

Statutory and Non Statutory Guidance

Statutory Guidance on Constitutions

Status of this Guidance

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

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

Developing a Constitution

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.

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

Councils should ensure that their constitution is easy to use and understand. Councils should in particular make sure that 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.

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.

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.

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.

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.

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.

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 that the council makes decisions in partnership with other councils and other bodies, in particular public service boards, regional partnership boards and corporate joint committees, 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.

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

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

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 and head of democratic services.

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 elected 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; in some councils the democratic services committee has an ongoing responsibility for oversight, but there is likely to be crossover with the governance and audit 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.

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.

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.

Any changes the council has resolved to make will come into immediate effect unless the decision specifies otherwise.

The published constitution should be amended within 5 days of the making of a resolution to ensure that 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).

The Constitution Guide Statutory Guidance

Status of this Guidance

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

Purpose of this Guidance

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

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

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.

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.

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.

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. The Guide can be found at (insert reference).

DRAFT

The Exercise of Functions by Councillors Statutory Guidance

Status of this Guidance

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

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.

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.

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

The Measure includes powers for councillors aimed at helping them tackle issues and resolve problems in their local area.

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.

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.

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

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.

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.

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

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.

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.

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.

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.

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.

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.

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

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.

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 to ensure delegated powers are used effectively;
- Implementing decisions that are made under delegated powers;
- Developing processes to appropriately record decisions made by a councillor under these powers

Some practical considerations

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.

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. 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

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.

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)

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.

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Council Executives Statutory Guidance

Status of this Guidance

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

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.

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

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.

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

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 an office on the executive, including the office of leader of the executive.

It is envisaged in the case of the leader of the executive 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.

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. There is a statutory limit of three on the number of executive posts (including the executive leader) that can be filled on a job sharing basis. 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.

When making appointments on a job sharing basis the executive leader should consider matters such as how this could increase the diversity in the executive to best reflect the diversity in the council's area, how will job sharing members be supported to ensure they can maintain a reasonable work life balance and opportunities for succession planning in the executive job sharing may offer. Job sharing arrangements must not be used solely as a means to increase the number of executive members.

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.

Should two or more of the members in a job sharing arrangement attend a meeting in their capacity as an executive member they may both be recorded as having attended and they may both speak at the meeting but should the meeting require a vote to be cast they must decide amongst them who will cast the vote, if they cannot agree on the vote then they must make the chair of the meeting aware they have not agreed a position.

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 in agreement with the other members of their job sharing arrangement. The chair of the meeting should establish whether this is the case and if agreement has not been reached then the job sharing member attending the meeting must make the chair aware no agreement has been reached. Councils will wish to consider what arrangements they put in place where a member of a job sharing arrangement casts a vote at a meeting they have attended which is not in agreement with their job sharing partners.

Likewise councils must consider the implications for political balance requirements for those committees which are subject to political balance requirements and on which a member of the executive may sit i.e. the Governance and Audit Committee and the Democratic Services Committee. This is in the event of a job sharing arrangement which 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).

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

Section 57 of the 2021 Act amends the Local Government Act 2000 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 and could bring valuable diversity and insight into discussions.

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 must be a clear purpose to the appointments which cannot be solely based on increasing the number of members able to make a contribution to the running of the executive.

The 2021 Act provides that the chair and vice-chair of the council or the presiding member or deputy presiding member cannot be assistants to the executive.

Whilst assistants are not members of the executive, they are treated as if they are members 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, Local Government and Elections (Wales) Act 2021 and Consequential SI xxxx).

Scrutiny and Call-ins

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.

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.

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.

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.

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.

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Political Assistants Non Statutory Guidance

Status of the guidance

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

Purpose of the guidance

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

Local authority political assistants are local government employees who undertake research and provide administrative support for the main political groups within an authority.

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.

[Part I of the Local Government and Housing Act 1989](#) sets out the framework regulating the appointment and conduct of political assistants.

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.

Political advisers 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.

Political advisers 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.

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](#).

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

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.

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.

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.

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

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.

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.

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

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.

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

Arrangements for Securing Effective Overview and Scrutiny

Statutory Guidance

Status of this Guidance

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

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

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.

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.

Effective scrutiny of partnership arrangements and joint committees such as public service boards and corporate joint committees is essential in ensuring that those arrangements are democratically accountable to local people.

Processes and Relationships

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.

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 undertakes its panel assessment.

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.

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.

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

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 months, building a comprehensive evidence base.

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.

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.

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

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.

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

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.

Appointment of Persons to Chair Overview and Scrutiny Committees Statutory Guidance

Status of this Guidance

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

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

Introduction

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

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;

1. Council with no political groups declared

Each scrutiny committee elects its own chair.

