



Llywodraeth Cymru
Welsh Government

Performance and governance of principal councils

Statutory guidance on Part 6, Chapter 1, of the Local Government and Elections (Wales) Act 2021

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Statutory guidance for principal councils on Part 6, Chapter 1, of the Local Government and Elections (Wales) Act 2021

Overview

This document provides statutory guidance for principal councils about the exercise of their performance and governance functions under Part 6, Chapter 1, of the Local Government and Elections (Wales) Act 2021.

This guidance is intended to constitute guidance under section 89(3) of the Local Government and Elections (Wales) Act 2021 once commenced.

Action required

Principal councils must have regard to this guidance when exercising their functions under Part 6, Chapter 1 of the Local Government and Elections (Wales) Act 2021.

The powers and duties in Chapter 1 of Part 6 apply from 1 April 2021, with the exception of the functions relating to panel performance assessments, which will come into force following the next ordinary local government elections in May 2022. Councils must have regard to the guidance once the relevant powers and duties come into force.

Further information

Enquiries about this document should be directed to:

Local Government Transformation and Partnerships Division

Local Government Directorate

Welsh Government

Cathays Park

Cardiff

CF10 3NQ

Email: LGPartnerships@gov.wales

This document may be accessed from the Welsh Government's [website](#).

Foreword

The Local Government and Elections (Wales) Act 2021 has strengthening and empowering local government at its core.

The new performance and governance regime set out in the Act is a fundamental component of this, firmly defining principal councils as self-improving organisations through a system based on self-assessment and panel performance assessment.

This approach is intended to build on and support a culture in which councils continuously challenge the status quo, ask questions about how they are operating, and consider best practice in Wales and wider. It will be important for the sector as a whole to take the lead in the implementation of the new regime, in supporting improvement and in sharing innovations and best practice.

My expectation is that when considering how well a council is meeting the performance requirements set out in the Act, either as part of self-assessment or panel performance assessment, the focus should always be on aiming to be the best. The extent to which a council is delivering legal duties and functions is a core part of a council's performance requirements. However, councils should always be striving for more - not simply meeting the minimum requirements, but seeking to ensure the best outcomes for the people they serve.

Taking housing as an example, we can all sign up to the ambition of provision of adequate housing for all, with authorities intervening earlier and going beyond achieving only the minimum legislative requirements. My ambition is for a culture where all parts of a council always aim to do better in everything they do, no matter how well they are performing already. Honest and open self-assessment at all levels of a council will form a fundamental part of this.

I also see collaborative working, for example between employers and trade unions, as important to driving up the performance of public services in Wales and contributing to improved worker well-being. The First Minister has set out our intention to legislate to embed the principle of social partnership in the organisation of public services in Wales. As such, I see implementing social partnership practices as a key part of a council exercising its functions and using its resources effectively.

I am grateful to local government colleagues and other stakeholders for working so constructively to co-produce this guidance with Welsh Government, as well as all those who responded to the formal consultation on the draft. The principle of co-development is central to ensuring this guidance is valuable for councils, facilitates the implementation of the provisions and, above all, ensures the new approach is a meaningful opportunity to continually strengthen local government.

Julie James MS
Minister for Housing and Local Government

Contents

| | |
|------------------------------------------------------------------------------------------------------------------------------------------|----|
| Summary..... | 5 |
| Duty to keep performance under review | 5 |
| Duty to consult on performance | 5 |
| Duty to report on performance | 5 |
| Duty to arrange a panel performance assessment | 6 |
| Duty to respond to a panel performance assessment report..... | 6 |
| Chapter 1 - Policy context and purpose of the performance regime set out in the Local Government and Elections (Wales) Act 2021 | 8 |
| Policy context..... | 8 |
| Well-being goals as set out in the Well-being of Future Generations (Wales) Act 2015..... | 9 |
| Five ways of working..... | 9 |
| Purpose of the performance and governance provisions | 10 |
| The wider environment in which the performance and governance regime operates | 11 |
| Support for improvement..... | 13 |
| Chapter 2 - Duty to keep performance under review, consult, and report on performance through self-assessment | 15 |
| Introduction | 15 |
| Duty of principal council to keep its performance under review | 15 |
| Duty to report on performance through self-assessment | 15 |
| Purpose of self-assessment..... | 15 |
| Approach to self-assessment..... | 16 |
| Applying the Well-being of Future Generations Act | 19 |
| Self-assessment report | 20 |
| Taking action on a self-assessment..... | 21 |
| Who should be involved in the self-assessment | 22 |
| Involving the council's governance and audit committee | 22 |
| Publication of self-assessment report | 22 |
| Chapter 3 - Duty to arrange, and respond to, a panel performance assessment..... | 24 |
| Introduction | 24 |
| Duty of principal council to arrange panel performance assessment..... | 24 |
| Purpose of panel performance assessment..... | 25 |

| | |
|---------------------------------------------------------------------------------------------------------|----|
| Approach to panel performance assessment..... | 26 |
| Timing | 27 |
| Preparation in advance of assessment | 28 |
| Appointing a panel | 28 |
| The panel's role in carrying out a panel performance assessment | 29 |
| Panel assessment report | 31 |
| Publication of panel assessment report | 32 |
| Responding to the panel assessment report..... | 32 |
| Involving the governance and audit committee | 32 |
| Publication of the response to the panel assessment report..... | 33 |
| Chapter 4 - Special inspections by the Auditor General for Wales..... | 34 |
| Introduction | 34 |
| Power to carry out a special inspection..... | 34 |
| Duty to respond to Auditor General's recommendations – principal council | 35 |
| Duty to respond to Auditor General's recommendations – Welsh Ministers | 35 |
| Chapter 5 – Support and assistance with improving performance, and intervention by Welsh Ministers..... | 37 |
| Introduction | 37 |
| Support and assistance by the Welsh Ministers..... | 37 |
| Powers of the Welsh Ministers to intervene | 38 |

Summary

The Local Government and Elections (Wales) Act 2021 (“the Act”) provides for a new and reformed legislative framework for local government elections, democracy, governance and performance.

This guidance sets out how principal councils should meet their duties contained in Part 6, Chapter 1, of the Act which relates to the performance and governance of principal councils.

A council must have regard to guidance issued by Welsh Ministers in relation to the exercise of its functions under Part 6, Chapter 1 of the Act.

The guidance is designed to support councils to understand and discharge their duties in relation to performance and governance, whilst recognising that councils will wish to and should be encouraged to develop their own approach in line with their wider statutory obligations, local circumstances, corporate structures, and best practice.

This guidance specifically addresses the following duties:-

Duty to keep performance under review

Section 89 of the Act requires a council to keep under review the extent to which it is fulfilling the ‘performance requirements’ that is, the extent to which:-

- it is exercising its functions effectively;
- it is using its resources economically, efficiently and effectively; and
- its governance is effective for securing the above.

Duty to consult on performance

Section 90 of the Act requires that a council must consult a range of people at least once in each financial year about the extent to which the council is meeting the performance requirements. The statutory consultees are:-

- a) local people;
- b) other persons carrying on a business in the council’s area;
- c) the staff of the council; and
- d) every trade union which is recognised (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52)) by the council.

Duty to report on performance

Section 91 of the Act provides that a council must produce a self-assessment report in respect of each financial year. The report must set out its conclusions on the extent to which it met the performance requirements during that financial year, and any actions it intends to take, or has already taken, to increase the extent to which it is meeting the performance requirements.

