

Changes to the statutory framework for local government in Wales

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We have been working with the Welsh Local Government Association and Lawyers in Local Government (Wales branch) to review and update the model constitution for Welsh local authorities to ensure it reflects the new legislative framework and to prepare a model constitution guide. The new model constitution and constitution guide have already been shared with Monitoring Officers in Wales.

In this article we will briefly consider the changes that Welsh local authorities need to make to other policies, procedures and arrangements. We will be hosting a webinar next month where we will discuss the new legislative framework in more detail.

Elections

Section 2 of the Act extends the right to vote in local government elections (and any other poll in Wales which uses the local government franchise such as mayoral elections and referendums) to 16 and 17 year olds and foreign citizens who are legally resident in Wales.

Section 4 imposes new duties on councils to both promote awareness amongst young people of these changes and to help them to register to vote.

Councils will therefore need to carefully consider and plan how they will communicate the changes to voting arrangements and encourage young people in their areas to participate in local elections. Electoral Registration Officers will also need to start thinking about how the automatic registration provisions in section 18 of the Act may impact upon this (although this section has not yet been commenced by statutory instrument so councils should not rely upon automatic registration to perform their duties under section 4).

Part 1 of the Act introduces a new power for principal councils to change the voting system that applies to its elections, enabling them to choose between a simple majority voting system (first past the post) or a single transferrable vote voting system (a proportional system in which electors can rank the available candidates in order of preference).

Any change in the voting system will require the support of at least two-thirds of the total number of councillors on the council. If a proposal to change the voting system is accepted then a principal council is unable to change its voting system until at least two ordinary elections have been held under the new system. If a proposal to change the voting system is rejected then the council cannot consider changing its voting system again during the same election cycle.

Councils will therefore need to carefully weigh up the pros and cons of implementing changes to their voting systems and ensure that any changes are decided in good time for them to be clearly communicated to electors in advance of the next ordinary election.

The electoral cycle of principal councils and community councils will also change from four to five-year terms.

Candidacy

The Act broadens the eligibility criteria for candidates in local government elections in Wales. It allows citizens of any country to stand for election (providing they meet the residency criteria) and council officers and employees to stand for election to their own council for the first time (providing that they do not hold a politically restricted post and agree to resign their employment with the council if they are elected). While requiring candidates to resign from their paid employment if they are elected to the council should reduce the risk of conflicts of interest occurring, councils may nevertheless wish to review their arrangements for managing conflicts if officers or employees are elected.

The Act also introduces a new disqualification criterion which prevents a person from standing for election or holding office as a member of a principal council or community council in Wales if they are subject to the notification requirements of, or an order under, the Sexual Offences Act 2003.

General power of competence

Section 24 of the Act provides principal councils and eligible community councils with a general power of competence, allowing them to act in their communities' best interests to generate efficiencies and secure value for money outcomes. It is being introduced with the aim of bringing about more effective and innovative local government in Wales by eliminating concerns surrounding the need to identify a specific power to authorise a particular activity or decision.

The new general power of competence is much broader than the existing well-being power (introduced by section 2 of the Local Government Act 2000 for county and county borough councils and extended to community councils by the 2011 Measure). It will allow councils to raise money by charging for discretionary services and to trade for commercial purposes.

However, the new general power of competence is subject to limitations. Councils are unable to rely on the general power to act contrary to any express statutory limitation on their powers and councils' charging and trading powers are subject to specific conditions set down in sections 26 and 27 of the Act respectively.

While the new general power of competence effectively flips the position from one where a council must identify a specific power to authorise an activity to one where that activity is authorised absent an express prohibition, principal councils and eligible community councils may wish to seek specific legal advice before relying upon the general power of competence. They must satisfy themselves that they are acting in accordance with the conditions set down in the Act and not contrary to any express limitation in any other statute or statutory instrument.

Promoting access to local government

Councils will now be required to take a range of steps to promote and encourage public participation in local government and democracy including:

- preparing, consulting on, publishing and reviewing 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 and have their views taken into account (sections 39-41)
- making a petition scheme setting out how the council will handle and deal with petitions including e-petitions (section 42)
- putting in place arrangements for broadcasting council meetings so that members of the public who are unable to attend in person can see and hear proceedings as they happen (section 46); such recordings of meetings should be publicly available for a reasonable period after each meeting
- publishing electronic and postal addresses for each member of the council on the council's website (section 43)
- publishing a guide to the council's constitution (section 45)

Councils will therefore need to ensure that they implement the necessary policies, procedures, constitutional checks and balances to deliver these new requirements. However, they will also wish to consider how they will monitor and review the effectiveness of these measures in improving public participation in local government and democracy whilst updating their policies and procedures over time to ensure that these aims are met.

Other changes

The Act also:

- makes changes to the appointment, role and remuneration of chief executives and clarifies the relationship between the chief executive, the council, the leader/elected mayor and other elected members

- enables the appointment of elected members as 'assistants to the executive' with the dual aim of broadening diversity within the executive and enabling members to gain experience before appointment to the executive
- enables job sharing of cabinet posts, including the executive leader, and makes provision for job sharing of certain other roles such as committee chair and presiding member
- introduces a process for managing family absences ensuring that members can access the same statutory leave entitlements as paid officers of the council
- imposes new ethical duties on the leaders of political groups and a requirement that standards committees provide training and support to group leaders on those new duties
- requires community councils to consider and address the training needs of members and staff
- enables the Welsh Ministers to make regulations on a range of matters including making information available to overview and scrutiny committees and the appointment of joint overview and scrutiny committees

We will consider these changes in more detail in our upcoming webinar.

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