

**CONSTITUTION COMMITTEE:**

**2 MARCH 2012**

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**REPORT OF THE MONITORING OFFICER      AGENDA ITEM: 2**

**LOCAL GOVERNMENT (WALES) MEASURE 2011 –  
CONSULTATION ON DRAFT STATUTORY GUIDANCE**

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**Reason for this Report**

1. To consider the draft statutory guidance on various sections of the Local Government (Wales) Measure 2011, which has been published for consultation by the Welsh Government.

**Background**

1. The Local Government (Wales) Measure 2011 ('the Measure') received Royal Approval on 10 May 2011, after having been passed in Plenary by the National Assembly for Wales on 15 March 2011. Explanatory notes on the final version of the Measure were published by the Welsh Government on 2 June 2011.
2. The Measure aims to:
  - *broaden and increase participation in local government by removing barriers and disincentives to standing for election to local authorities;*
  - *enable the review and improvement of the governance structures introduced through the Local Government Act 2000 so that they better suit the circumstances of local government in Wales;*
  - *enhance the role of non-executive members of local authorities in the scrutiny of local services;*
  - *develop and strengthen the role of community councils in Wales, including enabling them to deliver a wider range of services and actions locally as well as to increase the effectiveness of their representational role and their ability to work in partnership with other bodies;*
  - *reform the system for setting allowances for councillors;*
  - *allow the Welsh Ministers to issue statutory guidance on collaboration between local authorities, and between them and other bodies and to amalgamate up to three local authorities by order.*

3. The Council has previously considered and responded to the consultation on the initial draft Measure in September 2010 prior to consideration of the proposed legislation by the National Assembly for Wales.
4. The Welsh Government has the power to issue statutory guidance on the new duties and powers contained within the Measure and on some local authority activities with local authorities must have regard to. Draft statutory guidance has been developed by the Welsh Government during the period from May 2011 to January 2012. As part of this work, a Measure Implementation Group was established to support the development of the draft statutory guidance, which included representatives from the Welsh Government, Welsh Local Government Association, Wales Audit Office, SOLACE Wales and Association of Council Secretaries and Solicitors (ACSeS).

## Issues

5. The consultation relates to draft statutory guidance on the following sections of the Measure:
  - Timing of Council meetings (Section 6)
  - Training and development of Members (Section 7)
  - Discharge of functions by the Democratic Services Committee (Sections 8-21)
  - Exercise of functions by Councillors (Section 56)
  - Taking into account the views of the public (Section 62)
  - Reference of matters to Overview & Scrutiny Committees / Councillor Calls for Action (Section 63)
  - Appointment of Chairs of Overview & Scrutiny Committees (Sections 66-75)
  - Co-opted Members of Overview & Scrutiny Committees (Section 76)
  - Audit Committees (Sections 81-87)
6. Further statutory guidance on other sections of the Measure relating to, for example, remote attendance at meetings; annual reports by Members; family absence; Community Council matters and collaboration is expected to be issued in due course by the Welsh Government.
7. The period of consultation on the draft statutory guidance commenced on 3 February 2012 and will end on Friday 30 March 2012. The Welsh Government wishes to publish formal statutory guidance and regulations in advance of the commencement of the new municipal year following the local elections in May 2012.
8. As part of the consultation, the Welsh Government has also asked for views and comments to be provided in response to the following specific questions on the draft statutory guidance:
  - *What do you think the impact of the guidance will be in local authorities?*

- *What do you consider to be possible barriers to implementation?*
  - *How do you think these could be overcome?*
  - *In what ways would you improve the guidance document?*
  - *Do you think the Local Authorities (Standing Orders) (Wales) Regulations 2006 should be amended to include the head of democratic services (introduced by section 8(1)(a) of the Measure) as one of the officers subject to its provisions?*
9. In order for the Council to prepare a submission to the Welsh Government as part of this consultation exercise, it is proposed that the Constitution Committee should consider the draft statutory guidance and provide any comments as appropriate. To assist the Committee there will be a presentation on the key points by relevant officers.
  10. The Executive Business Committee is responsible for responding to consultation from the Welsh Government. A report delegating authority to the Chief Executive in conjunction with the Leader to prepare the Council's response will be considered at the Executive Business Meeting, (8<sup>th</sup> March 2012)
  11. Officers understand that the Policy Review and Performance Scrutiny Committee (14 March 2012); the Cardiff Independent Audit Panel (19 March 2012); and the Standards and Ethics Committee (20 March 2012) will consider the guidance and feed into that response. Political groups and/or individual Members may also wish to submit any comments to the Council's Monitoring Officer as part of the current consultation exercise.
  12. It is proposed that the Council's consultation response will be submitted by the Chief Executive to the Welsh Government by the closing date of 30 March 2012.

### **Legal Implications**

13. The Legal implications are contained in the body of the report

### **Financial Implications**

14. There are no financial implications arising directly from this report. However, when the Council implements the provisions of the Measure, there may be cost implications that will need to be considered at that stage

## **RECOMMENDATIONS**

The Committee is requested to:

1. note the draft statutory guidance on various sections of the Local Government (Wales) Measure 2011, which has been published for consultation by the Welsh Government;
2. consider the draft statutory guidance relating to various sections of the Local Government (Wales) Measure 2011 and provide any comments which will contribute to the Council's proposed response to the consultation exercise;

**MELANIE CLAY**

**Monitoring Officer and Chief Officer, Legal and Democratic Services**

**27 February 2012**

**Appendix A:** Draft Statutory Guidance from the Local Government Measure 2011 – Welsh Government Consultation Document

## **Background Papers**

Local Government (Wales) Measure 2011

<http://www.legislation.gov.uk/mwa/2011/4/contents/enacted>

Local Government (Wales) Measure 2011 – Explanatory Notes

<http://www.legislation.gov.uk/mwa/2011/4/notes/contents>

Council, 23 September 2010 – Agenda Item 9(a): Constitution Committee Minutes, 10 September 2010

Constitution Committee, 10 September 2010 – Agenda Item 7: Proposed Local Government (Wales) Measure

Number: **WG-14674**



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Welsh Government

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Welsh Government

## Consultation Document

### Draft Statutory Guidance from the Local Government Measure 2011

Date of issue: **3 February 2012**

Responses by: **30 March 2012**

## Overview

The Local Government Measure 2011 introduces new duties and powers in the fields of promoting and support membership of local authorities, local authority democratic services, local authority functions, overview and scrutiny committees and audit committees. It provides powers for Welsh Ministers to issue guidance to which local authorities must have regard.

## How to respond

Please submit your response to the questions below by 30 March 2012, in any of the following ways:

Email:

LGDMailbox@wales.gsi.gov.uk

Post:

Scrutiny, Democracy and Participation Team  
Welsh Government  
Cathays Park  
Cardiff  
CF10 3NQ.

## Further information and related documents

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

<http://www.assemblywales.org/bus-home/bus-third-assembly/bus-legislation-third-assembly/bus-leg-measures/business-legislation-measures-localgov.htm>

## Contact Details

For further information:

Scrutiny, Democracy and Participation Team  
Welsh Government  
Cathays Park  
Cardiff  
CF10 3NQ  
Telephone: 02920 801048

## Data Protection

**How the views and information you give us will be used.**

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

## What does the draft Statutory Guidance cover?

The Local Government (Wales) Measure 2011 (“the Measure”) was given Royal Assent on 10<sup>th</sup> May 2011. The Measure aims to:

- (i) broaden and increase participation in local government by removing barriers and disincentives to standing for election to local authorities;
- (ii) enable the review and improvement of the governance structures introduced through the Local Government Act 2000 so that they better suit the circumstances of local government in Wales;
- (iii) enhance the role of non-executive members of local authorities in the scrutiny of local services;
- (iv) develop and strengthen the role of community councils in Wales, including enabling them to deliver a wider range of services and actions locally as well as to increase the effectiveness of their representational role and their ability to work in partnership with other bodies;
- (v) reform the system for setting allowances for councillors;
- (vi) allow the Welsh Ministers to issue statutory guidance on collaboration between local authorities, and between them and other bodies and to amalgamate up to three local authorities by order.

Within the Measure, Welsh Ministers have power to issue statutory guidance on the new duties and powers contained within the Measure and on some local authority activities. Local authorities must have regard to this statutory guidance.