Duty to arrange a panel performance assessment

Section 92 of the Act provides that a council must arrange for a panel to undertake an assessment, at least once during the period between two consecutive ordinary elections of councillors to the council, of the extent to which the council is meeting the performance requirements.

Duty to respond to a panel performance assessment report

Section 93 of the Act provides that a council must prepare a response to each panel performance assessment report, setting out the extent to which it accepts the conclusions in the report, the extent to which it intends to follow any recommendations in the report, and any actions the council intends to take to increase the extent to which it is meeting the performance requirements.

This guidance refers specifically to these duties on a council, and sets out the expectations on how a council will perform these duties. All of the duties apply to councils from 1 April 2021, with the exception of the duties in respect of panel performance assessments, which will come into force following the next ordinary local government elections in May 2022. Councils will be required to have regard to the guidance once the relevant duties come into force.

There are other provisions within Part 6 of the Act such as powers for the Auditor General for Wales to carry out special inspections of a council; powers for the Welsh Ministers to provide support and assistance to a council with a view to improving its performance; and powers for the Welsh Ministers to intervene in a council which is not, or may not be, meeting the performance requirements. These aspects of the Act are also described in this guidance, with any duties placed on councils in these provisions explicitly stated.

The guidance is set out as follows:-

Chapter 1 - describes the policy context within which the performance and governance duties are set and the purpose of the duties.

Chapter 2 - explains the duty to keep performance under review; the duty to consult local people and others on performance; and provides guidance on the duty to report on performance, specifically through self-assessment.

Chapter 3 - provides guidance on the duty to arrange, and respond to a panel performance assessment.

Chapter 4 - describes the Auditor General for Wales' power to carry out a special inspection; the duty of a council to respond to any recommendations for actions it should take; and the duty of Welsh Ministers to respond to any recommendations for actions they should take.

Chapter 5 - describes the powers and duties for both Welsh Ministers and councils in relation to supporting and assisting with improving performance; and powers for

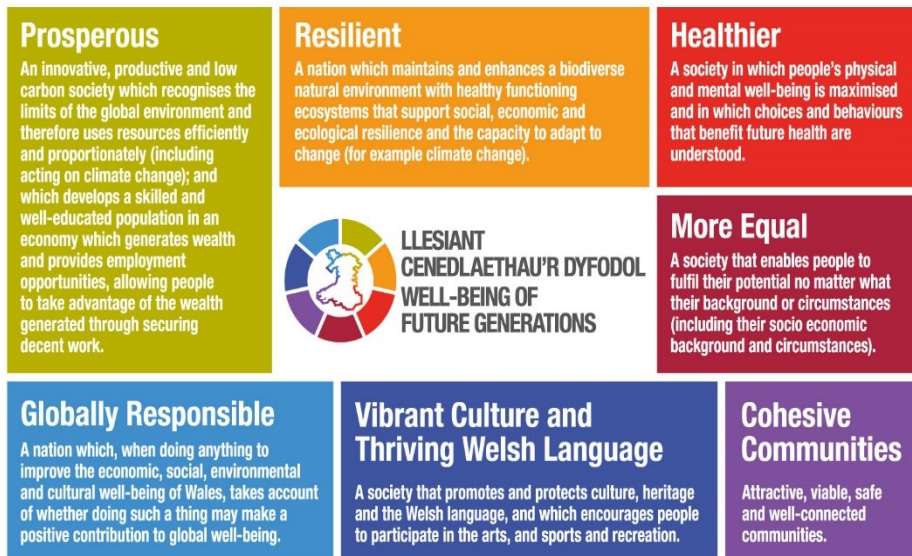
intervention by Welsh Ministers where Ministers consider that it is likely that the council is not, or that the council is not, meeting the performance requirements.

Chapter 1 - Policy context and purpose of the performance regime set out in the Local Government and Elections (Wales) Act 2021

Policy context

- 1.1 Councils are democratically accountable for the performance of their services, including their governance arrangements. They are supported through external audit, inspection and regulatory bodies who have a key role in assuring the quality of our public services in Wales.
- 1.2 The Local Government and Elections (Wales) Act 2021 (“the Act”) replaces the current improvement duty for councils set out in the Local Government (Wales) Measure 2009. The new approach as set out in the Act is designed to be a more streamlined, flexible, sector-led approach to performance, good governance and improvement. The intention is for councils to be proactive in considering how internal processes and procedures should change to enable more effective planning, delivery and decision-making to drive better outcomes.
- 1.3 The performance and governance provisions in the Act are framed within the context of the well-being duty in the Well-being of Future Generations (Wales) Act 2015, which sets out a legally binding common purpose for the public bodies subject to that Act to improve the social, economic, environmental and cultural well-being of Wales. It sets out seven well-being goals which these public bodies must work towards and five ways of working to guide how public bodies should deliver.
- 1.4 The Well-being of Future Generations Act provides the context within which councils should be exercising their functions, using their resources and ensuring their governance is effective, with the aim of maximising their contribution to the well-being goals.
- 1.5 Additionally, the performance and governance provisions within the Act align with other duties placed on councils, such as the Socio-economic Duty (Equality Act 2010), which comes into force on 31 March 2021. This duty will require councils, when taking strategic decisions such as ‘deciding priorities and setting objectives’, to consider how their decisions might help to reduce the inequalities associated with socio-economic disadvantage - driving better outcomes on people’s lives and experiences through better decision making and further contributing towards our shared goal of becoming “a more equal Wales”.

Well-being goals as set out in the Well-being of Future Generations (Wales) Act 2015



Five ways of working



Purpose of the performance and governance provisions

- 1.6 The purpose of the performance and governance provisions in the Act is to build on and support a developing culture in which councils actively seek and embrace challenge, whether presented from within the council, for example through scrutiny procedures, or externally. The provisions are designed to provide a framework which supports councils, through an ongoing process of review, to think about their performance and effectiveness now and for the future; to encourage more inquisitive organisations willing to challenge themselves to do more; and to be more innovative and more ambitious in what they do.
- 1.7 The provisions reflect the principles that for any organisation to be effective it needs to understand its current position, it must be clear on where it wants to go, have a robust plan as to how it will get there, and identify and manage risks to drive improvement. A truly effective organisation is never satisfied by current standards, even if they are good or excellent, but is driven to do more.
- 1.8 The provisions build reflection on performance and actions to improve into the system. This is not intended to be onerous or burdensome, but to ensure councils are reflecting on and ensuring long term sustainability to deliver effective services for their communities.
- 1.9 Improvement in this context is the council's ability to deliver against immediate priorities and remain capable to respond to the changing environment in which it operates. It is about the council's ability to consider how its internal processes and people operate in order to make effective decisions for the long term - working with the communities they serve in all their diversity - and how it will go about improving these in order to make better decisions and drive better outcomes for all.
- 1.10 The ambition should be to always do better, not just satisfying targets or minimum duties but exceeding expectations, ensuring the council is achieving the right outcomes and delivering what people want. Sharing and learning from best practice and aiming to be better (even if best in class) should be an implicit part of a council's approach.
- 1.11 For example, under the Housing (Wales) Act 2014, a local authority is required to provide support where a person is threatened with homelessness within 56 days. Whilst this is the legal minimum, councils, and partner agencies such as housing associations, should, in the delivery of their existing functions, have due regard to how these functions can be used to support the provision of adequate housing; aiming to intervene much earlier than the legislation requires.
- 1.12 Areas for improvement should be looked at honestly, and actively pursued to ensure problems are prevented or dealt with early before they become systemic. Such an approach should be an integral part of the system of how councils operate. For example, council executives should welcome and encourage scrutiny inquiries to make recommendations for system improvements, and governance and audit committees will play a key role in the performance and

governance regime. The aim is to support councils to build on existing strengths and to support them to achieve a more innovative, open, honest, transparent and ambitious sector, challenging itself and collectively driving up service delivery outcomes and standards across Wales.

