



Llywodraeth Cymru
Welsh Government

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Amended Guidance to the Independent Reuneration Panel for Wales Under Section 143A of the Local Government (Wales) Measure 2011 and Section 39 of the Local Government (Wales) Act 2015

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

1. Background

- 1.1. The Local Government (Democracy) (Wales) Act 2013 (“the 2013 Act”) received its Royal Assent on 30 July 2013. Its prime purpose was to reform the structure and functions of what is now known as the Local Democracy and Boundary Commission for Wales. There were, however, other provisions concerning Local Government and related issues. They included:
- Allowing Principal Councils to appoint Presiding Members to chair their meetings, in preference to the traditional civic chair or mayor;
 - Enabling Local Authorities to promote or oppose private bills in the National Assembly, rather than Parliament, if it is the appropriate legislature;
 - Requiring Town and Community Councils to publish information on the Internet;
 - Amending provisions within the Local Government (Wales) Measure 2011 (“the 2011 Measure”) relating to remote attendance at Council meetings and the constitution of audit and democratic services committees, and
 - Enabling Local Authorities to establish joint standards committees.
- 1.2. In addition, the responsibilities of the Independent Remuneration Panel for Wales (“the Panel”) within the 2011 Measure were amended by the 2013 Act in a number of ways but particularly in relation to the pay of Heads of Paid Service of certain Local Authorities.
- 1.3. Heads of Paid Service are statutory posts introduced under the Local Government and Housing Act 1989. Principal Councils and some other local authorities are required to designate one of their officers as the Head of Paid Service. This is usually the Council’s Chief Executive Officer. This officer is required to advise the Council with respect to the discharge of its functions and as to the number and organisation of its staff. For the purpose of this guidance, the term Chief Executive (“CEO”) is to be considered as a reference to the Head of Paid Service and/or a Chief Fire Officer.
- 1.4. The Local Government (Wales) Act 2015 (“the Act”) contains provisions designed to prepare for a restructuring of local government in Wales over the next few years. It contains provisions which:
- allow for voluntary mergers between principal authorities;
 - Provide for the establishment of transition committees to prepare for new authorities;

- Enable the Local Democracy and Boundary Commission for Wales to review the electoral arrangements for proposed new areas;
 - Enable the Panel to determine remuneration of members of proposed councils;
 - Place restraints on existing authorities carrying out certain transactions in advance of mergers and require them to provide certain information to Welsh Ministers and other authorities.
- 1.5. Section 29 *et seq* of the Act contains provisions permitting the Welsh Ministers to issue directions to place restraints on, amongst other things, certain transactions and recruitment by “merging authorities”. A “merging authority” is a principal authority which is to be merged into a new principal area, whether by merger regulations (voluntary mergers) or by virtue of a Bill introduced in the Assembly by the Welsh Ministers or in an Assembly Act.
- 1.6. In relation to recruitment, directions may impose restrictions on proposed recruitment to certain posts, including chief officers. Should the Welsh Ministers decide to issue directions under subsection (1), no chief officer may be recruited without consent of a person specified in the direction. Should the Welsh Ministers issue a direction under subsection (3), the authority must comply with specified requirements. Directions – and therefore the consent or requirements – can contain matters connected to the length of any appointment and its remuneration.
- 1.7. In an appointment made subject to the Ministerial directions described, the responsibility of the Panel under section 143A of the 2011 Measure to make recommendations in respect of the pay associated with these posts does not apply where the direction is given in relation to a proposal to pay the person a salary which is different to the person’s predecessor.
- 1.8. Section 39(1) of the Act also provides that section 143A of the 2011 Measure has the following effect: the functions of the Panel in relation to CEOs are extended to include all “chief officers” of principal authorities. This is a time limited provision, lasting from the coming into force of this provision, on 25 January 2016 until 31 March 2020. This is the day before the intended “vesting day” on which shadow authorities for new principal areas would take over responsibilities from the currently existing principal authorities.
- 1.9. The definition of “chief officer” in section 39 is taken from the Localism Act 2011:
- (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;
- (d) a non-statutory chief officer mentioned in section 2(7) of that Act;
- (e) a deputy chief officer mentioned in section 2(8) of that Act.

