

## Local elections in Wales

# Guidance for candidates and agents

## Part 1 of 6 – Can you stand for election?

June 2022

This document applies to county and county borough elections. It does not apply to community council elections. Our guidance and resources for other elections in the UK can be accessed from our website at:

<https://www.electoralcommission.org.uk/i-am-a/candidate-or-agent>

# Contents

Essential information .....	2
Qualifications for standing for election .....	3
Disqualifications.....	4
Can I stand for election in more than one ward within the same local authority? .....	6
Supplementary information.....	7
The qualifications.....	7
a. Being a registered local government elector.....	7
b. Occupying as owner or tenant any land or other premises in the local authority area.....	7
c. Your main or only place of work is in the local authority area.....	9
d. Living in the local authority area.....	9
Further information on certain disqualifications .....	10
Working for the local authority.....	10
Politically restricted posts .....	11
Bankruptcy restrictions or interim order.....	12
MS standing at local elections.....	13

# 2

## Essential information

This section of the document contains our guidance on whether or not you can stand for election at a county or county borough election. Supplementary information, which may only be relevant to some candidates, is provided at the back of this document. You can view this supplementary guidance by clicking on the links within this document or by clicking on the chapter heading on the contents page.

In this document, we use 'you' to refer to the candidate. We use 'must' when we refer to a specific requirement. We use 'should' for items we consider to be minimum good practice, but which are not legal or regulatory requirements.

Deadlines mentioned in this document are generic. We have published a [generic election timetable on our website](#). For scheduled polls we will publish a specific timetable which will be made available on our [website](#).

If a by-election has been called, you will be able to obtain a copy of the specific timetable for that election from the Returning Officer.

We are here to help, so please contact us if you have any questions.

See our [Overview document](#) for contact details.

Data protection legislation applies to the processing of all personal data.

Please contact the [Information Commissioner's Office](#) for further information about how the current data protection legislation affects you.

## Qualifications for standing for election

1.1 To be able to stand as a candidate at a local government election in Wales you must:<sup>1</sup>

- be at least 18 years old
- be a British citizen, an eligible [Commonwealth citizen](#), a citizen of any [member state of the European Union](#) or a qualifying foreign citizen and
- meet at least one of the following four qualifications:
  - a. You are, and will continue to be, registered as a local government elector for the local authority area in which you wish to stand from the day of your nomination onwards. See paragraph [1.12](#) for further information.
  - b. You have occupied as owner or tenant any land or other premises in the local authority area during the whole of the 12 months before the day of your nomination and the day of election. For more details, see paragraph [1.13](#).
  - c. Your main or only place of work during the 12 months prior to the day of your nomination and the day of election has been in the local authority area. More information is provided in paragraph [1.20](#).
  - d. You have lived in the local authority area during the whole of the 12 months before the day of your nomination and the day of election. See paragraph [1.21](#) for further details.

An **eligible** Commonwealth citizen is a Commonwealth citizen who either:

- does not need leave to enter or remain in the United Kingdom, or
- has indefinite leave to remain in the United Kingdom

A qualifying foreign citizen is a person who is not:

- A Commonwealth Citizen, or
- A citizen of the Republic of Ireland

And who:

- has or does not require leave to remain, or
- is treated as having leave to enter or remain in the United Kingdom

# 4

The full range of disqualifications is complex and if you are in any doubt about whether you are disqualified, you must do everything you can to check that you are not disqualified before submitting your nomination papers.

You must be sure that you are not disqualified as you will be asked to sign one of the required nomination papers to confirm that you are not disqualified.

It is a criminal offence to make a false statement on your nomination papers as to your qualification for being elected, so if you are in any doubt you should contact your employer, consult the legislation or, if necessary, take your own independent legal advice.

The Returning Officer will not be able to confirm whether or not you are disqualified.

## Disqualifications

1.2 Apart from meeting the qualifications for standing for election, you must also not be disqualified.

1.3 There are certain people who are disqualified from being a member of a local authority in Wales.

- a. You are **employed by the local authority** or hold a paid office under the authority (including joint boards or committees).<sup>2</sup> Note that you may be 'employed by the local authority' if, for example, you work at certain schools, fire services, police or health services. This list is not exhaustive. For further information, see paragraph **1.24**.
- b. You hold a **politically restricted post**.<sup>3</sup> For further details, see paragraph **1.32**.

