

Quick guide to the Local Government and Elections (Wales) Act 2021

Research Briefing

October 2021



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Contents

1. Overview	1
2. Introduction	2
3. Key provisions in the Act	3
Part 1 – Elections	3
Part 2 – General Power of Competence	4
Part 3 – Promoting Access to Local Government	5
Part 4 – Local Authority Executives, Members, Officers and Committees	7
Part 5 – Collaborative Working by Principal Councils	8
Part 6 – Performance and Governance of Principal Councils	10
Part 7 – Mergers and Restructuring of Principal Areas	11
Part 8 – Local Government Finance	12
Part 9 – Miscellaneous	13
Part 10 – General	13

1. Overview

The Local Government and Elections (Wales) Act 2021 ('the Act') was **passed by Senedd Cymru on 18 November 2020**. It received **Royal Assent** on 20 January 2021.

The Welsh Government's stated purpose for the Act, as noted in its **Explanatory Memorandum** is to:

- 'provide local government with new ways to support and serve their communities'; and
- to 'reinvigorate local democracy in Wales'.

The Act makes changes to the legislative framework for local government elections, democracy, performance and governance.

A key provision in the Act is the extension of the right to vote in local elections for 16 and 17-year-olds and foreign citizens legally resident in Wales. This change in the franchise mirrors the provisions in the **Senedd and Elections (Wales) Act 2020**, which extended voting rights for Senedd elections.

This Research Briefing provides an overview of the key provisions in the Act.

2. Introduction

On 18 November 2019, the previous Welsh Government introduced the **Local Government and Elections (Wales) Bill** and an accompanying **Explanatory Memorandum**. The Explanatory Memorandum incorporates a Regulatory Impact Assessment and Explanatory Notes.

On **introduction**, the then Minister for Housing and Local Government, Julie James MS, stated that the Bill would:

Deliver a major package of reforms to the way in which devolved elections are run and the governance framework of local government.

The Act seeks to reform and strengthen local government accountability, performance and transparency, and places new duties on principal councils to promote public participation in local democracy. The Welsh Government also anticipate that some of the provisions within the Act will **encourage greater diversity in local government**.

In addition to extending the electoral franchise, the Act also enables each individual principal council (that is the 22 county or county borough councils) to decide which of two voting systems - first past the post or single transferrable vote – to use for local elections.

The Act provides principal councils and eligible community councils with additional powers, known as the general power of competence. These powers enable qualifying councils to ‘act in their communities’ best interests’ without the need to identify specific legislative powers to undertake a particular activity.

There are also new powers for the Welsh Ministers to facilitate **greater collaboration** between principal councils. The aim according to the Welsh Government is to ensure ‘more consistent and coherent regional working mechanisms.’ This increased collaborative working will be driven by new regional Corporate Joint Committees (CJCs).

3. Key provisions in the Act

Part 1 – Elections

Part 1 of the Act contains significant local government electoral reforms.

The Act **extends the right to vote** for 16 and 17-year-olds and **foreign citizens legally resident in Wales** for local government elections. This aligns with the Senedd and Elections (Wales) Act 2020, which saw 16 and 17-year-olds voting for the first time in the May 2021 Senedd election.

This Part of the Act allows county and county borough councils to choose from one of **two voting systems** for local elections, and it also changes the local government **electoral cycle** from 4 to 5 years. It also provides for an alternative system to **register local government electors**.

Part 1 enables:

- Principal councils to choose whether they wish to use the first past the post method (the ‘simple majority’ system currently in use) or the Single Transferable Vote (STV).
STV is a form of proportional representation, currently in use in Scottish local government elections and in all Northern Irish elections (excluding Westminster elections). Further detail on STV can be found on the [Electoral Reform Society website](#).
- To align with current electoral cycles (Westminster, Senedd, Police and Crime Commissioners for example) the Act changes the statutory cycle for local government elections from 4 to 5 years. This includes community and town council elections. The next local government elections are due to be held in May 2022.
- Electoral Registration Officers (EROs) will now be able to add an individual to the local government electoral register without the need for them to apply. The ERO would need to be satisfied that they have reliable information that an individual is eligible for automatic registration.

