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# Guidance, including Statutory Guidance, to Principal Councils and Community and Town Councils in Wales

Local Government (Wales)  
Measure 2011

Part 7: Communities and  
Community Councils

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## Introduction

Part 7 of the Local Government (Wales) Measure 2011 ('the Measure') contains provisions which give effect to Welsh Government commitments to develop and strengthen the role of community councils in Wales, enabling them to deliver a wider range of services and actions locally as well as increasing the effectiveness of their representational role and their ability to work in partnership with other bodies.

These provisions flowed from the recommendations of a study, commissioned by the Welsh Government and undertaken in 2003, by the University of Wales, Aberystwyth: Institute of Geography and Earth Sciences into community councils in Wales, titled *Research Study into the Role, Functions and Future Potential of Community and Town Councils in Wales* ('the Aberystwyth Study').

The Aberystwyth Study presented a comprehensive review of the activities undertaken by community councils across Wales. The report concluded that there were growing pressures for reform to the structure and working practices of community councils. The report outlined the opportunities available to community councils, the constraints within which they operate and proposals for enhancing their roles.

The Welsh Government's response to the report and subsequent 2007 local government policy statement 'A Shared Responsibility' set out a range of commitments which have guided policy and action in this area since. The 2011 Measure provided the vehicle for those aspects which required primary legislation to implement them.

This guidance document includes statutory guidance in relation to the co-option of members of community councils (chapter 3) and the appointment of community youth representatives (chapter 4). When exercising functions under the provisions to which these chapters relate, regard must be given to this guidance.

For each of the other chapters this guidance provides a summary of the provisions contained within the Measure and where appropriate an update on the latest position regarding the adoption of those provisions. It should be noted that separate guidance, both statutory and non-statutory, may be developed in support of the various chapters of this part of the Measure. This guidance will be available on the Welsh Government website.

For the purposes of this guidance principal council refers to county or county borough councils, whilst community council refers to any community or town council.

# Chapter 1 Community Meetings and Community Polls

## Introduction

- 1.1. Provisions within the Local Government Act 1972 ('the 1972 Act') allowed a very small number of electors to call a meeting and trigger a poll. Such polls could prove costly with no obligation on the part of the principal or community council to abide by the outcome.
- 1.2. Chapter 1 of Part 7 revises the arrangements set out in the 'the 1972 Act for the calling and organisation of community meetings and community polls in Wales to make them more representative of local opinion. Whilst the ability of a community council to convene a community meeting has been retained, there is now a need for greater support from electors if they wish to convene a community meeting or call for a poll.

## The Measure Provisions

### Community meetings convened by the chair of the council or two councillors.

- 1.3. A community meeting may be convened by the chair of the community council or by two councillors who represent the community on the council.
- 1.4. Where community meetings are convened in this way, public notice must be given. 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 at least thirty days notice must be given. The Measure also specifies the details which are required to be included in the notice and how the notice should be published.

### Community meetings convened by local government electors

- 1.5. The Measure introduces new thresholds relating to the convening of community meetings by local government electors. A community meeting must be convened by no less than 10% of the local government electors for that community or 50 of the electors (if 10% exceeds 50 electors). Where there is a community council, such a meeting must be chaired by the existing chair of that council. Where there is no community council, a chair is to be appointed by those electors attending the community meeting.
- 1.6. The convenors of the meeting are required to give notice of the meeting to the community council, where one exists, or the principal council where one does not.
- 1.7. The Measure sets out the information required to be contained within that notice and allows for the supporting electors to retain anonymity if they are registered anonymously in the register of local government electors (under section 9B of the Representation of the People Act 1983).

- 1.8. In addition, the Measure allows for the notice to be given in electronic form to a principal council and requires the principal council to make available facilities so that notices may be delivered electronically. The council is also required to set, and appropriately publicise, the requirements for electronic notices, such as the authentication of an electronic signature.
- 1.9. The recipient council must consider whether the stipulated requirements and initial trigger threshold have been met. If the council considers that they have not been met, it must give notice to the convenors and state why it is of that opinion. If the council considers the requirements have been met, then the council must give public notice of the meeting within thirty days.
- 1.10. If the business of the community meeting is a general issue, at least seven clear 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 clear days notice must be given. The Measure also specifies the details which are required to be included in the notice and how the notice should be published.