1.4 There are certain people who are disqualified from being elected or being a member of a local authority in Wales. You cannot be a candidate if at the time of your nomination and on polling day:

- c. You are the subject of a **bankruptcy restrictions order or interim order**.<sup>4</sup> For more information, see paragraph **1.35**.
- d. You have had a criminal conviction during the period of five years ending with the day of poll or since being elected you have been convicted in the UK of an offence, you have been sentenced to a term of imprisonment of three months or more (including a suspended sentence), without the option of a fine and the ordinary period allowed for making an appeal or application in respect of the conviction has passed.<sup>5</sup> A person who is in the process of making an appeal or application in relation to the conviction is not disqualified at any time before the end of the day on which the appeal or application is disposed of, abandoned or fails by reason of non-prosecution<sup>6</sup>.
- e. You have **been disqualified under the Representation of the People Act 1983** (which covers corrupt or illegal electoral practices). The disqualification for an illegal practice begins from the date a person has been reported guilty by an election court or convicted and lasts for three years. The disqualification for a corrupt practice begins from the date a person has been reported guilty by an election court or convicted and lasts for five years,<sup>7</sup> unless at any time within that period a court determines that the conviction should not be upheld, in which case the disqualification ends at that time<sup>8</sup>.
- f. You are **subject to the notification requirements of or under Part 2 of the Sexual Offences Act 2003** and the ordinary period allowed for making an appeal or application in respect of the order or notification has passed.<sup>9</sup> A person who is in the process of making an appeal or application in relation to the disqualification is not disqualified at

# 6

any time before the end of the day on which the appeal or application is disposed of, abandoned or fails by reason of non-prosecution<sup>10</sup>.

1.5 A person may also be disqualified from becoming a member of certain authorities<sup>11</sup> following a decision of the Adjudication Panel for Wales.<sup>12</sup>

1.6 A person shall be disqualified from becoming (whether by election or otherwise) or remaining a member of any local authority in Wales if that person holds the post of chief executive of a local authority which is the council of a county or county borough in Wales.<sup>13</sup>

## **Can I stand for election in more than one ward within the same local authority?**

1.7 While you may submit nomination papers for more than one ward, you cannot stand for election in more than one ward within the same local authority after the deadline for withdrawals.

1.8 If the Returning Officer accepts your nomination papers and you are validly nominated in more than one ward within the same local authority, you must withdraw from all wards but one by 4pm on the nineteenth working day before the poll. If you do not, then you will be deemed to have withdrawn from all of the wards.

1.9 More details can be found in:

- [Part 2a: Standing as an independent candidate](#) or [Part 2b: Standing as a party candidate](#)

# Supplementary information

## The qualifications

1.10 When completing your nomination paper you will be asked to indicate which qualifications you meet. You should indicate on the form all those qualifications that apply to you.

### a. Being a registered local government elector<sup>14</sup>

1.11 To be able to use this qualification, your name must appear on the register of local government electors for the local authority area you wish to stand in at the time of your nomination and throughout your term of office should you be elected. Unlike the other qualifications that must only be satisfied on the day of your nomination and on polling day, this is an ongoing qualification. We therefore recommend that if you meet any of the other qualifications as well, you also indicate this on your nomination paper.

### b. Occupying as owner or tenant any land or other premises in the local authority area<sup>15</sup>

1.12 To be able to use this qualification, you must have occupied as owner or tenant any land or other premises in the local authority area during the whole of the 12 months before the day of your nomination and before polling day.



1.13 You must occupy 'land or other premises' to meet this qualification. The inclusion of the words 'other premises' can be taken as something other than land (i.e. some form of structure). Because 'land' and 'other premises' are alternatives it is, in theory, possible for a person to meet this qualification by occupying land only. There are some structures that might, arguably, fall outside the term 'premises' (e.g. a tent, caravan, house boat or mobile home). However, a person occupying such a structure need only establish occupancy of the land on which, for example their tent, is located.

1.14 If the land or premises crosses a local authority boundary, the land/premises is in that area with respect to both local authorities.

