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Llywodraeth Cymru  
Welsh Government

Welsh Government  
Consultation Document

## Local Government: Guidance for Principal Councils

**Consultation on Statutory Guidance and Directions made under the  
Local Government Act 2000, the Local Government (Wales) Measure  
2011 and the Local Government and Elections (Wales) Act 2021**

Date of issue: 17 March 2022

Action required: Responses by 22 July 2022

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.  
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## **Overview**

The Local Government and Elections (Wales) Act 2021 (the 2021 Act) contains a number of provisions to promote diversity, involvement and participation in county and county borough (principal) councils. These are a mix of new legislation and amendments to previous legislation. This consultation is therefore on a consolidated set of statutory guidance.

## **How to respond**

Completing an online form.

## **Further information and related documents**

Large print, Braille and alternative language versions of this document are available on request.

## **Contact details**

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# 1. Introduction

1.1 The Local Government and Elections (Wales) Act 2021 (the 2021 Act) contains a number of provisions to promote diversity, involvement and participation in county and county borough (principal) councils. These include:

- Duty to encourage local people to participate in decision making (section 39);
- Strategy on decision making (section 40);
- Duty to make a petition scheme and the abolition of certain community polls (section 42, section 162 and schedule 13);
- Duty on principal councils to publish an official address for members (section 43);
- Duty to publish a constitution guide (section 45);
- Electronic broadcasting of meetings (section 46);
- Provision for multi-location meetings (sections 47, 49 and 50 and schedule 4);
- Appointment of assistants to the executive (section 57 and schedule 6);
- Job sharing for executive leaders and members of the executive (section 58 and schedule 7);
- Provision to issue guidance to the executive in relation to equality and diversity of its membership (section 59);
- Amendments to the family absence provisions for elected members (section 61);
- Making information available to overview and scrutiny committees (section 65);
- Power to require authorities to appoint joint overview and scrutiny committees (section 66);
- The renaming of audit committees to governance and audit committees and changes to their membership and remit (sections 115, 116, 117 and 118);
- Removal of the bar on councils designating the same officer head of democratic services and monitoring officer (section 161);
- The re-naming and reconstitution of governance and audit committees (sections 116 to 118).

1.2 The Act creates standalone provision for some of these measures but also amends, sometimes extensively, previous legislation in the Local Government Act 2000 (the 2000 Act) and the Local Government (Wales) Measure 2011 (the 2011 Measure).

1.3 Statutory guidance issued under these Acts on matters such as executive arrangements, constitutions, scrutiny, training and development for elected members and the timing of meetings was issued several years ago and now not only does not reflect the legislative changes in the 2021 Act, it also does not recognise wider legislative change such as the Equality Act 2010 and the Well-being of Future Generations (Wales) Act 2015 or other changes in the 2021 Act itself such as the creation of corporate joint committees and the duty placed on a principal council to keep its performance under review through the use of and reporting on self and panel assessments.

1.4 To this end Welsh Government is proposing to revoke earlier guidance issued to principal councils and replace it with a refreshed set of statutory guidance which reflects not only the legislative changes but also changes in the ways in which people can engage with their elected members and councils and the changes in technology which enable councils to conduct their business in different ways.

1.5 The existing statutory guidance may be found at:

[Local Government \(Wales\) Measure 2011 Statutory Guidance June 2012](#)

[JOSC Statutory Guidance May 2013](#)

[Remote Attendance at Council Meetings 2014](#)

[Local Government Act 2000 Statutory Guidance 2006](#)

1.6 It should be noted that revised statutory guidance has already been issued on changes to the family absence provision for elected members in the 2021 Act and holding multi-location meetings, also in the 2021 Act, which may be found here:

[Family absence](#)

[Multi Location Meetings Guidance](#)

1.7 A separate consultation is currently underway on guidance relating to changes introduced to the ethical standards framework in sections 62 and 63 of the 2021 Act, the duty on political group leaders in relation to standards of conduct in their political group and the duty of standards committees to make an annual report.

[Consultation on Standards of Conduct Statutory Guidance](#)

1.8 Finally, it is intended to review and consult on refreshed guidance for the annual reports principal councillors may make and the arrangements for their publication which must be put in place under section 5 of the Local Government (Wales) Measure 2011 later this year and for it to be available to support councillors and officers for reports published relating to the 2022-23 municipal year.

## **Next Steps**

1.9 The intention is to publish the statutory guidance and constitution direction following this extended consultation in the autumn of 2022. The aim is to incorporate this guidance and other relevant existing guidance into a much larger 'guide' which has to date been described as the 'Democracy Handbook'.

- 1.10 The proposal is to bring together all of the work undertaken so far in relation to the Democracy Handbook into 'A Guide to the Legislative Framework for County and County Borough Councils in Wales'. The guide will enable easier access to information about the legislative framework for principal councils' political governance and scrutiny for the public and other interested parties but also meet the needs of officers and members in principal councils by bringing together a wide range of new and existing statutory guidance made under a number of separate pieces of legislation into a single place.
- 1.11 To this end, the final version will include introductory sections which do not constitute statutory guidance but provide an overview of the role and functions of principal councils, the role of elected members and officers, public participation and the governance framework, including democratic services. This section will be in the form of 'questions and answers' and will also include links to and brief explanations of the relevant primary and secondary legislation.
- 1.12 The final guide will also incorporate sections on performance and governance and working in partnership which will include existing guidance issued under the 2021 Act on these matters:

[Statutory Guidance on Performance and Governance of Principal Councils](#)

[Corporate Joint Committees Statutory Guidance](#)

- 1.13 The Guide may be helpful and of interest for other members of the local government family such as town and community councils, national park authorities, fire and rescue authorities and corporate joint committees (CJCs). But, it is not intended to support their day to day operation in the same way as it is intended to support principal councils. However, we intend to cross reference some of the statutory guidance contained in the final 'Guide' with guidance issued to CJCs where CJCs are subject to the same, or similar, requirements.
- 1.14 The guide will then be kept up to date and amended as legislation changes. It is also our intention to have a rolling programme of structured reviews of the Guide starting in the mid-term of each local government term so that the Guide and any statutory guidance can be updated in advance of incoming administrations. This will also be an opportunity to identify any secondary legislation which might require updating and potential matters for future primary legislation.

## **2 Statutory Guidance for Elected Members and their Support, Training and Development**

### **Introduction**

2.1 This section covers the following statutory guidance:

- [Timing of Council Meetings](#)
- [Training, Development and support for Elected Members](#)
- [Research Support and Services for Elected Members](#)

### **Timing of Council Meetings**

2.2 This guidance is issued under section 6(2) of the Local Government (Wales) Measure 2011. It replaces the guidance issued in June 2012. Whilst the guidance is being replaced, the core of the guidance is unchanged. However, the emphasis on the purpose underpinning the requirements in section 6 have been reinforced to underline the importance of considering the timing, frequency and length of all kinds of council meetings through the lens of equality and diversity and to keep this regularly under review.

2.3 The guidance now also reflects the requirements of the 2021 Act that councils must enable all meetings to be held on a multi-location basis.

### **Training, Development and Support for Elected Members**

2.4 This is statutory guidance made under Section 7(4) of the Local Government (Wales) Measure 2011 (the Measure), section 38 of the Local Government Act 2000 and section 71 of the Government of Wales Act 2006.

2.5 Part 1 of the Measure contains provisions intended to strengthen local democracy. Chapter 1 of that Part concerns the support provided to members of a local authority and section 7 within that chapter provides for the training and development of these members. The guidance relates to matters local authorities must take into account in securing reasonable training and development opportunities for its members as required by section 7 of the Measure.

2.6 Again whilst the guidance issued in 2012 is being repealed, the revised version remains substantially unchanged but aims to address the new roles and challenges councillors may face such as becoming an assistant to the executive or negative social media. It also recognises that different formats are now more readily accessible to support member training and development such as on-line learning and electronic workshops and tutoring.

- 2.7 The revised guidance also has an extended section on supporting councillors' well-being, recognising that councillors may have need for focused support at certain times, for example, if they are the subject of negative social media. Also that it is important support reflects the need to enable councillors from all backgrounds to undertake their role effectively. The guidance recognises the requirement in the 2021 Act to publish an official address for all councillors to ensure they can be protected from unwanted and sometimes harmful attention and that it is the Welsh Government's view there is no statutory requirement for a member's home address to be published on the register of interests. The member must register their home as an interest, the council may hold the member's address for administrative purposes but the address does not have to appear when the register is published.
- 2.8 The guidance also recognises that a commitment to supporting elected members and their training and development and their commitment to it is fundamental to meeting duties to keep the council's performance under review in section 89 of the 2021 Act.

### **Research Support and Services for Elected Members**

- 2.9 This is new statutory guidance issued under section 8(1A) of the Local Government (Wales) Measure 2011. This section of the 2011 Measure enables the Welsh Ministers to issue guidance to which a local authority must have regard when exercising its functions in respect of providing the head of democratic services (HDS) with the staff, accommodation and other resources which are, in its opinion, sufficient for the HDS to discharge their functions.
- 2.10 Councillors who are part of the executive or assistants to it have the benefit of working closely with officers of the council and have ready access to information and professional support. However, in order to undertake their roles effectively all elected members should be able to access a range of information and support. It is anticipated this will mainly focus on signposting members to existing sources of information or available training for example, how to use research, statistical or legislative websites. It may also include targeted support for groups of members for example, leading a task and finish group investigation or support for individual members to research issues impacting on their communities where they are taking forward a councillor call for action under section 21A of the Local Government Act 2000, they have been delegated functions under section 56 of the 2011 Measure or with which they are involved through their role on the council, for example as chair of a committee.
- 2.11 The democratic services committee should consider the provision of this kind of support to elected members as part of its considerations as to what constitutes sufficient resources for the HDS to discharge their functions. The case for resources

for this support should form part of the DSC's budget considerations and discussions with the council. It is anticipated that the DSC will begin this process by identifying the baseline of support which is already available to members, then work with members to identify how this support and its parameters could be developed over time.

### **3 Statutory Guidance on Participation Strategies and Petition Schemes**

#### **Introduction**

3.1 This section covers the following statutory guidance:

- [Participation Strategies](#)
- [Petition Schemes](#)

#### **Participation Strategies**

3.2 This is statutory guidance made under section 44 of the Local Government and Elections (Wales) Act 2021 (the 2021 Act).

3.3 This guidance is to support councils in the preparation and maintenance of their public participation strategies which aim to support and encourage decision making which is informed by, understands and reflects the diversity of the communities in the council area.

3.4 The aim of the guidance is to set out the importance of taking into account the views and experiences of people and communities in the area and that this should not be a 'one off' activity. Whilst the participation strategy is the requirement of the legislation the key aim is to embed an approach to working with and involving people and communities in decision making as part of the council's day to day democratic activities.

3.5 The aim of the duty in the 2021 Act is to work in harmony with existing duties councils have to involve and consult with the public, including the Well-being of Future Generations (Wales) Act 2015. This duty works with existing ones as it relates specifically to participation in the democratic processes of the council, recognising the democratic dimension of councils which is specific and integral to their constitution.

3.6 The guidance recognises that councils already have numerous participation pathways relating to participation in the democratic process and these should be brought together under the umbrella of the public participation strategy. There should wide involvement of the council's staff, leadership and elected members to build ownership and embed participation as an approach underpinning the council's democratic activities.

3.7 The guidance also recognises and suggests the opportunities that digital presents should be considered as an underpinning factor when developing and reviewing the

strategy but equally councils should be mindful of the potential for excluding some people if sole reliance is placed on digital.

- 3.8 The strategy should set out how it will be formally reviewed and how it will be kept up to date in between formal review periods.
- 3.9 Following consultation, references will be included to the 'National Principles for Public Engagement in Wales' which are currently being updated.

### **Petition Schemes**

- 3.10 This is statutory guidance made under section 44 of the Local Government and Elections (Wales) Act 2021 (the 2021 Act).
- 3.11 This guidance is to support councils in the preparation and maintenance of petition schemes aimed at enabling communities to explore support for specific issues to inform council deliberations. The schemes will form part of the council's public participation strategy.
- 3.12 The guidance sets the establishment of petition schemes in the context of councils' other interactions with the public and identifies the potential benefits that can be accrued from the thoughtful use of petition schemes in this context.
- 3.13 It aims to strike a balance between guiding principles for the establishment and maintenance of a petition scheme and local discretion to tailor the scheme to local needs and circumstances. It suggests councils may wish to work together either regionally or nationally to consider best practice and common approaches to some of aspects of the schemes such as the threshold for signatures which might trigger consideration of a petition by a committee or the full council.

## 4 Statutory Guidance on Political Governance

### Introduction

4.1 This section covers statutory guidance on:

- [Constitutions](#)
- [Constitution Guide](#)
- [Exercise of Functions by Councillors](#)
- [Council Executives](#)
- [Securing Effective Overview and Scrutiny](#)
- [Appointment of Persons to Chair Overview and Scrutiny Committees](#)
- [Co-opted Members of Overview and Scrutiny Committees](#)
- [Call-in Arrangements](#)
- [Councillor Calls for Action](#)
- [Overview and Scrutiny Committees – Taking into Account the Views of the Public](#)
- [Joint Overview and Scrutiny Committees](#)
- [Democratic Services Committees](#)
- [Governance and Audit Committees](#)

It also covers:

- [The Constitution \(Wales\) Direction 2022](#)
- [Non Statutory guidance on Political Assistants](#)

### **Constitutions, the Constitution Guide and the Constitution (Wales) Direction 2022**

4.2 This set of statutory guidance issued under section 37 of the 2000 Act is updated, as is the constitution direction, to reflect the significant legislative change that has taken place since the original guidance was issued in 2001 and 2006.

4.3 The revised guidance aims to reflect changes such as the removal of some models of executive arrangements from the statute book, the introduction of job sharing for executive members and assistants to the executive, the creation of democratic services committees and audit committees, subsequently re-named governance and audit committees with additional functions and a revised constitution, greater levels of partnership working with other principal councils, other members of the local government family, other public bodies and the third sector and many others.

4.4 The constitution guide is a new statutory provision introduced by the 2021 Act. The guidance is not intended to set out in detail what the guide should contain but provide guiding principles for its development and publication. The purpose of

creating a guide to the constitution is to have something which is useful and helpful to local people and local groups who may want to understand more about how the council operates and makes decisions, therefore the guidance aims to leave room for local discretion as to what would best support that aim.

## **Exercise of Functions by Councillors**

- 4.5 This guidance is unchanged other than the inclusion of new references to recent legislation such as the 2021 Act.

## **Council Executives**

- 4.6 This is new guidance issued under section 38 of the Local Government Act 2000 which was amended by section 59 of the 2021 Act to specifically enable Welsh Ministers to issue guidance which 'may among other things, include provision designed to encourage good practice in relation to equality and diversity (within the meaning of section 8(2) of the Equality Act 2006).
- 4.7 The guidance is aimed at supporting the implementation of new provisions in the 2021 Act which enable the job sharing of executive positions and the appointment of assistants to the executive. The guidance highlights that the purpose of these provisions is to enable executives to reflect the diversity of the communities members' represent and are intended to provide leaders with more opportunity to reflect on diversity when making appointments to the executive or its assistants. Councils are reminded that neither job sharing nor assistants to the executive should be used as a means to simply increase the number of members on an executive or the members support who support it.
- 4.8 The guidance also reminds the executive of the importance of a constructive approach to scrutiny and asks its members to support the role of scrutiny in demonstrating effective democratic accountability.

## **Overview and Scrutiny**

- 4.9 This section includes several pieces of guidance on effective overview and scrutiny including actions to be taken to secure effective overview and scrutiny, the appointment of chairs of overview and scrutiny committees, the co-option of members to overview and scrutiny committees, call-in arrangements, councillor calls for action, taking into account the views of the public and joint overview and scrutiny committees
- 4.10 The guidance on securing effective overview and scrutiny, the appointment of chairs and co-option is unchanged with the exception of updates relating to more recent

legislation such as the 2021 Act. The guidance on the appointment of chairs and co-opted members to overview and scrutiny committees is similarly unchanged with the exception of the updating of legislative references.

- 4.11 Likewise the guidance on call-ins and councillor calls for action has been updated only in relation to legislative references and the latter to also reflect the new guidance which forms part of this consultation in relation to research support and services for members.
- 4.12 The guidance on taking into account the views of the public has also been updated to reflect new legislation in particular the duty to encourage local people to participate in decision making set out in sections 39 to 41 which specifically reference this duty in the 2011 Measure at section 40(2)(e).
- 4.13 Since the joint overview and scrutiny guidance was first published in 2013 there have been a number of developments relating to councils working in partnership with each other and with public service partners, for example, corporate joint committees enabled by the 2021 Act and public services boards established by the Well-being of Future Generations (Wales) Act 2015, a number of which now cover more than one council area. The guidance has therefore been updated to reflect these developments and other relevant legislative changes which are important to the context in which scrutiny takes place. However, there have been no substantive changes to the content or methodology the guidance sets out.

### **Democratic Services Committees**

- 4.14 This guidance is also substantially unchanged but has been updated to reflected legislative changes, included the removal of the legislative prohibition on the monitoring officer also being the head of democratic services (see section 161 of the 2021 Act).

### **Governance and Audit Committees**

- 4.15 This guidance has been updated to reflect that change in name, membership and functions of the governance and audit committee introduced by the 2021 Act. In particular, the requirement for the committee to be chaired by a lay person, that one third of the membership should be lay members, no more than one member of the executive or assistant to the executive should be a member, a new duty to review and assess the authority's ability to handle service and organisational complaints effectively and a new duty to review and assess the arrangements the council has put in place to fulfil its duty to keep its performance under review as required by section 89 of the 2021 Act. This is not intended to repeat or overlap with the role of overview and scrutiny committees in terms of service performance but relates

specifically to the effectiveness of the arrangements for self and panel assessments as required by Part 6 of the 2021 Act.

### **Political Assistants**

4.16 This is non statutory guidance issued to assist councils in the appointment of political assistants. It brings together an outline of the relevant primary and secondary legislation and reminds council's these appointments are politically restricted and should be open and transparent.

# Consultation Questions

## Question 1

- Is the revised guidance on the timing of council meetings sufficiently clear as to the purpose for regularly reviewing the timing, length and frequency of all council meetings?

## Question 2

- Has the guidance on the timing of council meetings adequately addressed the context of multi-location meetings?

## Question 3

- Are there any other issues you would like the guidance on the timing of council meetings to address?

## Question 4

- Has the revised guidance on training, development and support for elected members addressed all of the relevant changes in legislation?

## Question 5

- Are the sections on focused support and support for the well-being of members sufficient?

## Question 6

- Do you have any comments on the view of the Welsh Government that whilst members must register their home as a beneficial interest under the Code of Conduct, there is no statutory requirement for the register of members' interests to be published including the home addresses of members?

## Question 7

- Are there any other issues you would like the revised guidance on training, development and support for members to address?

### **Question 8**

- Does the guidance on research support and services for elected members provide sufficient examples of the matters which should be taken into consideration by the DSC when considering whether the HDS has sufficient staff and resources to, in its opinion, discharge their functions?

### **Question 9**

- Does the guidance explain clearly that the intention is for capacity for research support to be built up over time and that the DSC and the HDS should have a strategy for this?

### **Question 10**

- Are there any other issues or comments you would like to make in relation to the guidance on research support and services for elected members?

### **Question 11**

- Does the guidance in Section 1 of this consultation adequately address issues relating to equality and diversity, including the social model of disability?

### **Question 12**

- Is there anything further the guidance could suggest to strengthen the need to take account of equality and diversity, including the social model of disability when developing the public participation strategy?

### **Question 13**

- Is there anything further the guidance could suggest to strengthen the need to take account of the Welsh language when developing the public participation strategy?

### **Question 14**

- Is the guidance sufficiently clear that the public participation strategy is intended to work in harmony with existing statutory duties relating to public involvement and participation by in particular focusing on public participation in the democratic processes of the council as set out in section 40(2) of the 2021 Act?

**Question 15**

- Are there any other matters you would like to see included in the guidance on public participation strategies?

**Question 16**

- Is the balance in the guidance on petition schemes between guiding principles and local discretion helpful?

**Question 17**

- Are there any other matters you would like to see included in the guidance on petition schemes?

**Question 18**

- Does the revised guidance on constitutions and the revised constitution direction contain references to all of the legislative changes you would expect to be included?

**Question 19**

- Does the guidance on the constitution guide strike the right balance between guiding principles and local discretion?

**Question 20**

- Do you have any other comments or suggestions in relation to the guidance on the constitution, the constitution guide or the constitution direction?

**Question 21**

- Is there anything further that should be included in the guidance on the exercise of functions by councillors?

**Question 22**

- Are there further references to legislation made since the guidance on the exercise of functions by councillors was issued which should be included?

**Question 23**

- Is there anything further you would like to see included in the guidance on job sharing for executive members?

**Question 24**

- Is there anything further you would like to see included in the guidance on assistants to the executive?

**Question 25**

- Is there anything further you would like to see included in the guidance to cabinets on effective overview and scrutiny?

**Question 26**

- Does the revised set of guidance relating to overview and scrutiny reflect all of the legislative changes that are relevant to the context in which scrutiny operates?

**Question 27**

- Are there any other issues that should be reflected in any of the guidance on scrutiny, for example, would further guidance in respect of corporate joint committees be helpful?

**Question 28**

- Are there any further references to relevant legislation that should be included in the guidance on democratic services committees?

**Question 29**

- Is there anything further you think should be included in the guidance on democratic services committees?

**Question 30**

- Does the revised guidance on governance and audit committees reflect all of the relevant legislative changes?

### **Question 31**

- Does the revised guidance reflect changes in the context in which governance and audit committees now operate?

### **Question 32**

- Is the advice on the guidance on the new duty on governance and audit committees relating to section 89 of the 2021 Act sufficient?

### **Question 33**

- Is the guidance on the new duty on governance and audit committees to review and assess the effectiveness of the arrangements for handling service and corporate complaints sufficient?

### **Question 34**

- Is there anything else you would like to see included in the guidance on governance and audit committees?

### **Question 35**

- Is the non-statutory guidance on political assistants helpful in highlighting the relevant legislation?

### **Question 36**

- Is there anything further than you would like to see included in the non-statutory guidance on political assistants?

### **Question 37**

- We would like to know your views on the effects that the statutory and non-statutory guidance would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

**Question 38**

- Please also explain how you believe the proposed policy the statutory and non-statutory guidance could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

**Question 39**

- We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

Please enter here:

## **Annex 1**

# **1. Timing of Council Meetings Statutory Guidance**

### **Status of this Guidance**

- 1.1 This is statutory Guidance made under Section 6 of the Local Government (Wales) Measure 2011 (the Measure). By virtue of section 6 (2) of the Measure, local authorities must have regard to this guidance in respect of the times and intervals at which meetings of a local authority are held. The relevant meetings in the context of this guidance are meetings of the full council and any committee or sub-committee of the council.

