

The Local Elections (Principal Areas) (Single Transferable Vote) (Wales) Rules 2023

This Explanatory Memorandum has been prepared by the Elections Division of the Welsh Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Local Elections (Principal Areas) (Single Transferable Vote) (Wales) Rules 2023.

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Minister for Finance and Local Government

12 September 2023

PART 1

1. Description

The Local Elections (Principal Areas) (Single Transferable Vote) (Wales) Rules 2023 amend the Local Elections (Principal Areas) (Wales) Rules 2021 (S.I. 2021/1459 (W. 374)) (“the 2021 Rules”) to include provision in the 2021 Rules for the conduct of elections to principal councils by the single transferable vote system (STV).

Throughout this Explanatory Memorandum certain generic terms are used for succinctness:

- Principal area – referring to a county and / or a county borough
- Principal council – referring to a county council and / or a county borough council
- Community council – referring to a community council and / or a town council
- The 1983 Act – the Representation of the People Act 1983
- The 2021 Act – the Local Government and Elections (Wales) Act 2021

2. Matters of special interest to the Legislation, Justice and Constitution Committee

None.

3. Legislative background

The Welsh Ministers are empowered to make Rules under section 36A(1) to (5) of the 1983 Act.

Section 36A(1) to (4) of the 1983 Act enables the Welsh Ministers to make rules for the conduct of elections to principal councils and community councils in Wales. Section 36A(5) of the 1983 Act enables the Welsh Ministers to make supplementary, incidental, consequential, transitional, transitory or saving provisions for the purposes of, in consequence of or for giving full effect to rules made under section 36A(1).

Section 36A of the 1983 Act was inserted by section 13 of the 2021 Act. On 6 May 2022, sections 5 to 12 of the 2021 Act come into force; these sections introduce, for principal councils only, the option of conducting their elections using the STV system instead of the simple majority system (also known as “First Past the Post”). The simple majority system was the only system available to principal councils until the coming into force of sections 5 to 12 of the 2021 Act.

The procedures a principal council must follow in order to change its voting system are set out in sections 8 and 9 of the 2021 Act. The first elections at which a principal council would be able to use the STV system would be the ordinary local government elections currently scheduled for May 2027.

Sections 5 to 12 of the 2021 Act do not apply to community councils; the option of changing to STV is not available to community councils which must continue to use the simple majority system for their elections.

The Local Elections (Principal Areas) (Wales) Rules 2021

On 15 December 2021, the 2021 Rules were made by the Welsh Ministers. The 2021 Rules provide for the conduct of election of councillors to principal councils. The 2021 Rules apply to elections held on or after 5 May 2022.

The 2021 Rules set out how elections to principal councils must be conducted where the simple majority system is in use. As originally made, they do not make provision for the conduct of elections using the STV system. The coming into force of the sections in the 2021 Act allowing for STV means the 2021 Rules need to be amended to accommodate rules for the conduct of elections where STV is in use (alongside the rules which provide for elections where the simple majority system is used).

The 2021 Rules set out rules on the:

- timetable for certain activities that take place before and on polling day,
- giving notice of an election,
- nomination of candidates,
- form of ballot papers,
- conduct of the poll, including functions of returning officers and polling station staff,
- appointment (by candidates) of polling agents and counting agents,
- counting of votes and the declaration of results,
- retention and later disposal, after the election, of certain election documents.

Most of the procedures, functions and responsibilities concerned with staging a principal council election are the same, whether conducted using STV or the simple majority system. Certain forms used at elections are prescribed and so versions relating to ballot papers, postal voting statements, poll cards and guidance for voters need to be provided for that contain appropriate instructions for elections using STV. Apart from these forms, the only procedural differences between an STV election and one using the simple majority system relate to the counting of votes and the declaration of the results.

Accordingly, a completely separate set of rules for an election using STV is not appropriate. These Rules, the Local Elections (Principal Areas) (Single Transferable Vote) (Wales) Rules 2023, amend the 2021 Rules to provide for the various new versions of prescribed forms and to insert a new Part 4A that sets out rules for the conduct of the count at an STV election.

