



Mick Antoniw, MS
Chair
Legislation, Justice and Constitution Committee Senedd Cymru
Cardiff Bay
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26 February 2021

Dear Mick

IMPLEMENTATION OF THE LOCAL GOVERNMENT AND ELECTIONS (WALES) ACT 2021

Following the Local Government and Elections (Wales) Act (“the 2021 Act”) receiving Royal Assent I wanted to take the opportunity to provide the Committee with an overview of the steps I intend to take to support the implementation of the 2021 Act.

In order to provide local authorities with certainty as to what legislative changes are being implemented when, and ensure everyone is able to make the required preparations it is necessary to make a number of statutory instruments before the end of this Senedd term.

The Local Government and Elections (Wales) Act 2021 (Commencement No. 1 and Saving Provision) Order 2021 (“the first commencement Order”)

The first Commencement Order, which I intend to make in early March, will commence a broad range of provisions on a series of dates between March 2021 and May 2022.

All Regulation making powers in Parts 2, 3 and 4 of the 2021 Act that are not yet in force will be brought into force on the day after the Order is made to facilitate the drafting, consulting upon and making of the necessary subordinate legislation.

Section 163 of the 2021 Act, which amends the Local Government (Democracy) (Wales) Act 2013 (“the 2013 Act”) to make provision in relation to the appointment, by the Boundary Commission, of its chief executive, and section 164 of the Act, which amends the 2013 Act in relation to directions made under section 48 of that Act, will be brought into force on 1 April 2021.

General power of competence

The general power of competence will be brought into force for principal councils on 1 November 2021. As I reported to the Committee during Stage 1, Regulations have been

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drafted which require qualifying local authorities to prepare and approve a business case before exercising the general power to do something for a commercial purpose.

I intend to issue the draft ***General Power of Competence (Commercial Purpose) (Conditions) (Wales) Regulations 2021*** for formal consultation during March.

Subject to the outcome of that consultation I anticipate these Regulations being made during October, subject to draft Regulations being laid before, and approved by, the Senedd. I intend these Regulations be extended to community councils ahead of the general power being commenced for these councils.

The general power will be brought into force for community councils on 5 May 2022, this will allow for the preparation of the necessary subordinate legislation and statutory guidance to support the implementation of the provisions.

Duty on community councils to prepare an annual report

Section 52 of the 2021 Act will be brought into force on 1 April 2022. This provision requires town and community councils to prepare and publish a report about the council's priorities, activities and achievements. Councils will be required to publish their first report, which will relate to the 2021-22 financial year, as soon as practicable after the end of that financial year.

Part 3 and 4 of the 2021 Act

In light of the revised scrutiny timetable for the 2021 Act I've postponed commencement of a number of the provisions in the Act to 5 May 2022 to correspond with the date of the next ordinary local government elections.

I consider this approach to be more appropriate and less disruptive to local authorities, especially in light of the ongoing pandemic, rather than subjecting the sector to a number of new requirements within the year preceding an ordinary election. A full list of the provisions which will be brought into force on this date is provided at Annex A.

Guidance

In order to ensure local authorities have the necessary support and assistance when implementing these provisions I have asked my officials to prepare guidance underpinning the provisions which is clear about the culture and approach expected when implementing the legislation.

In addition to developing new guidance, existing guidance will be re-visited and updated. Rather than create numerous pieces of separate guidance which have to be read together, I've asked my officials to develop a consolidated set of guidance, currently referred to as 'the Democracy Handbook', which is grounded in the values and principles of equality, transparency, accountability, respect and partnership between electors and those that have been elected

Digital Democracy

Alongside the development of guidance, work is underway to consider how best to exploit the potential of digital technology in the everyday lives of the citizens of Wales.

I've commissioned the Centre for Digital Public Services to undertake a Discovery project to consider, in light of all aspects of the 2021 Act, what the future of digital democracy looks like in 2022 and beyond for both councils and citizens and identify where we are now and

how we get from here to being able to fully carry out the requirements in the 2021 Act by 2022.

The Local Government and Elections (Wales) Act 2021 (Commencement No. 2 and Saving Provisions) Order 2021 (“the second Commencement Order”)

The second Commencement Order provides for the bringing into force of:

- Part 6 of the 2021 Act, which provides, amongst other things, for a new performance and governance regime for principal councils, the Welsh Ministers new support and intervention powers and co-ordination between Regulators;
- the restructuring provisions within Part 7 of the 2021 Act;
- the information sharing provisions in section 159; and
- the disapplication of the Local Government (Wales) Measure 2009 (“the 2009 Measure”) to principal councils and National Park authorities.

