

Summary of key provisions of the Local Government and Elections (Wales) Act 2021 for the Community and Town Council Sector

Introduction

The Local Government and Elections (Wales) Act 2021 (“the Act”) provides for the establishment of a new and reformed legislative framework for local government elections, democracy, performance and governance.

The major package of reforms includes electoral reform, a general power of competence for principal councils and eligible community councils; more consistent and coherent collaboration and joint working; voluntary mergers and increasing public participation in local government.

The Act received Royal Assent on 20 January 2021 and provides for a phased approach to introducing various provisions. Where dates of coming into force for particular provisions are known, they have been specified in the summary below.

The following summary identifies areas that are likely to be of interest for community and town councils.¹

Elections

Votes for 16 and 17 year-olds and EU Citizens and citizens of other countries

The Act provides for the extension of the local government franchise to allow 16 and 17 year-olds to be able to register to vote in Welsh local government elections and any poll in Wales which uses the local government franchise such as mayoral elections and referendums.

For the first time in May 2021, 16 and 17 year olds and legally resident foreign citizens are allowed to vote in the Senedd elections. They will also be able to vote in the 2022 local government elections. They will not be able to vote in any local government by-elections taking place before May 2022.

The Act extends the local government franchise to citizens from any country provided that they meet the criteria set out in Section 4(3) of the *Representation of the People Act, 1983 (RPA)* and can satisfy the local Election Registration Officer (ERO) that they are resident in the area in which they wish to register and vote, under Section 5 of RPA 1983.

¹ This is not a complete list of the provisions in the Act. For the full Act please see: <https://www.legislation.gov.uk/asc/2021/1/section/47/enacted>. For the full explanatory memorandum see: <https://senedd.wales/laid%20documents/pri-ld12877-em/pri-ld12877-em-e.pdf>

The voting system for county and county borough council elections - offering a choice: First Past the Post or Single Transferable Vote

The Act provides that each principal council may decide for itself on the voting system to use, whether FPTP or STV. A principal council will continue to use the existing FPTP voting system until such time as it may decide to change. A decision to change a voting system will require the support of at least two-thirds of the total number of councillors on the council (whether or not present and voting on a proposal to change). If a council has considered and rejected a proposal to change the voting system, the council may not re-visit the issue during the same electoral cycle.

Having changed to a different voting system a principal council is prevented from moving back until at least two ordinary elections have been held under the new system.

A change from one voting system to another would require a fresh electoral arrangements review of the council area, which would be undertaken by the Local Democracy Boundary Commission Wales (LDBCW).

The first election a principal council could use the STV system for is the ordinary local government elections in 2027.

The voting system for community council elections remains First Past the Post.

Five Year Terms

The Act changes the electoral cycle of principal councils and community councils from four to five-year terms. This would bring local government elections into line with the five-year terms for the UK Parliament (as set in the Fixed Term Parliaments Act 2011) and for the Assembly in GoWA 2006.

Electoral registration

The Act provides for a power for EROs to add an individual to the electoral register without the need for them to apply. EROs would be encouraged to obtain information/data of individuals not included on the electoral register from sources such as council tax records. Where the registration officer is satisfied that the information about a person not in the register of local government electors is correct and is entitled to be registered, the officer may decide to register the person without an application, subject to certain requirements. The registration office would be required to notify the individual that they will be included on the register. These provisions are not currently in force, the Welsh Government will continue to work with the electoral community to ensure any and all issues have been considered and resolved before enacting these provisions by Order.

Candidacy

The Act amends the eligibility criteria for candidates at local government elections to allow a citizen of any country to stand for election. This is subject to the other qualifying criteria, such as age and residence. All disqualification criteria will continue to apply.

Allowing council staff to stand for their own council

The Act provides that council officers and employees, other than those holding politically restricted posts, will be entitled to stand for election to their own council. They will only be required to resign their paid employment with the council if they are elected. This will widen the pool of potential candidates while ensuring there is no conflict of interest once the candidate is elected.

Disqualification criteria for standing as a councillor

The Act amends the disqualification provisions in Wales to disqualify individuals, from standing for election, or holding office as a member of a principal council or community council in Wales, if they are subject to a the notification requirements of, or an order under, the Sexual Offences Act 2003.

General Power of Competence

The Act provides eligible community councils with a general power of competence, with the aim of bringing about more effective, capable and innovative local government.

The general power will allow eligible community councils to act in their communities' best interests, generate efficiencies and secure value for money outcomes. They will also be able to raise money by charging for discretionary services and to trade.

It is considered the general power will allow eligible community councils to be more innovative, and move away from a position where they have to identify a specific power in order to undertake a particular activity, to one in which it is assumed they can do something unless there is a statutory restriction preventing it.

The conditions which community councils must meet, in order to be able to resolve themselves an 'eligible community council' are:

- at least two-thirds of the total number of members of the council have been declared to be elected whether at an ordinary election or at a by-election,
- the clerk to the council holds such qualification or description of qualification as may be specified by the Welsh Ministers by regulations, and
- the council satisfies the audit condition.

