

# **SL(6)382 - The Local Elections (Principal Areas) (Single Transferable Vote) (Wales) Rules 2023**

## **Background and Purpose**

On 6 May 2022, the provisions of the Local Government and Elections (Wales) Act 2021 (**the 2021 Act**) relating to the single transferable vote (**STV**) system at the election of councillors to a principal council (i.e. a county council or a county borough council) came into force. These provisions allow principal councils to decide to conduct elections using the STV system instead of the simple majority system.

Section 13 of the 2021 Act inserted section 36A of the Representation of the People Act 1983, which enables the Welsh Ministers to make rules for the conduct of local government elections in Wales. That power has been exercised to make the Local Elections (Principal Areas) (Wales) Rules 2021 (**the 2021 Rules**). The 2021 Rules set out how elections to principal councils must be conducted where the simple majority system is in use. They do not make provision for the conduct of elections where the STV system is in use.

These Local Elections (Principal Areas) (Single Transferable Vote) (Wales) Rules 2023 (**the STV Rules**) amend the 2021 Rules to provide for the conduct of elections where the STV system is used. The 2021 Rules will continue to make provision about the simple majority system for the conduct of elections in principle areas which have not decided to use the STV system.

STV is a preferential voting system, which means voters are asked to rank the available candidates in order of preference, using numbers. Voters may choose to rank all the available candidates or only as many as they wish. STV is considered to be a system of proportional representation. It usually produces results which generally reflect the proportions of votes cast for the different political parties, groups and independents in an individual electoral area and across the election as a whole.

The STV system is formally defined in [section 6\(2\) of the 2021 Act](#).

The following prescribed form for the front of the STV ballot paper is set out in the STV Rules:



**Election of councillors to [insert the name of the county or county borough council] – [insert name of ward]**

You can make as many or as few choices as you want to.  
Put the number **1** in the voting box next to your first choice.  
Put the number **2** in the voting box next to your second choice.  
Put the number **3** in the voting box next to your third choice. **And so on.**

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## Procedure

Draft affirmative.

The Welsh Ministers have laid a draft of the STV Rules before the Senedd. The Welsh Ministers cannot make the STV Rules unless the Senedd approves the draft STV Rules.

## Technical Scrutiny

The following 6 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

### 1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

We note the following minor drafting errors.

- In rule 2(a), the description of the amendment, “in the words in brackets” fails to identify the location and is unhelpful because all of the definitions listed in rule 3(3) include words in brackets afterwards. It would have been sufficient to state “for “section 202(1)” substitute “sections 202(1) and 203(1)”” as there is only a single reference to section 202(1) in rule 3(3).
- References to “paragraph” should instead be references to “sub-paragraph”.
  - In rules 3(5)(c) and 7(5)(c), the locations of the amendments are incorrectly described as “before paragraph (a)”. However, they should both be described as “sub-paragraph (a)” as they are divisions within paragraphs found in rule 31 of Schedules 1 and 2 respectively to the 2021 Rules.
  - In rules 4(2) and 8(2), in the new rules 60J, 60K, 60O, 60P, 64N, 64O, 64S and 64T, there are repeated references to “paragraph (a) (“transferable papers”)” and “paragraph (b) (“non-transferable papers”)”. However, the descriptions of these references are incorrect and they should all be described as “sub-paragraph (a) (“transferable papers”)” and “sub-paragraph (b) (“non-transferable papers”)”.
- In rule 8(1), in the English text, there are words missing in the description of the location of the amendment to the heading of Part 4 of “Schedule 2 2021 Rules”. It should state “Schedule 2 to the 2021 Rules”.

### 2. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

New rule 60F sets out a list of defined terms which apply to Chapter 2. When a rule in Chapter 2 uses one of those terms, readers are often reminded that the term is defined in rule 60F. For example:



- Rule 60F defines “quota”.
- Rule 60I(2) uses the term “quota”.
- Rule 60I(5) reminds readers that the meaning of “quota” can be found in rule 60F.

We note that rule 60F also defines “stage of the count”. However, when “stage of the count” is used in, for example, rules 60I, 60K and 60Q, there is no reminder that the meaning of “stage of the count” can be found in rule 60F. See also the use of the term “continuing candidate” in rule 60N.

The same issue arises as regards the definitions set out in rule 64J.

We also note that rule 3 of the 2021 Rules includes definitions that apply to the 2021 Rules as a whole; for example, rule 3 defines “the 1983 Act” as meaning the Representation of the People Act 1983. However, where the 2021 Rules use the term “the 1983 Act” there is no reminder that the definition can be found in rule 3.

We would be grateful if the Welsh Government could explain its approach to definitions and when it is necessary to remind readers of where definitions can be found.

### **3. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

In some places, the STV Rules refer to the transfer of papers generally in accordance with a particular rule. However, in other places, these STV Rules refer to the transfer of papers in accordance with specific paragraphs of a particular rule.

