

24<sup>th</sup> September 2021

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## **ELECTORAL REFORM**

### **Purpose**

1. To update members on a range of electoral reform matters and seek views on consultations relating to Local Elections Rules (in Wales) and the UK Elections Bill.

### **Background**

2. The Local Government and Elections (Wales) Act 2021 introduces a range of electoral reforms ahead of the 2022 local elections, including the enfranchisement of 16 and 17 year olds in local elections.
3. The Welsh Government is currently consulting on Local Elections Rules which will introduce several of these electoral reforms. The Welsh Government has also encouraged local authorities to come forward with electoral pilots ahead of the 2022 local elections. The Welsh Government is also reviewing and publishing the Local Democracy and Boundary Commission's final Electoral Reviews for each local authority.
4. The UK Government is currently consulting on an Elections Bill, which will introduce Voter ID and several other reforms, however, these many of the matters do not apply to devolved elections and requires a Legislative Consent Motion from the Welsh Government.
5. The Boundary Commission has also recently published a consultation on its Parliamentary Review Initial Proposals 2023.

### **Electoral Reviews**

6. The Minister for Finance and Local Government met with leaders following the Senedd elections to outline her plans regarding reviewing and publishing the final Electoral Reviews.
7. The Minister is periodically publishing final Electoral Reviews throughout the Summer and early Autumn and to date, final reviews for the following authorities have been published: Pembrokeshire, Denbighshire, Merthyr Tydfil, Ceredigion, Powys, Wrexham, Bridgend, Vale of Glamorgan, Neath Port Talbot, Carmarthenshire, Rhondda Cynon Taf and Swansea.

8. It is not anticipated that the Minister will make substantive changes to the Local Democracy and Boundary Commission recommendations. If they are implemented in full, there will be a range of changes in local authorities, in summary:
  - a reduction in councillors across Wales of 23 (3.7% reduction)
  - 482 of the 872 wards in Wales will see some change (55%). 8 local authorities will see changes in over 60% of wards.

## **Electoral Pilots**

9. The Welsh Government's electoral Reform Programme consists of two phases. The first ahead of next May's local government elections and the second ahead of the Senedd elections and local elections in 2026 and 2027. It is anticipated that more substantive reforms will be introduced or consolidated in the second phase (including elements from the UK Elections Bill, see below)
10. During the initial phase, the Welsh Government has prioritised reforms following the Local government and Elections Wales Act 2021 (see below) but has also emphasised the maximisation of registration of newly enfranchised voters and encouragement of electoral pilots at the 2022 local elections.
11. The Welsh Government has recently written to electoral administrators in each authority providing grant funding of up to £25,000 to expand internal capacity to support increased voter registration. This additional funding has been generally welcomed, however, the information required, and recruitment processes will be challenging given Welsh Government's timescales.
12. The Minister for Finance and Local Government wrote to all local authorities, through the WLGA at the end of July, seeking expressions of interest from authorities to pilot approaches for flexible voting at the 2022 local elections.
13. Local authorities and their elections teams are keen to innovative and supportive of reform, however, the timing of the request, the significant wider reforms being introduced ahead of the 2022 local elections and the capacity challenges faced meant that, despite support in principle, many authorities were unable to participate. Five authorities have however expressed an interest in flexible pilots: Blaenau Gwent Bridgend, Caerphilly, Rhondda Cynon Taf and Torfaen.
14. Officials from the authorities have had initial discussions with Welsh Government colleagues and are exploring a range of options including early voting (both in specific wards or county-wide), schools voting and/or voting at a central venue.
15. Further discussions are planned and it will be necessary to explore the administrative and logistical implications of any pilot. The Welsh Government is coordinating support, which may include financial assistance, liaison with digital suppliers and will need to introduce secondary legislation to allow the pilots to proceed.

