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WELSH STATUTORY INSTRUMENTS

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**2002 No. 803 (W.88)**

**LOCAL GOVERNMENT, WALES**

**The Local Authorities (Executive Arrangements) (Modification of Enactments and Further Provisions) (Wales) Order 2002**

*Made* - - - - - *21st March 2002*

*Coming into force* - - - - - *1st April 2002*

The National Assembly for Wales in exercise of the powers conferred upon it by sections 47, 105 and 106(1) of the Local Government Act 2000(1) hereby makes the following Order:

**Name, commencement, application and interpretation**

1.—(1) This Order is called the Local Authorities (Executive Arrangements) (Modification of Enactments and Further Provisions) (Wales) Order 2001 and shall come into force on 1st April 2002.

(2) This Order applies to Wales(2).

(3) In this Order—

“the 1972 Act” means the Local Government Act 1972(3)

“the 1989 Act” means the Local Government and Housing Act 1989(4); and

“the 2000 Act” means the Local Government Act 2000.

**Modification of Acts**

2. The 1972 Act, the 1989 Act and the 2000 Act, in their application to Wales, are modified in accordance with articles 3 to 6.

**Arrangements for discharge of functions by local authorities**

3. In section 101 of the 1972 Act(5) (arrangements for discharge of functions by local authorities)

—  
(a) after subsection (1), there shall be inserted—

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(1) 2000 c. 22.

(2) For the application of sections 47 and 105 of the Local Government Act 2000 to Wales, see section 106(1) of that Act.

(3) 1972 c. 70.

(4) 1989 c. 42.

(5) There are amendments to section 101 which are not relevant to this Order.

“(1A) A local authority may not under subsection (1)(b) above arrange for the discharge of any of their functions by another local authority if, or to the extent that, that function is also a function of the other local authority and is the responsibility of the other authority’s executive.

(1B) Arrangements made under subsection (1)(b) above by a local authority (“the first authority”) with respect to the discharge of any of their functions shall cease to have effect with respect to that function if, or to the extent that,—

- (a) the first authority are operating or begin to operate executive arrangements, and that function becomes the responsibility of the executive of that authority; or
- (b) the authority with whom the arrangements are made (“the second authority”) are operating or begin to operate executive arrangements, that function is also a function of the second authority and that function becomes the responsibility of the second authority’s executive.

(1C) Subsections (1A) and (1B) above do not affect arrangements made by virtue of section 19 of the Local Government Act 2000 (discharge of functions of and by another authority).”; and

(b) after subsection (5), there shall be inserted—

“(5A) Arrangements made under subsection (5) above by two or more local authorities with respect to the discharge of any of their functions shall cease to have effect with respect to that function if, or to the extent that, the function becomes the responsibility of an executive of any of the authorities.

(5B) Subsection (5A) above does not affect arrangements made by virtue of section 20 of the Local Government Act 2000 (joint exercise of functions).”.

### **Appointment of committees**

4. In section 102 of the 1972 Act(6) (appointment of committees)—

(a) after subsection (1), there shall be inserted—

“(1A) For the purpose of discharging any function in pursuance of arrangements made under regulations made under section 18 of the Local Government Act 2000 (discharge of functions by area committees)—

- (a) a local authority may appoint a committee of the authority; or
- (b) any such committee may appoint one or more sub-committees.”(7);

(b) in subsections (2) and (3), after “subsection (1)”, in each place where those words appear, there shall be inserted “or (1A)”; and

(c) in subsection (4), after the words “to advise the appointing authority or authorities”, there shall be inserted the words “, or, where the appointing authority or each of the authorities operate executive arrangements, any executive of that or those authorities, or a committee or member of that executive.”.

### **Standing orders with respect to local authority staff**

5. In section 8 of the 1989 Act (duty to adopt standing orders with respect to staff), for paragraph (d) of subsection (4), there shall be substituted—

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(6) Section 102(1) was amended by paragraph 31(1) of Schedule 13 to the Children Act 1989 (c. 41). There are other amendments to section 102 which are not relevant to this Order..

(7) See regulation 6 of the Local Authorities (Executive Arrangements)(Discharge of Functions) (Wales) Regulations 2001 (S.I.2001/2287 (W.175)).

- “(d) without prejudice to section 191(1) below, special provision in relation to the appointment of persons—
- (i) in pursuance of section 9 below;
  - (ii) for the purposes of functions exercised by joint committees on which relevant authorities are represented; and
  - (iii) in pursuance of regulations made under paragraph 6 of Schedule 1 to the Local Government Act 2000 (mayor’s assistant).”.