### **Purpose**

- 1.2 Part 1 of the Measure contains provisions related to the strengthening of local democracy. More specifically, Chapter 1 of this Part deals with “promoting and supporting membership of local authorities” and section 6 relates to the timing of meetings.
- 1.3 The times at which the meetings of a council take place is of considerable significance as it can affect the extent to which individuals may contemplate standing for election. This is an area for concern as it may impact on the diversity of membership of the council and thus impact on the council’s ability to make decisions which are informed by and reflect the diversity of people living in the council area. Decision making informed by insight from people of all ages and backgrounds is likely to be more balanced and have more focus on sustainable and long term solutions which balance the needs of different people in keeping with the principles set out in the Well-being of Future Generations (Wales) Act 2015.
- 1.4 For example, whilst the requirement to provide the facility for multi-location meetings for members who wish to join meetings remotely (see section 47 of the Local Government and Elections (Wales) Act 2021 (the 2021 Act)) should overcome some concerns, many people will find attending, sometimes lengthy meetings, in the day is incompatible with their paid employment and certain times of day are challenging for people with caring responsibilities such as young children. Therefore, for the purposes of this guidance the timing of meetings includes their frequency and length.

### **Reviewing existing arrangements**

- 1.5 Only members of council executives are considered to be “full-time” councillors and this is reflected in the levels of payments they are entitled to for their special

responsibilities. By contrast, non-executive members are considered to undertake the equivalent of a part-time role, which will, in many cases, need to be fitted around whatever other commitments councillors may have.

- 1.6 For many prospective councillors in full-time employment, the extent to which their employers are supportive of their new commitment is a vital concern. Although employment legislation entitles councillors to time off for public duties, operating that in practice may be more difficult (see Section 50 of the Employment Rights Act 1996 (1996 c18)).
- 1.7 The timing, length and frequency of meetings is the most problematic issue in this respect. Other duties may be fulfilled at times which suit the individual but a meeting is at a set time and (subject to any arrangements made for remote attendance) at a set venue.
- 1.8 It is neither practical nor desirable for the Welsh Government to prescribe the times, length and frequency of meetings of the full council, its committees and sub-committees as these are matters for each council to consider in individual circumstances. However, it is important that councils do not simply continue to hold their meetings at the same time, in the way as they always have done, simply out of inertia. What may have been tradition or an arrangement which suited the previous cohort of councillors will not necessarily serve the interests of the current one. It is recommended that meetings should be held of a length and at times, intervals and locations which are convenient to its members, having regard to equality and diversity issues. Also, regardless of whether meetings are fully on-line, multi-location or in person, agendas should provide for suitable breaks as this not only promotes a more effective meeting but is essential for members' and officers' health and well-being.
- 1.9 Therefore, all local authorities should review the times, frequency and length of meetings at least once in every term, preferably shortly after the new council is elected. However, with the advent of five year terms it would be prudent to consider an increase in this frequency to accommodate changes in circumstances that may accrue during that period.
- 1.10 Councils should survey their members, at least once shortly after each election, to assess their preferences and should be committed to act on the conclusions. The survey should be carried out at such time as it will be of most benefit to incoming members but no later than six months following ordinary elections. It will then be for each authority to decide on the regularity of such surveys.

1.11 Issues to be taken into account in conducting a survey could include:

- Whether daytime or evening meetings are preferred.
- Whether meetings are to be multi-location.
- The preferred meeting length.
- Whether particular times cause difficulties for councillors with particular characteristics, such as age, gender, religion, having caring responsibilities or being in employment.

1.12 When considering the results of the survey, councils should also consider whether there may be advantages to rotating meeting times due to an impossibility of meeting all of their members needs all of the time. Any such arrangements will, of course, need to be clearly publicised for the benefit of interested members of the public.

## **2. Training, Development and Support for Local Authority Members Statutory Guidance**

### **Status of this Guidance**

2.1 This is statutory guidance made under Section 7(4) of the Local Government (Wales) Measure 2011 (the Measure), section 38 of the Local Government Act 2000 and section 71 of the Government of Wales Act 2006.

### **Purpose**

2.2 Part 1 of the Measure contains provisions intended to strengthen local democracy. Chapter 1 of that Part concerns the support provided to members of a local authority and section 7 within that chapter provides for the training and development of these members. The guidance relates to matters local authorities must take into account in securing reasonable training and development opportunities for its members as required by section 7 of the Measure.

### **What the Measure requires**

2.3 Section 7 requires local authorities to secure the provision of reasonable training and development opportunities for its members. Each member should also have the opportunity to have a review of their training and development needs on an annual basis. However, it should be noted that these provisions do not apply to the executive leader of an authority which operates a leader and cabinet executive.

2.4 Should a member decide to have an annual review of their training and development needs, the authority must ensure that the review includes an opportunity for an interview with someone who they consider to be “suitably qualified” to advise about the training and development needs of a member.

2.5 In relation to these functions, a local authority is under an obligation to have regard to guidance issued by Welsh Ministers.

### **Reasonable Training and Development Opportunities**

2.6 The Measure does not define what constitutes reasonable training and development opportunities for the purposes of section 7. The Welsh Government recommends that local authorities provide opportunities for what is essential for a local authority member to perform their role effectively.

- 2.7 The role of councillors is constantly evolving as legislation changes, for example, the Local Government and Elections (Wales) Act 2021 (the 2021 Act) brings in provision enabling executive members to job share executive posts and for there to be assistants to the executive, it amended the remit of Governance and Audit Committees and placed new duties on councils to encourage the public to participate in decision making. Likewise the social and environmental context in which councillors undertake their roles is constantly changing new developments in social media, structural change in the way the public services are organised and the way councils interact with individuals and communities.
- 2.8 Therefore it is essential that councils do not have a static of what constitutes reasonable training and development needs for the purposes of section 7 of the Measure. The definition should be which is regularly and frequently kept under review, most likely by the democratic services committee, to ensure it reflects legislative changes and the needs of members identified through their annual reviews. It is not sufficient to offer a package of training to a member immediately on their election and take a position that is sufficient to support them for the whole of their term.
- 2.9 Subjects for an on-going training programme of member development should, but not exclusively, include:
- Induction - An introduction to the work of a local authority and its relationship with key bodies and the role of those bodies. Councils should plan a comprehensive induction programme for new councillors for delivery shortly after ordinary elections and also for new members elected at a by election;
  - Training on the role and functions of the executive, the council and its officers;
  - An overview of the council's constitution, including the operation of meetings, how to raise questions with the leader and executive, access to information and research support;
  - Training for the chairs of committees including effective chairing skills;
  - Training on specific roles members may undertake such as governors or representatives on health boards, fire and rescue authorities or national parks including a short brief on the purpose of the role and the member's responsibilities in keeping the council apprised of developments on the body they are representing the council on, the level of decision making that is delegated to them and how they may access assistance to support them in the role;
  - Training on the role of the councillor as a local member, the delegation of functions to ward members and councillor calls for action;
  - Training on public engagement, the council's strategy to encourage participation in local decision making and the role members can play in engaging communities;

- Specific training for councillors carrying out certain regulatory or quasi-judicial roles (training for councillors sitting on planning or licensing committees, for example);
- Specific training for councillors carrying out roles relating to the operations of the council. Governance and Audit, Democratic Services and Standards Committee members might be seen as in particular need;
- Training on the operation of overview and scrutiny and its relationship with the council executive;
- Training on ICT, including how to participate in multi-location meetings and how the use of ICT can support the councillor's work;
- Training on the effective use of social media and the opportunities for better engagement between councillors and the communities they serve. Also the risk of councillors being victimised or harassed by opponents or campaigners overstepping the bounds of reasonable debate;
- Training on wellbeing and safety, including ways of keeping safe when undertaking their role.
- Training on expected standards and the code of conduct (which might form part of an induction but may also be considered for regular 'refresher' training);
- Training on councillors' corporate parenting responsibilities;
- Regular briefings and updates on changes in the law, policy and other issues that impact on the role of the elected member such as the economy;
- Training on equality and diversity (EDI), and the council's responsibilities in respect of the wellbeing of future generations (WFG).

2.10 Training can also be carried out using a variety of formats – traditional classroom-style teaching is one option, as is more bespoke coaching and mentoring of individual members. Training and development opportunities might also be 'designed' in to council business to make learning opportunities more practically relevant, for example, a briefing on a technical issue as part of preparation for a scrutiny meeting. Training can be sourced and delivered in-house, in collaboration with other councils, or with the support of external individuals or organisations.

2.11 Training is a process, not an event. Councils could put together a member development strategy, which should reflect the need to keep councillors' skills refreshed and updated. This should incorporate the opportunity for organising briefings for councillors on emerging areas of law and policy. In producing such a strategy councils should have regard to material produced by the WLGA, in particular the Wales Charter (and Advanced Charter) for Member Support and development.

2.12 Training in the above areas need not be exclusively delivered. Training which combines one or more of the above areas is not discouraged. It is recommended that each member has their own personal development plan which is reviewed on a

regular basis. This could be used to inform the annual review of a local authority member's training and development needs as required under the Measure.

- 2.13 It is recommended that the Democratic Services Committee (DSC) has overall responsibility for deciding what should be regarded as reasonable training and development opportunities as part of its function of providing support to members to carry out their functions. In addition to the list above the DSC may consider adding some policy areas for which training is considered essential, such as planning or licensing. It may also consider how it could maximise the opportunities within the council's membership and that of other councils to provide for peer support and mentoring, shadowing and opportunities to observe meetings and other activities.
- 2.14 The agreed, training and development opportunities could be contained within a published development strategy which should include how the development will be provided and the process for commissioning external training and development. The Welsh Local Government Association's Charter for Member Support and Development ("the Charter") could be used for guidance purposes by local authorities in developing their strategies. Local authorities may wish to consider the requirements to achieve the Charter when developing their strategies and programmes.

## **Annual Review**

- 2.15 Every local authority member, other than an executive leader, must be offered the opportunity to have their training and development needs reviewed on an annual basis. It is recommended that much of the training and development needs of local authority members are identified by such reviews.
- 2.16 The review must include an opportunity for a pre-planned interview between the member and a suitably qualified person (see below). The interview could include a review of the training and development received by the member over the last year (or appropriate period if the local authority member has only been recently elected).
- 2.17 Local authorities may wish to consider detailing the outcome of the interview in an agreed plan which sets out training and development needs, if any, identified for the year ahead. It is recommended that this personal development plan is provided for the member and signed by both member and reviewer. This is a private document which is not expected to be published by the authority or member, although a member is free to publicise in his or her annual report any training and development undertaken if he or she so wishes.
- 2.18 Good practise suggests councils should adopt role descriptions to ensure that all members have a full understanding of the expectations placed upon them. The

descriptions can then be used as a guide to the skills required by the relevant member. The WLGA's competency framework sets out the expected skills and knowledge across a range of councillor roles ([WLGA Councillor Development \(Competency\) Framework](#)).

- 2.19 The annual review can then be an assessment of training and development needs to support the councillor in their role. A local authority may wish to consider making it clear to members that the review is not a performance review or an assessment of how well or how badly a member has conducted their duties. Ensuring members feel supported to undertake their role and can ask for training and development is integral to engendering a relationship of trust between backbench members, the executive and officers.
- 2.20 Councils could consider the drafting of a personal development plan for each councillor, arising from the statutory interview discussed above. Collated (and anonymised), these individual plans could then form the basis of a corporate member development strategy.

### **Suitably Qualified**

- 2.21 It is for the local authority to determine who could be considered a suitably qualified person to conduct interviews with local authority members to discuss their training and development needs as part of their annual review. This responsibility could be allocated to the DSC within the authority. In most cases, this may not be a question of naming individuals, but of describing a post or office holder, (see below). It would probably be neither suitable nor desirable for a single person to be made responsible for conducting all interviews.
- 2.22 It is also possible for group leaders to conduct interviews with their members or interviews to be conducted by the leader and the executive members. Both these practices are perfectly acceptable methods of complying with the requirements of the Measure.
- 2.23 Authorities may prefer, however, to divest the duty with their human resources officers. If this is the preferred option, local authorities may consider making the Head of Democratic Services (HDS) responsible for co-operating with human resources officers for this part of their work. If the chief executive was selected as a suitably qualified person to conduct an interview it would not be expected that they would work under the supervision of the HDS.
- 2.24 Some authorities may prefer to hire external consultants or peers to conduct interviews, which is also acceptable. Local authorities are encouraged to appoint a Member Development Champion from amongst its councillors.

- 2.25 It is recommended that there should be no surprises in the system and that individual members know who they can expect to conduct their interview. Local authorities may wish to consider including an option in their arrangements for members to make a request to the HDS to arrange for a different person to conduct their interview if there is good reason for so doing.
- 2.26 Finally, authorities must ensure that anyone conducting an interview must themselves have received suitable training in how to do this and are advised to liaise with the WLGA to ensure the provision of this. Therefore, even if the authority has chosen to allocate the duty of conducting reviews to a post, rather than an individual, that post holder should have received the necessary training before conducting reviews.

### **Executive Leader of the Local Authority**

- 2.27 Section 7 of the Measure does not apply to the executive leader (or elected mayor) of an authority. However, there may, of course, be occasions where the leader wishes to receive training or development and there is no suggestion that, by excluding them from the provisions of the Measure, they should not be able to receive training, nor, indeed, an annual review or an interview with a suitably qualified person.

### **On-going Training, Development and Support for Members**

- 2.28 The annual review should not be seen as the only point in the year when a discussion is held with a member about their training, development, support and well-being. It should also not be seen by the member as the only opportunity available to them to proactively consider their own development and training needs or other forms of support. Increasingly, councillors are subjected to significant personal demands as a consequence of their work. Representing local people is a privilege but with it comes challenges which, at their most extreme, pose challenges to the mental and physical health of elected representatives.
- 2.29 Councils have a general responsibility to develop an awareness and an understanding of the constraints under which councillors operate, and to ensure that the support arrangements put in place for councillors reflect these needs. This could be done alongside work carried out by political parties, and national sector bodies.
- 2.30 Councils should take every opportunity to support the well-being and personal safety of councillors and their families and should note carefully legislation which requires councils to provide councillors with an office contact address, both electronic and postal, (section 43 of the 2021 Act) to ensure members' privacy and that of their

families is preserved and protected. This is critical to member's well-being and encouraging and supporting a diversity of membership which reflects the diversity in the council's area.

- 2.31 The Welsh Government considers the protection of members addresses should be a priority for councils to support their members' well-being and promote diversity of membership. Therefore, the Local Authorities (Amendments Relating to Publication of Information) (Wales) Regulations 2022 amend sections 100G (4) of the Local Government Act 1972 and the Regulation 12 (1) of the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001 to remove the requirement to make the register of members addresses and the register of members of the executive addresses available for public inspection.
- 2.32 It is, of course, important that the public are aware of the interests members may have or hold, in particular where those interests could influence the decisions they may be involved in making in their role or roles on the council. Therefore, Part 4, paragraph 15 of the Model Code of Conduct requires members to register personal interests in the authority's register of members interests falling within a category mentioned in paragraph 10(2)(a), by providing written notification to the members' authority's monitoring officer. This includes any land and property in the authority's area in which members have a beneficial interest (or a licence to occupy for more than 28 days).
- 2.33 The Welsh Government is therefore mindful of the need to protect members' safety and welfare, whilst ensuring all relevant interests are captured and openness and transparency is maintained. However, it is the view of the Welsh Government that while members have an obligation to declare interests and not to participate in or influence council business, there is no requirement for members to include their full primary address (or any other address) when registering beneficial interests in land in the authority's area. It would be sufficient for members to state that they own a property in the authority's area (for example identifying the road or ward), in order to discharge their duties under paragraph 15 of the Code.
- 2.34 In addition, councils are reminded, under paragraph 16 of the Model Code, members, with their agreement, need not include information relating to any of the members' personal interests that is deemed sensitive information. In the code, "sensitive information" means the availability of the information for inspection by the public creates, or is likely to create, a serious risk that the member or a person who lives with the member may be subjected to violence or intimidation.
- 2.35 Councils and councillors have a role in supporting the presence of an open, accountable and respectful political culture in local areas. Despite this, councils will need to be aware of the risks that come with high profile public service. Councillors

may at times be at physical risk of harm – particularly where they are associated with unpopular or controversial decisions or issues. Councils must seek to understand where and how such risks emerge, and to work closely with local police and other community safety partners to – where necessary – put in place protective arrangements for councillors, as proactively as possible.

2.36 Councils are required to put arrangements in place for supporting councillors on family absences but there may be times when a member is in need of targeted, unplanned support for example:

- Where councillors are the subject of attacks on social media which go beyond acceptable political discourse. As far as possible, councillors should be supported to use social media to be more accessible to their constituents, but safe and reliable avenues need to be available to them to highlight such attacks, and for the council to support police action where appropriate. Legally there is a principle that councillors are expected to have “thicker skins”, but this should not limit the extent of informal support and advice that councillors should be given under these circumstances. Political parties may provide advice to councillors on the effective and safe use of social media, but councils should be aware of the comparative vulnerability of councillors who might be members of smaller parties, or acting as independents, and who therefore might not benefit from this support;
- Where councillors have chronic health conditions and/or are disabled, and councils should consider the support from the perspective of the social model of disability and remove barriers that may be disabling councillors with impairments;
- Where councillors have other commitments (including professional commitments), or operate under other restrictions, which may limit temporarily or permanently their ability to attend meetings or to otherwise engage in the life of the council.

2.37 Political groups may put in place arrangements for peer mentoring and support, for example, ‘buddying’ newly elected councillors with colleagues returning to office. This is an important element of training and support for many members. However, councillors unaffiliated to a political group (or part of a small, or geographically-specific, political group) may have particular needs, and councils can consider how these can be met in such a way that does not disadvantage other members.

2.38 A council culture where member well-being, learning and development is valued and nurtured amongst elected members could be considered an important element of a council being able to meet its duties in sections 89 and 90 of the 2021 Act to keep its performance under review and consult the public on performance. The active involvement of all members will be important to demonstrating these duties are

being met and members must be receptive to training and development to support them in this role and the council must be receptive to the importance of doing so.

### **3. Research Support and Services for Councillors Statutory Guidance**

#### **Status of this Guidance**

- 3.1 This is statutory guidance issued under section 8(1A) of the Local Government (Wales) Measure 2011. This section enables the Welsh Ministers to issue guidance to which a local authority must have regard when exercising its functions in respect of providing the head of democratic services (HDS) with the staff, accommodation and other resources which are, in its opinion, sufficient for the HDS to discharge their functions.

#### **Purpose of this Guidance**

- 3.2 Councillors who are part of the executive or assistants to it have the benefit of working closely with officers of the council and have ready access to information and professional support. However, in order to undertake their roles effectively all elected members should be able to access a range of information and support. It is anticipated this will mainly focus on signposting individual members to existing sources of information or available training for example, brief prepared for scrutiny committee meetings or how to use research, statistical or legislative websites. It may also include targeted support for groups of members for example, leading a task and finish group investigation or support for individual members to research issues impacting on their communities where they are taking forward a councillor call for action under section 21A of the Local Government Act 2000, they have been delegated functions under section 56 of the 2011 Measure or with which they are involved through their role on the council, for example as chair of a committee.
- 3.3 The democratic services committee should consider the provision of this kind of support to elected members as part of its considerations as to what constitutes sufficient resources for the HDS to discharge their functions. The case for resources for this support should form part of the DSC's budget considerations and discussions with the council. It is anticipated that the DSC will begin this process by identifying the baseline of support which is already available to members, then work with members to identify how this support and its parameters could be developed over time.

#### **Support for Research**

- 3.4 It is for the DSC to advise on the nature and level of support for research by elected members that would be suitable for their council and the level of resources that the HDS might require to provide a sufficient set of services in this regard. This guidance

sets out the sorts of services the DSC should consider when making its deliberations.

- 3.5 The proportionate use of research support by councillors is an important part of ensuring local democracy is functioning effectively. It is also important to ensure that members do not get frustrated by feeling they are not able to access or have available to them the support they need to make a difference to their local community or undertake a role they have been asked to do on behalf of the council effectively.
- 3.6 Councils should, through their democratic services committee, put in place a protocol or other set of rules governing how councillors should expect to be able to access and use research services, to ensure that it is accessible to all councillors and that it is used equitably and proportionately. This should dovetail with the democratic services committee's oversight of the overall resourcing available for democratic services in an authority.
- 3.7 The aim should be to provide support to assist backbench councillors and their staff to work with constituents, scrutinise legislation, develop policy, undertake any roles they may be asked to do on behalf of the council and undertake effective overview and scrutiny. Research may be related to a specific issue or issues that have a more general impact on the work of elected members across the council but would usually be connected to the delivery of the council's priorities or the scrutiny of their delivery. It should work in harmony with and not be expected to duplicate the support members might be provided by virtue of their membership of a political group, for example where political assistants have been appointed (section 9 of the Local Government and Housing Act 1989).

### **Research Support and Services**

- 3.8 Examples of research support and services include:
  - Collating and distributing background papers to assist councillors to better understand forthcoming key decisions including analysis of complex data and information which may be provided as background papers for council meetings such as the budget discussion;
  - Preparing and sharing regularly management information, including performance management shared as a part of formal assessments either by performance panels or Audit Wales;
  - Preparing and sharing demographic information, and information on the use of services by local people;
  - Responding to councillors' requests for research on specific topics to be undertaken either by council officers or an external source. Councils should set

out clear processes and procedures to ensure councillors have access to this kind of research but also that they understand the requirement for its judicious use within the budget and other resourcing parameters set by the council;

- Signposting of members to useful sources of information they can access on the issue in which they have an interest;
- Circulation of calendars of events held by local and national organisations which may be of interest to members and help inform their knowledge of particular issues.

3.9 The service should not be solely reactive, the proactive provision of timely briefings on new policies, changes in the law or other matters that could impact on the work of members should form part of the service. These briefings should be published and made available to the public as they will be of wider interest and can form part of the Council's strategy for meeting its duties under sections 39 to 41 of the Local Government and Elections (Wales) Act 2021 to encourage local people to participate in decision making and the publication of a participation strategy.

3.10 However, there is a risk of members feeling swamped with information so the DSC and HDS should consult and involve members to shape and regularly review the usefulness and effectiveness of the support provided.

## **Benefits**

3.11 The benefits of pro-active research support for councillors are:

- It means that councillors are better able to engage with the business of the authority in an informed, proactive manner;
- Different officers do not have to deal with requests for information and duplication is reduced;
- There is less demand for the bringing of reports to committees (particularly scrutiny committees) for information, or to note, because there are systematic methods to share research with councillors through other means thus freeing up committee time and resources;
- The products and outcomes of research can be shared equitably, rather than through one-to-one councillor-officer conversations which privileges those more capable in "navigating" the authority and its officer structures.

## **Support in accessing information**

3.12 Councils should adopt a proactive and permissive approach in how they engage with councillors' information needs. Councillors cannot always know what information they need to know, and as such may not be in a position to frame requests in a way that captures these needs succinctly. In particular, councils should

recognise that it is not optimal for councillors to be expected to make FOI requests of their own authority, and should put in place arrangements to ensure that they can access this – and other – information in an expedited manner.

3.13 As such councils should:

- Frame councillor access to information procedure rules expansively – with a presumption in favour of the release of information to councillors unless a clear public policy reason exists not to;
- Proactively provide councillors with management information and other data to ensure that they are kept informed about the business of the authority. Councils could produce an information bulletin or digest for councillors on a regular basis – subject to resources as suggested above;
- Engage with members to better understand how and where their roles will require that they access certain information sources, and support them to gain that access. This may include negotiation with partners, and others who may hold information relevant to councillors' roles.