## **Local Elections Rules 2021 Consultation**

16. The substantive element of the Welsh Government's pre-2022 electoral Reform Programme is included within the Local Elections (Principal Areas) (Wales) Rules 2021 and Local Elections (Communities) (Wales) Rules 2021 consultations, which conclude on 24<sup>th</sup> September.
17. The Elections Rules effectively introduce several elements of the Local Government and Elections (Wales) Act 2021 and also consolidate, modernise and redraft the existing rules.
18. The Rules modernise and simplify much of the language, and introduce several reforms, including:
  - new and amended processes around the translation and accessibility of documents, including simplifying the process and permitting online submission of nomination forms;
  - changes to accommodate the extension of the franchise for local election to 16/17 year olds and qualifying foreign citizens;
  - a new right for a candidate at a principal council election only to submit an electronic personal statement. This does not apply to community and town councils;
  - changes that allow candidates the option of not publishing their home address; and
  - changes which require candidates to declare any political party affiliations.
19. The Welsh Government has held a consultation event and there have been several discussions amongst electoral registration managers and the Association of Electoral Administrators.
20. The proposed reforms have generally been supported and welcomed by electoral professionals, however, there are some specific technical matters that need to be addressed or clarified, including further engagement with election management system suppliers.
21. Most authorities' electoral services teams, the Association of Electoral Administrators (AEA), SOLACE and the Wales Elections Coordination Board (WECB) are expected to respond to the consultation given the technicality and administrative implications of many of the proposed reforms. It is therefore proposed that the WLGA responds only on the parts of the reforms that impact most on candidates and councillors, which are also the more contested elements.

## **Nomination Papers**

22. The consultation proposes that:

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23. These reforms have been broadly supported by electoral administrators as the nomination process needs to be modernised to allow nomination papers to be submitted online. Hand delivery of paper nomination papers creates a burden and could be a disincentive and can be inconvenient or cause accessibility issues in large geographical and/or rural areas. Online submission could also remove significant administrative burdens for elections teams if the process was integrated into electoral management systems. The Association of Electoral Administrators would favour online submission via a nomination portal/website provided, legislated for, and funded centrally by Welsh Government and provides for the automatic integration of nominations into the electoral management system.
24. The simplification of the nomination process would also make it easier for candidates to stand and could encourage greater participation in the electoral process which is to be welcomed.
25. Electoral administrators are generally supportive of this reform, although note that the Welsh Government should consider security issues and a potential increase in fraudulent nominations that could result from the removal of subscribers from a nomination paper. It is therefore important, in relation to the provision of a witness, that sufficient details are provided so adequate checks can be made.
26. Given these reforms should improve accessibility, reduce barriers and burdens on candidates and electoral management staff, it is recommended that the WLGA support these proposed reforms, subject to the views of elections' professionals regarding appropriate processes and checks.

### **Statement of Party Membership**

27. The consultation proposes: *a new requirement for candidates to submit a statement of party membership (during the previous 12 months) and makes it an offence to knowingly withhold information about party membership or include something which is incorrect.*
28. The WLGA commented on this proposal when it was consulted upon in 2017:

*The WLGA supports clarity and transparency in the electoral process and therefore supports this proposal in principle, however further exploratory work needs to be undertaken to examine the practicability and risks of the proposal.*

*Welsh local government has a strong tradition of independent councillors who have made a valuable contribution to their communities and councils over the years. Many council candidates, whether standing as independents or representing political parties already produce manifestos or policy statements in advance of elections, so the electorate can make an informed decision of who to vote for.*

*Political parties do not have to publish their membership lists so it is therefore not immediately clear how feasible nor practicable the proposal to introduce a duty of declaration would be nor how alleged breaches of this proposed duty could be proven or disproven. There is a real risk therefore that vexatious claims could be made against legitimate independent candidates or councillors which might be difficult to prove or, critically, disprove.*

29. Given the above, compliance with such a requirement is a matter for individual candidates and would be difficult for other candidates or officials to challenge or investigate any alleged false statement, given details of political party membership may not be publicly available.
30. Furthermore, according to the AEA, a Returning Officer is required to accept a nomination paper on face value and there is case law which makes clear that Returning Officers must not undertake any investigation or research into any candidate and that their duty does not go beyond seeing that a nomination form is correct on its face. It is unclear therefore how or whether a nomination paper can be invalidated based on non-disclosure of political party membership.

