

## **Explanatory Memorandum to the Local Elections (Principal Areas)(Wales) Rules 2021**

This Explanatory Memorandum has been prepared by the Department for Local 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) (Wales) Rules 2021. I am satisfied the benefits justify the likely costs.

**Rebecca Evans MS**  
**Minister for Finance and Local Government**  
23 November 2021

## **PART 1**

### **1. Description**

The Local Elections (Principal Areas) (Wales) Rules 2021 (“these Rules”) set out the rules of conduct by which the election of councillors to county and county borough councils in Wales are to take place.

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 countyborough council
- Community council – referring to a community council and / or a town council

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

These Rules make certain new provision and update, consolidate and re-state the law concerning principal council elections and the rules by which they are conducted. They are largely derived from the Local Elections (Principal Areas) (England and Wales) Rules 2006 (“the 2006 Rules”) which applied across principal council elections in England and Wales. This means, that while the 2006 Rules make provision for Wales, following the Local Government and Elections (Wales) Act 2021, large parts of the 2006 Rules are out of date for Wales. These Rules make new provision about certain election procedures and, in keeping with the principles set out in the Legislation (Wales) Act 2019, they will consolidate and re-state existing law; update the law where appropriate to make it more accessible particularly using clearer language and will be Wales specific.

In addition, these Rules will be made bilingually for the first time.

### **3. Legislative background**

#### **Section 36A of the Representation of the People Act 1983**

The Welsh Ministers are empowered to make these Rules under section 36A(1), (2), (4), (5) and (9) of the Representation of the People Act 1983.

Section 36A(1) of the Representation of the People Act 1983 sets out that elections for councillors for local government areas in Wales must be conducted in accordance with rules made by the Welsh Ministers. Section 36A(2) sets out what these rules must do including requiring polls to be conducted where the election is contested and establishing the requirements for becoming a candidate for election etc.

Sections 36A(4) and (5) set out further provisions around what the rules may do and how these rules interact with existing legislation. This includes giving Welsh Ministers to power to make supplementary, incidental, consequential, transitional, transitory or saving provisions when giving full effect to these rules.

Section 36A(9) sets out the procedure by which these rules should be made. That is these rules will be made by statutory instrument and will include power to make different provisions for different purposes.

These Rules are presented to be laid before the Senedd under section 36A(10) of the Representation of the People Act 1983 and are subject to approval by resolution of Senedd Cymru.

In accordance with section 36A(7) of the Representation of the People Act 1983, before making these Rules, the Welsh Ministers have consulted such persons as they considered appropriate.

### **Section 26(2) of the Welsh Language Act 1993**

The Welsh Ministers also rely on section 26(2) of the Welsh Language Act 1993 to make provision to prescribe, in the Rules, a form of words in Welsh. In relying on this power the Welsh Ministers are to also exercise their powers under sections 39 and 40 of the Legislation (Wales) Act 2019 to combine the form of statutory instrument and the applicable Senedd procedures. As a result, the order making power under section 26(2) is to be made by way of the Rules by virtue of section 39 of the 2019 Act and the applicable Senedd procedure will be by way of the affirmative procedure as provided for by section 40 of that Act.

#### **4. Purpose and intended effect of the legislation**

The intended effect of these Rules is to set out the rules of conduct by which the election of councillors to county and county borough councils (“principal councils”) in Wales is to take place. These Rules are Wales specific and aim to provide an updated and modernised set of conduct rules. They also provide for policies made as part of the development and delivery of the *Local Government and Elections (Wales) Act 2021* to be implemented. These policy changes were consulted on as part of the *Electoral Reform in Local Government in Wales* consultation conducted in 2017. The policies being taken forward in these Rules relate to the optional publication of the candidate’s home address, the statement of party affiliation, and the necessary changes to secondary legislation following the extension of the franchise to those aged 16 and 17 and qualifying foreign citizens.

A link to the consultation can be found here: [Electoral reform in local government in Wales | GOV.WALES](#)

In order to give full effect to these Rules and the Local Elections (Communities) (Wales) Rules 2021, the Welsh Ministers intend to further exercise their powers under section 36A of the 1983 Act to make such supplementary and consequential provision as may be necessary by way of a separate statutory instrument. Such provision will apply, in the same way as these Rules, to elections of councillors to county and county borough councils in Wales held on

or after 5 May 2022.

Rules 1 to 4 of these Rules set out the legislative basis upon which they are made and the purpose of the Rules i.e. to provide for the conduct of an election of councillors for a principal council. These rules also set out that there are two Schedules providing details of the rules of conduct. Schedule 1 sets out the rules that apply to the conduct of a principal council election where the poll is not taken together with the poll at another election. Schedule 2 sets out the rules that apply to the conduct of a principal council election where the poll for that election is taken together or combined with the poll at a relevant election.

### **Schedule 1 - Rules for the conduct of a principal council election where the poll is not taken together with the poll at another election**

#### Part 1: Provision as to time

This Part of these Rules sets out the required timetable for certain specified activities that take place prior to and including polling day. This includes setting deadlines for the publication of the notice of election, delivery of nomination papers, delivery of notice of withdrawal of candidature, publication of statement as to person nominated, notice of uncontested election, notice of poll in contested election and polling day.

#### Part 2: Notice of election, nomination and method of election

##### *Notice of election*

Part 2 sets out the rules around the notice of election and what that notice should include. It requires returning officers to include specific details as part of the notice around the date and time of the poll and where and how to obtain and submit the appropriate forms of nomination papers.

It also requires returning officers to include in the notice an electronic delivery statement in which they must set out arrangements by which nomination papers may be obtained and submitted online or electronically. The ability to access and submit nomination papers online is a new provision, this is to reflect modern practices and to enable returning officers to support candidates in having as accessible a process as possible in standing for election. Candidates may still choose to obtain and submit nomination papers in person.

##### *Nomination of candidates*

This Part also sets out the rules in relation to the nomination of candidates. Returning officers must supply candidates with nomination papers and must, on request, prepare a nomination paper for signature. Returning officers must also make provision that nomination papers can be obtained and submitted online or electronically (in accordance with the information given in the notice of election). A candidate will be officially nominated when they have formally submitted the completed candidate nomination paper that is set out in the form at Annex 1 to the Rules set out in this document, or complete a form that is like the form set out in these Rules. The candidate must have signed the nomination in the

presence of a witness who must attest the signature.

Nomination papers must be returned to the returning officer in line with the notice of election. This Part also sets out the required information on a nomination paper and specific rules around that information. It also sets out the rules around the descriptions a candidate may use on nomination papers, if they choose to include one, and thence on the ballot paper. This relates to political descriptions and allows descriptions to be used that are likely to lead electors to associate the candidate with a registered political party, or with two registered political parties. Alternatively, it allows candidates to indicate they are an “independent” candidate. A candidate may use both English and Welsh language descriptions on their nomination forms.

This Part also allows for the words “Wales”, “Welsh”, “Cymru” or “Cymreig” to be prefixed or suffixed to a political party name or descriptor. That is to say, a person may use the term “Wales” or “Welsh” before the description of their party or parties, or may use the term “Cymru” or “Cymreig” after the description of their party or parties if using a Welsh language description.

There is a requirement that candidates will have to declare on their nomination papers if they are, or have been, members of a registered political party in the last 12 months, but that is not a party for which they are seeking to stand in the election in question. The “relevant period” is the period of 12 months ending with the day on which the notice of election is published. This is a new provision designed to support better voter information and will require such candidates to declare any such membership at any time in the previous 12 months, and the details of that party or parties. If a candidate knowingly fails to provide this information they will be guilty of a corrupt practice.

As part of the nomination process, candidates will be required to complete a home address form. These Rules provide for the details that should be included on that form. The address the candidate provides will be based on their qualification to stand for election in the county or county borough. There are a number of ways a person may qualify to stand for the principal council in question including:

- that the person is a registered local government elector at an address in that county or county borough;
- if a person is an owner or tenant of land or other premises in the county or county borough;
- if a person’s principal or only place of work is within the county or county borough; or
- the person has been resident in the county or county borough.