- 1.13 Enabling and supporting cultural and organisational change within local government through the performance and governance provisions in the Act will help to ensure strong councils, capable of achieving their well-being objectives and maximising their contribution to the national well-being goals.

The wider environment in which the performance and governance regime operates

- 1.14 The performance and governance provisions contained in the Act align with audit, inspection, regulatory and partnership arrangements.

- 1.15 Some individual responsibilities in relation to the performance and governance regime are broadly outlined below. Some of these are statutory powers and duties, contained in the Act or other pieces of legislation, and some stem from non-statutory arrangements.

Principal councils are responsible for:-

- Conducting robust self-assessments and reporting on the extent to which the council is meeting the performance requirements in order to improve the social, economic, environmental and cultural well-being of its local communities.
- Setting out any actions to increase the extent to which the council is meeting the performance requirements, including, for example, the role of scrutiny in challenging and driving the extent to which the performance requirements are being met.
- Commissioning panel performance assessments at least once during the period between two consecutive ordinary elections of councillors to the council.
- Seeking support / challenge from peers and partners where and when necessary, and consulting staff, local people and trades unions about the extent to which the council is meeting the performance requirements.

Welsh Local Government Association (WLGA) is responsible for:-

- Supporting councils at a local, regional and national level.
- Providing early intelligence and sector-led support to address areas for improvement identified through, for example, self-assessment, panel performance assessment or audit, inspection and regulator reports.

Audit Wales¹ is responsible for:-

- Auditing of accounts.
- Examining how public bodies manage and spend public money, including but not limited to their arrangements for securing value for money in the use of resources and making recommendations to improve the value for money of local government.
- Assessing the extent to which councils are acting in accordance with the sustainable development principle under the Well-being of Future Generations (Wales) Act 2015.
- Carrying out 'Special Inspections' as provided for in the Local Government and Elections (Wales) Act 2021.
- Making appropriate recommendations to councils and to the Welsh Ministers.

Care Inspectorate Wales (CIW) is responsible for:-

- Encouraging improvement in the delivery of social services, social care and childcare.
- Regulation and inspection of social care services including review of local authority social services functions under the Regulation and Inspection of Social Care (Wales) Act 2016 and the Social Services and Wellbeing (Wales) Act 2014.
- Regulation and inspection of childcare and play services under the Children and Families (Wales) Measure 2010.
- Advising Ministers on the possible use of their powers of intervention and monitoring visits to councils as required and agreed by the Minister.
- Providing professional advice to Welsh Ministers.

Estyn is responsible for:-

- Inspecting, evaluating and reporting on councils' performance in relation to their duties as described by sections 38 to 41 of the Education Act 1997, sections 75, 76, 123 and 127 of the Learning and Skills Act 2000 and sections 25, 26 and 51 of The Children Act 2004.

¹ Audit Wales is the trademark of two legal entities: the Auditor General for Wales and the Wales Audit Office. Each has its own particular powers and duties. The Auditor General audits and reports on Welsh public bodies. The Wales Audit Office provides staff and other resources for the Auditor General's work, and monitors and advises the Auditor General.

- Making appropriate recommendations to councils and to the Welsh Ministers to support improvement.
- 1.16 Local government, Welsh Government and auditors, inspectors, regulators and commissioners will continue to work together to share intelligence, raise cases of possible concern and agree approaches to support improvement. Building this shared understanding is key to ensuring a clear focus for consistent and sustained improvement.
- 1.17 Councils should use the findings of scrutiny committees, auditors, inspectors, regulators and commissioners on how a council is delivering its functions and governing itself to inform its self-assessment, and likewise the panels undertaking a performance assessment may also use this evidence to inform their recommendations.
- 1.18 The focus should be on a shared understanding of what all of these sources collectively reveal and, most importantly, the action to be taken as a result. Self-assessments and panel performance assessments do not, in any way, substitute or replace the role of auditors, inspectors or regulators.
- 1.19 Self-assessment and panel performance assessment of how the council is meeting the performance requirements should also be informed by, but not duplicate, other performance arrangements in specific service areas.
- 1.20 For example, the *Code of practice in relation to the performance and improvement of social services*² sets out the vision for social services in Wales and how improvements in services and for individuals will be supported, measured and sustained by councils. The self-assessment process set out in this guidance will not require councils to look again in detail at the social services function, but the evidence arising from the *Code of practice* will inform the broader strategic level understanding of how the council is operating as a whole, is using its resources and delivering for the people in its area.
- 1.21 Similarly, reforms to evaluation, improvement and accountability arrangements for schools have highlighted the importance of robust and continuous self-evaluation for all tiers of the education system. For councils, this means evaluating the effectiveness and impact of their services to support schools, which can also be used to inform its wider self-assessment.

Support for improvement

- 1.22 Keeping under review the extent to which it is meeting the performance requirements is just one part of a council's improvement journey.
- 1.23 The self-assessment and panel performance assessment a council undertakes can inform when and how to engage with any and all improvement support available to increase the extent to which it is meeting its performance

² [Social Services and Well-being \(Wales\) Act 2014: Code of practice in relation to the performance and improvement of social services in Wales \(Welsh Government, 2020\)](#)

requirements.

- 1.24 Ultimately the ambition is to enable councils to identify and resolve issues before any formal, statutory support or intervention is required. However, the Act does make provision for the Welsh Ministers to provide support and, where necessary, intervene in councils facing significant problems.

Chapter 2 - Duty to keep performance under review, consult, and report on performance through self-assessment

Introduction

- 2.1 This chapter of guidance should be read by a council to support the discharge of its duties in the Local Government and Elections (Wales) Act 2021 (“the Act”) to keep its performance under review; consult local people and others on the extent to which it is meeting the performance requirements; and report on its performance through a self-assessment report. The guidance here reflects the minimum requirements for self-assessment, recognising that councils are best placed to build on this to develop the detail of their own approach.
- 2.2 The findings of the self-assessment should be used to inform and identify areas where improvement or change might be needed and where sector-led support might be valuable.

Duty of principal council to keep its performance under review

- 2.3 The Act requires each council in Wales to keep under review the extent to which it is meeting the ‘performance requirements’, that is the extent to which:-
- **it is exercising its functions effectively;**
 - **it is using its resources economically, efficiently and effectively;**
 - **its governance is effective for securing the above.**
- 2.4 The duty to keep performance under review is intended to reflect existing substantive duties to which councils are already subject (i.e. their “functions”). Councils operate within a statutory framework of legal duties and powers, and it is not the intention to reproduce these at length here. The performance requirements are about looking at how effectively a council is operating, not only in terms of meeting individual objectives, but how it is delivering its functions, using its resources and governing itself.

