

16<sup>th</sup> December 2022

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## **ELECTORAL ADMINISTRATION AND REFORM WHITE PAPER**

### **Purpose**

1. To report, and seek views on, the contents and proposals made within the Welsh Government's Electoral Reform White Paper.

### **Background**

2. The White Paper, published in October 2022, presents the latest set of proposals and options for electoral reform in Wales. It builds on previous legislation, most notably the Local Government and Elections (Wales) Act 2021, and some recent piloted innovation in electoral practice.
3. The Welsh Government made renewed commitments to continued electoral reform in its Programme for Government 2021. The White Paper is broad and includes wider reforms which impact on councillors and other elected representatives. Each of the seven chapters is summarised in this report along with a suggested position for the WLGA to take on the key proposals made.
4. The Welsh Government and Senedd only have competence over non-reserved or Wales-wide elections, including Senedd, principal council and community and town council elections. The reserved elections, which remain under the UK Government, are the UK Parliamentary elections and the Police and Crime Commissioner elections.
5. This means that any electoral reform the Welsh Government proposes can only be applied to Wales-only elections unless the two Governments synchronise reform proposals through their respective legislative routes.
6. The consultation on the White Paper closes on 10<sup>th</sup> January 2023. Many local authorities and Returning Officers are yet to consider their draft consultation responses, however, the WLGA has received informal views from a number of authorities.
7. The WLGA typically relies on the professional views of returning officers and electoral administrators to shape its position on electoral administration and the Association of Electoral Administrators (AEA) and the Wales Electoral Coordination Board (WECB) will provide more detailed, expert feedback and commentary on some of the specific areas of electoral registration and elections planning and management.
8. It is anticipated that, following the conclusion of the consultation, there will be further opportunities for political dialogue between leaders and the Counsel General and Minister for Finance and Local Government regarding proposals in the White Paper.

## Electoral Reform: Wider Context and Challenges

9. This White Paper is one of three inter-related pieces of ongoing electoral reform in Wales and the UK, the other two are:
  - a. Senedd electoral reform, following the Senedd and Elections (Wales) Act 2020, ahead of the next scheduled Senedd elections in 2026. These reforms include an expansion of the number of Members of the Senedd, the use of combinations of the new proposed Parliamentary constituencies as the basis for the election of multiple Members for a combined area, and the reform of the presentation and content of candidate lists per political party with gender balance required.
  - b. Wider electoral reform, following the Elections Act 2022, a piece of UK Government legislation, is already in place and introduces the requirement for the presentation of ID by voters at polling stations, changes to postal voting systems, and enhancements to promote disability access, amongst other reforms. The main reforms in this Act have not been synchronised with reform in Wales, with the Welsh Government having adopted a different position.
10. The extent of these parallel reforms is significant and poses significant challenges:
  - a. firstly, for the capacity of Returning Officers and their electoral services teams to implement the necessary reforms safely within their capacity and resources; and
  - b. secondly, the growing divergence in electoral law and practice for non-reserved and reserved elections can be expected to cause voter confusion over what is expected of them to participate in elections.
11. The holding of combined elections of reserved and non-reserved elections in the future would inevitably cause voter confusion given the growing divergence in law and practice at the Wales and the UK levels. They would also pose logistical challenges for both electoral administrators and political parties with a greater risk of errors as a consequence.
12. Wales has a successful track record of managing elections with the trust and confidence of the electorate, candidates and political parties. Risks of electoral failure should be averted wherever possible and, therefore, combined elections should be avoided by agreement. Whilst Ministers in both Governments have stated an intention to avoid combined elections, the risk remains open and it is therefore proposed that the WLGA urges the two governments to enter into a formal inter-governmental agreement on this issue.
13. The Welsh Government is ahead of the UK Government on scoping the possibilities for the digitisation of electoral registration and elections. Both Governments however have reservations that the integrity of elections could be fully protected if electronic remote voting was introduced. The White Paper builds some foundations for progressing digitisation.