3.14 Councils should consider alternatives to private sessions of committees where the opportunity exists – for example, by re-framing reports or planning discussions in such a way that removes the need for confidential matters to be discussed. Frequently, however, such workarounds will be impossible. As far as possible councils should specify publicly why a matter is exempt from publication or from discussion in a public forum – ideally providing more information than just the description given in Schedule 12A of the Local Government Act 1972.

3.15 Equally, councillors should be made aware that councils are frequently under legal obligations to others with regard to maintaining the confidentiality of certain information – in particular, commercial information and personal information – and such releases could open up the council to challenge.

## **Annex 2**

# **1. Statutory Guidance on Public Participation Strategies**

### **Status of this Guidance**

- 1.1 This is statutory guidance made under section 44 of the Local Government and Elections (Wales) Act 2021 (the 2021 Act).

### **Purpose of this Guidance**

- 1.2 This guidance is to support councils in the preparation and maintenance of their Public Participation Strategies which aim to support and encourage decision making which is informed by, understands and reflects the diversity of the communities in the council area.

### **Policy intent**

- 1.3 Public participation is essential to ensuring the needs and aspirations of communities are at the heart of local decision making. Councils must demonstrate they recognise and value the contribution of local people in identifying, shaping and evaluating the services they and their families rely upon as part of their democratic decision making processes. This is central to the ethos of the Well-being of Future Generations (Wales) Act 2015 (the 2015 Act) and sections 39 to 41 of the 2021 Act are intended to work in harmony with the pursuit of councils' well-being goals and complement the five ways of working set out in the 2015 Act.
- 1.4 This is because the 'participation duty' in the 2021 Act relates specifically to participation in the democratic processes of the council, recognising the democratic dimension of councils which is specific and integral to their constitution. Its focus is on maintaining the participation, trust and interest of the public in democracy in the years between elections. Also, if this trust interest can be grown, supported and built upon in the years between elections, there is the opportunity to further build on this and encourage higher levels of voter registration and turnout at election time.
- 1.5 The aim of the public participation strategy is therefore to set out the arrangements the council intends to put in place to embed and deliver a culture of partnership with the public. To build this culture of partnership and for the public to have confidence in the council's commitment to encourage and act on their views, the participation strategy must be developed with all diverse communities within the council area.

- 1.6 The 2021 Act does not provide a definition of participation but for the purposes of this guidance and the preparation of the public participation strategy 'participation' should be interpreted as an all-encompassing term for activities or methods which inform, engage, consult, involve or use co-development or co-production between council and the public. It should also be interpreted as participation of everyone no matter their age, protected characteristic or characteristics or socio economic background. The council's public participation strategy should be clear how it will enable participation for everyone including by reference to the social model of disability.

### What the 2021 Act requires

- 1.7 The 2021 Act places a duty on principal councils to encourage local people to participate in their decision making. This includes where councils are making decisions in partnership with another principal council or in conjunction with another individual or body such as a local health board. This is set out in section 39 of the 2021 Act and is specifically intended to encourage public participation in the democratic processes of the council as a bridge with the public's direct engagement with councillors.
- 1.8 Section 40 of the Act then requires a principal council to prepare and publish a public participation strategy setting out how it will encourage local people to participate in its decision making. These strategies **must** include (section 40(2):
- a) ways of promoting awareness among local people of the principal council's functions;
  - b) ways of promoting awareness among local people of how to become a member of the principal council, and what membership entails;
  - c) ways of facilitating access for local people to information about decisions made, or to be made, by the principal council;
  - d) ways of promoting and facilitating processes by which local people may make representations to the principal council about a decision before, and after, it is made;
  - e) arrangements made, or to be made, for the purpose of the council's duty in section 62 of the Local Government (Wales) Measure 2011 (bringing views of the public to attention of overview and scrutiny committees);
  - f) ways of promoting awareness among members of the principal council of the benefits of using social media to communicate with local people.
- 1.9 The strategy **may** also address how a principal council proposes to comply with a duty imposed by any enactment. This enables the council to set out in one place how it will address a variety of duties to eliminate any duplication and to make it

easier for the public to understand the many different ways in which the council is encouraging participation across the range of its activities.

- 1.10 In developing its public participation strategy councils must consult people who live, work or study in the council's area and anyone else it thinks appropriate. Section 41 of the 2021 Act requires a council's first strategy made under this section to be published as soon as reasonably practicable after the local government elections in May 2022.
- 1.11 There are many ways of involving, engaging and interacting with individuals and groups of individuals within communities for example, formal consultations, focus groups, public meetings and citizens juries. No one mechanism is the key to developing a partnership approach between members of the public and the council which serves them, and councils will need to consider which approaches are best matched to different aspects of the strategy and the different communities they must engage.
- 1.12 A public participation strategy must go beyond relying solely on traditional requests for feedback on pre-determined plans and establish a relationship with communities built on trust, a commitment to listen to all voices and for those voices to be heard and to work together with the community to explore and resolve issues of concern, promote and recognise achievements and face new challenges together. The public participation strategy must set out how this will be achieved.
- 1.13 Section 41 then enables the council to determine the frequency of the subsequent reviews of its strategy but it must consult with people who live, work or study in the council's area and anyone else it thinks appropriate when undertaking a review. The revised or new version of the strategy must be published as soon as possible after the review.

### **Preparing the strategy**

- 1.14 In preparing the strategy the council should be clear about those it is required to consult with under section 41 of the 2021 Act on its purpose. The purpose is to set out **HOW** the council will achieve the requirements set out in section 39 of the Act.
- 1.15 Each of the requirements cannot be met solely through formal consultation, although formal consultation may be one of the pathways for participation, demonstrating that the requirements are being met will involve setting out a basket of measures. For example, demonstrating the council is meeting the requirement relating to ways of promoting and facilitating processes by which local people may make representations to the council about a decision, before, and after it is made could include formal consultation processes but could also include how to make

representations to your ward member, how to submit questions to the council leader, how to submit evidence to scrutiny committees, how to become a member of a citizens' panel or a co-production forum, systematic publication of council, cabinet and committee forward work plans and agendas and so on.

- 1.16 Whilst meeting the requirement relating to promoting awareness among local people of how to become a member of the principal council and what membership entails could include youth councils and youth cabinets, outreach in local communities and opportunities for shadowing elected members, promotion of how to attend council meetings, podcasts and webcasts about the work of elected members and so on.
- 1.17 The development of the strategy should be informed by discussions and involvement of the public as to its purpose and what participation pathways would best enable them and support them to engage in local decision making. The approach to the development of the strategy and the routes for participation it sets out must go beyond this, focusing on a partnership approach with those impacted by decisions made and services provided by the council.
- 1.18 An effective approach to public participation cannot be achieved without investment. It is essential as part of any baseline assessment the current level of resource allocated to engaging with the public is identified with an explanation of what those resources deliver.
- 1.19 The requirement to develop a public participation strategy should not be seen as an indication that councils are not already engaging with the public. Many councils will already have a number of mechanisms in place aimed at helping the council to understand the views of the public it serves. Councils should use the strategy to build on the strengths it already has in this area, while developing new ways of working within a wider partnership approach to demonstrate its commitment to public participation.
- 1.20 Councils should have regard to their statutory duties in respect of equalities, Welsh language and the Well-being of Future Generations (Wales) Act 2015 when preparing their strategy. Councils should also be aware that a well-rounded public participation strategy is integral to demonstrating it is meeting its duties under section 89 of the 2021 Act to keep its performance and governance under review and its duties under section 90 to consult local people on performance.

### Baseline assessment

- 1.21 An important part of any strategy is being clear about the starting point. In the case of a public participation strategy it is necessary to understand what is already in place, what works well and where the gaps are. It is essential there is an

understanding of the demographics within the local authority area. A local authority should conduct a baseline assessment as part of its preparation for developing a public participation strategy.

1.22 Key issues which should be considered as part of this assessment are the demographic profile of the local authority, the existing level and nature of community engagement and the current approach to public participation. The following questions, while not exhaustive, may be useful in establishing the baseline assessment:

- What is the local authority's demographic profile?
- What community networks already exist and under what circumstances does the local authority engage with them?
- What community leaders and local issues champions has the local authority identified, developed and maintained relationships with?
- What mechanisms currently exist for members of the community to put forward ideas to the council for consideration? How is this communicated to the public?
- How does the local authority act upon complaints received and how does the public know whether changes have been made to services / processes as a result?
- What resources are dedicated to community engagement / involvement? What has changed as a result?
- How does the public contribute to the scrutiny of the councils work?

1.23 The baseline assessment will help the local authority to focus on its strengths while developing a holistic, public-centered strategy.

1.24 In advance of drafting a strategy the council should consider the requirement placed on it through sections 39, 40 and 41 of the 2021 Act alongside the baseline assessment. This will provide an opportunity to identify key issues which will be important in developing the strategy, the timelines for action and the potential for investment to support both the development of, and implementation of the strategy.

### **Designing effective public participation**

1.25 Building on good practice and working with the public, councils can move from traditional approaches and design more collaborative, tailored and imaginative participation. Strategies should explain the approach and guiding principles the council has adopted. There are many approaches a council could follow in the development of its strategy and the following is intended to set out a high level approach of the key steps.:

## **Design**

- Set out clearly the purpose of the strategy and the intended outcomes;
- Identify and set out the process for development such as public and stakeholder engagement and how this will be inclusive and extensive;
- Involve a wide range of staff across the council to bring together an understanding of existing interactions with the public, understand good practice and generate ideas;
- Ensure the design fulfils the statutory requirements relating to the Well-being of Future Generations (Wales) Act 2015, equalities and Welsh language and considers the social model of disability and responsibilities in relation to children's rights;
- Set out how it will be ensured that the council executive and the council provide leadership for the development and implementation of the strategy;
- Set out how ward councillors will be involved in championing and leading the development process in their communities.

## **Development**

- Map existing participation pathways, existing strengths and weaknesses, identify gaps;
- Identify opportunities where digital could add value or provide new opportunities;
- Use the development process to create participation, harness democratic involvement, both inside the council and with the public, and build it into involvement in decision making;
- Road test proposals in communities;
- Benchmark proposals with other councils;
- Identify on-going resource needs to implement and evaluate the strategy.

## **Evaluation and Revision**

- Develop and use evaluation measures;
- Set timeframes for evaluation and revision.

1.26 This should not be approached as a sequential process. It should be noted that the above are interrelated, iterative tasks, not a step-by-step template.

## **Promoting awareness**

1.27 Effective public participation relies on there being a range of information available to the public which includes information about the following:

- the role of the council;

- how the council is structured;
- who represents them on the council and what has their contribution been;
- How decisions are made;
- How decisions are scrutinised;
- Key contacts within the council for general and specific issues;
- Short, Medium and Long term plans;
- Financial aspects of the Council;
- Key contact points.

1.28 The above is not an exhaustive list, there are many other examples of information which should be easily accessible to the public. It is however important that the public help define what they consider to be important to them as opposed to an approach which solely relies on the council determining what it thinks is important to people.

1.29 Much of the above information should be included in the council's constitution and constitution guide which it is required to prepare, publish and keep up to date by section 37 of the Local Government Act 2000. Separate guidance has been published about constitutions and the constitution guide.

1.30 The council's public participation strategy should include how it will improve the way it promotes awareness for example by:

- Improving the relevant sections of the council's website;
- Ensuring the council's forward plan supports public engagement by being accessible, timely and user friendly;
- Ensuring information for potential councillors is available and fit for purpose;
- Communicating through council publications, local media and social media, taking steps to use languages such as BSL and Braille;
- Information and support for schools;
- Staff from across the council being involved in its design, development, review and revision so that all interactions with the public can be harnessed;
- Staff training and development on good practice engagement, encouragement to see the participation strategy as a living document with continuous opportunity for improvement;
- How it will measure progress in terms of public participation; and
- Providing information to individuals interested in standing to be a councillor.

### **Reviewing, revising and replacing the strategy**

1.31 Encouraging and implementing measures to encourage public participation is a challenging aspect of council business. It is expected that as participation levels

increase, the new partnership approach between the council and individuals and communities will present more ways of working together which may necessitate amendments to the strategy, which should be developed in conjunction with the public.

- 1.32 The council must review its public participation strategy as soon as possible following each ordinary election, but may review its strategy at any other time. When reviewing the strategy the council must consult local people, and others it considers have an interest in the strategy. Following a review, the council may revise its strategy, or replace it with a new strategy.
- 1.33 The council must publish the revised or new strategy as soon as possible setting out the changes and the rationale for those changes.
- 1.34 However, the public participation strategy should not be viewed as a static 'document', only reviewed and revised to a pre-determined timetable. It should be viewed as an opportunity to constantly learn and develop and a process should be in place to ensure learning and good practice can be captured and harnessed in between 'formal' reviews.

## **Matters to consider**

### **Bringing together and joining up existing pathways for participation under the umbrella of the strategy**

- 1.35 Principal councils already have numerous ways of enabling people and communities to get involved with their policy development and service delivery and the way in which this informs the democratic processes of the council. However, the participation strategy can add value to existing pathways by clearly identifying them, signposting them and recognising them as potential multi-use pathways that could enrich areas of the council's work which they may not previously have been designed to interact or connect with.

Examples of existing participation pathways include:

- Interactions generated through engagement with the guide to the constitution published under section 37 of the Local Government Act 2000;
- Arrangements to support the delegation of functions to individual ward councillors under section 56 of the Local Government (Wales) Measure 2011;
- How the publication of future meeting dates of council, committee and scrutiny meetings and their forward work programmes support the public's knowledge of council business and therefore ability to engage with and participate in it;

- How policies relating to the co-option of members to council committees can support and enhance diversity of perspective;
- How arrangements for fulfilling the statutory duty in section 62 of the Local Government (Wales) Measure 2011 to take the views of the public into account work in harmony with and support the duty in section 39 of the 2021 Act;
- How arrangements for the public to make complaints and submit complements to the council can be interactive and include feedback on changes or actions that result (this should form part of the Governance and Audit Committee's function to review and assess the effectiveness of the council's ability to handle complaints effectively);
- How the council's policies on the broadcasting of council meetings, including archiving, as required by section 46 of the 2021 Act support the public's awareness and therefore ability to engage with council decision making;
- Ensuring the work and engagement elected members undertake in their wards is recognised and incorporated into participation strategy;
- Connecting the enabling of members' annual reports under section 5 of the Local Government (Wales) Measure 2011 as a means of promoting awareness of the council's functions and the role of elected members;
- The Council's petition scheme and petitions submitted under it as required by section 42 of the 2021 Act;
- The council's duty under section 90 of the 2021 Act to consult local people on performance;
- Schools engagement programmes and work to ensure young people are registered and made aware of their voting rights;
- Youth councils and youth cabinets;
- Focus groups and citizens' panels.

1.36 One of the functions of the role of the participation strategy is to coherently set out how these pathways contribute to and enable the public to participate in decision making. It should identify the added value of approaching participation in a holistic rather than piecemeal way. Mapping of existing pathways is also important to identify both gaps and potential connections which could strengthen the participation networks.

### **Making the best use of digital**

1.37 Technology has advanced significantly during the last decade and there are many tools that, if used appropriately can help bring democracy closer to the public. It offers new ways of engaging, which can address previous limitations, rather than simply recreating traditional offline participation online. The use of digital services and communication across Wales varies, however, developing and maintaining the participation strategy provides the opportunity for councils to work together and share experience and learning as to what works. A participation strategy must set

out the ways in which the council and the public can exploit the use of digital to maximise opportunities for effective participation.

- 1.38 The Covid-19 pandemic resulted in an increased awareness and use of digital, however these are technologies which present challenges in terms of training and awareness and a wide range of skills are needed to properly embrace digital participation. Councils should consider the cost benefits of investment in digital to promote engagement, including the investment in staff training and expertise required to make effective use of the opportunities digital presents. This is likely to mean taking a medium to longer term horizon for the realisation of benefits.
- 1.39 Participation strategies must include ways of promoting awareness amongst members of the principal council of the benefits of using social media to communicate with local people. This should be co-ordinated with the work of the Democratic Service Committees and its development of a member development strategy. Annual training reviews with individual members can be used to identify specific training needs but the participation strategy should set out how members will be involved in campaigns the council might run or support and how collective efforts of members can be harnessed on social media to promote and enable public participation. Separate guidance has been issued on member support, training and development and councils are reminded of their duties to ensure the well-being of their members is protected and, in particular, members are also provided with high quality training and information to deal with the challenges social media can bring in relation to threats and harm to personal well-being.
- 1.40 Digital is both a benefit and a barrier to diversity of participation and councils should be mindful of this when considering their approach to digital participation. Online channels can accommodate large volumes of participation thus allowing people with work, caring or other commitments to take their time to make their contribution at a time that suits them. However, it also has the potential to exclude some communities and people with protected characteristics from being able to participate in a way which is suitable or comfortable for them and so a mix of participation pathways should always be available.
- 1.41 This is because while digital communication offers significant benefits and opportunities to facilitate participation, the way it is implemented has the potential to exclude individuals. There are many reasons for this including physical and mental health conditions, accessibility of technology, lack of digital skills and socio-economic factors. Therefore, participation strategies must identify how the council will address these and other risks and ensure inclusivity.
- 1.42 Digital advances are likely to be a constant theme in society and it will be important for councils to enable staff to engage in exploration of new ways of working in a way

that staff feel supported to try new ways of engaging. This will require appropriate safeguards to be put in place and the strategy should identify how any exploration will take place, how the public will be involved and how it will approach identifying and implementing safeguards.

## **Ensuring Equality and Diversity**

- 1.43 This Welsh Government is committed to increasing diversity across all aspects of public life. This includes tackling the barriers which prevent individuals' active participation in local democracy and provision of local services.
- 1.44 Equality and diversity are fundamental to effective public participation. The public participation strategy must set out how the council will ensure the widest possible range of views from the public inform council business. This will require councils to go beyond what many describe as 'the usual suspects'.
- 1.45 Leadership and culture within councils is key to a successful partnership approach to participation. The baseline assessment councils conduct will assist in identifying existing routes to communication and engagement, while providing an opportunity to identify key communication gaps and opportunities to explore how the more hard to reach groups can be encouraged to participate. The use of representative groups, community leaders, ward councillors and charities can all provide important information about community networks. The involvement of such groups should be welcomed and form a key component of any public participation strategy.
- 1.46 The Equality Act 2010 provides a legal framework for protection against direct and indirect discrimination for people with protected characteristics. These include, age, sex, disability and religion. Councils must ensure its strategy sets out how it will advance equality of opportunity through the establishing and maintaining relationships with individuals and groups with protected characteristics.
- 1.47 In respect of disability, the Welsh Government is committed to the Social Model of Disability. This is an important approach, which goes beyond the Equality Act 2010 and broadens the focus on disability by recognising that what makes someone disabled is not their medical condition, but the attitudes and structures of society which present barriers. This is a key distinction and the removal of societal and attitudinal barriers must form part of the public participation strategy.
- 1.48 There are many ways in which barriers, often not intentional, can present in normal council business. An example would be where there are time limits on contributions to be made at meetings. The conditions some people experience may not be in a position to put forward their views within that time frame and as a result feel frustrated and not heard. This is a simple example of a self-imposed council barrier

to participation, there will be others which could be explored further with those effected.

## **Local Authority Meetings**

1.49 Much of a council's work is undertaken through meetings both at full council and committees. There are a number of challenges councils face when determining the arrangements for these meetings including the timing of the meetings, opportunities for the public to attend and contribute and communication of the impact on communities and individuals as a result of the decisions made. While the majority of these meetings are open to the public, it is recognised that not everyone will be able to attend in person. It is therefore important that information about the items to be considered, the evidence base which will underpin discussions and the outcome is readily available to the public. The public participation strategy should be clear about the communication arrangements around all council meetings. Separate guidance about multi-location meetings has been published.

1.50 The 2021 Act requires principal councils to broadcast meetings of the full council live as they happen. This development will allow the public to follow the proceedings of the full council in real time from wherever they are, hear the contribution of their local representatives and understand the issues raised in respect of agenda items. The council is also required to make the broadcast available electronically for a reasonable period after the meeting. This should be available for at least six months following the meeting. This should not be seen as a prohibition on councils to the broadcast of other meetings of the council. This is the first step in respect of broadcasting and the Welsh Government intends to extend this requirement to a number of other council committee meetings in the future. As part of its strategy councils should explore the views of the public about which of the council's committees they consider should be broadcast. This will require councils to ensure the public are clear about the nature and scope of each of its committees and sub committees.

## **Influencing decisions**

1.51 A principal council must set out in its strategy how it will support people to express their views on decisions before and after they are taken. This could include, for example:

- Setting out arrangements for contacting a local councillor, or a relevant cabinet member or senior officer, to make representations directly – and how those representations will be responded to;
- Setting out how representations can be made at relevant meetings;
- Holding local meetings to discuss the issues with local people;

- Including mechanisms for individuals to identify issues for consideration through scrutiny (for example, through arrangements to support the public to suggest topics for scrutiny or opportunities to take part in the scrutiny process);
- Opportunities to make their views known via the council’s website or social media channels, these should include opportunities for individuals to speak with ‘real people’ where appropriate rather than simply relying on automated responses or interaction.

## **Ensuring impact**

1.52 The expected impact of participation should be integral to design, delivery and monitoring. Councils should consider impact in terms of:

- Inviting participation when thinking is still at a formative stage;
- Providing information that allows for informed consideration;
- Giving adequate time for consideration and response;
- Giving ‘real’ consideration to the results of participation before a decision is taken.
- Councils should set out how participation will influence the council’s decision making, how the executive and relevant committees will be involved and what processes will be put in place.

1.53 Transparency should also be a key feature of these processes as should feedback to those participating about what the impact of their involvement has been. Feedback processes are integral to this so that people can understand and trust that their views were considered seriously and appropriately even though the outcome may not reflect or entirely reflect what they may have hoped for.

1.54 The strategy should therefore set out how this feedback cycle will operate in practice.

## **Approval and Review**

1.55 The strategy should set out the arrangements for approval and review within the council and what the proposed review cycle will be. As noted above, it should also set out that the strategy is a living document and to that end processes for on-going review and improvement should also be set out, as well as ‘formal’ full review periods and processes. The strategy should also set out how it will be evaluated and how the council will incorporate learning from its self and panel assessments conducted under Part 6 of the 2021 Act into any resulting new or revised participation strategy.



## **2. Statutory Guidance on Petitions**

### **Status of this Guidance**

2.1 This is statutory guidance made under section 44 of the Local Government and Elections (Wales) Act 2021 (the 2021 Act).

### **Purpose of this Guidance**

2.2 This guidance is to support councils in the preparation and maintenance of petition schemes aimed at enabling communities to explore support for specific issues to inform council deliberations.

### **What the Act requires**

2.3 Section 42 of the 2021 Act requires principal councils to make and publish a petition scheme setting out how the council intends to handle and respond to petitions including electronic petitions.