This consultation is on the draft statutory guidance issued under the following sections of the Measure:

Section 6 (1) Guidance in relation to timing of council meetings;  
Section 7(4) Guidance in relation to training and development of members of a local authority;  
Section 16 (2) Guidance in relation to the discharge of functions by the democratic services committee;  
Section 56 (6) Guidance in relation to exercise of functions by councillors;  
Section 62 (4) Guidance in relation to taking account the views of the public;  
Section 63: Reference of matters to overview and scrutiny committee: councillor call for action  
Section 75 (2)(a) Guidance in relation to appointment of committee chairs;  
Section 76 (1)(a) Guidance in relation to co-option; and  
Section 85 (1) Guidance in relation to audit committees

### What we would like to know:

- 1) What do you think the impact of the guidance will be in local authorities?
- 2) What do you consider to be possible barriers to implementation?
- 3) How do you think these could be overcome?
- 4) In what ways would you improve the guidance document?
- 5) Do you think the Local Authorities (Standing Orders) (Wales) Regulations 2006 should be amended to include the head of democratic services (introduced by section 8(1)(a) of the Measure) as one of the officers subject to its provisions?

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please include them in your response

# **THE LOCAL GOVERNMENT (WALES) MEASURE 2011**

## **STATUTORY GUIDANCE**

- |           |  |
|-----------|--|
| Chapter 1 | Section 6: Timing of council meetings  |
| Chapter 2 | Section 7: Training and development of members of a local authority                              |
| Chapter 3 | Section 16: Democratic Services Committee – discharge of functions                               |
| Chapter 4 | Section 56: Exercise of functions by councillors   |
| Chapter 5 | Section 62: Taking into account the views of the public  |
| Chapter 6 | Section 63: Reference of matters to overview and scrutiny committee – Councillor call for action |
| Chapter 7 | Section 75: Appointment of persons to chair overview and scrutiny committees                     |
| Chapter 8 | Section 76: Guidance and directions about co-option  |
| Chapter 9 | Section 85: Guidance on audit committees   |



## **CHAPTER 1 TIMING OF COUNCIL MEETINGS**

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### *Statutory Guidance made under Section 6 of the Local Government (Wales) Measure 2011*

#### **Introduction**

1.1 Part 1 of the Measure contains provisions related to the strengthening of local democracy. More specifically, Chapter 1 of this Part deals with “promoting and supporting membership of local authorities” and section 6 relates to the timing of meetings.

1.2 These provisions flowed from proposals developed in the report of the Councillor Commission Expert Panel *Wales Are We Being Served?* published in 2009. It included a number of recommendations aimed at making local government service more attractive to a more diverse cross-section of the adult population. These included laying greater emphasis on the roles of “backbench” councillors, including through the introduction of remote access to council meetings, a review of councillors’ time commitments, a bi-annual survey to establish councillors’ support needs and engaging with employers to try and attract more candidates from the employed workforce.

1.3 In this context, the times at which meetings of the local authority take place is of considerable significance as it can affect the extent to which individuals may contemplate standing for election.

#### **What the Measure requires.**

1.4 This is statutory guidance issued in accordance with section 6 (1) of 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.

#### **Reviewing existing arrangements**

1.5 Only members of council executives are considered to be “full-time” councillors and this is reflected in the levels of payments that they are currently entitled to for their special responsibilities. By contrast, backbench members are considered to undertake the equivalent of a part-time role, which will, in many cases, need to be fitted around whatever other commitments councillors may have.

1.6 The Expert Panel found that, although many councillors are retired, others had difficulty in marrying their work commitments with those of their council duties, or, in other cases, did so at the expense of any meaningful personal time.

1.7 For many prospective councillors in full-time employment, the extent to which their employers are supportive of their new commitment is a vital concern. Although employment legislation<sup>1</sup> entitles councillors to time off for public duties, operating that in practice may be more difficult.

1.8 The timing and frequency of meetings is the most problematic issue in this respect. Other duties may be fulfilled at times which suit the individual but a meeting is at a set time and (subject to any arrangements made for remote attendance) at a set venue.

1.9 It is neither practical nor desirable for the Welsh Government to prescribe the times and frequency of meetings of the full council, committees and sub-committees as these are matters for each local authority to consider in individual circumstances. However, it is important that local authorities do not simply continue to hold their meetings at the same time as they always have done simply out of inertia. What may have been tradition or an arrangement which suited the previous generation of councillors will not necessarily serve the interests of the new intake.

1.10 All local authorities should review the times at which meetings are held at least once in every term, preferably shortly after the new council is elected. The rule of thumb should be that meetings will be held at times, intervals and locations which are convenient to the majority of members. Councils should find ways of surveying their members, at least after each election, to assess their preferences and should be committed to act on the conclusions. The survey should be carried out within three weeks of ordinary elections, in order for recommendations to be considered at the Council's Annual Meeting. It will be for each authority to decide on the regularity of such surveys.

