new section is not limited to enabling job-sharing in those offices. Regulations may also include provision regarding how job-sharing arrangements in those offices are to operate, including how certain functions may be exercised in a shared office. The Welsh Ministers may also, in regulations, require principal councils to facilitate job-sharing by removing any barriers contained in, for example, the authority's standing orders.
333. Subsection (5) requires principal councils to have regard to any guidance issued by the Welsh Ministers to support regulations made under this section.

### **Section 61 - Family absence for members of local authorities**

334. Section 61 amends Part 2 of the 2011 Measure by removing the maximum number of weeks entitlement to the various kinds of family absence available to members of principal councils.
335. The provisions enable the maximum period of absence for each type of family absence to be specified in regulations (each kind of family absence is governed by regulations in any event). This provides flexibility to change the duration of the various periods of absence

### **Section 62 - Duties of leaders of political groups in relation to standards of conduct**

336. Part 3 of the 2000 Act established a statutory framework to promote and maintain high standards of ethical conduct by members and employees of relevant authorities in Wales. A "relevant authority" is a principal council, community council, fire and rescue authority or National Park authority.
337. Engendering a culture within a local authority which embraces high standards of conduct requires both local leadership and all members to accept responsibility for their actions both individually and collectively.
338. Building on the existing arrangements, section 62 inserts a new section 52A into the 2000 Act which places a duty on leaders of political groups within a principal council to promote and maintain high standards of conduct by members of their group. Group leaders are required to co-operate with the council's standards committee in the exercise of its general and specific functions for promoting high standards (see below).
339. Subsection (3) amends section 54 of the 2000 Act to extend the specific functions of a standards committee to include monitoring compliance by leaders of political groups with the new duty imposed on them by the Act to promote and maintain high standards of conduct by members of their group. A standards committee must also provide advice or provide or arrange training for group leaders on the new duty.

340. Section 106(5) of the 2000 Act is redundant (see section 105(1) of that Act), and is therefore omitted by subsection (4)(a) of this section. The other amendments made by this section are consequential in nature, or reflect the possibility that section 63 of the Act may be commenced before this section.

### **Section 63 – Duty of standards committee to make annual report**

341. A principal council, fire and rescue authority or National Park authority in Wales (but not a community council) is required by section 54 of the 2000 Act to establish a standards committee.
342. The general functions of a standards committee under section 54(1) of the 2000 Act are to promote and maintain high standards of conduct by members and co-opted members of a “relevant authority” and to assist them to observe the code of conduct.
343. In addition to the new function imposed by section 62(3) of the Act, a standards committee also has specific functions under section 54(2) of the 2000 Act, namely to:
- advise the authority on the adoption or revision of a code of conduct;
  - monitor the operation of the code of conduct; and
  - provide advice or provide or arrange training on the code of conduct for members of the authority.
344. Section 56(1) of the 2000 Act provides that a principal council’s standards committee (or a sub-committee established for the purpose) also exercises these functions in relation to members of community councils in its area.
345. Section 63 of the Act inserts a new section 56B into the 2000 Act which places a requirement on a standards committee to make an annual report to the authority concerned. In the case of a principal council, the requirement to report to “the authority” in this context includes any community councils in its area.
346. The report must:
- describe how the committee has discharged its functions during the preceding financial year;
  - include a summary of reports and recommendations made or referred to the committee by the Public Services Ombudsman for Wales relating to the investigation of alleged breaches of the member code of conduct, and any subsequent action taken by the committee;
  - include a summary of notices given to the committee by the Adjudication Panel for Wales, relating to the Panel’s decisions on possible breaches of the member code of conduct; and
  - in the case of a principal council, include the committee’s assessment of how political group leaders have complied with the new duty under section 52A of the 2000 Act (inserted by section 62 of this Act) to promote high standards of conduct.



347. The requirement to make an annual report is intended to ensure there is a regular and consistent approach to the reporting and consideration of standards of conduct by members of relevant authorities in Wales. This is intended to promote local ownership and collective responsibility by members for ensuring high standards of conduct within their authority. To this end, section 56B places an obligation on a relevant authority to consider the report and any recommendations made by its standards committee within three months of its receipt. The authority's consideration of a report will be a matter of public record through the published minutes of the meeting.

### **Section 64 and Schedule 8 - Certain investigations by the Public Services Ombudsman for Wales**

348. The Public Services Ombudsman for Wales ("the Ombudsman") has powers under section 69 of the 2000 Act to investigate allegations that a member or co-opted member, including former members and former co-opted members, of a "relevant authority" (see the note on section 62) has, or may have, failed to comply with their authority's code of conduct.
349. The Welsh Ministers have powers under section 70 of the 2000 Act to make an order which applies or reproduces any provisions of sections 60 to 63 of that Act, as those sections had effect immediately before their repeal by the Localism Act 2011, for the purpose of any investigation under section 69.
350. Prior to their repeal, sections 60 to 63 dealt with the procedure for investigating alleged code of conduct breaches in certain authorities in England. Those sections dealt with matters such as conflicts of interest, powers to obtain and disclose information, and protection from defamation proceedings.
351. The Public Services Ombudsman for Wales (Standards Investigations) Order 2006 (as amended) (2006 No. 949 (W. 98)) was made pursuant to the powers in section 70 of the 2000 Act and governs the procedure for investigations by the Ombudsman under section 69 of that Act.
352. The power in section 70 to apply law which has been repealed does not result in accessible law. Section 64 of, and Schedule 8 to, the Act address this problem by placing equivalent provision for investigations on the face of the 2000 Act in the form of new sections 69A to 69F and by substituting a new section 74. No substantial changes have been made to the effect of the law, but the provisions have, where appropriate, been aligned with the Ombudsman's powers relating to the investigation of maladministration and service failure in the Public Services Ombudsman (Wales) Act 2019 ("the 2019 Act").
353. New section 69A(1) provides that where the Ombudsman has a conflict of interest, as defined in subsections (2) or (4), they must exercise the power under paragraph 14 of Schedule 1 to the 2019 Act to delegate:
- the decision as to whether to investigate a case (under section 69) and,
  - where a decision is taken to investigate, any investigation of that case.

354. Paragraph 14 of Schedule 1 to the 2019 Act provides that the Ombudsman may authorise any person to discharge the Ombudsman's functions on behalf of the Ombudsman. However, the Ombudsman cannot make arrangements, under the 2019 Act or otherwise, with the Welsh Ministers, the First Minister or the Counsel General for the exercise by one of the other's functions or for the provision of certain specified services by one to the other.
355. Subsections (2) and (3) provide that the requirement to delegate applies if the Ombudsman was a member or officer of the relevant authority or a member of a committee, sub-committee, joint committee or joint sub-committee of the relevant authority at any point within five years of:
- the date on which the Ombudsman received the written allegation (if the case is within subsection (1)(a)); or
  - the date on which the Ombudsman received the written allegation investigated under subsection (1)(a) (if the case is within subsection (1)(b)).
356. Under subsection (4) the requirement to delegate also applies if the Ombudsman considers that they have, or are likely to have, an interest in the matters which may be investigated or the outcome of any investigations which may be undertaken. Subsection (5) requires the Ombudsman to disclose the nature of the interest to the person to whom any investigation under section 69 would or does apply. The Ombudsman must also disclose this information to any person that has made an allegation as described in section 69(1)(a)
357. Subsection (6) provides that should the Ombudsman, in contravention of subsection (1), decide whether to investigate a case or investigate a case the validity of anything done by the Ombudsman if not effected.
358. New section 69B sets out the requirements for investigations under section 69. Subsection (1) requires the Ombudsman to give the person to whom the investigation relates the opportunity to comment on whether they have failed to comply with the code of conduct of the authority of which they are, or were, a member or co-opted member
359. New section 69B(2) requires all investigations to be conducted in private.
360. Subsection (3) provides that, subject to the other requirements set out in this section, it is for the Ombudsman to decide the procedure for conducting an investigation. The Ombudsman could, for example, establish different procedures for different types of complaints and could, in any particular case, depart from any such established procedures if the Ombudsman considered it appropriate.
361. New section 69B(4)(a) provides that the Ombudsman may make such inquiries as the Ombudsman thinks appropriate. Subsection (4)(b) provides that it is for the Ombudsman to decide whether a person may be legally represented or be represented in some other way (e.g. by an independent advocate).

