



# Local Government (Wales) Measure 2011

## 2011 nawm 4

### PART 8

#### MEMBERS: PAYMENTS AND PENSIONS

##### *The Independent Remuneration Panel for Wales*

#### **141 The Panel**

- (1) There is to continue to be a panel of persons known as the Independent Remuneration Panel for Wales.
- (2) Schedule 2 has effect in relation to the Panel.

##### *Principal functions of the Panel*

#### **142 Functions relating to payments to members**

- (1) For the financial year beginning 1 April 2012 and for each following financial year, the Panel may decide the relevant matters—
  - (a) for which a relevant authority will be required to make payments to members of the authority;
  - (b) for which a relevant authority will be authorised to make payments to members of the authority.
- (2) Relevant matters are—
  - (a) matters relating to the official business of members of relevant authorities;
  - (b) periods of family absence under Part 2.
- (3) Having exercised that power, the Panel must set for each relevant matter one of the following—
  - (a) the amount that a relevant authority must pay to a member of the authority;

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- (b) the maximum amount that a relevant authority may pay to a member of the authority.
- (4) Having decided the relevant matters for which a relevant authority may be authorised or required to make payments under subsection (1) and set the amount or maximum amount for each matter under subsection (3), the Panel may determine that payments in respect of a particular matter or matters may not be paid to more than a fixed proportion of the members of an authority.
- (5) The proportion fixed by the Panel in accordance with subsection (4) may not exceed fifty per cent unless the consent of the Welsh Ministers has been obtained.
- (6) The Panel may set—
  - (a) the maximum percentage or other rate by which a relevant authority will be entitled to adjust for a financial year the amounts that had effect for the relevant matters for the previous financial year;
  - (b) an index by reference to which a relevant authority will be entitled to adjust for a financial year the amounts that had effect for such of the relevant matters for the previous financial year as the Panel decides.
- (7) The powers under subsection (6) may be exercised so as to—
  - (a) set a rate and an index in relation to the same matter;
  - (b) set different rates or indices in relation to different matters.
- (8) When setting an amount under subsection (3), making a determination under subsection (4) or setting a rate or index under subsection (6), the Panel must take into account what it considers will be the likely financial impact of doing so on relevant authorities.
- (9) The Panel may make different decisions under subsection (1), set different amounts under subsection (3), make different determinations under subsection (4) or set different rates or indices under subsection (6) in relation to authorities of different descriptions or different authorities of the same description.
- (10) For the purposes of subsection (2) a matter relates to the official business of a member of a relevant authority if it is a matter which a member undertakes—
  - (a) as a member of a relevant authority, or
  - (b) as a member of a body to which the member is appointed by, or following nomination by, the relevant authority or a group of bodies including the relevant authority.

### **143 Functions relating to members' pensions**

- (1) This section applies in relation to members of relevant authorities who—
  - (a) are not co-opted members, and
  - (b) are for the time being eligible for membership of a pension scheme in accordance with regulations under section 7 of the Superannuation Act 1972 (local government pension schemes).
- (2) The Panel may decide the descriptions of members to or in respect of whom a relevant authority will be required to pay a pension (a “relevant pension”).
- (3) The Panel may decide the relevant matters in respect of which a relevant authority will be required to pay a relevant pension.

- (4) The Panel may make different decisions in relation to authorities of different descriptions or different authorities of the same description.

#### **144 Relevant authorities, members etc.**

- (1) This section applies for the purposes of this Part.
- (2) An authority is a “relevant authority” if it comes within one of the following descriptions—
- (a) a local authority;
  - (b) a community council;
  - (c) a National Park authority (established under section 63 of the Environment Act 1995) for a National Park in Wales;
  - (d) a Welsh fire and rescue authority, that is an authority in Wales constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies.
- (3) A reference to a description of a relevant authority is to be read with subsection (2).
- (4) “Member”, in relation to a relevant authority, includes—
- (a) an elected mayor of the authority (within the meaning of section 39(1) of the Local Government Act 2000),
  - (b) an elected executive member of the authority (within the meaning of section 39(4) of that Act), and
  - (c) a co-opted member of the authority.
- (5) “Co-opted member”, in relation to a relevant authority, means a person who is not a member of the authority (except by virtue of subsection (4)) but—
- (a) is a member of a committee or sub-committee of the authority or is a member of, and represents the authority on, a joint committee or joint sub-committee of the authority, and
  - (b) is entitled to vote on questions for decision at meetings of that committee or sub-committee.

#### *Reports by the Panel*

#### **145 Annual reports**

- (1) The Panel must publish a report (an “annual report”) about the exercise of its functions with respect to each financial year.
- (2) An annual report may impose requirements (including, amongst other things, requirements to make payments) on relevant authorities.

#### **146 First annual report**

- (1) The first financial year for which the Panel must publish an annual report under section 145 is the financial year beginning 1 April 2012.
- (2) The report for that financial year (“the first annual report”) must be published no later than 31 December 2011.

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- (3) The first annual report must specify—
  - (a) the relevant matters,
  - (b) the amounts set under section 142(3),
  - (c) the proportion determined under section 142(4),
  - (d) the members of relevant authorities to or in respect of whom relevant authorities will be required to pay a relevant pension, and
  - (e) the relevant matters in respect of which a relevant pension is payable.
- (4) After publishing the first annual report but before publishing the second annual report, the Panel may publish one or more supplementary reports.
- (5) A supplementary report under this section may vary the provision made in the first annual report for the purposes of subsection (3)(a), (b), (c), (d) or (e).
- (6) In preparing a supplementary report under this section, the Panel must take into account—
  - (a) the first annual report and any supplementary reports relating to it, and
  - (b) the representations the Panel received about the reports referred to in paragraph (a).
- (7) Before publishing the first annual report or a supplementary report under this section, the Panel must—
  - (a) send a draft to
    - (i) the Welsh Ministers,
    - (ii) those relevant authorities which are required or authorised by the Panel to make payment to their members in respect of relevant matters, and
    - (iii) such other persons as the Panel considers appropriate,
 and,
  - (b) take into account the representations it receives about the draft.
- (8) The provisions of the first annual report or a supplementary report under this section come into force on the date specified for that purpose in the report; but the report may not specify a date earlier than the last day of the period of three months beginning with the day after the date of publication.

#### **147 Subsequent annual reports**

- (1) This section applies in relation to annual reports after the first annual report.
- (2) An annual report must be published no later than—
  - (a) 31 December in the financial year preceding that to which the report relates, or
  - (b) such later date as the Panel and the Welsh Ministers may agree.
- (3) An annual report must specify—
  - (a) by reference to the amount having effect for each relevant matter, such rate or index as is set under section 142(6), and
  - (b) the descriptions of members of relevant authorities to or in respect of whom relevant authorities will be required to pay a relevant pension.
- (4) An annual report may vary the provision made in the first annual report for the purposes of section 146(3)(a), (b), (c), (d) or (e).

- (5) After publishing an annual report but before publishing the next annual report, the Panel may publish one or more supplementary reports.
- (6) A supplementary report under this section may—
  - (a) vary the provision made in the annual report to which the supplementary report relates for the purposes of subsection (3)(a) or (b) (and may make provision for those purposes to the extent that the annual report does not);
  - (b) vary the provision made in the first annual report for the purposes of section 146(3)(a), (b), (c), (d) or (e) (or that provision as varied by virtue of subsection (4)).
- (7) In preparing an annual report or a supplementary report under this section, the Panel must take into account—
  - (a) the previous annual report and any supplementary reports relating to it;
  - (b) the representations the Panel received about the reports referred to in paragraph (a).
- (8) Before publishing an annual report or a supplementary report under this section, the Panel must—
  - (a) send a draft to the
    - (i) Welsh Ministers,
    - (ii) those relevant authorities which are required or authorised by the Panel to make payment to their members in respect of relevant matters, and
    - (iii) such other persons as the Panel considers appropriate,and,
  - (b) take into account the representations the Panel receives about the draft.
- (9) The provisions of an annual report or a supplementary report under this section come into force on the date specified for that purpose in the report; but no report may specify a date earlier than the last day of the period of three months beginning with the day after the date of publication.

#### **148 Consultation on draft reports**

- (1) The Panel must not publish an annual report or a supplementary report before the end of the period of eight weeks beginning with the day on which it sends a draft of the report in accordance with section 146 or 147.
- (2) The Panel must, when it sends a draft of a report in accordance with either of those sections, place an electronic copy of the draft on its website.

#### **149 Directions to vary draft reports**

- (1) The Welsh Ministers may direct the Panel to reconsider a provision of a draft report.
- (2) A direction under this section must specify—
  - (a) the provision,
  - (b) the reason for giving the direction, and
  - (c) the date by which the Welsh Ministers require the Panel to respond.
- (3) The Panel—

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- (a) must respond to the direction no later than the date specified for the purposes of subsection (2)(c);
  - (b) may not publish the report before having responded to the direction.
- (4) If the Panel decides not to vary the draft in accordance with the direction, it must specify in its response the reason for its decision.

### **150 Administrative requirements in reports**

- (1) An annual report may impose on relevant authorities requirements for avoiding—
- (a) duplication of payments made in respect of relevant matters;
  - (b) duplication as relevant matters of matters relating to the official business of members.
- (2) For the purposes of a case where a member of a relevant authority does something which relates to another relevant authority (as well as the authority to which the member belongs), and for which a payment in respect of a relevant matter must be made to the member, an annual report must set out how to determine which of the authorities will be required to make the payment.
- (3) An annual report may impose on relevant authorities requirements for keeping—
- (a) records of requests for payments in respect of relevant matters;
  - (b) records of payments made in respect of relevant matters;
  - (c) records of payments made in respect of relevant pensions.

### **151 Publicity requirements in reports**

- (1) An annual report may impose on relevant authorities requirements for making arrangements for publishing information of a specified description—
- (a) about payments made in respect of relevant matters;
  - (b) about payments made in respect of relevant pensions.
- (2) The report may require different arrangements to be made by authorities of different descriptions or different authorities of the same description.

### **152 Publicising reports**

- (1) If the Panel publishes a report, it must notify—
- (a) such persons as it considers are likely to be affected by the report, and
  - (b) such broadcasters and such members of the press as it considers appropriate.
- (2) The Panel must secure reasonable availability of its reports to persons generally.
- (3) Subject to subsections (1) and (2), the Panel may decide how to publicise its reports.
- (4) In this section, “report” (except in relation to subsection (1)(b)) includes a draft of a report; and “publish”, in relation to a draft, means send to the persons to whom the draft is required to be sent under section 146 or 147.

### *Payments by relevant authorities*

#### **153 Compliance with Panel’s requirements**

- (1) A relevant authority must comply with the requirements imposed on it by an annual report.
- (2) The Panel may monitor the making of payments by relevant authorities in respect of relevant matters; and in so doing the Panel may require a relevant authority to provide it with such information as it specifies about—
  - (a) the matters which are relevant matters in relation to the authority;
  - (b) requests to the authority for payments in respect of relevant matters;
  - (c) payments made by the authority in respect of relevant matters.
- (3) The Panel may monitor the making of payments by relevant authorities in respect of relevant pensions; and in so doing the Panel may require a relevant authority to provide it with such information as it specifies about—
  - (a) the members of the authority to or in respect of whom the authority is required to pay relevant pensions;
  - (b) payments made by the authority in respect of relevant pensions.
- (4) A relevant authority must comply with a requirement imposed on it under subsection (2) or (3).