For example:

- Rule 60P(3) refers to the transfer of papers “in accordance with this rule”.
- Rule 64T(3) refers to the transfer of papers “in accordance with paragraphs (4) and (5) of this rule”.

It is unclear whether this difference is intended and what effect it has on the transfer of papers.

See also rules 60J, 60K, 64N, 64O and 64S.

### **4. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

New rule 60P(5) refers to the transfer value of a vote as “the value at which the vote **on the ballot paper** was received by the excluded candidate” (emphasis added). However, the equivalent rule 64T(5) refers to the transfer value of a vote as “the value at which the vote was received by the excluded candidate”.

It is unclear whether this difference is intended and what effect it has on the transfer value of a vote.



## 5. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

New rules 60T and 64X set out the procedure for re-counting votes. These rules largely reflect existing rules 57 of Schedule 1 and 61 of Schedule 2. However, those existing rules include additional provision confirming that the rules that apply to a re-count also apply to any further re-counts. We note that new rules 60T and 64X do not include that additional provision.

## 6. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

- In rule 3(3)(b), in the new rule 22(3A)(a), there is a difference between the English and Welsh text. The English text refers to “Appendix **2A**” but the Welsh text refers to “Appendix **2**”.
- In rule 8(2), in the new rule 64G(3)(a), there is a difference between the English and Welsh text. The English text refers to “the **registration** officer” but it has been translated in the Welsh text as meaning “the **returning** officer”.
- In rule 8(2), in the new rule 64R(1), there is a difference between the English and Welsh text. The English text refers to “rule 64N **or 64O**” but the Welsh text only refers to “rule 64N”.
- In Schedule 3, in the new Appendix 5A, in the new “Official Proxy Poll Card” on page 50 (English text)/ page 64 (Welsh text), there is a difference between the English and Welsh text. In the final sentence of the right-hand column, the English text refers to “A poll card sent or delivered to **the proxy of an elector...**” but this has been translated as meaning “A poll card sent or delivered **to an elector...**” in the Welsh text.

The same error also occurs in Schedule 7, in the new Appendix 5A for Schedule 2 to the 2021 Rules, in the new “Official Proxy Poll Card” on page 77 (English text)/ page 83 (Welsh text).

- In Schedule 6, in the new Appendix 4A, in the “Instructions on marking the ballot papers and completing the postal voting statement”, in point 2 on page 69 (English text)/ page 74 (Welsh text), there is a difference between the English and Welsh text. In the Welsh text, there is an additional paragraph which isn’t found in the English text immediately after the words that correspond to “Put the number 3 in the voting box next to your third choice. And so on”. The additional paragraph in the Welsh text provides instructions to the reader concerning inserting the numbers in the boxes on the right-hand side of the voting paper next to the candidate’s name.
- In Schedule 6, in the new Appendix 4A, in the “Instructions on marking the ballot papers and completing the postal voting statement” in point 2 on page 69 (English text)/ page 74 (Welsh text), there is a difference between the English and Welsh text. In the English



text, in the paragraph which begins with the words “Where the ballot paper has been sent to a person voting as proxy,....” there is a reference to “a suitable form of words **for marking** the ballot paper”. But this has been translated as meaning “a suitable form of words **for the instructions for marking** the ballot paper” in the Welsh text. It appears that the Welsh text is correct on this occasion as the words “for the instructions” have been included earlier in the same phrase in point 2 of these instructions and in a similar provision later in Schedule 8, in point 3 of the new Appendix 6A.

- In Schedule 7, in the new Appendix 5A, in the new “Official Proxy Poll Card”, on the “Back of card” on page 78 (English text)/ page 83 (Welsh text), there is a difference between the English and Welsh text. In the English text, the word ‘write’ appears at the end of the sentence “Do not mark the ballot paper in any other way **write**”. As a result, the English text doesn’t make sense and the translation has omitted the word in the Welsh text. It appears that the Welsh text is correct as the same sentence has been used without “write” elsewhere in approximately 9 places in the Schedules.

## Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

### **7. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd**

New rule 32(12) sets out information that must be included inside voting compartments in polling stations when the STV system is used. The information that must be included is:

- (a) an instruction to the voter to put the number 1 in the voting box next to their first choice;
- (b) an explanation to the voter that they may make as many or as few additional choices as they wish, together with an instruction on how to do this by putting the number 2 next to their second choice, the number 3 next to their third choice and so on.”

Given that the STV system will be novel to many voters, did the Welsh Government consider including more information inside voting compartments, including, for example, an explanation of the consequences of making additional choices (i.e. that votes may be transferred where a candidate is elected and has a surplus of votes)?

## Welsh Government response

A Welsh Government response is required for points 2 to 7.

## Committee Consideration



The Committee considered the instrument at its meeting on 2 October 2023 and reports to the Senedd in line with the reporting points above.



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

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Welsh Parliament

**Legislation, Justice and Constitution Committee**