



RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

10th MAY 2021

DEMOCRATIC SERVICES COMMITTEE

THE LOCAL GOVERNMENT & ELECTIONS (WALES) ACT 2021

REPORT OF THE HEAD OF DEMOCRATIC SERVICES

1. PURPOSE OF THE REPORT

- 1.1 The purpose of this report is to summarise the various elements of the Local Government & Elections (Wales) Act 2021 which received Royal Assent on the 20th January 2021.
- 1.2 The report sets out the context and requirements of the Act, detailing the Council's current position and seeks identification of the appropriate lead officer(s) to respond, support and implement the introduction of the legislative requirements.

2. RECOMMENDATIONS

Members are recommended to:

- 2.1 Note the update provided in this report.
- 2.2 Consider the Council's position statement outlined within the report in respect of the requirements of the Act

3. REASONS FOR RECOMMENDATIONS

- 3.1 The need to provide an overview of the duties placed upon the Authority through the Local Government and Elections (Wales) Act 2021, which received royal assent on the 20th January 2021.
- 3.2 In accordance with the requirements of the Act, a number of actions will need to be addressed to ensure RCT comply with the legislative requirements. This report seeks to initiate this work through the identification of lead officer(s) in accordance with legislative guidelines.

4. BACKGROUND

- 4.1 The Local Government and Election (Wales) Act (The Act) received Royal Assent on the 20th January 2021.

4.2 The Act was one of only two Bills in the Welsh Government's legislative programme to continue during the Covid -19 pandemic. The Bill was prioritised given the timescales required to introduce the planned reforms in respect of the 2022 local government elections.

4.3 A link to the Act can be found [here](#) and explanatory notes found [here](#).

5. PREVIOUS ENGAGEMENT BY WELSH GOVERNMENT

5.1 The Act has been developed following engagement with local government over several years through:

- Draft Local Government Bill Wales – [Nov 2015](#)
- Consultation on Electoral Reform – [Oct 2017](#)
- Reforming Local Government: Resilience & Renewed White Paper – [Jan 2017](#)
- Consultation on Powers and flexibilities – Jan 2018
- Strengthening Local Government: Delivering for People – Welsh Government Green Paper – [June 2018](#)
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5.2 Most recently the Council has considered and commented upon the following elements:

Overview of the Bill

- Council - [27th November, 2019](#)
- Council – [15th January 2020](#)

Webcasting

- Democratic Services Committee – [8th January 2020](#) ; [1st October 2020](#)

6. THE LOCAL GOVERNMENT & ELECTIONS (WALES) ACT 2021 SUMMARY

6.1 While the general focus of discussions in respect of the Act, has been based around the creation of Corporate Joint Committees (CJC) this substantive piece of legislation will change the way we operate across a range of areas from electoral reform, public participation, governance and performance management, democratic processes and stronger working arrangements with Town and Community Councils.

6.2 The Act includes provisions for:

- Reforming electoral arrangements for local government, including:
 - Extending the voting franchise to 16- and 17-year olds and foreign citizens legally resident in Wales,
 - Changes to voter registration,
 - and enabling a principal council to choose between the 'first past the post' or the 'single transferable vote' voting systems;
- A general power of competence for principal councils and eligible community councils;
- Reforming public participation in local democracy;

- The leadership of principal councils, including to encourage greater diversity amongst executive members and establishing a statutory position of chief executive;
- Strengthening Scrutiny arrangements and arrangements for member conduct;
- The development of a framework and powers to facilitate more consistent and coherent regional working mechanisms;
- A new system for performance and governance based on self-assessment and peer review, including the consolidation of the Welsh Ministers' support and intervention powers;
- Powers to facilitate voluntary mergers of principal councils and restructuring a principal area;
- Local government finance including non-domestic rating and council tax;
- Miscellaneous provisions relating to:
 - Support provided for Community Councils
 - Executive arrangements
 - The status of the Head of Democratic Services
 - information sharing between regulators,
 - abolition of community polls,
 - fire and rescue authorities,
 - the Local Democracy and Boundary Commission for Wales, and
 - Public Service Boards.

