



# Local Government and Elections (Wales) Act 2021

2021 asc 1

## PART 2

### GENERAL POWER OF COMPETENCE

#### CHAPTER 1

##### THE GENERAL POWER

#### **24 Local authority's general power of competence**

- (1) A qualifying local authority has power to do anything that individuals generally may do, even if that thing is, in nature or extent or otherwise—
  - (a) unlike anything a qualifying local authority may do apart from this section;
  - (b) unlike anything that other public bodies may do.
- (2) Where subsection (1) confers power on an authority to do something, it confers power to do it in any way whatsoever, including—
  - (a) power to do it anywhere in Wales or elsewhere;
  - (b) power to do it for a commercial purpose or otherwise for a charge, or without charge;
  - (c) power to do it for, or otherwise than for, the benefit of the authority, its area or persons resident or present in its area.
- (3) The generality of the power conferred by subsection (1) on a qualifying local authority is not limited by the existence of any other power of the authority; and any other power of the authority is not limited by the existence of the general power.
- (4) For the purposes of this Chapter, each of the following is a qualifying local authority—
  - (a) a principal council;
  - (b) an eligible community council (as to which see Chapter 2).

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- (5) In this section, “individual” means an individual with full capacity.
- (6) References in this Part to the general power are to the power conferred by subsection (1).
- (7) This section is subject to sections 25 to 27 and to any provision made under section 28(3) or (4).

## **25 Boundaries of the general power**

- (1) The general power does not enable a qualifying local authority to do anything that the authority is unable to do by virtue of a pre-commencement limitation.
- (2) Nor does the general power enable a qualifying local authority to do anything that the authority is unable to do by virtue of a post-commencement limitation that is expressed to apply—
  - (a) to the general power,
  - (b) to all of the authority’s powers, or
  - (c) to all of the authority’s powers but with exceptions that do not include the general power.
- (3) The general power does not confer power to make or alter—
  - (a) arrangements of a kind that are made, or may be made, by or under Part 6 of the 1972 Act (discharge of functions by local authorities);
  - (b) arrangements of a kind that are made, or may be made, by or under Part 2 of the 2000 Act (arrangements with respect to executives etc.);
  - (c) contracting out arrangements, or any other arrangements that are not arrangements within paragraph (a) or (b), that authorise a person to exercise a function of a qualifying local authority.
- (4) In this section—
  - “post-commencement limitation” (“*cyfyngiad ar ôl cychwyn*”) means a prohibition, restriction or other limitation expressly imposed by a provision of—
    - (a) an Act of Senedd Cymru or an Act of Parliament passed after the day on which this Act was passed;
    - (b) an instrument—
      - (i) made under primary legislation (including this Act), and
      - (ii) which comes into force on or after the day on which section 24 comes into force in relation to principal councils;
  - “pre-commencement limitation” (“*cyfyngiad cyn cychwyn*”) means a prohibition, restriction or other limitation expressly imposed by a provision of—
    - (a) this Act;
    - (b) any other primary legislation passed before, or on the same day as, the day on which this Act was passed;
    - (c) an instrument—
      - (i) made under primary legislation (including this Act), and
      - (ii) which comes into force before the day on which section 24 comes into force in relation to principal councils.

- (5) For the purposes of subsection (1), section 111(3) of the 1972 Act (subsidiary powers of local authorities not to include power to raise money) is to be disregarded.

## **26 Limits on charging in exercise of general power**

- (1) The general power confers power on a qualifying local authority to charge for providing a service to a person only if the following conditions are met.
- (2) The first condition is that the service is not one that any enactment requires the authority to provide to the person.
- (3) The second condition is that the person has agreed to the service being provided.
- (4) Except in relation to a service provided for a commercial purpose, to the extent that the general power confers a power on a qualifying local authority to charge for the provision of a service, the power is subject to a duty to secure that, taking one financial year with another, the income from charges imposed under it does not exceed the costs of provision.
- (5) The duty under subsection (4) applies separately in relation to each kind of service.
- (6) Subject to the duty under subsection (4), in exercising the power conferred by the general power to charge for providing a service, a qualifying local authority may set its charges as it considers appropriate, and may among other things—
- (a) charge only some persons for providing a service;
  - (b) charge different persons, or different descriptions of persons, different amounts for the provision of a service.