The second Commencement Order also includes saving provisions relating to the disapplication of the 2009 Measure to principal councils and National Park authorities, so that the exercise of certain functions and other things done under the 2009 Measure continues to have effect following the commencement of the provisions in the 2021 Act which disapply the 2009 Measure to these authorities.

In addition, as a result of the commencement of the new performance regime in Part 6, and the consequent disapplication of the 2009 Measure, a number of consequential amendments are required to other enactments.

On 9 February I laid in draft the ***Local Government and Elections (Wales) Act 2021 (Consequential Amendments) Regulations 2021*** to provide for these amendments. Subject to the Regulations being approved by the Senedd I will make these Regulations and the second Commencement Order shortly after.

I intend to bring the majority of these provisions into force on 1 April 2021, this will ensure that the new performance regime will apply to principal councils from, and in relation to, the 2021-2022 financial year. This approach will give principal councils the entire financial year to conduct their first self-assessment and report early in the 2022-23 financial year. Councils will continue to assess their performance in accordance with the 2009 Measure in respect of the current financial year with reports to be published by the end of October 2021.

The provisions relating to Panel Performance Assessments will commence following the next ordinary local government elections in May 2022. This will allow for a more gradual and measured roll out of the new regime, allowing for at least one cycle of self-assessments to be conducted before requiring a panel assessment be completed.

Chapter 2 of Part 6, which makes provisions in respect of the membership and proceedings of Governance and Audit Committees, will also commence on 5 May 2022.

Guidance

I intend to publish guidance during March to support the implementation of the new performance and governance regime for principal councils. My officials and local government have been working together for the last 24 months, through a small focus group of local government officers with a role in performance and governance in their authorities, to co-produce this guidance.

The consultation on the draft guidance concluded earlier this month and the responses will be carefully considered and taken into account for the final version of the guidance.

The Local Government and Elections (Wales) Act 2021 (Commencement No. 3 and Transitional Provision) Order 2021 (“the third Commencement Order”)

The third Commencement Order will bring into force section 47 of the 2021 Act, which provides for attendance, including remote attendance, at local authority meetings, and Schedule 4 to the 2021 Act (as introduced by section 49) so far as these provisions are not already in force.

Part 1 of Schedule 4 amends existing legislation, primarily Part 5A of, and Schedule 12 to, the Local Government Act 1972 (“the 1972 Act”) and the Public Bodies (Admission to Meetings) Act 1960, to make provision in relation to arrangements for local authority meetings and documents, including requiring electronic publication of certain meeting documents. Part 2 of Schedule 4 makes certain consequential amendments as a result of section 47.

These provisions were inserted at Stage 3 for the purpose of making permanent arrangements in respect of certain provisions of the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020 (“the 2020 Regulations”). The 2020 Regulations provided flexibility to enable local authorities to operate safely, effectively and lawfully, while retaining the principles of openness and accountability to the public by, for example, enabling meetings to be conducted on the basis of full or partial remote attendance and by making provision about the electronic publication of certain documents.

The 2020 Regulations only make provision in relation to meetings held before 1 May 2021, as section 78 of the Coronavirus Act 2020 only enables the Welsh Ministers to make provision in relation to meetings up until 7 May 2021.

As the 2020 Regulations only apply to meeting held before 1 May 2021, I intend to bring sections 47 and 49 of, and Schedule 4 to, the 2021 Act into force on 1 May (so far as they are not already in force).

As I’ve set out in previous letters, the pandemic has exposed how out-of-date current provisions in respect of local authority meetings are, in particular the procedural and technical provisions which govern how meetings are recorded, how summonses are sent to members, and how documents including notices, agendas and minutes are published.

If the above provisions of the 2021 Act are not brought into force on 1 May, authorities will revert to the provisions of the 1972 Act (and associated legislation) as they stood before they were modified by the 2020 Regulations, representing a significant step back. This would prove particularly challenging should it be necessary for local authorities to continue to operate in a Covid secure manner at that point in time as they would not be able to meet legally and safely without the amended provisions being in force.

Bringing these provisions into force on this date is subject to the Senedd approving the ***Local Government and Elections (Wales) Act 2021 (Consequential Amendments and Miscellaneous Provisions) Regulations 2021*** (“the Consequential Regulations”).

The Consequential Regulations, which I have laid in draft before the Senedd, make amendments to other enactments which are consequential on the amendments made to the 1972 Act by Schedule 4 to the 2021 Act, give effect to provisions in section 47 relating to the contents of notices (or summonses in the case of National Park authorities) for meetings, including remote meetings, and make transitional provision to ensure a smooth transition from the 2020 Regulations to the provisions of the 2021 Act.