2.4 The petition scheme must as a minimum set out:

- a) how a petition may be submitted to the council;
- b) how and by when the council will acknowledge receipt of a petition;
- c) the steps the council may take in response to a petition received by it;
- d) the circumstances (if any) in which the council may take no further action in response to a petition;
- e) how and by when the council will make available its response to a petition to the person who submitted the petition and to the public.

2.5 A principal council must review its petition scheme from time to time and, if the council considers it appropriate, revise the scheme.

2.6 If a principal council revises or replaces a petition scheme, it must publish the revised or new scheme.

### **Designing a petition scheme**

2.7 A petition scheme should not be considered as the sole method of receiving public views on matters. Its design and parameters should be set in the context of the council's public participation strategy and informed by the other participation pathways available to members of the public. Therefore, as part of a suite of pathways used as part of the council's wider public participation strategy, it can be a powerful tool in gauging support for specific courses of action.

- 2.8 Well designed and resourced petition systems, working in conjunction and harmony with other participation pathways can have a range of benefits for the public and councils. For example, petitions enable communities to quickly highlight the issues which are of the most concern to them to the council, they can add weight to representations made by ward councillors on their behalf and provide a focus for community discussion. In turn, councils gain valuable insight into the concerns of their communities and can then support communities in addressing these issues.
- 2.9 Petitions should not be considered as a nuisance or threat and should be considered as a good opportunity to hear the views of the public, whether in support or not of something the council may be considering or intending to do.
- 2.10 Councils should, when designing petition schemes, think about the process from the point of view of petitioners, including understanding what petitioners might think “success” will look like at different stages in the process, and how the process can be made as transparent and streamlined as possible.
- 2.11 Councils should have regard to their statutory duties in respect of equalities, Welsh language and the Well-being of Future Generations (Wales) Act 2015 when preparing their petition scheme.
- 2.12 Petition schemes should be developed not just to ensure a fair and robust process but also to provide a helpful and positive experience for those people who take the time to submit and promote petitions. This is likely to involve consideration of the following issues:
- A clear explanation of the matters about which the council will accept petitions, including the criteria for making a decision to accept or reject a petition;
  - How and where advice will be given to petitioners to enable them to engage productively with the process, including measures in place for disabled people and individuals with long term health conditions and neurodiversity;
  - A clear understanding of the different stages in the petitions scheme, with an explanation of what thresholds will be used to determine the transition from one stage to another;
  - How petitions fit in with other opportunities for the public to be involved – and signposting to other opportunities, either as complementary to a petition or instead of it, including connecting the potential petitioner with their ward councillor;
  - The correct body to consider a given petition. It is right for petitions to be heard by a variety of different bodies, although the default is likely to be full Council unless it is seen as especially useful for the petition to be heard by a committee that focuses specifically on the subject matter of the petition itself;

- Petition schemes will need to consider where petitions are considered in scrutiny committees. These committees have no power to act on petitions but could (for example) adopt petitioners' arguments as formal recommendations;
- The rights of petitioners to speak in meetings, and how this engages with wider public speaking rights, and rights to make deputations;
- How and within what timeframe the council will provide feedback to the petitioner on the success or otherwise of their petition.

2.13 Councils are encouraged to explore what would constitute good practice around the framework for petition schemes set out in this guidance. For example, what might be an appropriate signature threshold for the consideration of a petition and how and when this threshold would be kept under review. This would support a balance between local discretion based on the size of the council, the nature of the scheme and its relationship to other participation pathways in the council and consistency for the members of the public who may be engaged with multiple councils or move from one council area to another.

## **Annex 3**

# **1. Statutory Guidance on Constitutions**

### **Status of this Guidance**

- 1.1 This is statutory guidance issued under section 38 of the Local Government Act 2000. Previous guidance relating to constitutions issued under this section in 2006 is revoked.

### **Purpose of this Guidance**

- 1.2 This guidance is to support councils in the preparation and maintenance of their constitutions.

### **Developing a Constitution**

- 1.3 Under Section 37 of the Local Government Act 2000, each council is required to prepare, keep up to date and publish electronically a document known as the council's 'constitution'. This must include their proposals for the discharge of functions, standing orders and code of conduct.
- 1.4 The Welsh Ministers issued separate guidance on Modular Constitutions for Welsh councils in 2001. This has been updated by Lawyers in Local Government as changes have required and it remains a valuable resource for local authorities (insert link). The annex to this guidance contains an outline structure for a constitution but it does not form part of this statutory guidance.

### **Content of the Constitution**

- 1.5 Councils should ensure their constitution is easy to use and understand. Councils should in particular make sure parts of the constitution which deal with related issues are cross-referenced. In considering their constitution, councils should have regard to their statutory duties in relation to the Welsh language, the Well-being of Future Generations (Wales) Act 2015, equalities, including the public sector socio economic duty, and also that they are now required to publish their constitutions electronically.
- 1.6 The constitution must include:
- Such information as the Welsh Ministers may direct, this currently includes information with respect to the discharge of all the council's functions as directed

by the Local Government Act 2000 (Local Authority Constitution) (Wales) Direction 2022 made under section 25(5) (annexed to this guidance);

- A copy of the authority's standing orders;
- A copy of the authority's code of conduct for members (including co-opted members); and
- such other information as the authority considers appropriate.

1.7 The arrangements for the discharge of non-executive functions should be a statement of who or which body within the council is responsible for the discharge of non-executive functions, (as described in the Local Authorities Executive Arrangements (Functions and Responsibilities) (Wales) Regulations 2007 made under Section 13(3)(a) of the Local Government Act 2000) together with a description of the role of the full council.

1.8 There is considerable scope for local choice and diversity in the content of the constitution and the way in which it operates. Many of the matters to be included in the constitution may also be included in an authority's standing orders.

1.9 There will be other matters governing the conduct of the authority's affairs which will not be included in standing orders, executive arrangements, the arrangements for the discharge of non-executive functions, the code of conduct for members or the code of conduct for officers. Councils may, if they choose, include any of these other matters in their constitution.

1.10 For example, a council may choose to include a description of locally developed protocols governing the relationships between the executive, other councillors and officers. The code of conduct for officers should make clear that that code of conduct is incorporated into the officers' contract of employment.

1.11 Other matters councils should consider including and / or taking into account in their constitutions include:

- The need for a "preamble" (or introduction) to the constitution, setting out the important principles that underpin the constitution's contents and recognising the council's broader obligations to local democracy and local people;
- The relationship between Articles of the constitution and more detailed rules of procedure (if this is the structure that a Council chooses to use to organise its constitution);
- The way in which informal discussions between members and officers inform and influence formal decision-making at the council;
- The way the council makes decisions in partnership with other councils and other bodies, in particular through public service boards, regional partnership boards,

corporate joint committees, and any joint committee established under the Local Government Act 1972;

- How the council will appoint members to national park authorities and fire and rescue authorities and how those members will update the council on their work;
- The working arrangements and relationship with community and town councils in the council's area;
- Rules of procedure which relate to high profile issues – for example, the full council procedure rules, including the arrangements in place for the electronic broadcasting of those meetings and the archiving and retention of the broadcasts;
- Financial procedure rules;
- Details on arrangements relating to public participation in relation to duties included in sections 39 to 41 of the Local Government and Elections (Wales) Act 2021;
- The needs of equality, diversity and inclusion and the statutory duties related to these and the Welsh language. This relates not only to ensuring that constitutional documents are themselves accessible, but that rules and procedures take account of the needs of people with a wide range of needs. For example, parts of the constitution that relate to the public's right to be involved in decision-making should take account of these needs;
- Councils' duties relating to the Well-being of Future Generations (Wales) Act 2015. Councils' overall legal obligations under this Act are well understood, but it also has implications, for example, through the ways of working, for how councils make formal decisions, and how scrutiny and oversight systems operate.
- The way the council will fulfil its obligations under the UK General Data Protection Registration (UKGDPR) when dealing with personal information.

1.12 Importantly, the constitution should be drafted as a flexible document. For example, it should not be necessary to produce a revised constitution every time an ad-hoc committee or sub-committee is appointed to undertake a particular task. However, this needs to be balanced against the need for a constitution to be detailed enough so that anyone who has dealings with the council can use it to determine who is responsible for the matter with which they are concerned.

### **Availability of the Constitution**

1.13 The Act requires that copies of the constitution are published electronically and available at the council's principal office for inspection at all reasonable times and that members of the public should be able to take away copies of the constitution for a reasonable fee. It is also recommended that local authorities should make copies of the constitution available more widely, for example at all their offices, libraries, community buildings etc.

## **Review and Revisions to the Constitution**

- 1.14 The council's constitution should be kept up to date at all times. Councils should review the constitution regularly to make sure it continues to be fit for purpose, with these reviews being led by councillors, and supported by the council's monitoring officer in consultation with the head of democratic services.
- 1.15 In considering their arrangements for the ongoing review and revision of their constitution councils should consider:
- Whether the council constitution will permit the monitoring officer to make "minor" amendments and what constitutes a minor amendment, for example the updating of a reference to legislation. Full reviews and major amendments must be agreed at full Council. Councils may wish to systematise this process, by linking it more formally to the annual general meeting to ensure that the constitution is kept under regular review;
  - Arrangements for councillor "ownership" (that is, a clear sense that councillors are responsible for making sure that the constitution is of a high quality). This matter of ownership is important. Ownership must be held by full council; but detailed work can be led by a named committee. Whichever formal space is designated it is important that councillors have regular opportunities to reflect on the strength of the governance framework, of which the constitution forms a central part.
- 1.16 An individual councillor may propose additions, amendments, suspensions or withdrawals to the council's constitution, but in doing so would have to declare any interest they have in obtaining a decision of the full council.
- 1.17 All proposed changes, unless previously agreed as being 'minor' have to be debated by the full council and require a majority vote of those members voting to be accepted.
- 1.18 Any changes the council has resolved to make will come into immediate effect unless the decision specifies otherwise.
- 1.19 The published constitution should be amended within 5 working days of the making of a resolution to ensure the most up to date version of the constitution is always available.



**WELSH GOVERNMENT**

**The Local Government Act 2000 (Local Authority Constitution) (Wales) Direction 2022**

1. The Welsh Ministers, in exercise of the power given to them by sections 37(1)(a) and 106(1)(a) of the Local Government Act 2000 (“the Act”), directs each county and county borough council (“local authority”) in Wales that the document which they must prepare and keep up to date in accordance with section 37(1) of the Act and referred to in that section as their constitution must contain the information specified in the Schedule.
2. This direction shall have effect from 25th July 2022.
3. The Local Government Act 2000 (Local Authority Constitution) (Wales) Direction 2001 is revoked.

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Minister for Finance and Local Government

## **The Schedule**

### **Specified Information**

1. A summary of the constitution.
2. The roles of members and (if applicable) of the elected mayor including:
  - 2.1 their election and terms of office;
  - 2.2 the rights and duties of all members and (if applicable) of the elected Mayor, including the application of family absence for members
3. The roles of the full council including:
  - 3.1 the functions and actions which are reserved to the full council; and
  - 3.2 the different types of council meeting and the rules governing the proceedings of those meetings, including the arrangements for multi-location meetings and for their electronic broadcast where this is required on a statutory basis or undertaken voluntarily.
4. The roles of the chairperson or presiding member of the council, and their respective deputies.
5. The roles of overview and scrutiny committees including:
  - 5.1 the terms of reference of each of the committees;
  - 5.2 the general and specific roles of each of the committees;
  - 5.3 the rules governing the proceedings of the committees and
  - 5.4 the arrangements in place for the consideration of and response to their reports by the full council and/or the executive.
6. The roles of the standards committee and of any sub-committee of that committee including:
  - 6.1 the membership of the committee and any sub-committee;
  - 6.2 the roles, functions, rights and duties of the committee and any sub-committee; and

- 6.3 the rules governing the proceedings of the committee and any sub-committee.
- 6.4 the arrangements in place for the consideration of and response to their reports by the full council and/or the executive.
7. The roles of any area committees including:
  - 7.1 the membership, terms of reference and functions of the committees;  
and
  - 7.2 the rules governing the proceedings of the committees and
  - 7.3 the arrangements in place for the consideration of and response to their reports by the full council and/or the executive.
8. The roles of the governance and audit committee and of any sub- committee of that committee including:
  - 8.1 the membership of the committee and any sub-committee;
  - 8.2 the roles, functions, rights and duties of the committee and any sub-committee;  
and
  - 8.3 the rules governing the proceedings of the committee and any sub-committee  
and
  - 8.4 the arrangements in place for the consideration of and response to their reports by the full council and/or the executive.
9. The roles of the Democratic Services Committee and of any sub-committee of that committee including:
  - 9.1 the membership of the committee and any sub-committee;
  - 9.2 the roles, functions, rights and duties of the committee and any sub-committee; and
  - 9.3 the rules governing the proceedings of the committee and any sub-committee and

- 9.4 the arrangements in place for the consideration of and response to their reports by the full council and/or the executive.
10. In the case of a local authority which is operating executive arrangements as defined by section 10(1) of the Act the roles of the executive and of members of the executive including:
- 10.1 the roles, functions, rights and duties of members of the executive and assistants to the executive, including the maximum number of assistants that may be appointed;
  - 10.2 the roles, functions, rights and duties of any elected mayor and any deputy mayor;
  - 10.3 the allocation of responsibility for the exercise of social services functions including responsibility for looked after children;
  - 10.4 the process for the appointment and removal of members of the executive and assistants to the executive;
  - 10.5 the rules governing the proceedings of the executive, including the arrangements for multi-location meetings;
  - 10.6 the arrangements for determining and managing the job sharing of executive posts, including the executive leader in relation to managing, and the manner in which this will be considered when allocating seats on committees which include a seat for members of the executive, such as the governance and audit committee and the democratic services committee, to which the political balance rules apply. In the case of the executive leader, the arrangements must set out how an election for executive leader will be undertaken where one or more of the potential office holders seeking that office are seeking it on the basis of job sharing arrangements.
11. Particulars of any arrangements for the discharge of any functions by individual members, another local authority, including corporate joint committees, or for the exercise of any functions jointly with another local authority including:
- 11.1 the nature of the arrangements and the functions to which they apply;
  - 11.2 the membership of any joint committees and sub-committees;
  - 11.3 the rules governing the proceedings of any joint committees and sub-committees; and

- 11.4 details of any contracting out arrangements.
12. The roles of officers of the local authority including:
- 12.1 the management structure of the local authority;
  - 12.2 the functions of the chief executive, the monitoring officer, the head of democratic services and the chief finance officer (section 151 officer);
  - 12.3 the code of conduct for officers;
  - 12.4 the arrangements for recruitment, appointment, dismissal and disciplinary action in relation to officers;
  - 12.5 details of delegations of functions to officers; and
  - 12.6 protocols for managing relationships between officers and members.
13. Principles for efficient, transparent and accountable decision making and access to information about decision making including rules of procedure for decision making and access to information in respect of the full council, its committees and sub-committees, the executive , overview and scrutiny committees and officers.
14. The confidential reporting procedure with references to the authority's codes of conduct for members and employees respectively.
15. The rules and regulations governing finance, contractual and legal matters including:
- 15.1 audit procedures;
  - 15.2 contracts and procurement rules and procedures including authentication of documents; and
  - 15.3 the rules governing legal proceedings by and against the local authority.
16. The arrangements to fulfil the duties under sections 91, 92 and 93 of the Local Government and Elections (Wales) Act 2021 to report on the council's performance and to arrange and respond to a panel assessment.
17. The rules and procedures for review and revision of the constitution.

18. Provisions for the suspension and interpretation of the constitution and elements of it.
19. The statutory derivations of all of the provisions of the constitution (i.e. the powers and duties under which they are made).

## **2. The Constitution Guide Statutory Guidance**

### **Status of this Guidance**

2.1 This statutory guidance is issued under section 38 of the Local Government Act 2000.

### **Purpose of this Guidance**

2.2 This guidance accompanies the requirement set out in section 45 of the Local Government and Elections (Wales) Act 2021 which amends section 37 of the Local Government Act 2000. This section requires councils to publish electronically and keep up to date a guide which explains in ordinary language the content of their constitution.

### **What is the Guide?**

2.3 Councils must produce and publish a guide to their constitution. A guide to the constitution is not the same thing as a guide setting out how the council works, although there is likely to be some overlap, nor is it an annotated index of the constitution itself. Councils are likely to already hold material on their website explaining key aspects of their operation, which could be used to form this guide.

### **Consultation and matters to be taken into consideration when preparing the guide**

2.4 Preparing an effective constitution guide should form part of the council's strategy on encouraging participation in decision making by the council prepared under sections 39, 40 and 41 of the Local Government and Elections (Wales) Act 2021. Councils could speak to local people, and to voluntary organisations representing local people, to understand what it would be most helpful to put in the constitution guide.

2.5 Councils should also have regard to their statutory duties in respect of equalities, Welsh language and the Well-being of Future Generations (Wales) Act 2015 when preparing their constitution guide. Councils should involve and consult a wide range of people and groups from diverse backgrounds before publishing the final guide.

2.6 An effective constitution guide will be one that understands the different interactions that local people are likely to have with the council, and with local democratic systems, and which dwells in more detail on those interactions. It may instead bear more similarity with some of the introductory information on councils' websites describing how the council operates.

2.7 For example, a guide could provide particular detail on:

- The rights of the public to access information about the council (including the right to inspect accounts, and other formal documents);
- Rights of access to meetings, and public speaking rights;
- Arrangements for petitions.

The Welsh Local Government Association and Lawyers in Local Government have produced a model guide to the constitution which councils may find helpful as a starting point.

## **3. The Exercise of Functions by Councillors Statutory Guidance**

### **Status of this Guidance**

- 3.1 This is statutory guidance made under Section 56 of the Local Government (Wales) Measure 2011 (the Measure). Previous guidance issued on this matter is revoked.

### **Purpose of this Guidance**

- 3.2 This is statutory guidance issued in accordance with section 56(6) of the Measure to which the senior executive member of the local authority must have regard in making arrangements under section 56.
- 3.3 Powers under section 56 are optional in nature but those authorities that decide to use them may use this guidance as a means to be informed of potential opportunities it might bring in assisting councils become more responsive to local need.
- 3.4 By giving more autonomy to elected members in their local area, section 56 enhances councillors' ability to resolve issues and problems on behalf of their residents.

### **Introduction**

- 3.5 The Measure includes powers for councillors aimed at helping them tackle issues and resolve problems in their local area.
- 3.6 It makes provision in section 56 for councils to be able to make arrangements for any functions to be exercised by individual councillors to allow them to make decisions at an electoral ward level that may result in improvements in their local areas.
- 3.7 Arrangements under this section only provide for a non-executive member to exercise functions in relation to the electoral ward for which the member has been elected, or to their official membership of an outside body.
- 3.8 This guidance seeks to outline potential positive benefits from delegating functions to elected members both within their role as ward members and as the council's official representative on outside bodies. The aim is to support elected members in being the voice of their community within the council and the voice of the council in their community.

## **What the Measure says about exercise of functions by councillors**

- 3.9 Section 56 gives powers to local authorities to formally delegate powers to individual councillors to carry out any function of the authority. With regard to the range of functions that may be exercised by non-executive councillors, section 56 allows local authorities flexibility to develop arrangements which may best suit their individual preferences. This includes enabling local authorities to delegate both executive functions and other council functions to non-executive councillors.
- 3.10 Section 56(1) provides that the senior executive member of a local authority may make arrangements for a non-executive member of the authority to exercise a function of the local authority which is the responsibility of the executive. Then section 56(2) provides that a local authority may make arrangements for a non-executive member of the authority to exercise any other function of the authority.
- 3.11 However, councils will need to be mindful that section 56(3) stipulates that local authorities may only delegate functions to non-executive members –
- (i) in relation to the electoral ward for which the non-executive member is elected, or
  - (ii) in relation to the non-executive member's official membership of a body other than the local authority.

## **Purpose and objectives of section 56**

- 3.12 The intent behind the provision is to provide councils with a wider range of opportunities to make effective use of elected members' representational role, this could now also be considered in conjunction with the duties placed upon councils in sections 39 to 41 of the Local Government and Elections (Wales) Act 2021 (the 2021 Act) to encourage local people to participate in decision making.
- 3.13 It could also be a way of supporting elected member training and development. For example, councils may wish to use the provision as a means to create developmental 'on-the-job' learning initiatives for non-executive members in instances where they may be utilised as council representative on outside bodies such as local health boards, housing associations, voluntary organisations, trusts or agencies. Such 'learning by doing' would be a chance to further councillors' skills and knowledge in a given area and broaden the council's overall pool of experienced elected members.
- 3.14 For those outside bodies where more than one member is appointed, councils may wish to delegate functions in a way which empowers non-executive members on occasions where the executive member may be absent.

- 3.15 In these instances, it would be important for the council to ensure those non-executive councillors to whom functions had been delegated receive the support and developmental opportunities necessary for them to successfully fulfil their role.
- 3.16 As a means to provide the necessary transparency and accountability for delegated functions, section 57 amends section 100EA of the Local Government Act 1972 to allow the Welsh Ministers to require councils to publicly record decisions made under section 56 of the Measure. In order to give the public account of the work undertaken by councillors within their wards, councils may wish to publish delegated decisions of councillors as part of their annual review process.
- 3.17 Although section 56 gives broad powers to delegate any local authority function to an individual member, there are obviously some functions that will be more appropriate than others. It would not be appropriate to delegate powers to make planning, social care or licensing decisions. But, delegated powers could be used to allow councillors to play a more active role in a wide range of policy areas.
- 3.18 For example, functions that could be delegated may include:
- Powers to effect repairs or improvements to streets. This could include road calming measures or street lighting.
  - Powers to develop and oversee youth activities within the area of an electoral ward.

### **Factors to consider when delegating powers**

- 3.19 When considering whether or not to delegate functions to non-executive members, councils may wish to give thought to the following issues: For members
- What value can be added by delegating powers? What specific local problems will be able to be tackled as a result?
  - Would councillors need additional support such as legal advice in the discharge of delegated functions?
  - How will members be supported if their decisions are challenged, for example, by judicial review?
  - How will councillors publicly record decisions made using their new powers?
  - Integrating the learning and participation generated through the delegation in to wider initiatives and strategies including statutory ones to strengthen them.
  - How the delegations support the council in meeting statutory duties in relation to equalities, Welsh language, the Well-being of Future Generations (Wales) Act 2015 and the duty to encourage participation in the 2021 Act.

3.20 For officers, in supporting elected members discharge delegated functions, things to think about include:

- Working more closely with councillors to develop their knowledge and skills;
- Providing advice and reports to ensure delegated powers are used effectively and in accordance with duties placed upon the council, including advice on statutory duties such as those contained in the Well-being of Future Generations Act (Wales) 2015, the Welsh Language (Wales) Measure 2011 and the Equality Act 2010;
- Will members need legal advice and support to discharge the delegated functions?
- How will members be supported if their decisions are challenged, for example, by judicial review?
- How will the decisions made by councillors with delegated functions be officially recorded?
- Implementing decisions that are made under delegated powers;
- Developing processes to appropriately record decisions made by a councillor under these powers

### **Some practical considerations**

3.21 Practically speaking, most local authorities will probably wish to amend their constitutions to put in place arrangements for delegating powers to councillors. Councils may wish to utilise existing procedures used to delegate powers to cabinet members when developing frameworks for delegating functions to non-executive members. In particular, any decisions made by non-executive members using delegated functions should be subject to the same call-in procedures as relate to executive functions more generally. Further options councils may wish to adopt include:

- Establishing enabling powers in their constitution for the purpose of delegating powers to non-executive members to be used as and when needed.
- Using delegated powers to tackle specific area based issues in response to local challenges.