The descriptions for (c)-(e) used in the 1989 Act are (in summary)::
“Statutory chief officers” include—

- (a) the chief education officer or director of education
- (b) the chief officer of a fire brigade
- (c) the director of social services or chief social work officer
- (d) the section 151 or chief finance officer

“Non-statutory chief officer” means -

- (a) a person for whom the head of the authority’s paid service is directly responsible;
- (b) a person who, as respects all or most of the duties of his post, is required to report directly or is directly accountable to the head of the authority’s paid service; and
- (c) any person who, as respects all or most of the duties of his post, is required to report directly or is directly accountable to the local authority themselves or any committee or sub-committee of the authority.

“Deputy chief officer” means, a person who, as respects all or most of the duties of his post, is required to report directly or is directly accountable to one or more of the statutory or non-statutory chief officers.

- 1.10 Section 39(3) of the Act provides that the Welsh Ministers may issue guidance to the Panel in relation to the temporary extension of its functions relating to chief officers’ pay described above.

Further, section 40 amends section 143A of the 2011 Measure to allow an authority that has consulted the Panel about a proposed reduction in salary to reduce (but not increase) the salary payable to a head of paid service (or chief officer for the duration of that provision) while awaiting the recommendation of the Panel provided that the contract under which the salary is payable allows for its alteration once the Panel’s recommendation has been considered.

Section 40 also provides that the Panel must notify the Welsh Ministers of any recommendation it makes on officers’ remuneration.

2. The Panel's responsibilities in relation to Chief Officer/CEO pay

- 2.1 Section 63 of the 2013 Act amended the 2011 Measure by inserting a new section 143A. Sections 141 to 160 of the 2011 Measure deal with local authority members' payments and pensions and the powers of the Panel in relation to them. Section 143A enables the Panel to make recommendations, in relation to principal councils and fire and rescue authorities (FRAs), on anything in their Pay Policy Statement (PPS) which relates to the salary of their CEO. As stated above, the Act extends this power for a period to all chief officers in a principal authority. For the purpose of this guidance, salaries include payments made by a relevant authority to an officer who is not an employee of the Authority under a contract for provision of services, as well as payments of salary made to an employed officer under an employment contract. The Panel's power to make recommendations however, is related only to authorities which must produce Pay Policy Statements (principal councils and FRAs).¹
- 2.2 Pay Policy Statements are a requirement under the Localism Act 2011 (sections 38 to 43), to be published on an annual basis by principal councils and FRAs. The purpose of the statement is to provide transparency with regard to a local authority's approach to setting the pay of its employees, by identifying the methods by which salaries are determined. In particular, it must include:
- Policies on all aspects and elements of the remuneration of Chief Officers;
 - The approach to the publication of, and access to, information relating to all aspects of the remuneration of Chief Officers;
 - The council's policy on the remuneration of its lowest paid employees;
 - The relationship between the remuneration of its Chief Officers and other employees.
- 2.3 The Welsh Government has issued guidance to Local Authorities on this matter.
<http://wales.gov.uk/topics/localgovernment/finandfunding/publications/payaccount/?lang=en>.
- 2.4 Pay Policy Statements (PPSs) are designed to cater for decision-making in relation particularly, to the pay of Chief Officers and the lowest paid staff. The position of the Welsh Government, expressed in the PPS

¹ It should be noted that section 64 of the 2013 Act, which enables Welsh Ministers to specify a public body which could be added to those for which the Panel has responsibilities, does not apply in relation to the Panel's responsibilities for Chief Executives' or Chief Officers' pay.

guidance, is decision-making on PPSs takes place in public, is open to scrutiny and is subject to a vote of all Council Members. This is reinforced by the Local Authorities (Standing Orders) (Wales) Regulations 2006 (as amended by the Local Authorities (Standing Orders) (Wales) (Amendment) Regulations 2014), which require a principal council to advertise publicly where it proposes to appoint a Chief Officer and the remuneration it proposes to pay in respect of that role is £100,000 per annum or greater.