The “home address” provided on this form (which may be one or more of the above options) will reflect the qualification of the candidate to stand for election to the principal council.

While completion of a home address form is a mandatory part of the nomination process, candidates will be able to indicate that they do not want their home address to be made public or published on the ballot papers. If candidates so

indicate, they must identify a relevant home area instead. The relevant home area will be the candidate's home local government area, or country as the case may be. This is a new policy that brings local government elections in Wales in line with Senedd elections and other elections across the United Kingdom. The returning officer is responsible for ensuring, where a candidate has indicated the home address is not to be published, that the wishes of the candidate are actioned.

Rules - 10, 11 and 12 set out the circumstances where a returning officer makes a decision on the validity of the nomination paper, setting out the circumstances in which a candidate does not stand as nominated, and also makes clear that if a candidate is nominated in more than one electoral ward they must withdraw their candidature from all but one of those wards by the deadline for the withdrawal of candidature. The Rules make clear that a candidate may only stand for election in one electoral ward or area. Rule 12 sets out how a candidate may withdraw their candidature by giving notice to the returning officer.

Once the deadline for nominations is reached, the returning officer must publish a statement of persons nominated. This statement of persons nominated must include the appropriate information on all those who stand nominated as candidates along with information on those that were nominated but no longer stand nominated together with the reason why they no longer stand nominated.

If a person has been nominated and remains a candidate, the returning officer must publish the names and description (if any) of that person as given in their nomination paper, their home address information and the information contained in their statement around political party membership. If the candidate has chosen not to publish their home address (by indicating this on their home address form) the returning officer must not publish the home address as part of the statement of persons nominated, but will include the relevant home area as indicated by the candidate. The statement of persons nominated should be in alphabetical order by surname and must show the commonly used forenames and surnames of the candidate unless those names are considered by the returning officer as likely to mislead or confuse the elector or are considered obscene or offensive.

Where two or more candidates have a name that is very similar or the same, they have stated their home addresses should not be published and the relevant home area is the same, the returning officer may make amendments or additions that will help the voter distinguish between the two candidates. The returning officer must have regard to any guidance given by the Electoral Commission when making these amendments or additions. Where it is practical to do so, the returning officer must also consult the people whose information is being amended or added to.

The returning officer is allowed to correct any minor errors found in the nomination paper or home address form as long as this is done before the statement of persons nominated is published. Rule 16 sets out the type of errors that may be corrected.

Rules 17 and 18 set out the process by which nomination papers and home address forms may be inspected. Nomination papers may be inspected by anyone during the "time for inspection", this means ordinary office hours on any

day after the last day for the delivery of the nomination papers and before the day of the poll. A person inspecting nomination papers may take a copy, or make extracts, from the papers. The inspection of home address forms may only be undertaken by persons listed in Rule 18 of these Rules. They are:

- another candidate standing in the same electoral ward,
- the election agent of another candidate standing in the same electoral ward,
- a person nominated by a candidate within the electoral ward if they are acting as their own election agent.

The time for inspection of the home address form is the same as for the nomination papers, however someone inspecting the home address form is not allowed to take a copy or make extracts of that form.

Finally, Rule 19 allows the proceedings relating to the nomination process to be abandoned by the returning officer if the proceedings are interrupted on any day by riot or open violence. If the day on which the proceedings are abandoned is the last day for the delivery of nomination papers, the proceedings must continue the following day. Any such abandonment does not affect the scheduled date of polling day but where proceedings resume on the next day, the deadlines specified in the second column of the timetable in rule 1 for the delivery of nomination papers, the delivery of notices of withdrawals of candidature and the publication of the statement as to persons nominated are each extended by one day.

### *Method of election*

Following the nomination procedure and the publication of the statement of persons nominated, the returning officer must decide whether the number of persons remaining validly nominated for the electoral ward exceeds the number of councillors to be elected. If the number of persons remaining validly nominated *does not* exceed the number of councillors to be elected, the returning officer must declare the person or persons standing to be elected, in which case no poll takes place.

If the number of persons remaining validly nominated *does* exceed the number of councillors to be elected, a poll must take place.

## Part 3: The poll at contested elections

### *General provisions*

The general provisions set out in Part 3 of these Rules concern the preparations the returning officer must make for the holding of a poll to elect the councillors.

Rule 21 provides that the votes at a poll must be given by ballot. The ballot of every voter must consist of a ballot paper. The only persons entitled to have their names inserted on the ballot paper are those that remain validly nominated for the electoral ward in question. The ballot paper must follow the form set out in

Appendix 2 to these Rules, it must be printed in accordance with the directions provided in Appendix 2 to these Rules, it must contain the names and descriptions of the candidates and their home address information in line with the information that was published as part of the statement of persons nominated (please note that if a person has chosen to not publish their home address, in line with the statement of persons nominated, it will not appear on the ballot paper; the relevant home area, as indicated by the candidate, will be published instead). The ballot paper must be capable of being folded and have a number and other unique identifying mark printed on the back. The order of the names of the candidates on the ballot papers must be the same as in the statement of persons nominated.

If a candidate has used a description that electors are likely to associate with a registered political party, the ballot paper may contain, against that candidate's name, one registered emblem of the party. If a candidate has used a description that electors are likely to associate with *two or more* registered political parties, the ballot paper may contain, against the candidate's name, one registered emblem of *one* of the political parties. The candidate must make the request for this to happen in writing to the returning officer, who must comply with the request.

The returning officer must prepare a corresponding number list and this must be in the form set out in Appendix 3 to these Rules, or a form to the like effect. The corresponding numberlist must be in two parts. Part 1 of the list must contain the number and unique identifying marks of all ballot papers to be issued to voters who are entitled to vote by post. Part 2 of the list must contain the numbers, but not the unique identifying mark, of all the ballot papers to be provided to polling stations for issue to voters who are entitled to vote at polling stations.

Each ballot paper to be used at the election must contain appropriate security marking, to be known as "the official mark", the official mark must be kept secret. A returning officer may use a different official mark for different purposes at the same election, but they must have an interval of at least five years between using the same official mark.

At no point in any legal proceedings challenging the election, will a person that has voted in that election be required to say who they voted for.

For the purposes of taking a poll or counting the votes, the returning officer may use any of the following rooms free of charge:

- a room in a school maintained or assisted by a county or county borough council;
- a room in a school which receives grant from Senedd Cymru;
- any other room where the expenses for maintaining the room are met in part or wholly by public funds.

If a returning officer uses such a room, they must make good any damage to the room resulting from its use for polling or counting, and defray any expense incurred in using the room for a poll or counting by the person or body who has control of the room.

### *Action to be taken before a poll*

Before a poll takes place the returning officer must publish a notice of poll that sets out the day of the poll, and the times when polling can take place. It must also state the number of councillors being elected for the electoral ward, and the names and descriptions of each candidate along with their home address information (as appropriate). At the same time, or as soon as practicable after the notice of poll is issued the returning officer must give a copy of the notice to each of the election agents.

If a voter is entitled to vote by post, the returning officer must issue them with a ballot paper, a postal voting statement (in the form set out in Appendix 4 to these Rules, or similar form) and the envelopes in which all of the ballot papers and postal voting statement can be returned. The postal voting statement must allow the elector to sign the form, or where a proxy is being used they must be able to sign the form (unless, in either case, the registration officer has dispensed with the need for a signature). The elector must also be able to provide their date of birth on the form, or where a proxy is being used the proxy must be able to provide their date of birth.

The returning officer must also provide the postal voter with information on how they can access support or further information in relation to their ballot. This is to include how to obtain translations into languages other than English and Welsh of any directions or guidance issued with the ballot paper, a translation into Braille of any directions or guidance, graphical representation of any directions or guidance, or any other form that directions or guidance may be available in.

If the postal vote is being issued to a person at an address in the UK, the returning officer must ensure that returning the ballot and postal voting statement is free of charge the voter.

