

Local Government and Elections (Wales) Act – commencement, implementation and guidance

Purpose

1. To update the Partnership Council on the steps being taken to bring the provisions of the Local Government and Elections (Wales) Act into force and support their implementation.

Background

2. The Local Government and Elections (Wales) Act 2021 (“the Act”) was passed in the Senedd on 18 November 2020 and received Royal Assent on 20 January 2021.
3. In order to provide local authorities with certainty as to what legislative changes are being implemented when, and ensure the required preparations can be made, it is intended to make three Commencement Orders, accompanied by other relevant subordinate legislation, during March 2021.
4. These orders will bring the relevant provisions into force on a series of dates between March 2021 and 5 May 2022. In light of the pandemic, the timetable for the scrutiny of the Act by the Senedd was extended. As a consequence the commencement of a number of the Act’s provisions has been postponed to 5 May 2022 to correspond with the date of the next local government elections.
5. The Welsh Government consider this approach to be more appropriate and less disruptive to local authorities, especially in light of the ongoing pandemic, rather than subjecting the sector to a number of new requirements within the year preceding the elections.
6. A range of guidance, and other means of support, are being developed to support the implementation of these provisions.

Update

7. It is intended to make the three Commencement Orders as follows:
 - The Local Government and Elections (Wales) Act 2021 (Commencement No. 1 and Saving Provision) Order 2021 is due to be made by 5th March.
This Order will bring into force a number of provisions across Parts 3, 4 and 9 of the Act.
 - The Local Government and Elections (Wales) Act 2021 (Commencement No. 2 and Saving Provisions) Order 2021 is due to be made by 12th March.
This is subject to the Senedd approving the Local Government and Elections (Wales) Act 2021 (Consequential Amendments) Regulations 2021 which need to be brought into force in line with this commencement order.
The second Commencement Order provides for the bringing into force of Part 6 of the 2021 Act, which provides, amongst other things, for a new performance and governance regime for principal councils and gives the Welsh Ministers new support and intervention powers, the restructuring provisions within Part 7 of the Act, the information sharing provisions in section 159 and the disapplication of the

Local Government (Wales) Measure 2009 (“the 2009 Measure”) to principal councils and National Park authorities.

- The Local Government and Elections (Wales) Act 2021 (Commencement No. 3 and Transitional Provision) Order 2021 is due to be made by 18th March.

This is subject to the Senedd approving the Local Government and Elections (Wales) Act 2021 (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 which need to be brought into force in line with this commencement order.

The third commencement order brings into force provisions in respect of attendance, including remote attendance, at local authority meetings and provisions in relation to the arrangements for local authority meetings and documents, including requiring electronic publication of certain meeting documents.

Provisions coming into force the day after the first Commencement Order is made

8. The first Commencement Order will bring into force, on the day after the Order is made, all Regulation making powers of the Welsh Ministers, in Parts 2, 3 and 4 of the Act, that are not yet in force. This is necessary to facilitate the drafting, consulting upon and making of the necessary subordinate legislation to support the implementation of the Act.
9. Section 161(1) of the Act, which requires principal councils to have regard to guidance issued by the Welsh Ministers in respect of their allocation of resources to the officer designated as Head of Democratic Services, will also come into force on this day.
10. Finally, section 59, which makes provision in respect of the content of, and duty to have regard to, guidance under section 38 of the Local Government Act 2000 will also come into force at this time.

Provisions coming into force on 1 April 2021

Local Democracy and Boundary Commission for Wales

11. The first Commencement Order will bring into force sections 163 and 164 of the Act which make provision in relation to appointment by the Local Democracy and Boundary Commission of its chief executive and enable the Welsh Ministers to give directions to the Commission and to principal councils, relating to the exercise of their functions under Part 3 of the 2013 Act

Performance and governance of principal councils, including disapplication of the 2009 Measure

12. The second Commencement Order will bring into force, on 1 April 2021, the majority of Chapters 1 and 3 of Part 6 of the Act in respect of the performance and governance of principal councils.
13. This will ensure that the new performance regime, other than panel performance assessments, will apply to principal councils from, and in relation to, the 2021-2022 financial year. This will allow principal councils the entire financial year to conduct their first self-assessment and report early in 2022-23. Councils will continue to report

under the 2009 Measure for the 2020-21 financial year with reports to be published in October 2021.

