

LOCAL GOVERNMENT AND ELECTIONS (WALES) ACT 2021

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Promoting Access to Local Government

Chapter 2: Public participation in decision-making by principal councils

Section 39 - Duty to encourage local people to participate in decision-making by principal councils

223. [Section 39](#) of the Act places a duty on principal councils to encourage local people to participate in their decision making. This includes where the council is making decisions in partnership with another individual or body, such as another principal council or in conjunction with another individual or body, such as a local health board.
224. For the purposes of this section, a decision includes where a decision is delegated to an individual by a principal council.

Section 40 - Strategy on encouraging participation

225. [Section 40](#) of the Act places a duty on principal councils to prepare and publish a public participation strategy detailing how it will meet the duties imposed by section 39.
226. [Section 62](#) of the 2011 Measure imposes a duty on principal councils to make arrangements for anybody living or working in the local authority's area to bring their views on any matter under consideration by an overview and scrutiny committee to the attention of that committee. The public participation strategy must also address the arrangements made in line with the duty imposed by section 62 of the 2011 Measure.

Section 41 - Public participation strategy: consultation and review

227. This section places a duty on principal councils to consult local people (defined in section 171 as people who live, work or study in the council's area) and anyone else it thinks appropriate when preparing its public participation strategy. The first strategy must be published as soon as reasonably practicable after section 40 comes into force.
228. The council can review its public participation strategy at any point, but it must do so as soon as reasonably practicable after an ordinary election of councillors. Again, when reviewing the strategy, the council must consult local people and anyone else it thinks appropriate.
229. Following a review, a council can revise or replace its public participation strategy but must first consult local people and anyone else it thinks appropriate. If it revises or replaces a public participation strategy, it must publish the revised or new version as soon as it is reasonably practicable to do so.

Section 42 - Duty to make petition scheme

230. Section 42 places a duty on principal councils to produce a petition scheme, stating how it will handle and respond to petitions, including electronic petitions.

Section 43 - Duty on principal councils to publish official addresses

231. Section 43 places a duty on principal councils to publish an electronic and postal address for correspondence for each council member. This may be an official rather than a home address.

Section 44 – Guidance on exercise of functions under this Chapter

232. This section requires principal councils to have regard to guidance issued by the Welsh Ministers when exercising their functions under Chapter 2, including those of encouraging public participation in decision-making by principal councils, developing a strategy on encouraging participation and making and publishing a petition scheme.

Chapter 3: Constitution Guides

Section 45 – Principal councils’ duty to publish constitution and constitution guide

233. Section 45 of the Act amends section 37 of the 2000 Act (local authority constitution).
234. Section 37 of the 2000 Act places a duty on principal councils to prepare and keep up to date a document (referred to in that section as their constitution) which contains copies of the council’s standing orders and code of conduct, any information which the Welsh Ministers may direct them to keep and any other information which the authority considers appropriate.
235. Section 45 of the Act places a further duty on principal councils to prepare, and keep up to date, a constitution guide which explains the content of their constitution in ordinary language.
236. Before amendment, section 37 of the 2000 Act places a duty on principal councils to ensure copies of their constitution are available at their principal office for inspection by members of the public at all reasonable hours. A council must supply a copy of their constitution to anyone who requests a copy, in exchange for a reasonable fee determined by the authority.
237. Section 45 amends section 37 of the 2000 Act so as to require principal councils to ensure copies of their constitution and constitution guide are published electronically and made available at their principal office for inspection by members of the public at all reasonable hours. A council must supply a copy of their constitution and constitution guide to anyone who requests a copy either free of charge or at a charge representing no more than the cost of providing the copy.

Chapter 4: Access to Meetings of Local Authorities

Section 46 - Electronic broadcasts of meetings of certain local authorities

238. Section 46(1) requires principal councils to make, and publish, arrangements that ensure that the proceedings of certain types of council meeting are broadcast electronically in a way that allows members of the public, not in attendance, to see and hear proceedings. The proceedings must be broadcast live (subject to any exceptions that may be specified in regulations) and they must be available electronically after the meeting for a period specified in regulations.
239. Subsection (2) specifies the types of council meeting to which the duty to make arrangements applies. It only applies to meetings, or parts of meetings that are open to the public. And the only type of meeting to which it applies by direct operation of

the subsection is a meeting of a principal council, which means meetings of the full council (subsection (2)(a)).