### Community Polls

- 1.11. The Measure introduces new thresholds relating to the calling of community polls by a community meeting, namely that a community poll must be demanded by a majority of the electors present with that majority constituting at least 10% of the total local government electorate for that community or 150 of the electors (if 10% of the electors exceeds 150). Different thresholds apply to demands for a poll relating to the existence or grouping of community councils – see chapter 2.
- 1.12. The returning officer must give notice, in writing, to the monitoring officer of the relevant principal council, of the question posed by the poll where the majority of those voting were in favour of that question. The relevant principal council is the council within whose area the community of the community meeting at which the poll was demanded lies. The notice requirements do not apply to a poll taken on a question of type specified in regulations made by the Welsh Ministers.
- 1.13. The recipient monitoring officer is required to determine, within 14 days of receiving the notice, the council to whose functions the poll question relates. The monitoring officer must then give notice in writing to the relevant council as soon as reasonably practicable after the date of the determination and include in that notice the reasons for the determination. There is no restriction on the type of issue which may be the subject of a community poll. If a poll question does not relate to functions of either council, the organiser should be informed by the monitoring officer that neither council would have power to take any action should there be a positive result at the poll. If the poll question is a repeat of an earlier one, or is, in the view of the monitoring officer, a frivolous one, the organiser should be reminded that the cost of the resultant poll will fall onto the community itself.

- 1.14. If a community council receives a notice from a monitoring officer about a community poll question it is required to consider what action, if any, it should take in response to the poll at a meeting of the community council. The meeting must be held within a period of six weeks from when the notice was given. If necessary, the chair of the community council should exercise their power to call an extraordinary meeting of the community council in order to comply with this requirement.
- 1.15. There is no legal expectation that the community council will take any action in response to a poll. However, the council must take all reasonable steps to give notice to each of the individuals who convened the community meeting of what action if any the council intends to take in response to the poll, or any part of the poll that was considered at the meeting. This notice must be provided in writing as soon as reasonably practicable after the meeting is held. The council must also supply the principal council with this information in respect of those persons who convened the community meeting who are registered anonymously on the register of local government electors.

### **Non Statutory Guidance**

- 1.16. It is the intention of the Welsh Government to develop and issue separate guidance on community polls.
- 1.17. This guidance will be issued for consultation in due course and will be available on the Welsh Government website.

## **Chapter 2 Organisation of Communities and their Councils**

### **Introduction**

- 2.1. The Welsh Government's response to the Aberystwyth Study indicated that it would legislate to make it easier for communities to establish community councils where they do not already exist and to require a greater level of support for a proposal to dissolve an existing council.
- 2.2. Chapter 2 of Part 7 amends the provisions contained within the 1972 Act to provide a lower threshold for a decision by a community meeting to call for a poll to establish a community council; and for the dissolution of a council to be supported by at least two-thirds of those voting in a poll. The opportunity has also been taken in the Measure to repeal the existing provisions of the 1972 Act relating to the creation, grouping and dissolution of councils and to recast them in a more easily understood form.

### **The Measure Provisions**

#### Establishing a new community council

- 2.3. A community meeting may apply to its principal council for an order establishing a new community council where the community does not have a separate community council. Prior to making such an application the community meeting must meet certain conditions.
- 2.4. Firstly, the community meeting must have taken an effective decision to hold a poll on a proposal to establish a council for that community. A decision to hold such a poll is only effective if a minimum of 10% of the total local government electorate for that community, or 150 of the electors (if 10% of the electors exceeds 150), are present and voting at the meeting.
- 2.5. Secondly, the poll cannot be held before the end of the period of 42 days beginning with the day on which the decision to hold the poll was taken. Thirdly, a poll may not be held within two years of an earlier poll which resulted in a rejection of a proposal to establish a community council; and finally, a majority of those voting in the poll must support the proposal to establish a community council.
- 2.6. On receipt of the application to establish a new community council, the principal council must consider whether the required conditions have been met. If the council is satisfied the conditions have been met, the order applied for must be made, subject to any provisions the principal council considers necessary.

#### Dissolving an existing community council

- 2.7. A community meeting may apply to its principal council for an order dissolving an existing community council. Prior to making such an application the community meeting must meet certain conditions.