362. New section 69B(6) empowers the Ombudsman to make payments towards the expenses of persons assisting the Ombudsman in an investigation, provided that they are properly incurred, and to pay certain allowances. It is for the Ombudsman to determine whether it is appropriate to make such payments or to impose any conditions on such payments
363. New section 69C(1) of the 2000 Act empowers the Ombudsman to require a person to supply information or produce documents relevant to an investigation under section 69 of that Act. This includes information or documents held in an electronic format.
364. New sections 69D(1) and (2) enable the Ombudsman to certify to the High Court that, in the Ombudsman's opinion, a person has without lawful excuse obstructed the Ombudsman (or a member of the Ombudsman's staff) in the discharge of functions under this Part or that the person has acted in a way that, if the act was done in relation to High Court proceedings, would amount to a contempt of court.
365. If the Ombudsman issues such a certificate then the High Court may inquire into the matter and if the High Court finds that the person concerned has obstructed the Ombudsman, the High Court may deal with the person as if that person had committed contempt in relation to the High Court (section 69D(5)).
366. New section 69E provides that the Ombudsman, a member of their staff, or a person assisting the Ombudsman, may only disclose information obtained in the exercise of the Ombudsman's functions under Part 3 of the 2000 Act:
- (a) for the purposes of:
    - the Ombudsman's functions under Chapter 3 or 4 of Part 3 of the 2000 Act or Part 3 or 5 of the 2019 Act;
    - the functions of the Adjudication Panel of Wales including the functions of its President, Deputy President and tribunals, under Chapter 4 of Part 3 of the 2000 Act;
    - criminal proceedings or the investigation of a criminal offence;
  - (b) if the disclosure is made to:
    - the Auditor General for the purposes of their functions under Part 2 of the 2004 Act;
    - the Electoral Commission for the purposes of any of its functions.
367. New section 69F enables the Welsh Ministers to amend Chapter 3 of Part 3 of the 2000 Act to make further or different provision about the exercise of the Ombudsman's functions under section 69.
368. New section 74 provides that, for the purposes of the law of defamation, the publication of a matter is absolutely privileged if it is done in exercise of the Ombudsman's functions under Chapters 3 and 4 of Part 3 of the 2000 Act; or in communications with the Ombudsman or a person exercising a function of the Ombudsman for the purposes of, or in connection with, those functions. "Publication" bears its usual meaning under the law relating to defamation.

### **Section 65 – Making information available to overview and scrutiny Committees**

369. Section 22(10) of the 2000 Act enables the Welsh Ministers to make regulations requiring the provision of information to the public or members of a principal council about decisions of the executive of that council.
370. Section 65 amends section 22(10) so that regulations may also require that overview and scrutiny committees and their sub-committees are given information about such decisions. Greater knowledge of the decision the executive intends to make will enable these committees to better plan their work.

### **Section 66 – Power to require authorities to appoint joint overview and scrutiny Committees**

371. Section 66 amends a regulation making power in section 58 of the 2011 Measure so that regulations may require principal councils to establish a joint overview and scrutiny committee. The amended regulation making power could be used to require councils to establish a joint overview and scrutiny committee where services are being provided across those councils' areas.

### **Section 67 – Community council training plans**

372. Section 67 requires a community council to make a plan setting out what it proposes to do to address the training needs of its councillors and staff.
373. The intention is that, by considering training provision in this way, community councillors, as a group, and the staff supporting the council, will come to collectively possess the knowledge and awareness needed for the council to operate effectively. It is not necessary for all councillors and staff to have received the same training and develop the same expertise.
374. Subsections (2) and (3) specify the timetable for making a community council's first training plan, and when they are subsequently required to make a new one. The timing for making the first plan is determined by the date the subsection comes into force, and allows up to 6 months for a community council to comply. This provides a reasonable period for a community council to consider the current skillsets of its councillors and staff, having regard to any guidance, in accordance with subsection (7), and to make a plan about the provision of training.
375. A new training plan must be put in place after each ordinary election of community councillors to reflect changes in training needs resulting from changes in councillors, and potentially staff too. Subsection (4) requires a community council to review its training plan from time to time. How often a plan is reviewed is at the discretion of a community council, to reflect local circumstances.
376. The training plan, and any revised plans, must be published, this requirement is intended to facilitate accountability on this matter.

377. Subsection (6) requires that the training plan must be considered by the full council by providing that section 101 of the 1972 Act does not apply. This means the functions of determining the content of a training plan, or reviewing a plan, cannot be delegated to a committee etc., or an officer of the community council.

## **Part 5: Collaborative Working by Principal Councils**

### **Chapter 2: Guidance about collaborative working**

#### **Section 69 – Guidance about collaborative working**

378. This section requires principal councils to have regard to guidance issued by the Welsh Ministers about the exercise of their functions in collaboration with another principal council.
379. Subsection (2) sets out what it means to exercise a function in collaboration with another principal council.

### **Chapter 3: Establishing corporate joint committees where request has been made**

#### **Section 70 – Application by principal councils to establish a corporate joint committee**

380. Under this section two or more principal councils may make a corporate joint committee application to the Welsh Ministers asking them to consider establishing, by regulations made under section 72, a corporate joint committee to exercise, in relation to the principal areas of those councils, a function or functions of those councils or the economic well-being function (see section 76 for the economic well-being function).
381. Principal councils may wish to make a corporate joint committee application if, for example, they consider there would be advantages in collaboratively exercising a particular function through a corporate body.
382. Subsection (2) sets out the actions the Welsh Ministers must take if, following the receipt of a corporate joint committee application, they decide not to make regulations establishing the corporate joint committee.

#### **Section 71 – Consultation before making joint committee applications**

383. This section requires principal councils to consult those persons listed in the section before making a corporate joint committee application. “Local people” is defined in section 171(1).

#### **Section 72 – Requested joint committee regulations**

384. This section gives the Welsh Ministers a regulation making power to establish a body corporate, called a “corporate joint committee”, in response to an application under section 70. The corporate joint committee will exercise the function or functions specified in the regulations in relation to the areas of the councils that made the application (called the “relevant councils”).
385. Subsection (3) limits the type of functions that can be specified in the regulations; they can only be functions of the relevant councils or the economic well-being function (see section 76).



386. Subsection (4) requires that where regulations specify the former type of function, they must also state whether the function is to be exercised by the corporate joint committee instead of by the relevant councils, or whether it is to be exercised concurrently by the corporate joint committee and the relevant councils. If the function is to be exercised concurrently, it means that the corporate joint committee and a principal council may both exercise the function separately in relation to the principal council's area.
387. An example of where subsection (5) would be relevant is where a principal council has a function under which a variety of things may be done, but a corporate joint committee is to be empowered to do only some of those things. The regulations may specify a function by means of specifying the particular things the corporate joint committee may do.
388. The Welsh Ministers will only be able to make regulations under this section if the conditions in section 73 are satisfied.
389. Regulations made under this section are referred to in this Part as "joint committee regulations" (as are regulations made under section 74).

### **Section 73 - Conditions to be met before making requested joint committee regulations**

390. This section sets out the conditions which must be satisfied before the Welsh Ministers can make regulations to establish a corporate joint committee under section 72.

## **Chapter 4: Establishing corporate joint committees where no request has been made**

### **Section 74 - Joint committee regulations where no request has been made**

391. Subsection (1) gives the Welsh Ministers a regulation making power to establish a body corporate, called a "corporate joint committee", to exercise the function or functions specified in the regulations in relation to the principal areas specified in the regulations (called the "relevant areas"). One of the ways in which this power differs from the power of the Welsh Ministers under section 72 is that a corporate joint committee can be established under this power without an application or consent from principal councils.
392. Subsection (3) limits the type of functions that can be specified in regulations made using this power; they can only be functions of the principal councils for the relevant areas that relate to transport, improving education, the function of preparing a strategic development plan or the economic well-being function (see section 76).
393. If the function of preparing a strategic development plan is specified in regulations under this section, Part 6 of the Planning and Compulsory Purchase Act 2004, as amended by Schedule 9 to this Act, applies and sets out that function and related provision.
394. For an explanation of subsection (5), see the note to section 72(4). For an explanation of subsection (6), see the note to section 72(5).



395. The Welsh Ministers will only be able to make regulations under this section if the conditions in section 75 are satisfied.
396. Regulations made under this section are referred to in this Part as “joint committee regulations” (as are regulations made under section 72).

#### **Section 75 – Conditions to be met before making regulations under section 74**

397. This section sets out the conditions which must be satisfied before the Welsh Ministers can make regulations to establish a corporate joint committee under section 74.

### **Chapter 5: Further provision relating to corporate joint committees and joint committee regulations**

#### **Section 76 – Economic well-being function**

398. This section creates an economic well-being function for corporate joint committees. A corporate joint committee will have this function only if the function is specified in the joint committee regulations which establish the committee (including where the function is added to those regulations by amending regulations made under section 80).
399. Where a corporate joint committee has been granted the economic well-being function it may do anything which it considers is likely to promote or improve the economic well-being of its area. The function may be exercised in relation to or for the benefit of all or any part of its area, or all or any persons resident or present in its area.
400. Where the corporate joint committee considers it is likely to promote or improve the economic well-being of its area, it may also do anything in relation to or for the benefit of any person or area situated outside the corporate joint committee’s area, including areas outside Wales.
401. Subsection (4) enables joint committee regulations made under section 72 or 74, including amendments to those regulations made under section 80(1), and supplementary etc. regulations made under section 83(2) to make the exercise of the economic well-being function subject to prohibitions, restrictions or other limitations.

#### **Section 77 – Provision that may or must be made in joint committee regulations**

402. Subsection (1) sets out provision which must be included in all joint committee regulations. Subsection (2) sets out provision which must be included in the circumstances set out in that subsection. Subsection (3) sets out examples of provision which may be included in joint committee regulations.

