

Explanatory Memorandum to the Eligible Community Councils (General Power of Competence) (Qualifications of Clerks) (Wales) Regulations 2021

This Explanatory Memorandum has been prepared by the Local Government Department 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 Eligible Community Councils (General Power of Competence) (Qualifications of Clerks) (Wales) Regulations 2021.

Rebecca Evans MS
Minister for Finance and Local Government

13 December 2021

PART 1

1. Description

The Eligible Community Councils (General Power of Competence) (Qualifications of Clerks) (Wales) Regulations 2021 (“the Regulations”) specify the qualifications that the clerk to a community council must hold in order for the community council to meet one of the three eligibility conditions to become an ‘eligible community council’ under section 30 of the Local Government and Elections (Wales) Act 2021 (“the 2021 Act”), thus enabling the council to exercise the general power of competence.

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

None.

3. Legislative background

Section 24 of the Local Government and Elections (Wales) Act 2021 (“the 2021 Act”) gives “qualifying local authorities” a general power of competence (the “general power”). The general power gives these authorities the power to do anything that an individual generally can do, provided they act rationally and within the law. Section 25 sets out the boundaries of the general power, section 26 sets out the limits on charging in exercise of the general power, and section 27 sets out limits on doing things for commercial purpose in exercise of the general power.

Qualifying local authorities are specified in the 2021 Act as principal councils and eligible community councils.

An eligible community council is a community council which meets the eligibility conditions set out in section 30 of the 2021 Act, and passes a resolution that it meets the conditions.

The Regulations are made under section 30(3) of the 2021 Act.

The Regulations are subject to the negative procedure in accordance with section 174(6) of the 2021 Act, and come into force on 5 May 2022.

4. Purpose and intended effect of the legislation

A community council must meet three conditions under section 30 of the 2021 Act before it can resolve itself as eligible to exercise the general power of competence. These are:

- At least two-thirds of the total number of members of the council have been declared to be elected, whether at an ordinary election or at a by-election
- The clerk to the council holds such qualification or description of qualification as may be specified by the Welsh Ministers by regulations

- The council has received unqualified auditor's opinions from the Auditor General for Wales, for two consecutive financial years. The latest unqualified auditor's opinion must have been received during the 12 months preceding the day on which the council will resolve itself to become eligible.

The purpose of the Regulations is to specify the qualifications that the clerk must hold in order for the community council to meet the second condition. A clerk can hold any of the following qualifications in order for the second criteria to be met:

- a Certificate in Local Council Administration (CiLCA)
- a Certificate of Higher Education in Community Governance
- a Certificate of Higher Education in Community Engagement and Governance; and
- a Certificate of Higher Education in Local Policy.

The intention is to provide assurance that the clerk of a council wishing to exercise the general power of competence has the core knowledge, skills and understanding of the operation of local government and of the principles of good governance to support a community council in the exercise of this power.

The CiLCA is not regulated by Qualifications Wales. CiLCA is a certified training programme recognised by the sector-representative bodies in Wales as the preferred professional qualification. The remaining qualifications are validated or awarded by Higher Education Institutions and are within the remit of Higher Education Funding Council for Wales (HEFCW) and The Quality Assurance Agency for Higher Education (QAA).

5. Consultation

A 12 week consultation was open between 28 June 2021 and 24 September 2021 on the draft regulations.

The formal consultation document and the draft regulations were provided in English and Welsh on the Welsh Government website and the link was sent to all community and town councils in Wales, as well as a range of other stakeholders including principal councils, One Voice Wales, The Society for Local Council Clerks, Audit Wales and the National Association of Local Councils.

The majority of respondents to the consultation agreed that the qualifications specified in the Regulations give confidence that the clerk has the core knowledge, skills and understanding to support a community council in the exercise of the new general power of competence. Whilst alternative qualifications were suggested, there was no significant support for any other suitable, sector-specific qualifications. No issues emerged which justified an amendment to the version of the Regulations as consulted upon.

A summary of the consultation responses is available [here](#).

6. Regulatory Impact Assessment (RIA)

A new Regulatory Impact Assessment (RIA) has not been prepared as part of the Regulations. The likely costs and benefits of complying with the Regulations were assessed as part of the [RIA for the 2021 Act](#) (pp 125-126).

The relevant section of the RIA for the 2021 Act has been reviewed and, aside from one further cost being identified (see below), was found to remain robust. On that basis, it was not considered necessary to carry out a new RIA.

There is one addition to the RIA to the 2021 Act, specifically relating to paragraphs 10.56 to 10.61. It emerged during consultation that there was not full bilingual provision for the training and assessment of the Certificate in Local Council Administration (CiLCA). Bilingual provision enables clerks to undertake CiLCA in the language of their choice and supports the objectives of the Cymraeg 2050 Welsh language strategy to increase usage of the language. Securing the relevant translated materials and access to Welsh speaking assessors will cost £7,000 in the 2021-22 financial year. This cost will be met by Welsh Government. Adding this cost to the local government costs identified in the RIA for the 2021 Act cost gives a total cost for 2021-22 of between £21,000 and £32,000, with the total for the ten-year appraisal period increasing to between £283,500 and £455,000.

Equal opportunities

The provisions of the Regulations do not demonstrate any discrimination against persons sharing any of the protected characteristics as set out in the Equality Act 2010.

Children's rights

No conflict with UNCRC has been identified and no negative impacts on children and young people are expected to arise as a result of the Regulations

Welsh language

The agreed additional funding will secure Welsh language training and assessment for CiLCA in readiness for 5 May 2022, when the Regulations come into force. Access to the CiLCA certificate will be an equal experience for both English and Welsh medium learners. The Regulation will, therefore, have no impact on the Welsh language.

The Certificates in Higher Education are offered by English institutions through English only.