

**RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL**

**COMMUNITY LIAISON COMMITTEE**

**23 APRIL 2021**

**THE LOCAL GOVERNMENT & ELECTIONS (WALES) ACT 2021**

**REPORT OF THE SERVICE DIRECTOR FOR DEMOCRATIC SERVICES & COMMUNICATIONS**

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**1. PURPOSE OF THE REPORT**

- 1.1 The purpose of this report is to summarise the various elements of the Local Government & Elections (Wales) Act 2021 which received Royal Assent on the 20<sup>th</sup> January 2021.
- 1.2 The report sets out the context and requirements of the Act, detailing Community Council's current position and the support and resources needed to implement the introduction of the legislative requirements.

**2. RECOMMENDATIONS**

Members are recommended to:

- 2.1 Note the update provided in this report.
- 2.2 Note the Community Council's position statement outlined within the report in respect of the requirements of the Act and consider how the required actions are taken forward in line with the timescales stipulated within the Act or as relevant regulations are made by Welsh Government.

**3. REASONS FOR RECOMMENDATIONS**

- 3.1 The need to provide an overview of the duties placed upon Community Councils through the Local Government and Elections (Wales) Act 2021, which received royal assent on the 20<sup>th</sup> January 2021.
- 3.2 In accordance with the requirements of the Act, a number of actions will need to be addressed to ensure Community / Town Council's comply with the legislative requirements.

**4. BACKGROUND**

- 4.1 The Local Government and Election (Wales) Act (The Act) received Royal Assent on the 20<sup>th</sup> January 2021.
- 4.2 The Act was one of only two Bills in the Welsh Government's legislative programme to continue during the Covid -19 pandemic. The Bill was prioritised

given the timescales required to introduce the planned reforms in respect of the 2022 local government elections.

4.3 A link to the Act can be found [here](#) and explanatory notes found [here](#).

## **5. PREVIOUS ENGAGEMENT BY WELSH GOVERNMENT**

5.1 The Act has been developed following engagement with local government over several years through:

- Draft Local Government Bill Wales – [Nov 2015](#)
- Consultation on Electoral Reform – [Oct 2017](#)
- Reforming Local Government: Resilience & Renewed White Paper – [Jan 2017](#)
- Consultation on Powers and flexibilities – Jan 2018
- Strengthening Local Government: Delivering for People – Welsh Government Green Paper – [June 2018](#)
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## **6. THE LOCAL GOVERNMENT & ELECTIONS (WALES) ACT 2021 SUMMARY**

6.1 The Local Government & Elections (Wales) Act will change the way RCT County Borough Council and Community and Town Councils will operate across a range of areas from electoral reform, public participation, governance and performance management, democratic processes and stronger working arrangements with Town and Community Councils.

6.2 The Act includes provisions for:

- Reforming electoral arrangements for local government, including:
  - Extending the voting franchise to 16- and 17-year olds and foreign citizens legally resident in Wales,
  - Changes to voter registration,
  - and enabling a principal council to choose between the 'first past the post' or the 'single transferable vote' voting systems;
- A general power of competence for principal councils and eligible community councils;
- Reforming public participation in local democracy;
- The leadership of principal councils, including to encourage greater diversity amongst executive members and establishing a statutory position of chief executive;
- Strengthening Scrutiny arrangements and arrangements for member conduct;
- The development of a framework and powers to facilitate more consistent and coherent regional working mechanisms;

- A new system for performance and governance based on self-assessment and peer review, including the consolidation of the Welsh Ministers' support and intervention powers;
- Powers to facilitate voluntary mergers of principal councils and restructuring a principal area;
- Local government finance including non-domestic rating and council tax;
- Miscellaneous provisions relating to:
  - Support provided for Community Councils
  - Executive arrangements
  - The status of the Head of Democratic Services
  - information sharing between regulators,
  - abolition of community polls,
  - fire and rescue authorities,
  - the Local Democracy and Boundary Commission for Wales, and
  - Public Service Boards.

6.3 The 'Coming into Force' provisions of the Act are complex, with some provisions coming into force within days of Royal Assent, others within two months and the majority via Ministerial statutory instruments.

6.4 The Act includes a number of provisions which enhance the profile of Town and Community Councils and the support a Principal Council is encouraged to provide. The new provisions placed upon Town and Community Councils mirror those now required by a Principal Council in respect of Public Participation and remote attendance. In addition specific requirements in respect of Members Training and support and how principal Councils support this work are included.