## **Section 78 – Application by principal councils to amend or revoke joint committee regulations**

403. Under this section the principal councils of a corporate joint committee may collectively make an application to the Welsh Ministers, asking them to consider making regulations under section 80 to amend or revoke the joint committee regulations which established the committee, whether made under section 72 or section 74. However, subsection (2) subjects applications under this section to certain restrictions.
404. The restrictions in paragraph (a) of subsection (2) relate both to applications to amend joint committee regulations which were made under section 72 and to applications to amend joint committee regulations which were made under section 74. An application may only ask for a new function to be specified in the joint committee regulations (so the function would become exercisable by the committee) if it is a function of the councils making the application or the economic well-being function.
405. The restrictions in paragraph (b) relate only to applications to amend joint committee regulations which were made under section 74. An application cannot ask for a function to be removed from the joint committee regulations (so it would no longer be exercisable by the committee), or modified, if it is a function which relates to transport or improving education.
406. Paragraph (b) also provides that an application cannot ask for the function of preparing a strategic development plan to be removed from joint committee regulations made under section 74. That function is set out in Part 6 of the Planning and Compulsory Purchase Act 2004, as amended by Schedule 9 to this Act; the function may not be modified under section 80 in any case.
407. Paragraph (b) also provides that an application cannot ask for the economic well-being function to be removed from joint committee regulations made under section 74. That function is set out in section 76; it may not be modified under section 80 in any case.
408. The power in section 80 may be used to amend joint committee regulations to impose prohibitions, restrictions or other limitations on the exercise of the economic well-being function, or to omit or modify prohibitions, restrictions or other limitations which have already been imposed. However, the effect of paragraph (b) is that an application under this section cannot ask for such prohibitions etc. to be imposed or modified in, or omitted from, joint committee regulations made under section 74.
409. The effect of paragraph (c) of subsection (2) is that an application cannot ask for joint committee regulations made under section 74 to be revoked.
410. The effect of subsection (3) is that an application may be made under this section for a principal council and its area to join an existing corporate joint committee, but only if that council and all the existing councils of the committee make the application jointly.

### **Section 79 – Further provision in relation to applications**

411. This section sets out the requirements principal councils must meet before making an application under section 78 to amend or revoke joint committee regulations, and the requirements placed on Welsh Ministers if they decide not to make the regulations.
412. Subsection (1) requires principal councils to consult such persons as they consider appropriate before they make an application to amend or revoke joint committee regulations.
413. Where, following the receipt of an application under section 78, the Welsh Ministers decide to not make regulations amending or revoking corporate joint committee regulations, subsection (2) requires they notify the principal councils that made the application.

### **Section 80 – Amendment and revocation of joint committee regulations**

414. Section 80(1) enables the Welsh Ministers to make regulations to amend or revoke joint committee regulations, whether the joint committee regulations were made under section 72 or section 74.
415. Subsection (2) places conditions on the Welsh Ministers' exercise of the power to make regulations under section 80(1), but different conditions apply depending on what the Welsh Ministers are using the power to do.
416. In order to be able to use the power in section 80(1) to amend joint committee regulations made under section 72, the Welsh Ministers must satisfy the conditions set out in section 81. These conditions apply whatever type of amendment the Welsh Ministers make to the joint committee regulations. However, if the Welsh Ministers revoke joint committee regulations made under section 72 the conditions in section 82 apply.
417. The conditions in section 81 apply if the Welsh Ministers use the power in section 80(1) to amend joint committee regulations made under section 74 in certain ways: where the Welsh Ministers use the power to specify an additional function in the joint committee regulations or to modify or omit existing specified functions. However, there are exceptions to this rule, and these are set out in sub-paragraphs (i) to (iii) of subsection (2)(b).
418. The conditions in section 82 apply if the Welsh Ministers use the power in section 80(1) to amend joint committee regulations made under section 74 in a way which does not involve specifying additional functions or modifying or omitting existing specified functions, or in a way which does involve one of those things but it falls within one of the exceptions in sub-paragraphs (i) to (iii) of subsection (2)(b).

419. Example 1: if regulations under subsection 80(1) were to add, to joint committee regulations made under section 74, a function relating to housing, the conditions in section 81 would apply. Among other things, the Welsh Ministers would need to have received an application under section 78 from the principal councils whose areas are covered by the corporate joint committee, and obtained the consent of those councils.
420. Example 2: if regulations under subsection 80(1) were to add, to joint committee regulations made under section 74, a function relating to transport, the conditions in section 82 would apply because the exception in sub-paragraph (i) of subsection (2)(b) is engaged. Those conditions require consultation and notification but not an application or consent.
421. Example 3: if regulations under subsection 80(1) were to amend provisions about membership in joint committee regulations made under section 74, the conditions in section 82 would apply.
422. Example 4: if regulations under subsection 80(1) were to revoke joint committee regulations made under section 74, the conditions in section 82 would apply.
423. Subsection (3) limits the types of function that can be specified in joint committee regulations using the power in section 80(1). These are limited to:
- a function of the principal councils in the corporate joint committee's area;
  - the economic well-being function (see section 76);
  - in the case of regulations amending joint committee regulations made under section 74, the function of preparing a strategic development plan. This function cannot be given to a corporate joint committee established under section 72.
424. For an explanation of subsection (4), see the note to section 72(4). For an explanation of subsection (5), see the note to section 72(5).
425. Subsection (6) applies where regulations made under this section revoke joint committee regulations so as to abolish the corporate joint committee which was established by those regulations, or where they amend joint committee regulations to remove a function from a corporate joint committee. Such regulations under this section may provide that the function or functions which were exercised by the corporate joint committee are to be exercisable by another person. However, such provision cannot be made in respect of the economic well-being function or the function of preparing a strategic development plan.

**Section 81 - Conditions to be met before amending joint committee regulations: application required from principal councils**

426. Section 81 sets out the conditions which apply where the Welsh Ministers exercise the power in section 80(1) in certain ways. See the note to section 80 for an explanation of when these conditions will apply.

**Section 82 - Conditions to be met before amending or revoking joint committee regulations: no application required from principal councils**

427. Section 82 sets out the conditions which apply where the Welsh Ministers exercise the power in section 80(1) in certain ways. See the note to section 80 for an explanation of when these conditions will apply.

**Section 83 - Supplementary etc. provision in certain regulations under this Part.**

428. Subsection (1) provides that joint committee regulations and regulations under section 80 (subsections (1) or (7)) may include supplementary, incidental, consequential, transitional or saving provision.

429. Subsection (2) enables the Welsh Ministers to make separate regulations containing supplementary, incidental, consequential, transitional or saving provision, applying in relation to all corporate joint committees, a particular corporate joint committee or corporate joint committees falling within a particular description. The Welsh Ministers may also use the power under this subsection to impose prohibitions, restrictions or other limitations on the exercise of the economic well-being function (see section 76).

430. Subsection (5) sets out examples of supplementary, incidental etc. provision which may be included in joint committee regulations, regulations under section 80, regulations under subsection (2) and regulations under subsection (7).

**Section 84 - Power of the Welsh Ministers to amend, repeal etc. enactments**

431. Subsection (1) sets out what joint committee regulations, regulations under section 80 and regulations under section 83 may do in relation to enactments. For the meaning of "enactment" see Schedule 1 to the Legislation (Wales) Act 2019 and section 171 (interpretation) of this Act.

432. Subsection (2) is a separate regulation making power to do the things set out in paragraphs (a) and (b) in relation to enactments, for the purposes of or in connection with this Part.

**Section 85 - Requirement to provide information etc.**

433. This section gives the Welsh Ministers powers to direct a principal council, a National Park authority or a corporate joint committee to provide them with any information or documents (see the definition in section 68) they consider appropriate for the purposes of considering whether to make regulations under this Part or giving effect to such regulations or in connection with such regulations.

**Section 86 - Guidance**

434. Under subsection (1), principal councils and corporate joint committees must have regard to any guidance issued by the Welsh Ministers for the purposes of Chapters 3, 4 and 5 of this Part of the Act.

435. Subsection (2) requires National Park authorities to have regard to any guidance issued by the Welsh Ministers for the purposes of Chapter 4 and Chapter 5 of this Part.

### **Section 87 – Exercise by principal councils of functions under this Part**

436. Section 87 provides that section 101 of the 1972 Act does not apply to the functions set out in subsection (4) of this section. As such the principal council may not arrange for these functions to be discharged by a committee, sub-committee or officer of the council or by another principal council.

437. Subsection (2) prohibits these functions being the responsibility of an executive of a principal council whilst subsection (3) provides that an elected mayor is to be treated as a councillor of a principal council for the purposes of those functions.

### **Section 88 – Amendments relating to strategic planning and joint transport authorities and Schedule 9 – Amendments related to corporate joint committees**

438. Section 88 introduces Schedule 9.

### **Part 1 of Schedule 9 – Creation of Strategic Planning Functions for certain Corporate Joint Committees and repeal of powers to establish Strategic Planning Panels etc.**

439. Paragraphs 1 to 8 of Schedule 9 amend the Planning and Compulsory Purchase Act 2004 to replace the system currently in that Act under which the Welsh Ministers may establish a strategic planning area together with a strategic planning panel to prepare a strategic development plan for that area.

440. The amendments to the Planning and Compulsory Purchase Act 2004 include the repeal of sections 60D to 60J, removing the powers of the Welsh Ministers to establish strategic planning panels.

441. Under the Planning and Compulsory Purchase Act 2004 as amended by Schedule 9 (see also section 74(4)), a strategic development plan is to be prepared by a corporate joint committee which has been established by joint committee regulations under section 74, and which has been given the function of preparing a strategic development plan by the joint committee regulations (including where regulations under section 80 have amended the joint committee regulations to give the corporate joint committee that function). The strategic development plan is to be prepared for the area of the corporate joint committee.

442. Paragraphs 9 to 48 make related amendments to other enactments.

### **Part 2 of Schedule 9 – Repeal of power to establish Joint Transport Authorities**

443. Part 2 of Schedule 9 amends the Transport (Wales) Act 2006 so as to repeal the powers of the Welsh Ministers to establish joint transport authorities. The Welsh Ministers will instead be able to use the powers in section 72 (with the consent of principal councils) or 74 (without the consent of councils) to establish a corporate joint committee to exercise a function of a principal council relating to transport.



444. Paragraph 50 makes a consequential amendment to Schedule 11 to the Government of Wales Act 2006.

## **Part 6: Performance and Governance Of Principal Councils**

### **Chapter 1: Performance, Performance Assessments and Intervention**

#### **Section 89 – Duty of principal council to keep its performance under review**

445. This section places a continuing duty on a principal council to consider the extent to which it is achieving the matters set out in paragraphs (a) and (b) of subsection (1), and the extent to which its governance is effective to enable it to achieve those matters.
446. The matters set out in subsection (1) are referred to in this Chapter as “the performance requirements”.
447. Those matters are intended to encapsulate the essence of how a principal council is expected to exercise its functions, use its resources and generally govern itself.
448. In particular, in relation to the use of resources, the performance requirements reflect one of the matters that the Auditor General is required by section 17(2)(d) of the 2004 Act to satisfy themselves of in auditing a principal council’s accounts; namely that the council “has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources”.
449. If the Welsh Ministers issue guidance to principal councils about the performance requirements or the exercise of any functions of a principal council under Chapter 1, principal councils must have regard to that guidance.

#### **Section 90 – Duty to consult local people etc. on performance**

450. This section requires that, at least once a year, a principal council must consult with those listed in this section to obtain their views about the extent to which the council is meeting its performance requirements. “Local people” is defined in section 171 and means people who live, work or study in the area of a principal council.

#### **Section 91 – Duty of principal council to report on its performance**

451. This section requires a principal council to make a report (a “self-assessment report”) in respect of each financial year, setting out the council’s conclusions about the extent to which it met its performance requirements during that year. The views which the council has come to about its performance as a result of complying with the duty in section 89 will be able to inform the conclusions set out in the report, and those conclusions must take into account the views of local people about the council’s performance. The views of local people may be ones which were obtained by the council in complying with the consultation duty in section 90 or ones which it has obtained through other mechanisms; for example, as a result of letters sent to the council commenting on whether the council has exercised particular functions effectively.

452. The council must make a self-assessment report in respect of a financial year as soon as reasonably practicable after the end of that financial year. The report must set out any things the council intends to do, or has already done, in order to improve its performance in the next financial year. Then, when the council makes the report in respect of that next financial year, it must set out its conclusions on how much those things have improved its performance.
453. The section sets out other requirements applying to the report, including who should receive a copy of the report, and when it must be published.
454. The principal council's governance and audit committee must review a draft of the self-assessment report and may recommend changes. Governance and audit committees were established as audit committees under section 81 of the 2011 Measure. Section 115 of this Act changes their name and makes some changes to their functions (see also Chapter 2 of this Part for provisions about their membership and proceedings).
455. Where the governance and audit committee recommends changes to the conclusions in the draft report, or to actions which the council intends to take or has taken in order to improve its performance, but the principal council decides against making those changes, the council must give its reasons in the final version of the self-assessment report.

### **Section 92 – Duty of principal council to arrange panel performance assessment**

456. Subsection (1) of this section places a duty on a principal council to make arrangements for a panel to assess the extent to which the council is meeting the performance requirements (this is referred to as a “panel performance assessment”).
457. Under the council's arrangements, a panel performance assessment should take place at least once during the period between two consecutive ordinary elections of councillors to the council. The panel's report should be published at least six months before the next ordinary election and the council's response to that report (under section 93) should be published at least four months before the next ordinary election.
458. The section also sets out whose views a panel must seek and take into account in undertaking a panel performance assessment (see section 171 for the definition of “local people”).
459. Following a panel performance assessment a panel must produce a report setting out its conclusions and any actions the panel recommends the council take to increase the extent to which it meets its performance requirements in the future.
460. This section also requires the council to provide a copy of the report to its governance and audit committee.
461. The effect of subsection (8) is that panel members can only do things jointly with the other members of the panel, not by themselves.

### **Section 93 – Duty of principal council to respond to report of panel performance assessment**

462. This section places a duty on a principal council to respond to a panel performance assessment report which it receives. In its response, the council is required to set out the extent to which it accepts the panel’s conclusions and the extent to which it intends to follow any recommendations contained in the report. The principal council should also identify any actions it proposes to take to increase the extent to which it meets the performance requirements.
463. The principal council’s governance and audit committee must review a draft of the response and may recommend changes. Where the committee recommends changes to the statements made in the draft response under subsection (2), but the principal council decides against making those changes, it must give its reasons in the final version of the response to the report of the panel performance assessment.
464. The council must send its response to those persons listed in subsection (6), and publish it.
465. For an explanation of subsection (7), see the note to section 92.

### **Section 94 – Panel performance assessments: supplementary regulations**

466. This section gives the Welsh Ministers a power to make provision by regulations for, and in connection with, the appointment, by principal councils, of panels which will conduct panel performance assessments. Ministers may, in particular, make provision about the appointment of panel members and about the payment of fees to, or in relation to, panel members (for example, provision about recompensing an employer who allows an employee time off work to be a member of a panel).

### **Section 95 – Power of Auditor General to carry out a special inspection**

467. This section gives the Auditor General a power to carry out an inspection of a principal council to assess the extent to which the council is meeting the performance requirements (this inspection is referred to in Chapter 1 as a “special inspection”). The Auditor General may conduct such an inspection where they consider that a principal council is not, or may not be, meeting the performance requirements. The Auditor General must consult the Welsh Ministers before making the decision to conduct a special inspection, except in a case in which the Welsh Ministers have asked the Auditor General to consider undertaking a special inspection.
468. Before carrying out a special inspection, the Auditor General must provide notice to a principal council giving the reasons for the special inspection and the matters the Auditor General intends to inspect.
469. This section also requires the Auditor General to produce a report following the special inspection which must be published and sent to the council, Estyn and the Welsh Ministers. A council must make the report available to its governance and audit committee as soon as is reasonably practicable.

### **Section 96 - Duty of principal council to respond to Auditor General's recommendations**

470. This section provides that a principal council must prepare a response to any recommendations to the council contained in a special inspection report under section 95(6)(b).
471. The principal council's governance and audit committee must review a draft of the response and may recommend changes. Where a principal council decides against making changes recommended by the governance and audit committee to statements in the response about any action which the council intends to take in response to recommendations from the Auditor General, the council must give its reasons in the final version of the response to the Auditor General's recommendations.

### **Section 97 - Duty of the Welsh Ministers to respond to Auditor General's recommendations**

472. This section requires the Welsh Ministers to respond to any recommendations made by the Auditor General under section 95(6)(b) for action to be taken by the Welsh Ministers.

### **Section 98 - Auditor General's powers of entry and inspection etc.**

473. Section 98 confers powers on the Auditor General, including a person to whom the Auditor General's powers have been delegated (see subsection (5)) to do certain things for the purposes of a special inspection of a principal council under section 95.
474. Subsection (1) enables the Auditor General to enter the premises of a principal council to do things that the Auditor General considers necessary for the purposes of a special inspection of that council.
475. This includes inspecting documents held by the council. "Document" is defined in section 112 as including information recorded in any form. Having entered the premises of a council the Auditor General may inspect, for example, information held by that council on a computer or in an electronic information storage facility.
476. Examples of things the Auditor General could require from a principal council under subsection (2) are: to be sent a document or to be allowed to use an office or copying facilities in the council's premises while the inspection is being carried out.
477. Subsection (3) allows the Auditor General to require a person to appear before them (for example, at the offices of the Auditor General or at an office in a principal council which the Auditor General is using) to provide:
- information;
  - an explanation (for example, an explanation of why that person thinks something happened); or
  - a document.

478. Subsection (4) sets out the Auditor General's powers to make copies of documents, to require councils to make copies for the Auditor General's use and to retain documents which the Auditor General has inspected or been provided with. If the Auditor General decides that it is necessary to retain a document (for example, the original of a letter which the Auditor General considers it necessary to examine further), the Auditor General may retain the document only for as long as is necessary for the purposes of the special inspection.

**Section 99 - Auditor General's powers of entry and inspection etc.: notice and evidence of identity**

479. Section 99 sets out requirements which apply to the Auditor General's exercise of the powers under section 98.
480. The effect of subsection (1) is that, subject to subsection (3), the Auditor General may exercise the power under section 98(1) to enter a council's premises only if at least three clear working days' notice in writing has been given to the principal council.
481. The meaning of the term "working day" is given by the Legislation (Wales) Act 2019 (anaw 4) (see Schedule 1 to that Act). It means a day which is not a Saturday, Sunday, Christmas Day, Good Friday or a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971 (c. 80).
482. Notice must be given to the council using one of the methods set out in subsection (5), though the method in paragraph (c) of subsection (5) can be used only if the council has notified the Auditor General of an email address to be used for that purpose. Paragraph (c) does not require councils to provide an email address for that purpose.
483. For example, if notice is posted first class to the principal office of the council on a Monday, the Auditor General can exercise the power under section 98(1) to enter the council's premises no earlier than the Friday of that week.
484. Subsection (2) contains equivalent notice requirements applying to the exercise of the powers under section 98(2). Again, notice must be given to a council using one of the methods in subsection (5).
485. The effect of subsection (3) is that the Auditor General is not required to give notice before exercising a power under section 98(1) or (2) if the Auditor General considers that giving notice would prejudice, or would be likely to prejudice, the special inspection (for example, if the Auditor General considered it was necessary to inspect urgently certain information before it was deleted).
486. Subsection (4) contains notice requirements applying to the exercise of the powers under section 98(3) to require a person to appear before the Auditor General.