2. Council with only one declared political group

Each scrutiny committee elects its own chair.

3. 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.

4. Council with two or more political groups and multiple scrutiny committees

The political groups represented in the executive can only appoint as many chairs as are proportionate to their combined share of the council's overall membership, rounding down if this does not equal a whole number of chairs. It is for the executive groups together to decide upon the allocation of their entitlement to chairs between them.

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 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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 writing, there are no plans to do either.

Guidance

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.

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.

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.

Co-opted Members of Overview and Scrutiny Committees Statutory Guidance

Status of this Guidance

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

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

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.

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;

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.

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.

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 authorities, the Environment Agency Wales, and local business forums who have been working alongside elected members to improve local services.

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

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.

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.

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

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 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.

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

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 and experience to participate in scrutiny activity.

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.

A series of suggested principle points and core competencies are provided within Appendix X to assist councils develop their individual arrangements.

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.

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

In recognition of the democratic mandate of elected 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.

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.

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

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.

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

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.

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.

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

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.

Guidance in relation to the Parent Governor Representatives and Church Representatives (Wales) Regulations 2001 is included within the National Assembly for Wales Circular 19/2002 which can be found at <http://wales.gov.uk/publications/circular/circulars2002/NAFWC192002?lang=en>

The Welsh Government Guidance Circular No: 001/2010 contains guidance on the Crime and Disorder (Overview and Scrutiny) Regulations 2009 which can be found at <http://wales.gov.uk/topics/localgovernment/publications/guidance/?lang=en>

‘Call in’ Arrangements in relation to Overview and Scrutiny Committees Statutory Guidance

Status of this guidance

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

Purpose

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

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

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.

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.

Councillor Calls for Action Statutory Guidance

Status of this Guidance

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

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

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.

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.

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

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.

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.

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

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.

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:

(1) 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;

(2) 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.

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.

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.*

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.

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.

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.

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.

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'

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.

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.

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.

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.*

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.

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.

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

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.

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

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.

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)

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.

Overview and Scrutiny Committees - Taking into account the views of the public

Status of this guidance

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

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

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.

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.

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.

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

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

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.

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.

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

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.

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.

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.*

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.

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.

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.

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.

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.

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 / JOSOC 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

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.

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

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.

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.

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

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.

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.

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

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.

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

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.

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.

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.

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.

Joint Overview and Scrutiny Committees Statutory Guidance

Status of this Guidance

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

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

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.

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

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.

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

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.

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

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.

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

In deciding whether or not to establish a JOSC, overview and scrutiny committees may wish to give thought to the following questions:

- 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

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.

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

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

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 \(legislation.gov.uk\)](http://legislation.gov.uk)

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.

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.

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.

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

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

With regard to call-in, JOSCs should be able to recommend that an executive decision of 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 Council.

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.

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 local authorities 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.

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

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.

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.

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.

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.

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 member 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.

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.

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.

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

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.

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

Where a JOSC is established, it is suggested participating authorities 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.

Each principal 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.

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.

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.

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

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.

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.

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.

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.

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

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.

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

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.

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.

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.

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.

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.

Democratic Services Committee Statutory Guidance

Status of this Guidance

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

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

Introduction

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.

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 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

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.

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.

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.

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).]

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

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.

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.

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)).

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)).

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)).

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)).

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

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

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.

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.

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

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.

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.

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.

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.

Governance and Audit Committees Statutory Guidance

Status of this Guidance

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

Purpose of this Guidance

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

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.

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.

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.

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

The full council must have regard to this guidance when determining membership. At least two thirds of the members of the committee are to be members of the council and at least one member must be a lay member. Only one member of the executive may sit on the committee, and that person must not be the leader (s82, Local Government (Wales) Measure 2011).

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.

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.

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.

It may also mean that the members should not have too many other commitments, in general such as membership of other committees membership because of the significant commitment which being a member of the governance and audit committee implies. All members should receive adequate training and

development.

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.

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

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.

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.

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.

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

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.

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.

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 a scrutiny committee.

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

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.

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 Statement¹ and Corporate Governance Strategy. An effective and high profile governance and audit committee is critical to engendering public confidence that

¹ 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.

the authority has a solid approach to its financial and organisational propriety.

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 auditors and require reports as to action taken in response. This means that the authority must ensure the governance and audit committee has copies of auditor's reports. 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.

The governance and audit committee must also 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. 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.

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

The way in which an organisation manages its internal and external complaints process 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.

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 accessibly 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

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.

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.

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.

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

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. 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

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.

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