The Consequential Regulations also provide that documents published electronically, as required under the 2020 Regulations, must be accessible for six years from the date of the meeting to which they relate. Currently the 2020 Regulations do not specify how long documents required to be published electronically under those Regulations must remain accessible, effectively requiring them to be accessible indefinitely.

Amending the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001

Part 5A of, and Schedule 12 to, the 1972 Act do not apply to executives of principal councils, with separate provision is made in the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001 (“the 2001 Regulations”), albeit the same principles apply across the bodies of legislation.

There was insufficient time to bring forward Government amendments at Stage 3 to amend the 2001 Regulations to align the arrangements for the executives of principal councils with the revised provisions in Part 5A of the 1972 Act in respect of principal councils and other local government bodies.

Provision is now needed to amend the 2001 Regulations and I intend to make the ***Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) (Amendment) Regulations 2021*** during March.

If the amendments to the 2001 Regulations are not made to come into force at the same time as Schedule 4 comes into force, executives of principal councils will revert to the provisions of the 2001 Regulations on 1 May 2021, therefore facing the same challenges I set out above in respect of principal councils.

In addition, as principal councils are required to make arrangements for remote attendance under section 47 in respect of their executive, the 2001 Regulations need to be amended to ensure they complement the provisions in section 47, in the same manner as Schedule 4 amends the 1972 Act in respect of meetings of the principal council.

Finally, if the 2001 Regulations were not amended as proposed, meetings of the executive would be subject to different requirements to meetings of the principal council, which would lead to confusion and inconsistency.

In developing the Consequential Amendment Regulations and the amendments to the 2001 Regulations, I have had regard to the public sector equality duty in section 149 of the Equality Act 2010.

Guidance

I intend to publish guidance to support local authorities in implementing these provisions. Whilst this will be published ahead of the Democracy 2022 guidance I’ve referred to earlier in this letter, it will be drafted on the basis of the same unpinning values and principles of equality, transparency, accountability and respect.

This guidance will also emphasise the importance of considering matters such as equality, specifically complying with their duties under the Equality Act 2010, and the expectation that authorities make reasonable adjustments when deciding on what meeting arrangements are appropriate. For example, I would expect to this to include consideration of matters such as providing subtitled facilities etc.

Establishment of Corporate Joint Committees

I have also laid the draft statutory instruments necessary to enable the first corporate joint committees (“CJCs”) to be established in April 2021. This represents the first tranche of statutory instruments in respect of CJCs.

This tranche comprises of four sets of establishment Regulations, one for each region, namely the:

- ***Mid Wales Corporate Joint Committee Regulations 2021***
- ***North Wales Corporate Joint Committee Regulations 2021***
- ***South East Wales Corporate Joint Committee Regulations 2021***
- ***South West Wales Corporate Joint Committee Regulations 2021***

In addition to providing the establishment of each CJC, these Regulations include the core constitutional arrangements and key details, such as membership, geography and the functions which will be exercised by each CJC: strategic development planning; regional transport planning; and the power to do things to promote or improve the economic well-being of their areas.

A formal consultation has been undertaken in respect of the draft establishment Regulations with a number of engagement events and technical briefing sessions held, both prior to, and during the consultation period. The consultation process resulted in 52 responses with no calls for fundamental changes to the Regulations.

Whilst the draft establishment Regulations provided for the necessary modifications to the Transport Act 2000, so as to enable the CJCs to exercise their proposed transport functions, in line with the principle of making provision once, these modifications are now provided for in the ***Corporate Joint Committees (Transport Functions) (Wales) Regulations 2021***

The Regulations provide that the functions to be exercised are to come into force on the 28 February 2022 for the South East Wales CJC or 30th June 2022 for the remaining three CJCs. This delay is allow each CJC to undertake preparatory work before they discharge those functions.

A number of Statutory Instruments have also been laid alongside the Establishment Regulations to ensure that, from the point they are established, Corporate Joint Committees:

- come under the remit of the Public Services Ombudsman for Wales (***the Public Services Ombudsman (Wales) Act 2019 (Amendment of Schedule 3) Regulations 2021***)
- come within the remit of the Auditor General for Wales (***the Public Audit (Wales) Act 2004 (Amendment) (Local Government Bodies in Wales) Order 2021***)
- are subject to the Public Services Equality Duty (***the Equality Act 2010 (Public Authorities subject to the Public Sector Equality Duty) (Wales) Order 2021***)
- will be able to be subject to Welsh Language Standards (***Corporate Joint Committees (Amendment of Schedule 6 to the Welsh Language (Wales) Measure 2011) Regulations 2021***)

These will ensure CJCs are subject to appropriate oversight, management and conduct requirements from the start and deliver against commitments I made during the passage of the 2021 Act in relation to matters such as the Welsh Language Standards.