4. Purpose and intended effect of the legislation

Rule 1 gives the title of the Rules and their commencement date, which is 9 October 2023.

Rule 2 amends rule 3 (interpretation) of the 2021 Rules so that the terms “simple majority system” and “single transferable vote system” are added to the list in paragraph (3) of that rule. The effect of the amendment is that those terms have the meaning as set out in section 6 of the 2021 Act.

Rule 3 makes various amendments to Part 3 of Schedule 1 to the 2021 Rules (conduct of the poll), including:

- a number of consequential amendments as result of the insertion of part 4A of the 2021 Rules and
- providing for alternative versions of certain prescribed forms to be used at STV elections. The forms introduced in Part 3 concern the form of the ballot papers, postal voting statements, poll cards and guidance for voters. Alternative versions are needed for STV so that, instead of being instructed to mark a cross, voters are given information about how to mark their first, second and third preferences etc.

Rule 4 inserts a new Part 4A in the 2021 Rules, dealing with the counting of votes at elections using STV. The existing Part 4 will continue to apply at elections using the simple majority system and is renamed to reflect its scope.

Chapter 1 of the new Part 4A contains introductory provisions.

Rule 60A sets out the duties of the returning officer in making arrangements for the counting of votes. The returning officer must make arrangements for the votes to be counted as soon as practicable after the poll and must notify the counting agents of the time and place the count will begin.

The provision made for attendance at the counting of votes (rule 60B), for the initial counting of ballot papers and verification etc. (rule 60C) and for the returning officers’ general duties in counting the votes (rule 60D) is similar to that made by the existing Part 4 for elections using the simple majority system.

The provision made for the rejection of ballot papers is materially different (rule 60E). In particular, the grounds for rejection differ in certain respects to take account of the position at elections using STV where voters must indicate a first preference and may indicate second and subsequent preferences. Voters are invited to indicate their preferences using figures, but ballot papers are not to

be treated as void if they use words or some other mark instead and their intentions are clear.

Chapter 2 of the new Part 4A sets out the rules used to determine the result at elections using STV. These Rules are based on a system that is sometimes described in literature about electoral systems as “the classic Gregory method” or “the simple Gregory method”. The key aspects of the rules are the following.

- The first preference votes on valid ballot papers are counted (rule 60G).
- The “quota” is calculated. This is the number of votes needed to secure the return of a candidate as a councillor. Rule 60H sets out the steps by which the quota is calculated.

Rule 60I sets out that a candidate is treated as elected if, at any stage of the count, the number of votes for the candidate equals or exceeds the quota.

Transfers

Under STV, votes are transferred in the circumstances where the number of votes for a candidate exceeds the quota (that is, where the candidate is therefore treated as elected and has a surplus) and there remain seats to be filled.

- Where first preference votes for a candidate exceed the quota, rule 60J sets out what happens. The successful candidate’s ballot papers are examined to see whether the voter has expressed a “next available preference”. This is defined in rule 60J(2) and is broadly a next preference (in consecutive order) for a candidate who is still in the race (that is, who has been neither treated as elected nor excluded). Ballot papers expressing a next available preference are referred to in the rules as “transferable papers” and each is transferred to the candidate for whom the preference is given. The vote on each transferred ballot paper has a value that is calculated in accordance with rule 60J(5), by taking the candidate’s surplus and dividing it by the total number of ballot papers being transferred.
- Rule 60K sets out what happens in cases where a candidate has a surplus, for example, where a candidate has a surplus following the transfer of first preference votes under rule 60J. In this case, the returning officer examines only the ballot papers that were last transferred to the successful candidate (in the example, those transferred under rule 60J). These ballot papers are examined to see whether the voter has expressed a next available preference. Each ballot paper expressing a next available preference is transferred to the candidate for whom the preference is given. The vote on each transferred ballot paper has a value which is calculated in accordance with rule 60K(5). This again involves dividing the candidate’s surplus by the total number of ballot papers being transferred but there is an additional step which is intended to ensure that the value is not greater

than the value of the vote on the ballot paper when it was received by the candidate from whom it is now being transferred (see step 3 in rule 60K(5)).