1.11 Although this process could result in long-serving councillors having to make changes to their pattern of working that would be worth doing if it meant that the council was better able to retain new councillors with outside responsibilities.

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

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

1.13 As a result of the survey, local authorities should also consider whether there may be advantages to rotating meeting times due to an impossibility of pleasing all their members all of the time. Any such arrangements will, of course, need to be clearly publicised for the benefit of interested members of the public.

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<sup>1</sup> Section 50 of the Employment Rights Act 1996 (1996 c18)

## **CHAPTER 2 TRAINING AND DEVELOPMENT OF LOCAL AUTHORITY MEMBERS**

### *Statutory Guidance made under Section 7 of the Local Government (Wales) Measure 2011*

#### **Introduction**

2.1 Part 1 of the Measure contains provisions intended to strengthen local democracy. Chapter 1 of that Part concerns the support provided to members of a local authority and section 7 within that chapter provides for the training and development of these members.

2.2 This statutory guidance is issued under section 7(4) of the Measure and section 71 of the Government of Wales Act 2006. The guidance relates to local authorities securing reasonable training and development opportunities for its members as required by section 7 of the Measure.

#### **What the Measure requires.**

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

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

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

#### **Guidance**

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

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

2.7 Below is a non-exhaustive list of some of the areas in which local authorities may wish to consider providing training for their members.

- Induction
- Role and functions of the executive, the council and its officers
- Overview and scrutiny
- Information technology
- Code of conduct
- The role of a councillor as a local member.

2.8 Training in the above areas need not be exclusively delivered. Training which combines one or more of the above areas is not discouraged. It is recommended that each member has their own personal development plan which is reviewed on a regular basis. This could be used to inform the annual review of a local authority member's training and development needs as required under the Measure.

2.9 It is recommended that the Democratic Services Committee (DSC) has overall responsibility for deciding what should be regarded as reasonable training and development opportunities. In addition to the list set out in paragraph 7 the DSC may consider some policy areas for which training is considered essential, such as planning or licensing.

2.10 The agreed, training and development opportunities could be contained within a published development strategy. The Welsh Local Government Association's Charter for Member Support and Development ("the Charter") could be used for guidance purposes by local authorities in developing their strategies. Local authorities may wish to consider the requirements to achieve the Charter when developing their strategies and programmes.

2.11 It may not always be the case that the reasonable training and development needs of local authority members can be met in-house. The development strategy could contain procedures for commissioning external bodies to provide training and local authorities are advised to liaise with the Welsh Local Government Association's (WLGA) member development officers if drafting such procedures. It is recommended that the DSC decides on the level of funding to be made available for the purchase of external training.

### Annual Review

2.12 Every local authority member (other than an executive leader – see paragraph 23) must be offered the opportunity to have their training and development needs reviewed on an annual basis. It is recommended that much of the training and development needs of local authority members are identified by such reviews.

2.13 The review must include an opportunity for a pre-planned interview between the member and a suitably qualified person (see paragraphs 2.17-2.22). The interview could include a review of the training and development received by the member over the last year (or appropriate period if the local authority member has only been recently elected).

2.14 Local authorities may wish to consider detailing the outcome of the interview in an agreed plan which sets out training and development needs, if any, identified for the year ahead. It is recommended that this personal development plan is provided for the member and signed by both member and reviewer. This is a private document which is not expected to be published by the authority or member, although a member is free to publicise in his or her annual report any training and development undertaken if he or she so wishes.

2.15 In achieving the standard required for the Charter, local authorities will need to adopt role descriptions for the posts of leader, deputy leader, executive member, scrutiny member, chair of scrutiny and chairs of statutory and area committees. The descriptions could be used as a guide as to the skills required by the relevant member.

2.16 The review is an assessment of training and development needs. A local authority may wish to consider making it clear to members that the review is not a performance review or an assessment of how well or badly a member has conducted their duties. That is not a statutory requirement and is a matter for the electorate to judge at the ballot box.

#### Suitably Qualified

2.17 It is for the local authority to determine who could be considered a suitably qualified person to conduct interviews with local authority members to discuss their training and development needs as part of their annual review. This responsibility could be allocated to the DSC within the authority. In most cases, this may not be a question of naming individuals, but of describing a post or office holder, (but see paragraph 2.22 below). It would probably be neither suitable nor desirable for a single person to be made responsible for conducting all interviews.