6.3 The 'Coming into Force' provisions of the Act are complex, with some provisions coming into force within days of Royal Assent, others within two months and the majority via Ministerial statutory instruments.

7. **PART 1: ELECTIONS**

Extension of the right to vote in local government elections - Extending the vote franchise to 16- & 17-year olds and foreign citizens legally residents in Wales (Section 2)

7.1 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. The Act also allows for 'qualifying foreign citizens' to be included in the extended franchise

7.2 The Act places a duty on principal Council's to promote awareness of how to register to vote at local government elections amongst 'relevant young people'

and to take whatever action the Councils think is necessary to help them to register.

Position Statement:

The Democratic Services and Engagement Officer, sitting under the Council Business Unit is working with YEPS and the Director of Education and Inclusion to take forward engagement with young people to increase awareness regarding the right to vote. A social media campaign is being developed in collaboration with young people to ensure the message is effective.

Some of the work intended to be taken forward has been disrupted due to the Covid-19 pandemic, however alternative engagement provisions are being taken forward. A 'diversity in democracy' Member working group has also been created which will look in part at the engagement opportunities.

Identified Lead Officer(s)

Service Director of Democratic Services and Communications & Director of Legal Services

Two Voting systems - Enabling councils to choose between a 'first past the post' (FPTP) or a 'single transferable' (STV) voting system (Section 5)

- 7.3 Post 2022 the Act will introduce the opportunity for individual Councils to determine their own election arrangements.
- 7.4 Supporters of FPTP take the view that the voting and counting procedures are simple, familiar and relatively cheap, and therefore this system provides a straightforward relationship between where a candidate finishes in the tally of votes and whether or not they are elected.
- 7.5 The White Paper 'Reforming Local Government: Resilient and Renewed' contained the proposal to allow individual principal councils to choose their voting system, the choice being between the FPTP system or the STV system.
- 7.6 STV is a preferential voting system, which means voters are asked to rank the available candidates in order of preference, using numbers. Voters may choose to rank all the available candidates or only as many as they wish. STV is considered to be a system of proportional representation
- 7.7 Welsh Government highlight that each election of a principal council is a separate election confined to the area of the council. Welsh Government has therefore determined that it is appropriate that the council should decide on its voting system, which best reflects the needs of their local people and communities.

- 7.8 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 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.
- 7.7 Provision is made to prevent a principal council, having changed to a different voting system, from moving back until at least two ordinary elections have been held under the new system.

Position Statement

RCT comply with the current voting system of first past the post. A change from one voting system to another would require a Full Council decision and a fresh electoral arrangement review of the council area, which would be undertaken by the Local Democracy & Boundary Commission for Wales.

Identified Lead Officer(s)

Director of Legal Services & Service Director Democratic Services & Communications

Change of electoral cycle from 4 years to 5 years (Section 14).

- 7.8 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 the Government of Wales Act 2006.
- 7.9 70% of respondents to the main electoral reform consultation agreed the term should be set at five years.
- 7.10 The Act also seeks to provide a regulatory provision to increase the flexibility available to the Welsh Ministers, subject to consultation, to alter the date on which that election is held.

Position Statement:

At the 2017 local government elections, Elected Members were elected on a 4 year term. Under section 37ZA(2) and (3) of the Wales Act 2017, the day of an ordinary local government election in Wales cannot take place on the same day as the Assembly ordinary general election, therefore Members terms of office was extended for a 5 year period, until May 2022. The standard five year term provided under the Act would not only allow a consistent

approach to terms of office across the democratic process but would also allow Members a further year to gain experience and knowledge for the benefit of their residents and the Council.

Identified Lead Officer(s)

Director of Legal Services

Disqualification for election and being a member of a local authority (section 20)

- 7.11 The Act provides the ability for council officers and employees, other than those holding politically restricted posts, to 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. Welsh Government believe this will widen the pool of potential candidates while ensuring there is no conflict of interest once the candidate is elected.
- 7.12 If a council officer or employee makes a declaration of office following the Election the person must resign from their position. This resignation will have immediate effect irrespective of any notice period required.

Position Statement

Currently officers within the Council are unable to stand for election within Rhondda Cynon Taf. Going forward, the Senior Leadership Team will need to be mindful of any succession planning needed to ensure the role and duties of a candidate are continued if they are elected.