Before, or at the same time, as the notice of poll is issued the returning officer must publish notice of the situation of each polling station and the description of the voters entitled to vote there. The returning officer must ensure that there are a sufficient number of polling stations and allot electors to the polling station. One or more polling station can be provided for in the same room, and the returning officer must provide each polling station with a sufficient number of compartments to ensure voters can mark their votes without being observed.

As soon as practicable after the publication of the notice of election, the returning officer must send or deliver an official poll card to electors not voting by post; an official postal poll card electors voting by post and not by proxy; an official proxy voting poll card to a person voting as a proxy for an elector and not by post; and an official proxy postal poll card to a person voting as proxy for an elector by post. An official poll, or postal poll card must be sent or delivered to the elector's qualifying address. Similarly, the official proxy poll, or proxy postal poll, card must be sent or delivered to the proxy's address as set out on the list of proxies.

Each poll card must be in the form as that set out in Appendix 5 to these Rules, or a form to the like effect. The poll card must include:

- the name of the council to which the councillor is being elected;
- the electoral ward for which councillors are to be elected;
- the number of councillors to be elected for that electoral ward;
- the elector's name, qualifying address and number on the register;
- the date and hours of the poll and the location of the elector's polling station; and
- any other information the returning officer believes is appropriate.

When someone is entered onto the local government register as an anonymous elector, the poll card must contain the information as set out above save for the elector's name, qualifying address and number on the register and the poll card must be sent or delivered in an envelope or other covering so as not to disclose that the elector has an anonymous entry.

The returning officer is required to appoint and pay a presiding officer at each polling station and a sufficient number of clerks that are necessary to conduct the poll, or the count, or other purposes of the election. The returning officer must not knowingly appoint a presiding officer or clerk that has been employed by, or on behalf of, a candidate in connection with the election. If the returning officer so wishes they may preside at a polling station with appropriate modifications as to the actions taken by a returning officer to presiding officer or vice versa.

The returning officer is also required to provide each presiding officer with a sufficient number of ballot boxes and ballot papers, as they deem necessary. Every ballot box must be constructed so that ballot papers can be put in but cannot be taken out of it without the box being unlocked or unsealed (depending on the design of the box). The returning officer must provide each polling station with materials that allow the voter to mark the ballot paper, copies of the relevant register of electors, that is those electors allotted to that polling station, copies of notices issued under section 13B(3B) or (3D) of the Representation of the People Act 1983 so far as they relate to the relevant register of electors, copies of the parts of any lists of persons entitled to vote by post or by proxy that correspond to the relevant register of electors, and the polling station's corresponding number list, consisting of Part 2 of the corresponding number list as set out in these Rules.

The returning officer must make sure that an enlarged, sample copy, of the ballot paper is displayed at each polling station; this must be clearly marked as a "specimen". In addition to this the returning officer must provide each polling station with an enlarged hand-held sample copy of the ballot paper in order to assist voters who are partially-sighted. They must also provide a device that enables voters who are blind or partially-sighted to vote independently, without the assistance of the presiding officer or a companion. This device must allow a ballot paper to be inserted into, or removed from, or attached to, or detached from, the ballot paper without causing damage to the paper. It must also hold the ballot paper firmly in place during use and provide a suitable means by which the voter can identify the spaces on the ballot paper on which votes may be marked, identify the candidate to which each space refers and allow the voter to mark their vote in the space chosen.

The returning officer must also provide a notice as set out in Appendix 6 to these Rules which gives directions for the guidance of voters in voting which will be displayed inside and outside the polling station. The returning officer may also provide copies of the notice in Braille or languages other than Welsh or English, if they believe this is appropriate.

These Rules also set out that candidates can appoint polling agents and counting agents. These appointments must be made before the poll and the returning officer must be notified of the appointments, no later than the fifth day before the poll, including their personal details. The polling agent is able to attend the polling station with the purpose of detecting *personation*, that is to say somebody who is casting a vote at the poll while pretending to be someone else. The counting agent is able to attend the counting of votes. The same person can be appointed as a polling or counting agent by more than one candidate. If the polling or counting agent were to die, or becomes incapable of acting, the candidate is allowed to appoint another agent and must immediately give the returning officer notice of this along with the personal details of the new agent. If these Rules require that something is done in the presence of the polling or counting agents, and an agent is not in attendance at the appointed time and place, this does not invalidate the action taken. Similarly, where a candidate does not have a counting agent the returning officer may give the candidate any notice that is required to be given to the counting agent.

The returning officer must ensure that every person attending a polling station, save for those voting and their companions, any person under the age of 16, those assisting a voter with disabilities or a constable on duty, has been given a notice setting out that they must maintain, and aid in maintaining the secrecy of the ballot. They must not communicate to anyone, before the close of poll, for whom an individual has voted, the number of any elector as set out on the electoral register or the nature of the official mark. If a person does not follow the law as set out in section 66(1), (3) and (6) of the *Representation of the People Act 1983* they will be liable, upon summary conviction to a fine or a period of imprisonment not exceeding 6 months.

If a postal ballot, or a proxy postal ballot is returned to the returning officer, the returning officer must mark the postal voters list or the proxy postal voters list respectively in the manner dictated by the Representation of the People (England and Wales) Regulations 2001.

### *The Poll*

These Rules set out who the presiding officer at a polling station may and may not admit to the polling station. The presiding officer must exclude from the polling station anyone that is not:

- A voter that has been allotted to that polling station;
- Anyone under the age of 16 who is accompanying a voter;
- The candidate and their election agents;
- The polling agents appointed to attend the polling station;
- The clerks appointed to attend the polling station;
- The returning officer or members of the returning officer's staff;
- And anyone who would be entitled to be at the polling station under any

of the Section 6A to 6D of the Political Parties, Elections and Referendums Act 2000, that is to say representatives of the Electoral Commission and accredited observers;

- The constables on duty; and
- The companions of voters with disabilities.

The presiding officer of the polling station is required to regulate the total number of voters, and persons under the age of 16 who are accompanying a voter that are admitted to the polling station at any one time. No more than one polling agent per candidate will be allowed inside the polling station.

If a constable stationed at the polling station, or a person employed by the returning officer to work at the polling station, wishes to cast their vote at that polling station, rather than at the polling station to which they have been allotted, they may do so as long as they present a certificate in the form set out in Appendix 7 of these Rules (or a form to like effect). In the case of a constable, this certificate must be signed by a police officer of, or above, the rank of inspector. In the case of a person employed by the returning officer to work at the polling station, this certificate must be signed by the returning officer.

The presiding officer of the polling station must keep order in the polling station. If a person engages in misconduct within the polling station, or fails to obey orders lawfully given by the presiding officer, the presiding officer may order that the person is removed from the polling station. In these circumstances, the person may be removed by a constable in or near the polling station or by any other person that has been authorised in writing by the returning officer to remove people from the polling station. If a person is removed from the polling station, they must not return without the express permission of the presiding officer. If a person is removed and charged with the commission of an offence in the polling station, the person may be dealt with as a person taken into custody by a constable for an offence without a warrant. The powers set on in this rule, Rule 38, must not be exercised to prevent a voter who is otherwise entitled to vote at a polling station from having the opportunity to vote at that polling station.

Immediately before the poll begins the presiding officer must show the empty ballot box to those people (if any) who are present in the polling station. They must see that the ballot box is empty. The presiding officer must then lock up the box (if it has a lock) and place the returning officer's seal on it, in such a way as to prevent it being opened without breaking the seal. The presiding officer must then place the box, within their own view, so that ballot papers can be returned to it. The presiding officer must keep the box locked and sealed, if it has a lock; if it does not have a lock it must be kept sealed.

Rule 40 sets out questions that a presiding officer may ask a person before they are provided with a ballot paper, they may not ask any of these questions once the ballot paper has been given to the person. The Rule also sets out the questions a presiding officer must ask a person upon the request of the candidate or agent. Table 1 and table 2 provided in Rule 40 set out the exact circumstances of the voter and the exact question a presiding officer may ask that voter. The main purpose of these questions is to ascertain the identity of the voter and their eligibility to take part in the way they are seeking to, for example, if they are applying as proxy for an elector who is named on the local government register.

A person may be prevented from voting only if a candidate, or candidate's election or polling agent declares that they have reasonable cause to believe that the person has committed an offence of *personation*, that is to say somebody who is casting a vote at the poll while pretending to be someone else; and/or if the person is arrested on the grounds they are suspected of committing or being about to commit an offence of *personation*.

These Rules set out the voting procedure to be followed in the polling station by both the voter and polling station staff. When a voter requests a ballot paper, they must be given one. Immediately before the ballot paper is given the number of the elector, as set out on the electoral register, must be called out. Unless the elector has an anonymous entry, the name of the elector, as set out on the electoral register, must be called out. The number of the elector must be marked on the polling station corresponding number list beside the number of the ballot paper that will be issued. A mark must be placed on the electoral register at the polling station against the elector's number to show that a ballot paper has been received, this mark must not indicate which particular ballot paper has been received. Where the person is acting as proxy, a mark must be placed against that person's name on the list of proxies. Where an elector has an anonymous entry on the electoral register, the elector's official poll card must be shown to the presiding officer before the ballot paper is given (and a ballot paper must not be given if the elector does not have their official poll card) and only the number may be called out.

Once the voter has received the ballot paper, they must immediately go into one of the compartments of the polling station. The voter must then secretly mark the ballot paper, fold the ballot paper up so that the vote is concealed, show the presiding officer the back of the ballot paper so that the number and other unique identifying mark can be seen and then put the ballot paper into the ballot box in the presence of the presiding officer. As soon as the voter has put the ballot paper in the ballot box, they must leave the polling station. If the voter is in the polling station, or in a queue outside the polling station, at the close of poll and has not yet had the opportunity to cast their vote, the presiding officer must permit them to cast their vote as soon as practicable.

When marking the ballot paper, a voter may ask the presiding officer to place the mark on their behalf if they are blind, have an impairment or are unable to read. The presiding officer must place the mark on the ballot paper as directed by the voter and must do so in the presence of any polling agents that are in the polling station at the time of the request. Once they have placed the mark on the ballot paper as directed by the voter the presiding officer must place the ballot paper in the ballot box. If the presiding officer takes this course of action, they must maintain a list of voters known as the "the list of votes marked by the presiding officer" which includes the name and number of the voter and the reason why the vote was marked on their behalf.

Voters who are blind, have an impairment or who are unable to read may also apply to the presiding officer to be allowed to vote with the assistance of a companion. The voter must tell the presiding officer either orally, or in writing, the reason they are asking for assistance from a companion. The companion of the voter is then required to make a written declaration to the presiding officer

stating that they are eligible to assist the voter, that is to say they are aged 16 years or over. The companion is also required to declare in writing that they have not previously assisted more than one voter with disabilities at the election. This declaration must be in the form set out in Appendix 8 to these Rules and it must be given to the presiding officer who will attest it. The presiding officer at the polling station is required to keep a list of voters known as “the list of voters with disabilities assisted by companions” which includes the name and number of the voter and the name and address of the companion. Where the voter has an anonymous entry on the electoral register, only the electoral number is to be entered onto this list.

These Rules also provide six sets of circumstances where a voter has applied for a ballot paper and is entitled to vote once they have answered satisfactorily questions set out in Rule 40, but their ballots will be treated differently by being given a ballot paper of a different colour to the other ballot papers used in the election and having to return their ballot to the presiding officer instead of putting it into the ballot box:

- The first set of circumstances where this may happen is if the applicant represents themselves to be a particular elector that has been named in the copies of the electoral register but has not been named as a postal voter or on the list of proxies, and if another person has already voted in person either as that elector or that elector’s proxy;
- The second set of circumstances where this may happen is if the applicant represents themselves to be a particular person named in the list of proxies as a proxy for an elector and is not entitled to vote by post as proxy, and that another person has already voted in person either as that elector or as that elector’s proxy.
- The third set of circumstances where this may happen is if the applicant represents themselves to be a particular elector named on the electoral register and that applicant is also named in the postal voter list, and the applicant claims not to have made an application to vote by post at the election.
- The fourth set of circumstances where this may happen is when the applicant represents themselves to be a particular person named as a proxy on the list of proxies and that person is also named in the proxy postal voter list, and the applicant claims not to have made an application to vote by post as proxy at the election.
- The fifth set of circumstances where this may happen is where after the last time a person may apply for a replacement postal ballot but before the close of poll, the applicant represents themselves to be a particular elector named in the copies of the electoral register who is also named in the postal voter list and the applicant claims to have lost or not received the person’s postal ballot paper.
- The sixth set of circumstances where this may happen is where after the last time a person may apply for a replacement postal ballot paper but before the close of poll, the applicant represents themselves to be a particular person named as a proxy in the list of proxies who is also named in the proxy postal voter list, and the applicant claims to have lost or not to have received that person’s postal ballot paper.

In all of these circumstances the ballot paper that is given to the presiding

officer is considered to be a “tendered ballot paper” and will be referred to as such in these Rules.

Rule 47 sets out the duties of the presiding officer in relation to tendered ballot papers. When a presiding officer is given a tendered ballot paper they must endorse the ballot paper with the name of the voter and the voter’s number as set out in the polling station register, or if the voter is voting as a proxy for an elector, the number of that voter. The presiding officer must put the ballot paper in a separate packet and they must keep a list known as “the tendered vote list” which includes the name of the voter and the voter’s number as set out in the polling station register, or if the voter is voting as a proxy for an elector, the number of that voter. Where the elector has an anonymous entry on the electoral register, only the voter number is required to be kept on this list.

If, during the process of voting, a voter has inadvertently dealt with their ballot paper in a way that it cannot be conveniently used as a ballot paper they may obtain another ballot paper. To do this, the voter must give the ballot paper that has been spoilt back to the presiding officer and prove to the presiding officer’s satisfaction that the action leading to the spoiling of the ballot paper was undertaken inadvertently. When the voter is issued with a new ballot paper, the spoilt ballot paper must be cancelled immediately.

If a correction is made to the electoral register on the day of the poll, the presiding officer is required to keep a list of persons to whom ballots are provided as a result of these corrections. Corrections to the electoral register can only be made in accordance with sections 13(3B) or (3D) of the Representation of the People Act 1983.

If, during polling day, proceedings are interrupted or obstructed by riot or open violence the presiding officer must adjourn proceedings until the following day and immediately inform the returning officer. Where a poll has been adjourned at a polling station in these circumstances, the hours of polling on the new polling day must be the same as for the original day and will be subject to the rules set out in this legislation with regards to the close of poll.

Once every voter has cast their vote, these Rules set out the processes and procedures that must be followed by the presiding officer at the close of poll. Once every voter has cast their vote the presiding officer must seal the ballot boxes in the presence of the polling agents. This is to stop additional ballot papers being introduced. The presiding officer (and any polling agents that wish to) must then affix their seal to each sealed ballot box. Still in the presence of any polling agents, the presiding officer must place the following into separate packets each being sealed with the presiding officer’s seal (and any polling agent’s seal that wishes to affix it):

- The unused and spoilt ballot papers;
- The tendered ballot papers;
- The marked copies of the registration records together with the list of proxies;
- The polling station’s corresponding number list;
- Any certificates that have been surrendered to the presiding officer;
- The list of voters marked by the presiding officer, along with a statement

of the number of voters, whose votes are marked under the headings of “disability” and “unable to read”;

- The declarations made by the companions of voters with disabilities;
- The list of voters with disabilities assisted by companions;
- The tendered votes list;
- The list of correction of errors on polling day.

The sealed boxes and packets must be delivered to the returning officer either by the presiding officer or using an arrangement that has been approved in advance by the returning officer. The packets must be accompanied by a statement called a “ballot paper account” that has been prepared by the presiding officer showing:

- The number of ballot papers given to the presiding officer;
- How the ballot papers are accounted for under the following headings:
  - The number of ballot papers issued and not accounted for,
  - The number of ballot papers unused,
  - The number of spoilt ballot papers,
  - The number of tendered ballot papers.