6.5 In 2020 the Council adopted a new Community Charter to support positive working relationships and share good practice in the best interest of local communities. It is intended that through this Charter and through the work of the Community Liaison Committee RCT Council can look to support Community and Town Councils with the requirements of this Act going forward.

## 7. **PART 1: ELECTIONS**

### **Extension of the right to vote in local government elections - Extending the vote franchise to 16- & 17-year olds and foreign citizens legally residents in Wales (Section 2)**

7.1 The Act provides for the extension of the local government franchise to allow 16 and 17 year-olds to be able to register to vote in Welsh local government elections and any poll in Wales which uses the local government franchise such as mayoral elections and referendums. They will not however, be able to vote in

any local government by-elections taking place before May 2022. The Act also allows for 'qualifying foreign citizens' to be included in the extended franchise.

- 7.2 The Act places a duty on principal Council's to promote awareness of how to register to vote at local government elections amongst 'relevant young people' and to take whatever action the Councils think is necessary to help them to register.

**Position Statement:**

Although not a requirement on Community and Town Councils, Community and Town Councils could assist promotion of the right to vote and the importance of democracy through promotion of RCT Council's youth vote campaign through their own dedicated social media accounts / website.

**Two Voting systems - Enabling councils to choose between a 'first past the post' (FPTP) or a 'single transferable' (STV) voting system (Section 5)**

- 7.3 Post 2022 the Act will introduce the opportunity for individual Principal Councils to determine their own election arrangements.
- 7.4 Supporters of FPTP take the view that the voting and counting procedures are simple, familiar and relatively cheap, and therefore this system provides a straightforward relationship between where a candidate finishes in the tally of votes and whether or not they are elected.
- 7.5 The White Paper 'Reforming Local Government: Resilient and Renewed' contained the proposal to allow individual principal councils to choose their voting system, the choice being between the FPTP system or the STV system.
- 7.6 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
- 7.7 Welsh Government highlight that each election of a principal council is a separate election confined to the area of the council. Welsh Government has therefore determined that it is appropriate that the council should decide on its voting system, which best reflects the needs of their local people and communities.
- 7.8 The Act provides that each principal council may decide for itself on the voting system to use, whether FPTP or STV. A principal council will continue to use the existing FPTP voting system until such time as it may decide to change. A decision to change voting system will require the support of at least two-thirds of the total number of councillors on the council (whether or not present and voting on a proposal to change). If a council has considered and rejected a

proposal to change the voting system, the council may not re-visit the issue during the same electoral cycle.

- 7.9 Provision is made to prevent a principal council, having changed to a different voting system, from moving back until at least two ordinary elections have been held under the new system.

**Position Statement**

The voting system for community council elections remains First Past the Post.

**Change of electoral cycle from 4 years to 5 years (Section 14).**

- 7.10 The Act changes the electoral cycle of principal councils and community councils from four to five-year terms. This would bring local government elections into line with the five-year terms for the UK Parliament (as set in the Fixed Term Parliaments Act 2011) and for the Assembly in the Government of Wales Act 2006.
- 7.11 70% of respondents to the main electoral reform consultation agreed the term should be set at five years.
- 7.12 The Act also seeks to provide a regulatory provision to increase the flexibility available to the Welsh Ministers, subject to consultation, to alter the date on which that election is held.

**Position Statement:**

At the 2017 local government elections, Councillors were elected on a 4-year term. Under section 37ZA(2) and (3) of the Wales Act 2017, the day of an ordinary local government election in Wales cannot take place on the same day as the Assembly ordinary general election, therefore Members terms of office was extended for a 5 year period, until May 2022.

The standard five year term provided under the Act would not only allow a consistent approach to terms of office across the democratic process but would also allow Members a further year to gain experience and knowledge for the benefit of their residents and the Council.

**Disqualification for election and being a member of a local authority (section 20)**

- 7.13 The Act provides the ability for council officers and employees, other than those holding politically restricted posts, to be entitled to stand for election to their own council. They will only be required to resign their paid employment with the council if they are elected. Welsh Government believe this will widen the pool

of potential candidates while ensuring there is no conflict of interest once the candidate is elected.

- 7.14 If a council officer or employee makes a declaration of office following the Election the person must resign from their position. This resignation will have immediate effect irrespective of any notice period required.

#### **Position Statement**

This provision will widen the pool of potential candidates while ensuring there is no conflict of interest once the candidate is elected. This will help take forward the diversity agenda for both Principal and Community and Town Councils.