2.18 Some local authorities already carry out various practices in relation to the review of the training and development needs of its members. Practices include group leaders conducting interviews with their members or interviews being conducted by the leader and the executive members. Both these practices are perfectly acceptable methods of complying with the requirements of the Measure.

2.19 Authorities may prefer, however, to divest the duty with their human resources officers. If this is the preferred option, local authorities may consider making the Head of Democratic Services (HDS) responsible for supervising human resources officers for this part of their work. If the Head of Paid Service was selected as a suitably qualified person to conduct an interview it would not be expected that they would work under the supervision of the HDS.

2.20 Some authorities may prefer to hire external consultants or peers to conduct interviews, which is also acceptable.

2.21 It is recommended that there should be no surprises in the system and that individual members know who they can expect to conduct their interview. Local authorities may wish to consider including an option in their arrangements for members to make a request to the HDS to arrange for a different person to conduct their interview if there is good reason for so doing.

2.22 Finally, authorities must ensure that anyone conducting an interview must themselves have received suitable training in how to do this and are advised to liaise with the WLGA to ensure the provision of this. Therefore, even if the authority has chosen to allocate the duty of conducting reviews to a post, rather than an individual, that post holder should have received the necessary training before conducting reviews.

#### Executive Leader of the Local Authority

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

## **CHAPTER 3 LOCAL AUTHORITY DEMOCRATIC SERVICES**

### *Statutory Guidance for Democratic Services Committees made under Section 16 of the Local Government (Wales) Measure 2011*

#### **Introduction**

3.1 The Measure contains provisions related to the strengthening of local democracy. Chapter 2 of this Part deals with “local authority democratic services”. Most principal councils will have a part of their organisation which bears the title “democratic services” or something similar but this is the first time that such provision is being made in legislation.

3.2 The provisions in Part 1 flow from proposals developed in the report of the Councillor Commission Expert Panel Wales, *Are we being served?* published in 2009. It expressed the view that, since the introduction of executive structures through the Local Government Act 2000, insufficient attention had been given to ensuring that the needs of those councillors outside the executive, the overwhelming majority, were being well provided for.

3.3 The Panel therefore proposed that *“consideration should be given to a legal separation of the executive and non-executive functions of the council, with separate funding streams, that would protect the central provision of members’ services.”*

3.4 Although the Welsh Government did not support that proposal in full, mainly because it implied considerable organisational upheaval and likely expense, it nevertheless agreed with the gist of the argument, that those councillors outside the leadership needed safeguards to ensure they were able to fulfil their duties and play a full role in the operation of the local authority.

3.5 This guidance is provided to assist local authorities and, where directed at democratic services committees, constitutes guidance under section 16 of the Measure.

#### **What the Measure requires**

3.6 Each county and county borough council is required 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 (section 8(1)).

3.7 The person designated as HDS must not be the council's Head of Paid Service, Monitoring Officer or Chief Finance Officer (section 8(4)). The post of HDS is a politically restricted post within the meaning of the Local Government and Housing Act 1989 (section 21); and the designation must be made by the democratic services committee (section 11(1)(a)).

3.8 The HDS would be able to delegate any of his/her functions to any of his/her 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).]



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

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

- Carry out the local authority’s function of designating the HDS;
- Keep under review the provision of staff, accommodation and other resources made available to the HDS, in order to ensure that it is adequate for the responsibilities of the post;
- Make reports, at least annually, to the full council in relation to these matters.

Each DSC can decide how it carries out these functions.

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

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

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

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

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

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

3.17 Any report presented to the DSC by the HDS must be considered by the DSC within three months. Similarly, any report made by the DSC must be considered by the full council within three months (sections 18 and 19).

## **Functions of the DSC**

### Designating the Head of Democratic Services

3.18 Only the DSC or a sub-committee of the DSC can designate the HDS. How this operates in practice will vary and a DSC can decide itself how it wishes to do this. In many cases, there will be an obvious person who already fulfils much of the HDS function. One would expect the Head of Paid Service to make a recommendation to the DSC as to who would be a suitable candidate.

### It should be made clear that the person designated as HDS is not prevented from performing other roles within the authority

3.19 Just as the Monitoring Officer will often have other duties to perform outside his/her statutory role, so too could the HDS.

3.20 However, 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.

3.21 When a new HDS is required, again the DSC could designate an existing officer or, if it felt there was no-one suitable, could agree with the Chief Executive or relevant members(s) that 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 authority, 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.

### Staff and resources for democratic services

3.22 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.

