

LOCAL GOVERNMENT (WALES) MEASURE 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7 – Communities and Community councils

96. The sections in Chapters 1 and 2 of Part 7 of the Measure revise the arrangements set out in the 1972 Act for the calling and organisation of community meetings and community polls in Wales to make them more representative of local opinion.

Section 88 - Convening of community meetings by local government electors

97. **Section 88** amends the existing provision in paragraph 30 of Schedule 12 to the 1972 Act for convening community meetings.
98. Subsection (1) of the new section 88 re-enacts the existing provisions in paragraph 30(1) of Schedule 12 insofar that in communities which have a community council, a community meeting may be convened by the chair of the council or by two councillors representing the community on the council. These triggers for convening a community meeting are unchanged. The effect of subsections 1(b)–(e) is that where community meetings are convened in this way, the existing requirements for giving public notice are re-applied. Accordingly, if the business of the community meeting is a general issue, at least seven days notice must be given; if the business concerns the existence of a community council or the grouping of a community with other communities (i.e. pursuant to sections 27A-27L of the 1972 Act as inserted by the Measure) at least thirty days notice must be given.
99. The amendment to paragraph 30(1) of Schedule 12 also removes the existing provisions whereby a community meeting may be convened by six local government electors (whether or not the community in question has a community council). Subsection (2) of the new section 88 introduces new thresholds, namely 10% of the local government electors for that community or 50 of the electors, whichever is the lower.

Section 89 – Notice of community meeting convened by local government electors

100. Inserts a new paragraph 30B in Schedule 12 to the 1972 Act which sets out the information required to be provided to enable the relevant local council to decide whether a community meeting has been duly convened when the convenors of the meeting are local government electors. The relevant local council, to which the notice of a community meeting must be given, is a community council in communities where one exists and the principal council where one does not.
101. The information required to support a notice is set out in subsections (2)-(7). The provisions allow for the notice to be given in electronic form to a principal council (provided it meets technical requirements set by the principal council under section 90) and for the supporting electors to retain anonymity if they are registered anonymously in the register of local government electors.

Section 90 – Facility for the provision of electronic notices of the convening of community meetings

102. Requires a principal council to make available facilities so that notices for community meetings may be delivered electronically. The council is also required to set, and appropriately publicise, the requirements for electronic notices scheme, such as the authentication of an electronic signature.

Section 91 – Action following receipt of notice of a community meeting

103. Requires the recipient council of the notice detailed in section 89 to consider whether the stipulated requirements and initial trigger threshold have been met. If the council considers they have, then the council must give public notice in accordance with the new section 92. If the council considers that the requirements have not been met, it must give notice to the convenors and state why it is of that opinion.

Section 92 – Public notice of community meeting

104. Requires that within thirty days of deciding that the requirements for convening a community meeting have been met, the relevant council must give public notice that the community meeting will be held.
105. If the business of the community meeting is a general issue, at least seven days notice of the meeting must be given; if the business concerns the existence of a community council or the grouping of a community with other communities at least thirty days notice of the meeting must be given (i.e. pursuant to sections 27A-27L of the 1972 Act as inserted by the Measure). The section also specifies details which are required to be included in the notice and how the notice should be published.

Section 93 – Demands for community polls

106. This section substitutes paragraph 34(4) of Schedule 12 to the 1972 Act with a provision which raises the thresholds required for a community meeting to demand a community poll. The existing thresholds require a demand for a poll to be supported by no less than ten or one-third of the local government electors present at the community meeting, whichever is the lower. This is replaced with a majority of the local government electors present, the said majority constituting 10% of the local government electorate for that community or 150 of the electors, whichever is the less.

Section 94 - Notice to be given by returning officer following taking of a poll consequent on a community meeting

107. Introduces a new provision which sets out the notice procedure following a community poll which was triggered by a community meeting and where a majority of electors voting were in favour of the question posed. The notice requirements need not be applied if the poll were on a question of a type which would be inappropriate for the council to respond to and that type had been specified in regulations by the Welsh Ministers (the new sub-paragraph 38A(2) of Schedule 12 to the 1972 Act).

Section 95 - Determination of monitoring officer as to the council to whose functions a poll relates

108. Requires the monitoring officer to whom the notice of the result of the community poll has been delivered to determine, within 14 days of receiving notice, the council to whose functions the poll question relates. The monitoring officer must then give notice, as set out in the new paragraph 38B, to the relevant council as soon as reasonably practicable.

Section 96 – Consideration of result of community poll by community council

109. Requires a community council to consider the results of a poll, following notification under the new paragraph 38B of Schedule 12 to the 1972 Act, in a meeting of the council.