#### **Candidacy**

- 7.15 The Act amends the eligibility criteria for candidates at local government elections to allow a citizen of any country to stand for election. This is subject to the other qualifying criteria, such as age and residence. All other disqualification criteria will continue to apply.
- 7.16 The Act amends the disqualification provisions in Wales to disqualify individuals, from standing for election, or holding office as a member of a principal council or community council in Wales, if they are subject to a bankruptcy or debt relief restrictions order, a person guilty of a corrupt or illegal practice, a person subject to the notification requirements of, or an order under, Part 2 of the sexual offences act 2003 and a person convicted, during a period of 5 years before the election of an offence for which he or she has been sentenced to a term of imprisonment of 3 months or more.

#### **Position Statement**

It is the candidate's responsibility to ensure they meet the eligibility criteria and not prohibited from standing by any of the disqualification provisions.

### **8. PART 2 - GENERAL POWER OF COMPETENCE**

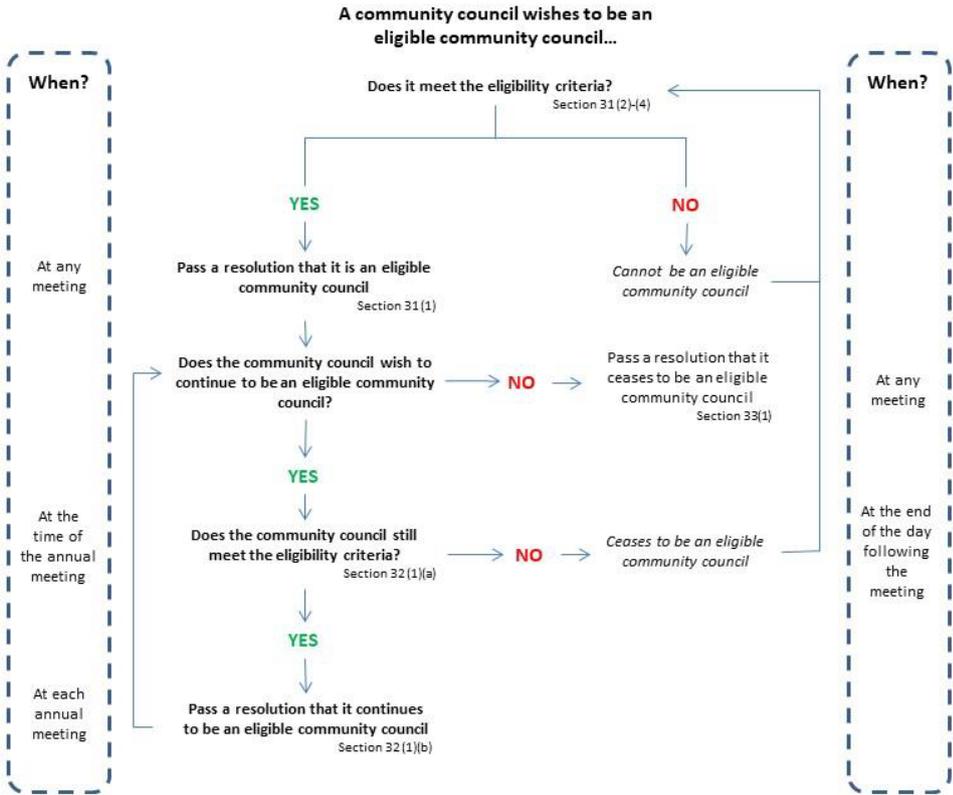
- 8.1 The Act provides principal councils and eligible community councils ('qualifying local authorities') with a general power of competence, with the aim of bringing about more effective, capable and innovative local government.
- 8.2 The general power will allow qualifying local authorities to act in their communities' best interests, generate efficiencies and secure value for money outcomes. They will also be able to raise money by charging for discretionary services and to trade in line with existing powers.
- 8.3 In addition, the general power will allow qualifying local authorities to engage in activities potentially judged to be outside the remit of well-being power within

LGA 2000. It is considered the general power will allow qualifying local authorities to be more innovative, and move away from a position where they have to identify a specific power in order to undertake a particular activity, to one in which it is assumed they can do something unless there is a statutory restriction preventing it.