1.15 You must also occupy the land or other premises as an 'owner' or 'tenant'. Ownership may be established by showing title to the land or premises in question. Tenancy is established by showing a lease over the land. In a number of circumstances, a lease will survive even though it has expired and the parties have failed to sign a new lease, and the tenancy survives through tacit agreement between the parties. Therefore, there may be circumstances in which a person's tenancy of land or premises might need to be established by evidence other than a current lease.

1.16 You must also have 'occupied' the land or premises. Therefore, in addition to establishing legal ownership or legal tenancy, you must establish that you have actually occupied the land or premises. This is a question of fact in each case. The interpretation of the term 'occupy' in other legal contexts suggests that it is not necessary for a person to be personally resident on the land or premises (which may in any event be covered by the qualification of 'lived in the local authority').

1.17 However, it does require something to be actually done on the land or premises – an empty unlocked house cannot be described as 'occupied', for example. It also requires a sufficient degree of control, to exclude or prevent others from interfering with the land or premises. If you have sub-let all of

your land or premises to another person, this will point against you having 'occupied' it yourself.

1.18 Finally, you must have occupied the land or premises 'during the whole of the twelve months preceding' the day on which you are nominated and polling day. Whether an absence will prevent you from claiming that you have occupied the land or premises for the preceding year should be worked out by taking into account all other factors: for instance, whether you have allowed others to occupy the land or premises in your absence, and the reason for your absence.

### c. Your main or only place of work is in the local authority area<sup>16</sup>

1.19 To be able to use this qualification, your main or only place of work must have been in the local authority area during the 12 months prior to your nomination and prior to polling day itself. You do not have to be in paid employment to qualify, as long as you satisfy the requirement of your main or only place of work being in the local authority area. Councillors whose main or only job is being a councillor would be able to use this qualification, provided that their place of work is within the local authority.

### d. Living in the local authority area<sup>17</sup>

1.20 To be able to use this qualification, you are not required to have lived at the same address for the whole of the 12 months before the day on which you are nominated, but you must have lived in the same local authority area during the whole of those 12 months.

1.21 If in the last 12 months you have lived at more than one address in the local authority area you should list on the nomination paper all of the addresses at which you have lived during that period.

# 10

1.22 This qualification also requires you to live in the local authority area from the date of nomination to polling day.

## Further information on certain disqualifications

### Working for the local authority<sup>18</sup>

1.23 You are disqualified from being a member of a local authority if you are a paid officer or employee of that local authority. However, you are not disqualified from standing as a candidate at an election to a local authority. For more information see paragraph **1.31**

1.24 This would be the case where your appointment:

- has been made
- could be made
- has been confirmed by the local authority itself
- has been confirmed by any committee or sub-committee of the local authority
- has been confirmed by any joint committee or National Park authority where the local authority is represented by a person holding such an office or employment

1.25 However, the disqualification on the basis of being a paid officer or employee does not apply to the office of chairman, vice-chairman, presiding member or deputy presiding member of the local authority. Some authorities will have executive arrangements which involve a leader and cabinet executive. In those cases, the disqualification will not apply to the office of executive leader, member of the executive or assistant to the executive.

1.26 Local authorities typically have committees and sub-committees. Paid officers of a local authority employed under the direction of such committees or sub-committees are disqualified from standing to that authority. In addition, where

such a committee or sub-committee has a member, or members, appointed on the nomination of another local authority, the disqualification will also apply to being elected to the other local authority.

1.27 If you are a paid officer of a local authority employed under the direction of a joint board, a National Park authority or joint committee, you will be disqualified from being elected as a member of all of the authorities that are represented on that body.

1.28 Joint boards, committees etc. can include various organisations, such as fire services and education authorities. Therefore, as a general rule, if you work in the local public sector, you should seek advice from your employer's HR department to help you establish whether the disqualification would apply to you. Sometimes employment relationships can be complex and if this is the case for you, we recommend that you seek your own legal advice.

1.29 If you are a teacher in a school maintained by the local authority you will be disqualified from being a member of the local authority.<sup>19</sup>

1.30 If elected, the disqualification of working for the local authority does not apply at any time before you make a declaration of acceptance of office. You must have resigned your post before signing the declaration of acceptance of office.<sup>20</sup>

## Politically restricted posts<sup>21</sup>

1.31 If you are an employee of a local authority anywhere in Great Britain you must check that you do not hold a politically restricted post. If you hold a politically restricted post, you are disqualified from standing for election to any county or county borough council in Wales. You may, however, stand at community council elections (provided you are not also

# 12

employed by the community council, meet all the qualifications and are not otherwise disqualified).

