



# Local Government (Wales) Act 2015

2015 anaw 6

*Restraints on transactions and recruitment etc. by merging authorities*

## **29 Restraining transactions and recruitment etc. by direction**

- (1) The Welsh Ministers may direct that—
- (a) a merging authority must not carry out a restricted activity unless it has considered the opinion of a specified person or persons on the appropriateness of carrying out the activity;
  - (b) a merging authority must not carry out a restricted activity unless the written consent of a specified person or persons has been given for the activity to be carried out.
- (2) The restricted activities are—
- (a) making a relevant land acquisition or disposal;
  - (b) entering into a relevant contract or agreement;
  - (c) making a relevant capital acquisition;
  - (d) giving a relevant grant or other financial assistance;
  - (e) making a relevant loan;
  - (f) including an amount of financial reserves in a calculation under section 32 of the Local Government Finance Act 1992;
  - (g) starting the process of recruiting (including by way of internal recruitment)—
    - (i) a non-statutory chief officer mentioned in section 2(7) of the Local Government and Housing Act 1989;
    - (ii) a deputy chief officer mentioned in section 2(8) of that Act.
- (3) The Welsh Ministers may direct that a merging authority seeking to appoint or designate a person to a restricted post (including from among its existing officers) must comply with specified requirements about the appointment or designation.
- (4) “Restricted post”, in relation to a merging authority, means—
- (a) the head of its paid service designated under section 4(1) of the Local Government and Housing Act 1989;
  - (b) its monitoring officer designated under section 5(1) of that Act;

- (c) a statutory chief officer mentioned in section 2(6) of that Act.
- (5) A merging authority must—
  - (a) provide details of a proposal to carry out a restricted activity to any person specified for the purpose of subsection (1)(a) or (b) in respect of that activity;
  - (b) provide the Welsh Ministers with details of a proposal to appoint or designate a person to a restricted post where any requirements apply in relation to the appointment or designation by virtue of a direction under subsection (3).
- (6) If an opinion given for the purposes of subsection (1)(a) is that it would not be appropriate for a merging authority to carry out a restricted activity but the authority decides to carry it out, the authority must publish its reasons for making that decision.
- (7) Section 143A(1)(b) and (3) of the Local Government (Wales) Measure 2011 (recommendations of Independent Remuneration Panel for Wales on salary) does not apply—
  - (a) where a direction has been given under subsection (1)(b) in relation to the recruitment of a non-statutory chief officer or deputy chief officer, to a proposal to pay the recruited person a salary which is different to that paid to that person's predecessor;
  - (b) where a direction has been given under subsection (3), to a proposal to pay the appointed or designated person a salary which is different to that paid to that person's predecessor.
- (8) The reference in subsection (7) to section 143A of the Local Government (Wales) Measure 2011 includes a reference to that section as it has effect under section 39 of this Act.
- (9) A direction given under this section takes effect from the date specified in the direction.

### **30 Directions under section 29(1): supplementary**

- (1) This section applies in relation to a direction under section 29(1).
- (2) A direction may be given in respect of—
  - (a) a single merging authority;
  - (b) two or more specified authorities;
  - (c) authorities of a specified description.
- (3) A person specified as a person whose opinion or consent is required may be such authority or person as the Welsh Ministers consider appropriate, and this may include the Welsh Ministers, any transition committee and any shadow authority.
- (4) A direction may specify different persons—
  - (a) in relation to different matters for which an opinion or consent is required;
  - (b) in relation to different merging authorities or descriptions of authority.
- (5) A direction may specify, in relation to the same restricted activity, different requirements in respect of transactions of different values.
- (6) A direction may specify, in relation to the recruitment of a non-statutory chief officer or deputy chief officer—
  - (a) different requirements in respect of different levels of proposed remuneration;
  - (b) different requirements in respect of different descriptions of officer.

- (7) An opinion or consent for the purposes of a direction may be given in respect of a particular transaction or transactions of any description.
- (8) Any consent for the purposes of a direction may be given unconditionally or subject to conditions.
- (9) For the purposes of a direction relating to the recruitment of a non-statutory chief officer or deputy chief officer, an opinion given, or conditions to which a consent is subject, may in particular relate to—
  - (a) the remuneration to be payable to a recruited person;
  - (b) the duration of an appointment.
- (10) Any enactments relating to acquisitions or disposals, entering into contracts or agreements, giving grants or other financial assistance, making loans, or the recruitment or appointment of persons by merging authorities have effect subject to any direction.
- (11) Consent required by a direction is in addition to any consent required by any of those enactments.

### **31 Directions under section 29(1): further provision about reserves**

- (1) A direction under section 29(1)—
  - (a) may provide that the opinion or consent of the person or persons specified in the direction is not required for the inclusion, in a calculation under section 32 of the Local Government Finance Act 1992, of financial reserves of a description specified in the direction;
  - (b) may, in relation to any merging authority or description of merging authority, provide that an opinion or consent is not required for the inclusion in such a calculation of an amount of financial reserves not exceeding an amount specified in or determined under the direction.
- (2) If a direction contains provision by virtue of subsection (1), the reference in section 29(2)(f) to an amount of financial reserves is to be read as a reference to an amount of financial reserves other than an amount permitted by the direction.

### **32 Directions under section 29(3): supplementary**

- (1) This section applies in relation to a direction under section 29(3).
- (2) A direction may be given in respect of—
  - (a) a single merging authority;
  - (b) two or more specified authorities;
  - (c) authorities of a specified description.
- (3) A direction may specify different requirements for different descriptions of post.
- (4) Requirements imposed on a merging authority by a direction may, in particular, relate to—
  - (a) the remuneration to be payable to an appointed or designated person;
  - (b) the duration of an appointment or designation.

- (5) Any enactments relating to the recruitment, designation or appointment of persons by merging authorities have effect subject to any direction.

### **33 Directions: consequences of contravention**

- (1) An acquisition or disposal made in contravention of a direction given under section 29 is void.
- (2) A contract (including a contract for employment) or agreement entered into in contravention of a direction given under section 29 is unenforceable.
- (3) A grant or other financial assistance given, or a loan made, in contravention of a direction given under section 29 is repayable.
- (4) If a merging authority includes financial reserves in a calculation under section 32 of the Local Government Finance Act 1992 in contravention of a direction given under section 29, the authority is to be treated for the purposes of section 30(8) of that Act as not having made the calculations required by Chapter 3 of Part 1 of that Act.

### **34 Interpretation of sections 29 to 36**

- (1) In sections 29 and 35, “relevant land acquisition or disposal” means the acquisition or disposal of land if the consideration for the acquisition or disposal exceeds £150,000.
- (2) In subsection (1) the reference to the acquisition or disposal of land includes—
  - (a) the acquisition or grant or disposal of any interest in land,
  - (b) entering into a contract to acquire or dispose of land or to acquire or grant or dispose of any interest in land, and
  - (c) acquiring or granting an option to acquire any land or any interest in land.
- (3) In sections 29 and 35, “relevant contract or agreement” means—
  - (a) any contract, other than a capital contract, under which the consideration exceeds £150,000 where—
    - (i) the period of the contract extends beyond the transfer date, or
    - (ii) under the terms of the contract, that period may be extended beyond the transfer date,
  - (b) any capital contract under which the consideration exceeds £500,000, or
  - (c) any framework agreement within the meaning of regulation 2(1) of the [Public Contracts Regulations 2006 \(S.I. 2006/5\)](#) where—
    - (i) the period of the framework agreement extends beyond the transfer date, or
    - (ii) under the terms of the framework agreement, that period may be extended beyond the transfer date.
- (4) In subsection (3) “capital contract” means a contract in respect of which the consideration payable by the merging authority is expenditure which is capital expenditure for the purposes of Chapter 1 of Part 1 of the Local Government Act 2003 (capital finance).
- (5) In sections 29 and 35, “relevant capital acquisition” means an acquisition of share capital or loan capital in any body corporate in respect of which the consideration exceeds £500,000, other than an acquisition of loan capital where—

- (a) the acquisition of the loan capital is an investment for the purposes of the prudent management of the merging authority's financial affairs, and
  - (b) the investment is admitted to an official list maintained by a competent authority in an EEA State.
- (6) In subsection (5) (and this subsection)—
  - “competent authority” (“*awdurdod cymwys*”) means an authority which is responsible for maintaining the official list in an EEA State;
  - “official list” (“*rhestr swyddogol*”)—
    - (a) in relation to the United Kingdom, has the meaning given by section 103(1) of the Financial Services and Markets Act 2000, and
    - (b) in relation to any other EEA State means the equivalent list maintained by the competent authority of that State.
- (7) In sections 29 and 35, “relevant grant or other financial assistance” means a grant or other financial assistance (other than a loan) of more than £150,000.
- (8) In sections 29 and 35, “relevant loan” means a loan of more than £150,000 where—
  - (a) the period of the loan extends beyond the transfer date, or
  - (b) under the terms of the loan, that period may be extended beyond the transfer date.
- (9) In sections 29 to 32 and 36, “specified” means specified in a direction given under section 29.

### **35 Determining whether financial limits have been exceeded**

- (1) For the purpose of making a determination as to whether a financial limit set out in section 34 is exceeded—
  - (a) in the case of a relevant land acquisition or disposal, the consideration for any other acquisition or disposal of land relating to the same or a similar description of matter made by the merging authority after 26 January 2015 (which was the day on which the Bill for this Act was introduced in the National Assembly for Wales) is to form part of the determination;
  - (b) in the case of a relevant contract or agreement, the consideration under any other contract or agreement relating to the same or a similar description of matter entered into by the merging authority after 26 January 2015 is to form part of the determination;
  - (c) in the case of a relevant capital acquisition, the consideration in respect of the acquisition of share capital or loan capital in the same body corporate made by the merging authority after 26 January 2015 (other than an acquisition where the conditions set out in paragraphs (a) and (b) of section 34(5) are met) is to form part of the determination;
  - (d) in the case of a relevant grant or other financial assistance, the amount of any grant or other financial assistance (other than a loan) given by the merging authority to the same person after 26 January 2015 is to form part of the determination;
  - (e) in the case of a relevant loan, the amount of any loan made by the merging authority to the same person after 26 January 2015 is to form part of the determination.

- (2) Where the consideration or any of the consideration in respect of a transaction is not in money, the limits set out in section 34 apply to the value of the consideration.
- (3) Where, in determining whether a limit set out in section 34 is exceeded, a question arises as to the value of the consideration in relation to a transaction and the persons concerned fail to reach agreement, for the purposes of the determination the question is to be decided by the Welsh Ministers.
- (4) The Welsh Ministers may by regulations substitute a different figure for that for the time being set out in subsection (1), (3)(a) or (b), (5), (7) or (8) of section 34.

### **36 Guidance in relation to transactions, recruitment etc.**

- (1) The Welsh Ministers may issue guidance—
  - (a) as to the operation of sections 29 to 35;
  - (b) in relation to any direction given under section 29;
  - (c) on carrying out restricted activities;
  - (d) on appointing and designating persons to restricted posts.
- (2) Merging authorities and any specified persons must have regard to any guidance issued under subsection (1).
- (3) In subsection (1), “restricted activity” and “restricted post” each have the meaning given in section 29.