- 8.4 Specifically in relation to 'eligible community councils', the general power will empower this tier of local government, so it is better placed to be part of the Welsh public service in the future and can better contribute to local well-being and community resilience. Access to the general power will enable them to be ambitious and innovative.
- 8.5 The restrictions on the use of the general power are in line with similar restrictions placed on councils in England in relation to their use of the general power of competence in the form that has applied in England since 2012.
- 8.6 The conditions which community councils must meet, in order to be able to resolve themselves an 'eligible community council' are:
- at least two-thirds of the total number of members of the council have been declared to be elected whether at an ordinary election or at a by-election,
  - the clerk to the council holds such qualification or description of qualification as may be specified by the Welsh Ministers by regulations, and
  - the council satisfies the audit condition.
- 8.7 The audit condition is satisfied if:
- the most recent Auditor General for Wales' (AGW) opinion on the council's accounts:
    - is an unqualified AGW opinion on the council's accounts, and
    - was received by the council during the 12-month period ending on the day on which the council passes the resolution to become an eligible community council
  - the AGW's opinion on the council's accounts which immediately preceded the opinion mentioned above is also an unqualified opinion.
- 8.8 The power to exercise the general power of competence for eligible community councils will come into force on 5 May 2022. Ahead of this, there will be consultation on guidance and the regulations specifying a 'relevant professional qualification' for a clerk. It is envisaged that this will be a sector specific qualification such as the Certificate in Local Council Administration (CiLCA).
- 8.9 It is intended that the well-being power, provided in section 2 of the Local Government Act 2000, will be repealed when the provisions relating to the general power of competence are brought into force for eligible community

councils on 5 May 2022. Until the well-being power is repealed community councils can continue to use the power. Anything which is started by councils before, and is ongoing at, the time the well-being power is repealed can continue under this power until that thing is completed or until a council resolves to become an eligible community council. However nothing new may be started using the well-being power after it is repealed.

- 8.10 Once a community Council has resolved itself as an eligible community council it will need to reaffirm on an annual basis that it continues to meet the eligibility criteria. A council would do so by passing a resolution at its annual meeting. If this is not performed then the Community Council ceases to an eligible council at the end of the day following the AGM in question. A community Council may decide that despite meetings the conditions, it no longer wishes to be an eligible community council.
- 8.11 In addition, if a Community Council enters into an activity while it is an eligible community council the person to whom has entered into this activity can still rely on this general power of competence, even if the council is no longer eligible to exercise this general power. This will provide clarity and certainty for anyone that a community council may enter into a contract with.



**Position Statement**

Community and Town Council's continually work with the best interests of residents in mind, working to achieve value for money and efficient services

across the areas they are responsible for. The general power of competence will further embed this principle, allowing greater opportunities for Councils to explore.

Work will need to be taken forward to support Town and Community Councils with the eligibility criteria and exercising of the general power (if eligible to do so), with the platform of the Community Liaison Committee assisting with this support and the regular clerks meeting.

## **9. PART 3 – PROMOTING ACCESS TO LOCAL GOVERNMENT**

- 9.1 The Welsh Government is keen to encourage a more diverse range of members of the public to engage with local democracy. The majority of respondents to the draft Bill consultation agreed that improved public participation in local government was valuable. The Act places a statutory requirement upon principal councils to encourage public participation in their decision-making and scrutiny procedures for the first time. The proposals are also intended to support openness and transparency.
- 9.2 The Act includes a duty to encourage local people to participate in local government (and to produce a strategy to that effect);
- Duty to make petition scheme (and repeal of community polls);
  - Duty to broadcast certain meetings;
  - Greater flexibility around remote attendance of members.

### **Public Participation Strategy (section 40)**

- 9.3 Principal councils will be required to encourage local people to participate in local government. In addition, councils will be required to prepare, consult on, publish and review a 'public participation strategy', with the aim of making it easier for members of the public to understand how local government functions; how it makes decisions; and how local people can follow proceedings, input their views, and have them taken into account. These provisions will come into force in May 2022

#### **Position Statement:**

There is no requirement for a Community and Town Council to make a public participation strategy; though they should consider how they enable public participation to take place. There would be opportunity for any engagement opportunities in the democracy process taken forward by the council to be promoted at a Community / Town Council level to try to achieve a wider engagement base for the benefits of the residents of RCT.

## **Petition scheme (section 42)**

- 9.4 The Act requires a principal council to make a petition scheme setting out how it will handle and deal with petitions, including e-petitions. Such a proposal is similar to schemes already in place within a number of public bodies in Wales, such as the Assembly. These provisions will come into force in May 2022

### **Position Statement**

There is no requirement for a community or Town council to have a petitions scheme.