## **27 Limits on doing things for commercial purpose in exercise of general power**

- (1) The general power confers power on a qualifying local authority to do things for a commercial purpose only if they are things that the authority may, in exercise of the general power, do otherwise than for a commercial purpose.
- (2) Where, in exercise of the general power, a qualifying local authority does things for a commercial purpose, the authority must do them through a company.
- (3) A qualifying local authority may not, in exercise of the general power, do things for a commercial purpose in relation to a person if any enactment requires the authority to do those things in relation to the person.
- (4) In this section, “company” means—
- (a) a company within the meaning of section 1(1) of the [Companies Act 2006 \(c. 46\)](#), or
  - (b) a registered society within the meaning of the [Co-operative and Community Benefit Societies Act 2014 \(c. 14\)](#) or the [Co-operative and Community Benefit Societies Act \(Northern Ireland\) 1969 \(c. 24 \(NI\)\)](#).
- (5) A qualifying local authority must have regard to any guidance issued by the Welsh Ministers about doing things, in the exercise of the general power, for a commercial purpose.

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## 28 Powers to make supplementary provision

- (1) If the Welsh Ministers consider that an enactment prevents qualifying local authorities from exercising the general power, or obstructs them in exercising the general power, the Welsh Ministers may by regulations amend, modify, repeal, revoke or disapply that enactment.
- (2) If the Welsh Ministers consider that any other power overlaps (to any extent) the general power, then, for the purpose of reducing or removing that overlap, the Welsh Ministers may by regulations amend, modify, repeal, revoke or disapply any enactment.
- (3) The Welsh Ministers may by regulations make provision preventing qualifying local authorities from doing, in exercise of the general power, anything that is specified, or is of a description specified, in the regulations.
- (4) The Welsh Ministers may by regulations provide for the exercise of the general power to be subject to conditions, either generally or in relation to doing anything that is specified, or is of a description specified, in the regulations.
- (5) Regulations made under subsection (4) may, among other things, provide that the exercise of the general power by a qualifying local authority—
  - (a) to charge for providing a service to a person is to be subject to conditions in addition to the conditions set out in section 26;
  - (b) to do things for a commercial purpose is to be subject to conditions in addition to the conditions set out in section 27.
- (6) The power under subsection (1), (2), (3) or (4) may be exercised in relation to—
  - (a) all qualifying local authorities;
  - (b) a particular authority that is a qualifying local authority;
  - (c) a particular description of local authority that is a qualifying local authority.
- (7) Except as provided for in subsection (8), before making regulations under subsection (1), (2), (3) or (4) the Welsh Ministers must consult—
  - (a) such principal councils and community councils as they consider appropriate,
  - (b) such persons representing principal councils and community councils as they consider appropriate, and
  - (c) such other persons as they consider appropriate.
- (8) The duty imposed by subsection (7) does not apply in the case of regulations made by the Welsh Ministers only for the purpose of amending earlier regulations—
  - (a) so as to extend the earlier regulations, or any provision of the earlier regulations, to a particular authority or authorities of a particular description, or
  - (b) so that the earlier regulations, or any provision of the earlier regulations, ceases to apply to a particular authority or to authorities of a particular description.
- (9) This section does not confer power to make provision—
  - (a) that amends, repeals or disapplies a provision of this Act;
  - (b) for the delegation or transfer of any function of legislating by order, rules, regulations, or other subordinate instrument.

## **29 Amendments relating to this Chapter**

Part 1 of Schedule 3 makes amendments relating to this Chapter.