Section 97 – Action to be taken following community council’s consideration of results of certain community polls

110. Requires the community council to inform the convenors of the community meeting which triggered the poll of what action (if any) the council intends to take in response to the poll. Sub-paragraph 1(a) of the new paragraph 29A of Schedule 12 to the 1972 Act makes clear that there is no legal expectation that the community council will take any action in response to the poll. This action need be taken only where the community poll was triggered at a community meeting of local government electors.

Section 98 – Consideration of result of community poll by principal council

111. Introduces a new section 33B to the 1972 Act which requires a principal council, which has received notice under the new paragraph 38B, to consider the result of the community poll and decide what actions it will take. The council is required, within two months of receiving notice, to perform at least one of the actions set out in the new subsection (4), but may perform more than one.

Section 99 – Principal council’s explanation of its response to a community poll

112. Requires a principal council to give notice, as soon as is reasonably practicable, of the action which it has taken and, possibly intends to take, in response to the community poll. The section sets out the possible recipients of such a notice, to be determined by the circumstances.

Section 100 – Repeal of existing provisions about establishment and dissolution of community councils, etc

113. Repeals the existing provisions in sections 28 to 29B of the 1972 Act governing the procedures for establishing and dissolving community councils (including for groups of communities), to make way for the new provisions set out in this Measure. The Welsh Assembly Government considers that the existing provisions are unnecessarily complex and the development of community councils is hindered by the existing thresholds which apply to some of the procedures for the establishment or dissolution of a community council. The Welsh Assembly Government considers that the existing thresholds for establishing a community council are too high and those for dissolving a community council are too low.

Section 101 – Power of community meeting to apply for an order establishing a community council

114. Introduces a new section 27A in the 1972 Act to set out the conditions which must be met before a community meeting may apply to the principal council for its area for an order to establish a community council for the area. The new subsections (4)-(6) re-enact conditions which apply under the existing provisions. The new subsections (2) and (3) lower the threshold for a community meeting voting to establish a community council to require 10% of the local government electors for the community or 150 of the electors (whichever is the lower) to be present and voting at the meeting. The existing threshold is 30% of the local government electors for the community or 300 of the electors (whichever is the lower).

Section 102 – Orders establishing separate community councils for communities

115. Introduces a new section 27B in the 1972 Act to set out the action a principal council must take when it has received an application from a community meeting for an order to establish a separate community council for the area of the community.

Section 103 – Power of community meeting to apply for an order dissolving its separate community council

116. Introduces a new section 27C in the 1972 Act to set out the conditions which must be met before a community meeting may apply to the principal council for its area for an order to dissolve an existing separate community council for the area. The new subsections (2)-(5) re-enact conditions which apply under the existing provisions. The threshold for a community meeting voting to dissolve a community council remains 30% of the local government electors for the community or 300 of the electors (whichever is the lower) to be present and voting at the meeting. A new threshold is introduced by the new subsection (6) which requires that at least two-thirds of those voting in the community poll support the proposal to dissolve a community council. A bare majority is required at present.

Section 104 – Orders dissolving separate community councils for communities

117. Introduces a new section 27D in the 1972 Act to set out the action a principal council must take when it has received an application from a community meeting for an order to dissolve a separate community council for the area of the community.

Section 105 – Power of community meeting to apply for an order grouping its community with other communities under a common community council

118. Introduces a new section 27E in the 1972 Act to set out the conditions which must be met before a community meeting may apply to the principal council for its area for an order grouping its community with other communities under a common community council. The provisions are essentially the same as those for establishing a community council under the new section 27A, with the additional condition at subsection (7) requiring applications to be made jointly with the other communities involved in the prospective grouping.

Section 106 – Orders grouping a community with other communities under a common community council

119. Introduces a new section 27F in the 1972 Act to set out the action a principal council must take when it has received an application from a community meeting for an order to group a community with other communities under a common community council.

Section 107 – Power of community meeting to apply for an order adding its community to a group of communities with a common council

120. Introduces a new section 27G in the 1972 Act to set out the conditions which must be met before a community meeting may apply to the principal council for its area for an order adding its community to a group of communities under a common community council. The provisions require the consent of all the communities involved in the prospective new grouping with the same thresholds applying as are introduced for establishing a community council under the new section 27A.

Section 108 – Orders adding a community to a group of communities with a common council

121. Introduces a new section 27H in the 1972 Act to set out the action a principal council must take when it has received an application from a community meeting for an order to add a community to a group of communities with a common community council.

Section 109 – Power of council for a group of communities to apply for an order dissolving the group

122. Introduces a new section 27I in the 1972 Act to set out the conditions which must be met before a council for a group of communities may apply to the principal council for its area for an order dissolving the group. The provisions are essentially the same as those for dissolving a separate community council under the new section 27C, with each community in the group being required to consider and vote on the proposal separately.