Other key provisions in Part 1 include changes to **qualification** and **disqualification** criteria for individuals standing for election:

- Council employees and officers, including teachers, have previously been disqualified from standing for election in the council area where they are employed. In order to stand for election, they would need to resign from their paid employment.

The Act changes the rules to allow council employees (other than those holding politically restricted posts) to stand for election. They would not need to resign their paid employment with the council to do this.

- The Act also updates the disqualification provisions in Wales. Anyone subject to the notification requirements of, or an order under, the Sexual Offences Act 2003 are barred from standing for local elections or holding office. This is the same whether elected as a member of a principal council or community or town council in Wales.

Part 2 – General Power of Competence

Part 2 contains provisions establishing a **general power of competence** for local government.

Chapter 1 of Part 2 of the Act sets out the boundaries of the general power for qualifying authorities (principal councils and eligible community councils). This includes the financial limits and use of the power when used for commercial purposes.

What the General Power of Competence means for qualifying local authorities?

- Local government powers and duties are not set out in any single piece of legislation, but have been conferred upon them over time. Local government functions are as a result, limited by legislation.
- It'll mean that qualifying authorities (that is the 22 principal councils and eligible community councils) will no longer be required to identify a specific power in order to undertake a particular activity. Instead, they will be in a position in which it is “assumed they can do something unless there is a statutory restriction preventing it”.

Chapter 2 of Part 2 of the Act sets out the conditions which a community council must meet, together with the procedure they must follow, in order to become an **eligible community council**.

The provisions in this chapter, according to the Welsh Government, will ensure community councils are 'suitably equipped to handle current and future challenges'.

However, for a community council to be eligible to exercise the general power of competence, it would need:

- at least two thirds of the community council to have been elected;
- that the clerk to the council holds qualifications as specified by the Welsh Ministers in regulations; and
- the council must also have received an 'unqualified' opinion on the council's most recent accounts by the Auditor General for Wales, as well as on the accounts which immediately preceded it.

Only after the above criteria have been met can a community council pass a resolution that it is an eligible council.

As this Act repeals the well-being powers in the Local Government Act 2000 in full, community councils that have not resolved themselves eligible for the general power of competence, will not be able to exercise either power.

Community councils will still be able to use the full scope provided by **section 137(1) of the 1972 Act** to incur expenditure for certain purposes not otherwise authorised, subject to the existing financial restriction.

Part 3 – Promoting Access to Local Government

Part 3 of the Act places a duty on principal councils to **promote** and **encourage** participation in council decision-making. It does this by placing requirements on all principal councils to prepare and publish a **public participation strategy**. The strategy sets out how the council will comply with the new duties.

The strategy must address the following:

- how the council intends to promote awareness of its functions to its residents;
- how it will facilitate processes for local people to make representations; and

- how the council will promote awareness of how to become a member of the council.

Other provisions aimed at promoting participation include:

- establishing a **petition scheme** and processes to respond to a petition; and
- a duty to publish **official addresses** (electronic and postal) for members of the council.

The latter duty is aimed at ensuring elected members are freely accessible to the public, whilst also protecting the privacy of individual member home addresses. However, elected members can choose to continue to use their home address as their official address.

The Act makes several changes to **enable greater access to local government meetings**. The Welsh Government believes people should be able to watch and access council meetings at any time, whether this is full council meetings, or meetings of committees and sub-committees for instance.

The Act places a requirement on all principal councils to broadcast council meetings that are open to the public, and to make these available for a specified period. The Act also enables other local government meetings to be broadcast, such as Fire and Rescue Authority and National Park Authority meetings. The duty to broadcast meetings does not extend to community and town councils.

There are also changes to arrangements for **elected member attendance** at local authority meetings. These arrangements also apply to community and town councils, fire and rescue, National Parks and port health authorities in Wales.