- Rules 60L, 60M and 60N deal with ancillary matters relating to transfers. In particular, rule 60L deals with cases in which transfers need not take place, rule 60M deals with the order of transfers where two or more candidates have the same surplus and rule 60N deals with the records that the returning officer is required to make and with cases in which transfers need not take place.

Exclusions

If vacancies remain to be filled after all transfers of surpluses have taken place, the rules provide for the candidate with the lowest number of votes to be excluded (rule 60O). The excluded candidate's votes are then redistributed. This takes place in stages.

- The first stage involves the transfer of the excluded candidate's first preference votes under rule 60O. The returning officer examines the ballot papers on which those votes were given to see whether the voter has expressed a next available preference. Each ballot paper expressing a next available preference is transferred to the candidate for whom the preference is given, at a transfer value of 1.

If vacancies remain following this, the returning officer then sorts the excluded candidate's other ballot papers into groups according to the transfer value at which the votes were received by the excluded candidate (rule 60P). Beginning with the group of the highest value, the returning officer examines the ballot papers to see whether the voter has expressed a next available preference. Each ballot paper expressing a next available preference is transferred to the candidate for whom the preference is given, at the value that the vote on the paper had when it was received by the excluded candidate.

- Rule 60Q deals with the order of exclusion where more than one candidate has the lowest number of votes. The returning officer must exclude whichever of the candidates had the lowest number of votes at the earliest stage of the count at which they had an unequal number of votes.
- If the candidates were credited with an equal number of votes at all stages, the returning officer must decide between the candidates by lot with the candidate on whom the lot falls being excluded.
- Rule 60R deals with ancillary matters relating to exclusions, such as the records that the returning officer is required to make. It also provides that a ballot paper is non-transferable if the returning officer considers that it indicates that; the preference next in the order of preference has been given to two or more candidates (whether or not they are consecutive candidates); the next preference on the ballot paper (whether or not for a

continuing candidate) does not follow consecutively after the preference immediately before it; or it is unclear to the returning officer for any other reason which candidate is next in the order of preference.

Last vacancies

Rule 60S sets out special rules that apply to the filling of last vacancies. These rules are intended to ensure that the returning officer is not required to continue counting when it would be pointless to do so. For example, the rule provides that where the number of candidates still in the race is equal to the number of vacancies remaining unfilled, those candidates are treated as elected.

Supplementary matters

Rules 60T to 60W deal with supplementary matters. Rule 60T enables a candidate or election agent to request, at the end of each stage of the count, a re-count of that stage. The returning officer must comply with the request unless, in the returning officer's opinion, it is unreasonable. Rule 60U sets out rules about the order in which candidates are treated as elected (with the general rule being that this is the order in which their respective surpluses were transferred). Rule 60V provides for the returning officer's decisions to be final (subject to review on an election petition). Rule 60W deals with the declaration of the result, the giving of notice to the proper officer of the council for which the election was held and the publication of certain details about the result.

Rule 5 – deals with amendments to Part 5 of Schedule 1 to 2021 Rules. The effect of these amendments is that the statements of rejected ballot papers prepared under rule 60E(6) and the statements as to the result of the verification of the ballot paper accounts prepared under rule 60C(5) are included in the list of documents which must be delivered to the registration officer at contested elections.

Rule 6 inserts Schedules 1 to 4 to these Rules, which comprise Appendices 2A, 4A, 5A and 6A which are inserted into the Appendices to Schedule 1 to 2021 Rules. Each new Appendix provides a new prescribed form relating to ballot papers, postal voting statements, poll cards and guidance for voters (respectively). The new forms contain appropriate instructions for elections using STV.