14. Digital electoral reform, and any piloting, will require coordination and a clear strategic direction and the Welsh Government should be encouraged to develop a longer-term digital strategy accompanied by national expertise and financial investment. First steps could be, for example, the operation of digital registers on polling day across the whole of Wales for non-reserved elections. As a cautionary note, however, a progressive approach with digitisation in Wales is likely to increase the 'divergence gap' with the UK Government showing no signs of relaxing its position.
15. The implementation of electoral reform is time-consuming and requires adequate investment. The Welsh Government has provided national funding for some electoral reform and most recently fully funded the flexible voting pilots held in the 2022 local government elections. It is important that the Welsh Government commits to a longer-term investment programme for electoral reform, including resilient workforce capacity within electoral administrator and corporate teams within local authorities.
16. Whilst the Regulatory Impact Assessment (RIA) which accompanies the White Paper attempts to costs all proposals and options presented, there is always a risk with any new legislative proposals that there may be unforeseen costs which later emerge at the implementation stage. There is also a risk that the recurrent annual costs of legislative reform become a financial burden on local authorities once transitional funding has ended.
17. It should be noted that the capacity in local authorities for electoral reform, and experimentation, is limited and goes beyond the central electoral administration teams and into ICT, legal, finance and corporate communications teams. All local authorities have reduced their corporate capacity over multiple years of budget pressures. Expectations for reform should be reasonable, and time and patience shown in developing and testing ideas and plans.

## **The White Paper**

### **Key aspects**

18. The paper summarises the key proposed reforms in the White Paper, where the WLGA has existing policy positions or potential WLGA positions in response. Several of the proposed reforms are technical and relate to the administration of elections, whilst members will have an interest in many of these, the following are key proposals which will be of particular interest and/or impact on councillors.
  - Whether the current five-year cycle of local elections should be changed to four years (5 years was made permanent in last year's Act) (see paragraph 23);
  - Changes regarding the timing of and factors to feed into electoral reviews (and electoral division size), e.g. urban/rural dimension, concentration of local businesses and social deprivation; (see paragraph 27.2)
  - Proposal to dissolve the Independent Remuneration Panel (IRP) and the transfer the functions to the Local Democracy and Boundary Commission (see paragraph 27.4)

- Removing the role/powers for the review of the remuneration of chief executives from the IRP (providing councils with complete discretion); (see paragraph 27.5)
- Empowering the IRP (or the new body) to introduce 'parachute payments' for councillors who are unsuccessful; (see paragraph 27.6)
- Wider powers and enabling actions around tackling candidate abuse (see paragraph 29.6)
- Proposed introduction of statutory mandatory councillor training, which the WLGA has previously not supported; (see paragraph 33.1) and
- Removing the 'grace period' for standing down as a councillor if elected to the Senedd i.e. if a councillor is elected to the Senedd, a local by-election should be called. (see paragraph 33.3)

## Chapter 1: Introduction

19. This Chapter largely sets out the background and context, including previous legislation and Welsh Government policy for electoral reform. Six principles are set out against which progress in making electoral reform will be benchmarked. These are based on equity, accessibility, participation, improving the citizen experience, simplicity and integrity.
20. Whilst these principles are sound and are fully supportable, the Welsh Government needs to recognise and, where necessary resource, that under the accessibility, simplicity and integrity principles that any major reforms need to be within the scope and capacity of the administering Returning Officers and local authorities and there needs to be a positive cost-benefit case for any major reform.

## Chapter 2: Long Term Vision

21. This chapter outlines the Welsh Government's longer-term electoral reform ambitions which are not within the scope of the White Paper's more immediate proposals and include: consolidation of the existing law in Wales for Senedd elections into a single, simplified and accessible Conduct Order; extending the franchise to prisoners in Wales (which is again deferred in this paper); remote voting and on-line absent voting; diversity in democracy; an all-Wales database - specifically for connected/accessible electoral registers; co-incidental and combined elections; digital imprints on campaign materials; on-line nominations facilities; and the terms of elections for local authorities.
22. The following is a set of positions for the Association to consider taking where specific proposals are made, noting that some of these papers are explored within the Paper without specific proposals being made at this stage:
- 22.1 **support for the consolidation of the existing legislation for Senedd elections under a new Conduct Order** for simplicity and understanding;
- 22.2 **support for the development of a longer-term strategy for digitisation including research and testing as needed** – with a nationally funded investment and resourcing plan;