Duty to report on performance through self-assessment

- 2.5 The mechanism for a council to keep its performance under review is self-assessment, with a duty to publish a report setting out the conclusions of the self-assessment once in respect of every financial year. Self-assessment will be complemented by a panel performance assessment once in an electoral cycle, providing an opportunity to seek external insights (other than from auditors, regulators or inspectors) on how the council is meeting the performance requirements.

Purpose of self-assessment

- 2.6 Self-assessment is a way of critically, and honestly, reviewing the current position in order to make decisions on how to secure improvement for the future. Self-assessment is more than stating what arrangements are in place;

it is about considering how effective these arrangements are and how they can be improved. Self-assessment of how the council is meeting the performance requirements places ownership of performance and improvement firmly with councils.

- 2.7 Considering the extent to which the council is meeting the performance requirements is a corporate, organisational assessment rather than an assessment of individual services. For example, it should consider the role of leadership, and the effectiveness of the relationship between the political leadership and senior officers in the council, in ensuring the council is able to respond to the changing environment in which it operates. It is about a council being self-aware, understanding whether it is delivering the right outcomes, and challenging itself to continuously improve how it manages delivery of services and performs as the custodian of the area.
- 2.8 Self-assessment can be achieved by using intelligence already held corporately in an insightful way, reflecting at a strategic level on how the council is operating, and what action is needed to ensure it can continue to provide effective services now and for the long term.

Approach to self-assessment

- 2.9 As indicated above, self-assessment ensures a council has ownership of its own performance and improvement. As such each individual council will wish to, and should be free to, determine its own approach to self-assessment, designed to fit local circumstances and corporate structures, and informed by best practice.
- 2.10 For some councils self-assessment will already form an integral part of ongoing strategic and corporate governance arrangements, and many (if not all) will have used self-assessment as part of operational management of individual services and at a corporate level.
- 2.11 At its simplest level, self-assessment of how the council is meeting the performance requirements is about asking the questions of:-
- How well are we doing?
 - How do we know?
 - What and how can we do better?

These questions should be asked in the context of the performance requirements.

- 2.12 Some key principles which a council should take into account when formulating its approach to self-assessment are:-
- Self-assessment is not a fixed judgement. To be truly effective, embedding self-assessment throughout an organisation should be an ongoing process, addressing issues as they are identified, responding in real time and effectively to challenges and opportunities.

- It is an opportunity for a meaningful process to contribute to strengthening local government and not an exercise in compliance.
- The self-assessment process should encourage honesty, objectivity and transparency about the council's performance and governance, including its key relationships between political leaders and officers and how these are managed.
- An effective approach would be owned and led at a strategic level, whilst involving members and officers at all levels of the organisation and a range of people across communities and partners.
- Self-assessment should be an evidence-based analysis, understanding what a range of quantitative and qualitative information at the council's disposal reveals about how it is exercising its functions, using its resources and governing itself.
- The self-assessment should be focused on outcomes, what has been achieved rather than the process, and asking honest questions about the impact of the council's actions on people's lives and experiences.
- Self-assessment should not be a standalone process, but integrated as part of the council's corporate planning, performance and governance processes.

2.13 The self-assessment will necessarily draw on a range of internal and external sources, ensuring a broad evidence base to inform the actions the council will take to increase the extent to which it is meeting the performance requirements in future.

2.14 Some sources which could inform the self-assessment, and which will already be available to the council, may include:-

- reports already produced by the council in response to statutory requirements, such as the annual report on progress on meeting the organisation's well-being objectives as required by the Well-being of Future Generations (Wales) Act 2015; statement of internal control required by the Accounts and Audit (Wales) Regulations 2014; annual equality reports; local authority social services annual reports etc;
- evidence from a range of inspection and regulatory sources, including reports from Estyn, Audit Wales, and Care Inspectorate Wales;
- reports published by the Public Service Ombudsman for Wales, such as public interest reports, thematic reports, and own initiative reports, as well as Complaints Standards Authority Reports;

- self-evaluations the council may already have undertaken in relation to specific service areas, or been involved with in relation to partnership working;
- findings of any assessment about the extent to which the council is meeting its well-being objectives, reviews undertaken, or advice published by the Future Generations Commissioner, and the Auditor General for Wales on how the council has acted in accordance with the sustainable development principle in setting and taking steps to achieve their well-being objectives;
- any inquiry, investigation, assessment undertaken, advice provided or recommendation by the Equality and Human Rights Commission in relation to strengthening action to tackle key inequalities;
- any reports of self-evaluation of the scrutiny function against the outcomes and characteristics for effective local government overview and scrutiny;
- performance management indicators (although the self-assessment will need to be broader than an assessment of quantitative performance indicators alone);
- staff surveys, and the outputs from any other engagement processes with staff such as trade union forums;
- compliments, complaints and other feedback from both internal and external sources.

2.15 This list is not exhaustive, and councils will wish to determine for themselves what information will best inform the self-assessment and lead to evidence-based conclusions about how the council is meeting the performance requirements. It will be important for councils to consider carefully how to maximise the value of the evidence sources before them, asking questions about and interpreting the evidence to understand what it reveals and how to act upon it.

2.16 In considering the effectiveness of its governance arrangements, the council may also wish to have regard to *'Delivering Good Governance in Local Government'* produced by the Chartered Institute of Public Finance and Accountancy and SOLACE, as well as the accompanying guidance notes.

2.17 In reaching the conclusions of its self-assessment, the council must also take into account the views of the following about the extent to which the council met the performance requirements in the financial year to which the self-assessment report relates:-

- local people;
- other persons carrying on a business in the council's area;
- the staff of the council; and

- every trade union which is recognised (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992 (c.52)) by the council.
- 2.18 The council should identify an appropriate and representative cross section of staff, local people and businesses, and determine how they are consulted in the process. For example, the council may be satisfied it could be achieved through incorporating as part of a wider approach to engagement rather than as a standalone consultation, they may also wish to consider this as they take forward implementation of the requirements to produce a public participation strategy contained elsewhere in the Act. The key priority should be to ensure that the council involves the views of the above in reaching its conclusions of the extent to which it is meeting the performance requirements.
- 2.19 The council should gather and use intelligence to reflect the experience of, and impact on, children and young people, people from different protected groups and those experiencing socio-economic disadvantage. The council may already hold relevant information as part of its Public Sector Equality Duty obligations, or the information it will use to demonstrate due regard under the Socio-economic Duty.³
- 2.20 Whilst this is the minimum consultation in relation to how the council is performing required by the Act, the council may consult others as it determines will best support its own self-assessment. The council may also wish to consult partners, for example, community and town councils or other public bodies in the area to ensure a rounded view to inform its self-assessment. In considering how it is meeting the performance requirements, it would be expected an assessment of partnership working and collaboration would be undertaken as a key indicator of how a council is exercising its functions, using its resources and governing itself.
- 2.21 Councils should be exercising the duties under the performance and governance regime within this guidance in accordance with the Welsh Language Standards and any relevant compliance notice issued by the Welsh Language Commissioner.

Applying the Well-being of Future Generations Act

- 2.22 The Well-being of Future Generations Act sets out a legally binding common purpose for the public bodies subject to that Act to improve the social, economic, environmental and cultural well-being of Wales. The Act sets out seven well-being goals⁴ which public bodies subject to the Act must work towards collectively.