Within the first tranche, the **Corporate Joint Committees (General) (Wales) Regulations 2021** put in place a number of core provisions in relation to the general administration and governance of Corporate Joint Committees, including provision to:

- ensure, ahead of the wider application of the local government ethical framework, that members, co-opted participants from constituent councils and employees of CJsCs are subject to appropriate standards of conduct
- subject CJsCs to appropriate accounting and financial management practices
- enable arrangements to be made for the provision of services between CJsCs and principal councils
- ensure equality of treatment of members of a CJC by the CJC

Once the Public Audit (Wales) Act 2004 (Amendment) (Local Government Bodies in Wales) Order 2021 has been made and CJsCs are subject to the relevant provisions of the Public Audit (Wales) Act 2004, I intend to make provision to ensure CJsCs are subject to the appropriate accounting and financial management duties.

To achieve this the **Accounts and Audit (Wales) (Amendment) Regulations 2021**, which is subject to the negative Senedd procedure, will be made to apply the Accounts and Audit (Wales) Regulations 2014 to CJsCs. I intend to make these Regulations the day after the Public Audit (Wales) Act 2004 (Amendment) (Local Government Bodies in Wales) Order 2021 is made but note that it will come into force during the recess period.

Further secondary legislation is planned in the next term to complete the application of the local government legislative framework that Corporate Joint Committees will operate in – for example they can only be made subject to the Wellbeing of Future Generations (Wales) Act 2015 once they have been established. I will continue to work with local government to co-develop an appropriate and proportionate implementation of that framework.

The Family Absence for Members of Local Authorities (Wales) (Amendment) Regulations 2021

Finally, I have also laid the Family Absence for Members of Local Authorities (Wales) (Amendment) Regulations 2021 which amend the Family Absence for Members of Local Authorities (Wales) Regulations 2013 to increase adopter's absence entitlement for members of a local authority from 2 weeks to 26 weeks. The changes made by these Regulations will result in the same periods of maternity and adopter's absence being available to members of principal councils and provide for similar arrangements for adopter's absence as are already in place for maternity absence.

I have also written to the Chair of the Equality, Local Government and Communities Committee regarding these amendments.

Yours sincerely



Julie James AS/MS

Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government

Annex A: Provisions of the Local Government and Elections (Wales) Act 2021 coming into force on 5th May 2022.

The relevant local authorities will be subject to the duties listed below from the 2022 local government elections.

- Public participation duty including duty to prepare a public participation strategy (sections 39 – 41)
- Duty to establish a petitions scheme (section 42)
- Duty to publish official addresses (section 43)
- Duty to have regard to any guidance issued by the Welsh Ministers under Chapter 2 of Part 3 (section 44)
- Duty to publish a constitution and constitution guide (section 45)
- Duty to make arrangements to enable the electronic broadcasting of meetings (section 46)
- Appointment of a chief executive (section 54)
- Duty of political group leaders in relation to standards of conduct (section 62)
- Duty of standards committee to make annual report (section 63)
- Duty on community councils to prepare a training plan (section 67)
- Panel assessments of performance (section 92 and 93)

The following provisions will also come into force on 5 May 2022:

- Participation at meetings of community councils: 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 (section 48)
- Reconsideration of remuneration following direction by the Welsh Ministers: amends section 143A of the 2011 Measure to provide that where the Welsh Minister direct a principal council to reconsider their response to a recommendation of the IRP, the reconsideration cannot be delegated and must be undertaken by the full council (section 56)
- Appointment of assistants to executive: provides for the appointment of members of principal councils as assistants to the executive. The assistants will not be members of the executive but could act on their behalf in certain circumstances (section 57)
- Job sharing: amends LGA 2000 so as to provide for two or more members of a principal council sharing an office on an executive and increases the maximum allowable size of an executive where members of the executive share office. (section 58)
- Making information available to overview and scrutiny committees: enables the Welsh Ministers to make regulations requiring the provision of information to the public or members of a principal council about decisions of the executive of that council (section 65)
- Power to require authorities to appoint joint overview and scrutiny committees: amends a regulation-making power in section 58 of the Local Government (Wales) Measure 2011 so that regulations may require principal councils to establish a joint overview and scrutiny committee (section 66)
- Governance and Audit Committees: Membership and Proceedings (Chapter 2 of Part 6)
- Removal of the restriction on monitoring officers also being designated head of democratic services and prevention of a council's chief executive being designated head of democratic services (section 161)
- Abolition of polls consequent on a community meeting: amends the 1972 Act so as to abolish community polls, with the exception of community governance polls (section 162)