

CYNGOR SIR POWYS COUNTY COUNCIL.

**COUNTY COUNCIL
22 July 2022**

REPORT AUTHOR: Head of Legal and Democratic Services

SUBJECT: Newtown Town Council Request for Election

REPORT FOR: Decision

1. Following the elections on 5 May 2022, 10 town councillors were elected unopposed to Newtown Town Council, across 5 wards leaving 6 vacancies.

Ward	Seats	Elected	Vacancies
North	3	2	1
East	3	2	1
South	3	1	2
West	3	2	1
Central	4	3	1
Totals	16	10	6

Ten from sixteen seats represents 62.5% elected.

2. Section 21 of the Representation of the People Act 1985 ("the 1985 Act") Town and Community Councils have a power (not a duty) to co-opt and fill vacant seats left remaining after an ordinary election.
3. Section 39 (4) of the Representation of the People Act 1983 ("the 1983 Act") also gives a power (not a duty) to County Councils by Order to make arrangements . Under Section 21 of the 1985 Act This power cannot be exercised before the expiry of 35 days (computed as required by the legislation) from the date of the ordinary local elections.
4. This situation concerning a vacancy following the ordinary local government elections is contrasted with the position in respect of casual vacancies (which may occur from time to time during the life of a Council) when 10 electors can request an election. If such a request is not forthcoming the Town or Community Council has in that situation a duty (not a power) to co-opt.
5. Newtown Town Council has written to Powys County Council to request that an election is held for the 2 vacancies in the South ward of the town council. The reason behind the request, is that the town Council might wish to declare its eligibility to use 'General Power of Competence' in the next 12 months. To be eligible to do so would require them meeting certain conditions, one of which is that at least two thirds of the members of Newtown Town council have been declared elected (including unopposed), rather than co-opted. The Town Council intend to co-opt to the vacant seats in the other 4 wards.

6. An extract from the report taken to Newtown Town Council on 12 May 2022, explains more about the General Power of Competence –

3.0 General Power of Competence (GPOC)

- 3.1 *GPOC permits qualifying local councils to do anything that an individual generally can do (so long as what is intended to do is not otherwise prohibited). It is often referred to as a general ‘power of first resort’ which means that a community council eligible to use GPOC does not need to rely on other existing specific powers in legislation to carry out around 50 lawful functions.*
- 3.2 *Eligible councils will also be able to raise money by charging for discretionary services, and to trade for commercial purposes and in the exercise of their ordinary functions.*
- 3.3 *To become an eligible council, it must meet the eligibility conditions:*
- *At least two-thirds (66.6%) of the total number of members of the council have been declared to be elected (including unopposed), whether at an ordinary election or at a by-election*
 - *The clerk to the council holds such named qualification or certification as may be specified by the Welsh Ministers by regulations*
 - *The two most recent Auditor General for Wales (AGW) opinions on the council’s accounts are unqualified. The most recent must have been received in the previous 12 months*
- 3.4 *Unlike Local Government Act (LGA) 1972 S137, which is often called ‘the power of last resort’ but which is capped for this council for 2022-23 at £8.82 per elector equating to £71353.80, there are no financial capping limits on GPOC.*
- 3.5 *GPOC therefore, is a substantial measure allowing great flexibility for the council’s work for the community – hence the limiting eligibility criteria.*
7. Whilst there is little, or no cost involved in co-option there obviously would be a cost (re-chargeable to the Town Council) in respect of holding an election for the two vacancies.
8. If an election was to be agreed, subject to the Returning Officers arrangements, would be held on Thursday, 29 September.
9. Under the relevant legislation and the Constitution decisions in respect of holding elections in these types of situations falls to full County Council and accordingly Council is asked to determine this request.

Legal

10. The Head of Legal and Democratic Services (Monitoring Officer) has commented as follows: “the recommendations can be accepted from a legal point of view

Finance

11. The Head of Finance (Section 151 Officer) notes the report. There are no financial implications as costs will be met by the Town Council.

Recommendation:	Reason for Recommendation:
To make the Newtown Town Council (South ward) Election – Order 2022 as set out in Appendix A to the report.	To determine the request of Newtown Town Council.

Person(s) To Action Decision:	Sandra Matthews, Principal Elections Officer
Date By When Decision To Be Actioned:	Immediately

Relevant Policy (ies):	Council's Constitution		
Within Policy:	Y	Within Budget:	Y

Contact Officer Name:	Tel:	Fax:	Email:
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Relevant Portfolio Member(s):	Councillor James Gibson-Watt
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Relevant Local Member(s):	Councillor David Selby Councillor Kelly Healy Councillor Joy Jones Councillor Adam Kennerley Councillor Pete Lewington
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Background Papers used to prepare Report: