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## **REPORT OF THE HEAD OF DEMOCRATIC SERVICES**

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### **WELSH GOVERNMENT STATUTORY AND NON-STATUTORY GUIDANCE FOR PRINCIPAL COUNCILS IN WALES**

#### **Reason for this Report**

1. To inform the Committee of the Welsh Government's Statutory and Non-Statutory Guidance for Principal Councils in Wales (the 'Democracy Handbook'), issued in June 2023 and attached at **Appendix A**.
2. The finalised guidance includes updated guidance under the Local Government (Wales) Measure 2011 for the Democratic Services Committee as well as new guidance on the democracy provisions introduced by the Local Government and Elections (Wales) Act 2021.

#### **Background**

3. The Local Government (Wales) Measure 2011 introduced the requirement for each principal council to:
  - designate one of their officers to the new statutory post of "Head of Democratic Services" (HDS) and provide that officer with sufficient support to do their job.
  - establish a Democratic Services committee to perform the following roles:
    - 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.
4. The latest Statutory and Non-Statutory Guidance for Principal Councils in Wales includes:
  - Part 2 Guidance for elected members' support, training and development
  - Part 3 Guidance on public participation strategies and petition schemes
  - Part 4 Guidance on constitutions, executives, scrutiny, governance and audit committees and conducting meetings.

5. The remit of the Democratic Services Committee does not cover all aspects of the guidance but the relevant sections are covered in more depth within this report. Other committees will receive briefings or updates on the guidance which is within their remits.

## **Issues**

6. The published guidance largely reflects the same provisions that were included within the Welsh Government Consultation draft guidance previously considered by the Committee at its meeting in September 2022.

### Democratic Services Committee (DSC)

7. This statutory guidance for Democratic Services Committees was made under Sections 8 (1A) and 16 of the Local Government (Wales) Measure 2011 (the Measure). This guidance replaces previous guidance issued in 2012 and provides assistance to principal councils in the effective running of their Democratic Services Committees. The changes to the guidance are summarised at **Appendix B** with the key changes being identified in bold.
8. The guidance identifies the importance of ensuring that 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 considered as critical to good governance and enabling the council to demonstrate it is effectively supporting and resourcing scrutiny as part of its duties relating to keeping performance under review and consulting local people on performance.
9. It is also considered as critical to enable both scrutiny and elected members in their representational role to engage with the public thus contributing to meeting the duties in relation to encouraging local people to participate in decision making and participation strategies.
10. The membership of the DSC has been updated to reflect that when making appointments to the Committee the Council cannot include more than one member of the executive **or assistant to the executive**. Any executive member must not be the council leader.
11. Whilst 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 Head of Democratic Services (HDS), the guidance now indicates that 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 its:
  - contribution this work makes to the council meeting its duties relating to the duty to encourage local people to participate in decision making
  - strategy on public participation
  - contribution to keep its performance under review and consult with local people on performance.

- 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.
12. The guidance also notes that councils will have competing pressures for resources, including for essential front line and statutory services, and careful consideration of cumulative impacts of resourcing erosion or reductions in relation to democratic services should therefore be part of considerations on the DSC Committee's report.
  13. The updated guidance has already been implemented by this Authority in respect of the Democratic Services Committee.

#### Timing Of Council (including Committee) Meetings

14. This statutory Guidance was made under Section 6 of the Local Government (Wales) Measure 2011 (the Measure). By virtue of section 6 (2) of the Measure, local authorities must have regard to this guidance in respect of the times and intervals at which meetings of a local authority are held. The relevant meetings in the context of this guidance are meetings of the full council and any committee or sub-committee of the council. The changes to the previous guidance are summarised at **Appendix C** with the key changes being identified in bold.
15. The updated guidance confirms that Councils should survey their members to assess preferences in relation to meeting times, frequency and length at least once in every term and states that this survey should be carried out within six months of the ordinary local government elections, which has already been implemented as part of the initial induction process in 2022 in respect of the timings of Council meetings. The guidance also advises Councils to consider increasing the frequency of surveys to accommodate changes in circumstances and that it is for each authority to decide on the regularity of such surveys. The Democratic Services Committee may wish to consider when an additional survey of meeting timings should be undertaken to ensure that the calendar of meetings does not adversely affect the attendance of Elected Members at scheduled meetings.

#### Training, Development and Support for Local Authority Members

16. The statutory guidance is made under Section 7(4) of the Local Government (Wales) Measure 2011 and a local authority must have regard to it. Also, under Section 38 of the Local Government Act 2000, as amended by section 45 of the Local Government and Elections (Wales) Act 2021, a local authority elected mayor or an executive leader must have regard to it; and under Section 71 of the Government of Wales Act 2006. The changes to the previous guidance are summarised at **Appendix D** with the key changes being identified in bold.
17. Section 7 of the 2011 Measure requires local authorities to secure the provision of reasonable training and development opportunities for its members but does not define what constitutes reasonable training and development opportunities for these purposes. The updated guidance notes that the role of councillors is constantly evolving as legislation changes, for example, the new duties on councils to encourage the public to participate in decision making. Likewise, the social and environmental context in which councillors undertake their roles is constantly changing.