#### Part 4: Counting of votes and declaration of result at contested election

After the close of poll, the returning officer must make arrangements for the votes to be counted in the presence of counting agents as soon as practicable. The returning officer is required to give the counting agents a notice stating the time and place at which the votes will be counted.

These Rules entitle the following people to be present at the counting of votes:

- The returning officer and members of the returning officer’s staff;
- Each candidate and a guest of each candidate;
- The election agents;
- The counting agents;
- Representatives of the Electoral Commission and accredited observers as provided for under sections 6A to 6D of the Political Parties and Referendums Act 2000; and
- The constables on duty.

The returning officer is allowed to permit any other person to attend the count but only if the returning officer is satisfied that the person’s attendance will not impede the efficient counting of votes and has either consulted the election agents (if appointed) or in the case of candidates who have not appointed election agents, the candidates about whether or not to give permission or has decided it is not practicable to consult these persons. The returning officer must make arrangements to ensure that every person attending the count has been issued with a notice setting out of the requirement around secrecy, in line with section 66(2) and (6) of the Representation of the People Act 1983.

The returning officer is required to give counting agents all reasonable facilities, and all necessary information, for overseeing the proceedings. This is to be done in a way that the returning officer can provide consistently ensuring the orderly conduct of the count and the discharging of returning officer’s duties. This

particularly relates to the sorting of votes where a candidate is elected by the use of the simple majority. A counting agent is entitled to satisfy themselves that in this case the ballot papers have been sorted correctly before the counting begins.

Before counting begins the returning officer must, in the presence of the counting agents, open each ballot box, take out the ballot papers, count them and record the number. The returning officer must not count any tendered ballot papers. The returning officer, again in the presence of the counting agents, must verify each ballot paper account by comparing it with the number of ballot papers recorded, the unused and spoilt ballot papers in the returning officer's possession and the tendered votes list. Following this the returning officer must draw up a statement setting out the result of the verification process and they must give a copy of this statement to any election agent that requests it.

The returning officer must also count the postal ballot papers that have been properly returned. This means the ballot paper and the properly completed accompanying postal voting statement have been handed in at a polling station in the electoral ward before the close of poll (a person standing inside the polling station or in the queue for the polling station is entitled to hand in their postal vote and it will be counted), given by hand to the returning officer before the close of the poll, or received by the returning officer by post before the close of poll. In this instance a properly completed postal voting statement will be signed by the elector or by the proxy and will state the date of birth of the elector or the proxy. Once this has been done the returning officer must record the number of valid postal ballots counted.

The returning officer must not count the votes given on any ballot paper until, in the case of the postal ballot papers, they have been mixed with the ballot papers from at least one ballot box, and, in the case of ballot papers from a ballot box, they have been mixed with the ballot papers from at least one other ballot box.

While the process of counting and recording the number of ballot papers and counting the votes is taking place the returning officer must take all proper precautions to prevent any person from identifying the voter who has cast the vote.

The result of the poll must be ascertained by counting the votes given to each candidate. The candidate or candidates to whom more votes have been given than the other candidates (up to the number of councillors to be elected) must be declared to have been elected. The returning officer, so far as is practicable, must proceed continuously with the counting of votes, only allowing time for refreshment. However, if the returning officer wishes, they can exclude any hours between 7pm and 9am the following morning. If the returning officer chooses to exclude any time, they must place the ballot papers and other documents relating to the election under the returning officer's seal and the seal of any counting agents that wish to affix theirs. They must also take proper precautions for the security of the ballot papers and other documents.

These Rules set out the reasons that a ballot paper is to be rejected and considered void. The conditions under which this can happen include the ballot paper does not bear the official mark, a ballot paper on which votes are given for more candidates than the voter is entitled to vote for, a ballot paper on which

anything is written or marked by which the voter can be identified except the printed number and other unique identifying mark on the back, a ballot paper that is unmarked or void for uncertainty.

If the voter is entitled to vote for more than one candidate, a ballot paper is not to be treated as void for uncertainty where any vote has been cast and there is no uncertainty around it; in this instance that vote is to be counted. This means that in some cases ballot papers may contain a valid vote and an invalid vote where it is clear that one (or more) of the votes has been cast properly and without any uncertainty.

A ballot paper is not to be treated as void, only because of how it is marked, if it is clear from the ballot paper that the voter intended to vote for one or other of the candidates, the way the ballot paper is marked does not itself identify the voter and the returning officer is satisfied that the voter cannot be identified from the ballot paper. This Rule should be applied to ballot papers where a vote is marked elsewhere than in the proper place, by other means than a cross or by more than one mark.

Where a ballot paper is rejected under Rule 56, the returning officer must ensure it is marked with "rejected" or in the case of a ballot paper that is partially rejected it must be marked with "rejected in part" and there must be a clear indication as to which vote has been counted. If a counting agent objects to the returning officer's decision then the returning officer must add "rejection objected to" on the ballot paper. The returning officer must then prepare a statement showing the number of ballot papers rejected and the number rejected in part with a breakdown of the reasons for the rejection or partial rejection. The decision of the returning officer in respect of a ballot paper is final, but this can be reviewed on an election petition.

Once the count is completed a candidate or a candidate's agent may request a re-count if they so wish. The returning officer must comply with this request unless the returning officer believes the request to be unreasonable. No steps should be taken around the completion of the count until the candidates and agents have had the opportunity to request a recount. This Rule also applies to a recount, that is to say a candidate or candidate's election agent may request a recount of the recount as long as they have been present at the original recount.

If the circumstances arise where, following the counting of votes and any recounts, there is an equality of votes between any candidates and the addition of one vote would entitle any of the candidates to be elected, the returning officer must immediately decide between the candidates by drawing lots. The candidate to which the lot falls should be considered to have received an additional vote and will be declared the elected candidate.

When the count has been completed, the returning officer must declare the candidate, or candidates who have more votes than other candidates to be elected; they must also give notice of the candidates elected to the proper officer of the council for which the election was held. The returning officer must also publish a notice of the names of the candidates elected, the total number of votes given for each candidate (and whether they were elected or not) and the number of rejected ballot papers under each heading in the statement of rejected ballots.

## Part 5: Disposal of documents

When the process of counting of votes has been completed, the returning officer must seal in separate packets the counted ballot papers, and the rejected ballot papers. The returning officer must not open any packets that were previously sealed containing the tendered ballot papers, completed corresponding number lists, certificates surrendered by constables or staff of returning officers, or marked copies of the registration records and lists of proxies.

Where a returning officer has sealed up the counted and rejected ballot papers they must forward the following documents to the registration officer of the local authority in whose area the election was held:

- The packets of ballot papers in the returning officer's possession;
- The ballot paper accounts;
- The statements of rejected ballot papers;
- The statement as to the result of the verification of the ballot paper accounts;
- The lists of votes marked by the presiding officer, together with the statement of the number of voters whose votes are marked under the headings "disability" and "unable to read";
- The declaration made by the companions of voters with disabilities;
- The lists of voters with disabilities assisted by companions;
- The tendered votes lists;
- The lists of correction of errors on the electoral register on the day of the poll;
- The packets containing completed corresponding number lists;
- The packets containing certificates surrendered by the constables or staff of returning officers;
- The packets containing copies of registration records and lists of proxies; and
- The packets containing the postal voters list and the proxy postal voters list.

These documents must be retained for a period of one year beginning on the day when they are received by the registration officer. At the end of the one year period the registration officer must destroy the documents unless otherwise directed by order of a county court, a Crown Court, a magistrates' court or an election court.

Similarly, the returning officer must destroy each of the candidate's home address forms on the next day following the 35<sup>th</sup> day after the returning officer has returned the names of the elected members. This must happen unless an election petition questioning the election or returning of candidates is presented before that day. If this happens, then the documents must be destroyed as soon as is practicable following the conclusion of proceedings which includes where there is an appeal and the proceedings of the appeal.

Rule 63 sets out the processes of producing documentation for a county court.

It relates to specific documents in the custody of the registration officer, the documents are:

- Rejected and counted ballot papers;
- Sealed packets containing completed corresponding number lists; and
- Sealed packets containing certificates surrendered by constables or staff of returning officers.

If a county court is satisfied by evidence given on oath, they are able to make any of the following listed orders. These orders are required for the purpose of instituting and maintaining a prosecution for an offence in relation to a ballot paper, or in relation to ballot papers for the purpose of an election petition. These Orders are:

- An order for the inspection or production of any of the rejected ballot papers including any ballot papers rejected in part;
- An order for the inspection of any of the counted ballot papers;
- An order for the opening of any of the sealed packets containing completed corresponding number lists or certificates surrendered by constables or staff of returning officers. This order can be made for the inspection of the whole or part of the content of a sealed packet.

An election court may make orders relating to these documents and can make:

- An order for the inspection of any of the counted ballot papers;
- An order for the opening of any of the sealed packets containing completed corresponding number lists or certificates surrendered by constables or staff of returning officers. This order can be made for the inspection of the whole or part of the content of a sealed packet.

Any order made under this Rule may be made subject to any of the following conditions the court believes is appropriate. In deciding what is appropriate the court should consider how to ensure that the way the elector has given their vote is not disclosed unless, and until, it is proven that the elector has given their vote and that the vote has been declared invalid by a competent court. The conditions are:

- Conditions as to person;
- Conditions as to time;
- Conditions as to the place and method of inspection;
- Conditions as to the production or opening.

The power set out in this Rule may be exercised by any judge of the county court but must not be exercised in open court. Any appeals around an order made under this Rule will be made to the High Court. Unless the Rule states otherwise, no person may inspect any of the rejected or counted ballot papers, open any of the sealed packets containing completed corresponding number lists or certificates surrendered by constables or staff of returning officers.

When any of the packets detailed above are presented by the registration officer or the registration officer's agent in compliance with the order it must be accepted that this is conclusive evidence that the documents contained within the packets relate to the specified election. Similarly if a packet of ballot papers with an endorsement on the packet is produced by the registration officer or registration officer's agent it must be accepted that the ballot papers are what they are stated to be. This also applies to the votes cast on those ballot papers, that is to say, it must be accepted that the elector whose vote was given on a specific ballot paper was indeed the elector as set out on the local government register of electors for the specified election.

#### Part 6: Death of a candidate

The final provision in Schedule 1 relates to the countermand or abandonment of a poll as a result of the death of a candidate. If, in a contested election, the returning officer is satisfied (before the result of the election is declared) that one of the candidates named on the ballot paper has died the returning officer must countermand the notice of the poll, or if polling has begun, the returning officer must direct that the poll is abandoned and no further ballot papers may be issued.

If a poll is abandoned, the presiding officer at any polling station in use at the election must take the necessary steps, set out in these Rules, at the close of polls. It is not necessary for the presiding officer to prepare a ballot paper account.

The returning officer must deal with ballot papers and other documents that are in their possession (or later delivered to them) when the poll is abandoned in the same way as they would deal with documentation under normal circumstances and in line with the Rules set out in this Schedule. However, the returning officer must seal up all the ballot papers (whether the votes have been counted or not) and it is not necessary to seal up counted and rejected ballot papers in separate packets. Any ballot papers on which the votes were neither counted nor rejected are to be treated as counted ballot papers.

## **Schedule 2**

### **Rules for the conduct of a principal council election where the poll is taken together with the poll at relevant election**

Schedule 2 sets out the rules that apply to the conduct of an election where the poll is taken together or combined with the poll at one or more relevant elections. Most of the Rules are the same as for stand-alone principal council elections, however there are some notable differences. Those Rules that are either new, substantially different, or have small differences are detailed below.

Whilst these Rules do not make provision about local government elections when combined with Senedd elections, Schedule 4 to the National Assembly for Wales (Representation of the People) Order 2007 will continue to apply (as modified) to such combinations.

### Part 3: The poll at contested elections

#### *General provisions*

Part 3 of these Rules set out procedures around contested elections. Where a poll is combined, the Rules are largely the same as where a poll for a stand-alone principal council election is held. There are some minor changes to the Rules, for instance, in these circumstances the ballot paper must be of a different colour to that of any ballot papers being used at any other election being held in combination with the principal council election.

Similarly, if the poll is combined, there are a number of functions that must be undertaken by the “co-ordinating returning officer”. This means that the relevant function may be undertaken for both elections by the returning officer who, under regulation 4 of the Representation of the People (Combination of Polls) (England and Wales) Regulations 2004 (“the Combination of Polls Regulations”), is responsible for discharging the functions specified in regulation 5 of those Regulations, in which case that person is to be known as “the co-ordinating returning officer”. These functions stretch across the Rules and are particularly relevant to the duties undertaken in relation to postal voting, at the close of poll and during the count. Further details (where necessary) of these functions are included under the relevant sections.

When issuing poll card, if the returning officer for each relevant election agrees, a combined poll card may be issued which includes all the necessary information for both elections as set out above.

In preparation for polling day the returning officer is required to provide each presiding officer with a sufficient number of ballot boxes and ballot papers, as they deem necessary. Every ballot box must be constructed so that ballot papers can be put in but cannot be taken out of it without the box being unlocked or unsealed (depending on the design of the box). If the returning officer considers it appropriate, the same ballot box may be used for any relevant elections taking place on that polling day, that is to say the principal area election and any other relevant election. If the returning officer does not consider it appropriate, specific provisions must be made for the use of different ballot boxes. Each ballot box must be marked clearly with the election it relates to as shown on the ballot paper for that election, and the box must clearly indicate the colour of ballot paper that should be inserted into the box.

## *The Poll*

If the poll is combined, the polling station register that is being used for the principal area election may be used for each relevant election the voter is participating in. In this case, when more than one ballot paper is being issued to the voter for the principal area election and other relevant elections, one mark is to be placed on the polling station register and in the list of proxies (if relevant) to denote that the ballot papers have been issued. If the ballot papers being issued to the voter does not include a principal council ballot paper the polling station register must be marked in a way as to identify each election for which a ballot paper has been issued.

Polling station presiding officers are required (as with stand-alone principal council elections) to keep individual lists of electors in specific circumstances. These circumstances are:

- Where the presiding officer is asked to place the mark of voter on the ballot paper if they are blind, have an impairment or are unable to read;
- Where an application has been made to the presiding officer for a companion to assist a voter who is blind, has an impairment or who is unable to read;
- Where a tendered ballot is issued, in these circumstances a “tendered ballot” is the same as set out in Schedule 1 to these Rules; and
- Where a correction is made to the polling station register on the day of the poll.

In each of these cases, if the poll is combined, the list may be used by the presiding officer for both the principal area election and any other relevant election the voter has participated in. Where the same list is used it must be made clear which election the elector participated in, if they did not participate in all elections taking place in the polling station.

### Part 4: Counting of votes and declaration of result at contested election

The Rules set out in this part apply differently to returning officers depending on whether or not they are the co-ordinating returning officer. While this is unlikely in the most usual combination of elections (i.e. principal council with community council), given the returning officer for a principal council election will be returning officer for community and town council elections, there could be circumstances where the co-ordinating returning officer is a different person. If the returning officer is the co-ordinating returning officer, the following Rules apply:

- Rule 53 (attendance at proceedings);
- Rule 54 (preliminary and general duties);
- Rule 55 (separation of ballot papers etc.); and
- Rule 58 to 64 (provisions relating to counting etc.)

Where the returning officer is not the co-ordinating returning officer, the following Rules apply:

- Rule 53(1) and (3) to (7) (attendance at proceedings);
- Rule 56 (preliminary and general duties);
- Rule 57 (opening of containers etc.); and
- Rule 58 to 64 (provisions relating to counting etc.)