487. If the person required to appear is a member of a principal council or a member of the staff of a principal council, at least three clear working days' notice in writing is required. Notice must be given using one of the methods in subsection (6). In the case of other persons who are required to appear, seven clear working days' notice in writing is required and notice must be given using one of the methods in subsection (7).
488. A council etc., against whom a person is attempting to exercise a power under section 98, may request evidence of that person's authority to exercise the power. If the person does not produce the evidence they cannot exercise the power.

### **Section 100 – Auditor General's powers of entry and inspection etc.: offences**

489. Section 100 creates offences for failing, without a reasonable excuse, to comply with a requirement imposed under section 98, or for intentionally obstructing the exercise of the powers of entry and inspection, or the powers to copy and retain documents, under section 98.

### **Section 101 – Auditor General's Fees**

490. This section requires the Wales Audit Office to set a scale of fees to carry out special inspections. The Wales Audit Office will have discretion to charge a fee which departs from the set scale if the work involved in a special inspection is substantially more or less than envisaged by the set scale. Before setting a scale of fees, the Wales Audit Office must consult the Welsh Ministers and such representatives of principal councils as the Wales Audit Office considers appropriate.

### **Section 102 – Support and assistance by the Welsh Ministers**

491. Under this section the Welsh Ministers may provide such support and assistance to a principal council as the Welsh Ministers consider appropriate to increase the extent to which the council meets the performance requirements. This section also allows a principal council to request support and assistance from the Welsh Ministers for that purpose. Before providing support and assistance to a council under this section (whether or not in response to a request from the council), the Welsh Ministers must consult the council about the support and assistance they intend to provide.

### **Section 103 – Direction to a principal council to provide support and assistance**

492. This section provides the Welsh Ministers with the power to direct a principal council to provide another principal council ("the supported council") with any support and assistance that the Welsh Ministers consider appropriate to increase the extent to which the supported council meets the performance requirements. The direction must set out what support and assistance must be given to the supported council.
493. Before giving the direction, the Welsh Ministers must consult with both councils affected by the direction.



#### **Section 104 – Powers of the Welsh Minister to intervene**

494. This section sets out the conditions which apply to the Welsh Ministers' exercise of the powers of direction in sections 105, 106 and 107 ("an intervention direction"). The Welsh Ministers must consider that the principal council, to which the direction will relate, is either not meeting, or is likely not to be meeting, the performance requirements.
495. This section also sets out the steps the Welsh Ministers must take before giving an intervention direction and the circumstances where these steps do not apply.

#### **Section 105 - Direction to co-operate with provision of support and assistance**

496. This section (which is subject to section 104) contains powers for the Welsh Ministers to direct a principal council, referred to as "the supported council", to cooperate with those persons listed in subsection (1) for the purposes of enabling support or assistance to be provided. This includes persons acting on behalf of, assisting or authorised by the persons listed in subsection (1).
497. The section sets out ways in which the supported council may be required to cooperate by, or under, a direction under this section.

#### **Section 106 - Direction to take or not to take etc. a specified step**

498. This section (which is subject to section 104) provides that the Welsh Ministers may direct a principal council to take, not take or cease taking a specified step. It includes examples of the steps which a principal council may be required to take.

#### **Section 107 - Direction that a function be performed by the Welsh Ministers or their nominee**

499. This section (which is subject to section 104) provides that the Welsh Ministers may give a direction which has the effect that a function, or functions, of a principal council, as specified in the direction, is exercised by the Welsh Ministers or a person nominated by the Welsh Ministers.
500. Subsection (3) provides the Welsh Ministers with a power to make regulations to apply or disapply any statutory provisions in relation to functions which are to be exercised by the Welsh Ministers or their nominee as a result of a direction under this section.

#### **Section 108 – Exercise of functions under this Chapter**

501. This section provides that functions conferred on a principal council under this Chapter (other than functions conferred on a governance and audit committee) may be undertaken by the council or its executive, as decided by the council.
502. Subsections (2) to (4) provide that the functions listed in subsection (4) are not subject to the provisions of section 101 of the 1972 Act or sections 14 and 15 of the 2000 Act.

503. This means that if the council decides that one of those listed functions is to be the responsibility of the council, it may not be delegated to a committee or sub-committee or an officer of the council, or to another principal council. Similarly, if the council decides that one of those listed functions is to be the responsibility of the council's executive, it may not be allocated to, for example, a committee of the executive or an officer of the council.

**Section 109 - Power of the Welsh Ministers to add to list of persons to whom reports etc. must be sent**

504. Section 109 enables the Welsh Ministers to make regulations to add to the lists of persons to whom certain reports and responses produced under this Chapter must be sent.

**Section 110 - Power of the Welsh Ministers to amend etc. enactments and confer new powers**

505. This section gives the Welsh Ministers power to amend, modify, repeal, revoke or disapply enactments (but not the provisions of this Chapter) that the Welsh Ministers consider prevent or obstruct a principal council from complying with this Chapter.
506. The Welsh Ministers may also confer new powers on principal councils that the Welsh Ministers consider necessary or expedient in order to permit or facilitate compliance with this Chapter.

**Section 111 - Guidance**

507. This section provides that any person who has functions under or by virtue of this Chapter (other than the Auditor General and principal councils; an equivalent guidance provision applying to principal councils is in section 89(3)) must have regard to guidance issued by the Welsh Ministers about the exercise of those functions.
508. If someone is exercising a function under this Chapter which relates to an assessment of the extent to which a principal council is meeting the performance requirements (for example, if a panel is carrying out an assessment under arrangements made under section 92), they must have regard to any guidance that the Welsh Ministers have issued about the performance requirements. Again, this requirement does not apply to the Auditor General or principal councils.

**Section 113 - Disapplication of the 2009 Measure in relation to principal councils and repeal of provisions about co-ordination of audit**

509. This section amends the 2009 Measure, which contains a performance assessment system, so that it ceases to apply to principal councils.
510. The section also repeals the provisions contained in the 2009 Measure dealing with the co-ordination of audit (section 23) and information sharing (section 33). Chapter 3 of this Part contains new provision about co-ordination between certain regulators and section 159 contains new provision about information sharing.

## **Section 114 - Amendment of the Well-being of Future Generations (Wales) Act 2015**

511. This section amends paragraph 1 of Schedule 1 to the Well-being of Future Generations (Wales) Act 2015 (“the WFG Act”). This reflects section 91(11) of this Act and together the provisions allow a principal council to publish its self-assessment report within the same document as its report under paragraph 1 of Schedule 1 to the WFG Act, where the reports relate to the same financial year.

## **Section 115 and Schedule 10 - New name and functions of audit committees**

512. Section 115 amends section 81 of the 2011 Measure (principal councils to appoint audit committees) to change the name of audit committees to “governance and audit committees” and confer additional functions on those committees.
513. As a result of the change of name a number of consequential amendments are made to the 2011 Measure and these are set out in Schedule 10, which is introduced by this section.

## **Chapter 2: Governance and Audit Committees: Membership and Proceedings**

### **Section 116 - Membership of governance and audit committee**

514. Section 116 of the Act amends section 82 of the 2011 Measure in order to increase the number of lay members on a governance and audit committee.
515. Before amendment, the situation under section 82 of the 2011 Measure is that at least two thirds of the members of a governance and audit committee must be members of the principal council and at least one member of the governance and audit committee must be a lay member.
516. After amendment, the situation is that two thirds of the members of a governance and audit committee must be members of the council and one third must be lay persons.
517. In addition, three subsections ((5A), (5B) and (5C)) are added to section 82 of the 2011 Measure. These provide that a governance and audit committee must appoint a committee chair and deputy chair. The committee chair must be a lay person and the deputy chair must not be a member of the council’s executive or an assistant to its executive.

### **Section 117 - Meaning of lay person**

518. Section 117 of the Act amends section 87 of the 2011 Measure. It imposes additional limits on who may be a “lay” member of a governance and audit committee.

### **Section 118 - Proceedings etc.**

519. This section amends section 83 of the 2011 Measure changing arrangements for chairing of meetings. Before amendment section 83 required that an audit committee must appoint one of its number as chair. This person may be a member of the principal council or a lay member but must not be a member of an executive group. If there are no opposition groups, the person who is to chair the audit committee may be a member of an executive group but must not be a member of the council's executive.
520. After amendment, a meeting of a governance and audit committee is to be chaired by the committee chair (which will now be appointed under section 82) or, in the chair's absence, by the deputy chair. If both are absent, the committee may appoint another member of the committee (who may not be a member of the council's executive or an assistant to the executive) to chair the meeting.

