

COUNCILLOR ON LINE TRAINING

UNDERSTANDING THE LAW

A decorative graphic at the bottom of the slide consisting of a green trapezoidal shape pointing downwards, which is overlaid on a yellow trapezoidal shape pointing upwards. The two shapes meet at a white diagonal line.

WHAT IS AVAILABLE?

The on-line training materials have been prepared to assist you in developing your information and knowledge base as a Councillor.

The materials cover 7 distinct subject areas of which 'Understanding the law' is one. The other materials cover Induction, the Code of Conduct, the Council as an Employer, Understanding Local Government Finance, Health and Safety and Diversity and Inclusion.

LET'S GET STARTED

This module is about the 'Understanding the Law' and it covers the following key elements:-

- ▶ The responsibilities and obligations the Council has in law
- ▶ The Council's statutory powers and duties
- ▶ Key aspects of law affecting Councils such as equal opportunities and data protection
- ▶ Sources of advice

PURPOSE OF THE MODULE

To support you in:-

- ▶ Knowing what a Council can and cannot do legally
- ▶ Knowing the key steps a Council must take for its decisions and actions to be lawful
- ▶ Understanding how a Council can meet the requirements of the law in key areas such as freedom of information and the Welsh language
- ▶ Knowing where to turn to for advice about the law.

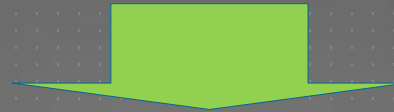
OVERVIEW

The module will cover a range of legislation and legal duties affecting your Council including:-

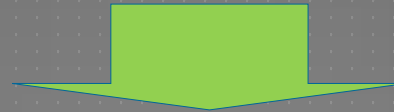
- ▶ Statutory duties and powers
- ▶ Powers of delegation
- ▶ National Assembly Measures, Bills and Acts
- ▶ Recent relevant legislation
- ▶ The duty to promote equal opportunities
- ▶ Data Protection and Freedom of Information legislation

LEGISLATION AND POWERS

**Acts of Parliament/Assembly Acts
Primary Legislation**



**Statutes
Secondary Legislation**



Powers to Act

PRIMARY AND SECONDARY LEGISLATION

- ▶ Acts of Parliament passed in Westminster are known as **primary legislation** e.g. Equality Act 2010
- ▶ Since the House of Commons hasn't the time to consider every regulation it sometimes passes enabling legislation which gives powers to another executive authority to implement and administer the requirements of the Acts e.g. In October 2007, the Equality and Human Rights Commission was set up with powers across all areas of equality law in relation to the enforcement of equality law and is able to publish statutory codes of practice – **This is an example of secondary legislation.**
- ▶ Both primary and secondary legislation lead to 'powers to act.'

LAW MAKING IN WALES

- ▶ The National Assembly for Wales can pass laws on all subjects in the areas devolved to it by the UK Parliament e.g. Local Government and Education/Training
- ▶ Assembly laws used to be called Measures (e.g. Local Government (Wales) Measure 2011) but proposed laws are now called Bills and enacted laws are called Acts
- ▶ Measures made between 2007 and 2011 will continue to be called 'Assembly Measures' and continue to have the same effect as laws.

DUTIES AND POWERS

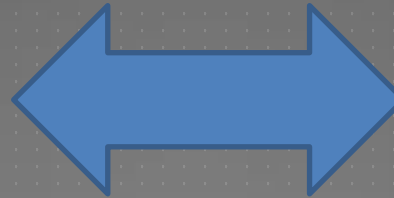
Laws



Statutory Duties



Must do



Statutory Powers



Can do

DUTIES AND POWERS EXPLAINED

- ▶ Statutory duties are those things that a Council **must do**
- ▶ Statutory powers are those things that a Council **can do**

This is an important distinction

- ▶ Most decisions the Council makes will require it to spend money and Councils have tax raising and borrowing powers to support the delivery of services
- ▶ Examples of statutory powers include power to maintain and protect war memorials, provide community centres, festivals and entertainment.