### **Candidates' Personal Statements**

31. The consultation proposes: *allowing candidates to submit a 180 statement, in English, Welsh or another language (which should also be provided in English or Welsh), including a photograph. Such statements will be published on the council website. The consultation includes details about permissible content and deadlines for submission.*

32. The WLGA commented on this proposal when it was consulted upon in 2017:

*The WLGA supports this proposal in principle as it should improve voter accessibility and understanding.*

*There is potential that this would become a significant additional burden for Returning Officers and elections staff in the already busy run-up to an election, requiring additional communication with hundreds of candidates, which may include checking and dealing with queries and any challenges to the validity or lawfulness of any statements supplied.*

*An evaluation of the administrative impact and the success of existing approaches such as Police and Crime Commissioner elections and experiences of other countries should be carried out prior to any further consideration of this proposal.*

33. Although this proposal would provide information about candidates, there are several significant concerns regarding the administrative burden, and organisational and personal risks to electoral administrative staff.
34. The Electoral Commission's report on the May 2021 elections noted 'The experience of these polls has again highlighted concerns about the resilience and capacity of electoral administration structures in Wales, which are coupled with

the challenges of delivering elections within an outdated and increasingly complex electoral law framework.'

35. The AEA also notes that there has been no evaluation of the effectiveness of statements for PCC elections has been undertaken, and therefore the likely impact and value is unknown, whilst the administrative burdens and risks are potentially significant. Additional legislative burdens, such as the introduction of candidate personal statements for principal area elections, should be accompanied by proper impact assessment or based on the evaluation of previous pilot experiences.
36. It is not clear why local authorities should be responsible for managing this process or the websites, particularly given a national approach was coordinated by the UK Government for the PCC elections. It should also be noted that social media is already extensively used by candidates and they can self-promote, as can political parties.
37. These include:
  - The significant and disproportionate burden and responsibility of Returning Officers checking the appropriateness, accuracy and validity of potentially several hundred candidate statements in a short-period of time in the run-up to already complex elections. There are personal risks as well, as the refusal to accept a statement can potentially be challenged as part of an election petition.
  - The need to check and translate statements supplied in languages other than English and Welsh, and scope for costs of translation of candidates' statements submitted in one language to ensure compliance with Welsh Language Standards.
  - Scope for significant burden and risk of human error if such statements and photos are submitted via email attachment, rather than an integrated online electoral management system.
  - There is a political risk and conflict for authorities and the legal basis for councils publishing political statements (on behalf of candidates) during a pre-election period would need to be clarified. This would be in contravention of Section 2 of the Local Government Act 1986, as amended in 1988, whereby councils should 'not publish any material which, in whole or in part, appears to be designed to affect public support for a political party'.
38. Given these significant administrative concerns and organisational and personal risks, these proposed reforms should be postponed or revised to remove the expected duties on local authorities, with the Welsh Government commissioning a separate national website, with self-loading responsibilities for candidates with national management, such as the model for Police and Crime Commissioner Elections, where website arrangements are provided by the UK Government.
39. It is proposed that the WLGA supports the views of electoral administrators and that the Welsh Government reconsiders these proposals and reflects on the concerns and alternative proposals for hosting candidates' statements online.