## **CHAPTER 2**

### **ELIGIBLE COMMUNITY COUNCILS**

## **30 Becoming an eligible community council**

- (1) A community council that meets each of the conditions set out in subsections (2) to (4) (“the eligibility conditions”) may become an eligible community council for the purposes of Chapter 1 by passing, at any meeting of the council, a resolution that it is an eligible community council.
- (2) The first condition is that at least two-thirds of the total number of councillors of the community council have been declared elected (whether at an ordinary election or at a by-election).
- (3) The second condition is that the clerk to the council holds such qualification or description of qualification as may be specified by the Welsh Ministers by regulations.
- (4) The third condition is that—
  - (a) the most recent AGW opinion on the council’s accounts—
    - (i) is an unqualified AGW opinion, and
    - (ii) was received by the council during the period of 12 months ending on the day the council will (if it passes a resolution in accordance with subsection (1)) become an eligible community council, and
  - (b) the AGW opinion on the council’s accounts which immediately preceded the opinion mentioned in paragraph (a) is also an unqualified AGW opinion.
- (5) For the purposes of subsection (4) and section 34—
  - (a) an AGW opinion is an opinion provided by the Auditor General for Wales under section 23 of the [Public Audit \(Wales\) Act 2004 \(c. 23\)](#), having concluded an audit of a community council’s accounts for a financial year, and
  - (b) an AGW opinion is unqualified if the Auditor General for Wales has not, in the opinion, expressed in any way that the Auditor General for Wales is not satisfied as to the matters set out in section 17 of the [Public Audit \(Wales\) Act 2004](#).
- (6) A community council that passes a resolution in accordance with subsection (1) becomes an eligible community council on passing the resolution.

## **31 Continuing to be an eligible community council**

- (1) If an eligible community council wishes to continue to be an eligible community council it must—
  - (a) at the time of each annual meeting following the passing of the resolution in accordance with section 30, meet the eligibility conditions, and
  - (b) at each such annual meeting, pass a resolution that it continues to be an eligible community council.

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- (2) An eligible community council that does not pass a resolution in accordance with subsection (1) ceases to be an eligible community council at the end of the day following the annual meeting in question.
- (3) In this section and section 32 “annual meeting”, in relation to an eligible community council, means a meeting of the council held under paragraph 23 of Schedule 12 to the 1972 Act.

### **32 Ceasing to be an eligible community council**

- (1) An eligible community council may pass a resolution at any meeting of the council (including an annual meeting) that it cease to be an eligible community council.
- (2) A community council that passes a resolution under subsection (1) ceases to be an eligible community council at the end of the day following the meeting at which the resolution was passed.

### **33 Community councils that cease to be eligible: exercise of general power of competence**

A community council that ceases to be an eligible community council may continue to exercise the general power of competence in relation to any thing done while it was an eligible community council.

### **34 Common community councils established after this Act is passed**

- (1) This section applies where—
  - (a) after this Act is passed, communities are grouped together under a common community council under an order under section 27F of the 1972 Act, and
  - (b) at least half of the communities grouped together had separate community councils which, immediately before the order under section 27F of the 1972 Act was made, met the third eligibility condition (set out in section 30(4)).
- (2) The third eligibility condition does not apply to the common community council until it has received two AGW opinions in respect of two financial years; and sections 30(1) and 31(1) are to be read accordingly.
- (3) If the first AGW opinion received by the common community council is not an unqualified opinion, the council is to be treated as no longer meeting the eligibility conditions.

### **35 Power to amend or modify this Chapter**

- (1) The Welsh Ministers may by regulations amend this Chapter for the purposes of—
  - (a) adding an eligibility condition,
  - (b) removing an eligibility condition,
  - (c) changing any of the eligibility conditions, or
  - (d) making provision for a community council to cease to be an eligible community council (in circumstances other than those specified in this Chapter).

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- (2) Before making regulations under paragraphs (a) to (c) of subsection (1), the Welsh Ministers must consult such persons representing community councils as they consider appropriate.
- (3) The Welsh Ministers may by regulations amend or modify this Chapter for the purposes of providing that, during the period of two years beginning with the day on which this Chapter comes into force—
  - (a) an eligibility condition does not apply;
  - (b) an eligibility condition applies with modifications.

### **36 Guidance on exercise of functions under this Chapter**

A community council must have regard to any guidance issued by the Welsh Ministers about the exercise of functions under this Chapter.

### **37 Amendments relating to this Chapter**

Part 2 of Schedule 3 makes amendments relating to this Chapter.