Identified Lead Officer(s)

Senior Leadership Team

Candidacy

- 7.13 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 other disqualification criteria will continue to apply.
- 7.14 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 bankruptcy or debt relief restrictions order, a person guilty of a corrupt or illegal practice, a person subject to the notification requirements of, or an order under, Part 2 of the sexual offences act 2003 and a person convicted, during a period of 5 years before the election of an offence for which he or she has been sentenced to a term of imprisonment of 3 months or more.

Position Statement

It is the candidate's responsibility to ensure they meet the eligibility criteria and not prohibited from standing by any of the disqualification provisions.

Identified Lead Officer(s)

Director of Legal Services

Meeting expenditure of returning officers (section 22)

- 7.15 The Act clarifies that Returning Officers can only claim expenses properly incurred in the running of a local government election in Wales.
- 7.16 Personal fees in respect of services rendered during the conduct of a local government elections cannot be claimed as they are not "expenses". It is proposed that the personal fee will also be removed for National Assembly for Wales elections when an order is next made under article 23 of the National Assembly for Wales (Representation of the People) Order 2007 (currently the National Assembly for Wales (Returning Officers' Charges) Order 2016 is in force).

Position Statement:

In Rhondda Cynon Taf the Returning Officer does not claim for costs incurred as part of local elections. The Chief Executive has not fulfilled the role of Returning Office since 2014

Identified Lead Officer(s)

None applicable

8. PART 2 - GENERAL POWER OF COMPETENCE

- 8.1 The Act provides principal councils and eligible community councils ('qualifying local authorities') with a general power of competence, with the aim of bringing about more effective, capable and innovative local government.
- 8.2 The general power will allow qualifying local authorities 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 in line with existing powers.
- 8.3 In addition, the general power will allow qualifying local authorities to engage in activities potentially judged to be outside the remit of well-being power within LGA 2000. It is considered the general power will allow qualifying local authorities 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.

- 8.4 Specifically in relation to ‘eligible community councils’, the general power will empower this tier of local government, so it is better placed to be part of the Welsh public service in the future and can better contribute to local well-being and community resilience. Access to the general power will enable them to be ambitious and innovative.
- 8.5 The restrictions on the use of the general power are in line with similar restrictions placed on councils in England in relation to their use of the general power of competence in the form that has applied in England since 2012.

Position Statement

The Council continually work with the best interests of residents in mind, working to achieve value for money and efficient services across the County Borough. The general power of competence will further embed this principle, allowing greater opportunities for the Council to explore.

Work will need to be taken forward to support RCT’s Town and Community Councils with the eligibility criteria and exercising of the general power (if eligible to do so), with the platform of the Community Liaison Committee assisting with this support.

Identified Lead Officer(s)

Senior Leadership Team

9. PART 3 – PROMOTING ACCESS TO LOCAL GOVERNMENT

- 9.1 The Welsh Government is keen to encourage a more diverse range of members of the public to engage with local democracy. The majority of respondents to the draft Bill consultation agreed that improved public participation in local government was valuable. The Act places a statutory requirement upon principal councils to encourage public participation in their decision-making and scrutiny procedures for the first time. The proposals are also intended to support openness and transparency.
- 9.2 The Act includes a duty to encourage local people to participate in local government (and to produce a strategy to that effect);
- Duty to make petition scheme (and repeal of community polls);
 - Duty to broadcast certain meetings;
 - Greater flexibility around remote attendance of members.

RCT have already been approached by Welsh Government to assist in the development of the guidance that will accompany Chapter 4 of the Act in respect of public participation and transparency.

Public Participation Strategy (section 42)

- 9.3 Principal councils will be required to encourage local people to participate in local government. In addition, councils will be 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.

Position Statement:

In 2018 the Council introduced a public engagement strategy to support positive engagement in the work of scrutiny. This will provide a useful basis to comply with this requirement. Work is also being taken forward with the 'Bang the table' consultation platform which will assist in addressing participation and consultation in the democratic process going forward.