14. The provisions relating to panel performance assessments will commence on 5 May 2022 in line with the next local government elections. This will allow for a more gradual and measured roll out of the new regime, allowing for at least one cycle of self-assessments to be conducted before requiring a panel assessment be completed.
15. The second Commencement Order also disapplies the 2009 Measure to principal councils and includes saving provisions to ensure that the exercise of certain functions, and other things, done under the 2009 Measure continue to have effect following the disapplication of the Measure.
16. Section 159 of the Act, to the extent not already commenced, will also be brought into force on 1 April. This section deals with information sharing between regulators, the Auditor General for Wales and the Welsh Ministers. The majority of section 159 came into force on the day after Royal Assent by virtue of section 175 of the Act.
17. As a result of the introduction of the new performance regime in Part 6, and the subsequent disapplication of the 2009 Measure, a number of consequential amendments are required to other enactments, these are provided for in the Local Government and Elections (Wales) Act 2021 (Consequential Amendments) Regulations 2021, which have been laid in draft before the Senedd.

Guidance

18. During March the Welsh Government will publish guidance to support the implementation of the new performance and governance regime for principal councils.
19. Welsh Government officials have been working with local government for the last 24 months to co-produce this guidance, with a formal consultation on the draft guidance having concluded in February. The responses to that consultation have been carefully considered and taken into account for the final version of the guidance.

Re-naming of Audit Committees

20. The second commencement Order will also bring section 115 of the Act into force on 1 April 2021. This section provides for the re-naming of Audit Committees to Governance and Audit Committees and requires these Committees to undertake additional functions, namely those functions set out in Chapter 1 of Part 6 of the Act and:
 - (a) review and assess the authority's ability to handle complaints effectively;
 - (b) make reports and recommendations in relation to the authority's ability to handle complaints effectively

Restructuring of principal areas

21. The provisions in Part 7 of the Act in respect of restructuring of principal areas will also be brought into force on 1 April 2021, this provision is again made in the second Commencement Order.

National Park authorities – 2009 Measure

22. The second Commencement Order will also bring into force section 169 of the Act, which disapplies the 2009 Measure to National Park authorities, on this date. The Order will also provide for associated saving provisions to ensure that the exercise of certain functions, and other things, done under the 2009 Measure continue to have effect following the disapplication of the Measure.
23. Local Government and Elections (Wales) Act 2021 (Consequential Amendments) Regulations 2021 detailed above also provides for the necessary consequential amendments in respect of National Park authorities.
24. A non-statutory performance regime is being introduced for National Park authorities based around a Framework Agreement which has been signed by the Welsh Government and the three National Park authorities' Chief Executive Officers.

Fire and rescue authorities – 2009 Measure

25. Whilst the 2009 Measure is being disappplied to principal councils and National Park authorities it will continue to apply to fire and rescue authorities. Disapplying the 2009 Measure to fire and rescue authorities is dependant on the development of a new performance framework under section 167 of the Act, which in turn depends on a new National Framework for Fire and Rescue Services under section 21 of the Fire and Rescue Services Act 2004. Work in this area has been paused due to the heightened pressure on the Service during the COVID-19 pandemic.

Family absence for members of principal councils

26. The draft Family Absence for Members of Local Authorities (Wales) (Amendment) Regulations 2021 were laid last month and are due to be debate by the Senedd on 2 March. These Regulations provide for amendments to the Family Absence for Members of Local Authorities (Wales) Regulations 2013 ("the 2013 Regulations").
27. These Regulations will amend the 2013 Regulations so as to increase adopter's absence entitlement for members of principal councils from 2 weeks to 26 weeks. This will result in the same periods of maternity and adopter's absence being available to members of principal councils and provide for similar arrangements for adopter's absence as are already in place for maternity absence.
28. Subject to the Senedd approving these Regulations they will be made by 5 March 2021 and brought into force on 1 April 2021.