Section 110 – Orders dissolving a group of communities

123. Introduces a new section 27J in the 1972 Act to set out the action a principal council must take when it has received an application from a council for a group of communities for an order dissolving the group.

Section 111 – Power of community meeting to apply for order separating community from a group of communities

124. Introduces a new section 27K in the 1972 Act to set out the conditions which must be met before a community meeting may apply to the principal council for its area for an order separating the community from a group of communities. The provisions are essentially the same as those for dissolving a separate community council under the new section 27C.

Section 112 – Orders separating a community from a group of communities

125. Introduces a new section 27L in the 1972 Act to set out the action a principal council must take when it has received an application from a community meeting for an order separating the community from an existing group of communities.

Section 113 – Power of Welsh Ministers to alter voting threshold in connection with organisation of community councils

126. Introduces a new section 27M in the 1972 Act to enable the Welsh Ministers by order to alter the thresholds for the various establishment and dissolution procedures introduced by this Measure, thereby enabling them to make changes in the light of experience of applying the new thresholds.

Section 114 – Organisation of communities and their councils: consequential amendments

127. Amends other existing provision to reflect the substitution of various sections in the 1972 Act by the appropriate new provisions introduced in this Part of the Measure.

Section 115 – Transitional provision

128. Clarifies that the new procedures set out in Chapter 2 of this Measure will not apply if certain existing procedures, as set out in subsections (a) and (b) of this section, were undertaken before the provisions in this Chapter have been brought into force.

Section 116 – Requirement of public notice where vacancies in community council membership are to be filled by co-option

129. Introduces a requirement that where a community council intends filling a vacancy by co-option, the council must give public notice of the co-option opportunity. It is accepted good practice that opportunities for co-option are advertised openly, but there is no requirement at present. This will avoid the perception of community councils being ‘closed shops’ and raise awareness of opportunities for greater participation by under-represented groups. The requirements of the public notice are set out in subsection (5),

which includes provision for Welsh Ministers to set other requirements for the notice in the light of experience.

Section 117 – Guidance about giving public notice of co-option

130. Empowers the Welsh Ministers to issue guidance about giving public notice about co-option, to which community councils and councillors must have regard.

Section 118 – Appointment of community youth representatives by community councils

131. Enables a community council to appoint up to two community youth representatives to the community council. The appointments will give a platform for a youth voice, encourage communication between different sectors of society and incite a greater interest in politics and local government by young people.
132. The criteria for a community youth representative are set out in subsection (2). Subsection (3) enables the community council to determine the terms of appointment, including those relating to the vacation of office.

Section 119 – Notice requirements in connection with youth representative appointments

133. Requires that where a community council intends appointing a community youth representative, it must first give public notice of its intention to do so and specifically to the persons and in the manner set out at subsections (4-5). The requirements of the public notice are set out in subsection (6). The Welsh Ministers may set other requirements for the notice in the light of experience.

Section 120 – Guidance about appointment of community youth representatives

134. Empowers the Welsh Ministers to issue guidance about the appointment of community youth representatives, to which community councils must have regard.

Section 121 – Effect of appointment as a community youth representative

135. The community youth representatives will not have any of the statutory rights, privileges and obligations of a community council extended to them at this time; but this section enables the Welsh Ministers, by regulations, to provide for a community youth representative to be treated as a member of the council for purposes specified in the regulations.

Section 122 – Reports about discharge of a principal council's function of keeping community areas under review

136. Introduces new subsections (2A)-(2D) in section 55 of the 1972 Act to require a principal council to publish every 15 years (and send to the Local Government Boundary Commission for Wales – the “Welsh Commission”) a report of how it has discharged its existing function of keeping community areas under review. The existing legislation has no such timeframe for publishing reports and some councils have not published reports.

Section 123 – Reports about discharge of a principal council's function of keeping electoral arrangements for communities under review

137. Introduces new subsections (4A)-(4D) in section 57 of the 1972 Act to require a principal council to publish every 15 years (and send to the Welsh Commission) a report of how it has discharged its existing function of keeping electoral arrangements for community areas under review. The existing legislation has no such timeframe for publishing reports and some councils have not published reports.

Section 124 – Exercise of functions by the Local Government Boundary Commission for Wales on behalf of principal councils

138. Introduces a new section 57A in the 1972 Act to enable the Welsh Commission and a principal council to agree arrangements by which the Welsh Commission may exercise the principal council's functions of reviewing the community areas or electoral arrangements for communities and considering requests received from community meetings and councils in this respect.
139. The existing legislation enables the Welsh Commission to undertake these functions at present, but the Welsh Commission must first be directed to do so by Welsh Ministers. The cost of undertaking reviews currently falls to the Welsh Commission as the existing legislation does not allow it to charge any fee to the principal council concerned. The new provision alleviates the need for a direction from the Welsh Ministers where a principal council and the Welsh Commission have reached agreement about the arrangements for the review.