Identified Lead Officer(s)

Service Director of Democratic Services & Communication and the Director of Legal Services

Petition scheme (section 43)

- 9.4 The Act requires a principal council to make a petition scheme setting out how it will handle and deal with petitions, including e-petitions. Such a proposal is similar to schemes already in place within a number of public bodies in Wales, such as the Assembly.

Position Statement

In 2019 the Council adopted a Petitions criterion allowing publication of the outcome of petitions received at Council meetings. This process will provide a useful basis to comply with this requirement.

Identified Lead Officer(s)

Service Director of Democratic Services and Communication

Publication of Official addresses (Section 44)

- 9.5 Elected members should be freely accessible to local people. A duty will be placed on principal councils to publish an electronic and postal address for each member of the council on its website to support this objective. A council address may be used if the member wishes to protect the privacy of their home address

Position Statement

The Council already publishes this information on the Council website under each of the Members portfolio. Council policy recommends that Members should use their Council email address when contacting residents and officers within the Council, rather than a personal email address. In addition, the Council already assists members to direct constituent correspondence

through Members Services, if a Member has requested the removal of their home address from the website

Identified Lead Officer(s)

Service Director of Democratic Services and Communications

Constitution Guides (section 46)

- 9.6 The Act will require principal councils to prepare and publish a guide to their constitution, which explains in ordinary language the content of their constitution. This will be a layperson's guide to the constitution, enabling the general public to understand how the council operates and makes decisions. The intention is to make it easier for local people to understand how their council functions.

Position Statement

The Council's Constitution is available on the Council website and a copy of the document is available at the Council Headquarters. Hard copies of the constitution are also provided to members of the public if requested for a nominal charge.

Monitoring Officers & Heads of Democratic Services are discussing the development of an easy-to-read explanation of rules of procedure and other relevant information

Identified Lead Officer(s)

Service Director of Democratic Services and Communications and Director of Legal Services.

Electronic Broadcasts of meetings of certain local authorities (Section 47).

- 9.7 The Act places a duty on principal councils to put in place arrangements for a broadcast of council meetings so that members of the public who are unable to attend are able to see and hear proceedings as they happen. Recordings of meetings should also be publicly available for a reasonable period after the meeting.

Position Statement

The Council has recently invested in broadcasting technology in anticipation of the requirements of the Act and due to the current virtual meeting process (in accordance with the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations), recording of Committee meetings are available on the Council website. A retention policy on the availability of these recording will need to be produced going forward.

Identified Lead Officer(s)

Service Director of Democratic Services and Communications

Conditions for remote attendance of members of local authorities (section 48)

- 9.8 The Act modifies the provisions in the 2011 Measure with the intention of making it easier for remote attendance to operate. Essentially, the conditions attached to the operation of remote attendance within the 2011 Measure are removed, in favour of leaving the principal council's standing orders to specify the conditions about how it should operate within that council. In addition, the chair of the meeting will need to be happy that the conditions for remote attendance are satisfied in the case of any particular meeting before business should proceed.

Position Statement

The Council has recently invested in broadcasting technology in anticipation of the requirements of the Act. The Council Business Unit is in the process of developing arrangements to integrate our virtual meeting arrangements into the newly introduced Public-I technology to enable hybrid meetings once restrictions allow.

Identified Lead Officer(s)

Service Director of Democratic Services and Communications

Notice of local authority meetings to be published electronically (paragraphs 2-8)

- 9.9 The Act also makes provision in relation to notices of principal council and community council meetings. Much of the legislative provision governing the meetings and proceedings of council business is contained in section 99 of, and Schedule 12 to, the 1972 Act and reflects the practices of the time. Provision for access to meetings and documents of certain authorities, committees and sub-committees is set out at Part VA of the Act. While many of the provisions remain relevant, there is scope to modernise them. Schedule 12 predated the internet and the production of electronic documents and use of electronic communications. Provision has been made to amend the law relating to meetings in order to modernise the rules governing the meetings and proceedings of principal councils and community councils. For example, notices of meetings may be published electronically by the Proper Officer, instead of with the consent of an individual member.