3.22 It is for councils to decide the extent and means by which they wish to use the powers under section 56. It is advised that councils should develop a protocol to define when and under what conditions a function will be delegated to a non-executive member. Also, that the training, development and support the councillor might require to undertake the role is considered as part of their annual training review. When making arrangements to delegate powers, councils should take into account the need to avoid the possibility of allegations of favouring councillors of a particular political persuasion. In multi-member wards, local authorities should

make the same arrangements for delegated functions including any associated budgetary arrangements to apply to each elected member or to none.

### **Multi-member Wards**

3.23 The powers in the Measure relate to individual councillors but local authorities may need to put arrangements in place to ensure that delegated powers are used jointly by all members representing a particular ward especially if those members are from different political parties.

3.24 If functions are delegated to councillors within the same ward, councils may wish to produce guidance and support aimed at ensuring decisions undertaken in wards are co-ordinated and complementary in improving outcomes for local people.

### **Links with Councillor Calls for Action (CCfA)**

3.25 Where councils have decided to take advantage of the powers under section 56, they will find that there are some close links with CCfA. Members exercising delegated powers may find that they have more opportunities to resolve issues locally without having recourse to CCfA. CCfAs on particular issues may encourage councils to use section 56 to delegate powers to members to resolve those issues locally.

## **4. Council Executives Statutory Guidance**

### **Status of this Guidance**

4.1 This guidance is statutory guidance issued under section 38 of the Local Government Act 2000. This section was amended by section 59 of the Local Government and Elections (Wales) Act 2021 to provide for Welsh Ministers to issue guidance under section 38 which ‘may among other things, include provision designed to encourage good practice in relation to equality and diversity (within the meaning of section 8(2) of the Equality Act 2006).’

### **Purpose of this Guidance**

4.2 The purpose of this guidance is to require the executive leader of a council to take into account diversity when appointing their cabinet. The aim is to support and encourage decision making in the executive which understands and reflects the diversity of the communities in the council area.

4.3 This guidance also requires council executives to take a proactive, positive and constructive approach to its interactions with scrutiny in the council.

### **Diversity in Cabinets**

4.4 When establishing their cabinet the executive leader or elected mayor must have regard to statutory duties relating to equalities and the Welsh language. This includes consideration of the protected characteristics set out in the Equalities Act 2010, including the public sector duty to have due regard to the need to reduce the inequalities of outcome resulting from socio-economic disadvantage.

4.5 The leader or mayor must consider how their appointments reflect and support the diversity of the communities in the council area and as far as possible try to reflect this diversity. This is to ensure that decision making in the executive is informed by a wide range of perspective and experiences. The Local Government and Elections (Wales) Act 2021 (the 2021 Act) provides executive leaders with opportunities to increase the diversity in their cabinet through the use of job sharing arrangements and/or the appointment of assistants to the executive.

### **Job Sharing Executive Leaders and Executive Members**

4.6 Section 58 of the 2021 Act amends the Local Government Act 2000 to require councils with executive arrangements to make provision enabling two or more councillors to share office on that executive, including the office of leader of the executive. It is envisaged, that the most likely scenario in the case of the leader of

an executive, is that two or more members would mutually make an arrangement to stand for election as executive leader on the basis of a job-sharing arrangement. The executive procedures and council procedures must provide for this.

- 4.7 In the case of executive members, it is for the executive leader to determine appointments to the executive based on the arrangements set out and agreed in the council's constitution. The constitution must set out the parameters for the operation of job-sharing arrangements in the executive. The number of executive posts (including that of executive leader) that can be filled on a job-sharing basis is limited to three by the 2000 Act. This is to ensure that in councils with a smaller number of members there are still sufficient members to provide proper scrutiny of the executive.
- 4.8 When making appointments on a job-sharing basis the executive leader should consider matters including how:
- this could increase the diversity in the executive to best reflect the diversity in the council's area;
  - job-sharing members will be supported to ensure they can maintain a reasonable work life balance;
  - those arrangements may offer opportunities for succession planning in the executive.
- 4.9 The terms of the job-sharing arrangements should be clear and agreed in advance. Job-sharing arrangements should not be used solely as a means of increasing the number of executive members or to create roles for job-sharing members which equate to workloads greater than if the cabinet position was held by an individual member.
- 4.10 In the case of both job-sharing executive leaders and job-sharing executive members, the two or more members in the job-sharing arrangement are to be treated as one member when attending a meeting in their capacity as a member of the executive for voting purposes and for the purposes of determining whether a meeting is quorate.
- 4.11 Should two or more of the members in a job-sharing arrangement attend a meeting in their capacity as executive members they should both be recorded as having attended the meeting and they both may speak at the meeting. However, should the meeting require a vote to be cast, they must decide between them in advance who will cast their vote and inform the chair of the meeting. There is then a careful balance to be struck between pre-determination and proper preparation for the meeting amongst the job-sharers which should include an exploration on their position, what questions they may have on the matter and what further information they might wish to see, in the same way that it would be expected they would

manage all aspects of their job-sharing arrangements to ensure continuity and consistency of approach between themselves.

- 4.12 If one member of a job-sharing arrangement attends a meeting in their capacity as a member of the executive and the meeting requires a vote then the attending member must cast their vote taking into account preparatory discussions with their job-sharing partners.
- 4.13 Where a member of a job-sharing arrangement casts a vote at a meeting they have attended which is subsequently identified as contrary to any preparatory discussions between job-sharing partners, unless the contradiction is attributable debate and discussion in the meeting, then that vote may be treated as invalid for the purpose of decision making, as the vote is allocated to the job-sharing arrangement and not to the individual member of that arrangement who has attended the meeting.
- 4.14 It will be for each council to determine the appropriate course of action at that point, based on the specific circumstances, to ensure integrity of decision making is maintained. Councils should explain the significance of this aspect of job-sharing clearly to any members participating in executive job-sharing arrangements in advance and it should form part of induction and training for executive members.
- 4.15 As noted above, councils and job-sharing members should recognise that the successful operation of job-sharing arrangements will require the establishment of effective working arrangements from the outset and high levels of trust between the job-sharing members. The working arrangements should include how disputes between job-sharers will be resolved.
- 4.16 Councils will need to consider how they communicate the position in respect of job -share arrangements to external organisations to which job-sharing members are appointed in their capacity as an executive member.
- 4.17 Councils must consider the implications for political balance requirements for those committees which are subject to political balance requirements and on which a job-sharing member of the executive may sit i.e. the Governance and Audit Committee and the Democratic Services Committee. This will require consideration where a job-sharing arrangement consists of members from more than one political group or a political group or groups and an unaffiliated member or members (where an unaffiliated member is a member not registered with the proper officer as being a member of a political group for the purposes of sections 15 to 17 of the Local Government and Housing Act 1989).

4.18 The treatment of job-sharing partners as if they were one member for the purposes of voting and quorums for meetings they attend as executive members does not extend to meetings they attend in their roles as members of the council.

### **Assistants to the Executive**

4.19 Section 57 of the 2021 Act amends the 2000 Act to provide for the appointment of assistants to the executive. The aim is to support diversity by enabling members who might not be in a position to take up a full time executive role because of personal or other circumstances to have the opportunity to learn and develop. Whilst not members of the executive, assistants can attend and speak at executive meetings or at committees of the executive and could bring valuable diversity and insight into discussions.

4.20 The Council's constitution, which must be agreed by the full council, and its executive arrangements must include provision as to the number of assistants to the executive that may be appointed, their term of office and their responsibilities. Again there should be a clear purpose to the appointment of assistants to the executive, and these appointments should not be used solely as a means of increasing the number of members able to make a contribution to the running of the executive.

4.21 The 2000 Act provides that neither the chair nor the vice-chair of the council nor the presiding member, or deputy presiding member can be appointed as assistants to the executive.

4.22 Whilst assistants to the executive are not members of the executive, they are treated as if they are members of the executive for the purposes of the allocation of seats on scrutiny committees where neither members of the executive nor assistants to the executive can be members. Likewise, the committees which are able to include one member of the executive, the Governance and Audit Committee, the Democratic Services Committee and the Standards Committee, can only have a member of the executive OR an assistant to the executive as part of their membership (Schedule 6, to the Local Government and Elections (Wales) Act 2021 and The Local Government and Elections (Wales) Act 2021 Consequential Amendments (Job-Sharing and Assistants to the Executive) 2022).

### **Scrutiny and Call-ins**

4.23 Cabinets should recognise the importance of effective scrutiny for the good governance of the council overall and reflect this in their constitutions. They should respond promptly and constructively to requests from scrutiny for information, attendance at meetings and other reasonable requests.

- 4.24 Executives should note that Section 65 of the Local Government and Elections (Wales) Act 2021 amended section 22(10) of the Local Government Act 2000 which provides Welsh Ministers with a power to make regulations which include provision for or in connection with requiring prescribed information about prescribed decisions made in connection with the discharge of functions which are the responsibility of a local authority executive to be made available to members of the public or members of the authority to include an overview and scrutiny committee of the authority or a sub-committee of such a committee. This is intended to convey the seriousness which Welsh Ministers attach to effective co-operation and information sharing between the executive and scrutiny and its place at the heart of the good and effective governance of the council.
- 4.25 Cabinets should set the tone for organisational commitment to effective scrutiny by ensuring there is parity of esteem between scrutiny and the executive and encouraging scrutiny to operate in a cross party constructive manner.
- 4.26 Cabinets should respond promptly and respectfully to recommendations from scrutiny explaining whether the recommendation will be accepted or rejected, the reasons for these decisions and what actions will be taken. Cabinets should publish their response electronically and the response should be available to the public except for matters exempt from publication.
- 4.27 Cabinets should be open to the need for appropriate use of call-ins and respond in a prompt and constructive manner to such requests. Cabinets should support the design of effective and proportionate call in rules which do not make call-ins overly difficult or impossible.

## 5. Political Assistants Non Statutory Guidance

### Status of the guidance

- 5.1 This is non-statutory guidance on the appointment of political assistants to political groups.

### Purpose of this guidance

- 5.2 The purpose of this guidance is to explain provisions in the Local Government and Housing Act 1989 relating to the appointment of political assistants and to encourage councils to be open and transparent regarding the role and activities of the political assistants they employ.

### Political Assistants

- 5.3 Local authority political assistants are local government employees who undertake research and provide administrative support for the main political groups within an authority.
- 5.4 The existence of these posts allows a separation of professional officer and political roles and can enable the provision of advice to councillors that local authority officers are prevented from providing.
- 5.5 [Part I of the Local Government and Housing Act 1989](#) sets out the framework regulating the appointment and conduct of political assistants.
- 5.6 Under section 2 of the 1989 Act, the post of political assistant in a local authority is politically restricted. This means that, like other politically restricted posts, the post-holder cannot stand for election, act as an election agent or sub-agent, be an officer of a political party, manage a party or branch of a party, and cannot canvass on behalf of a political party or candidate for election.
- 5.7 Political assistants are, however, permitted to speak to the public with the intention of affecting support for a political party, but their actions must not give the impression that they are acting as the representative of the political party.
- 5.8 Political assistants are also able to publish or cause to be published written work or other material intended to affect public support for a political party, but they must not give the impression that the publication is authorised by the political party.
- 5.9 These rules were adopted to address concerns about political impartiality, conflict of interest and the use of taxpayer funds for political purposes in councils. Further

details on the restrictions in place can be found in the [Local Government Officers \(Political Restrictions\) Regulations 1990](#).

- 5.10 The restrictions take the form of terms and conditions that are deemed to be incorporated into those officers' terms of appointment and conditions of employment. The restrictions applicable to all holders of politically restricted posts are set out in [Part I of the Schedule](#) to the Regulations. [Part II of Schedule](#) provides for further terms and conditions for political assistants.

## **Appointments**

- 5.11 Under [section 9 of the Local Government and Housing Act 1989](#), a local authority may appoint up to 3 assistants for political groups subject to stringent conditions and safeguards.
- 5.12 The 3 largest political groups in each authority qualify for a political assistant if the membership of the group consists of at least 10% of the membership of the authority. The exception is where only one political group accounts for at least 10% of the membership, in which case the next biggest group also qualifies.
- 5.13 No appointments can be made until posts have been established for all qualifying groups, however, only one post can be appointed to a political party.
- 5.14 Under [section 7 of the Local Government and Housing Act 1989](#) employees of a local authority must be appointed on merit. Section 9 provides an exception to this principle. The appointment of each political assistant is down to the political group each post (political assistant) is to represent. The appointee can take account of the candidate's political activities during the selection process, although the posts are 'politically restricted' (as described above).

## **Remuneration and contracts**

- 5.15 It is for the authority to determine the salary payable, however, it is expected that local authorities show restraint and allow pay increases in a proportionate manner in line with wider local government pay.

[The Local Government \(Assistants for Political Groups\) \(Remuneration\) \(Wales\) \(Amendment\) Order 2019 \(legislation.gov.uk\)](#) sets the maximum level of potential pay that political assistants can be paid.

- 5.16 Under [section 9\(4\)\(b\) of the Local Government and Housing Act 1989](#) the maximum salary set by regulations is a full-time equivalent figure so it is not possible to pay

an annual salary at an hourly rate for part-time hours if this would breach the maximum amount stipulated if the political assistant were to work full-time.

5.17 The contract of employment must terminate at or before the annual council meeting following the first elections after the person was appointed (or the first annual council meeting after the person has been in post for 3 years if the council is elected by thirds). However, this does not prevent the post holder being reappointed for a further term. The local authority cannot delegate any functions to an assistant, and no other authority officer can be required to work under the direction of an assistant (other than in respect of secretarial or clerical services).

### **Openness and transparency**

5.18 Each local authority is under a duty to draw-up and regularly update a list of posts which are politically restricted and political assistants are expected to comply with the officer code of conduct of their authority.

5.19 Local authorities should consider publishing the details below as best practice:

- the total number of political assistants it employs
- the political group each assistant serves
- the number of councillors in each political group
- the number of hours per week for which each political group's assistant is employed

## **6. Arrangements for Securing Effective Overview and Scrutiny Statutory Guidance**

### **Status of this Guidance**

6.1 This guidance is statutory guidance issued under section 38 of the Local Government Act 2000. It replaces previous guidance issued in 2012 which is revoked.

### **Purpose of this Guidance**

6.2 The purpose of this guidance is to ensure councils have effective scrutiny arrangements in place and that they have procedures to regularly review and seek to improve the effectiveness of those arrangements.

### **Policy Intent**

6.3 Overview and scrutiny is an essential element of the political and general governance of the council. The council and executive culture should be open to and supportive of scrutiny and scrutiny should be provided with staff and resources to enable it to effectively undertake its functions, including holding the council executive to account.

6.4 It is recognised that difficult decisions will always have to be made in relation to council finances but the overriding principle should be that investment in scrutiny also contributes to better services for local people by providing another channel for people to be involved in the decisions that affect them and driving a culture of learning and improvement across the council as whole. This should be considered in light of sections 39 to 41 of the Local Government and Elections Act 2021 (the 2021 Act) in terms of the duty to encourage local people to participate on decision making and prepare a strategy on encouraging participation and the duty of a principal council to keep its performance under review and consult local people as part of that duty as required by sections 89 and 90 of the 2021 Act.

6.5 Effective scrutiny of collaborative arrangements with other councils such as joint committees and corporate joint committees and cross public service partnership arrangements - such as public service boards is essential in ensuring that those arrangements are democratically accountable to local people.

### **Processes and Relationships**

6.6 To achieve the policy intent scrutiny should not sit aside from other processes which form part of the council's governance system. Arrangements for overview and

scrutiny should be set out clearly in the council's constitution and constitution guide required by section 37 of the Local Government Act 2000.

- 6.7 Scrutiny should be an integral part of the council's self-assessment under Part 6 of the Local Government and Elections (Wales) Act 2021 (the 2021 Act) and should also be considered when the council arranges its panel assessment.
- 6.8 The role scrutiny plays in involving local people to participate in decision making under section 39 of the 2021 Act should be set out in the strategy the council must prepare and consult upon in sections 40 and 41.
- 6.9 Scrutiny chairs should have good working relationships with each other and regularly discuss approaches to scrutiny and learn from the work of other scrutiny committees within the council and in other councils. Scrutiny chairs should also establish good working relationships with the chair of the governance and audit committee and the standards committee, as well as the chair or presiding member of the council and the chairs of other committees. They should also foster good working relationships with internal and external auditors and with regulators.
- 6.10 The effectiveness of scrutiny is in part dependent on mutual respect between those charged with scrutiny of the executive and the executive itself. Chairs should therefore develop constructive working relationships with the council's executive. The council's executive are required to reciprocate this approach to constructive working under statutory guidance also issued under section 38 of the Local Government Act 2000.

### **Effective Working**

- 6.11 All scrutiny committees should adopt the most effective ways of working to ensure that they are able to fulfil their role. This may include:
  - The consideration of matters as part of a multi-item committee agenda. Here, councils should ensure that the number of items on a single agenda does not make it difficult for members to consider the matter in question in depth;
  - The consideration of matters at a single-item committee agenda. This provides more flexibility around approach, involving panels of witnesses, and potentially some public participation. One off "challenge panels" can be a proportionate and effective way to dig into a topic.
  - Task and finish groups. "Task and finish" groups are small, informal groups of members, commissioned by a committee to investigate a topic and to report back.

Task and finish groups are not subject to rules about the meeting of committees, because they are informal bodies.

- The convening of a short task and finish group. A group that meets only a couple of times over a few weeks will be able to tackle a narrow, defined subject. It is likely to be possible for a review to be commissioned, and then to report back to the next meeting of the same committee;
- The convening of a longer task and finish group. The “traditional” task and finish group model is for a body that meets multiple times over several month, building a comprehensive evidence base.

6.12 The commissioning of task and finish groups, where it happens, should involve the agreement of a scope, setting out the terms of reference of the group and the timescale for carrying out its work.

6.13 Task and finish groups can meet either in private, or in public. When they have completed their work, task and finish groups should submit a report and recommendations to the committee that has commissioned them. This should also include some record of the proceedings of the group (including information on where, and from whom, evidence has been gathered), particularly if the group has met in private. The committee can then decide to adopt the recommendations, submitting them to the council’s executive or another body for a response.

6.14 All ways of working demand careful planning. Councils should, in programming work, consider in some detail the scope of a topic and how it should be considered so as to maximise its impact. In some cases this may involve councillors meetings beforehand to discuss questioning strategy, or otherwise meeting to plan scrutiny work. Resourcing arrangements for scrutiny should take into account the necessity for officer support for this planning activity.

## **Resourcing and Information**

6.15 To be effective scrutiny must be resourced and have access to officers dedicated to supporting scrutiny committees to plan, manage and execute their work programmes. Officers not directly supporting scrutiny should be mindful that their employment is with the council and not the executive, they should therefore provide scrutiny committees with support and information in a constructive and timely manner to assist their work. This may sometimes present challenges for officers but members of scrutiny committees and members of the executive should also be mindful of these conflicts and these matters should be considered when protocols are developed governing the relationships between officers and members for inclusion in the council’s constitution.

6.16 Section 65 of the Local Government and Elections (Wales) Act 2021 amended section 22(10) of the Local Government Act 2000 which provides Welsh Ministers with a power to make regulations which include provision for or in connection with requiring prescribed information about prescribed decisions made in connection with the discharge of functions which are the responsibility of a local authority executive to be made available to members of the public or members of the authority to include an overview and scrutiny committee of the authority or a sub-committee of such a committee. This is intended to convey the seriousness which Welsh Ministers attach to effective co-operation and information sharing between the executive and scrutiny and its place at the heart of the good and effective governance of the council.

### **Reviewing Scrutiny**

6.17 Effective scrutiny is itself open to regular review and arrangements should be put in place for this to take place as part of the council's self-assessment processes. Peer review is also a good way to review effectiveness and learn from the experience of other scrutineers.

## **7. Appointment of Persons to Chair Overview and Scrutiny Committees Statutory Guidance**

### **Status of this Guidance**

7.1 This is statutory guidance made under Section 75 of the Local Government (Wales) Measure 2011 (the Measure). Previous guidance issued under this section in relation to the appointment of persons to chair overview and scrutiny committees in 2012 is revoked.

### **Purpose of this guidance**

7.2 To provide guidance to councils on the appointment of persons to chair overview and scrutiny committees.

### **Introduction**

7.3 Part 6 of the Measure deals with overview and scrutiny, including, from sections 66 to 75, provisions relating to the appointment of chairs of overview and scrutiny committees (scrutiny committees). The policy intent is to ensure overview and scrutiny is not dominated by the political groups on the executive of the council, and can act independently.

### **What the Measure requires**

7.4 Local authorities must include within their standing orders arrangements for the appointment of the chairs of their scrutiny committees which are in line with the following;

**(i) Council with no political groups declared**

Each scrutiny committee elects its own chair.

**(ii) Council with only one declared political group**

Each scrutiny committee elects its own chair.

**(ii) Council has two political groups but only one scrutiny committee**

The scrutiny committee elects its own chair. If, however, one of the groups (A) is represented in the council executive but the other (B) is not, that other group (B) must be left to appoint the chair.

### **(iii) Council with two or more political groups and multiple scrutiny committees**

If there is more than one political group on the executive they can only be allocated as many chairs as is proportionate to their combined share of the council's total membership. This should be rounded down if it does not equate a whole number. It is then for the political groups on the executive to decide on the distribution of the executive's allocation of chairs between themselves.

The rest of the scrutiny chairs are the "property" of those groups not represented in the executive. If there is only one such group, they are entitled to all the remaining chairs. If there is more than one non-executive group, each gets a share of the chairs in proportion to their membership, rounding down to the nearest whole number, including zero. For example:

Number of members of council = 60  
Number in executive groups(s) = 26  
Number of scrutiny chairs = 5  
Number for executive groups = 2  
Number of chairs remaining = 3  
Number of non-executive group(s) = 3  
Size of non-executive group C = 16  
Size of non-executive group D = 6  
Size of non-executive group E = 2  
Entitlement to scrutiny chairs of C = 2  
Entitlement of scrutiny chairs of D = 1  
Entitlement of scrutiny chairs of E = 0

Should there be any unallocated chairs following this calculation, then the chair is to be appointed by the members of that committee(s).

If all political groups in an authority are represented in the executive and the rounding down process results in unallocated chairs, any such chairs are also to be appointed by the members of those committees.

### **(iv) Council where political group refuses to take allocation of chairs**

Where a political group declines to take its allotment of chairs, none of those chairs can be allocated to an executive group. The vacant positions are to be offered to the other political groups in proportion to their size. In the example above, if A refused their 2 chairs, the opposition groups would be entitled to appoint the chairs of 5 committees and the allocations should be C = 3, D = 1, E = 1. If C refused their 2 chairs, the other groups would be entitled to one each. If D refused its single chair

that would go to E, as group C has already had its allocation rounded up to give it 2.