Section 125 – Sums payable in respect of reviews carried out by the Local Government Boundary Commission for Wales

140. Introduces new subsections (4A)-(4C) in section 56 of the 1972 Act for circumstances where the Welsh Ministers have had to direct the Welsh Commission to undertake a review on behalf of a principal council (perhaps because the Welsh Commission and the council have failed to reach agreement about the arrangements for the review). The direction may include a requirement on the principal council concerned to pay the Welsh Commission a sum specified or to be calculated.

Section 126 – Community councils' powers to promote well-being

141. Amends section 1(b) of the 2000 Act to include community councils in the list of local authorities on which the power of well-being is conferred by section 2(1) of that Act.
142. Part I of the 2000 Act provides a power for local authorities to do anything that they consider is likely to achieve the promotion or improvement of the economic, social or environmental well-being of their area. In relation to Wales, this power is currently conferred on county councils and county borough councils only. The Assembly Government considers that extending the power of well-being to community councils will enhance the opportunities for them to develop their role in promoting and improving the well-being of their areas.

Section 127 – Modifications of enactments preventing or obstructing a community council from exercising their well-being power

143. Enables the Welsh Ministers by order to make modifications to any enactment which they think prevents or obstructs community councils from exercising their power under section 2(1) of the 2000 Act.

Section 128 - Transitional provision

144. This transitional provision is to deal with the situation where a community strategy pursuant to section 39(4) of the Local Government (Wales) Measure 2009 has not yet been published.

Section 129 – Welsh Ministers' power to pay grant to community councils

145. Enables the Welsh Ministers to pay grants to community councils. The developing role of community councils may create new demands on their finances but the current legislation does not enable the Welsh Ministers to make grant payments to community councils for any purposes.

Section 130 - Power to set out model charter agreement

146. Enables the Welsh Ministers to set out a model charter agreement in an order. The Assembly Government already encourages collaborative arrangements between principal and community councils, usually set out in an agreed “charter”, through which the two tiers of government would work together in a mutually supportive and co-operative way for the benefit of their communities. The Welsh Ministers consider that, in the first instance, the development and adoption of collaboration arrangements/ charters is best achieved on a voluntary basis at the local level. There is, however, no power currently available to the Assembly Government to require reluctant councils to come together, address the issues and agree a charter for the benefit of their areas.

Section 131- Directions requiring the adoption of model charter agreements

147. Enables the Welsh Ministers to issue directions requiring the adoption of a model charter.

Section 132- Guidance about model charter agreements

148. Empowers the Welsh Ministers to issue guidance about charter agreements, to which principal and community councils acting under a direction of the Welsh Ministers must have regard.

Section 133 - Consultation

149. Requires the Welsh Ministers to consult the bodies, persons or local government institutions stipulated before making an order or issuing a direction about model charter agreements.

Section 134 – Schemes for the accreditation of quality in community government

150. Enables the Welsh Ministers to make regulations to provide for an accreditation of quality scheme for community councils.
151. There is currently no national accreditation of quality scheme to assess the competence of community councils in Wales. The Welsh Ministers consider that there is value in developing such a scheme to help raise standards of local government by community councils.
152. The intention of the Welsh Ministers is that, in the first instance, a national accreditation of quality scheme in Wales should be developed and operated on a non-statutory basis. However, the Welsh Ministers consider that it would be beneficial to have a “reserve” power to introduce a statutory accreditation scheme should this be considered appropriate at some future point. This section provides this power.

Section 135 – Accreditation of quality in community government: criteria

Section 136 – Accreditation of quality in community government: applications

Section 137 – Accreditation of quality in community government: fees

Section 138 – Accreditation of quality in community government: removal of accreditation

Section 139 – Applications for accreditation of quality in community government: delegation of functions

Section 140 – Accreditation of quality in community government consequences

153. These provisions support section 134. If the Welsh Ministers make regulations for an accreditation scheme, the regulations:
- must set criteria to be met on an application for accreditation. These may cover the matters listed in section 135(2), but would not be limited to these;
 - must set out the requirements for a valid application for accreditation (section 136);
 - may set fees for an application for accreditation (section 137);
 - must set out the grounds for the removal of accreditation status awarded and for the review of accreditation status awarded (section 138).
154. **Section 139** would allow the Welsh Ministers to arrange for another person (which need not be a public authority) to operate the accreditation scheme.
155. **Section 140** enables the Welsh Ministers, by regulations, to remove or alter statutory impediments from accredited community councils (for example, because they have achieved a certain standard of performance) and to place impediments in the way of unaccredited community councils (for example, because they are unable to show that they have achieved a certain standard).