- 2.5 In addition to making recommendations about any policy in the authority's PPS which relates to the salary of the CEO, section 143A of the 2011 Measure also provides that the Panel may make recommendations in respect of any proposal to change the salary of a Chief Executive. Principal councils and fire and rescue authorities are obliged to have regard to any recommendation the Panel makes in relation to what is in their PPS concerning Chief Executives' pay. As set out above, this now applies also to chief officers of principal authorities.
- 2.6 Should a Principal council or FRA wish to change the salary of their CEO, or a principal council wish to change the pay of a chief officer, it will have to consult the Panel, unless the change being considered is commensurate with a general pay increase or reduction for "the authority's other staff"². The council or FRA must have regard to the Panel's recommendation when reaching its decision.
- 2.7 The Panel may request any information it needs to assist it to reach a conclusion on the matter and the Council/FRA will be obliged to provide it. The Panel may publish any recommendation it decides to make.
- 2.8 The Panel's recommendation could express approval of the local authority's proposal, express criticism of or concerns about the proposal, or recommend variations of the proposals but it must have regard to this guidance issued by the Welsh Government.

3. The Panel's deliberation

- 3.1 When considering the issue of officers' salaries, it is important that the Panel fully appreciates it is in a fundamentally different position to that in relation to the remuneration of members of local authorities. In the latter situation, the Panel is the final arbiter in the matter. The Panel has the power to set precisely what a member of a local authority should receive,

² For the purposes of this guidance, "staff" can be interpreted as "officers", so does not include, for instance, teachers or front-line employees delivering services.

unless it confines itself to setting maxima instead. However, even in this situation it is the Panel, not the local authority or the Welsh Government, which has the power to make the decisions.

- 3.2. In contrast, in relation to Chief Executives or Chief Officers, the Panel's role is limited to taking a view and making a recommendation. Although the Local authority/authorities concerned must have regard to the recommendation, they are not obliged to follow it. The Local Authorities (Standing Orders) (Wales) Regulations 2006 (as amended by the Local Authorities (Standing Orders) (Wales) (Amendment) Regulations 2014) require any such decision to be made through a vote of full Council. The authority however, under section 143A must notify the Welsh Ministers and the Panel of its response to a recommendation made by the Panel about a change in salary of its CEO. If the Welsh Ministers consider that an authority's response is inconsistent with the Panel recommendation, the authority might be subject to a direction from the Welsh Ministers to re-consider the salary.
- 3.3. Nevertheless, the Panel does not decide what an individual Chief Executive or Chief Officer is paid. This should avoid any need for the Panel to be pulled into negotiations with Trade Unions or professional associations, for instance. Although one cannot rule out the possibility of a legal challenge to a recommendation by the Panel, it is less likely because of the indirect nature of the Panel's relationship to the final decision. It is perhaps more likely, however, in the case of Chief Officers, that the Panel may be subject to pressure from trade unions or professional associations, who may view the Panel's role as intruding into their negotiation process
- 3.4. The Panel is being asked to use its own experience and expertise to arrive at a recommendation in each case that arises. Local authorities are required to provide the Panel with any information it may reasonably require in reaching a conclusion and that provides the Panel with considerable power to gather necessary information. The sort of information the Panel may require could include the following:
 - Papers or reports prepared by the Authority in relation to the matter;
 - Reports or other information provided to the Authority by any consultancy, Trade Union or professional association;
 - Details of the total package available, or under consideration, for the Chief Executive or Chief Officer. This could include the length of contract on offer, pension arrangements, severance package, returning officer fees, performance bonuses, provision for annual and other leave, payment in kind (i.e. cars) and relocation costs. The Panel may also wish to take into account any interdependency of individual salaries within pay structures ;