Position Statement

The Council already complies with this requirement with publication of Committee papers electronically at least three clear working days prior to a meeting. Publication of Committee papers are provided on the Council website and through the restricted Modern Gov app. Work is being undertaken to make the Modern Gov a public app for public view.

Identified Lead Officer(s)

Service Director of Democratic Services and Communications

10. Part 4 Local Authority Executives, Members, officers and committees

REFORMING DEMOCRATIC PROCESSES & LEADERSHIP

- 10.1 The Act changes or enhances a number of requirements in respect of Local Authority Executives, Members, Officers and Committees. The changes include:
- Appointment of Chief Executives (rather than a head of paid service) with specific duties;
 - Appointment of assistants to cabinets and allowing job-sharing leaders or cabinet members;
 - Updating family absence provisions in line with those available to employees (via regulations);
 - Requiring leaders of political groups to promote and maintain high standards of conduct by members of their groups.

Chief Executives (Section 53)

- 10.2 The term “chief executive” (occasionally “managing director”) is widely used throughout local government in Wales to denote the head of a principal council’s administration, but the title is not found in local government legislation. The principal responsibility of chief executives is to ensure the operational effectiveness of their council so that the organisation is capable of delivering the executive’s objectives and discharging the other statutory functions of the council, in a way which is lawful and fiscally appropriate. The Act replaces the statutory post of the ‘Head of Paid Service’ with the statutory post of ‘Chief Executive’.
- 10.3 The amendments contained within the Act make clear that the leader, not the chief executive, is the spokesperson for the council on policy matters, while the chief executive is responsible for management of the principal council and its staff, who are charged with carrying out the decisions of the council and its leadership.

Position Statement

The Council already have an appointed ‘Chief Executive’ and the current arrangements effectively support positive working relationships between the Senior Leadership Team and Council Members.

Identified Lead Officer(s)

Director of Human Resources

Appointment of assistants to executive and job sharing (sections 56 and 57)

- 10.6 The Act makes provisions for Welsh Ministers to issue guidance designed to encourage good practice in relation to equality and diversity. The Leader will be

obliged to have regard to the guidance when exercising functions relating to executive arrangements, including the appointment of executive members.

- 10.7 The Act also requires local authorities to include in their executive arrangements provision enabling two or more councillors to share a cabinet post, including the position of executive leader. This will offer more councillors the opportunity to participate as a cabinet member and enable executives to reflect the diversity of their relevant area.
- 10.8 The Act also makes provision to allow principal councils operating executive arrangements to exceed the limit on cabinet size in order to accommodate job-shared cabinet posts.

Position Statement

The Councils current Executive arrangements will enable the Council to swiftly respond and positively utilise these provisions. The cabinet have previously supported the arrangements for deputy cabinet members under previous regulations and will positively look to utilise the opportunities provided under the Act.

Identified Lead Officer(s)

Service Director of Democratic Services and Communications following a decision of the Leader.

Family absence for members of local authorities (Section 60)

- 10.9 The 2011 Measure introduced a system of family absence for principal councils in Wales. The system was intended to require local authorities to extend to councillor's similar family absence entitlements available to officers of those authorities. The objective was to remove some of the barriers which restrict the ability of people with family responsibilities from seeking to become candidates.
- 10.11 Changes in employee statutory family leave arrangements have, in part, been updated.
- 10.12 As there has been no corresponding change in the provisions for family absence set out in the 2011 Measure and the underpinning regulations the arrangements for family absence for councillors of principal councils are now out of step. The provisions in the Act remove the obstacles which might prevent the regulations from being able to keep in step with UK employment law.

Position Statement

The Council already complies with the current family absence arrangements.

Identified Lead Officer(s)

Service Director of Democratic Services and Communication

**Duties of leaders of political groups in relation to standards of conduct.
(Sections 61 and 62)**

- 10.13 The Act will require the leaders of political groups to 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 council's standards committee in the exercise of its functions to promote and maintain high standards of conduct. In turn, a 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.
- 10.14 Standards committees will be required after the end of each financial year to make an annual report to the authority describing how the committee's functions have been discharged during the financial year and setting out an overview of conduct matters within the council. The council will be obliged to consider the report and any recommendations made by the standards committee within 3 months of receipt.