In a council where there is only one non-executive group and this group is declining its chairs, or in a council where there are other non-executive groups but each of them declines to take the vacant chairs, it is left to each scrutiny committee to elect its own chair from any of its membership.

**(v) Political make-up of the executive changes**

If a political group leaves or joins the executive, the exercise of allocation of chairs begins again in accord with the provisions described above.

**(vi) Filling casual vacancies**

Should a scrutiny chair be vacated for some reason, the chair should normally be allocated to the same political group as the outgoing chair. If, however, the chair has been elected by the committee itself, then the committee should appoint the new chair.

**(vii) Council wishes to operate different allocation system**

A council may decide to abandon the processes outlined above, but only if it wishes to bring about an allocation of scrutiny chairs which is more favourable to the non-executive groups than would be produced by the prescribed procedures. For this to happen, a majority within each political group must support the alternative proposal, and the proposal must be approved by a resolution of the full council, with a majority of members of every political group voting in favour of the resolution.

**(viii) Appointment of vice-chairs**

The allocation of any committee vice-chairs is a matter for each authority to decide upon.

Welsh Ministers may make regulations in relation to the allocation of chairs and also issue directions. At the time of issuing this guidance there are no plans to do either.

**Guidance**

7.5 The provisions of sections 66 onwards provide little room for manoeuvre. Councils' standing orders should set a timetable for the appointment processes to be completed.

- 7.6 Where a situation arises where the allocation procedures outlined in this guidance appear inadequate to deal with a particular situation, councils should first consult their legal advisers for an opinion. Welsh Government officials may be contacted for advice by those legal advisers if necessary.
- 7.7 The spirit of the legislation is clear. It reflects a policy position in favour of scrutiny being, as far as possible, independent from the leadership of a council.

## **8. Co-opted Members of Overview and Scrutiny Committees Statutory Guidance**

### **Status of this Guidance**

8.1 This is statutory guidance made under Section 76 of the Local Government (Wales) Measure 2011 (the Measure). It relates to the co-option of persons that are not members of local authorities onto their overview and scrutiny committees in accordance with section 21 of the Local Government Act 2000. Previous guidance issued in 2012 on this matter is revoked.

### **Purpose of this Guidance**

8.2 The purpose of this guidance is to provide a framework for councils to consider when appointing co-opted members to overview and scrutiny committees. In particular it requires councils to have regard to how co-option could bring a wide range of different skills and increased diversity to overview and scrutiny committees.

### **Policy Intent**

8.3 Co-option of members to overview and scrutiny committees who are not councillors is a way to build a more diverse membership. It can provide a way to support broader public participation in local democracy and should form part of the council's strategy on encouraging participation as required by section 40 of the Local Government and Elections (Wales) Act 2021.

8.4 In making arrangements for co-option, councils might:

- Think about the needs of under-represented groups, and the barriers that might otherwise exist for such groups to engage with the business of the authority;
- Consider co-option alongside other methods of assuring public participation such as inviting people with valuable perspectives and experience to engage as witnesses or technical advisers as co-option may not always be the best way to garner the views and experience of some people.

8.5 The evidence from overview and scrutiny committees in Wales is that the contribution of co-opted members on committees can significantly strengthen their effectiveness. Whilst co-option is only one method by which the views of stakeholders can help shape the work of scrutiny committees, it is considered by the Welsh Government to be an important tool in achieving 'buy-in' from representative groups and individuals that may otherwise be disengaged from local decision making processes. Co-option can serve to strengthen Members' community leadership role through the provision of alternative perspectives and the facilitation of stronger area-based networks and contacts.

- 8.6 The Welsh Government considers that including a broader range of specialists, community representatives and service-users in scrutiny exercises is advantageous, and that proactively engaging co-optees in scrutiny activity, enables elected members to send powerful messages about involving people and partners through their own structures and practice.
- 8.7 In recognition of the rich impact multi-perspective scrutiny can have in driving improvement, panels have been established to scrutinise the work of Public Service Boards whose membership span sectoral, organisational and geographic boundaries. To date these panels have included co-optees from voluntary organisations, local health boards, community health councils, police and crime panels, Natural Resources Wales, and local business forums who have been working alongside elected members to improve local services.
- 8.8 Some of the important benefits accruing from these arrangements have been the cross-transference of learning and the breaking down of organisational fragmentation in addressing 'wicked issues'. These practices have indicated that partnership working and co-option may be seen as processes that increase local democratic input and integration across different parts of the public sector.

### **Deciding when to co-opt**

- 8.9 Any appointment of co-optees should be informed by scrutiny forward work plans and what outcomes elected members are seeking to achieve as the result of planned scrutiny exercises. Councils are advised to think carefully about the use of co-option as a means to develop partner relations or improved public connections that may add significant value to the work of scrutiny committees.
- 8.10 In all instances where co-option is being considered, care should be taken to ensure that co-option is in fact the best way for some individuals or groups of interest to be involved in the work of scrutiny committees. Groups of interest should include protected characteristics equality groups in recognition of the value these perspectives can add to the work of local authority scrutiny committees. In some circumstances it may be more appropriate for stakeholders to act as 'expert advisors' of a task and finish group or to be included as an invitee at scrutiny committee meetings. For example, some vulnerable groups or service users may feel intimidated by the formality of full committee meetings and may wish to submit written or oral evidence in support of a scrutiny review. The nature of stakeholder involvement in scrutiny work will need to be established on a case by case basis.
- 8.11 Also, organisations who are financially supported by partner agencies may feel reluctant to challenge the performance of funding providers in a public arena. Steps

should be taken to minimise the risk of co-optees experiencing conflicts of interest as a result of being involved in scrutiny work.

### **Identifying potential co-opted members**

8.12 Councils may wish to think about employing several strategies to identify co-optees that are likely to enrich scrutiny activity.

For example, councils may wish to:

- approach town and community councils in the area to nominate representatives for co-option on to committees;
- advertise in the local press;
- utilise social networking sites;
- approach wider 'sectoral organisations' such as the voluntary sector or local business forums for co-optee nomination;
- invite former co-optees with specific interest or expertise, to attend scrutiny meetings in an 'advisory capacity' when there are relevant items on the agenda.

8.13 Councils may also wish to develop an application form for groups or individuals to complete to express an interest in becoming a co-optee. Such forms could be made available from the scrutiny web pages of local authorities or advertised in the local press. Again, consideration should be given to protected characteristic equality groups.

### **Recruiting co-opted members**

8.14 Councils will need to ensure that recruitment processes in relation to co-optees, whether this be on an individual or representational basis, are inclusive and fair so as to encourage people with a wide diversity of knowledge, skills and experience to participate in scrutiny activity.

8.15 To assist committees in recruiting co-optees it is suggested that councils consider developing outline role descriptions for co-opted members. These would help to clarify the expectations of both committees and potential co-opted members. Some councils have also found it helpful when selecting a co-opted member when more than one application has been received to identify competencies against which an application for a position is evaluated.

8.16 However, as a general rule it is suggested that committees should ensure co-opted members are able to:

- (i) represent the interests of the population that receive services provided by or commissioned by public service providers;

And/or,

- (ii) contribute expert knowledge or skills that will lead to a rigorous and objective scrutiny of the issues under review;

And/or,

- (iii) live or work in the county or county borough area.

8.17 Councils should have a protocol to govern co-option to scrutiny committees, to provide consistency and transparency on these issues. The protocol should form part of scrutiny's rules of procedure.

### **Scrutiny Committees: Number of co-opted members**

8.18 In recognition of the democratic mandate of councillors it is recommended that the number of co-opted members on a scrutiny committee should not exceed a third of the total membership of the committee.

8.19 It is suggested however, that approaches to co-option be informed by an appreciation of what the co-optee will be able to contribute to the issue under consideration rather than a narrow focus on numbers of co-opted members.

8.20 Such an approach will help committees decide whether or not the participation of co-opted members remains relevant to its work priorities or whether there is need to refresh co-opted membership from time to time.

### **Sub-Committees: number of co-opted members**

8.21 In recognition of the varied ways in which sub-committees operate, it is recommended that no limit be placed on the number of co-opted members that may participate in a sub-committee.

8.22 However, it is considered that it should be the case that co-opted members should not comprise the whole membership of the sub-committee.

### **Types of appointment for co-opted Members**

8.23 As previously highlighted, scrutiny committees have a wide range of options available to them with regard to appointing co-opted members.

In their recruitment processes councils may specify that the appointment of a co-opted member is to be:

- i) For the life of the committee;
- ii) Until such time as it decides to terminate the appointment; or
- iii) For the purpose of a particular review or performance monitoring exercise.

8.24 It is advised that successful applicants be required to sign a statement of appointment that will include terms governing appropriate conduct. Specifically, on accepting office, co-opted members should be required to declare that they will observe the Code of Conduct for Members in the particular council's constitution which covers, among other matters, treating others with respect, not disclosing confidential information and disclosing relevant personal interests.

8.25 To ensure that co-opted members are provided with the information and skills necessary to fully participate in scrutiny activity, it is recommended that councils take steps to provide co-optees with appropriate induction training in addition to other training and developmental opportunities.

### **Voting rights**

8.26 The Measure does not afford co-opted members of scrutiny committees with any additional voting rights. The existing voting rights of co-opted members are to be found within the provisions of paragraph 8 to Schedule 1 to the Local Government Act 2000, the Parent Governor Representatives and Church Representatives (Wales) Regulations 2001 and the Crime and Disorder (Overview and Scrutiny) Regulations 2009.

## **9. ‘Call in’ Arrangements in relation to Overview and Scrutiny Committees Statutory Guidance**

### **Status of this guidance**

9.1 This guidance is statutory guidance issued under section 38 of the Local Government Act 2000.

### **Purpose of this guidance**

9.2 The purpose of this guidance is to set out matters local authorities should take in to account when making their arrangements under section 21 of the Local Government Act 2000 in relation to the powers of overview and scrutiny committees to review and scrutinise decisions made, including those not yet implemented by the executive and make recommendations for those decisions to be reconsidered. The process commonly referred to as ‘call in’.

### **Policy Intent**

9.3 The call in process is an important part of the political governance of the council. The rules of procedure a council sets out in relation to call in should strike a balance between enabling open and transparent overview and scrutiny of decisions and preventing deliberate filibustering of the council’s operation. For these reasons, councils should ensure that clear and consistent call-in rules form a part of their constitutions.

### **Guidance**

9.4 Call-ins should not be regarded as a regular tool for scrutiny and they should not by default become a means of compensating for deficiencies elsewhere in scrutiny procedures. The more constructive approach is to put in place procedures which facilitate more, proportionate, pre-decision scrutiny.

Call-in rules should make reference to:

- The kinds of decision which will be subject to call-in. These will usually be key decisions, set out in the executive’s forward plan;
- The number of councillors who need to request a call-in for it to be valid;
- Any other limits to call-in requests – for example, a need for a decision to cover two or more electoral divisions in order to be valid;
- Process requirements, for example, the need to fill in a form stating reasons for the call-in, which would then be published. In general councils should ensure that

call-in requests do not need to satisfy too many bureaucratic requirements, and that they ensure that call-ins can happen where politicians recognise a pressing need for a decision to be reconsidered;

- The timescale, after a decision is made, within which a valid call-in request might be made and accepted;
- The arrangements for organising a meeting of an overview and scrutiny committee once a valid call-in request is received;
- Arrangements for how such a meeting is carried out. This may include a right for a councillor or councillors requesting a call-in to set out their reasons for doing so;
- The recommendations that the scrutiny committee can make. These might be to take no further action (allowing the decision to be immediately implemented) or to make recommendations to the executive that the decision should be amended, or withdrawn entirely;
- Arrangements for the executive to provide a response to the scrutiny committee.

9.5 Call-in rules should not be designed to make call-ins essentially impossible (for example, by requiring that two members of a scrutiny committee request a call-in where political balance requires that only one member of each committee is a member of the opposition). For this reason, councils should review their call-in rules following elections to ensure that they still allow for the proportionate use of this power.

## **10. Councillor Calls for Action Statutory Guidance**

### **Status of this Guidance**

10.1 This is statutory guidance made under Section 21A(3) of the Local Government Act 2000 (the 2000 Act). Previous guidance on this matter issued in 2012 is revoked.

### **Purpose of this Guidance**

10.2 This is statutory guidance issued under section 21A(3) of the 2000 Act (as amended by section 63 of the Local Government (Wales) Measure 2011 (the 2011 Measure)), to which a member of an authority must have regard in considering whether to make a call for action. Councillor calls for action (CCfAs) enable local councillors and their electors to ensure a response from their council leadership to issues of local importance. CCfAs should be regarded as one of a series of tools elected members have at their disposal to resolve local issues and make a positive difference in their community.

### **Introduction**

10.3 Section 63 of the 2011 Measure amends Section 21A of the Local Government Act 2000 to enable any councillor of a principal council in Wales to refer a matter to an overview and scrutiny committee which relates to the discharge of any of the functions of the council or which affects all or part of the electoral area which the councillor represents.

10.4 This provision pre-dates the Well-being of Future Generations (Wales) Act 2015, but reflects its principles that outcomes such as improved health, educational attainment and employment should be co-produced through the joint efforts of service users, service providers and others. CCfAs can offer a valuable form of community intelligence which can contribute to developing and delivering a shared vision for the locality. The CCfA should be understood as a means of “last resort” in a broad sense, with issues being raised at a scrutiny committee after other avenues have been explored. As such, the process should make it easier for issues that would benefit from scrutiny consideration to be identified, and for those issues which are best dealt with through other means to be signposted accordingly. It might be helpful to identify research support for members considering a CCfA to either ensure it is the appropriate course of action or to build a well evidenced case to enable effective scrutiny and consideration.

10.5 Therefore, for CCfA to act effectively as an improvement tool, discussions about how to put CCfA procedures in place should focus less on process and more on outcomes. Since it is likely that the types of issues that would make for a CCfA would

be cross-cutting and multi-agency in nature, thought should be given to the types of things that may constitute a satisfactory ‘resolution’ for councillors and by extension, local communities.

### **Purpose and objectives of the CCfA**

10.6 The CCfA provisions should be seen in the wider context of strengthening local democracy and widening participation in local decision making. They should be considered in the context of duties placed on the council in sections 39 to 41 of the Local Government and Elections (Wales) Act 2021 relating to encouraging local people to participate in decision making.

10.7 As such, CCfA should not be regarded solely as a ‘scrutiny’ process. Instead Councils should consider it within the context of making improvements more generally to a wider range of council functions aimed at supporting participatory democratic activity. This includes support for Members in their constituency roles as well as activities such as complaints, and consultation processes that capture public experience and opinion.

10.8 This guidance is not about providing authorities with a prescriptive ‘instruction manual’ as to how councils must set about putting CCfAs in practice. Instead, it provides a series of considerations and analysis to those authorities that recognise the value of identifying and acting upon the local knowledge that elected members can channel and who wish to use CCfA.

### **Legislative context**

10.9 The purpose is to ensure that executive arrangements by a local authority enable any member of the council to refer to an overview and scrutiny committee a “local government matter” which falls within the committee’s remit. A referral in this way will ensure that the matter is included in the agenda and discussed at the committee. However, in making such a referral the member must have regard to any guidance issued by the Welsh Ministers.

10.10 If the overview and scrutiny committee receives a referral from a member who is not on the committee, it can choose to do any of the things that it might normally do with a new item. These include: reviewing and scrutinising decisions and actions, and making reports and recommendations.

In deciding whether to do any of these things, the committee may “have regard to” two particular points:

(i) anything that the member may have already done in relation to the matter, particularly if they have been empowered to do so by the council under section 56 of the 2011 Measure,

And;

(ii) representations made by the elected member as to why the committee should take the matter up. If the committee decides not to take the matter up, it must explain the reasons why to the member. However, if the committee chooses to conduct some work on the issue, it must make sure that the elected member has a copy of any reports or recommendations that it makes in relation to it.

10.11 Subsection (12) of section 21A of the 2000 Act defines 'local government matter' in relation to a member of a local authority in Wales as a matter which is not an excluded matter and which –

- a) relates to the discharge of any function of the authority, or
- b) affects all or part of the electoral area for which the member is elected or any person who lives or works in that area.

10.12 Subsection (13) of section 21A of the 2000 Act defines what is meant by an excluded matter in subsection (12). It is described as any matter which is-

- a) a local crime and disorder matter within the meaning of section 19 of the Police and Justice Act 2006 (local authority scrutiny of crime and disorder matters), or
- b) a matter of any description specified in an order made by the Welsh Ministers for the purposes of this section.

10.13 It can be seen that subsection (12)(b) allows for a broad range of issues that may be referred to an overview and scrutiny committee by a local authority member. As such, local authorities will need to ensure that implementation of CCfA is sufficiently responsive and wide ranging.

10.14 For example, it may be the case that a CCfA identifies a cross-cutting issue such as access to local dental services which could necessitate the scrutiny committee considering engagement with public service partners. In these instances CCfA can be used to develop closer links between councils and external partners.

10.15 When deciding upon whether or not to address an issue raised by CCfA at a scrutiny committee meeting, committees may find it helpful to use criteria for referral.

10.16 In considering how to respond to a CCfA, committees have a wide range of options available to them. They could, for example, call members and officers to attend a

meeting and answer questions, instigate a review of policy, or, depending on the nature of the CCfA, make reports or recommendations to the decision making body of the relevant partner(s). Committees should think about the levels of formality that would be most appropriate in addressing issues in a way that helps facilitate positive outcomes.

10.17 Regarding how best to make use of the resources available to them, scrutiny committees should also assess how the problem may fit with existing programmes of work. CCfAs that can be considered as a complementary part of a scrutiny committee's forward work programme should similarly themed or related topics already have been included. In these instances, taking into account the steps councillors will already have taken in trying to resolve a community issue CCfAs can be considered as providing an evidence base to inform the committee's next steps.

### **Defining 'resolution'**

10.18 The concept of resolution is arguably the issue at the centre of CCfA, i.e. ensuring that CCfA actually helps councillors to resolve intractable issues. The purpose of CCfA is to provide resolution where other techniques might not be able to do so, so the first step is to try to see if the issue has been or can be resolved through other means. This should be central to a council's procedures for raising and addressing CCfAs. As highlighted earlier, the deployment of a CCfA should be regarded as a last resort after other avenues have proved unsatisfactory. Consequently, the successful operation of CCfA will be reliant on the effectiveness of existing mechanisms in place aimed at supporting councillors in their constituency role.

10.19 Due to the potential cross-cutting and intractable nature of the social problems likely to be raised under CCfA, it is probable that there be no 'quick fix' of the issue under discussion. Therefore, in order for CCfA to make any headway in addressing local issues, it is advisable that councils should seek to make processes sufficiently adjustable so not to limit openness or exploratory discussion.

10.20 In practical terms it may help if local authority procedures specified that the councillor raising an issue articulates what they would regard as a successful outcome or resolution at the beginning of the CCfA process. Such outcomes could be revised by an appropriate scrutiny committee following initial enquiry. These initial objectives could act as the indicator of success against which the progress of a CCfA could be considered.

10.21 Before a CCfA is escalated to a full scrutiny committee meeting, councillors should first consider the following options in resolving a community issue:

- Informal discussions with officers or other councillors;

- Informal discussions with partner representatives;
- Referral of matters to other 'scrutiny bodies' or internal audit committees;
- Formal discussions with officers and councillors;
- Formal letters to Executive Members;
- Asking questions at Full Council;
- Submitting a motion to Full Council;
- Organising public meetings;
- Use of petitions;
- Making a complaint;
- Freedom of Information requests;
- Communication with local AMs or MPs;
- Use of social media or email based campaigns.

10.22 In order for the CCfA to be effective in identifying and addressing public concern, the local authority's leadership together with senior officers within partner agencies will need to support the following principles:

- Appreciation of the role scrutiny can play as a driver of service improvement and its responsiveness to the needs of people in the area;
- Willingness to address unsatisfactory performance and a recognition of the need to resolve problems through discussion;
- Transparency in decision making processes and inclusion of the scrutiny process at all stages;
- Understanding, and a willingness to bolster the multi-faceted 'Community Leadership' role undertaken by members in their communities;
- Appreciation of the active part that service users and the wider community play in achieving improved outcomes.

10.23 Each issue attempted to be raised as a CCfA will have to be considered on its own merits. But it must be demonstrable that each issue raised as a CCfA has been given due and appropriate consideration even if it is then determined it does not meet the criteria the council has set.

10.24 Scrutiny committees often examine issues which are highly political in nature and this should not necessarily be viewed as a negative thing. Elected members can use the power of political debate to give proper consideration and analysis to controversial issues and in many cases a councillor's local knowledge can result in significant investigatory impact in helping identify constructive ways forward.

## **Working with partners**

- 10.25 Success in dealing with CCfA issues that involve partners will usually involve those partners having been a part of the initial discussions leading to CCfA being established in a local authority. If partners have been part of those discussions it follows that it is more likely that they will be willing to work with scrutiny committees to resolve local issues.
- 10.26 Good management of partnership relations by scrutiny committees can be beneficial for both partners and elected members. Using CCfA, Scrutiny can play an important role in linking partners up across the spectrum of local policy making. Partnership scrutiny can assist integration as well as ensuring local needs and aspirations are represented in decision making processes.

## **Links to community safety issues**

- 10.27 The Police and Justice Act 2006 (the 2006 Act) provides for a CCfA mechanism to deal with community safety and crime and disorder matters. The 2006 Act requires that the designated Crime and Disorder Committee consider all crime and disorder matters including community safety CCfAs. However, it may be the case that a cross-cutting issue such as substance misuse which draws upon a wide range of agencies is raised as a CCfA and it is unclear which committee is best placed to consider it.
- 10.28 In these instances, councils will need to bear in mind that the most important consideration is for the issue to be discussed in its entirety rather than adopt a rigid structural approach which further fragments enquiry. It may be the case that scrutiny chairs adopt a pragmatic approach about which committee should address a CCfA which has both crime and disorder and other subject elements. For example, it might be the case that scrutiny committees invite additional scrutiny chairs to meetings where CCfAs are being considered as linked to their relevant areas of expertise.

## **Links with section 56 of the 2011 Measure (exercise of functions by councillors)**

- 10.29 It might be that where councils have chosen to take advantage of the power to delegate functions under section 56, there are close links with CCfA. It could be that members exercising delegated powers will have more opportunities to resolve issues locally without having recourse to CCfA. CCfAs on particular issues may encourage councils to use section 56 to delegate powers to members to resolve those issues locally, further strengthening the council's responsiveness in improving local services.

# **11. Overview and Scrutiny Committees - Taking into account the views of the public**

## **Status of this guidance**

11.1 This is statutory guidance issued under section 62(4) and (5) of the Local Government (Wales) Measure 2011 (the Measure). A local authority and an overview and scrutiny committee must have regard to this guidance in complying with their obligations under section 62 'Taking into account the views of the public'. Previous guidance on this matter issued in 2012 is revoked.

## **Purpose of this guidance**

11.2 The guidance is intended to provide practical advice to local authorities and overview and scrutiny committees as to how to comply with the requirements set out in section 62 of the Measure. This guidance relates to all overview and scrutiny committees and their sub-Committees, and to any joint overview and scrutiny committees and sub-Committees of joint overview and scrutiny committees (referred to in the legislation as "relevant overview and scrutiny committees").