- 2.8. Firstly, the community meeting must have taken an effective decision to hold a poll on a proposal to dissolve an existing council for that community. A decision to hold such a poll is effective only if a minimum of 30% of the local government electors for the community, or 300 of the electors (if 30% of the electors exceeds 300), are present and voting at the meeting.
- 2.9. Secondly, a poll can not be held before the end of the period of 42 days beginning with the day on which the decision to hold the poll was taken.
- 2.10. Thirdly, a poll may not be held within two years of an earlier poll which resulted in a rejection of a proposal to dissolve an existing community council; and finally, at least two-thirds of those voting in a poll must support the proposal to dissolve the council for the community
- 2.11. On receipt of the application to dissolve the council of a community, the principal council must consider whether the required conditions have been met. If the council is satisfied the conditions have been met, the order applied for must be made.

#### Grouping communities under a common community council

- 2.12. A community meeting may apply to its principal council for an order grouping the community with some neighbouring community or communities which lie in the same principal area as the community, under a common community council. Prior to making such an application, the community meeting must meet certain conditions.
- 2.13. The conditions are essentially the same as those for establishing a new community council (see paragraphs 2.4 and 2.5 above), with the additional requirement that applications must be made jointly with the other communities involved in the prospective grouping.
- 2.14. On receipt of the application, the principal council must consider whether the required conditions have been met. If the council is satisfied the conditions have been met, the order applied for must be made, subject to any provisions the principal council considers necessary, and the order made must specify the name of the group in both English and Welsh.

#### Adding a community to a group of communities under a common community council

- 2.15. A community meeting may apply to its principal council for an order adding the community to a group of communities, all of which lie in the same principal area as the community, and for which there is a common community council. Prior to making such an application, the community meeting must meet certain conditions.
- 2.16. The conditions are essentially the same as those for establishing a new community council (see paragraphs 2.4 and 2.5 above), with the additional requirement that applications require the consent of all the communities involved in the grouping.

2.17. On receipt of the application, the principal council must consider whether the required conditions have been met. If the council is satisfied the conditions have been met, the order applied for must be made, subject to any provisions the principal council considers necessary, and the order made must specify the name of the group in both English and Welsh.

#### Dissolving a group of communities

2.18. A community council may apply to its principal council for an order dissolving a group of communities. Prior to making such an application, the community meeting must meet certain conditions.

2.19. The conditions are essentially the same as those for dissolving a community council (see paragraphs 2.8 and 2.9 above), with each community in the group being required to consider and vote on the proposal separately.

2.20. On receipt of the application, the principal council must consider whether the required conditions have been met. If the council is satisfied the conditions have been met, the order applied for must be made, subject to any provisions the principal council considers necessary.

#### Separating a community from a group of communities

2.21. A community meeting of a community included in a group of communities, may apply to its principal council for an order separating the community from the group. Prior to making such an application, the community meeting must meet certain conditions.

2.22. The conditions are essentially the same as those for dissolving a community council (see paragraphs 2.8 and 2.9 above).

2.23. On receipt of the application, the principal council must consider whether the required conditions have been met. If the council is satisfied the conditions have been met, the order applied for must be made, subject to any provisions the principal council considers necessary.

#### Altering voting thresholds in connection with the organisation of community councils

2.24. The Measure introduces new provisions enabling Welsh Ministers to, by order, alter the thresholds for the various establishment and dissolution procedures, thereby enabling them to make changes in the light of experience of applying those new thresholds

## **Chapter 3 Co-option of members of Community Councils**

### ***Statutory guidance issued in accordance with section 117 of the Local Government (Wales) Measure 2011***

#### **Introduction**

- 3.1. The Aberystwyth Study highlighted concerns regarding the inclusiveness of some councils, the low level of contested elections and the procedures for consulting and communicating with local people.
- 3.2. In this context, Chapter 3 of Part 7 addresses the need to give public notice where vacancies in community council membership are to be filled by co-option, which is of considerable significance as it can affect the extent to which individuals can participate in the democratic process.

#### **The Measure Provisions**

- 3.3. The Measure requires that where a community council intends filling a vacancy by co-option, the council must give public notice of the co-option opportunity.
- 3.4. This requirement applies to:
  - (a) the power of members of a community council to co-opt a person to fill a vacancy in the membership of the council in the event of insufficient nominations to fill vacancies in respect of which an election is held, as provided under section 21(2)(a) of the Representation of the People Act 1985.
  - (b) any power or duty of a community council to co-opt a person to fill a casual vacancy in the membership of the council under rules made under section 36(2) of the Representation of the People Act 1983.
- 3.5. The Measure requires that notice must be given:
  - (a) in the case of vacancy unfilled at an election, by one of the members authorised by the council for that purpose; and
  - (b) in the case of a casual vacancy, by the council.
- 3.6. The general provisions in section 232 of the 1972 Act relating to public notices apply. These require that notice shall be given:
  - (a) by posting the notice in some conspicuous place or places within the council's area; and
  - (b) in such other manner, if any, as appears to the council to be desirable for giving publicity to the notice.