Position Statement:

The Council has an established Standards Committee which considers both the code of conduct in respect of the Council and Community and Town Councils within RCT. The Committee already publishes a Standard's Committee Annual Report, which is reported and presented to Council by the Chair of the Committee.

Identified Lead Officer(s)

Director of Legal Services and Service Director Democratic Services & Communications

Making information available to Overview & Scrutiny

- 10.15 The Welsh Government consulted in the White Paper 'Power to Local People' on proposals to make the role of scrutiny within a principal council more effective and to ensure the local community has a greater involvement in the scrutiny of council policies.
- 10.16 Section 22(10) of LGA 2000 enables the Welsh Ministers to make regulations requiring the provision of information about decisions the executive have made or intend to make. In England regulations have been made regarding what are commonly known as 'key decisions', that is, decisions which have a significant financial implication or a significant effect on local communities. To date, the Welsh Government has not made such regulations. As indicated in 'Power to Local People', the intention is to do so, in order to ensure scrutiny committees are given sufficient notice of important decisions before they are made, so they may scrutinise the executive more effectively. The Act amends section 22(10) of LGA 2000, so that regulations may require that scrutiny committees and their sub-committees are given such notice.

Position Statement:

In 2015 the Council enhanced the provision of information to enable wider engagement by elected members in the key decisions of the Council. The inclusion of the role of Head of Democratic Services as part of the Senior Leadership team has provided the opportunity to cite the requirement of scrutiny in advance of key decisions. In addition to this quarterly meeting between Scrutiny Chairs and the relevant Cabinet Member portfolio holder are taken forward to discuss the forward work programme of the Cabinet to identify areas for future scrutiny.

Identified Lead Officer(s)

Service Director of Democratic Services and Communication

Power to require authorities to appoint Joint Overview & Scrutiny Committees

10.17 The Act amends a regulation-making power in the 2011 Measure so that regulations may require principal councils to establish a joint scrutiny committee. The amended regulation-making power could be used to require councils to establish a joint scrutiny committee where services are being provided across those councils' areas. The purpose of this provision is to ensure effective and efficient scrutiny of services delivered in collaboration.

Position Statement

The Council has positive experience of supporting and hosting joint scrutiny committees and is currently host for the Cwm Taf PSB JOSC and the Cardiff Capital Region City Deal JOSC.

Identified Lead Officer(s)

Service Director of Democratic Services and Communication.

11. PART 5 - COLLABORATIVE WORKING BY PRINCIPAL COUNCILS.

Application by principal councils to establish a corporate joint committee (Section 69)

- 11.1 This provision enables two or more principal councils to make a corporate joint committee to exercise specific functions in relation to the principal areas of those Councils.
- 11.2 Cabinet and the Council's Overview Scrutiny Committee recently considered a joint report in respect of the powers for councils to initiate the establishment of Corporate Joint Committees (CJCs) covering the *four functions of economic wellbeing, transport, strategic planning and school improvement*
- 11.3 The Council responded to the consultation on these regulations and a copy of the report can be found [HERE](#).

12. PART 6 - PERFORMANCE & GOVERNANCE OF PRINCIPAL COUNCILS

Performance, performance assessments and intervention – chapter 1

- 12.1 The Act seeks to establish a more regularised performance and governance system which will place an onus on the principal council to take ‘ownership of its own improvement’, and should seek to build reflection on performance and action to improve into its system.
- 12.2 This will now entail a system that requires annual self-assessment of performance by principal councils and a periodic review to provide an external, expert perspective on the council’s performance and its progress in improving its performance.
- 12.3 The Act also makes provision for the Welsh Ministers to provide support and, where necessary, to intervene in principal councils facing significant problems. The Welsh Ministers will be able to provide support to principal councils to address difficulties they are facing. In more serious cases, the Welsh Ministers will be able to intervene to enable improvement.
- 12.4 The support and intervention provisions develop the existing legislative framework set out in the 2009 Measure (which will be repealed). The new provisions include a power for the Auditor General for Wales to carry out a special inspection that is similar to his existing power. The purpose of a special inspection is to support a principal council in meeting or increasing the extent to which it is meeting its performance requirements.

