

LOCAL GOVERNMENT AND ELECTIONS (WALES) ACT 2021

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: General Power Of Competence

Chapter 2: Eligible community councils

Section 37 and Part 2 of Schedule 3 - Amendments relating to this Chapter 2 of Part 2: eligible community councils

214. **Section 37** introduces Part 2 of Schedule 3 which makes amendments, relating to this Chapter, to Part 1 of Schedule 3 and other legislation, including fully repealing the well-being power in section 2 of the 2000 Act.
215. This will mean the well-being power ceases to apply to all community councils, regardless of whether or not they are eligible to exercise the general power, in addition to principal councils (as provided for in Part 1 of the Schedule).
216. The well-being power is being repealed in full, even though community councils which have not resolved themselves eligible will not be able to use the general power. This is on the grounds that having both the general power of competence and the well-being, in addition to section 137 of the 1972 Act, could add to existing confusion reported by the community council sector about the powers available to them.
217. Retaining the well-being power would also reduce the incentive for community councils to meet the eligibility criteria in order to access the general power.
218. These criteria require a community council to demonstrate consistent sound financial management, to receive guidance and input from a clerk with particular qualifications, and to publicly keep under review whether it meets the criteria, and whether it should become or remain an eligible community council.
219. **Part 2** of Schedule 3 amends the 1972 Act to as to restrict the power of local authorities to incur expenditure for certain purposes not otherwise authorised to community councils that are not eligible community councils. This amendment is made as eligible community councils will be able to rely on the (wider) general power to incur expenditure that would otherwise be incurred under this power.
220. The Schedule also repeals the power the Welsh Ministers have under Chapter 9 of Part 7 of the Local Government (Wales) Measure 2011 (“the 2011 Measure”) to provide for a scheme under which the Welsh Ministers may grant accreditation to a community council if the criteria set out in the regulations are met.
221. This power has not been used, on the ground that it would be preferable to have a situation where the local government sector retains control of determining ‘quality’ rather than being dependent on the Welsh Ministers for the conferral of that status.

*These notes refer to the Local Government and Elections (Wales)
Act 2021 (c.1) which received Royal Assent on 20 January 2021*

Instead, the criteria for accreditation of quality in community government envisaged in the 2011 Measure form the basis of the criteria for eligibility to use the general power of competence. The need for councils to resolve themselves to be eligible by reference to an objective set of criteria will provide a means of assuring the quality of community councils and incentivising councils to improve.

222. The Schedule also adds references to the general power of competence to legislation which had previously referred to the well-being power, and makes other consequential amendments.