³ Councils should gather and use intelligence to reflect the experience of and impact on [people from different protected groups](#) and those experiencing [socio-economic disadvantage](#)

⁴ See [Chapter 1](#) for full definitions of the goals.

- 2.23 Public bodies must meet their duty under the Well-being of Future Generations Act acting in accordance with the sustainable development principle, which means that they must act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.
- 2.24 In order to show that they have acted in accordance with the sustainable development principle, a public body must take account of five ways of working.⁵
- 2.25 The Well-being of Future Generations Act provides the context within which a council should be exercising its functions, using its resources and ensuring its governance is effective, with the aim of maximising its contribution to the well-being goals. The Act sets the framework within which a council must consider its performance, in terms of service delivery, corporate capability and capacity to meet the needs of current users, without compromising the needs of future generations.
- 2.26 The statutory guidance⁶ on the Well-being of Future Generations Act contains a core set of activities common to the corporate governance of public bodies. These are:-
- Corporate planning
 - Financial planning
 - Workforce planning (people)
 - Procurement
 - Assets
 - Risk management
 - Performance Management
- 2.27 Considering the seven corporate areas as a framework for the self-assessment, and applying the five ways of working to those areas, will support the council to ensure it is governing itself to maximise its contribution to the well-being goals and meet its well-being objectives.

Self-assessment report

- 2.28 The council is required to make and publish a self-assessment report once in respect of every financial year, and the report should be made as soon as reasonably practicable after the financial year to which it relates. However, it is for the council to determine when exactly to do this to best align with its own corporate arrangements.
- 2.29 The self-assessment report must set out conclusions as to the extent to which the council met the performance requirements during that financial year, and any actions it will take, or has already taken, to increase the extent to which it

⁵ See [Chapter 1](#) for full details of the ways of working

⁶ [Well-being of Future Generations Act Guidance](#)

will meet the performance requirements. The emphasis should be on understanding how the council is operating now, the likely demands it will face in the future, and how it can build sustainability. Beyond that, it is for the council to consider the most appropriate format for the report based on what would best fit local circumstances.

- 2.30 The intention is for the self-assessment report to be a learning document. As such it needs to be accessible and succinct, where possible. A self-assessment report might look to focus on the learning which has emerged from the self-assessment, the sources that have informed the conclusions, and summary information to answer the key questions about how the council is meeting the performance requirements: how well are we doing?; how do we know?; and what and how can we do better?.
- 2.31 Except in the case of the first self-assessment report, the report must also include a review of actions emerging from the previous year's report, with consideration on the progress made on those, and how they increased the extent to which the council met the performance requirements.
- 2.32 The council may wish to consider opportunities to integrate its self-assessment report with reports on other duties, for example it may publish its report on progress in meeting its well-being objectives as required by the Well-being of Future Generations (Wales) Act 2015 in the same document as the self-assessment. In considering opportunities to integrate self-assessment with other duties, the council will need to be satisfied however that all their statutory duties have been fully met.

Taking action on a self-assessment

- 2.33 Through self-assessment the council will identify areas for action to increase the extent to which it is meeting the performance requirements, and put in place a plan to ensure this is undertaken. The self-assessment should be considered the start of the process, not an end in itself. The conclusions may, for example, inform the corporate, well-being objectives or delivery plans, or scrutiny work plans as appropriate.
- 2.34 The council should be proactive in addressing the findings of the self-assessment. The self-assessment should inform considerations of how internal processes and procedures should change to support more effective planning, delivery and decision-making to drive better outcomes, and innovative ways to better deliver its functions.
- 2.35 Ensuring sustainability of services for the long term should be at the heart of the actions. This may involve looking to the long-term on future trends, risks and opportunities, considering alternative ways of delivering services such as use of digital technologies, or collaborating with other public and third sector bodies.
- 2.36 Where there are specific concerns arising from the self-assessment, the council can lead in identifying opportunities for self, and sector-led support or

involving others as appropriate. Seeking such discussions early to actively respond is the mark of a forward thinking, open organisation intent on delivering for its communities.

Who should be involved in the self-assessment

- 2.37 The requirement to produce a self-assessment report is one for the full council or its executive (as a council may determine). As has already been covered in this guidance, councils will be required to involve a wide range of stakeholders and local people in its self-assessment. In addition, involving members from controlling and opposition groups, heads of service, the corporate performance function and employees at all levels in the self-assessment will help to embed the approach in the organisation's culture and build a rich picture to inform the assessment.
- 2.38 Scrutiny committees are a key part of offering constructive challenge to how a council is performing and how it organises itself in the delivery of sustainable services. Scrutiny committees, as well as internal audit, will be a key part of a council's self-assessment, and the council should determine and agree how best to involve their scrutiny committees in the self-assessment process itself, not just in considering the outcomes of any self-assessment.
- 2.39 The council may also consider how to involve partners such as the public services board, regional partnership board etc. for their area.

Involving the council's governance and audit committee

- 2.40 The council must make a draft of its self-assessment report available to its governance and audit committee. The committee must review the draft report and may make recommendations for changes to the conclusions or action the council intends to take.
- 2.41 If the council does not make a change recommended by the governance and audit committee, it must set out in the final self-assessment report the recommendation and the reasons why the council did not make the change.

Publication of self-assessment report

- 2.42 The self-assessment report must be published⁷ within four weeks of it being finalised and approved in accordance with the council's agreed processes, and a copy should be made available to the council's governance and audit committee. The report should also be sent to:-

- The Auditor General for Wales
- Her Majesty's Chief Inspector of Education and Training in Wales
- The Welsh Ministers⁸

⁷ Electronically on the council's website see s171(2) of the Local Government and Elections (Wales) Act 2021.

⁸ This includes Care Inspectorate Wales

2.43 The council can, of course, share the report with any other person or organisation which the council so wishes.

Chapter 3 - Duty to arrange, and respond to, a panel performance assessment

Introduction

- 3.1 This chapter of guidance is about the requirements relating to panel performance assessment within the Local Government and Elections (Wales) Act 2021 (“the Act”). The guidance here reflects the minimum requirements for panel performance assessment as set out in the Act, recognising that councils will wish to develop the detail of their own approach.
- 3.2 The duties in relation to panel performance assessment will come into force from the start of the next local government electoral cycle, in May 2022.
- 3.3 The intention is that the performance and governance provisions in the Act will be underpinned by a sector-led, co-ordinated approach to improvement and support. The findings and recommendations of the panel performance assessment provide an external perspective and should be used to inform and identify areas where sector-led support might be valuable. This will apply in the case of individual councils and should also inform the development and provision of any proposed improvement support nationally.
- 3.4 This chapter of guidance should be read by a council to support the discharge of its duties to arrange a panel performance assessment and to publish and respond to a panel performance assessment report. This chapter may also be read by panel members to guide them in carrying out a panel performance assessment. Panel members may also refer to the guidance on self-assessment to understand how councils are required to discharge their duties on self-assessment as this may usefully inform their approach to the panel assessment.