The audit condition is satisfied if:

- the most recent Auditor General for Wales' (AGW) opinion on the council's accounts:
 - is an unqualified AGW opinion on the council's accounts, and
 - was received by the council during the 12 month period ending on the day on which the council passes the resolution to become an eligible community council
- the AGW's opinion on the council's accounts which immediately preceded the opinion mentioned above is also an unqualified opinion.

The power to exercise the general power of competence for eligible community councils will come into force on 5 May 2022. Ahead of this, there will be consultation on guidance and the regulations specifying a 'relevant professional qualification' for a clerk. It is envisaged that this will be a sector specific qualification such as the Certificate in Local Council Administration (CiLCA).

It is intended that the well-being power, provided in section 2 of the Local Government Act 2000, will be repealed when the provisions relating to the general power of competence are brought into force for eligible community councils on 5 May 2022. Until the well-being power is repealed community councils can continue to use the power. Anything which is started by councils before, and is ongoing at, the time the well-being power is repealed can continue under this power until that thing is completed or until a council resolves to become an eligible community council. However nothing new may be started using the well-being power after it is repealed.

Public participation

The intention is to encourage a more diverse range of members of the public to engage with local democracy. Principal councils are required to prepare, consult on, publish and review a 'public participation strategy', with the aim of making it easier for members of the public to understand how local government functions; how it makes decisions; and how local people can follow proceedings, input their views, and have them taken into account. These provisions will come into force in May 2022. There is no requirement for a community council to make a public participation strategy; though they should consider how they enable public participation to take place.

Petition Scheme

Principal council are also required make a petition scheme setting out how it will handle and deal with petitions, including e-petitions. These provisions will come into force in May 2022. There is no requirement for a community council to have a petitions scheme.

Access to meetings

The Act makes it easier for meetings to take place through a variety of arrangements, including multi-location meetings where all individuals are attending

virtually and hybrid meetings - where a number of individuals are attending in person at a designated location and others are attending virtually from a range of other locations. The Act makes permanent provision for remote meetings (multi-location) and electronic publication of documents, currently provided through The Local Authorities, (Coronavirus) (Meetings) (Wales), Regulations 2020 Act and it is intended to have effect from 1 May 2021 to dovetail with the expiry of The Local Authorities, (Coronavirus) (Meetings) (Wales), 2020 Regulations. These provisions will also apply to community councils.

The electronic publication of documents extends to include making available key information as soon as reasonably practicable, and within seven working days of the community council meeting taking place, and must include: the names of members who attended; apologies for absence; declarations of interest; any decisions taken and the outcome of any votes. This would not apply to any decisions taken in private, or where disclosure of the information would be contrary to any enactment.

Participation

From 5 May 2022 people presiding over community and town council meetings that are open to the public must give members of the public in attendance reasonable opportunity to make representation about any business being discussed at the meeting, unless this is likely to prejudice the effective conduct of the meeting.

Community Council Annual Reports

From April 2022 community and town councils will have a duty to prepare and publish a report about the council's priorities, activities and achievements. The first report must relate to the financial April 2021- March 2022 and be published as soon as reasonably practicable after April 2022.

Conduct of members

The duty on political group leaders in principal councils, as outlined here does not extend to community and town councils. From May 2022 Leaders of political groups must take reasonable steps to promote and maintain high standards of conduct by the members of their group. In doing so, a group leader must co-operate with the principal council's standards committee in the exercise of its functions to promote and maintain high standards of conduct. In turn, a principal council's standards committee has new functions under the Act to ensure group leaders have access to advice and training to support their new duties and to monitor group leaders' compliance with those duties.

It is already the case that all community councils are required to adopt a code of conduct and all community councillors are expected to have high standards of conduct whether they are part of a political group or not

Training of members and staff of community councils

Community and town councils will have a duty to consider training from 5 May 2022 for councillors and community council staff, and publish the first training plans by November 2022.

It is not the intention to ensure that each and every councillor necessarily receives training on the same subjects but to seek to bring about a situation where the councillors as a group, and the staff collectively, possess the knowledge and awareness they need to operate effectively. This takes into account that some community councils have only one member of staff, the clerk, and some smaller community councils actually share their clerk with one or more other community councils.

Abolition of community polls

The Act provides for the abolition of community polls, and implementation of a system of petitions in their place. The exception is community governance polls, those which enable a community to hold a poll in respect of a proposal to establish or dissolve a community council or to group with other communities under a common community council.

Local Democracy and Boundary Commission

The LDBCW has the power to make recommendations to the Welsh Ministers about changes to areas and electoral arrangements following a review. The Act gives the LDBCW the responsibility of appointing its own chief executive, although it also provides powers for the Welsh Ministers to appoint the chief executive where the position has been vacant for six months or more, consulting with the LDBCW before making the appointment.

The Act also amends section 48 of the 2013 Act to provide a power for the Welsh Ministers to direct the LDBCW not to conduct or stop a review under the 2013 Act.

Public Services Boards

The WFGA (Wales) 2015 Act provides for PSBs to merge if they wish to do so but it does not enable PSBs which have merged, to demerge, or partially demerge at a later date. The Act takes steps to address this inflexibility and to provide for steps to be taken following merger and demerger.