1.32 The posts that are politically restricted are:

- the Head of the Paid Service
- the statutory chief officers (the chief finance officer, chief education officer, chief officer at certain fire brigades or the director of social services)
- non-statutory chief officers (including a person who, as respects all or most of the duties of their post, is required to report directly or is directly responsible to the local authority or any committee or sub-committee of the authority or the head of the authority's paid service)
- deputy chief officers (a person who, as respects all or most of the duties of their post, is required to report directly or is directly accountable to one or more of the chief officers)
- the monitoring officer
- officers exercising delegated powers
- assistants to political groups
- a sensitive post which meets one or both of the following duties-related criteria:
  - I. giving advice on a regular basis to the authority (including committees, sub-committees and joint committees on which the authority is represented)
  - II. speaking on behalf of the authority on a regular basis to journalists or broadcasters

1.33 You should check with the HR department of your employer if you are not sure whether you hold a politically restricted post.

## Bankruptcy restrictions or interim order<sup>22</sup>

1.34 Bankruptcy in itself is not a disqualification. If you have been adjudged bankrupt by a court in England, Wales or Northern Ireland, you are not disqualified on that basis. However, you are disqualified if you are currently subject to any of the following:

- an interim bankruptcy restrictions order
- a bankruptcy restrictions order
- an interim debt relief restrictions order
- a debt relief restrictions order

made by a court in England or Wales. If the order was made in Scotland or Northern Ireland, you should take your own legal advice since the law is complex in this area.

## MS standing at local elections

1.35 Members of the Senedd cannot be members of a council of a county or county borough<sup>23</sup> but there is a limited time, and limited circumstances, in which they may be appointed to both. While they can stand as candidates at the local election, if successful, an MS would have to resign their seat in the Senedd before making a declaration of acceptance of office<sup>24</sup> or else be disqualified as an MS.

1.36 However, an exemption from disqualification applies, where an MS successful at a local election may hold both positions, for the period between their election as a council member and the next general election of Members of the Senedd if it is within a period of 372 days beginning with the day they are returned as a member of the council<sup>25</sup>.

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<sup>1</sup> Local Government Act 1972 s.79 as amended by Section 19 of Local Government and Elections (Wales) Act 2021

<sup>2</sup> LGA 1972 s.80B(1)

<sup>3</sup> Local Government and Housing Act 1989 s.2

<sup>4</sup> LGA 1972 s.80A(1)

<sup>5</sup> LGA 1972 Section80A(2)

<sup>6</sup> LGA 1972 s.80A (4) and (5)

<sup>7</sup> LGA 1972 s.80(1)(e)

<sup>8</sup> Representation of the People Act 1983 (RPA 1983) s.173(3)

<sup>9</sup> LGA 1972 s.80A(1) (c)

<sup>10</sup> LGA 1972 s.80A(4)and (5)

<sup>11</sup> Local Government Act 2000 (LGA 2000) s.49(6)

<sup>12</sup> Local Government Act 2000 (LGA 2000) s.49(6)

<sup>13</sup> Local Government & Housing Act 1989, Section (1A) (inserted by sch.5 para.6 LG&E(Wales) Act 2021)

<sup>14</sup> LGA 1972 s.79(1)(a)

<sup>15</sup> LGA 1972 s.79(1)(b)

<sup>16</sup> LGA 1972 s.79(1)(c)

<sup>17</sup> LGA 1972 s.79(1)(d)

<sup>18</sup> LGA 1972 s.80C as added by Section 20 of the Local Government and Elections (Wales) Act 2021

<sup>19</sup> LGA 1972 s.80C(3) as added by Section 20 of the Local Government and Elections (Wales) Act 2021

<sup>20</sup> LGA 1972 Section 80B(1) and (2) as added by Section 20 of the Local Government and Elections (Wales) Act 2021

<sup>21</sup> Local Government and Housing Act 1989 s.2

<sup>22</sup> LGA 1972 s.80A (1)(a) and (b)

<sup>23</sup> Government of Wales Act 2006 s. 16(1)(zc)

<sup>24</sup> Government of Wales Act 2006 s. 17D(2)

<sup>25</sup> Government of Wales Act 2006 s. 17F(1)