Duty of principal council to arrange panel performance assessment

- 3.5 The Act requires a council to make arrangements for an independent panel, appointed by the council, to assess the extent to which the council is meeting the performance requirements – a panel performance assessment. The performance requirements are defined as the extent to which a council:-
- is exercising its functions effectively;
 - is using its resources economically, efficiently and effectively; and
 - has effective governance in place for securing the above.
- 3.6 This guidance sets out the purpose of the panel assessment; proposes the stages involved in an assessment; covers matters relating to the timing of a panel assessment; describes minimum requirements and considerations when appointing a panel; and outlines the arrangements for responding to a panel performance assessment report.
- 3.7 In considering how a council exercises its panel performance assessment duties a council should take into account the Welsh Language Standards and

any relevant compliance notice issued by the Welsh Language Commissioner.

- 3.8 Councils may of course commission support similar to a panel performance assessment for a number of other purposes, such as peer reviews on specific services or on particular themes or issues. These are all part of the council's improvement journey, and can complement but not replace the corporate, organisational level, statutory panel performance assessment required by the Act.

Purpose of panel performance assessment

- 3.9 A panel performance assessment is just one component of a sector-led approach to performance, governance and improvement. An effective panel performance assessment can inform the council's improvement journey, building on the annual self-assessment, supporting it to look to the future through a different lens. The panel assessment should provide different perspectives; some independent, objective external challenge; and an opportunity to test thinking with impartial expert peers.
- 3.10 The panel performance assessment will assess, as the council does through self-assessment, the extent to which the council is meeting the performance requirements. It is not about checklists, it is not a form of inspection, and it is not an audit. It is about supporting the council to achieve its aspirations through developing and deepening its understanding about how it is operating, and how it can ensure it is able to offer effective services for the long term.
- 3.11 The panel are not responsible for holding the council to account, but should offer an external view of how the council is operating. This does not replace auditors, inspectors, or regulators' assurance role. This is about supporting councils to understand how they can improve the extent to which they are meeting the performance requirements.
- 3.12 It is for the council to determine how to make the most effective use of the panel performance assessment, and ensure its findings are used alongside other sources in determining its approach to corporate performance, governance and improvement.
- 3.13 Panel performance assessment is part of a culture where councils are open to and embrace challenge, whether presented from within the authority or, in this case, externally. The assessment should be seen as challenging, but constructive, an effective and proportionate approach to continuously learning how to make the council stronger.
- 3.14 Research has shown the potential value to a council in seeking a peer perspective, such as that which a panel performance assessment will provide,

at a corporate, organisational level.⁹ For example, it has been found that such a peer perspective can confirm the council's own understanding of what is needed and add strength to the case for change, as well as supporting or encouraging both organisational and behaviour change.

Approach to panel performance assessment

- 3.15 Each individual council will wish to, and should be free to, determine its own approach to engaging with panel performance assessments (within the broad parameters set out by the Act).
- 3.16 Although it will ultimately be for the council and the panel to determine, we would expect a panel performance assessment to encompass three broad stages; Preparation, Assessment and Follow Up.

Stage 1 - Preparation

This stage is council-led and is likely to include:-

- **Scoping the requirements** of the panel performance assessment. The council may wish to work with partners to do this, and consider any particular challenges that have been highlighted in their self-assessment or in recent audit, inspection or regulator reports. This will help to identify the skills and expertise required from the panel to maximise the impact of the assessment.
- **Identifying and commissioning a panel** to undertake the assessment.
- **Establishing the terms of reference** for the panel performance assessment and, once in place, agreeing the terms of reference with the chair of the panel. This will also provide an opportunity to discuss expectations and approach to the assessment.
- **Sharing relevant information** with the panel to set the context for the assessment.
- **Making practical arrangements** as required by the panel to enable them to effectively conduct the assessment.

Stage 2 – Assessment

This stage is largely led by the panel and is likely to include:-

- **Desk-based review by the panel** to inform their initial thinking and decisions on the areas they wish to focus on during the assessment.

⁹ see Downe, J., Bottrill, I. and Martin, S. (February 2017) *'Rising to the challenge: an independent evaluation of the LGA's corporate peer challenge programme'*. Cardiff Business School: Centre for Local & Regional Government Research.

- **Discussions between the panel** and elected members, officers and other stakeholders about areas within the scope of the assessment.¹⁰
- **Verbal presentation of main findings by the panel.**

Stage 3 - Follow up

This stage should include:-

- The panel sending their **final report** to the council.
- The council **considering its response** to the panel assessment, including the **actions it intends to take following the learning** from the assessment.
- The council **involving** its **governance and audit committee** and considering any recommendations the committee makes on its response to the panel performance assessment.

Timing

- 3.17 The duty to arrange a panel performance assessment at least once during an electoral cycle means an assessment should take place in the period between ordinary elections of councillors to the council. A council may choose to commission more than one panel assessment in an electoral cycle, but it is not a requirement of the legislation.
- 3.18 It is for the council to choose the time during the electoral cycle when panel performance assessment is likely to be of most value to the council. The council should consider how the panel performance assessment can be best timed to align with other aspects of its corporate governance approach and other service specific inspections or assessments. The council may also wish to reflect on the timing of any reviews by the Future Generations Commissioner and examinations by the Auditor General for Wales, so that maximum value is achieved from the panel performance assessment. The council may wish to seek advice from inspectorates, regulators or Audit Wales on this point.
- 3.19 The only requirement on timing is that arrangements must enable the council to publish a panel performance assessment report at least six months before the date of the next ordinary election. Councils will wish to consider timing in relation to the code of recommended practice on local authority publicity, and not leave it too late in the cycle to enable a panel assessment to be commissioned and concluded.
- 3.20 Councils could, in theory, commission a panel performance assessment near the start of an electoral cycle and the next assessment near the end of the next electoral cycle. This could mean a gap of nine years between panel

¹⁰ Panels should gather and use intelligence to reflect the experience of and impact on [people from different protected groups](#) and those experiencing [socio-economic disadvantage](#)

performance assessments. However, this approach would be discouraged as it could well call into question how a council is effectively exercising its functions in relation to its performance and governance.

Preparation in advance of assessment

- 3.21 A council should not feel it has to 'prove' anything to the panel and as such preparation in advance of a panel assessment should not be overly onerous. However, it is recognised a panel performance assessment will require some administrative resource to support the panel with practical arrangements, such as arranging meetings and focus groups, and facilities for the panel to use if appropriate.
- 3.22 The panel will also wish to see key documents as part of their assessment which will require officer time to collate, but it is not envisaged this will involve the preparation of any new reports, as there should already be a range of information (including the self-assessment report) available.

Appointing a panel

- 3.23 The council is responsible for identifying panel assessors, commissioning the panel to undertake the assessment, and meeting any associated costs.
- 3.24 Selection of panel members will be key to ensuring an effective and meaningful, assessment. The council should ensure the panel has a range of practical experience, knowledge and perspectives, has integrity, objectivity and assurance that its findings will be trusted by the council. The council should also consider the importance of diversity when appointing the panel.
- 3.25 To ensure independence panel members must have sufficient detachment from the council to reach impartial, objective conclusions about how the council is meeting the performance requirements. For example no one who is, or has recently been (within the last two years), a member or officer of the council being assessed should be considered for appointment to the panel. A panel member should not be conflicted (in so far as a reasonable third party would regard a panel member as conflicted) in offering an assessment of how the council is meeting the performance requirements.
- 3.26 To be most effective the panel should be peer-led. It should have a mix of experienced senior officers, councillors and others who work with local government including from the wider public and other sectors, who can command the confidence of the council and ensure councils get the most appropriate challenge, support and constructive recommendations. Panel members can also have experience of Wales or further afield.
- 3.27 Whilst it is important that a proportion of the panel have a good understanding of the complexity of working in a political environment and the impact that this can have on organisational culture and priorities, it is equally important that those with experience of other sectors and working with local government are able to bring these valuable insights to the work of a panel.