18. The guidance states that it is essential that councils do not have a static view of what constitutes reasonable training and development needs, and this should be kept under review by the Democratic Services Committee to ensure it reflects legislative changes and the needs of members. It is not sufficient to offer a package of training to a member immediately on their election and take a position that is sufficient to support them for the whole of their term.
19. Under section 7 of the 2011 Measure, every local authority member, other than an executive leader, must be offered the opportunity to have their training and development needs reviewed on an annual basis. The updated guidance outlines good practice in this regard. The processes for providing Annual Review's and mentoring for members in Cardiff are currently being reviewed and a further report will be provided to the committee on this in due course.

#### Research Support and Services for Councillors

20. This is statutory guidance issued under section 8(1A) of the Local Government (Wales) Measure 2011, as introduced by the Local Government and Elections (Wales) Act 2021. This section enables the Welsh Ministers to issue guidance to which a local authority must have regard when exercising its functions in respect of providing the Head of Democratic Services (HDS) with the staff, accommodation and other resources which are, in its opinion, sufficient for the HDS to discharge their functions.
21. The previous guidance on staff and resources for democratic services has been expanded to make detailed provision for research support and services for councillors, as shown at **Appendix E**.
22. The guidance identifies that in order to undertake their roles effectively all elected members should be able to access a range of information and support. It is anticipated this will mainly focus on signposting individual members to existing sources of information or available training for example, brief prepared for scrutiny committee meetings or how to use research, statistical or legislative websites. It may also include targeted support for groups of members for example, leading a task and finish group investigation or support for individual members to research issues impacting on their communities. This support is currently provided through the use of the Committee and Members Services and the research support provided to the Scrutiny Committees by the Principal Research Officer. Additional information is becoming more widely available to Elected Members including access to the Corporate Plan Dashboard and ward level census data being shared by Data Cymru.
23. The guidance states that the Democratic Services Committee should advise on the nature and level of support for research by elected members that is suitable for their Council and the level of resources that the Head of Democratic Services might require to provide a sufficient set of services in this regard. The guidance also states that Councils should, through their Democratic Services Committee, put in place a protocol or other set of rules governing how councillors should expect to be able to access and use research services, to ensure that it is accessible to all councillors and that it is used equitably and proportionately. This should dovetail with the Democratic Services Committee's oversight of the overall resourcing available for democratic services in an authority. As such, the guidance indicates that councils should:

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

24. The expanded guidance states that the Democratic Services Committee should consider the provision of this kind of support to elected members as part of its considerations as to what constitutes sufficient resources for the HDS to discharge their functions. It is anticipated that the DSC will begin this process by identifying the baseline of support which is already available to members, then work with members to identify how this support and its parameters could be developed over time. The council should set out what steps it will take to improve research services to members where appropriate, with actions and timelines and communicate this to members.

25. It is proposed that the development and implementation of the Research Protocol for Elected Members be added to the committees forward work programme which will include consultation with Elected Members and Officers to balance the requirements for research with the available resources.

#### Arrangements for Securing Effective Overview and Scrutiny

26. This guidance is statutory guidance issued under section 38 of the Local Government Act 2000. A county or county borough council, elected mayor or an executive leader must have regard to it. It collates previous guidance in existence and has expanded upon it to provide greater detail to replace the previous guidance issued in 2012. The changes to the guidance are summarised at **Appendix F** with the key changes being identified in bold.

27. The guidance recognises 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

28. The requirements of the guidance for scrutiny arrangements to be included in the Council’s Constitution and for scrutiny to be an integral part of the of the council’s self-assessment under Part 6 of the Local Government and Elections (Wales) Act 2021 are in place in Cardiff. It is considered that the Council’s arrangements for Scrutiny also reflect the effective working and resourcing and information elements of the guidance.

## Appointment of Persons to Chair Overview and Scrutiny Committees

29. This section provides guidance to councils on the appointment of persons to chair overview and scrutiny committees with a policy intent to ensure overview and scrutiny is not dominated by the political groups on the executive of the council and can act independently. This guidance replaces previous guidance issued under this section in relation to the appointment of persons to chair overview and scrutiny committees in 2012.
30. These arrangements for appointing persons to Chair Overview and Scrutiny Committees are already in place in Cardiff.

## Co-Opted Members of Overview and Scrutiny Committees

31. 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. This guidance replaces previous guidance issued in 2012. The changes to the guidance are summarised at **Appendix G** with the key changes being identified in bold.
32. 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.
33. The guidance indicates that 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. Co-opted members on committees can significantly strengthen their effectiveness by bringing different perspectives. 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.

## 'Call in' Arrangements in relation to Overview and Scrutiny Committees

34. This is new statutory guidance issued under section 38 of the Local Government Act 2000. A county or county borough council elected mayor or an executive leader must have regard to it. This guidance replaces any previous guidance issued on this matter.
35. The guidance states that "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.

36. 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.
37. The arrangements for Call-ins identified in the guidance are already in place in Cardiff (specifically, within Rule 12 of the Scrutiny Procedure Rules).

#### Councillor Calls for Action (CCfA)

38. This is statutory guidance made under Section 21A(3) of the Local Government Act 2000 (the 2000 Act), to which a member of an authority must have regard in considering whether to make a call for action. This guidance replaces previous guidance on this matter issued in 2012.
39. Section 21A of the Local Government Act 2000 enables 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. The guidance indicates that Councillor calls for action (CCfAs) enable local councillors and their electors to ensure a response from their council leadership to issues of local importance and 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. This statutory 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.
40. The guidance states that 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.
41. 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.
42. The guidance states that "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."

43. The guidance suggests that “It might be helpful to identify research support for members considering a CCfA to either ensure it is the appropriate course of action or to build a well evidenced case to enable effective scrutiny and consideration”.
44. The guidance states that when deciding whether or not to address an issue raised by a CCfA at a scrutiny committee meeting, committees may find it helpful to use criteria for referral. Although there have been no CCfA’s in recent years there is no set criteria for undertaking CCfAs, therefore the development of these criteria is to be added to the Constitution Committee’s Forward Work Programme, for consideration, following consultation with all councillors.

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

45. 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’. This guidance replaces previous guidance on this matter issued in 2012. The changes to the guidance are summarised at **Appendix H** with the key changes being identified in bold.
46. Section 62 of the Local Government (Wales) Measure 2011 requires local authorities to make arrangements to enable the public to express their views in relation to any matter being considered by its scrutiny committees. The guidance indicates that engaging the public more deeply in scrutiny activity may be regarded as a hallmark 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 and should also form part of the guide to the constitution.
47. 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.
48. The guidance confirms that 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.

#### Joint Overview and Scrutiny Committees (‘JOSCs’)

49. 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. This guidance replaces previous guidance in relation to joint overview and scrutiny committees issued under this section in 2013. The purpose of the guidance is to set out the key matters councils must take into consideration when establishing and operating joint overview and scrutiny committees (JOSCs).

50. 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. This could include wider public service matters. 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.
51. Local authorities need to give careful consideration to who they appoint to sit on JOSCs. In some instances, it may be appropriate 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. 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:
  - 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;
  - The JOSC should have the ability to appoint co-opted members if there are none contained within the body of the committee's membership.
52. The guidance indicates that "Councils should make efforts to co-ordinate their forward work programmes to avoid duplication and help ensure scrutiny activities are complementary where appropriate. JOSCs could operate in an environment where there is scrutiny of particular issues or organisations at both a joint regional level and at a local level. Clarity of roles will be important to avoid duplication."
53. Cardiff Council is currently a partner authority of the Joint Overview and Scrutiny Committee for the Cardiff Capital Region City Deal and is engaged in discussions about extending the remit of this JOSC to include scrutiny of the South East Wales Corporate Joint Committee, its successor body. Cardiff will continue to work with colleagues in partner authorities to ensure that the requirements of this guidance are met.
54. Although this council is already complying with a significant majority of this statutory guidance a more formal self-assessment should be undertaken in co-ordination with the scrutiny Chairs and their Scrutiny Committees. The outcomes of the self-assessment will be reported back to the Democratic Services Committee in due course.

## Legal Implications

55. Relevant legal provisions are referenced in the body of the report. There are no direct legal implications arising from the recommendations of this report.

## Financial Implications

56. There are no direct financial implications arising from this report.

## Recommendations

The Committee is recommended to:

- a. Note the contents of the report and the Statutory and Non Statutory Guidance for Principal Councils in Wales attached at **Appendix A**.
- b. Note the inclusion of the following topics on the Democratic Services Committee's forward work programme:
  - The development of a Research Support and Services for Councillors Protocol
  - Consideration and development of the Annual Review process.
- c. Note that the development of the criteria for the Councillor Calls for Action will be considered by the Constitution Committee.
- d. Note the intention to undertake a self-assessment of the Scrutiny function with support from the Scrutiny Chairs and the Scrutiny Committee Members to ensure that the requirements of the statutory guidance are being met.

**Gary Jones**

**Head of Democratic Services**

**29 August 2023**

Appendix A: Statutory and Non Statutory Guidance for Principal Councils in Wales

Appendix B: Extract of the Statutory Guidance showing changes relating to the Democratic Services Committee

Appendix C: Extract of Statutory Guidance showing changes relating to the Timing of Council and Committee Meetings

Appendix D: Extract of Statutory Guidance showing changes relating to Training, Development and Support for local authority members.

Appendix E: Research Support and Services for Councillors Statutory Guidance

Appendix F: Arrangements for Securing Effective Overview and Scrutiny

Appendix G: Extract of Statutory Guidance showing changes relating to Co-Opted Members of Overview and Scrutiny Committees

Appendix H: Extract of Statutory Guidance showing changes relating to Overview and Scrutiny Committees - Taking Into Account The Views Of The Public

Background papers:

- [Welsh Government Consultation](#) report to the Democratic Services Committee dated 5 September 2022