## **Publication of Official addresses (Section 43)**

- 9.5 Elected members should be freely accessible to local people. A duty will be placed on principal councils to publish an electronic and postal address for each member of the council on its website to support this objective. A council address may be used if the member wishes to protect the privacy of their home address

### **Position Statement**

There is no requirement for a community or Town council to publish such information, although it is noted most do provide through their relevant webpages, or alternative contact information is provided through the details of the clerk. It is suggested as good practice that Members should use a Council email address when contacting residents, rather than a personal email address.

## **Constitution Guides (section 45)**

- 9.6 The Act will require principal councils to prepare and publish a guide to their constitution, which explains in ordinary language the content of their constitution. This will be a layperson's guide to the constitution, enabling the general public to understand how the council operates and makes decisions. The intention is to make it easier for local people to understand how their council functions.

### **Position Statement**

There is no requirement for a Community or Town Council to produce such a guide, however it may be useful to consider whether the Community Council wishes to produce a similar easy to read guide outlining its purpose and responsibilities, how it operates, how it meets and makes decisions to assist local residents understand and engage with the democratic process.

## **Electronic Broadcasts of meetings of certain local authorities (Section 46).**

- 9.7 The Act places a duty on principal councils to put in place arrangements for a broadcast of council meetings so that members of the public who are unable to attend are able to see and hear proceedings as they happen. Recordings of

meetings should also be publicly available for a reasonable period after the meeting.

**Position Statement**

There is no requirement for a Community or Town Council's to webcast meetings.

**Conditions for remote attendance of members of local authorities (section 47)**

- 9.8 The Act modifies the provisions in the 2011 Measure with the intention of making it easier for remote attendance to operate, including multi-location meetings where all individuals are attending virtually and hybrid meetings - where a number of individuals are attending in person at a designated location and others are attending virtually from a range of other locations. The Act makes permanent provision for remote meetings (multi-location) and electronic publication of documents, currently provided through The Local Authorities, (Coronavirus) (Meetings) (Wales), Regulations 2020 Act and it is intended to have effect from 1 May 2021 to dovetail with the expiry of The Local Authorities, (Coronavirus) (Meetings) (Wales), 2020.

**Position Statement**

These provisions will also apply to Community and Town councils. Due to the Covid Pandemic, Community and Town Councils are currently hosting meetings remotely. Support will need to be provided to allow for the development of hybrid meetings in the future. Community Councils will need to specify within their standing orders the conditions that must be satisfied for a member to remotely attend a meeting and must require the person chairing any such meeting to determine whether those conditions are satisfied.

**Section 48 – Participation at meetings of community councils.**

- 9.10 Members of the public attending a Community Council meeting must be given reasonable opportunity to make representations about an item of business due to be discussed at the meeting.

**Position Statement**

As a matter of good practice a number of Community and Town councils already give the public an opportunity to make representations, without a statutory obligation to do so. The Chair will have the ability to curtail the opportunity if they consider someone's use of it is likely to prejudice the effective conduct of the meeting.

**Notice of Community Council meetings to be published electronically (Section 49)**

- 9.11 Community and Town Council's are already required through amendments to paragraph 26 of schedule 23 to the 1972 Act to publish the time and place of their intended meetings electronically. Further amendments to the Act provide the proper officers of the council greater flexibility in sending summonses and to clarify that electronic authentication is permissible. In addition, a further amendment allows that the notice of a Committee summons must be published electronically and fixed in a conspicuous place in the Community' rather than prescribing the offices of the Council as not all community councils have a council building.

#### **Position Statement**

It is important to note that the electronic publication of documents extends to include making available key information as soon as reasonably practicable, and within seven working days of a community council meeting taking place, and must include: the names of members who attended; apologies for absence; declaration of interest; any decisions taken and the outcomes of any votes. This would not apply to any decision taken in private, or where disclosure of the information would be contrary to any enactment.

### **Annual reports by Community Councils (section 52)**

- 9.12 Community Councils will be required to prepare and publish an annual report about the Council's priorities, activities and achievements during the preceding financial year.

#### **Position Statement**

From April 2022 Community and Town Councils will have a duty to prepare and publish a report about the council's priorities, activities and achievements. The first report must relate to the financial April 2021- March 2022 and be published as soon as reasonably practicable after April 2022.