- 22.3 **support for exploring a national database** as a platform for future digitisation and flexibility in voting;
  - 22.4 **avoidance of coincidental or combined elections;**
  - 22.5 **supportive of digital imprints for on-line/digital elections campaigning materials;**
  - 22.6 **supportive of the extension of an on-line candidate nomination system** to all devolved elections with national investment in a universal system to enable this facility; and
  - 22.7 **continued commitment and support to diversity in democracy**, which the WLGA has championed during recent terms.
23. The **Welsh Government is also seeking views on changing the current five-year cycle of local elections to four years (5 years was made permanent in last year's Act)** given that the regularity of Parliamentary elections has been removed. As noted earlier, it is important that local and national elections remain separate. Members have previously been supportive of the extension to 5-year terms.

### Chapter 3: Simplifying Electoral Registration

24. This chapter covers: the voting franchise and specifically the position for European Union citizens; automatic registration, data sharing with local authorities and with public sector bodies for registration purposes; the status of the 'open register' for inspection and purchase; student and young persons' registration.
25. The following is a set of positions for the Association to consider taking:
- 25.1 **Supportive of the harmonisation of the treatment of EU citizens on a UK basis** with the options to be explored for the equal treatment of European and foreign nationals, and the treatment of European citizens based on their immigration status;
  - 25.2 **Supportive of automatic registration but not supportive of the mandating of Electoral Registration Officers to do so** in advance of more expansive piloting and evaluation, and the adoption of comprehensive data sharing protocols with privacy protections;
  - 25.3 **Supportive of the development and adoption of data sharing protocols** to follow the above point;
  - 25.4 **Supportive in principle of the withdrawal of the open register as it serves no useful purpose for elections.** However, there remains a risk for divergence if there was a requirement to maintain an open register for reserved (UK) elections and this would further complicate the registration activities of Electoral Registration Officers; and

- 25.5 **Supportive of more proactive activity to encourage student registration** at their location of study at the outset of their university life.

## **Chapter 4: Strengthening Electoral Administration**

26. This is a wide-ranging chapter which covers: the transition of the current Wales Electoral Coordination Board (WECB) to a statutorily-based Elections Management Board (EMB); the role of the Local Democracy and Boundary Commission for Wales and the transfer in of the role and functions of the Independent Remuneration Panel with the subsequent termination of the latter; the withdrawal of the current function of the current Panel to review proposed changes to the remuneration of local authority chief executives; the conduct of boundary reviews for principal councils and town and community councils; campaign finance; electoral pilots; and the extension of the duties of the Welsh Language (Wales) Measure 2011 to Returning Officers.

27. The following is a set of positions for the Association to consider taking:

- 27.1 **Supportive of the transitioning of the Wales Electoral Management Board (WECB) to a statutorily based Elections Management Board (EMB).** The WECB was set up in 2017, and includes the Electoral Commission, Welsh Government and Returning Officer representatives. Its role is to coordinate the planning and management of elections in Wales, provide views on electoral reform proposals and has provide guidance and support to electoral administrators in Wales. However, the WECB is voluntary, does have dedicated resources nor any specific powers. Given the scale of electoral reform, the Welsh Government is proposing a more substantial statutory model (similar the Scottish model). Although further work is needed on the constitutional options, it is proposed that the WLGA supports the proposed approach, with additional powers to direct Returning Officers and Electoral Registration Officers on good collective practice;
- 27.2 **Supportive of the main proposals on factors to be considered during and the timing of electoral reviews;** this includes that Ministers cannot make orders on reviews within six months of the date of the next ordinary election; that the maximum period for the conduct of a review for all principal councils should be 15 months, and the maximum period for decision making by Ministers should be 3 months. It is also proposed that wider factors could be taken into account when shaping the size of the electoral divisions e.g. urban/rural dimension, concentration of local businesses and social deprivation; that a 10-year programme of reviews should be maintained;
- 27.3 **Supportive of a requirement for the conducting of regular and timely community reviews by principal councils,** as practice across Wales has been inconsistent in the past;
- 27.4 **Supportive of the proposal to dissolve the Independent Remuneration Panel (IRP) and the transfer the functions to the Local Democracy and Boundary Commission** as this would consolidate complementary work

under one body, and should led to streamlined working with local authorities with stronger central-local relationship management;