## **Background**

11.3 Effective scrutiny is integral to helping people feel they are able to influence what goes on in their locality. Scrutiny has an important role in stimulating connections between different individuals and groups, and channelling community intelligence into the improvement processes of the council and its partners. In this respect, the scrutiny function can be regarded as helping to both build and represent democratic capacity. Before this can happen however, people need to know about their options to make their views known when they want to.

11.4 Engaging the public more deeply in scrutiny activity may be regarded as a hall-mark of healthy democracy. Better communication about local decision making processes and greater representative participation will help ensure more direct experiences of community life inform strategic thinking and operational practice. It is also an important element of the council being able to demonstrate it is complying with the duty in section 39 of the Local Government and Elections (Wales) Act 2021 (the 2021 Act) to encourage local people to participate in decision making. The arrangements for taking into account the views of the public in the scrutiny process should be set out in the strategy on encouraging participation required by section 40 of the 2021 Act.

11.5 Section 62 of the Local Government (Wales) Measure 2011 ("the Measure") places a requirement on local authorities to make arrangements that enable all persons

who live or work in the area to bring to the attention of the relevant overview and scrutiny committees their views on any matter under consideration by the committee.

11.6 Furthermore, section 62 provides that an overview and scrutiny committee must take into account any views brought to its attention in accordance with arrangements under this section.

### **Raising public awareness about scrutiny**

11.7 To enable the public to effectively engage with overview and scrutiny committees, the Welsh Government considers people should first be informed about their council's scrutiny function and programmes of planned work.

11.8 As such, overview and scrutiny committees are expected to make strong efforts to raise public awareness about their role and function, including how people and communities can help shape and contribute to the delivery of scrutiny committee forward work programmes (FWP). This should also be included and publicised in the council's strategy on encouraging participation required by section 40 of the 2021 Act.

11.9 Several local authorities have already developed good quality websites which inform members of the public about the way in which decisions are made by a local authority and how people may engage in the work of overview and scrutiny committees. This should also form part of the guide to the constitution required to be published electronically and kept up to date under section 37 of the Local Government Act 2000.

11.10 There should be clear reference to overview and scrutiny on the council's website with easy links to meeting schedules and documentation required by Part VA of the Local Government Act 1972. Local authorities should consider the list below which sets out some of the additional information that could be included on their scrutiny webpages:

- An accessible guide to the local authority's decision making processes
- An accessible guide to the local authority's scrutiny function
- overview and scrutiny committee FWPs
- Copies of the annual report of overview and scrutiny committees
- A list of criteria as to what would make a good scrutiny item

- Forms by which members of the public can identify issues for scrutiny
- Forms by which members of the public can put themselves forward to offer comments upon any item included for discussion on a relevant overview and scrutiny committee's FWP.
- Forms by which members of the public may nominate themselves to attend an overview and scrutiny committee to provide evidence, information, comment or views in relation to any topic being considered by such a committee. This will include directions as to how a member of the public may submit views related to Call-Ins.
- Forms by which members of the public may nominate themselves to participate as a co-opted member of an overview and scrutiny committee.
- Details of Chairs and support staff of overview and scrutiny committees and how they may be contacted.

## **Public Engagement**

11.11 The Welsh Government considers public engagement in scrutiny is vital in improving the design and delivery of local services from a citizen-perspective. Input from a range of stakeholders can assist in understanding the complexities that often characterise social problems and scrutiny committees can play an important role in gathering necessary intelligence.

11.12 In formulating their arrangements for taking in to account the views of the public councils must have regard to their statutory duties in relation to equalities, including the public sector socio-economic duty and the Welsh language. Arrangements must facilitate and support the ability for people and communities from all backgrounds and protected characteristics to be able to engage constructively and easily with scrutiny.

11.13 It is recommended that local authorities develop internal mechanisms to better enable members of the public engage in scrutiny activity. Such mechanisms may include the following:

- Request that an item be placed on an agenda for consideration by an overview and scrutiny committee (providing this is of immediate relevance to a topic included on its FWP);
- Submit evidence (oral or written) to a planned or ongoing scrutiny review or investigation;

- Participate as a co-opted Member;
- Submit evidence (oral or written) relating to a Call-In of an Executive decision.

11.14 Arrangements may take the form of public speaking arrangements in some cases, or developing reports summarising written submissions in others. It is recognised that safeguards may need to be built into processes to protect against committees being lobbied in potentially vexatious ways. Overview and scrutiny committees may still refuse public requests to include particular items on their agendas but in doing so should produce a clear rationale to account for their decision.

11.15 This rationale could link to criteria that committees will have developed in formulating their overview and scrutiny committees' FWPs. Committees should explain why they may refuse to consider a public request for scrutiny or to exclude particular information from their investigative work.

11.16 In managing the engagement process it may help a local authority to differentiate between public contributions to scrutiny which are unsolicited, such as a councillor call for action or an external request for an item to be placed on an agenda, and those which have been actively sought by an overview and scrutiny committee in support of a planned review or investigation.

11.17 In either case, any such arrangements made by local authorities should recognise the distinct timescales that direct different forms of scrutiny activity in order that public contributions can influence committee work programmes in an appropriate and timely manner.

11.18 It is recommended that arrangements are made to give careful consideration to ensuring the credibility and applicability of public contributions to the scrutiny process. This will ensure that the work of the relevant overview and scrutiny committees is informed by accurate and relevant evidence.

11.19 In order to manage the differing ways in which members of the public may engage with the work of scrutiny it is recommended that a series of protocols be developed to assist in the consistent application of practices. The aim of the protocols will be to manage public expectations in terms of setting out how any information submitted to relevant overview and scrutiny committees will be used and detailing how and when feedback will be provided. It is recommended that local authorities develop protocols to cover the following:

- Public speaking arrangements at Scrutiny Committee / Joint Overview and Scrutiny Committees (JOSC) meetings (to include Call-In)
- Public involvement in Sub-Committee and / or Task & Finish Group Meetings
- Managing a request for scrutiny (including petitions)

- Dealing with requests for public co-option

### **Publication of forward work programmes**

11.20 The timely publication and regular updating of forward work programmes of overview and scrutiny committees is essential in facilitating meaningful engagement from the public in scrutiny. This should again be included in the council's strategy on encouraging participation in decision making published under section 40 of the 2021 Act.

11.21 It is expected that scrutiny committees publish details of their annual FWP on the council's webpages in a clearly signposted section of the website dedicated to scrutiny.

11.22 To encourage greater collaboration between local authorities in the undertaking of joint scrutiny, it is recommended that overview and scrutiny committees FWPs be published near the start of the municipal year. This will allow such committees to better co-ordinate planned activity with relevant councils and other public sector agencies.

11.23 In addition, in order to stimulate interest within existing community networks and representative groups, relevant overview and scrutiny committees should consider sending copies of their FWP to the following:

- local voluntary sector organisations,
- Police and Crime Panels,
- Fire and Rescue Authorities,
- Youth Councils,
- National Parks
- Town and Community Councils.

11.24 It is recommended that this take place at the start of the FWP period and make clear that the FWPs of overview and scrutiny committees are flexible and may change according to local priorities. In addition, local authorities may wish to consider containing information in the FWP about how members of the public may assist in developing and delivering overview and scrutiny committees' FWPs.

### **Public Engagement and Call-In**

11.25 In respect of decisions of a council's executive which have been called-in the local authority may wish to develop public speaking arrangements specifically for these occasions.

11.26 Where the subject matter under consideration is not confidential or exempt, such arrangements could recognise the time-limited nature of call-ins by giving the Chair discretion to allow public speakers to provide information and also respond to information presented during the course of discussion. The Chair may be given discretion to allow for multiple representations to be made at a Call-In meeting to allow for different public perspectives to inform the Committee's deliberations.

11.27 The Chair could also have the discretion to stop a speaker at any time in proceedings if in their view a speaker is making comments that are, or appear to be, defamatory, vexatious, discriminatory or offensive.

### **Engaging with the Third Sector**

11.28 The third sector in Wales has a wealth of specialist expertise and frontline experience in a wide range of areas and can provide means of entry for often disenfranchised people into local decision making.

11.29 For that reason the Welsh Government considers the voluntary sector has an important role to play in providing input to local government overview and scrutiny. Councils should develop protocols with County Voluntary Councils as an integral part of their arrangements in complying with section 62 of the Measure. These should include consideration of co-option, regular meetings between scrutiny chairs and voluntary sector representatives and use of voluntary sector networks as a means to inform and engage people of all ages and backgrounds in the work of scrutiny.

### **Taking the public's views into account**

11.30 An overview and scrutiny committee must take into account any views brought to its attention. In practice this will mean developing appropriate methods by which a member of the public may engage with the scrutiny process as considered above and pro-actively managing the overview and scrutiny committee's interface with written and oral submissions. Authorities will need to have in place methods to deal with requests for scrutiny and / or public oral or written submissions which are vexatious, discriminatory, inappropriate or unreasonable.

11.31 In the event a member of the public requests an issue for scrutiny, then it is recommended a report detailing their submission is considered at the next relevant overview and scrutiny committee meeting. Good practice would also suggest that the person who submitted the issue is invited to attend a meeting to present their views to elected members in person. However, attendance at formal overview and scrutiny committees may not be an attractive or appropriate proposition for some

people and so arrangements could be made to ensure their views are nevertheless presented for consideration.

11.32 Regardless of whether or not an overview and scrutiny committee decides to further investigate a public request for scrutiny, it is recommended that the committee provide full feedback as to their decision to the person who submitted the original request, together with a rationale for the course of action adopted.

11.33 On those occasions where an overview and scrutiny committee receives a number of written submissions from the public in relation to a single topic under consideration, then it is recommended a summary report be presented to the relevant committees at the first appropriate opportunity.

## **12. Joint Overview and Scrutiny Committees Statutory Guidance**

### **Status of this Guidance**

12.1 This is statutory guidance under section 58(4) of the Local Government (Wales) Measure 2011 (the Measure). A local authority and a joint overview & scrutiny committee must have regard to this guidance in exercising or deciding any function conferred upon it. Previous guidance in relation to joint overview and scrutiny committees issued under this section in 2013 is revoked.

### **Purpose of this Guidance**

12.2 The purpose of this guidance is set out the key matters councils must take into consideration when establishing and operating joint overview and scrutiny committees (JOSCs).

### **Policy Intent**

12.3 The aim of section 58 of the Measure is to enable joint scrutiny of collaborative arrangements, such as corporate joint committees, and strengthen scrutiny arrangements through the promotion of collaboration and the sharing of scrutiny expertise. Section 66 of the Local Government and Elections (Wales) Act 2021 amends section 58 to enable Welsh Ministers to also prescribe the circumstances when two or more principal councils must form a joint scrutiny committee.

12.4 Enabling local authorities to establish JOSCs is intended to make it easier to scrutinise the delivery of providers whose services cover more than one county, or to examine issues which cut across geographical boundaries. The provision for joint scrutiny expands the options currently available to councils in undertaking wider public service scrutiny, and provides for a more flexible way of working to secure improved outcomes. In addition, joint scrutiny can facilitate opportunities to share learning and scrutiny capacity across local authorities. The harnessing of 'collective intelligence' through JOSCs is intended to lead to more effective forms of governance, and higher standards of democratic accountability.

### **What are the benefits of Joint Scrutiny? For Scrutineers**

12.5 Where joint scrutiny exercises have taken place in Wales, participants have reported a number of benefits in having gained insight into, and knowledge from, other councils' scrutiny arrangements.

12.6 For example, it was found that councillors have been able to view issues from a wider perspective, leading to a more thorough exploration of the topics under consideration. Furthermore, the presence of different scrutiny chairs and support from alternative scrutiny officers has provided opportunities for cross-transference of learning and exchanges of good practice. Experiences of joint scrutiny have been found to stimulate members and officers to critically review and enhance their 'home' council's internal methods and ways of working, ultimately leading to a higher standard of scrutiny.

### **Benefits for Partners**

12.7 From a partnership perspective, the benefits of a joint scrutiny approach are in bringing a fresh eye to developments at all stages of the decision-making process. JOSCs have the ability to bring forward new sources of information that decision-makers may not have considered in the development of plans, policies and strategies.

12.8 Non-executive members have a wealth of local intelligence and are well-placed to evaluate whether partnership priorities and methods of delivery are meaningful to local communities. Many councillors are linked in to a range of social networks and community groups and are able to feed views into decision making processes. Furthermore, JOSCs can help reduce duplication of accountability and reporting mechanisms by adopting a co-ordinated approach to the issue under enquiry.

### **Selecting the right issue for Joint Overview & Scrutiny**

12.9 The effectiveness of a JOSC will be dependent on the reasons underpinning its establishment and the issue it intends to address. To secure the commitment and sustained interest of the principal councils involved, it follows that the topic chosen as the focus of a JOSC should be of relevance to all participants. The identification of a suitable topic for joint scrutiny will be dependent on effective forward work programme planning that seeks to consider issues of wider public interest, as well as those topics specific to a particular geographical area. Members and officers will need to be pro-active in exploring opportunities for joint scrutiny, checking to see whether there is compatibility in the forward work programmes of neighbouring or relevant authorities. Networking via regional and national scrutiny events, and the publication of forward work programmes will allow scrutiny practitioners to be more informed in this respect.

12.10 Some instances where a joint committee might be appropriate include:

- On-going monitoring of a joint service delivery mechanism;
- On-going review of a joint statutory partnership or other collaborative arrangement such as a corporate joint committee;

- Investigating a topic that may require a regional response (for example, waste management or sustainable development);
- Sharing scrutiny resources to investigate a similar topic of high interest or high importance to more than one authority (although not necessarily requiring a joint / multi-authority response).

### **Criteria for establishing a JOSC**

12.11 In deciding whether or not to establish a JOSC, the following questions should be considered:

1. Does the topic involve the work of a strategic partner or partnership body whose services cover more than one local authority area? For example, a JOSC may wish to focus upon the work of a transport provider, third sector organisation or a relevant social enterprise whose services cross authority boundaries.
2. Does the issue or service affect residents across more than one county area or concern a particular population's needs? A JOSC may wish to consider thematic topics such as climate change, fuel poverty, grass-fires or road safety; or it may wish to consider services connected to particular groups of interest such as young adults with physical disabilities, teenage mothers or vulnerable older people.
3. What form of JOSC could reasonably be resourced? Undertaking effective joint scrutiny is dependent on participating councils engaging in the building of relationships, and putting in place systems of working and administration. In order that JOSCs can provide significant added value, care must be taken to ensure that its objectives are proportionate to its resources.

### **The importance of scoping and project management**

12.12 Outline scoping should be undertaken to help determine whether or not to establish a JOSC. In identifying which partnership projects to progress and determining an appropriate methodology, practitioners should think carefully about whether examining a topic will result in added value or enhancement for each participant. In order to determine the likely success of joint work, it is strongly recommended that a project management approach be adopted to help ensure the objectives of joint scrutiny activity are delivered.

12.13 An informal feasibility study should be undertaken by likely participants in order that members and officers more specifically define areas of mutual interest, the type of scrutiny role intended to be undertaken, and the level of resource that could reasonably be dedicated to support a JOSC's effective functioning. Preliminary work

should also identify the likely risks associated with the scrutiny topic, and how it is intended that these be effectively managed.

## **Roles for Joint Overview & Scrutiny Committees**

12.14 Local authorities can use JOSCs in a flexible way to suit their needs. For example, councils have the option to establish JOSCs on an ad hoc basis which may be more appropriate for forms of pre-decision scrutiny or consultation exercises; or councils may decide to establish 'standing' JOSCs which may be more useful in monitoring services or decisions over the medium to long term.

## **Powers of Joint Overview & Scrutiny Committees**

12.15 The 2011 Measure enables Welsh Ministers to make regulations which will provide for JOSCs to have equivalent powers to other overview and scrutiny committees, as set out in existing legislation, and includes reviewing and scrutinising decisions of the Council's executive which have not yet been implemented ('call-in'). These regulations can be found here: [The Local Authorities \(Joint Overview and Scrutiny Committees\) \(Wales\) Regulations 2013 \(legislation.gov.uk\)](#)

12.16 JOSCs may make reports and recommendations about any matter, other than crime and disorder matters which are covered by separate legislation and guidance under sections 19 and 20 of the Police and Justice Act 2006. This does not preclude councils from working together on crime and disorder issues. As encouraged by the Guidance for the Scrutiny of Crime and Disorder Matters (Wales) 2010, councils should make efforts to co-ordinate their forward work programmes to avoid duplication and help ensure scrutiny activities are complementary where appropriate.

12.17 A JOSC is only able to exercise functions in relation to matters which are identified by the appointing authorities. It is therefore important that the local authorities participating in the joint committee are clear from the outset about its roles, responsibilities and terms of reference.

12.18 Under section 58(3)(b) JOSCs also have the option of establishing sub-committees in the same way as single authority overview & scrutiny committees. It is important to note that any sub-committee would discharge only those functions conferred on them by the JOSC.

12.19 This provision will enable JOSCs to operate in a more streamlined and flexible manner in achieving the aims and objectives of the 'parent' JOSC.

12.20 In practice, the reporting arrangements for JOSCs will be informed by the reasons underpinning the committee's establishment and the outcomes intended to be achieved. An important factor for JOSCs to consider when determining reporting arrangements is the need to develop constructive working relationships with the executive groups of service providers who are subject to scrutiny. Consequently, it is suggested that the chairs of JOSCs should meet regularly with an appropriate executive representative to discuss priorities, approaches and planned areas of work.

### **Joint Overview & Scrutiny Committees and Call-In**

12.21 With regard to call-in, JOSCs should be able to recommend that an executive decision made by one of the participating councils, made but not yet implemented, be reconsidered by the person(s) that made it or arrange for that decision to be exercised by the relevant Council.

12.22 However, in order to safeguard against potential abuse, councils should consider developing procedures where an executive decision of one of the participating councils of a JOSC may only be called-in by the JOSC if it is supported by an equal proportion of the participating Councils.

12.23 Whilst the above approach has been suggested to help ensure the integrity of the call-in function as it relates to JOSCs, this is ultimately a matter for councils to determine as part of their constitutional arrangements. In support of the development of such arrangements it is suggested that the number of members required to initiate a Call-In should, as a minimum, be set at half the total membership of the JOSC.

12.24 To illustrate, a worked example is set out in the following fictional scenario.

Councils A, B and C wish to work together to jointly commission services. A Joint Committee is subsequently established which is comprised of the executive members of each Council. A JOSC is also established to provide governance arrangements. The membership of the JOSC is comprised of non-executive Members from the three Councils.

A decision is subsequently made but not implemented by the executives of councils A, B and C. However, non-executive members from Council A consider that the decision made by the three executives may disadvantage Council A's local communities. Council A therefore wishes to call-in the decisions made by the three respective Councils.

In this instance, the JOSC could not call-in a decision made by the executive of Councils B or C unless the call-in procedure was supported by an equal number of members from Councils A, B and C.

The number of members able to call-in an executive decision of one of the participating Councils should be half of the JOSC's entire membership. That half must include equal numbers from each participating council. In the above example, should the total membership of the JOSC be twelve (four members from each Authority) then a call-in could only be made by two members from each Authority which would give six.

In the event that a JOSC would wish to call-in an executive decision made by Councils B and C, then it is advisable that each participating council undertake each call-in separately. That is not to say that two call-in processes could not run in parallel, only to recognise that any re-examination of an executive decision would have to take place on an individual basis within each participating council.

### **Appointing a Joint Committee**

12.25 In establishing a JOSC which is additional to a council's existing scrutiny committee(s), a report setting out its role, responsibilities, terms of reference and intended outcomes to be generated by the joint exercise should be considered by each of the participating authorities appropriate scrutiny committees (or sub-committees) before being endorsed by full council.

12.26 The appropriate scrutiny committees (or sub-committees) would be those whose terms of reference are most closely aligned to the issue intended to be considered by means of a JOSC. This would help to ensure that the non-executive members of each local authority are able to participate in the decision to establish a joint committee and to ensure that a JOSC would add value and would not duplicate existing work programmes.

12.27 With regard to the remit of JOSCs it should be remembered that existing legislation relating to sections 19 and 20 of the Police and Justice Act 2006, excludes any matter which could be considered by a Crime and Disorder Committee from the work programmes of all other scrutiny committees, sub-committees and JOSCs.

12.28 Local authorities will need to give careful consideration to who they appoint to sit on JOSCs. It might be helpful in some instances to appoint members who already sit on the scrutiny committee whose terms of reference most closely match the issue to be scrutinised or the terms of reference for the proposed JOSC. However, in wishing to draw on the expertise and knowledge base of a wider pool of non-executive members this might not be the most appropriate course of action, and it

will be for local authorities to decide which members should be appointed to which committee.

12.29 In order to ensure JOSCs represent fairly the interests of each local authority, an equal number of committee seats must be allocated to each of the participating councils. JOSCs are not required to be politically balanced themselves but each participating council should aim to ensure that the membership of the JOSC it puts forward reflects, as far as possible, the political balance in the council.

12.30 The representation from an authority may include co-opted members from that authority who are either statutory or who have been accorded voting rights under the Crime and Disorder (Overview & Scrutiny) Regulations 2009.

12.31 The JOSCs may also decide to co-opt members who would be in addition to the allocations from each council. With regard to co-option as it relates to a JOSC, the following conditions may help committees determine their approach to co-option:

(i) Where the parent council/committee has appointed co-opted members to sit on the JOSC, the number of co-opted members should not exceed the number of elected members that have been identified by the parent council/committee to sit on the JOSC.

(ii) The JOSC should have the ability to appoint co-opted members if there are none contained within the body of the committee's membership.

12.32 With regard to the size of JOSCs, good practice suggests that the maximum number of seats should be set at no more than 16 for effective functioning. However, this is ultimately a matter for local authorities to decide as it is dependent on the issue intended to be considered.

### **Chairing a Joint Overview & Scrutiny Committee**

12.33 The chair of a JOSC must be elected from the membership of the JOSC, and the election of the chair should take place at the first meeting of the Committee. JOSCs that are established on a long-term basis may decide to rotate chairs annually, or at some other interval, in order for each participating authority to have equal status, and to ensure that opportunities for member development are provided.

12.34 Where joint scrutiny exercises have taken place in Wales, it was found helpful to alternate the chairs amongst the participating local authorities. As such, councils may wish to give thought to allocating vice-chairs (if thought appropriate) to the members of those authorities who are next scheduled to hold the position of chair.

This would allow for a measure of continuity within joint arrangements and broaden the experience of participating members.