## **10. Part 4 Local Authority Executives, Members, officers and committees**

### **REFORMING DEMOCRATIC PROCESSES & LEADERSHIP**

- 10.1 The Act changes or enhances a number of requirements in respect of Local Authority Executives, Members, Officers and Committees. The changes include:
- Appointment of Chief Executives (rather than a head of paid service) with specific duties;
  - Appointment of assistants to cabinets and allowing job-sharing leaders or cabinet members;

- Updating family absence provisions in line with those available to employees (via regulations);
- Requiring leaders of political groups to promote and maintain high standards of conduct by members of their groups.

**Duties of leaders of political groups in relation to standards of conduct. (Sections 61 and 62)**

- 10.2 The Act will require the leaders of political groups to take reasonable steps to promote and maintain high standards of conduct by the members of their group. In doing so, a group leader must co-operate with the council's standards committee in the exercise of its functions to promote and maintain high standards of conduct. In turn, a standards committee has new functions under the Act to ensure group leaders have access to advice and training to support their new duties and to monitor group leaders' compliance with those duties.
- 10.3 Standards committees will be required after the end of each financial year to make an annual report to the authority describing how the committee's functions have been discharged during the financial year and setting out an overview of conduct matters within the council, and any community councils within its area. The council will be obliged to consider the report and any recommendations made by the standards committee within 3 months of receipt.

**Position Statement**

The duty on political group leaders in principal councils, as outlined here does not extend to community and town councils. From May 2022 Leaders of political groups must take reasonable steps to promote and maintain high standards of conduct by the members of their group. In doing so, a group leader must co-operate with the principal council's standards committee in the exercise of its functions to promote and maintain high standards of conduct. In turn, a principal council's standards committee has new functions under the Act to ensure group leaders have access to advice and training to support their new duties and to monitor group leaders' compliance with those duties.

It is already the case that all community councils are required to adopt a code of conduct and all community councillors are expected to have high standards of conduct whether they are part of a political group or not.

**Community Council training plans (section 67).**

- 10.3 The Act sets out proposals requiring a Community Council to consider whether their councillors and staff possess the knowledge and awareness they need for the Council to operate effectively and to make plans for the steps they will take to address any training needs identified.

- 10.4 Once this part of the Act comes into force, Community Councils will have 6 months to comply with the requirements of compiling a training plan. A new training plan must be put in place after each ordinary election of community councillors to reflect changes in training needs.
- 10.5 The training plan and any revisions must be published to ensure transparency and accountability of how Councils operate. Training plans must also be considered by the full council.

### **Position Statement**

Community and Town councils will have a duty to consider training from 5 May 2022 for councillors and community council staff, and publish the first training plans by November 2022.

It is not the intention to ensure that each and every councillor necessarily receives training on the same subjects but to seek to bring about a situation where the councillors as a group, and the staff collectively, possess the knowledge and awareness they need to operate effectively. This takes into account that some community councils have only one member of staff, the clerk, and some smaller community councils actually share their clerk with one or more other community councils.

Where possible RCT Council will look to share any training provision they have available to cover some of the training identified through the plan.

### **Abolition of community polls**

- 10.6 The Act provides for the abolition of community polls, and implementation of a system of petitions in their place.
- 10.7 The exception is community governance polls, those which enable a community to hold a poll in respect of a proposal to establish or dissolve a community council or to group with other communities under a common community council.

## **11. FINANCIAL IMPLICATIONS**

- 11.1 The regulatory impact assessment relating to the Act contains Welsh Governments costs analysis of the implementation of the provisions within the Act.

## **12. SUMMARY**

- 12.1 The 'Coming into Force' provisions of the Act are complex, with some provisions coming into force within days of Royal Assent, others within two months and the majority via Ministerial statutory instruments.

- 12.2 An updated and more detailed timeline will be shared when available however- Remote attendance and related matters will be commenced from April 2021 (when the current emergency coronavirus meeting regulations end);
- 12.3 Most of the electoral reforms will be introduced in time for implementation at the 2022 local elections;
- 12.4 The power of general competence and public participation duties will apply from the 2022 local elections.
- 12.5 The Community and Town Councils within RCT are already well paced in respect of the requirements coming forward within the Act, and with the support of RCT Council and the shared working practices and support identified through both the Community Liaison Committee and the Community Charter, the duties placed on the all will be achieved, which will further improve public participation in the democratic process and further benefits for the people of RCT.

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