The original aim of the provision in the Bill was to make it easier for Members to attend meetings remotely. Local authorities would have had the freedom to specify the conditions for the operation of remote attendance in their standing orders. These provisions were amended significantly at Stage 3 of the Bill's passage through the Senedd. It reflected the rapid shift to virtual working and subsequent procedural changes for conducting local government business as a result of the pandemic. Moving the motion in the Senedd, the **former Minister for Housing and Local Government stated** (10 November 2020):

In response to the pandemic, we made emergency regulations in April so as to allow local government bodies to meet remotely... These bodies would not have been able to meet legally and safely, or continue their business during the pandemic, without this intervention. Warmly welcomed by stakeholders, these regulations have resulted in other

benefits Local government bodies have been able to work more flexibly and efficiently and decision-making processes have been made accessible to a much wider audience.

There are some specific provisions for community councils in this Part too in order to improve public participation at community council meetings. The Act ensures that the public in attendance have a reasonable opportunity to make representations about council business of the day.

The Act also requires community councils to publish annual reports about the **council's priorities, activities and achievements** during the year.

Part 4 – Local Authority Executives, Members, Officers and Committees

Part 4 of the Act makes various amendments to existing legislation around roles and functions of officers and elected members.

It enables the executive (the Cabinet) of a principal council to appoint members as **assistants** to the executive and facilitates **job-sharing** for executive leaders and executive members. The Act also enables the Welsh Ministers to make regulations to facilitate job-sharing of certain principal council offices. This includes the chair or presiding member of a principal council and chairs and vice-chairs of committees.

This part of the Act also makes changes to the entitlement of members of principal councils to **family absence**, bringing them in line with updated UK employment law.

There are new duties placed on **leaders of political groups** to promote and maintain high standards of conduct by members of their group. In line with this, principal council standards committees have new functions to monitor compliance of political groups and provide advice and training for leaders on matters relating to their new duties.

One of the key aims of the provisions in Part 4 is to promote and increase diversity of representation within council executives and certain offices. The role of **assistant to the executive**, for example, seeks to provide less experienced members, or those unable to commit time to a senior role with opportunities to gain valuable experience. Assistants will not be remunerated or be able to vote on decisions taken by the executive.

Similarly, **job-sharing** of certain positions within a principal council aims to provide members with opportunities to take on higher profile roles that they may

otherwise be unable to do. Provisions in the Act allow the current maximum size of the executive (10) for instance, to be exceeded up to a maximum of 13, where it is caused by appointments on a job-sharing basis.

The [Local Government \(Wales\) Measure 2011](#) introduced a system of **family absence** for members of principal councils in Wales. This was similar to entitlements available to council officers. The change in 2011 sought to remove some of the barriers to those with family responsibilities wishing to stand for election. It also enabled elected members to be absent from meetings of the council during a period of family absence. Some statutory arrangements for family leave have moved on since 2011, and the provisions in the Act bring them into step with current UK law.

Other provisions in this section include:

- powers to require principal councils to establish joint-scrutiny committees where services are provided across council areas;
- a requirement on community councils to make and publish a training plan for community councillors and its staff;
- a duty on standards committees to make an annual report describing how the committee's functions have been discharged during the financial year;
- requirements on principal councils to appoint a chief executive (rather than designate a head of paid service), and about the remuneration of chief executives; and
- amendments to the [Local Government Act 2000](#) to make provision about investigations by the [Public Services Ombudsman for Wales](#) into the conduct of members of local government.

Part 5 – Collaborative Working by Principal Councils

Local authorities have, for many years, worked closely with each other and with various partners, forming local and regional partnerships. Several partnerships have a statutory footing, while others are a mix of formal and informal multi-agency partnerships. The partnership landscape has nevertheless become increasingly complex, and the Welsh Government, through this Act, sought to **establish a framework** that will:

Support and encourage regional working and collaboration through a more coherent, consistent, simplified and democratically controlled mechanism.