Position Statement

We are well placed to respond to these new duties within our current performance processes. There is a mature performance culture in place across the Council which is underpinned by being clear about our strengths and where we can improve.

Our current arrangements are evidence based and inform the allocation of resources, and enable the Council to both formulate a set of medium term priorities, as included within the Corporate Plan, and monitor, scrutinise and evaluate progress and impact on an on-going basis. The arrangements also have a positive track record of supporting compliance with performance related legislation and responding to recommendations arising from Regulator reports.

In developing our performance arrangements for 2021/22 we have considered the detailed requirements of the Act to ensure they can all be met within existing arrangements across the Council. This includes widening and strengthening our opportunities for residents’ feedback and considering how we apply the new Public Sector Equalities. We are also currently considering how we can best prepare to meet the requirement to undertake our first Panel Performance Assessment following the Local Government Elections in 2022

Identified Lead Officer(s)

Director of finance & Digital Services.

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Governance & Audit Committees (Chapter 2)

- 12.1 The Act enhances the remit of the Audit Committee, renaming the committee as the Governance and Audit Committee. The reforms increase lay representation and the role of Chair must be performed by one of the Lay members. The Committee will also have additional responsibilities in respect of reviewing the Council's Complaints procedures to ensure its 'adequacy.' These measures become a requirement from 2022.
- 12.2 The Act repeals the 2009 Measure duties, replacing the audit and reporting duties with a self-assessment and panel assessment process (peer review).

Position Statement

Implementation of the amendments proposed with the Act have been identified. The Committee's current membership incorporates one lay member which will need to be built upon to fulfil the requirements of the act.

Identified Lead Officer(s)

Service Director of Democratic Services and Communication and Director of finance & Digital Services.

PART 7 - MERGERS AND RESTRUCTURING OF PRINCIPAL AREAS

- 13.1 In line with the Welsh Ministers' commitment to assist principal councils wishing to merge, the Act makes provision for the voluntary merger of principal councils.
- 13.2 The Bill provides for two or more principal councils to submit a joint application to the Welsh Ministers for the voluntary merger of their respective areas and councils. The Welsh Ministers would be enabled to make regulations ("merger regulations") to give effect to the abolition of the principal councils which had submitted the joint application and for their replacement by a single new area and council.

Position Statement

The Council have developed positive joint working arrangements across local authorities to produce a more efficient, robust and value for money service.

Identified Lead Officer(s)

Senior Leadership Team

14. LOCAL GOVERNMENT FINANCE

The Act includes regulations in respect of Non-domestic rating and Council Tax and the imprisonment of debtors. A separate report advising of this detail will be presented at a future date.

15. ADDITIONAL PROVISIONS

- 15.1 Part 9 of the Act includes miscellaneous provisions relating to a range of matters, which Welsh Government will believe will strengthen and modernise the operation of local government.

Information sharing between regulators

- 15.2 The Act includes information sharing provisions similar to those in the 2009 Measure which facilitate the sharing of information between the Auditor General for Wales, Estyn and the Welsh Ministers).
- 15.3 The purpose of this addition is to ensure that regulators are able to share information for the purpose of exercising their specified functions in relation to a principle council.
- 15.4 The Act also provides that the Welsh Ministers and the Auditor General for Wales may request information for the purposes of their functions relating to collaborative working by principal councils, performance and governance of principal councils, and the restructuring of principal areas.

Head of Democratic services

- 15.5 The 2011 Measure introduced provisions requiring principal councils to appoint a democratic services committee with various functions, including the duty to designate one of the council's officers as the head of democratic services.
- 15.6 The 2011 Measure made no determination as to the level of officer that should fulfil the duty. Welsh Government have noted that in many Welsh local authorities, the head of democratic services is at middle management with insufficient authority within the council to deliver the wishes of the Democratic Services Committee. The Welsh Government believe that scrutiny must have appropriate and sufficient support, in the form of skilled officers and its own budget.
- 15.7 The Act amends the 2011 Measure and the Localism Act so that the head of democratic services is treated as a chief officer and afforded appropriate statutory protection.