3.7. The notice must contain:

- (a) Contact details of an individual from whom further information about the vacancy and the process for selecting a person may be obtained;
- (b) Such other information as the council considers appropriate; and
- (c) Such other information as is required to be included by any regulations made the Welsh Ministers.

The Welsh Ministers have no plans to issue regulations at this time, but will keep the matter under review.

3.8. In exercising the above functions, councils must have regard to the following statutory guidance.

### **Statutory Guidance**

3.9. This statutory guidance has been issued by Welsh Ministers in exercise of their powers under section 117 of the Measure. By virtue of section 117(1) of the Measure, local authorities must have regard to this guidance in respect of the issuing of public notice where vacancies in community council membership are to be filled by co-option.

3.10. It has long been accepted good practice that opportunities for co-option onto community councils are advertised openly within the local community. This avoids the perception, whether warranted or not, that community councils are 'closed shops' populated by the 'favoured few'. It is important that councils are representative of the communities that they serve and the Welsh Government has taken steps on a number of fronts to encourage greater diversity amongst those standing for office. This includes provisions in the Measure which require principal councils to collect information on candidates standing for election to principal and community councils.

3.11. The Welsh Government would, of course, prefer to see all vacancies on community councils filled through elections or by-elections whenever possible. However, co-option is a valid means of filling vacant seats when the need arises.

3.12. The Measure sets out minimum requirements for giving notice in relation to the filling of vacancies through co-option. However, in considering where and how to give notice, councils should have regard to the need to reach out to as wide a range of persons within their community as possible. In particular, councils should consider how best to reach those groups who traditionally might be reluctant to seek office, or whom are often underrepresented within the democratic system.

3.13. Councils should take note of the under represented groups included in the Equality Act 2010 and proactively seek to reach people within these categories. All public notices and information needs to be in Plain English and Cymraeg Clir to overcome any barriers relating to the use of complicated language.

3.14. Councils will wish to consider the most appropriate and cost-effective means of giving publicity to opportunities for co-option, but the placing of a notice on the council's notice board alone is unlikely to be adequate in most cases. This may be supplemented by the promotion of co-option on council websites; councillors' or the council's Facebook page or Twitter feeds, letters to local organisations, as well as through the local press.

#### Co-option to fill a vacancy following an election

3.15. The Representation of the People Act 1985 ("the 1985 Act") provides that unless the number of newly elected members of the community council is less than constitutes a quorum for meetings of the council, *'those members may co-opt any person or persons to fill the vacancy or vacancies remaining unfilled'*.

3.16. The 1985 Act goes on to provide that the county / county borough council for the area may do anything for the proper holding of an election or appointing persons to the council in relation to any vacancies which are not so filled. The county / county borough council may not exercise the above powers before the expiry of 35 days from the date of the ordinary elections (see section 21(2), 1985 Act). The duty on the returning officer in section 39(1) of the Representation of the People Act 1983 to hold an election within 35 days does not apply in this instance (see: section 21(2)(c)).

3.17. In view of the wording used in section 21(2) of the 1985 Act, section 116(3)(a) of the Measure provides that the notice of the council's intention to co-opt a person or persons is to be given by one of the members authorised by a majority of the other members of the community council for that purpose. Whilst this could be any member, councils may consider it appropriate for the notice to be in the name of the chair of the council. Consideration of the matter would need to be amongst the first business of the new council at its annual meeting following the elections.

#### Co-option to fill a casual vacancy

3.18. A casual vacancy can arise for several reasons, including resignation or failure to accept office. The vacancy is automatic, and does not need to be declared. The statutory reference for the filling of casual vacancies is section 21 (2) (a) of the Representation of the People Act 1985 and any power or duty of a community council under rules made under section 36(2) of the Representation of the People Act 1983 to co-opt a person to fill a casual vacancy.

3.19. Public notice must be given of the vacancy to give the community the opportunity to nominate candidates to represent them on the council. If notification is received from ten electors within fourteen days that they want an election, then an election must be held. If there is one candidate for one vacancy, this candidate is elected unopposed. Only if there is no request for an election may the council co-opt an individual as a councillor and again public notice must be given.