- Information concerning the remuneration on offer to other Local Authority Chief Executives/Officers. (Note: the Panel are not restricted to only requiring information from the local authority considering a variation in salary).
 - Details of agreements made at the National Joint Council level.
- 3.5 Should there be a situation where, probably as a result of national negotiations, a pay award is made to chief officers across local authorities which differs from that awarded to other staff, the Panel may consider joint or collective approaches from local authorities, rather than each authority needing to separately engage with the Panel. However, this does not fetter the ability of the Panel to make different recommendations to different authorities if they feel so justified.
- 3.6. It is also likely the Panel would wish to take into account more general data relating to prices and incomes, which it may well have available through its relevance to the remuneration of Local Authority members.
- 3.7 The legislation does not restrict the Panel to a purely reactive role. If it wished, the Panel could use its power to make recommendations relating to provisions within local authorities' PPSs irrespective of any proposal to vary the pay of a Chief Executive or Chief Officer provided the recommendation "related to" the salary of the Chief Executive or Chief Officer. The Panel would, however, need to consider whether it had the time and resource to carry out such an exercise and bear in mind that the policy driver behind the provisions in the 2013 Act was related to control over what were viewed as unacceptable decisions in relation to pay increases. Exercising the power in a way that was inconsistent with its purposes, could give rise to legal challenge. However, it does mean any individual or organisation could refer an issue concerning the Chief Executive's or Chief Officer's pay to the Panel for its consideration and the Panel could decide to act on that reference if it felt it necessary.
- 3.8. The Panel needs to be consulted if there is a downward variation being proposed for a Chief Executive's or Chief Officer's pay (unless, as in the case of an increase, it is commensurate with a general approach to officers pay in that Authority). The Panel is likely to take the same type of evidence requirements into account.
- 3.9. Finally, what factors should the Panel take into account in reaching a recommendation? It is for the Panel to make its own assessment of what factors are relevant to the exercise of its discretion in any particular case and how much weight is to be given to them. However, the following paragraphs cover what the Welsh Ministers consider to be key factors to be taken into account by the Panel.

- 3.10. When recruiting Chief Executives and Chief Officers, public sector bodies are obliged to consider what remuneration will be required to recruit and retain the most suitably qualified persons. That is why there is often a large differential between the highest paid individual officer at Chief Executive Officer level and the next level within an Authority. Particularly in relation to Chief Fire Officers, the Panel needs to recognise the professional expertise required for the post and will need to refer to the National Joint Council for Brigade Managers of Local Authority Fire and Rescue Services (“the Gold Book”).
- 3.11. The Panel will need to be sensitive to this but also take a balanced approach. Public acceptability is a legitimate factor for the Panel to take into account, but it should not be given undue weight. Although perceived excesses in remuneration of politicians and public officials have given rise to public controversy, it is understandable any significant increase in pay for an already well-paid post may be criticised at a time when economic circumstances are difficult for many families. The Panel also needs to be aware that one of the reasons for the new duty in relation to chief officers being introduced is to introduce an element of control over any possibility of unreasonable pay rises taking place as mergers approach. Generous increases could have a marked impact on entitlement to redundancy or pension packages.
- 3.12. Salary levels for Chief Executive Officers within comparable local authorities need to be taken into account. In addition, there is a tendency to set arithmetic limits on the differential between the highest and lowest paid staff in an organisation, as well as the differential between the highest and second highest paid. It will be for the Panel to decide whether to take cognisance of this and how much weight to give it.
- 3.13. The Panel will also be able to take into account whether the salary under consideration is reasonable for the area concerned.
- 3.14. In conclusion, the Panel will want to satisfy itself the local authority concerned has made a clear business case for a proposed change and examined the options. The view of the Panel should be taken at the end, not the beginning of the process, in order that the Panel is able to see all the evidence the authority has taken into account in making its proposal. This will be particularly important when an urgent appointment is being considered. If the Panel’s view is required quickly, it will need to have all the background information readily available.