The Council's Head of Democratic is already appointed as a Chief Officer and is a member of the Council's Senior Leadership Team. The statutory opinion of the Head of Democratic Services is that the support provide to Scrutiny and non-executive members is sufficient.

Abolition of community polls

- 15.8 The Act provides for the abolition of community polls, and implementation of a system of petitions in their place.
- 15.9 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.

Public Services Boards

- 15.10 The WFG Act enables Public Services Boards to merge, if they consider it would assist them in contributing to the achievement of the well-being goals. The Act also states that Welsh Ministers may direct two or more Boards to merge if the Welsh Ministers consider it would assist the boards in contributing to the achievement of the well-being goals.
- 15.11 However, the WFG Act does not currently explicitly enable Public Services Boards which have merged to demerge, or partially demerge, at a later date. This means there is a potential lack of flexibility for Boards. The provisions in the Act aim to address this inflexibility and to provide for steps to be taken following merger and demerger.

Town & Community Councils

- 15.12 The Act includes a number of provisions which enhance the profile of Town and Community Councils and the support a Principal Council is encouraged to provide. The new provisions placed upon Town and Community Councils mirror those now required by a Principal Council in respect of Public Participation and broadcasting. In addition specific requirements in respect of Members Training and support and how principal Councils support this work are included.

In 2020 the Council adopted a new Community Charter to support positive working relationships and share good practice in the best interest of local communities.

Fire & Rescue Authorities

- 15.13 The Welsh Government proposes to introduce a new performance management system to reflect the operating contexts and challenges which each fire and rescue authorities face.
- 15.14 FRSA 2004 requires the Welsh Ministers to prepare a Fire and Rescue National Framework, setting priorities, objectives and guidance to fire and rescue authorities on the discharge of their functions.
- 15.15 The Act provides powers for the Welsh Ministers to make regulations requiring fire and rescue authorities to develop and publish strategic plans in relation to the exercise of their functions, and the objectives and priorities set out in the Fire and Rescue National Framework. These regulations may also specify the

performance management arrangements to be used to assess a fire and rescue authority's performance against these plans.

16 **SUMMARY**

- 16.1 The 'Coming into Force' provisions of the Act are complex, with some provisions coming into force within days of Royal Assent, others within two months and the majority via Ministerial statutory instruments.
- 16.2 An updated and more detailed timeline will be shared when available, but in general it is anticipated that CJC regulations will be introduced in the Senedd during February-April 2021, for commencement in the summer (and first meeting of CJs planned by end of September 2021), subject to further consideration by the Minister given the ongoing consultation on this issues.
- 16.3 Remote attendance and related matters will be commenced from April 2021 (when the current emergency coronavirus meeting regulations end);
- 16.4 Performance and governance arrangements will be commenced from April 2021 (with the final performance report from the 2009 Measure published by 31st October 2021).
- 16.5 Most of the electoral reforms will be introduced in time for implementation at the 2022 local elections; and
- 16.6 The power of general competence, public participation duties, broadcasting of meetings and new councillor duties will apply from the 2022 local elections.
- 16.7 As stated above, the Welsh Government has already consulted on the draft Regulations to Establish CJs and the regulations of General Application and statutory CJC guidance. The Welsh Government is currently also consulting on draft statutory guidance on the 'performance and governance of principal councils. RCT have already been approached by Welsh Government to assist in the development of the guidance that will accompany Chapter 4 of the Act in respect of public participation and transparency.
- 16.8 In addition to the statutory guidance on CJs and performance and governance, it is anticipated that several sets of statutory instruments will be laid and a further 5 statutory guidance notes will be produced during the next 12 months (covering public participation, executive members' duties on equality and diversity, collaboration, mergers as well as updated scrutiny guidance and the role of the Head of Democratic Services and the independence of that role. (based on the 2011 Measure).

17. **FINANCIAL IMPLICATIONS**

- 17.1 The regulatory impact assessment relating to the Act contains Welsh Governments costs analysis of the implementation of the provisions within the Act.

- 17.2 Where the costs of implementation by the Council of the required measures in the Act are not drawn from existing budgets then these will be the subject of future reports.
- 17.3 Separate reporting will be required in relation to the matter of CJC's and new performance measure costs.