### **Chapter 3: Co-ordination between regulators**

#### **Section 119 - Co-ordination between regulators**

521. This section makes provision of a type which is similar to that in section 23 of the 2009 Measure, which is repealed by section 113 of this Act. However, unlike section 23, it applies only in relation to principal councils.
522. It places a duty on the Auditor General and all "relevant regulators" to have regard to the need for co-ordination in the exercise of their "relevant functions" (see section 120 for the meaning of "relevant regulators" and "relevant functions"). It requires the Auditor General to draw up a timetable in relation to each principal council for each financial year (although the timetable may cover more than one financial year).
523. The timetable must show the dates or periods (in the year or years to which it relates) on, or during, which the Auditor General and the relevant regulators should, in the Auditor General's opinion, exercise their relevant functions. All relevant regulators and the Auditor General must then take all reasonable steps to adhere to the timetable.
524. The Auditor General also has a duty to assist the relevant regulators to comply with their duties under this section.

#### **Section 120 - "Relevant regulators" and "relevant functions"**

525. For the purposes of section 119, this section defines the relevant functions of the Auditor General and lists, in a table, the relevant regulators and their relevant functions.
526. The Welsh Ministers may make regulations to amend the table listing the relevant regulators and their functions.

## **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.

#### **Part 1 of Schedule 11: Merging Councils**

##### **Paragraph 1 – Transition committees for merging councils.**

602. Immediately after making an application for voluntary merger, the applicant councils (“the merging councils”) must establish a transition committee.

##### **Paragraph 2 – Membership of transition committees for merging councils**

603. A transition committee is to be made up of an equal number of elected members of the merging councils, with a minimum number of 5 members per council. The senior executive member (that is, the executive leader, or directly elected mayor if the council has one) of each of the merging councils must be a member of the transition committee.
604. A merging council’s executive member responsible for finance (who may also be the executive leader) must also be appointed to the transition committee.
605. A transition committee may co-opt additional persons to serve as members on the committee, but co-optees do not have voting rights. A merging council’s membership of a transition committee must reflect the political balance of the merging council, in accordance with the requirements set out in Schedule 1 to the 1989 Act.

##### **Paragraph 3 – Functions of transition committees and sub-committees for merging councils**

606. A transition committee must advise and make recommendations to the councils and the shadow council for the new principal area on the matters specified in paragraph 3(1). This is intended to ensure that the transition committee helps identify the issues which need to be addressed in the transition from the old councils to the new council, and makes recommendations to address the issues identified.

607. The Welsh Ministers may direct a transition committee to give them advice and recommendations.

## **Part 2 of Schedule 11: Restructuring councils**

### **Paragraph 4 - Transition committees for restructuring councils**

608. After giving notice under section 129(6), that they propose to restructure specified principal councils, the Welsh Ministers may direct the councils to establish a transition committee; the functions and membership of the transition committee may be specified by the Welsh Ministers in the direction.

## **Part 3 of Schedule 11: Transition committees of merging councils and restructuring councils**

### **Paragraph 5 - Sub-committees of transition committees for merging councils or restructuring councils**

609. Paragraph 5 enables a transition committee (whether established under Part 1 or Part 2 of this Schedule) to establish one or more sub-committees, to provide the transition committee with advice on matters the transition committee refers to it. Anyone appointed to a sub-committee, who is not an elected member of one of the merging or restructuring councils, will not be entitled to vote on matters before the sub-committee.

### **Paragraph 6 - Provision of funding, facilities and information to transition committees for merging councils or restructuring councils**

610. The merging councils or restructuring councils must meet the costs of the transition committee. If the councils fail to agree the apportionment of costs between themselves the Welsh Ministers will determine the proportion of cost to be borne by each council.
611. The merging or restructuring councils must provide the committee with facilities and resources, including staff and information, if reasonably requested by the committee or any of its sub-committees.

### **Paragraph 7 - Transition committees for merging councils or restructuring councils: further provision**

612. The Welsh Ministers may direct a transition committee to exercise its functions in accordance with the direction, and under section 172 a transition committee must comply with any direction given.
613. Neither an audit committee nor an overview or scrutiny committee of a merging council or a restructuring council may exercise its functions in respect of anything done by the transition committee.
614. Transition committees will generally not be empowered to take decisions on policy, strategic or operational matters in respect of a new or existing council; their role will be advisory, and to make recommendations (and in relation to merging councils, paragraph 3 expressly sets out their functions). The relevant audit and scrutiny committees are able to consider any decisions taken by the existing councils in light of advice or recommendations from the transition committees.

## **Section 137 and Schedule 12 – Restraint of transactions and recruitment**

615. Section 137 introduces Schedule 12, which enables the Welsh Ministers to impose restraints and certain controls on specified activities of merging councils and restructuring councils.

### **Paragraph 1 - Restraining transactions and recruitment etc. by direction**

616. The Welsh Ministers may direct a merging council or a restructuring council not to undertake a “restricted activity” without considering the opinion of a person specified in the direction, or (as the case may be) without obtaining the written consent of a person specified in the direction. The persons who may be specified in the direction are such persons (including authorities) as the Welsh Ministers consider appropriate, which may include the Welsh Ministers themselves, transition committees and shadow councils (see paragraph 2(2)).

617. Paragraph 1(2) describes the restricted activities in respect of which directions under this Schedule can be issued.

618. Paragraph 1(3) enables the Welsh Ministers to direct a merging council or a restructuring council seeking to appoint or designate a person to a “restricted post” to comply with specified requirements about the appointment or designation; the “restricted posts” are set out in paragraph 1(4).

619. Paragraph 1(5) requires a merging council or a restructuring council to provide details of a proposal to carry out a restricted activity to the person specified in a direction under sub-paragraph (1), and to provide the Welsh Ministers with details of a proposal to appoint or designate a person to a restricted post where a direction has been given under sub-paragraph (3).

620. Paragraph 1(6) requires a merging council or a restructuring council to publish its reasons for determining to proceed with a restricted activity when the person specified in a direction, which imposes the requirement in sub-paragraph (1)(a), has given the opinion that it would not be appropriate for the merging council or restructuring council to do so.

### **Paragraph 2 - Directions under paragraph 1: supplementary**

621. Paragraph 2 makes further provision about what may be contained in a direction under paragraph 1. In particular, sub-paragraph (3) enables a direction under paragraph 1 to be tailored so different persons may be specified for the purposes of providing an opinion or consent in relation to different matters.

622. Under sub-paragraph (4), directions can also provide for different requirements in relation to the same restricted activities of differing values; for example, the direction could provide that land purchases of a lower value may require the consent of a shadow council whereas higher value purchases may require the consent of the Welsh Ministers.

**Paragraph 3 - Directions under paragraph 1: further provision about reserves**

623. Paragraph 3 allows for a direction under paragraph 1 to permit the inclusion by the council, without the opinion or consent (as the case may be) of the person specified in the direction, in the mandatory calculation of the council's budget requirements of-

- specified descriptions of financial reserves, or
- financial reserves up to an amount determined under the direction.

**Paragraph 4 - Directions under paragraph 1(3): supplementary**

624. Paragraph 4 enables a direction under paragraph 1(3) (concerning restricted posts) to be tailored so that different requirements may be specified for different descriptions of posts in the same council. The requirements may relate to remuneration and the length of any appointment or designation of a person.

**Paragraph 5 - Directions: enforcement and consequences of contravention**

625. The consequences of failing to comply with a direction issued under paragraph 1 are set out in paragraph 5:

- a contract, including an employment contract, or agreement entered into in breach of a direction will be unenforceable;
- a land transaction or capital acquisition made in breach of a direction will be void;
- any grant, or provision of other financial assistance or a loan, in breach of a direction will be repayable; and
- the use of reserves in breach of a direction when making the mandatory calculation of the council's budget requirement means that the calculation will be treated as though it had not been made.

**Paragraph 6 - Interpretation of paragraphs 1 and 7**

626. Paragraph 6 provides further detail on the terms used in the Schedule, including on the nature of the restricted activities specified in paragraph 1. It sets out the minimum financial thresholds in relation to those activities, below which the activity is not a "restricted activity" and therefore cannot be subject to control under a direction under paragraph 1.

627. The Welsh Ministers may by regulations amend the thresholds set out in this paragraph.

**Paragraph 7 - Determining whether financial limits have been exceeded**

628. Paragraph 7 sets out various matters to be taken into account when determining whether the financial thresholds have been exceeded. They include, for example, a requirement to take into account not only the land acquisition in question, but other land acquisitions which took place within a related timeframe and which relate to the same or similar matter as the acquisition in question. These requirements are intended to guard against councils splitting acquisitions etc. in order to reduce their value below the financial thresholds in paragraph 6, and so avoid having to comply with the requirements of a direction under paragraph 1.



**Paragraph 8 - Financial limits: further provision**

629. This paragraph provides that, if there is disagreement about whether a threshold has been exceeded or not, the matter will be decided by the Welsh Ministers. It also provides that where a transaction, in whole or part, involves consideration (that is, a benefit promised by one party to the transaction to another party, in relation to the transaction) which is not money, the value of the consideration is still subject to the financial thresholds in paragraph 6.

**Paragraph 9 - Guidance in relation to transactions, recruitment etc.**

630. If the Welsh Ministers issue guidance about the matters in this Schedule, the person specified in a direction under paragraph 1 must have regard to that guidance.

631. Principal councils are subject to a duty to have regard to guidance issued by the Welsh Ministers by virtue of section 146, and such guidance can concern the matters set out in paragraph 9(1).