## UK Elections Bill

40. The Elections Bill was introduced to UK Parliament on 5<sup>th</sup> July and seeks to deliver the UK Government's manifesto commitments to ensure that UK elections 'remain secure, modern, transparent and fair'.
41. According to the Cabinet Office briefing, the main elements of the Bill are:
- *"Requiring voters to show photographic identification to vote in a polling station,*
  - *Improving the absent ballot process by increasing protection on postal and proxy voting;*
  - *Strengthening the laws on intimidation and undue influence;*
  - *Strengthen and clarify our laws surrounding political finance*
  - *Extending the 'imprint' requirement to digital political campaigning;*
  - *Improving access to voting for electors with disabilities;*
  - *Removing the 15 year limit on voting rights of British citizens overseas;*
  - *Increasing the parliamentary accountability of the Electoral Commission;*  
*and*
  - *Updating the franchise to reflect our new relationship with the European Union.*
42. Not all of the proposed reforms would apply to devolved or local elections in Wales and none would be in force ahead of the 2022 local elections.
43. The LGA will be supporting scrutiny of the Bill and the Association of Electoral Administrators are expected to provide evidence during the passage of the Bill.
44. Some proposed reforms are supported by the LGA and would be supported by local government in Wales, notably the principles behind strengthening laws on intimidation and undue influence.
45. Members will be aware of the joint Civility in Public Life campaign with the LGA, COSLA and NILGA which seeks to improve political discourse and reduce abuse and intimidation of councillors. The proposed sanctions on intimidation and undue influence will apply if someone is convicted of an offence of an intimidatory nature if the victim was a candidate or campaigner. Someone convicted may be served a disqualification order that prevents them from standing for, being elected to, or holding certain elective offices for five years.
46. Other proposed reforms have been contested by some however, notably the proposals around Voter ID. The House of Commons Research Paper<sup>1</sup> notes:

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<sup>1</sup> [Elections Bill 2021-22 - House of Commons Library \(parliament.uk\)](https://www.parliament.uk/research/briefings/CP7522)

- *"The most controversial measure in the Bill is that voters must show photo ID before getting a ballot paper in a polling station. This would affect UK parliamentary elections and local elections in England.*
- *The Government argues this will improve the integrity of elections and prevent someone's vote from being stolen – the electoral offence of personation. It proposes a broad range of photo ID will be allowed, including a free voter card available to those without any other form of ID.*
- *Opponents argue personation is rare and resources would be better directed at improving registration rates. They also point out that certain groups are less likely to have photo ID and this would make it harder for some people to vote.*
- *The Bill also makes other changes to the administration of elections aimed at improving the security of postal and proxy voting and to improve the accessibility of elections for disabled voters."*

47. The view of elections professionals is that such reforms require careful consideration to ensure voter identification is deliverable and does not lead to disenfranchisement, particularly for voters from already underrepresented groups. Voter should not negatively impact on people who wish to vote, and must avoid unnecessarily adding to election bureaucracy, costs and risk. There will also need to be sufficient lead-in time for legislation, administrative planning and voter awareness raising in advance.
48. Mick Antoniw MS, Counsel General and Minister for the Constitution wrote to authorities on 13<sup>th</sup> September confirming that a Legislative Consent Memorandum has been tabled as some reforms fall within the competence of the Senedd (Appendix A).
49. The Counsel General notes that the Welsh Government supports some proposed reforms, but that these would be better introduced via the Senedd at a later date, to align with the Welsh Government's planned Electoral Reform Programme to ensure consolidated Welsh electoral legislation.
50. The Counsel General does not recommend that legislative consent is given via Legislative Consent Motion given the above and wider Welsh Government concerns about other reforms:

*"...the Welsh Government does not support the introduction of voter ID, the placing of unnecessary constraints on postal and proxy voting, or the extension of the overseas franchise. Whilst we are content the Bill does not apply these to devolved elections in Wales, we are concerned about potential unintended consequences such as voter and candidate confusion and complexity for administrators.*

*We are also concerned that the provisions in the Bill regarding the accountability of the Electoral Commission, as currently drafted, are not compatible with the accountability arrangements, established by the Senedd and Elections (Wales) Act 2020, between the Electoral Commission and the Llywydd's Committee in the Senedd."*



51. Given the approach and concerns outlined by the Counsel General, it is recommended that the WLGA supports the Welsh Government's position in its Legislative Consent Motion.