#### **154 Members wishing to forgo payments**

- (1) This section applies if a member of a relevant authority elects, by notice in writing given to the proper officer of the authority, to forgo (either completely or to the extent specified in the notice) entitlement to payments in respect of such relevant matters as are specified in the notice.
- (2) The requirement imposed on the authority by an annual report to make payments in respect of such relevant matters as are specified in the notice does not apply in the case of that member (or does not apply in that case to the extent specified in the notice); and section 153(1) is to be read accordingly.
- (3) “Proper officer” has the meaning given in section 270(3) of the Local Government Act 1972.

#### **155 Withholding payments**

- (1) A relevant authority must not make payments in respect of relevant matters or a relevant pension to a person who is suspended or partially suspended from being a member of the authority by virtue of Part 3 of the Local Government Act 2000 (conduct of local government members etc.).
- (2) The Welsh Ministers may, in such other cases as they consider appropriate, direct a relevant authority not to make payments (including in respect of pensions) in respect of such relevant matters as are specified in the direction.
- (3) Before giving a direction under subsection (2), the Welsh Ministers must consult the Panel.

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- (4) A direction under subsection (2) is enforceable by mandatory order on the application of the Welsh Ministers.
- (5) A relevant authority may require the repayment of payments made in respect of relevant matters or a relevant pension to a person in respect of a period during which that person was not entitled to receive the payment for any reason, including (but not limited to) any of the following reasons—
  - (a) the payments were made in breach of the prohibition in subsection (1);
  - (b) the payments were made in breach of a direction under subsection (2);
  - (c) the person had ceased to be a member of the authority.

### *Enforcement*

#### **156 Directions to comply with requirements**

- (1) If the Welsh Ministers are satisfied that a relevant authority has failed to comply with a requirement relating to relevant matters which is imposed on it by or by virtue of this Measure, they may direct the authority to comply with the requirement.
- (2) A direction under this section must specify—
  - (a) the requirement;
  - (b) the reason for giving the direction;
  - (c) the steps that the Welsh Ministers require the authority to take;
  - (d) the date by which the Welsh Ministers require the authority to take the steps.
- (3) A direction under this section is enforceable by mandatory order on the application of the Welsh Ministers.

### *Supplementary*

#### **157 Guidance**

- (1) The Panel may give guidance about how to comply with requirements imposed by annual reports.
- (2) The power of the Panel to give guidance under subsection (1) includes the power to vary or revoke guidance given.
- (3) A relevant authority must have regard to guidance given under subsection (1).

#### **158 Power to modify provision about Panel**

The Welsh Ministers may by order make modifications of this Part so as to—

- (a) add, vary or omit provision about the Panel’s membership, the tenure of its members, or its procedures;
- (b) add, vary or omit provision conferring or imposing a function on the Panel.

#### **159 Interpretation of Part 8**

- (1) In this Part—



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“annual report” (“*adroddiad blynyddol*”) has the meaning given in section 145;

“co-opted member” (“*aelod cyfetholedig*”), in relation to a relevant authority, has the meaning given in section 144;

“financial year” (“*blwyddyn ariannol*”) means a period of 12 months ending with 31 March;

“member” (“*aelod*”), in relation to a relevant authority, has the meaning given in section 144;

“the Panel” (“*y Panel*”) means the Independent Remuneration Panel for Wales;

“relevant authority” (“*awdurdod perthnasol*”) has the meaning given in section 144 (and a reference to a description of a relevant authority is to be read in accordance with that section);

“relevant matter” (“*mater perthnasol*”) has the meaning given in section 142;

“relevant pension” (“*pensiwn perthnasol*”) has the meaning given in section 143.

- (2) The references in sections 153, 154 and 157 to requirements imposed by an annual report include a reference to requirements included in an annual report by a supplementary report.

## **160 Consequential amendments**

Schedule 3 (payments and pensions: minor and consequential amendments) has effect.