Rule 53 sets out who is allowed to be present at proceedings concerning the separation of ballot papers, the opening of containers and the count itself. The following are entitled to be present at these proceedings:

- The returning officer and members of the returning officer's staff;
- Each candidate and a guest of each candidate;
- The principal area election agents (if appointed);
- The principal area counting agents (if appointed);
- Representatives of the Electoral Commission and accredited observers as provided for under sections 6A to 6D of the Political Parties and Referendums Act 2000; and
- The constables on duty.

Additionally, any person that is entitled to attend the counting of votes at the relevant election, that is to say not the principal area election, is also allowed to attend proceedings around the separation of ballot papers.

The returning officer may also permit any other person to attend proceedings around the separation of ballot papers, opening of containers and the count but only if the returning officer is satisfied that the person's attendance will not impede on the efficient discharge of the returning officer's functions and has either consulted the election agents about whether or not to give permission or has decided it is not practicable to consult the election agents.

The returning officer is required to give counting agents reasonable facilities for overseeing any of the proceedings they are entitled to attend. The returning officer, in so far as is possible, must also give the counting agents all the information about proceedings. This must be done consistently and with the orderly conduct of proceedings and must allow the returning officer to discharge their duties fully and properly. This particularly relates to the sorting of votes where a candidate is elected by the use of the simple majority. A principal area counting agent is entitled to satisfy themselves that in this case the ballot papers have been sorted correctly before the counting begins.

The co-ordinating returning officer must make arrangements for the votes to be counted in the presence of the principal area counting agents and any other counting agents as soon as practicable. The returning officer is required to give the counting agents a notice stating the time and place at which the votes will be counted. While the counting and recording of votes is taking place, the returning officer must take all proper precautions to prevent any person from identifying the voter who has cast the vote.

If the returning officer is the co-ordinating returning officer, they must, in the presence of the principal counting agents and other counting agents, open each ballot box, take out the ballot papers, count them and record separately the

number of ballot papers used in each election. The returning officer must not count any tendered ballot papers. If separate ballot boxes were used at the poll, no vote for a candidate at the principal area election is to be treated as invalid because it was put in the ballot box for the other relevant election taking place.

The returning officer must also count the postal ballot papers that have been properly returned. This means the ballot paper and the properly completed accompanying postal voting statement have been handed in at a polling station in the electoral ward before the close of poll (a person standing inside the polling station or in the queue for the polling station is entitled to hand in their postal vote and it will be counted), given by hand to the returning officer before the close of the poll, or received by the returning officer by post before the close of poll. In this instance a properly completed postal voting statement will be signed by the elector or by the proxy and will state the date of birth of the elector or the proxy. Once this has been done the returning officer must separately record the number of valid postal ballots counted at the poll at the principal area election and at each relevant election.

Following this, the returning officer must separate the ballot papers relating to the principal area election from the ballot papers relating to each relevant election. They must then make up packets of ballot papers for each relevant election and seal these packets in separate containers making clear on each one which ballot papers are contained therein. The returning officer must then deliver, or arrange for delivery, of the containers of ballot papers for each election together with a list of the containers and their content, the ballot paper accounts relating to the election together with a copy of the statements as to the result of the verification and the packets of unused or spoiled ballot papers, tendered ballot papers and certificates surrendered during polling to each of the relevant returning officers for each election.

The returning officer must then mix together all the ballot papers used at the principal area election.

If the returning officer is not the co-ordinating returning officer they must take specific action in advance of the count as set out in Rule 56. They must make arrangements for the votes to be counted in the presence of the principal area counting agents as soon as is practicable following the delivery of the ballot papers by the co-ordinating returning officer.

The returning officer is required to give the counting agents a notice stating the time and place at which the votes will be counted. While the counting and recording of votes is taking place, the returning officer must take all proper precautions to prevent any person from identifying the voter who has cast the vote.

Upon receipt of the containers of ballot papers from the co-ordinating returning officer, the returning officer must open each container in the presence of the principal area counting agent. If postal ballots for the relevant election have not been dealt with by the co-ordinating returning officer, the returning officer must

count the postal ballot papers that have been properly returned and record the number counted. The returning officer must mix together all the postal ballot papers and the ballot papers from the containers.

#### Part 5: Disposal of documents

When the process of counting of votes has been completed, the returning officer must seal in separate packets the counted ballot papers, and the rejected ballot papers. The returning officer must not open any packets that were previously sealed containing the tendered ballot papers, completed corresponding number lists, certificates surrendered by constables or staff of returning officers, or marked copies of the registration records and lists of proxies.

Where a returning officer has sealed up the counted and rejected ballot papers they must forward the following documents to the registration officer of the county or county borough council in whose area the election was held:

- The packets of ballot papers in the returning officer's possession;
- The ballot paper accounts;
- The statements of rejected ballot papers;
- The statement as to the result of the verification of the ballot paper accounts; and
- The packets containing the postal voters list and the proxy postal voters list.

Where the returning officer is also the co-ordinating returning officer, they must also forward the following documents to the registration officer of the local authority in whose area the election was held:

- The lists of votes marked by the presiding officer, together with the statement of the number of voters whose votes are marked under the headings "disability" and "unable to read";
- The declaration made by the companions of votes with disabilities;
- The lists of voters with disabilities assisted by companions;
- The tendered votes lists;
- The lists of correction of errors on the electoral register on the day of the poll;
- The packets containing completed corresponding number lists;
- The packets containing certificates surrendered by the constables or staff of returning officers; and
- The packets containing copies of registration records and lists of proxies.

The final provision in Schedule 2 relates to the countermand or abandonment of a poll as a result of the death of a candidate. If, in a contested election, the returning officer is satisfied (before the result of the election is declared) that one of the candidates named on the ballot paper has died the returning officer

must countermand the notice of the poll, or if polling has begun, the returning officer must direct that the poll is abandoned and no further ballot papers may be issued. This countermanding or abandoning of the poll does not affect the poll at any relevant election.

At the close of poll at each relevant election, the presiding officer at any polling station in use at the election must take the steps set out in these Rules to close the poll in the same way had the principal area poll not been abandoned. However, it is not necessary for the presiding officer to prepare a ballot paper account.

When the returning officer is the co-ordinating returning officer they are required to take the steps necessary under Part 4 of these Rules. However, specific exceptions apply in these circumstances, which are that the returning officer must not proceed with counting any ballot papers or votes relating to the abandoned poll, and it is not necessary to verify any ballot paper accounts relating to the poll.

When the returning officer is not the co-ordinating returning officer they must receive any ballot papers or other documents relating to the abandoned poll that may be delivered by, or on behalf of, the returning officer but they must not proceed with any step set out in Part 4 of these Rules in so far as they relate to the abandoned poll.

## **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 2 August 2021 to 24<sup>th</sup> September on the draft Rules and accompanying Explanatory Memorandum. The consultation was drawn to the attention of a wide range of electoral experts including returning officers, Associate of Electoral Administrators and One Voice Wales and other stakeholders.

Three separate virtual consultation events were held with electoral experts as well as bespoke meetings with a range of stakeholders. 31 consultation responses were received.

There was broad agreement to most of the proposals in the consultation. Responses advised further consideration was necessary for early proposals to introduce a requirement that returning officers publish statements submitted by candidates. Although there was broad agreement to the proposals, responses indicated a preference for further work to the practical application of the policy. The proposals were withdrawn until further work can be completed. No other substantive amendments were considered necessary to the draft Rules.

Consultation was carried out with the Information Commissioner's Office in accordance with Article 36 (4) of the General Data Protection Regulation.

## **PART 2 - REGULATORY IMPACT ASSESSMENT**

### **6. Options**

The majority of the Rules and associated processes will remain the same as for previous local elections excepting certain changes to accommodate the extension of the franchise contained in the Local Government and Elections (Wales) Act 2022 and policy changes consulted on in the Electoral Reform in Local Government in Wales consultation document. These changes include:

- changes to accommodate the extension of the franchise for local election to 16/17 year olds and qualifying foreign citizens;
- changes that allow candidates the option of not publishing their home address;
- changes which require candidates to declare any political party affiliations;
- the provision of the option for candidates to submit nominations online; and
- allowing candidates to self-nominate.