## **Parliamentary Review – Initial Proposals 2023**

52. The Boundary Commission for Wales has published a consultation on its initial proposals for the Parliamentary Review for 2023. The consultation closes on 3<sup>rd</sup> November 2021.
53. Under the changes, the parameters for which are set out in legislation, Wales' parliamentary constituencies will be reduced from 40 to 32, based on an electorate range between 69,724 and 77,062. Ynys Môn is a protected constituency and will not be subject to any changes.
54. The Boundary Commission proposals will inevitably draw significant interest and sensitivity locally and will impact on established communities and will mean inconsistent boundaries for local authority areas, Senedd consistencies and Parliamentary constituencies.
55. Given the anticipated differences in views at a community and local level regarding the Boundary Commission's proposals, it is suggested that the WLGA does not seek to submit a national, composite response to the consultation.

## **Recommendations**

**56. Members are asked to:**

- 56.1 Note the updates on Electoral Reviews, Electoral Pilots and Parliamentary Review;**
- 56.2 Agree, subject to further comments, that the WLGA responds to the Welsh Government's Local Elections Rules consultation supporting the responses of local authority electoral administrators and focusing on Nomination Papers (paragraphs 21-25), Statement of Party Membership (paragraphs 26-30), and Candidates' Personal Statements (paragraphs 31-39); and**
- 56.3 Considers and endorse the Welsh Government's position (as per paragraphs 46-47 and Appendix 1) in response to the UK Elections Bill.**

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**Report Cleared by: Cllr Andrew Morgan, WLGA Leader**

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Counsel General and Minister for the Constitution



Llywodraeth Cymru  
Welsh Government

Electoral Reform Partners

13 September 2021

Dear all,

## UK Elections Bill

You will be aware the UK Government introduced an Elections Bill to the UK Parliament on 5 July 2021 [available here: <https://bills.parliament.uk/bills/3020>]. The Bill makes provision for and amends existing electoral law, and includes provisions (amongst others) related to Voter ID, postal and proxy voting, European Citizens voting, and the Electoral Commission. Some elements of the Bill fall within the legislative competence of the Senedd, and as such a Legislative Consent Memorandum (LCM) was laid before the Senedd on based on the Bill as introduced. The LCM is available here: <https://senedd.wales/media/se2pxiww/lcm-ld14517-e.pdf>

As outlined in the LCM, the Welsh Government does not support the introduction of voter ID, the placing of unnecessary constraints on postal and proxy voting, or the extension of the overseas franchise. Whilst we are content the Bill does not apply these to devolved elections in Wales, we are concerned about potential unintended consequences such as voter and candidate confusion and complexity for administrators. We are also concerned that the provisions in the Bill regarding the accountability of the Electoral Commission, as currently drafted, are not compatible with the accountability arrangements, established by the Senedd and Elections (Wales) Act 2020, between the Electoral Commission and the Llywydd's Committee in the Senedd.

Some proposals in the Bill may have merit, and there may be a case for implementing such proposals for devolved elections via this Bill (if they align with Welsh Government policies) if doing so would maximise clarity for voters, candidates and administrators. However, it is the Welsh Government's preference to consult with our stakeholders and consider these issues for potential inclusion in separate Senedd legislation, rather than the UK Government's Elections Bill extending to devolved elections. This would also align with our approach of considering ways to consolidate and codify electoral legislation in Wales, and thus improve the accessibility of Welsh law. This approach would also provide an opportunity to modernise the electoral system in Wales, making it fit for purpose for the 21<sup>st</sup> century, and ensuring that Senedd elections and local government elections in Wales are as inclusive as

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

possible. That is why we are exploring with local authorities whether flexible voting pilots can take place in next year's local government elections. I have made these views clear to the UK Government and will be working constructively with them to seek changes to the Bill.

As we go forward with those discussions, it will be paramount that we reflect the views of interested stakeholders here in Wales. I would therefore be grateful for any initial comments on the Bill and LCM by 30 September following which we will continue to engage with you as the Bill continues its passage through UK Parliament and the LCM is scrutinised by the Senedd. Grateful if comments could be sent to [CAUMailbox@gov.wales](mailto:CAUMailbox@gov.wales).

Yours sincerely,

A handwritten signature in blue ink, reading 'Mick Antoniw', with a horizontal line underneath the name.

**Mick Antoniw AS/MS**

Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad  
Counsel General and Minister for the Constitution