## **Chapter 4 Appointment of Community Youth Representatives**

### ***Statutory guidance issued in accordance with section 120 of the Local Government (Wales) Measure 2011***

#### **Introduction**

- 4.1. The Aberystwyth Study identified that the composition of community councils in Wales did not proportionately reflect the composition of the population as a whole. In particular, the study identified a need to engage with young people, both to gain their input into the areas of the councils' responsibilities which affect them and to encourage them to further participate in local government when they are old enough to stand for election.
- 4.2. Chapter 4 of Part 7 enables community councils to appoint up to two individuals to act as community youth representatives. It addresses the need to give notice of the intention to appoint a community youth representative to the public; the head teacher or proprietor of any school with premises in the area; and the principal and governing body of any further or higher education establishment with premises in the area.

#### **The Measure Provisions**

- 4.3. The Measure does not require community councils to appoint youth representatives, but sets out what they are required to do if they choose to do so. These requirements ensure that, when the decision is made to appoint youth representatives, the opportunity to become a youth representative is made available to all eligible young people in the community. The requirements to give notice and information about the appointment of youth representatives also help parents, guardians and education professionals to best support young people in their campaign for election and in their work with the council after election.
- 4.4. A community council may appoint no more than two individuals to act at any one time as community youth representatives. The Measure defines a "community youth representative" as an individual who:
  - is over the age of 15 but under the age of 26; and
  - is considered by the council to be suitable to represent the interests of individuals under the age of 26 who live, work or receive education or training in the community area.
- 4.5. Youth representatives do not necessarily have to live, work or receive education or training in the community area themselves, provided the council considers them suitable. This may be particularly applicable where a neighbouring community does not have a community council.
- 4.6. A community council may not appoint any individual as a youth representative unless they have complied with the notice requirements in section 119 of the Measure. Under section 119, councils are required to give notice in

accordance with the requirements of section 232 of the 1972 Act, modified as follows:

- (a) by posting the notice in some conspicuous place or places within the council's area;
- (b) by giving notice to the head teacher and proprietor of any school which has any part of its premises situated in the area of the community council;
- (c) by giving notice to the principal and governing body of any institution of further or higher education which has any part of its premises situated in the area of the community council; and
- (d) by giving notice in any other manner that appears desirable to the community council for ensuring that as many eligible young people as possible are aware of the intention to appoint youth representatives.

4.7. The public notice must contain the following information:

- the contact details of an individual from whom further information about the appointment of youth representatives, and the process of their appointment, may be obtained;
- any other information the community council considers appropriate; and
- any other information required to be included in the notice by any regulations made by the Welsh Ministers.

At present, there are no intentions to issue regulations under this section.

### **Statutory Guidance**

4.8. This statutory guidance has been issued by Welsh Ministers in exercise of their powers under section 120 of the Measure.

4.9. By virtue of section 120(1) of the Measure, local authorities must have regard to this guidance in exercising their powers to appoint community youth representatives.

4.10. The Measure sets out minimum requirements for giving notice in relation to the appointment of youth representatives. However, in considering where and how to give notice, councils should have regard to the need to reach out to as wide a range of young persons within their community as possible. In addition to giving notice to educational establishments as required by the Measure, councils should consider whether there are other youth organisations in the area which should also be consulted.

4.11. It is for councils to determine the selection process, the terms of appointment and the nature of the role that youth representatives will play. The latter might include, for example, participation in relation to the consideration of specific facilities for young people, or it could extend to providing a "youth view" on all matters before the council.

- 4.12. Although these provisions in the Measure are specifically aimed at encouraging the involvement of young people as council representatives, they do not preclude the council's use of other methods of engaging young people such as youth councils and other youth fora.
- 4.13. Community youth representatives are not members of the community council that appoints them and, consequently, they may not vote on council matters.
- 4.14. Welsh Ministers have powers to provide through regulations that community youth representatives are to be treated as members of the council for prescribed purposes. There is currently no intention to make such regulations, but this will be reviewed in light of implementation of the legislation over time.
- 4.15. It should be noted that individuals are eligible to become full community councillors from the age of 18. Individuals between the ages of 18 and 26 who are elected or co-opted as community councillors must assume the full duties and privileges of a councillor and must represent the interests of the whole community, not only young people. Therefore, individuals between the ages of 18 and 26 who become community councillors, either through election or co-option, cannot also be community youth representatives.