Rules 7 to 10 make amendments of Schedule 2 to the 2021 Rules (dealing with the position where the poll at a principal council election is combined with the poll at a relevant election). The provision made to Schedule 2 by these Rules is comparable to that made by rules 3 to 6 in respect of Schedule 1 in respect of non-combined polls.

Rule 11 makes a technical amendment to rule 54(3) of the 2021 Rules.

Schedules

Schedule 1 inserts a new Appendix 2A into Schedule 1 to the 2021 Rules to provide a form of the ballot paper to be used in an STV election.

Schedule 2 inserts a new Appendix 4A into Schedule 1 to the 2021 Rules to provide a form of the postal voting statement to be used in an STV election.

Schedule 3 inserts a new Appendix 5A into Schedule 1 to the 2021 Rules to provide forms of the several official poll cards to be used in an STV election.

Schedule 4 inserts a new Appendix 6A into Schedule 1 to the 2021 Rules to provide a form of the guidance to voters to be used in an STV election.

Schedules 5 to 8 insert Appendices 2A, 4A, 5A and 6A into Schedule 2 to the 2021 Rules to provide forms as set out above to be used in an STV election when combined with another election.

5. Consultation

Section 36A(7) of the 1983 Act requires the Welsh Ministers to consult with such persons as they consider appropriate when making these Rules.

An 8-week consultation ran from 10 February on these Rules and accompanying Explanatory Memorandum. The consultation was drawn to the attention of a wide range of electoral experts including returning officers, the Electoral Commission, Associate of Electoral Administrators and the Welsh Local Government Association and other stakeholders. A summary of responses to the draft Amending Rules was published on 14 July 2023 alongside a Ministerial statement confirming that some amendments to the draft rules would be made to aid clarity and accessibility, particularly for voters.

6. Regulatory Impact Assessment (RIA)

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Rules.

These Rules amend the Local Elections (Principal Areas) (Wales) Rules 2021 to make additional provision so a principal council election may be conducted using STV. The new provision sits alongside the existing provision for the conduct of a principal council election using the simple majority system. The Local Government and Elections (Wales) Act 2021 enables a principal council to choose between the simple majority system and STV for the conduct of its elections. It is for the principal council to decide whether to change its voting system; accordingly, these Rules impose no new costs on principal councils since it is entirely at the discretion of a council whether or not to change.

Whether a principal council decides to conduct its elections using STV or the simple majority system, most cost elements will remain the same. The cost of administrative work, production of ballot papers and poll cards, the hire and

staffing of polling stations and the retention of election documents for one year after the election will be the same, whether the election is conducted by STV or the simple majority system.

The cost difference, for a single principal council, between an election conducted under STV and the same election conducted using the simple majority system arise from the count. An STV count, undertaken manually, as required under these rules, would likely take longer than the equivalent count under the simple majority system, because of the potential for several additional rounds of counting to count surplus votes from candidates deemed elected and votes transferred from excluded candidates.

At an election using the simple majority system, a council must meet certain costs, being the hire of the count centre and fees for counters. Under the simple majority system, these costs would be contained to a single day; using STV we would expect counting at an ordinary election to extend into a second day, with a consequential increase in costs. We estimate for a medium sized principal council, with about 100,000 electors, the difference between an STV count and one held using the simple majority system would be £6,000, being the hire of the count centre and fees for counters extended into a second day. No specialist equipment would be needed for a manual STV count.

7. Cost and benefit analysis

No cost and benefit analysis has been made for these Rules, which are necessary to enable Councils to undertake their legislative entitlement to an election using the STV system if they so decide.

8. Competition Assessment

The provisions within the Rules will not affect business, or charities and/or the voluntary sector in ways that raise issues related to competition. The competition filter has not been applied. The provisions in the Rules are not expected to have any impact on competition or place any restrictions on new or existing suppliers. The majority of the costs associated with the legislation are expected to fall on public bodies, who already meet these costs. The legislation is not expected to have any negative impact on small and medium sized enterprises in Wales.