- 3.28 It would be expected that any assessment panel commissioned under the council's duties contained in the Act should include as a minimum:-
- An independent panel chair – not currently serving in an official or political capacity within local government
 - A peer from the wider public, private or voluntary sectors
 - A serving local government senior officer, likely to be equivalent to chief executive or director, from outside the council to be assessed
 - A senior elected member, from outside the council to be assessed
- 3.29 The council may choose to appoint other additional members of the panel as they see fit, for example officers at other levels, more partner representatives or other external experts. The council may also wish to assign an officer to work with the panel for the duration of the assessment, to provide administrative support and co-ordinate activity across the authority.

The panel's role in carrying out a panel performance assessment

- 3.30 The panel, acting jointly, is required to assess the extent to which the council is meeting the performance requirements, that is, the extent to which:-
- it is exercising its functions effectively;
 - it is using its resources economically, efficiently and effectively;
 - its governance is effective for securing the above.
- 3.31 In this way the panel is building on, and complementing, the self-assessments already undertaken by the council. The panel may find it helpful to refer to the guidance on self-assessment to guide their approach to undertaking the panel assessment. The panel's focus should be on looking at the current situation, and over a sufficient previous period to get a meaningful picture of the position in the council and any trends. The panel will be considering how capable the council is to respond to the changing environment in which it operates, and should be guided in its work by using the ways of working set out in the Well-being of Future Generations Act.¹¹
- 3.32 The panel may also find it helpful to consider the activities common to the corporate governance of public bodies as set out in the statutory guidance on the Well-being of Future Generations (Wales) Act 2015¹²:-
- Corporate planning
 - Financial planning
 - Workforce planning (people)
 - Procurement

¹¹ See [Chapter 1](#) for full details of the ways of working

¹² [Well-being of Future Generations Act Guidance](#)

- Assets
- Risk management
- Performance Management

- 3.33 Using this as a framework should guide the panel in understanding whether the council is governing itself effectively in order to maximise its contribution to the well-being goals.¹³
- 3.34 This is a corporate, organisational assessment, designed to consider the extent to which the council is meeting the performance requirements and its capability to deliver effective outcomes. The panel should not be seeking to undertake deep dives or in-depth service reviews, although a panel may draw on the findings of other peer reviews or in-depth service reviews in reaching their conclusions. The panel should not be looking to audit / check the councils own self-assessments, although the approach a council takes to self-assessment may inform a panel's view on the effectiveness of its governance arrangements.
- 3.35 In carrying out a panel performance assessment in respect of a council, a panel must consult the following about the extent to which the council is meeting the performance requirements:
- local people;
 - other persons carrying on a business in the council's area;
 - the staff of the council;
 - and every trade union which is recognised (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992 (c.52) by the council.
- 3.36 While this is the minimum required by the legislation, the panel may choose to consult or involve others as it determines relevant to its assessment of how the council is meeting the performance requirements.¹⁴ The panel may, for example, seek to consult other partners involved in collaborative working with the council, as well as audit, inspection or regulatory bodies.
- 3.37 It is for the panel to consider how it might wish to consult in order to effectively contribute to the panel assessment process, for example utilising existing engagement mechanisms, web-based surveys, questionnaires etc. These should be designed to be representative of the relevant population (e.g. local people, or staff). It is for the council to make the necessary arrangements to facilitate the consultation.
- 3.38 The panel will also utilise a range of other internal and external sources, ensuring a broad evidence base to inform conclusions on the extent to which the council is meeting the performance requirements and recommendations on how to improve. Suggestions of sources which could inform the

¹³ See [Chapter 1](#) for full definitions of the goals.

¹⁴ Panels should gather and use intelligence to reflect the experience of and impact on [people from different protected groups](#) and those experiencing [socio-economic disadvantage](#)

assessment are included in the guidance to councils on conducting self-assessments.

3.39 Councils will need to consider how long they will need to engage a panel for, and agree this with the panel, to ensure there is sufficient time for the three broad stages set out in paragraph 3.16.

3.40 The assessment is likely to include the following key steps for the panel, although it will be for the panel to determine and agree its approach:-

- A scoping meeting.
- Desk based research.
- Meetings with political leaders, senior officers; and discussion groups, including with staff and partners, local people, unions and representatives of local businesses.
- Analysis of findings and agreement to conclusions.
- Presentation of key findings.
- Preparation of the panel's report to the council setting out their conclusions.

Panel assessment report

3.41 Following the conclusion of a panel assessment, a panel must make a report setting out:-

- its conclusions as to the extent to which the council is meeting the performance requirements;
- any actions the panel recommends that the council could take in order to increase the extent to which it meets the performance requirements.

3.42 It is for the panel to determine the form and content of this report, although it would be expected that it would reflect the key principles of openness and transparency, and accessibility for the public and all councillors. The report must be the judgements and recommendations of the panel acting jointly.

3.43 The panel chair should discuss their conclusions and recommendations with the council leader and chief executive, and any others the council wish to involve (for example leaders of the opposition and political groups, and chairs of scrutiny committees), to ensure that the richness of the learning from the assessment is properly conveyed.

3.44 The panel must send the report as soon as is reasonably practicable after it has been prepared to:-

- The council
- The Auditor General for Wales
- Her Majesty's Chief Inspector of Education and Training in Wales
- The Welsh Ministers¹⁵

¹⁵ This includes Care Inspectorate Wales

Publication of panel assessment report

3.45 It is the responsibility of the council, not the panel, to publish the panel report. As soon as reasonably practicable after receiving the report from the panel, the council must:-

- make the report available to the council's governance and audit committee; and
- publish the report.¹⁶

Responding to the panel assessment report

3.46 The council must prepare a response to the panel performance assessment report. In its response, the council is required to state:-

- the extent to which it accepts the conclusions in the report;
- the extent to which the council intends to follow any recommendations contained in the report; and
- any actions it proposes to take to increase the extent to which it meets the performance requirements.

3.47 The conclusions and recommendations from the assessment should be used to guide the council in identifying actions it will take to increase the extent to which it is meeting the performance requirements. The report should highlight areas where self and sector-led support might be valuable. It may also reiterate something that the council is already aware of and add weight to the case for change, and / or indicate where it would be beneficial to involve others as appropriate.

3.48 In responding, a council should apply the Well-being of Future Generations (Wales) Act 2015 and formulate its response according to the five ways of working. This should apply to both *what* the council intends to do and *how* it intends to do it. Involving others in formulating its response would be the mark of a forward thinking council.

3.49 A council should also reflect on a panel performance assessment when undertaking its next self-assessment, to see whether the learning from the panel assessment has been put into action.

Involving the governance and audit committee

3.50 The council must make a draft of its response to the panel performance assessment available to its governance and audit committee, which must then review the draft response and may make recommendations for changes to the response to the panel assessment.

¹⁶ Electronically on the council's website see s171(2) of the Local Government and Elections (Wales) Act 2021.

3.51 If the council does not make a change recommended by the governance and audit committee, it must set out in the final response the recommendation and the reasons why it did not make the change.