**Section 138 - Reviews of electoral arrangements**

632. The Welsh Ministers may direct the Boundary Commission to conduct an 'initial review' of electoral arrangements for principal areas which are the subject of a merger application, or a proposal for restructuring.

633. If the review relates to a restructuring which involves the transfer of part of an area to be abolished to another principal area, the direction must specify the area which is to be subject to the initial review (since it may not be necessary to include the whole of the receiving area in the review). A direction for an initial review of such areas may also specify that certain matters set out in paragraph 3(1) of Schedule 1 to the Act (which would normally be considered in an initial review of whole principal area) are not to be considered in the review of what is a more limited area.

634. A direction under this section must specify the voting system in relation to which the electoral arrangements are to be reviewed.

635. This section (along with section 11) introduces Schedule 1 (as to which, see paragraphs 63 to 94 of these Notes) which makes provision for the conduct of an initial review by the Boundary Commission in respect of mergers and restructurings (as well as in respect of changes to the voting system in an area not subject to a merger or restructure).

636. Subsection (6) empowers the Welsh Ministers to amend, by regulations, section 29(3) of the 2013 Act. This enables the Welsh Ministers to re-set the start of the 10-year review period, during which the Boundary Commission must undertake a review of electoral arrangements for all principal councils in Wales. The 10-year review cycles started on 30 September 2013, when section 29(3) of the 2013 Act came into force.



### **Section 139 – Prohibition of changes to executive arrangements**

637. Following receipt of a voluntary merger application or having given notice of a restructuring proposal under section 129(6), the Welsh Ministers may direct the merging councils or the restructuring councils that they must not take any steps to change their executive arrangements (including holding a referendum on a proposal to change those arrangements) until merger or restructuring regulations have come into force or the Welsh Ministers have given notice to the principal councils concerned that they do not propose to make such regulations.
638. While a direction is in force, a council is not subject to any duty imposed by or under another enactment to take steps to change its form of executive. A council subject to such a direction would therefore not, for example, be required by any regulations made under section 34 of the 2000 Act to act on a petition calling for a referendum on a proposal to introduce a directly elected mayor.

### **Section 140 – Requirement on principal councils to provide information etc. to the Welsh Ministers**

639. The Welsh Ministers may direct any principal council which is involved in a voluntary merger or a restructuring to provide the Welsh Ministers with any information or documents relating to a possible or ongoing merger or restructuring.

### **Section 141 – Requirement on principal councils to provide information etc. to other bodies**

640. The Welsh Ministers may direct any principal council which is involved in a voluntary merger or a restructuring to provide to the bodies specified in this section any information or documents relating to a possible or ongoing merger or restructuring.

### **Chapter 4: Remuneration arrangements for new principal councils**

641. These sections make provision for the remuneration arrangements for new principal councils (including shadow councils) established under this Part, with reference to the existing arrangements under which the Independent Remuneration Panel for Wales exercises functions under Part 8 of the 2011 Measure. The Panel has statutory responsibility for determining the range and level of allowances payable to elected members of principal local authorities and in relation to the salaries of chief executives of principal councils.

### **Section 142 - Directions to Independent Remuneration Panel for Wales**

642. Section 142 enables the Welsh Ministers to direct the Independent Remuneration Panel for Wales to perform “the relevant functions” in relation to shadow councils, and new principal councils for the financial year in which the transfer date falls (i.e. the date on which the shadow council assumes the full range of principal council functions and replaces the merging or restructuring councils which are abolished).

643. The relevant functions are those set out in section 142 of the 2011 Measure (which concerns payments to be made to elected members) and section 143 of the 2011 Measure (pensions for elected members).
644. The Panel must follow the procedures set out in Part 8 of the 2011 Measure (other than section 143A of that Measure) subject to the provisions in subsection (4) of this section, which modify and disapply aspects of Part 8 of the 2011 Measure.
645. Subsection (4)(a) provides that the shadow council is a “relevant authority” for the purposes of Part 8 of the 2011 Measure; “relevant authority” being defined in section 144(2) of the 2011 Measure. Subsection (4)(b) relates to the requirements in sections 147 and 148 of the 2011 Measure about the dates by which the Panel must publish its annual report and drafts of the annual report.
646. As noted above, the transfer date for a new principal council will generally be 1 April, but the annual report and draft annual report in which the Independent Remuneration Panel will set out its determinations for the first year of that council will be published in the months before the transfer takes place. Subsection (4)(b) means that in this circumstance the Panel may make determinations in respect of “the council-in-waiting” before it is established, as if it were already established.
647. Subsection (5) will allow the Panel to address the circumstances where a designated shadow council has become the fully vested council on the transfer date (almost always 1 April) and is not replaced by the elected council for the new area until the first ordinary elections are held, probably in May of the same year. Subsection (5) enables the Panel, in making determinations for the first financial year of the new authority, to be able to make different determinations for the periods before and after the first set of elections.

### **Section 143 - Reports of Panel relating to shadow councils and new principal councils**

648. Section 143(2) requires the Independent Remuneration Panel for Wales to include its first determinations on pay and pensions for members of the shadow council in a report which must be published by a date set out in the direction given to the Panel by the Welsh Ministers under section 142(1).
649. The “first report” in respect of the shadow council may be an annual report or a supplementary report; this will enable the report to be published at a time which is appropriate in relation to the establishment of the shadow council, rather than be conditioned by the timetable required under section 147 of the 2011 Measure. Additionally, section 148(1A)(b) of the 2011 Measure is dis-applied if the first report is a supplementary report, so the period for representations on a draft report in this circumstance is not conditioned by the restrictions in section 148(1A)(b) and may be as long as is considered appropriate.

650. Subsection (5) sets out to whom the Panel must send a draft of a report (whether an annual or a supplementary report) which relates to a shadow council or the council for a new principal area.
651. Where the first report is a supplementary report, subsections (6) to (8) provide that the specified requirements which may be applied by an annual report under the 2011 Measure may be applied in this particular circumstance by the supplementary report.

#### **Section 144 - Guidance to Panel**

652. Section 144 requires the Independent Remuneration Panel for Wales to have regard to guidance issued by the Welsh Ministers about the exercise of its functions under sections 142 and 143.

#### **Section 145 - Pay policy statements**

653. Section 145 requires a shadow council to prepare and approve a pay policy statement (as provided for in sections 38 and 39 of the Localism Act 2011) for the periods set out in subsection (3).
654. The purpose is to ensure the shadow council has in place a public statement which articulates the shadow council's policies on a range of issues relating to the pay of its future workforce, particularly its chief officers and its lowest paid employees.
655. To assist the shadow council, subsection (1) requires a transition committee to publish recommendations for the pay policy statement to be prepared by the shadow council, no later than six weeks before the day the shadow council is elected or established. Shadow councils are prohibited from appointing a chief officer until the pay policy statement for the period mentioned in subsection (3) has been prepared and approved.
656. The term "chief officer" has the same meaning as in section 43(2) of the Localism Act 2011 and covers the following officers of a principal council:
- (a) its chief executive (appointed under section 54 of this Act; but until that section comes into force, it will include a principal council's head of paid service);
  - (b) a monitoring officer (designated under section 5(1) of the 1989 Act);
  - (c) a statutory chief officer mentioned in section 2(6) of the 1989 Act, i.e.:
    - the director of children's services;
    - the director of public health;
    - the chief education officer;
    - the director of social services;
    - an officer responsible for the administration of the authority's financial affairs;

- (d) a non-statutory chief officer mentioned in section 2(7) of the 1989 Act, i.e.:
    - a person for whom the chief executive is directly responsible;
    - a person who, as respects all or most of their duties, is required to report directly or is directly accountable to the chief executive;
    - any person who, as respects all or most of their duties, is required to report directly or is directly accountable to the local authority themselves or any committee or sub-committee of the authority;
  - (e) a deputy chief officer mentioned in section 2(8) of the 1989 Act, i.e. a person who, as respects all or most of their duties, is required to report directly or is directly accountable to one or more of the statutory or non-statutory chief officers. This does not include a person whose duties are solely secretarial or clerical or otherwise in the nature of support services.
657. Subsection (6) applies section 143A of the 2011 Measure to shadow councils. Accordingly, the Independent Remuneration Panel for Wales may make recommendations to a shadow council about any policy in the shadow council's pay policy statement and any proposed change to the salary of the shadow council's chief executive.
658. A shadow council must have regard to any recommendation from the Panel when performing its functions under section 38 and 39 of the Localism Act 2011. If the shadow council proposes to make a change to the salary of its chief executive which is not commensurate with a change to the salaries of the council's other staff, the shadow council must consult the Panel about the change, and have regard to any recommendation received from the Panel.

## **Chapter 5: Supplementary**

### **Section 146 - Guidance**

659. The bodies listed in section 146 must have regard to guidance issued by the Welsh Ministers for the purposes of the Part.

### **Section 147 - Other consequential etc. provision**

660. Section 147 enables the Welsh Ministers to include in merger and restructuring regulations supplementary, incidental, consequential, transitional and saving provision (see subsection (5)). They may also make separate regulations containing supplementary etc. provision in order to give full effect to the specific merger or restructuring regulations, or for the purposes of or in consequence of specific regulations.
661. The Welsh Ministers may make regulations of general application (that is, applying in relation to all merger or restructuring regulations) for the same reasons. The section identifies some of the specific uses of these powers, including for the transfer of staff, property and liabilities (including criminal liabilities) from merging or restructuring authorities to the successor authority or authorities.