- 27.5 **Supportive of the removal of the role/powers for the review of the remuneration of chief executives from the IRP.** The WLGA has long made the case for this removal as local authorities, as employers, should be trusted to set their own pay structures under their own governance arrangements;
- 27.6 **Supportive of empowering the IRP (or the new body) to introduce ‘parachute payments’ for councillors** who are unsuccessful at the next election. This proposal is welcome and the WLGA has made the case for parachute payments in recent years; councillors are the only paid public roles that do not have financial protection and are not entitled to receive a ‘redundancy’ payment if they lose office at an election. Members of the Senedd and Members of Parliament receive a significant resettlement grant and redundancy payments are also a protected right for public sector employees. Senior councillors in particular tend to be full-time, often have to give up careers to focus on their councillor role and many have family as well as other financial commitments; the personal risk of a sudden and significant loss of a salary is inconsistent and unfair compared to other public roles. It is also a disincentive for those with careers or family responsibilities to consider taking on the most senior roles in local government.
- 27.7 **Supportive of the principal of piloting electoral change prior to wider adoption** - provided that the accessibility/ease of voting for that specific election is not adversely affected and that the returning officer is satisfied that the risk of managing a pilot innovation is manageable and would not risk a loss of performance against their performance standards. Piloting could be more ambitious and with the over-riding aim to increase participation in elections e.g. central voting hubs, and weekend voting over more appealing opening hours; The WLGA would not be supportive of a power to direct Returning Officers to undertake pilots as it is important that the Returning Officer, as the responsible individual, is confident in the ability and capacity to deliver any elections successfully and with minimal risk; and
- 28.8 **Fully supportive of full bilingualism in elections** and extending the work of Returning Officers within the legal duty to work to the provisions of the Welsh Language (Wales) Measure 2011. As noted in the White Paper, compliance with bilingual practice standards has been very high in recent and past elections but, it would be difficult to argue against new duties for returning officers comparable to those set for principal councils under the Measure.

## **Chapter 5: Building Democratic Strength**

28. This chapter covers: accessible voter information and the possibility of having a portal for candidate statements to be published for each local election; accessibility for under-represented people; education for young people on democracy and democratic and electoral processes; strengthening of the electoral

offence of undue influence; candidate safety; access to an Electoral Office Fund to promote diversity; the Local Government Candidates Survey.

29. The following is a set of positions for the Association to consider taking:

- 29.1 **The need for a form of digital platform or portal for the uploading of candidate statements for local elections is not proven.** Candidates, and their political parties where they have one are increasingly effective in promoting their campaigning locally. This is particularly so with social media platforms and increasing public uptake of them. The WLGA and electoral administrators have previously raised concerns about these proposed reforms as this would be a significant and complex task and risks accusations of political bias if statements are reviewed and edited before publication. If this introduced, it should be nationally coordinated and resourced, given the number of candidates involved in local elections across Wales. Candidates should be responsible for their own uploading and any editorial control, which in itself would be a logistical challenge, should not sit with Returning Officers as this would pose a conflict of interest between administering an election and some jurisdiction over campaigning material commentary;
- 29.2 **Supportive of political parties improving the accessibility of their materials** wherever possible;
- 29.3 **The WLGA is supportive of ensuring elections and the electoral process is accessible as possible and supports the social model of disability.** The White Paper notes there is ongoing exploration, with stakeholders, around access and flexibility, there are however limitations on the suitability and availability of portable equipment on the market currently and a large number of polling stations have spatial limitations. These challenges are under wider review given the provisions of the Elections Act 2022 for reserved elections;
- 29.4 **The WLGA continues to support the principle of an Access to Elections Office Fund**, as a means of supporting candidates, to promote diversity in participation;
- 29.5 **Supportive of innovation in the national curriculum, schools and colleges** making commitments to working with both electoral administrators and political parties to promote awareness and campaigning, and of extensive national awareness campaigning activity for young voters and potential votes;
- 29.6 **Supportive of wider powers and enabling actions around tackling candidate abuse.** The White Paper proposes strengthening the definition of Undue Influence as an electoral offence with regard to the intent to commit an act and also with regard to damage a person's reputation. The WLGA, working with the LGA, has long campaigned for improved candidate safety and has promoted higher standards, including the signing of the first ever Fair Campaigns Pledge ahead of May's local elections. The powers of Returning Officers and local authorities are however very limited and resolution offer rests on local mediation and persuasion. The advice of



leading police experts is key, as would be the adoption of codes of practice by political parties and candidates.