Publication of the response to the panel assessment report

3.52 As soon as reasonably practicable after finalising the response, the council must publish¹⁷ the response and send the response to:

- The members of the panel
- The Auditor General for Wales
- Her Majesty's Chief Inspector of Education and Training in Wales
- The Welsh Ministers¹⁸

3.53 The response to a panel assessment report must be published at least four months before the next ordinary election of councillors to the council is due to take place.

¹⁷ Electronically on the council's website see s171(2) of the Local Government and Elections (Wales) Act 2021.

¹⁸ This includes Care Inspectorate Wales

Chapter 4 - Special inspections by the Auditor General for Wales

Introduction

4.1 Over and above the system of self-assessment, panel performance assessment and reporting, the performance and governance provisions in the Local Government and Elections (Wales) Act 2021 (“the Act”) provide for a special inspection of a council to be carried out by the Auditor General for Wales. This chapter describes powers for special inspections of councils, sets out how a decision to undertake a special inspection is taken, and describes the duties of councils and the Welsh Ministers to respond to special inspection reports. Councils may put reports through their own democratic processes, in addition to meeting these statutory requirements

Power to carry out a special inspection

4.2 The purpose of a special inspection is to support a council in meeting, or increasing the extent to which it is meeting, the performance requirements.

4.3 If the Auditor General for Wales considers that a council is not, or may not be meeting, the performance requirements, the Auditor General may carry out a special inspection. This inspection is to assess the extent to which the council is meeting the performance requirements, that is, the extent to which:-

- it is exercising its functions effectively;
- it is using its resources economically, efficiently and effectively;
- its governance is effective for securing the above.

4.4 Welsh Ministers can also request the Auditor General to consider whether a council is not, or may not be, meeting the performance requirements; and determine whether to carry out a special inspection.

4.5 The Auditor General must consult the Welsh Ministers before determining whether to carry out a special inspection of a council, unless the Welsh Ministers made the request as outlined above.

4.6 The Auditor General must also give notice in writing to the council of the intention to carry out a special inspection specifying:-

- the reasons for considering the council is not or may not be meeting the performance requirements; and
- the matters the Auditor General intends to inspect (although the Auditor General is not restricted to inspecting only the matters specified in the notice).

4.7 Following a special inspection, the Auditor General must make a report setting out:-

- conclusions as to the extent to which the council is meeting the performance requirements; and

- any actions it is recommended the council or Welsh Ministers take to increase the extent to which the council meets the performance requirements and/or improve the effectiveness of local government for the area.
- 4.8 The Auditor General must, as soon as reasonably practicable, publish the report and send the report to:-
- the principal council to which it relates;
 - Her Majesty's Chief Inspector of Education and Training in Wales;
 - The Welsh Ministers¹⁹
- 4.9 A council in receipt of a special inspection report must make the report available to its governance and audit committee as soon as reasonably practicable.
- 4.10 If the report deals with the administration of housing benefit by the council, the Auditor General may send the report to the Secretary of State.

Duty to respond to Auditor General's recommendations – principal council

- 4.11 A council in receipt of a special inspection report by the Auditor General for Wales has a duty to respond to the recommendations.
- 4.12 The response must state what action, if any, the council intends to take in response to the recommendations. The council must make a draft of the response available to its governance and audit committee, which must review the draft response and may make recommendations for changes to the draft. If the council does not make a change recommended by the governance and audit committee, the council must set out in the response both the recommendation and the reasons why it did not make the change.
- 4.13 The response must be sent to the Auditor General within 30 days of the council receiving the report, unless the Auditor General specifies a longer period in writing.
- 4.14 The council must, as soon as reasonably practicable after sending the response to the Auditor General, publish the response and send it to:-
- Her Majesty's Chief Inspector of Education and Training in Wales;
 - The Welsh Ministers²⁰

Duty to respond to Auditor General's recommendations – Welsh Ministers

- 4.15 If a special inspection report made by the Auditor General for Wales contains recommendations for action to be taken by the Welsh Ministers, the Welsh Ministers must prepare a response to the recommendations.

¹⁹ This includes Care Inspectorate Wales

²⁰ This includes Care Inspectorate Wales

4.16 The Welsh Ministers' must publish their response as soon as reasonably practicable and send it to:-

- The Auditor General;
- The principal council to which the Auditor General's report relates; and
- Her Majesty's Chief Inspector of Education and Training in Wales.

Chapter 5 – Support and assistance with improving performance, and intervention by Welsh Ministers

Introduction

- 5.1 The Local Government and Elections (Wales) Act 2021 (“the Act”) makes provision for Welsh Ministers to provide support and assistance to councils, and where necessary to intervene where a council is facing significant problems.
- 5.2 This chapter describes powers for Welsh Ministers to provide statutory support and assistance, and is distinct from any informal sector-led support available to councils. Self-assessment and panel performance assessment should assist councils in identifying issues early, access sector-led support to address issues, and avoid the need for more formal statutory support.
- 5.3 This chapter also describes powers for statutory intervention by Welsh Ministers to increase the extent to which a council is meeting the performance requirements. Statutory intervention in a council is an action of last resort. Welsh Ministers will endeavour to work with a council and other partners to offer support to allow councils to deal with issues in an appropriate and timely manner to ensure they do not become critical or crisis issues.
- 5.4 The purpose of the support and intervention powers is to secure good governance and the delivery of effective local government, not to effect substantive change to the underlying functions of a council.

Support and assistance by the Welsh Ministers

- 5.5 Welsh Ministers are able to provide support to a council to address difficulties they are facing in meeting the performance requirements. This support will be bespoke and designed for the specific issues or circumstances causing concern. In this way the support and assistance would be tailored to best meet the specific needs of the council.
- 5.6 A council may ask Welsh Ministers to consider providing support and assistance and such a request would be the mark of a forward thinking, open organisation intent on delivering for its communities.
- 5.7 Welsh Ministers can also provide support and assistance in the absence of a request from a council, in order to increase the extent to which a council meets the performance requirements.
- 5.8 The Welsh Ministers must consult the council about the support and assistance they intend to provide.
- 5.9 Welsh Ministers can direct a council to provide support and assistance to another council if considered appropriate to increase the extent to which the council receiving support meets the performance requirements.

- 5.10 Before making a direction both councils would be consulted and all circumstances, including the impacts of providing this support, would be taken into consideration.

Powers of the Welsh Ministers to intervene

- 5.11 If Welsh Ministers consider it is likely a council is not meeting the performance requirements, or that the council is not meeting the performance requirements, they may direct a council to take specific actions and may also direct that a function of a council be performed by the Welsh Ministers or their nominee.
- 5.12 The Act includes conditions on when and how Welsh Ministers can give an intervention direction. These state that Welsh Ministers must:-
- have provided or attempted to provide support and assistance to the council;
 - have consulted such persons as they consider appropriate; and
 - have notified the relevant council that they intend to give the direction.
- 5.13 However, if Welsh Ministers consider there is an urgent need to give a direction these conditions would not apply.
- 5.14 Welsh Ministers would approach each situation on its own merits when determining whether statutory support or statutory intervention is necessary, taking account of a full range of evidence.
- 5.15 The Welsh Ministers may direct a council to co-operate with the Welsh Ministers, or with another council it directs to give support and assistance. The supported council must give access to its premises, documents, other information, and facilities and assistance for the purposes of providing support and assistance (unless prohibited from doing so by any enactment or rule of law).