### **Voting rights of members of joint committees**

**6.—(1)** In section 13 of the 1989 Act<sup>(8)</sup> (voting rights of members of certain committees: England and Wales)—

- (a) after subsection (5), there shall be inserted—

“(5A) Nothing in this section shall prevent the appointment of a council manager of a local authority, or one other officer of that local authority in that person’s place, as a voting member of a joint committee, or a sub-committee of such a committee, where—

- (a) that local authority have a mayor and council manager executive<sup>(9)</sup>; and
- (b) the joint committee or the sub-committee has been appointed for the purpose of discharging functions which, as respects that local authority, are the responsibility of that executive.”; and

- (b) in subsection (9), after the words “In this section -”, there shall be inserted—

““council manager”, “executive” and “mayor and council manager executive” have the same meaning as in Part II of the Local Government Act 2000 (arrangements with respect to executives etc.); and”.

**(2)** In paragraph 3 of Schedule 1 to the 2000 Act (executive arrangements: further provision (Mayor and council manager executives))—

- (a) in sub-paragraph (10), for the words “sub-paragraph (11)”, there shall be substituted the words “sub-paragraphs (11) and (12A)”; and
- (b) after sub-paragraph (12), there shall be inserted—

“(12A) The council manager of a local authority is entitled to vote at a meeting of a joint committee, or sub-committee of such a committee, if—

- (a) that joint committee or sub-committee has been appointed for the purpose of discharging functions which, as respects that local authority, are the responsibility of the executive of the local authority; and
- (b) the council manager is a member of that joint committee or sub-committee.”.

### **Standing orders with respect to local authority contracts**

**7.—(1)** Before a local authority operate executive arrangements under Part II of the 2000 Act they shall make standing orders under section 135 of the 1972 Act (contracts of local authorities) with respect to the making of contracts on their behalf in the course of the discharge of functions which are the responsibility of the executive of that authority.

- (2)** The standing orders shall include provision for securing that any contract which—

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<sup>(8)</sup> Section 13(9) was amended by paragraph 36 of Schedule 4 to the Police and Magistrates' Courts Act 1994 (c. 29) and paragraph 96(5) of Schedule 37 and Part 1 of Schedule 38 to the Education Act 1996 (c. 56). There are other amendments to section 13 not relevant to this Order.

<sup>(9)</sup> See regulations 11 and 12 of the Local Authorities (Executive Arrangements) (Discharge of Functions) (Wales) Regulations 2001 (S.I. 2001/2287 (W.175)).

- (a) is of or above a value specified in the standing orders by the authority; or
  - (b) is of a description specified in the standing orders by the authority, must be in writing.
- (3) The function of specifying a value or a description of contracts for the purposes of the provisions required by paragraph (2) shall be discharged by the authority themselves and section 101 of the 1972 Act (arrangements for the discharge of functions by local authorities) shall not apply to that function.
- (4) The standing orders shall include provision for securing that any contract to which the provisions required by paragraph (2) apply must—
- (a) be made under the authority’s seal and be attested by at least one officer of the authority who, in the case of an authority having a mayor and council manager executive, is not the council manager, whether or not the seal is also attested—
    - (i) by any member of the authority; or
    - (ii) in the case of an authority having a mayor and council manager executive, by the council manager; or
  - (b) be signed by at least two officers of the authority, whether or not the contract is also signed by any member of the authority.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(10)

21st March 2002

*D. Elis-Thomas*  
The Presiding Officer of the National Assembly

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order modifies legislation and makes other provisions for the purposes of, in consequence of, or for giving full effect to provisions in Part II of the Local Government Act 2000 (“the 2000 Act”) (arrangements with respect to executives etc.). This Order applies in relation to county and county borough councils in Wales.

Article 3 modifies section 101 of the Local Government Act 1972 (“the 1972 Act”). Article 3(a) prevents local authorities from making arrangements for the discharge of functions by another local authority to the extent that the function in question is the responsibility of the executive of that other local authority. In such cases the function (to that extent) could become the responsibility of the executive of that local authority, but not of the local authority themselves.

The modifications in article 3 also provide that the arrangements for the discharge of a local authority’s functions, by either another local authority or a joint committee, existing at the time when any of the participating local authorities begin to operate executive arrangements, shall cease to the extent that the function in question becomes the responsibility of the executive of any of those authorities.

Article 4 modifies section 102 of the 1972 Act to enable local authorities to appoint area committees for the purpose of discharging functions delegated by the executive. The amendment will also enable local authorities to appoint advisory committees to advise the executive of the local authority and any committee or individual member of that executive.

Article 5 modifies section 8 of the Local Government and Housing Act 1989 (“the 1989 Act”), enabling regulations made by the Secretary of State concerning local authorities’ standing orders with respect to staff to include special provision in relation to the appointment of a local authority mayor’s assistant.

Article 6 modifies section 13 of the 1989 Act to ensure that, where a local authority are operating a mayor and council manager executive, the council manager, or any other officer appointed in that person’s place, may be a voting member of any joint committee (or sub-committee of such a committee) which exercises functions which are the responsibility of the executive and of which that person is a member. This article also makes a consequential amendment to Schedule 1 to the 2000 Act.

Article 7 introduces a requirement for local authorities who are or will be operating executive arrangements under Part II of the Local Government Act 2000 to make standing orders in respect of local authority contracts and specifies the provisions that are to be included in the standing orders, including the procedure to be followed in the making of such contracts.