### **Officer Support for JOSCs**

- 12.35 Where a JOSC is established, it is suggested participating councils should share the costs associated with the undertaking of joint scrutiny exercises. This should cover arrangements for officer support and research, as well as administrative support and provision of meeting venues.
- 12.36 Each council may wish to offer different types of scrutiny officer support in respect of resourcing JOSCs. For example, some councils may wish to offer administrative support, and others research and advisory expertise. Consideration should be given to how the JOSC could most effectively achieve its scrutiny objectives and how the standard of scrutiny could be raised including through the collective learning of each authority.
- 12.37 In recognition that officer support for scrutiny varies across local authorities, it is likely that the scrutiny support officers of participating councils will need to liaise regularly to co-ordinate and project manage the work of JOSCs, and consider how to make best use of available resources. When deciding joint support arrangements, factors to consider include the scrutiny capacity available and how well the expertise and skill sets of officers' link to the topic(s) identified for joint scrutiny.
- 12.38 Regular meetings may help to overcome any difficulties in aligning different cultures, methodologies and supporting mechanisms for scrutiny and will help facilitate transfer of skills and learning. Participating scrutiny officers and chairs should nominate a JOSC officer co-ordinator from amongst themselves to ensure a clear point of contact available for those engaged in joint activity.
- 12.39 It is recommended that those supporting JOSCs put in place opportunities for reflection at key stages (for example, at mid-term points) within the life cycle of scrutiny reviews. This would help ensure that participating authorities are satisfied with the support arrangements and are finding them of benefit in meeting the objectives of the JOSC. Scrutiny support arrangements may include rotating meeting venues of JOSCs among the local authorities represented on the joint committee. However, it may also be the case that the committee chooses to meet at the authority which is geographically most central to minimise travel times for those involved.

## **Forward Planning**

- 12.40 In order to function effectively, JOSCs should formulate a forward plan to identify what issues the JOSC intends to focus upon during the course of the year or duration for which it is established.
- 12.41 The forward plan should provide a clear rationale as to the purpose of considering a particular topic, and to the methods by which it will be investigated. Attempts should be made to develop an outcome-focused forward plan rather than one which is process-orientated.
- 12.42 As JOSCs may be either ad hoc or standing, care will need to be taken to ensure that its forward plan corresponds with the committee's original purpose. For example, in the instance where several authorities may wish to form a JOSC to investigate a cross-cutting issue such as substance misuse, its forward plan should serve to act as the investigation's project plan since the investigation should have a clearly-defined start and finish.
- 12.43 Where a JOSC may have been formed to consider the work of a strategic partnership, its forward plan should be driven by evidence of community need and a sound understanding of the partnership's priorities, risks and financial pressures. In addition, the forward plans of JOSCs should be agreed in consultation with partners where possible.
- 12.44 JOSCs must also have regard to guidance relating to section 62 of the Measure which places a requirement on local authorities to engage with the public. The JOSC publishing its forward plan as soon as is reasonably possible in order that interested groups and individuals are able to provide comment and offer their views is integral to complying with this duty.

## **Appointing a sub-committee of a JOSC**

- 12.45 JOSCs are able to appoint sub-committees. This provision extends the range of options available to a JOSC in being able to effectively investigate and make recommendations for improvement as they relate to issues of public interest or concern.
- 12.46 As is the case with sub-committees appointed by single authority scrutiny committees, sub-committees of a JOSC can only exercise the functions conferred upon it by the 'parent' JOSC. In the interests of fairness and effective working, a sub-committee of a JOSC should, where possible, consist of equal numbers of representatives from each participating authority.

## Ways of Working

**The following section is not statutory guidance but has been included as a way of working which JOSCs may wish to consider**

### Task and Finish Groups

- 12.47 Where elected members have been involved in task and finish groups of single authority scrutiny committees, they have reported a number of benefits from working in smaller, more structured teams. For example, members with differing levels of scrutiny experience and subject knowledge are able to gain confidence and motivation by working collaboratively with more experienced councillors and co-opted members. Similarly, task and finish group working can develop positive peer relations as a result of a members working collectively towards a common goal.
- 12.48 In the event that a JOSC may wish to establish a task and finish group to consider a particular issue in more depth, it is suggested that JOSCs limit the membership of a task and finish group to include any co-opted members the JOSC may wish to appoint.
- 12.49 Depending on the nature of issue under consideration, JOSC task and finish group investigations can either be 'light-touch' where recommendations can be identified at a relatively early stage and strictly time-limited, or a very intensive investigation involving a range of 'Expert Witnesses', site visits and the commissioning of supporting research as is currently the practice for the majority of overview and scrutiny committees.
- 12.50 It is often the case that task and finish groups have significant resource implications and for this reason it is suggested that a JOSC think carefully about the number of task and finish groups that can effectively be run and supported at any one time.
- 12.51 As a means of ensuring that a task and finish group of a JOSC fulfils its objectives, it is recommended that a project management approach be adopted. This should include developing a project brief for the task and finish group's work, a project plan and the production of highlight reports to the parent JOSC to ensure it is kept informed of the investigation's progress.

## **13. Democratic Services Committees Statutory Guidance**

### **Status of this Guidance**

13.1 This statutory guidance for Democratic Services Committees made under Sections 8 (1A) and 16 of the Local Government (Wales) Measure 2011 (the Measure). Previous guidance issued on this matter in 2012 is revoked.

### **Purpose of this guidance**

13.2 This guidance is provided to assist principal councils in the effective running of their democratic services committees.

### **Introduction**

13.3 The Measure contains provisions related to the strengthening of local democracy including the requirement for principal councils to have a democratic services committee. The purpose of the committee is to ensure those councillors outside the executive leadership have the support and resources to fulfil their duties and play a full role in the operation of the local authority.

13.4 This is critical to good governance and enabling the council to demonstrate it is effectively supporting and resourcing scrutiny as part of its duties in sections 89 and 90 of the Local Government and Elections (Wales) Act 2021 (the 2021 Act) relating to keeping performance under review and consulting local people on performance. It is also critical to enable both scrutiny and elected members in their representational role to engage with the public thus contributing to meeting the duties set out in sections 39 to 41 of the 2021 Act in relation to encouraging local people to participate in decision making and participation strategies.

### **Head of Democratic Services**

13.5 Each county and county borough council is required to designate one of their officers as “Head of Democratic Services” (HDS) and provide that officer with sufficient support to do their job (section 8(1) of the Measure). Section 8(1A) enables the Welsh Ministers to issue statutory guidance to councils about the exercise of their function in relation to the provision of staff, accommodation and other resources which are, in the council’s opinion, sufficient to support the HDS in discharging their functions.

13.6 The person designated as HDS must be designated by the democratic services committee (section 11(1)(a) and must not be the council’s chief executive or chief finance officer, section 8(4) as amended by section 161 of the 2021 Act which removed the prohibition on a council designating the same officer monitoring officer and head of democratic services. The same section of the 2021 Act amends section

43(2) of the Localism Act 2011 to include the head of democratic services in the definition of 'chief officer' for the purposes of pay policy statements.

13.7 The post of HDS is a politically restricted post within the meaning of the Local Government and Housing Act 1989 (section 21) and the designated officer is defined as a chief officer for the purposes of the Local Authorities (Standing Orders) (Wales) Regulations 2006 as amended. In these regulations, the HDS is provided the same 'statutory protection' in relation to disciplinary action as the council's chief executive, monitoring officer and chief finance officer (s151 officer). Underlining the important role they undertake in ensuring the good governance and democratic accountability of the council.

13.8 The HDS is able to delegate any of their functions to any of their staff (section 8(2)). The functions of the HDS are –

- a) - to provide support and advice (but see note 1 below)
  - to the authority in relation to its meetings;
  - to committees of the authority and the members of those committees;
  - to any joint committee which a local authority is responsible for organising and the members of that committee;
  - in relation to the functions of the authority's overview and scrutiny committee(s), to members of the authority, members of the executive and officers; -
  - to each member of the authority in carrying out the role of member of the authority (but see note 2 below);
- b) to promote the role of the authority's overview and scrutiny committee(s);
- c) to make reports and recommendations in respect of the number and grades of staff required to discharge democratic services functions and the appointment, organisation and proper management of those staff;
- d) any other functions prescribed by the Welsh Ministers.

[Notes

- 1. the function of providing advice about whether or how the authority's functions should be, or should have been, exercised, only applies to advice concerning the functions of the overview and scrutiny and democratic services committees;
- 2. in this case, advice to a member does not include advice in connection with their role as an executive member, and does not include advice about a matter being or to be considered at a meeting (other than a meeting of an overview and scrutiny or democratic services committee).]

13.9 The Measure enables Welsh Ministers to make regulations requiring local authorities to include within their standing orders provisions concerning the management of the staff provided to the HDS. For these purposes, "management of staff" does not include appointment, dismissal or disciplinary action (section 10).

## **Democratic Services Committees**

13.10 Each council must also establish a democratic services committee (DSC) to perform the following roles (section 11):

- carry out the local authority's function of designating the HDS;
- keep under review the provision of staff, accommodation and other resources made available to the HDS, in order to ensure that it is adequate for the responsibilities of the post;
- make reports to the full council in relation to these matters.

Each DSC can decide how it carries out these functions.

13.11 The full council must appoint the members of the DSC, which must consist solely of councillors and cannot include more than one member of the executive or assistant to the executive, and must not be the council leader. The rules concerning allocation of seats to political groups apply to the DSC.

13.12 The council must also appoint the chair of the DSC, who must not be a member of any of the political groups represented in the executive. The exception to this is when a council has no opposition groups. In this case, any member of the DSC can be appointed as chair provided the member is not a member of the executive (section 14((1), (2) and (9)).

13.13 The DSC can appoint its own sub-committees and delegate functions to them (section 13). The DSC appoints the chair of any sub-committee (section 14(3)).

13.14 A DSC has the power to require the attendance of any members or officers of the council to answer questions and can invite anyone else it likes to do so also. If a member or officer is required to attend they must answer any questions unless the question is one which they would be entitled to refuse in a court (section 14(5) to (7).

13.15 DSC meetings and sub-committees are to be open to the public as is normal in council meetings and subject to the same regime of accessibility in general (section 14(8)). The DSC must meet at least once a year (section 15(1)) and, additionally if the full council so decides or at least a third of the members of the DSC demands a meeting (section 15(2)). There is no limit on the maximum number of meetings a DSC may hold. The onus lies on the chair to ensure that meetings are held when required (section 15(3)).

13.16 The DSC must have regard to guidance from the Welsh Ministers when exercising its functions (section 16(2)).

13.17 Any report presented to the DSC by the HDS must be considered by the DSC within three months. Similarly, any report made by the DSC must be considered by the full council within three months (sections 18 and 19). The procedures relating to the operation of the DSC should be included in the council's constitution.

## **Functions of the DSC**

### **Designating the Head of Democratic Services**

13.18 Only the DSC or a sub-committee of the DSC can designate the HDS. How this operates in practice will vary and a DSC can decide itself how it wishes to do this. However, the expectation is there would be discussion with the chief executive and relevant member(s) of the council executive, for example, to agree whether the post should be advertised externally, in which case the procedures for appointing staff described in the council's standing orders must be followed.

13.19 It would be a sensible arrangement for the DSC to be consulted on the advertising, interview and selection process, even though it would be the council, not the DSC, which would appoint as the employing body. The appointment could, however, be made subject to the DSC subsequently designating the selected person as HDS.

13.20 The person designated as HDS is not prevented from performing other roles within the authority. Just as the chief executive will have other duties to perform outside their statutory role, so too could the HDS. However, local authorities should take care to ensure that any other duties do not conflict with their HDS role and the DSC will need to be satisfied that the person designated has sufficient time to conduct his/her functions despite any other roles they may have.

### **Making Recommendations on the adequacy of the provision of staff, accommodation and other resources**

13.21 It is the function of the DSC to consider, and make recommendations as to, the adequacy of the provision of staff, accommodation and other resources for the exercise of the functions which fall to the HDS. The functions known in many local authorities as members' services, committee services and overview and scrutiny support would fall within the HDS responsibilities.

13.22 The HDS must present a report to the DSC describing what they feel to be a reasonable level of support for democratic services functions. The DSC, however, cannot make the final decision on these matters. It must submit its own report to the full council, arguing the case for necessary resource. It may well be that full council will modify or reject the DSC's report, in which case it could be advisable for the

DSC to consider alternative proposals, which may involve a period of negotiation involving the HDS, Chief Finance Officer and the appropriate executive member.

- 13.23 In considering the DSC's recommendations the council should take into account the contribution the work of the HDS and the DSC make to the good governance and effective democratic accountability of the council, including the contribution this work makes to the council meeting its duties in sections 39 to 41 of the 2021 Act relating to the duty to encourage local people to participate in decision making and its strategy on public participation and its contribution to sections 89 and 90 of the 2021 Act to keep its performance under review and consult with local people on performance. Ensuring all members are adequately supported and trained, that scrutiny is adequately resourced and committees have access to high quality analysis and information is a cost of effective democracy. It is noted councils will have competing pressures for resources, including for essential front line and statutory services, careful consideration of cumulative impacts of resourcing erosion or reductions in relation to democratic services should be therefore be part of considerations on the DSC Committee's report.
- 13.24 The final decision on resources will rest with full council but the Measure places the responsibility on the authority itself to ensure that the HDS is provided with sufficient staff, accommodation and other resources as are, in the council's opinion, sufficient to allow the HDSs functions to be discharged (section 8(1)(b)) and it must therefore fully explain any decision not in keeping with the recommendations of the DSC.

## **14. Governance and Audit Committees Statutory Guidance**

### **Status of this Guidance**

14.1 This is statutory guidance under section 85 of the Local Government (Wales) Measure 2011 (the Measure).

### **Purpose of this Guidance**

14.2 The purpose of this guidance is set out the key matters councils must take into consideration when establishing and operating governance and audit committees.

### **Overview**

14.3 Councils must establish a Governance and Audit Committee. The committee has the following functions (s81, Local Government (Wales) Measure 2011):

- review and scrutinise the authority's financial affairs,
- make reports and recommendations in relation to the authority's financial affairs,
- review and assess the risk management, internal control, performance assessment and corporate governance arrangements of the authority,
- make reports and recommendations to the authority on the adequacy and effectiveness of those arrangements,
- review and assess the authority's ability to handle complaints effectively,
- make reports and recommendations in relation to the authority's ability to handle complaints effectively,
- oversee the authority's internal and external audit arrangements, and
- review the financial statements prepared by the authority.

14.4 The Welsh Government's view is that well-functioning governance and audit committees are critical to the effective governance of councils. They should be viewed positively by all council members as part of the improvement and governance system. They also have an important role to play in improving strategic planning and facilitating both scrutiny and constructive challenge within the structures of a council.

14.5 In addition to these statutory functions, a council can confer other functions on the committee which it deems suitable for it. Each governance and audit committee can decide how it wants to carry out its functions, but in doing so it must have regard to this guidance.

14.6 Detailed guidance on the operation of governance and audit committees has been produced by Chartered Institute of Public Finance and Accountancy (CIPFA). In deciding how the Governance and Audit Committee will operate and how it will

transact its key tasks, councils and committees themselves should consider the intersection between the formal role of this committee and the role of other bodies – in particular, the Democratic Services Committee (in respect of corporate governance) and the Overview and Scrutiny Committee(s) (in respect of financial oversight and review of strategic risks).

## **Membership**

- 14.7 The full council must have regard to this guidance when determining membership. Two thirds of the members of the committee are to be members of the council and one third must be a lay members. Only one member of the executive or assistant to the executive may sit on the committee, and that person must not be the leader (s82, Local Government (Wales) Measure 2011).
- 14.8 The chair of the committee is to be decided upon by the committee members themselves. However, the chair must be a lay member. The committee must also appoint a deputy chair who must not be a member of the council's executive or an assistant to the executive (section 81, subsections 5A, 5B and 5C of the Measure). All committee members, including lay members, have the right to vote on any issue considered by the committee.
- 14.9 The rules within section 15 et seq of the Local Government and Housing Act 1989 apply to governance and audit committees. The authority must however decide how many non-councillors should be appointed to the committee, and all members of the committee should display independence of thinking and unbiased attitudes, and must recognise and understand the value of the governance and audit function.
- 14.10 All new members will need to be provided with induction training. Although it is to be hoped that appointed councillors would have some relevant expertise, this cannot be guaranteed. What will be important, though, is to try and ensure that members do not have any other responsibilities which might conflict with their role on the governance and audit committee. That might be particularly the case in the choice of any executive member or assistant to the executive on the committee.
- 14.11 It may also mean that the members should not have too many other commitments, in general such as membership of other committees because of the significant commitment which being a member of the governance and audit committee implies. All members should receive adequate training and development.
- 14.12 The governance and audit committee should try and ensure that they appoint a member as chair who will be strong and experienced enough to lead the questioning which the committee will have to perform.

14.13 Whatever recruitment method is employed, lay members should be independent from the council and have no business connection with it, although knowledge of how local government functions would be a definite advantage. In appointing lay members whose political allegiances are well known, local authorities should consider if this compromises the independence and perception of independence from the council a lay member should demonstrate. Councils should follow a public recruitment exercise, similar to that used to appoint members of standards committees, to recruit their lay members. It is recommended that a lay member should not be appointed for more than two full terms of a local authority. Any lay member with voting rights is subject to the provisions of the authority's Code of Conduct for Members.

### **Meetings and Proceedings**

14.14 As a committee of the council, the governance and audit committee is subject to normal arrangements of openness. Meetings should be held in public, agendas and reports should be published and available for inspection. The exception to this is where "exempt items" are being considered, which are chiefly matters which involve discussions concerning named individuals or commercial in confidence matters.

14.15 Any officer or member called to attend the governance and audit committee meeting must do so. They must answer any questions asked of them save ones which they could refuse to answer if they were in court. The committee can invite other persons to attend before it, but anyone else so invited to attend is under no compulsion to do so.

14.16 The committee must meet at least once a year and must also meet if the full council so decides, or if at least a third of the committee's members require that a meeting be held. Beyond these stipulations, the committee can meet whenever it determines.

14.17 The Welsh Government suggests councils consider appropriate publications by relevant professional bodies such as CIPFA when establishing and reviewing their procedures for governance and audit committees.

## **Functions of a Governance and Audit committee**

### **Reviewing the authority's financial affairs**

14.18 Section 151 of the Local Government Act 1972 requires local authorities to make arrangements for the proper administration of its financial affairs. Putting in place the governance and audit committee and providing it with the duty to keep the

authority's financial affairs under review must be viewed as assisting in the fulfilment of this requirement.

14.19 This is an area which is given close attention by the authority's external auditors and ties in with the duty of the governance and audit committee to oversee the arrangements for internal and external audit, and also the need to monitor the internal control and risk management arrangements made by the authority.

14.20 Local authorities should make their own arrangements, in their constitution, to provide for clear demarcation between the role of the governance and audit committee and that of a relevant scrutiny committee. The governance and audit committee role should be more to seek assurance that the budgetary control systems (as an internal control) of the council are working, rather than the actual scrutiny of spend. This may serve as acceptable demarcation between the role of the governance and audit committee and that of an overview and scrutiny committee.

### **Risk management, internal control, performance assessment and corporate governance arrangements of the authority**

14.21 The attention to this matter should raise the profile of risk management as a necessary control tool within the authority as a whole. By providing regular review, the governance and audit committee forms a significant part of the authority's corporate governance system.

14.22 The authority should have a clear 'Statement of Purpose' for its governance and audit committee, ensuring the committee has a prime role in ensuring effective corporate governance is central to the organisation's procedures. As such, the governance and audit committee should review the Annual Governance Statement<sup>1</sup> and Corporate Governance Strategy. An effective and high profile governance and audit committee is critical to engendering public confidence that the authority has a solid approach to its financial and organisational propriety.

14.23 The governance and audit committee will need to report on the adequacy of the authority's risk management and internal control arrangements, and comment on their effectiveness. It will also follow up on risks identified by internal and external

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<sup>1</sup> An Annual Governance Statement is a document which sets out a council's arrangements for decision-making and governance. The AGS is the product of a review of council governance carried out by senior officers. There is no obligation on Welsh councils to prepare an Annual Governance Statement. As there is no legal obligation to produce an Annual Governance Statement, Welsh Government is not providing statutory guidance on this matter. However, councils will note the presence of the local government accounting standards. Councils could consider how the AGS can be used as a tool for broader corporate improvement; it can be used to evaluate strengths and weaknesses in the governance framework and, as part of an annual action plan, take forward agreed changes accordingly.

auditors and require reports as to action taken in response. This means that the council must ensure the governance and audit committee is briefed on the contents and recommendations contained in auditor's reports and has access to them. It should also have access to reports from regulators where these have identified risks, failures in internal control or the corporate governance systems of the council. It would be good practice for all reports from auditors and regulators to be shared with the governance and audit committee as a matter of course.

14.24 In addition to these existing duties, the 2021 Act added a new duty to this group of duties which requires the governance and audit committee to review and assess and make reports of the effectiveness of the arrangements the council has put in place for the performance assessments it is required to complete under section 91 of the Local Government and Elections (Wales) Act 2021 in order to fulfil its duty to keep performance under review in section 89 of the 2021 Act. This is not intended to be a repeat of the performance assessment itself but consideration, for example, of the rigour and comprehensive nature of the process. Neither is it intended to duplicate the role of overview and scrutiny committees in holding the council's executive to account in relation to the performance management of the council's services.

### **Review and assess the authority's ability to handle complaints effectively**

14.25 The way in which an organisation manages its internal and external complaints process for service and organisational complaints (consideration of the complaints process for complaints made under the code of conduct is not a function of the Governance and Audit Committee) is an integral part of its corporate governance systems. It is vital that people, communities and other stakeholders have trust and confidence their complaints will be treated with due respect and gravity. It is also important that staff and others internal to the organisation have trust and confidence internal complaints are treated with similar respect.

14.26 The role of the governance and audit committee is not to consider whether individual complaints have been dealt with appropriately but to consider the effectiveness of the complaints process. For example, is the process accessible to everybody in the community, is the council giving proper consideration to its statutory duties in relation to equalities and Welsh language when handling complaints, is there internal learning built into the complaints process to improve systems and services going forward.

### **Internal and external auditors**

14.27 An effective governance and audit committee should provide the authority's chief finance officer with advice which can serve to bolster the work of internal and

external auditors. The committee can ensure that audit reports are kept in the authority's mind, so timing of meetings might be planned so as to effectively follow-up auditors' recommendations.

14.28 The governance and audit committee will expect to input into the planning of internal audit priorities, approving the annual programme of audits and ensuring the internal auditors have the necessary resources to conduct their work effectively. They will want to meet with the Head of Internal Audit and receive their annual report.

14.29 The governance and audit committee should also receive the reports from the external auditors and follow up their recommendations during the year. The committee should have a role in agreeing the authority's response to the auditor's letters or reports as well as being able to meet with the external auditor.

14.30 In addition, the governance and audit committee should receive and consider reports from any regulators or inspectors. In respect of these, the authority will need to ensure there is no unnecessary duplication between the governance and audit committee and any overview and scrutiny committee in considering such reports.

### **Financial statements**

14.31 Before their approval by the authority, the governance and audit committee should consider and comment on the authority's certified draft financial statements. They will want to see to what extent the statements take cognisance of audit reports during the year, and changes in accounting policy and internal control mechanisms. The Committee should also review the external audit statement and also seek assurance on the management of the council's financial affairs. Any concerns should be reported to the Council.

14.32 Governance and audit committees may approve the financial statements themselves where local authorities have delegated that power to them under regulation 10 of the Accounts and Audit Regulations (Wales) 2014 (as amended).

### **Governance and Audit Committee Reports and Recommendations**

14.33 Reports and recommendations by the governance and audit committee should be considered by full council in particular, as well as the executive. The processes for these considerations should be set out in the council's constitution.