240. The duty may be extended to meetings of bodies operating within the council by the Welsh Ministers specifying such bodies in regulations (subsection (2)(a) and subsection (4)).
241. The types of body that may be specified are :
- the executive of a principal council;
 - a committee or sub-committee of the executive of a principal council;
 - a committee or sub-committee of a principal council;
 - a joint committee or a sub-committee of a joint committee of two or more principal councils.
242. Subsection (3) enables the Welsh Ministers to make regulations including further provision in connection with the electronic broadcast of meetings of a principal council or a body specified in regulations under subsection (2).
243. Subsection (6) requires a principal council to have regard to guidance made by the Welsh Ministers about its duty to make and publish arrangements under subsection (1).
244. Subsection (8) gives the Welsh Ministers a wide power to require the electronic broadcast of the meetings of other specific bodies, including by way of amendment, revocation or repeal of primary and secondary legislation. The power is exercisable by regulations.
245. The bodies that may be made subject to such requirements are:
- fire and rescue authorities for an area in Wales,
 - National Park authorities for a National Park in Wales,
 - a joint committee of one or more principal councils and one or more fire and rescue authorities or National Park authorities, or
 - a joint board which is constituted under any enactment as a body corporate and discharges functions of two or more principal councils.
246. All regulations under this section must be approved by Senedd Cymru before being made (see section 174(5)(d)).

Section 47 - Attendance at local authority meetings

247. [Section 47](#) requires local authorities to make arrangements that ensure their meetings can take place in a manner which enables persons who are not in the same place to attend the meeting. The authority must publish these arrangements, if the arrangements are revised or replaced the new arrangements must also be published.
248. Under the arrangements meetings will have to be capable of being held virtually. Section 47 does not however require meetings to be held in a certain format. Whether they are held fully virtually, partially virtually – whereby some participants are in the same physical location whilst others join the meeting virtually – or as physical meetings will be a matter for those responsible for arranging the meetings.
249. Authorities must, in making these arrangements, have regard to guidance issued by the Welsh Ministers.
250. The type of equipment or other facility to be used to facilitate virtual meetings is not specified but must, under subsection (2), enable all participants in the meeting to speak to each other and be heard by each other.

251. Section (2) further specifies that where the meeting is required to be broadcast under section 46 of the Act, all participants in the meeting must be able to see, and be seen, by each other in addition to being able to speak to each other and be heard by each other.
252. Subsection (6) specifies the bodies that, for the purpose of this section, fall within the definition of a “local authority” and also defines “local authority meetings”, which are the meetings to which the duty set out in subsection (1) applies.
253. Subsection (7) provides that where an enactment refers to the attendance, presence or appearance of a person at a local authority meeting (as defined in subsection (6)), it includes their participation via the arrangements put in place to satisfy the requirements of this section. This subsection also provides that a reference to “the place at which a local authority meeting is held” is not limited to a physical location.
254. Subsection (8) enables the Welsh Ministers, by regulations to make changes to the conditions set out in subsection (2), for example, to accommodate technological advances in how meetings can be held virtually and to add a joint board to the definition of local authority in subsection (6).

Section 48 - Participation at meetings of community councils

255. **Section 48** amends Part 4 of Schedule 12 to the 1972 Act, which sets out requirements with regard to meetings and proceedings of community councils.
256. An additional paragraph (27A) is added which provides that members of the public attending a community council meeting must be given reasonable opportunity to make representations about any item of business due to be discussed at the meeting.
257. As a matter of good practice a number of community and town councils already give the public an opportunity to make representations, without a statutory obligation to do so. However this practice is at the discretion of the council and is not currently applied universally.
258. The duty to give members of the public the opportunity to make a representation is qualified in 27A(2) to the extent that the person chairing the meeting has the ability to curtail that opportunity if they consider someone’s use of it is likely to prejudice the effective conduct of the meeting.
259. The person chairing would have wide discretion to decide what amounts to a “reasonable opportunity” but would have to have regard to any guidance on this matter issued by the Welsh Ministers under 27A(3).

Section 49 – Notices etc. of local authority meetings and Schedule 4 –Notice of local authority meetings, access to documents and attendance at meetings

260. **Schedule 4**, introduced by section 49 of the Act, makes provision about arrangements for local authority meetings, documents for local authority meetings and attendance at such meetings
261. **Part 1** of Schedule 4 complements the changes introduced by section 47 in respect of attendance at local authority meetings (including remote attendance) and makes provision about the electronic publication of certain local authority meeting documents. Part 2 of Schedule 4 makes amendments which are consequential upon section 47.