Part 5 of the Act establishes a framework for **greater regional working** between principal councils. The Act allows **Corporate Joint Committees** (CJCs) to be established via two routes:

- at the instigation of two or more principal councils (Requested joint committee regulations); and
- at the instigation of the Welsh Ministers (Joint committee regulations where no request has been made).

Corporate Joint Committees will be able to directly employ staff, hold assets and manage finances.

The Welsh Ministers can only specify certain functions to be exercised by corporate joint committees established where no request has been made. These are:

- improving education;
- strategic transport planning;
- the function of preparing a strategic development plan; and
- the economic well-being function.

A CJC granted the economic well-being function may do anything which it considers is likely to promote or improve the economic well-being of its area. CJCs can also request that regulations be made adding or removing functions from a CJC, but only in areas specified within the Act.

In February 2021, the **Welsh Ministers laid regulations instigating the establishment of four CJCs** in Wales:

- **The North Wales Corporate Joint Committee;**
- **The Mid Wales Corporate Joint Committee;**
- **The South West Wales Corporate Joint Committee;** and
- **The South East Corporate Joint Committee.**

The four CJCs will be able to exercise functions relating to strategic development planning, regional transport planning and promote the economic well-being of their area. Improving education has not been specified within the Regulations as a function to be exercised by the CJCs.

Other provisions within this Part of the Act relate to the process of amending, modifying and revoking regulations or existing legislation and making guidance about collaborative working. This is in order to deliver the policy intent of

simplifying regional arrangements.

Part 6 – Performance and Governance of Principal Councils

Before the passing of the 2021 Act, the improvement programme for principal councils was driven by the [Local Government \(Wales\) Measure 2009](#). The Welsh Government's [EM](#) described that improvement regime as 'process orientated', focussing on 'activity or outputs which can be easily measured'.

Chapter 1 in Part 6 of the Act provides for an **enhanced improvement regime** for principal councils. It [seeks to](#) 'establish a more regularised performance and governance system that puts the onus on the principal council to take ownership of its own improvement'.

Each principal council is now required to undertake an annual review of the extent it is exercising its functions effectively, and whether it is using its resources efficiently. A report on the council's performance must be published and sent to the Welsh Ministers, the Auditor General for Wales (AGW), and Her Majesty's Chief Inspector of Education and Training in Wales (ESTYN). As part of the annual review process, each principal council is required to consult with residents, businesses and council staff about its performance, and to make arrangements for an **external panel**, appointed by the council, to assess its performance. A panel performance assessment must take place at **least once** between two consecutive ordinary local council elections.

There is an additional power for the AGW to conduct a special inspection if a council is not meeting performance requirements. The AGW is required to report on the outcomes of a special inspection, and to include any recommendations for the council or the Welsh Ministers to act.

There are also provisions in this Chapter that enable the Welsh Ministers to provide principal councils with support and assistance if they are not meeting their performance requirements. The Welsh Ministers can direct a principal council to provide another principal council with support and assistance. This may include provision of staff, goods and services.

Chapter 2 amends existing provisions in the [Local Government \(Wales\) Measure 2011](#) about the membership of the newly named Governance and Audit Committees. These committees have an important role in scrutinising the financial affairs and corporate governance of councils. They must be independent of the Executive of the council and under the 2011 Measure, are required to include

at least one ‘lay member’. A lay member is a financially competent, independent individual who is not an officer or member of a principal council.

The 2021 Act makes it mandatory for the principal council ensure **one-third of members** on Governance and Audit Committees are lay members. It also places a duty on the committee to appoint a lay person as its Chair, and requires that the Deputy Chair is not a member of the Executive or assistant to it.

The final Chapter in Part 6 seeks to ensure that the AGW and the relevant regulators (ESTYN and Care Inspectorate Wales) coordinate their relevant functions. The aim, according to the **EM** is to ‘promote effective working between the relevant regulators in order to minimise the burden on local government’.