**Option 1 – Business as usual.** The current rules governing local elections The Local Elections (Principal Areas) (England and Wales) Rules 2006 (“the 2006 Rules”) and the Local Elections (Parishes and Communities) (England and Wales) Rules 2006 would govern the conduct of local elections in Wales.

**Option 2 –** To make The Local Elections (Principal Areas) (Wales) Rules 2021 and The Local Elections (Communities) (Wales) Rules 2021.

### **7. Cost and benefit analysis**

#### **Option 1 – Business as usual**

Were option 1 to be followed, it would mean the existing England and Wales Rules would apply to the local elections. These Rules are no longer considered fit for purpose as a consequence of the Local Government and Elections (Wales) Act 2021 extending the franchise for local government elections to 16/17 year olds and qualifying foreign citizens. These new electors are not accommodated for within the current rules.

The additional changes being made to the rules (referred to above), were consulted on in 2017/2018 in the *Electoral Reform in Local Government in Wales* consultation. Many of the changes consulted on were given effect in the Local Government and Elections (Wales) act 2021 and the most appropriate legislative vehicle for the remaining changes is these Rules. Were option 1 to be followed, this further modernisation of electoral processes could not be achieved.

## **Option 2 – Make the Local Elections (Principal Areas) (Wales) Rules 2021 and the Local Elections (Communities) (Wales) Rules 2021**

### **Description**

The local authority is required to appoint a Returning Officer to conduct elections on its behalf. The cost of running local elections falls entirely on County and County Borough Councils and Town and Community Councils. Section 36C(1) of the Representation of the People Act 1983 (the 1983 Act) requires councils to cover all expenditure, so far as that expenditure does not, where there is a scale fixed by the county or county borough council, exceed that scale, incurred by the Returning Officer in holding an election.

In the case of the costs of Town and Community Council elections the 1983 Act also prescribes under section 36C(2) that all expenditure properly incurred by a returning officer in relation to the holding of an election of a community councillor must, in so far as it does not, in cases where there is a scale fixed for these purposes by the council of the county or county borough in which the community is situated, exceed that scale, be paid by the principal council; and if the principal council so require, any expenditure so incurred must be repaid to them by the community council.

The costs of running an election result from having to meet a range of fees, charges and expenses incurred in paying staff, the expenses of printing notices, ballot papers, postal voting forms etc. hiring polling stations and conducting the counts. There are no changes proposed in the Rules with respect to the usual processes for running the election. Consideration has been given to the areas where there will be a change in processes and these are examined separately below.

### **Cost**

*Changes to accommodate the extension of the franchise for local election to 16/17 year olds and qualifying foreign citizens.*

The Regulatory Impact Assessment that accompanied the Local Government and Elections (Wales) 2021 Act set out the costs associated with the extension of the franchise to local elections and in particular the cost to local government of the additional electors at local elections. An extract is below. These costs were subsequently incorporated into the formula for calculating the local government settlement and are included here for information only.

“The Cost of Electoral Administration in Great Britain’ report indicates that the election expenditure per elector in Wales in 2010-11 was £1.96. This includes the costs of mounting the election and counting the votes. Figures that are more recent are unavailable. For the purposes of this Regulatory Impact Assessment, we have updated this cost to £2.40 to account for inflation.

The Office of National Statistics mid 2019 population estimates suggests that there are 33,112 16 year olds resident in Wales and 32,992 17 year olds. The figures estimate that 34,075 qualifying foreign citizens are resident in Wales who

are not yet able to vote through other franchises (e.g. excluding Commonwealth and EU citizens).”

*Table 1: Cost to local government, per election, for increased local government electorate*

<b>Cost of additional voters</b>	<b>Population estimate (mid-2019)</b>	<b>Cost per elector (£)</b>	<b>Total (£)</b>
Increased electorate (16 and 17 year olds) at elections	66,104	2.40	158,650
Increased electorate (foreign citizens) at elections	34,075	2.40	81,780
<b>Total</b>			<b>240,000</b>

### *Changes to nomination process*

The remaining changes proposed in the consultation are to the nomination process and include:

- Changes that allow candidates the option of not publishing their home address
- Changes to provide for the submission of nominations online
- Changes which allow candidates to self-nominate without the need for subscribers
- Changes which require candidates to declare any political party affiliations in the preceding 12 month period (ending on the day the notice of election is published)

All of the above could require changes to the nomination packs and forms available to candidates to download from the Electoral Commission and local authority websites. For example, the inclusion of a home address form enabling candidates to redact their home address from the information otherwise published. The forms must also be available to be completed and submitted electronically, remove the present requirement for subscribers, and include space for declaration of political party affiliation. Home address forms are already available for other elections and providing an additional form for the candidate for local government elections to access should be cost neutral. However, the Electoral Commission may wish to design a new template nomination form to be used by Returning Officers. The Electoral Commission has previously estimated costs for updating similar electoral forms associated with the Local Government and Elections (Wales) Act 2021 and these costs are included in table 2.

*Table 2: Cost to Electoral Commission of re-designing any forms (if necessary)*

<b>Cost</b>	<b>Population estimate (mid-2019)</b>
Design of updated nomination form	£30,000
<b>Total</b>	<b>£30,000</b>

The change to the rules to allow candidates to self-nominate will mean that candidates no longer need to have 10 registered local electors subscribe their nomination form. Each of the nominations forms (up to 350 per local authority area for the local elections) require each individual subscriber to be confirmed as a registered local elector. The new self-nomination rule is designed to make the process simpler and remove barriers for potential candidates. There is an added administrative benefit to electoral administrators of the

The change to the rules to allow candidates to self-nominate will mean that candidates no longer need to have 10 registered local electors subscribe their nomination form. Each of the nominations forms require each individual subscriber to be confirmed as a registered local elector. The new self-nomination rule is designed to make the process simpler and remove barriers for potential candidates. However, there is also an added administrative benefit to electoral administrators of the removal of subscribers as set out in table 3 below. Engagement with electoral experts suggest that not needing to check the details of subscribers to each candidate nomination form can save up to 15 minutes of administrative time per candidate. Electoral administrators have highlighted that larger areas could see up to 300 candidates leading to a conservative saving of 75 hours in total. The saving of administrative time translates into a financial saving for the local authority:

*Table 3: Savings for local authorities identified of changes to allow self-nomination*

<b>Cost</b>	<b>Per local authority</b>	<b>Across Wales</b>
Monetary saving arising from an estimated 75 hours of administrative time (at £16 per hour).	£1,200	
<b>Total</b>	<b>£1,200</b>	<b>£26,400</b>

## **Benefits**

The extension to the franchise for local elections was completed in the Local Government and Elections (Wales) Act 2021. However, in order to give full effect to that extension, the rules governing the election must be remade to be fit for purpose. This enables more people to participate in the democratic process,

providing for a local government which is more responsive to the diverse communities it serves and over the long term encourage a sustained relationship with democracy and result in higher turnouts at future elections and more people from wider backgrounds being interested in standing as candidates in local elections.

With regards to the option allowing candidates to submit nomination papers electronically, benefit include increasing accessibility by removing the need to hand deliver the nomination papers which can in certain areas require significant distances to be travelled.

The removal of the requirement for candidates to publish their home address is important in encouraging more people to stand at election. The provision contributes to removing the risk of negative and potentially abusive attention at the candidate's home address. This change has already been implemented at other elections.

### **Preferred Option**

Option 2 would deliver a broad range of benefits as set out above and is considered essential in order to give effect to the franchise change and introduce improvements for candidates to local elections.

#### *Other impacts*

A full Integrated Impact Assessment was carried out on the impact of the new provisions introduced to the rules. This can be found on the Welsh Government's website [here](#).

### **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 (SMEs) in Wales.