662. Subsection (8) provides that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246) (commonly referred to as “TUPE”) apply to a transfer of staff made under these regulations, apart from regulations 4(6) and 10.
663. Excluding TUPE regulation 4(6) means that the liability of an abolished council to be prosecuted for, convicted of and sentenced for any offence will be transferred to the new council. Without this provision any criminal liability of an abolished council under or in connection with contracts of employment transferred to the new council would disappear when the councils are abolished.
664. Excluding TUPE regulation 10 preserves the occupational pension rights of staff being transferred under or by virtue of merger or restructuring regulations. Without this provision, the new council would not be under a legal obligation to honour pension rights, duties or liabilities under existing contracts of employment.

### **Section 148 – Initial procedure for restructuring regulations**

665. Section 148 sets out an enhanced procedure for the approval of restructuring regulations by the Senedd (this section does not apply to merger regulations).
666. The Welsh Ministers must lay before the Senedd a proposed draft of the restructuring regulations, an explanation of why 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 and details of the consultation undertaken about the restructuring proposal.
667. The proposed draft of the restructuring regulations and the required accompanying documents must be laid before the Senedd no less than 60 days before laying the final draft of the regulations before the Senedd for the purpose of obtaining the Senedd’s approval by way of affirmative resolution (see section 174(4)).
668. At the end of the 60 days, if the Welsh Ministers lay before the Senedd the final draft of the restructuring regulations, they must be accompanied by a statement which sets out what representations have been received since the proposed draft regulations were laid and what changes, if any, have been made in the final draft regulations.
669. The enhanced procedure does not apply to regulations made only for the purpose of amending restructuring regulations.

### **Section 150 – Repeals of other enactments**

670. Section 150 repeals certain specified legislation, namely:
- Chapter 2 of Part 9 of the 2011 Measure, to remove the existing power and procedure under which the Welsh Ministers may amalgamate two or three principal councils;

- Section 23(4)(e)(ii) and (iii) of the 2013 Act – section 23 of the 2013 Act enables the Boundary Commission, of its own initiative or at the request of a principal council, to conduct a review of the boundaries of principal areas. In relation to such a review the Boundary Commission may recommend the making of “principal area boundary changes”, as defined in section 24(4)(e) of that Act. This amendment means that the Boundary Commission cannot recommend abolishing a principal area or constituting a new principal area;
- Section 1(1), 2 to 39 and 44 of the Local Government (Wales) Act 2015. These provisions provided for voluntary mergers, and paved the way for a proposed reorganisation of counties and county boroughs to be achieved by 1 April 2020. That programme is not being pursued so the specified provisions are now either redundant or effectively spent.

## **Part 8: Local Government Finance**

### **Section 151 - Powers of billing authorities to require the supply of information relating to hereditaments**

671. This section amends Schedule 9 to the Local Government Finance Act 1988 (“the 1988 Act”), to enable a “billing authority” in Wales (a principal council) to serve notice on certain persons, requiring them to supply the authority with information as specified in the notice, relating to a particular property, which the council believes will assist it in the exercise of its functions relating to the non-domestic rating.
672. This could include, for example, information the council believes will help it to determine the amount of rating due in relation to the property.
673. The council may only give notice under this provision to persons with a particular connection with the property, as set out in new paragraph 5(1D) of Schedule 9 to the 1988 Act.
674. It is criminal offence to provide false information in response to a notice, punishable with a fine, a person who fails to comply with a notice is also subject to a fine.

### **Section 152 – Requirement to supply to billing authorities information relevant to determining liability to non-domestic rates**

675. This section provides the Welsh Ministers with a power to make regulations under which a person will be subject to a duty to provide principal councils with information which relates to determining who is liable to pay a non-domestic rate, and how much is to be paid. The information need not be requested by the council and there will be no on-going duty to supply the information.
676. The regulations may authorise a principal council to impose a financial penalty on persons who do not provide the information. The regulations may also make the provision of false information to be a criminal offence, punishable with a fine.
677. The regulations must provide for a person to appeal the imposition of a penalty.



### **Section 153 - Powers of billing authorities to inspect properties**

678. This section provides principal councils with a power to enter and inspect properties in their area, if they believe it is required for the purposes of carrying out its functions relating to non-domestic rating. Before exercising this power, a council must obtain the approval of the Valuation Tribunal for Wales, and once that approval is obtained it must provide ratepayers with at least 24 hours' notice of an inspection.

679. It is a criminal offence, punishable with a fine, to delay or obstruct an inspection.

### **Section 154 - Multipliers**

680. This section amends Schedule 7 to the 1988 Act so that the consumer prices index is the measure of inflation when calculating the non-domestic rating multiplier (previously it was the retail prices index). A power is also provided to the Welsh Ministers to make regulations changing the measure of inflation.

### **Section 155 - Amendment of Chapter 3 of Part 5 of the Local Government Finance Act 1988**

681. This section amends existing provision in sections 84J, 84K, 84M, 84N and 84P of the 1988 Act (which relate to the calculation and payment of the revenue support grant) to correct various cross references and related amendments.

### **Section 156 - Joint and several liability to pay council tax**

682. Section 156 amends Schedule 1 to the Local Government Finance Act 1992 ("the 1992 Act" to expand the power in paragraph 11 of that Schedule. That power enables the Welsh Ministers to specify descriptions of people (beyond those already mentioned in Schedule 1) who are to be disregarded when calculating how many people are resident in a dwelling for the purposes of determining whether there is to be a discount in the amount of council tax which is payable.

683. As expanded by section 156, that power enables the Welsh Ministers to provide that a person who is to be disregarded for the purposes of a council tax discount is also not to be jointly or severally liable for council tax (that is, they are not to be liable to pay council tax either individually, or jointly with others).

### **Section 157 - Removal of power to provide for imprisonment of council tax debtors**

684. This section amends paragraph 8 of Schedule 4 to the 1992 Act. Paragraph 1 of that Schedule provides a broad power to the Welsh Ministers to make regulations in relation to the recovery of council tax. The effect of this section is to remove the power of the Welsh Ministers to make provision under which a person may be sent to prison for non-payment of council tax.

### **Section 158 - Procedure for certain regulations and orders made under the Local Government Finance Act 1992**

685. This section clarifies the procedure which must be followed when making certain regulations and orders under the 1992 Act.

## **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.

## **Part 10: General**

### **Section 171 – Interpretation**

739. Section 171 defines a number of words and terms used throughout the Act.

740. It also makes provision relating to every duty under the Act (but not a duty imposed by amending another enactment) to publish something. Subsection (2) requires the person subject to the duty to publish the document electronically (which means on that person’s website, if they have one), and in such other manner as the person thinks appropriate.

### **Section 172 – Directions**

741. Section 172 makes provision applying to all directions given under the Act (requiring that they be given in writing, and that they be complied with by the person to whom they are given).

### **Section 173 – Power to make consequential and transitional provision etc.**

742. Section 173 provides the Welsh Ministers with a power to make regulations containing supplementary etc. provisions to give full effect to any provision of the Act. The regulations made may amend, modify, repeal or revoke any enactment (but where they do, they are subject to the affirmative procedure in the Senedd; see section 174(5)(t)).

### **Section 174 – Regulations under this Act**

743. Section 174 makes general provision about how the various regulations that may be made under the Act are to be made. This includes provision about the procedures of the Senedd that apply in relation to the regulations, and the ancillary provision (that is, supplemental, incidental, consequential, transitional, transitory or saving provision) that may be made in regulations.

### **Section 175 – Coming into force**

744. Section 175 sets out when the provisions of this Act comes into force and, where the provisions come into force by order, sets out what provision the order may contain. This provision deals with a range of different approaches to commencement.
745. Various regulation making powers come into force the day after the Act receives Royal Assent, including the powers to establish corporate joint committees under Part 5, and to provide for voluntary mergers of principal areas under Part 7 (the power to provide for restructuring of principal areas under that Part will be commenced by order, and subsection (2) of section 175 makes provision for this).
746. The partial commencement of section 159 relates to the commencement of Part 5 and the fact that Part 6 (performance management) will be commenced by order. The provisions commenced in section 166 on the day after Royal Assent are connected with the coming into force of the provisions on voluntary mergers.
747. Other provisions come into force on specified dates, which coincide with the start of the local government financial year (see subsection (4)), or are intended to fall on the day of the next ordinary elections to principal councils (on 5 May 2022; see subsection (5)), or the day after that day (see subsection (6)).

### **Section 176 – Short Title**

748. Section 176 provides that the short title of the Act is the Local Government and Elections (Wales) Act 2021.

### **RECORD OF PROCEEDINGS IN THE SENEDD**

749. The following table sets out the dates for each stage of the Act’s passage through the Senedd. The Record of Proceedings and further information on the passage of this Act can be found on the Senedd website at:

<https://business.senedd.wales/mgIssueHistoryHome.aspx?IId=26688>

<b>Stage</b>	<b>Date</b>
Introduced	18 November 2019
Stage 1 - Debate	8 April 2020
Stage 2 Scrutiny Committee - consideration of amendments	2 & 9 September 2020
Stage 3 Plenary - consideration of amendments	10 November 2020
Stage 4 Approved by the Assembly	18 November 2020
Royal Assent	20 January 2021