ULTRA VIRES

The powers that a Council has to act determines what it is able to do. To act outside of these powers is said to be acting 'ultra vires.' If the Council is acting outside of its powers the decisions it makes may be considered illegal and the Council may then be liable for its actions.

Ultra Vires is one to avoid!!!

LOCAL GOVERNMENT ACT 1972, SECTION 137

This is a discretionary power where a Council can spend a limited amount of money for purposes for which they have no specific power. The conditions relating to its use are:-

- ▶ It cannot be used if another power applies
- ▶ There is an annual limit based on a sum determined annually by the Welsh Government multiplied by the number of electors
- ▶ Its use must benefit some or all of the inhabitants or area
- ▶ The benefit must be commensurate with the expenditure
- ▶ Separate accounts recording its use must be maintained

Examples of its use include: litter competitions, beach cleansing, beating the bounds event.

POWER OF WELL-BEING

- ▶ The Local Government Act 2000 conferred the power to promote or improve economic, social or environmental well-being on principal councils
- ▶ The Local Government (Wales) Measure 2011 extended the power to community and town councils
- ▶ Statutory guidance on its use was published by the Welsh Government
Web-Link:
<https://gov.wales/docs/dsjlg/publications/130328statutorypowerguideen.pdf>
- ▶ Can be used as the power of first resort but it should be noted that the amount that can be expended in a financial year is subject to the S137 limited (referenced in previous slide)
- ▶ It cannot be used if what is proposed is restricted by other legislation

DELEGATION OF RESPONSIBILITY

A Council can delegate its power to:-

- ▶ A Committee
- ▶ A Sub-Committee
- ▶ An Officer
- ▶ Another Council or Joint Committee

BUT NOT TO A SINGLE COUNCILLOR NOT EVEN THE CHAIR

RECENT LEGISLATION

- ▶ Equality Act 2010
- ▶ Welsh Language (Wales) Measure 2011
- ▶ Local Government (Wales) Measure 2011
- ▶ Local Government (Democracy)(Wales) Act 2013
- ▶ Accounts and Audit (Wales) Regulations 2014
- ▶ Well Being of Future Generations Wales) Act 2015
- ▶ Planning (Wales) Act 2015
- ▶ Environment (Wales) Act 2016
- ▶ Data Protection Act 2018 (GDPR)

We will now explore these in more depth

EQUALITY ACT 2010

- ▶ New Equality Act was passed in 2010
- ▶ 'General Duty' to eliminate unlawful discrimination, promote equal opportunities and good relations within communities
- ▶ Councils must demonstrate that they have given due consideration to equality issues
- ▶ Legislation also covers sexual orientation and religion & belief

(The module on Equality and Inclusion covers the Act in more depth)

WELSH LANGUAGE (WALES) MEASURE 2011

- ▶ Approved in February 2011 to modernise the Welsh Language Act 1993
- ▶ Includes provision regarding the official status of the Welsh language and establishes Welsh Language Commissioner
- ▶ Establishes 'Standards of Conduct' to replace Welsh Language Schemes

The web link for the Commissioner's website is:-

<http://www.comisiynyddygybraeg.cymru/English/Pages/Home.aspx>

LOCAL GOVERNMENT (WALES) MEASURE 2011

- ▶ Aims to strengthen the structures and working of local government in Wales at all levels and to ensure that local councils reach out to and engage with all sectors of the community they serve.
- ▶ 179 sections, most of which came into force in 2011
- ▶ Includes provisions re: community meetings and polls, establishing, dissolving, grouping and separating community councils, co-option of members, community youth members, power of well-being, Welsh Government grants, Charter Agreements, Quality Council scheme, payments for members

LOCAL GOVERNMENT DEMOCRACY (WALES) ACT 2013

- ▶ Reformed organisation and functions of Local Government Boundary Commission
- ▶ Improved public access to information concerning Community and Town councils:
- ▶ Required contact details, membership, interests and record of proceedings to be available via the internet
- ▶ Clerk to be contactable by e-mail

The web-link for the statutory guidance is:

<https://gov.wales/docs/dsjlg/publications/localgov/150430-access-to-information-en.pdf>

ACCOUNTS AND AUDIT (WALES) REGULATIONS 2014

- ▶ Introduced to consolidate the 2005 Regulations and subsequent amendments. Guidance published in 2015
- ▶ Defines community councils as 'Smaller Relevant Bodies' (subject to £2.5m income/expenditure limit)
- ▶ Subject to limited assurance audit regime
- ▶ Part 5: Approval of accounts by Council (no delegation), annual return approval by 30th June and publish accounts by 30th September

WELL-BEING OF FUTURE GENERATIONS (WALES) ACT 2015

- ▶ About improving the social, economic, environmental and cultural well-being
- ▶ Establishes seven national Well-being goals
- ▶ Sustainable Development principle
- ▶ Forty draft national indicators
- ▶ Future Generations Commissioner established
- ▶ Duty on larger local councils (Over £200,000)

The Commissioner's Website: <https://futuregenerations.wales/>

PLANNING (WALES) ACT 2015

- ▶ Provides a modern delivery framework for development plans and planning decisions
- ▶ Introduces a National Development Framework and Strategic Development Plans
- ▶ Improves collaboration between authorities
- ▶ Improves engagement with communities
- ▶ Modernises planning enforcement

ENVIRONMENT (WALES) ACT 2015

Creates a National resources policy including actions to address:-

- ▶ Climate change
- ▶ Carrier bags
- ▶ Waste
- ▶ Fisheries for shellfish
- ▶ Marine licensing
- ▶ Flood risk management
- ▶ Bio-Diversity (With a new duty for community and town councils)

DATA PROTECTION ACT 2018

Regulates how personal information can be used, key principles are:

- ▶ Must be fairly and lawfully processed, and for limited purposes
- ▶ Adequate, relevant and not excessive
- ▶ Accurate
- ▶ Secure and not kept longer than necessary
- ▶ Processed according to your rights and not transferred abroad
- ▶ Data controllers must notify the ICO and pay an annual fee

You may want to access the Information Commissioner's website for more information:- <https://ico.org.uk/for-organisations/guide-to-data-protection/>

FREEDOM OF INFORMATION ACT 2000

- ▶ All information is covered by the FOI Act
- ▶ Publication scheme – All Councils must have one
- ▶ Keep good records
- ▶ Recognise an information request
- ▶ 20 working days response time
- ▶ Clarify what is needed
- ▶ When in doubt seek advice especially regarding possible vexatious requests

Guidance from the Information Commissioner:

<https://ico.org.uk/for-organisations/guide-to-freedom-of-information/>

HEALTH AND SAFETY

- ▶ General duty for employers to look after the health, safety and welfare of all people at work
- ▶ Large and important body of law
- ▶ Principle of risk assessment is embodied in the approach
- ▶ Includes fire, manual handling, display screen equipment, and stress, working at heights and many other areas

Health and Safety Executive's website: <http://www.hse.gov.uk/>

SOURCES OF INFORMATION

- ▶ One Voice Wales
- ▶ Equality and Human Rights Commission
- ▶ Information Commissioner
- ▶ Welsh Language Commissioner
- ▶ Welsh Government
- ▶ Society of Local Council Clerks
- ▶ Natural Resources Wales

NOW TEST YOURSELF

Try to answer the following :-

- 1) What is the difference between a statutory duty and a statutory power?
- 2) What does the term 'ultra vires' mean?
- 3) How would you describe the Section 137 Financial Limit?
- 4) To whom can a Council delegate?
- 5) Name three examples of recent legislation of relevance to the Council.

WHAT NEXT?

Now that you have a basic understanding of the Law, you are strongly recommended to ask your Council to provide you with the opportunity to attend a training course on this subject.

The training offered by One Voice Wales is interactive and explores all elements of the Council's role relating to the law in the depth that you would expect from your representative body. It will also give you the opportunity to engage with other Councillors enabling you to share experiences and learn from your peer group.