Provisions coming into force on 1 May 2021

29. The third Commencement Order will bring into force, on 1 May 2021, section 47 of the Act, which provides for attendance, including remote attendance, at local authority meetings, and Schedule 4 to the Act (as introduced by section 49) so far as these provisions are not already in force.
30. Part 1 of Schedule 4 amends existing legislation, primarily Part 5A of, and Schedule 12 to, the Local Government Act 1972 ("the 1972 Act") and the Public Bodies (Admission to Meetings) Act 1960, to make provision in relation to arrangements for local authority meetings and documents, including requiring electronic publication of

certain meeting documents. Part 2 of Schedule 4 makes certain consequential amendments as a result of section 47.

31. These provisions, which relate to principal councils, town and community councils, National Park authorities, fire and rescue authorities and port health authorities¹, were inserted at Stage 3 for the purpose of making permanent arrangements in respect of certain provisions of the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020 (“the 2020 Regulations”).
32. The 2020 Regulations provided flexibility to enable local authorities to operate safely, effectively and lawfully, while retaining the principles of openness and accountability to the public by, for example, enabling meetings to be conducted on the basis of full or partial remote attendance and by making provision about the electronic publication of certain documents.
33. As the 2020 Regulations only make provision in relation to meetings held before 1 May commencing the provisions of the Act on this date will enable authorities to transition from the 2020 Regulations to the permanent provisions of the Act. The necessary transitional provisions will be provided for in the third Commencement Order to ensure a smooth transition from the 2020 Regulations to the provisions of the Act in respect of any meetings being held in early May.
34. As a result of the amendments made to the 1972 Act by Schedule 4, a number of consequential amendments are required to other enactments. These are provided for in the Local Government and Elections (Wales) Act 2021 (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 which have been laid in draft before the Senedd.
35. These Regulations also provide that documents published electronically, as required under the 2020 Regulations, must be accessible for six years from the date of the meeting to which they relate. Currently the 2020 Regulations do not specify how long documents required to be published electronically under those Regulations must remain accessible, effectively requiring them to be accessible indefinitely.

Guidance

36. The Welsh Government will make guidance available to support local authorities in implementing these provisions. This guidance will highlight the importance of considering matters such as equality, specifically complying with the duties under the Equality Act 2010, and the expectation that reasonable adjustments are made when deciding on what meeting arrangements are appropriate. For example, it is expected to this to include consideration of matters such as providing subtitling facilities etc.

Digital Democracy

37. Alongside the development of guidance, work is underway to consider how best to exploit the potential of digital technology to support open and transparent local democracy which is accessible to everyone.
38. To information this work the Welsh Government have commissioned the Centre for Digital Public Services to undertake a discovery project which will:

¹ for a port health district in Wales constituted under section 2 of the Public Health (Control of Disease) Act 1984

- (a) consider all aspects of the Act and what the future of digital democracy looks like in 2022 and beyond, both for councils and citizens
- (b) identify where we are now and how we get from here to being able to fully carry out the requirements in the new Act

Amending the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001

- 39. There was insufficient time to include provision in the Act amending the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001 (“the 2001 Regulations”) so as to align the arrangements for the executives of principal councils with the revised provisions in Part 5A of the 1972 Act as amended by Schedule 4 to the Act.
- 40. To address this issue, the Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) (Amendment) Regulations 2021 have been prepared with the intention of their being made during March and brought into force on 1 May 2021.
- 41. As a consequence of the limited timeframe for the drafting and making of these Regulations following the passing of the Act, it has not been possible to undertake a formal consultation on the amendments to the 2001 Regulations. Welsh Government officials have engaged informally with the key stakeholders, such as local government lawyers (who also informed the development of the 2020 Regulations).
- 42. Whilst formal consultation is the standard, valuable, practice, in this instance the criticality of ensuring the amendments to the 2001 Regulations are brought into force on 1 May, so as to align the provisions for the executives of principal council with those for principal council and other local government bodies, has meant it has not been possible.

Provisions coming into force on 1 November 2021

General power of competence

- 43. The general power of competence will be brought into force for principal councils on 1 November 2021. As detailed during scrutiny of the Act it is intended to make Regulations requiring qualifying local authorities to satisfy certain criteria before exercising the general power to do something for a commercial purpose.
- 44. The draft General Power of Competence (Commercial Purpose) (Conditions) (Wales) Regulations 2021, which require principal councils to prepare and approve a business case before using the general power to do something for a commercial purpose, will be issued for formal consultation during March.
- 45. Subject to the outcome of that consultation, it is intended these Regulations be made before the general power is brought into force for principal councils.

Provisions coming into force on 1 April 2022

Duty on community councils to prepare an annual report

- 46. The first Commencement Order will bring into force section 52 of the Act which requires town and community councils to prepare and publish a report about the

council's priorities, activities and achievements. Councils will be required to publish their first report, which will relate to the 2021-22 financial year, as soon as practicable after the end of that financial year.

Provisions coming into force on 5 May 2022

47. The following provisions will be brought into force on 5 May 2022

Principal councils

48. The first Commencement Order will bring the following provisions into force on 5 May 2022:

- Public participation duty including duty to prepare a public participation strategy (sections 39 – 41)
- Duty to establish a petitions scheme (section 42)
- Duty to publish official addresses (section 43)
- Duty to have regard to any guidance issued by the Welsh Ministers under Chapter 2 of Part 3 (section 44)
- Duty to publish a constitution and constitution guide (section 45)
- Duty to make arrangements to enable the electronic broadcasting of meetings (section 46)
- Appointment of a chief executive (section 54)
- Reconsideration of remuneration following direction by the Welsh Ministers (section 56)
- Appointment of assistants to executive (section 57)
- Job sharing (section 58)
- Duty of political group leaders in relation to standards of conduct (section 62)
- Making information available to overview and scrutiny committees (section 65)
- Power to require authorities to appoint joint overview and scrutiny committees (section 66)
- Removal of the restriction on monitoring officers also being designated head of democratic services (section 161)
- Abolition of polls consequent on a community meeting (section 162)

Guidance

49. In order to ensure local authorities have the necessary support and assistance when implementing these provisions the Welsh Government will publish guidance underpinning the provisions which is clear about the culture and approach expected when implementing the legislation.

50. In addition to developing new guidance, existing guidance will be re-visited and updated.

51. Rather than create numerous pieces of separate guidance which have to be read together, a consolidated set of guidance, currently referred to as 'the Democracy Handbook', will be prepared. This guidance will be grounded in the values and principles of equality, transparency, accountability, respect and partnership between electors and those that have been elected

52. The second Commencement Order will bring the following provisions into force on 5 May 2022:
- Panel assessments of performance (section 92 and 93)
 - Governance and Audit Committees: Membership and Proceedings (Chapter 2 of Part 6)

Town and community councils

53. The first Commencement Order will bring the general power of competence into force for town and community councils on 5 May 2022.
54. Commencing the general power for town and community councils on this date will allow for the preparation of, and consultation on, the necessary subordinate legislation and statutory guidance to support the implementation of these provisions. This will include Regulations defining a ‘relevant professional qualification’ for community council clerks and provision to extend the requirement to prepare and approve a business case before using the general power to do something for a commercial purpose to town and community councils.
55. When the general power is commenced for town and community councils the power of well-being, as provided for in section 2 of the Local Government Act 2000, will be repealed. Provision will be made in the Commencement Order to save the power of well-being, so as to ensure that anything which has been started by a council before, and is ongoing at, the time the well-being power is repealed can continue until it that thing is completed, or until a council resolves to become an eligible community council. Nothing new may be started using the well-being power after it is repealed
56. In addition to the general power of competence, the following provisions will be brought into force on 5 May 2022 by the first Commencement Order:
- Participation at meetings of community councils (section 48)
 - Duty on community councils to prepare a training plan (section 67)
 - Abolition of polls consequent on a community meeting (section 162)

Duty of standards committees to make an annual report

57. The first Commencement Order will commence section 63 of the Act, which inserts new section 56B into the Local Government Act 2000. This new section 56B requires a standards committee of a relevant authority to, as soon as reasonably practicable after the end of each financial year, make an annual report to the authority in respect of that year.
58. The requirement to make an annual report applies to the standards committees of National Park authorities, fire and rescue authorities and principal councils. In the case of a principal council, the requirement to report to “the authority” in this context includes any community councils in its area.
59. As the duty in respect of the annual report is drafted on the basis of a financial year, the first report will be due as soon as practicable after the end of the 2022-23 financial year and will relate to how the committee’s functions have been discharged during the 2022-23 financial year.