Part 7 – Mergers and Restructuring of Principal Areas

Part 7 of the Act enables two or more principal councils to apply to the Welsh Ministers to **voluntarily merge**. The new provisions were required because existing powers in the **Local Government (Wales) Act 2015** were time limited and could no longer be used.

The decision to make an application for a voluntary merger can only be made by the full council of each principal council in question. It is also a requirement to consult with residents and key stakeholders before making a merger application.

The Act enables Welsh Ministers to make regulations in order to abolish the principal councils named in the application, and to create a new council area. The regulations will also need to provide for a shadow council, which will make important decisions in advance of the new merged council coming into being. This includes setting the budget and council tax for the first year and overseeing the appointment of the senior management team. Such decisions will allow the new council to function effectively and lawfully from day one.

There are also provisions that allow the Welsh Ministers to make **restructuring regulations** to merge two or more principal councils where there are ‘no willing partners’. Currently, a principal council facing serious difficulties **cannot apply** to the Welsh Ministers to allow it to merge with one or more of its neighbours.

Several conditions set out in section 129 of the Act must be met before restructuring regulations can be made. These include:

- a report of a special inspection of a principal council by the AGW, or an abolition request from a principal council;

- that the Welsh Ministers have given notice to the affected councils of receipt of the report or abolition request, and published the notice;
- that the Welsh Ministers consult with councils affected by any restructure; and
- that the Welsh Ministers are satisfied that effective and convenient local government is not likely to be achieved without restructuring regulations.

Part 8 – Local Government Finance

Part 8 of the Act amends existing legislation regarding non-domestic rates (otherwise known as business rates), and council tax.

There are new powers for principal councils to deal with tax avoidance by business owners. This includes a power to **serve notice**, requiring the supply of information relating to the property where the business is undertaken. The council can seek information from third parties, such as utility companies, in order to determine the correct ratepayer. Billing authorities also have new powers to enter and inspect properties, similar to those that already exist for Valuation Officers. The Welsh Government are of the view that the **provisions** in the Act will ‘improve the accuracy of non-domestic rates bills and reduce the potential for fraud and avoidance’.

The Act amends the measure of inflation that applies to calculations of the non-domestic rates multiplier from RPI (Retail Prices Index) to CPI (Consumer Prices Index) on a permanent basis. The multiplier is the system used to calculate how much a rateable property (a business) needs to pay in business rates every year to the local authority. CPI has been used to uprate the multiplier in Wales since 2018, replicating a change that occurred in England at the same time. The Welsh Government has generally **made Orders** annually (apart from in 2020 when it was frozen due to the pandemic), amending Schedule 7 of the Local Government Finance Act 1988.

The Act also permanently removes a power that enabled imprisonment as a sanction for non-payment of council tax. Previously, the Welsh Government had made amendments to regulations to remove this power for local authorities, **seeing** it as an ‘outdated and disproportionate response to a civil debt issue’. Reinstatement the power to imprison would now require new primary legislation.

Part 9 – Miscellaneous

Part 9 of the Act makes a range of **provisions aimed at** ‘strengthening and modernising the operation of local government’.

Key provisions include:

- amending **information sharing provisions** which facilitate the sharing of information between members of the “information sharing group” (the AGW, Estyn and the Welsh Ministers) in relation to a principal council. This also extends to corporate joint committees established under Part 5 of this Act;
- statutory protection for **heads of democratic services**, to promote the role to a chief officer and removing the current restrictions that prevent a local authority from designating their monitoring officer as their head of democratic services;
- the abolition of community polls;
- powers for the Welsh Ministers to give directions to the Local Democracy and Boundary Commission;
- removing the requirement for a **local inquiry** into proposed amendments to fire and rescue combination orders;
- provisions relating to the performance and governance of fire and rescue authorities and National Parks authorities; and
- a provision that enables Public Services Boards that have merged to demerge.

Part 10 – General

Part 10 of the Act contains general provisions regarding:

- interpretation;
- directions given and regulations and orders made under the Act;
- power to make consequential etc. provision in regulations;
- the coming into force of the Act; and
- the short title of the Act.