#### Disclosure and Barring Service Checks (formerly Criminal Records Bureau checks)

- 4.16. The Criminal Records Bureau (CRB) and the Independent Safeguarding Authority were merged in December 2012. The Disclosure and Barring Service (DBS) was created in place of the two bodies. CRB checks are now referred to as DBS checks.
- 4.17. As the appointment of youth representatives and their role is at the discretion of the individual community or town council, it will be for the council itself to determine whether they are entitled to ask for a DBS check, and at what level, for councillors, clerks and staff working with youth representatives, given the individual circumstances of the council. If the role of the youth representatives changes, the council would need to reconsider its position regarding DBS checks.
- 4.18. Community and town councils can obtain further information about DBS checks from <https://www.gov.uk/disclosure-barring-service-check> or by emailing the DBS at customerservices@dbs.gsi.gov.uk. In addition, the Home Office has produced guidance on eligibility for DBS checks <https://www.gov.uk/government/publications/dbs-check-eligible-positions-guidance>

## **Chapter 5 Reviews of Community Areas and Electoral Arrangements**

### **Introduction**

- 5.1. The 1972 Act placed a duty on principal councils to keep the whole of their area under review for the purpose of considering whether or not to make recommendations to the Local Democracy and Boundary Commission for Wales (LDBCW) with respect to the constitution, abolition or alteration of communities. However, there were no timescales in the 1972 Act regarding the regularity of such reviews.
- 5.2. In addition, principal councils had a duty to keep under review the electoral arrangements for the communities in their area for the purpose of examining the number of councillors within each community area and, as appropriate, their distribution within community wards and considering whether or not to make substantive changes in those arrangements. Again, there were no timescales regarding the regularity of these reviews.
- 5.3. To address these issues, Chapter 5 of Part 7 introduces provisions specifying timescales within which principal councils are required to review their community areas and report to the LDBCW.

### **The Measure Provisions**

- 5.4. The Measure included provisions relating to the review of community area and electoral arrangements. These have since been replaced by provisions within the Local Government (Democracy) (Wales) Act 2013, the detail of which is set out below.

### **Local Government (Democracy) (Wales) Act 2013**

- 5.5. The Local Government (Democracy) (Wales) Act 2013 includes provisions relating to electoral arrangement reviews and the review of communities. The Act renames the LDBCW as the Local Democracy and Boundary Commission for Wales (LDBCW) and that term, in abbreviated form, is used below.

#### Principal council reviews of community areas

- 5.6. The Act tightens the review requirements contained in section 122 of the Measure so that, once notified of a forthcoming electoral review, a principal council will be required to ensure that its communities have been recently reviewed to the satisfaction of the LDBCW. Should a principal council fail to comply with this requirement, the LDBCW will be empowered to carry out a community review and charge the principal council for doing so. The LDBCW will also be empowered to issue guidance to the principal council on the timing and process of reviews together with the principles to be followed.

## Principal council reviews of electoral arrangements

- 5.7. The Act replaces the ten to fifteen year timeline for reviews of principal councils with a continual cycle of electoral arrangements reviews, commencing in 2014. No final report or an electoral arrangements review can be published during the nine-month period preceding a normal day for local elections, so as to ensure that any changes can be implemented in good time for any forthcoming election.
- 5.8. It should be noted that, irrespective of who conducts the review, a draft report should be produced for consultation and this must include any local authorities to whom it is relevant.
- 5.9. Further details of the Act may be found on the National Assembly website <http://www.senedd.assemblywales.org/mgIssueHistoryHome.aspx?IID=5052&AIID=8648>

## **Chapter 6 Community Councils' Powers to promote Well-being**

### **Introduction**

- 6.1. The Local Government Act 2000 ('the 2000 Act') created a discretionary power which enables local authorities in Wales, namely county councils and county borough councils, to do anything that they consider is likely to promote or improve the economic, social or environmental well-being of their area and/or persons in it, provided that they are not restricted from doing so by other legislation.
- 6.2. Local authorities are statutory bodies which operate within a statutory framework. Before the power to promote well-being came into force, local authorities could only do those things that they were empowered to do by specific statutory powers, duties and functions. This often created uncertainty regarding the extent of the 'enabling' power which local authorities had. Therefore the introduction of the well-being power enabled local authorities to have a wide discretionary power to further develop their community leadership role and the delivery of better and more responsive services.
- 6.3. The Welsh Government considered that extending the power of well-being to community councils would enhance their opportunities to develop their role in promoting and improving the well-being of their areas, including working in partnership with principal councils and other stakeholders. In this context, Chapter 6 of Part 7 extends the power of well-being to community councils.

### **The Measure Provisions**

- 6.4. The Measure amends the 2000 Act to include community councils in the list of local authorities on which the power of well-being is conferred. The power may be exercised in relation to the whole or any part of the community council's area and in relation to all or any persons resident or present in the area.
- 6.5. In determining whether or how to exercise these powers, a community council must have regard to the community strategy for the area published under the Local Government (Wales) Measure 2009 by the principal council for the area. In practice, from April 2013 the community strategy will be replaced by a single integrated plan, which will incorporate the statutory planning duties with regard to community planning, children and young people, health social care and well-being and community safety.
- 6.6. In addition, the Measure enables the Welsh Ministers, by order, to make modifications to any enactment which they think prevents or obstructs community councils from exercising the power of well-being under the 2000 Act.

### **Statutory Guidance**

- 6.7. Statutory guidance has been issued by the Welsh Ministers under Section 3(5) of Part 1 of the Local Government Act 2000. By virtue of Section 3(5) of Part 1

of the Local Government Act 2000, local authorities must have regard to this guidance.

- 6.8. This Statutory guidance is available on the Welsh Government website <http://wales.gov.uk/topics/localgovernment/publications/statutory-guidance-ese-la-act-2000/?lang=en>

## **Chapter 7 Grants to Community Councils**

### **Introduction**

- 7.1. Section 31 of the Local Government Act 2003 provides a general power for the Welsh Ministers to pay a grant towards expenditure incurred by a principal council, i.e. a county or county borough council.
- 7.2. The bulk of community council income is received by means of a council tax precept under Section 41 of the Local Government Finance Act 1992. The developing role of community councils may create new demands on council finance outside the scope of the council tax precept. The Aberystwyth report recommended that the Welsh Government should examine possible alternative mechanisms for directly funding community councils, such as through the use of direct grants.
- 7.3. To this end, Chapter 7 of Part 7 enables Welsh Ministers to provide direct grant funding to community councils, akin to that which already exists in relation to principal councils.

### **The Measure Provisions**

- 7.4. Whilst there are no current specific plans to utilise this power, the Measure introduces a provision enabling Welsh Ministers to pay a grant to a community council towards expenditure incurred or to be incurred by a community council.
- 7.5. The amount of the grant paid, and the manner of the payment, would be determined by the Welsh Ministers. The grant may be paid subject to conditions covering, but not limited to, the use of the grant and the circumstances in which the whole or part of the grant must be repaid.

## **Chapter 8 Model Charter Agreements between Local Authorities and Community Councils**

### **Introduction**

- 8.1. The Aberystwyth Study identified that the quality of relationships between principal councils and their community councils varied significantly, not only from county to county, but within different departments of a principal council and the community councils within their area. In addition, at the time only around two-fifths of community councils had any functions delegated to them by their principal council.
- 8.2. To address these matters, the Aberystwyth Study recommended that the Welsh Government should legislate to require all local authorities to produce a charter agreement with community councils in their areas, including procedures for the delegation of a specified range of functions to accredited community councils and outlining procedures for interaction between local authorities and community councils.
- 8.3. In this context, Chapter 8 of Part 7 introduces provisions allowing Welsh Ministers to introduce mandatory charters between principal councils and their community councils.

### **The Measure Provisions**

- 8.4. The Measure enables Welsh Ministers to, by order, set out a model charter agreement for use between a principal council and a community council for a community or communities within its area. A charter agreement in this context means a shared agreement describing the way in which the councils' respective functions will be exercised for the purpose of maintaining and improving co-operation between them.
- 8.5. In addition, Welsh Ministers may, by direction, require local authorities and community councils to adopt this model charter. Such a direction may require the councils concerned to seek agreement as to how to exercise functions in accordance with all, or some, of the provisions of the model charter agreement as set out in the direction.
- 8.6. Under Section 132 of the Measure, the Welsh Ministers may issue statutory guidance. Local authorities must have due regard to this guidance when acting under a direction from the Welsh Ministers requiring the adoption of model charters.