- 29.7 **Supportive of the proposal to review the candidates survey in order to make it more flexible.** The value and practicality of the survey of candidates standing at local elections should be reviewed, alongside consideration of what minimum information could reasonably be expected to be provided by candidates as part of the nominations process, and what further (anonymised) personal information could be requested. The political parties should be active here in advising on recommended disclosure practice.

## Chapter 6: Modernising Welsh Elections

30. This chapter covers: advance voting; reforming postal and proxy voting; a postal vote tracking system; digital registers.

31. The following is a set of positions for the Association to consider taking:

- 31.1 **Supportive of future programmes of pilots, and particularly those which can be enabled by digitisation.** The pilots on flexible/early voting at May's local elections were inconclusive and costly, and the cost-benefit case has not been made;
- 31.2 **Supportive of ongoing, proportionate improvements to the postal vote system.** A postal vote tracking system could be disproportionate in the effort required for the benefit. It is important that divergence between Wales and England is mitigated, given the provisions of the Elections Act 2022 for postal voting, due to the risks of voter confusion and administrative complexity/burdens; and
- 31.3 **Supportive of a transition to digital register** under a national programme of investment and support.

## Chapter 7: Improving our Democracy

32. This chapter covers: considers the possibility of mandated training for councillors and a commitment from candidates that they would undertake training; the disqualification rules for local councillors who become members of the Senedd; the removal of the 'period of grace' before a resignation is required for local councillors who become members of the Senedd.

33. The following is a set of positions for the Association to consider taking:

- 33.1 The WLGA has long championed, promoted and supported improved training and development for councillors, however, it is **not supportive of statutory mandatory councillor training**, noting and respecting the local arrangements already in place in local authorities and that there is no statutory mandation for Members of the Senedd to undertake training. Several councils have introduced locally 'mandated' training, for example code of conduct or that specific training was carried out before appointment to a particular committee e.g. planning or licencing and the WLGA's induction curriculum, developed with authorities, outlines which training much be deemed 'mandatory' locally. The WLGA would support the empowerment of

councils to introduce and enforce local mandatory training and the continuation of the WLGA's role in advising, coordinating on recommended programmes of induction, training and continual professional developments;

**33.2 Supportive of there being consistency in disqualification arrangements election to the Senedd for community and town councillors and principal councillors** i.e. bringing community and town councils in line with the current rules for principal councils;

**33.3 Members views are sought on the 'grace period' for standing down as a councillor if elected to the Senedd.** Currently, if a councillor is elected to the Senedd and the next ordinary Senedd election is due to take place in 372 days, they do not have to resign and can carry on serving as a councillor. The White Paper proposes removing this 'grace period', meaning dual-hatted MS/councillor would have to resign their council seat and trigger a by-election.

34. The WLGA would like further opportunity to review in detail the assumptions made in the RIA and IIA to assist Welsh Government in forward planning, in particular ahead of any forthcoming legislation, noting the need for a longer-term national investment strategy and full and continuous funding of reform.

## Recommendations

**35. Leaders are asked to:**

**35.1 comment on the proposed reforms and the draft WLGA positions in response to feed into the WLGA's consultation response to the White Paper;**

**35.2 provide views in particular on potential changes to the local government term (paragraph 23) and 'grace periods' for councillors elected to the Senedd (paragraph 33.3);**

**35.3 delegate the approval of the final consultation response to WLGA Group Leaders. The final response will be informed by members' comments and additional submissions by local authorities ahead of the 10<sup>th</sup> January 2023 consultation deadline.**

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