### **Current Position**

- 8.7. The Welsh Ministers endorse the principle of the recommendation of the Aberystwyth Study and strongly encourage the voluntary development of charter agreements as a means of establishing effective collaboration between principal councils and their community councils. The Welsh Ministers very

much welcome the work that has taken place to date to develop and review charters where they already existed.

- 8.8. In response to the recommendation of the Aberystwyth Study, the Welsh Government developed and issued non-statutory guidance *A Shared Community - Relationship building and charters for unitary authorities and community and town councils* ('A Shared Community') in 2008 <http://wales.gov.uk/topics/localgovernment/publications/asharedcommunity/?lang=en> This provides a resource pack of guidance and good practice to support both principal and community councils and includes a model charter that councils may choose to adopt. The Welsh Government has also worked closely with One Voice Wales and the Welsh Local Government Association to ensure that practical support is available to councils in taking charters forward.
- 8.9. While the Measure enables Welsh Ministers to require principal and community councils to adopt a model charter, there is no intention at present to use this power. Charters remain optional; it is important that a charter is only in place because both the principal council and their community council are fully committed to it. The Welsh Government recognises that charter agreements may not always be the most desirable option and emphasises the importance of honest, open dialogue between a principal council and their community councils to identify the most appropriate way for them to work in their area.
- 8.10. Where a decision has been taken to develop a charter agreement it is recommended that local authorities and community councils have regard to the guidance contained within *A Shared Community*, available from the Welsh Government website.
- 8.11. The Welsh Government continues to monitor the progress made by principal councils in developing charter agreements and the Welsh Ministers may re-visit the decision regarding the use of the provisions contained in Chapter 8 if deemed necessary.
- 8.12. While the Welsh Government believes that there is a role for community councils in delivering a range of services in their local areas, it believes that delegation of services is a voluntary option and must be the result of local agreement between the local authority and the community or town council. Any delegation of services should be based upon improving local service delivery, whilst maintaining or improving value for money. While a charter agreement can provide a framework for the delegation of services, there is no direct link between the two; a charter agreement is not necessarily an agreement for the delegation of services to a community council.

## **Chapter 9 Schemes for the Accreditation of Quality in Community Government**

### **Introduction**

- 9.1. The Aberystwyth Study recommended that a community council wishing to take on delegated functions from a principal council should be able to demonstrate that it is capable of performing such functions effectively before entering into a service level agreement. The Welsh Government's response to the Aberystwyth report indicated that it did not accept there was a case for a centralised system of accreditation for community councils, but that it would keep the matter under review.
- 9.2. By contrast, in England the '*Quality Parish and Town Council Scheme*' is a national programme (although it is not statutory) with standards set by stakeholders to the scheme, including the National Association of Local Councils (NALC), Society for Local Council Clerks, the Local Government Association, Commission for Rural Communities and UK Government departments such as the Department for Environment, Food and Rural Affairs and the Department for Communities and Local Government. The scheme is operated through the county associations of NALC.
- 9.3. The Welsh Ministers see no reason why a national accreditation of quality scheme in Wales could not be developed and operated on a non-statutory basis by the representative bodies as in England. However, it was considered prudent to take the opportunity afforded by the Measure to secure an enabling power for the Welsh Ministers to introduce a statutory accreditation scheme for community councils in Wales, should this be deemed appropriate at some future point. Such a scheme would likely to be similar in nature to that in England.

### **The Measure Provisions**

- 9.4. The Measure provides Welsh Minister's with a reserve power to establish, by regulations, an accreditation scheme for community councils.
- 9.5. When making regulations for an accreditation scheme, Welsh Minister's must ensure the regulations set criteria to be met by community councils applying for accreditation. These may include, but are not limited to:
  - the percentage of the members of the council who hold office by virtue of having been elected as described in section 35(1) of the Local Government Act 1972 (election of community councillors);
  - qualifications of, and training for officers, of the council;
  - training for members of the council and community youth representatives;
  - the frequency with which meetings of the council are held and the publicity given to meetings (both before and after they are held);
  - involving persons in the work of the community council;

- encouraging persons to improve the well-being of the community or communities for which the council is established;
  - annual reports;
  - accounts.
- 9.6. In addition, the regulations must set out the requirements for a valid application for accreditation; set fees for an application for accreditation; and set out the grounds for the removal of accreditation status awarded and for the review of accreditation status awarded.
- 9.7. The Measure enables Welsh Ministers to arrange for another person (which need not be a public authority) to operate the accreditation scheme.
- 9.8. Finally, Welsh Ministers may, by regulations, 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).