3.23 In some councils, the scrutiny function has not been part of what has previously been known as "Democratic Services" and these arrangements may well have worked well. It is important to note that the HDS designation created by the Measure will probably not be identical to any previous post with the same or similar name. However, in taking responsibility for promoting the

scrutiny function and providing support and advice as indicated in section 9, it will be important to take care not to dilute the effectiveness of existing arrangements. The HDS would need to present a report to the DSC describing what s/he feels to be a reasonable level of support for democratic services functions. The DSC, however, could not make the final decision on these matters. It would need to 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 councillor.

3.24 The final decision on resources will rest with full council. However, 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 will therefore need to explain any decision not in keeping with the recommendations of the DSC.

## **CHAPTER 4 EXERCISE OF FUNCTIONS BY COUNCILLORS**

### *Statutory Guidance made under Section 56 of the Local Government (Wales) Measure 2011*

#### **Introduction**

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

4.2 The Measure 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 division 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 division for which the member has been elected, or to their official membership of an outside body.

4.3 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.

4.4 By giving more autonomy to elected members in their local area, section 56 enhances councillors' ability to resolve issues and problems on behalf of their residents. Judicious use of these powers may assist members to become 'cabinet members for their ward' as described in the report by Local Government Leadership<sup>2</sup> referenced in the Simpson Report.

4.5 The Simpson Report considers that the role of councillors should not be prescribed 'purely by those services that are presently delivered by the local authority'<sup>3</sup>. The Report advocates a re-think of member's 'committee-based' work in favour of a more localised, empowered means of addressing community issues. It challenges negative stereotypes about members undertaking 'political work' within their wards and favours an approach that seeks to make best use of members' desire to make a positive change in their community.

4.6 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. It is directed by an appreciation of the value inherent in elected members being the '*voice of the community in the council, and the voice of the council in the community*'<sup>4</sup> and a wish to make full use of councillors' dual capacity in achieving improved outcomes.

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<sup>2</sup> <http://www.localleadership.gov.uk/docs/CabinetMemberForYourWard.pdf>

<sup>3</sup> A copy of the Simpson Report may be obtained from the following link:  
<http://wales.gov.uk/topics/localgovernment/publications/lrdelivery/?lang=en>

<sup>4</sup> WLGA (2008), *Member Development: Good Practice Principles*. Welsh Local Government Association and Member Development Network, 2008.

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

4.7 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.

4.8 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.

4.9 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.

4.10 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 division 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**

4.11 The intent behind the provision is a desire to give councils a wider range of opportunities to make effective use of elected members' representational role. For example, it may be the case that councils would 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.

4.12 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.

4.13 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.

4.14 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.

4.15 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.

4.16 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 division.
- Powers to provide grants to local groups to carry out community projects.

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

4.17 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?

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**

4.18 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.

4.19 In considering practice in England where similar powers of delegation were introduced under the Local Government and Public Involvement in Health Act 2007, some 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.

4.20 It will be for councils to decide the extent and means by which they would wish to use the powers under section 56. It is advised that councils should develop a clear policy to define when and under what conditions a function will be delegated to a non-executive member. It is also advised that when making arrangements to delegate powers, councils take into account any political bias that may be alleged in authorities where, for example, a Cabinet may be comprised of one party.

4.21 Additional advice is provided by the Centre for Public Scrutiny's good practice guide linked to putting the Councillor Call for Action (CCfA) into practice. Here, guidance is provided for those councils wishing to use their powers to delegate functions. It draws upon existing English practice and suggests ways that this might be done so as to complement CCfA and existing neighbourhood working arrangements.

A copy of the guidance can be found at the following link:

<http://www.cfps.org.uk/what-we-do/publications/cfps-general/?id=92>

## **Multi-Member divisions**

4.22 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.

4.23 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 CCfA**

4.24 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.



## **CHAPTER 5 TAKING INTO ACCOUNT THE VIEWS OF THE PUBLIC**

### *Statutory Guidance made under Section 62 of the Local Government (Wales) Measure 2011*

#### **Background**

5.1 The 'Making the Connections' strategy for improved public services in Wales adopts a citizen centred model with public involvement as a primary requirement. This guidance document links in particular to two of the 'Making the Connections' principles:

1. **Citizens at the Centre:** *services more responsive to users with people and communities involved in designing the way services are delivered.*
2. **Public Engagement:** *every person to have the opportunity to contribute, and connect with the hardest to reach.*

5.2 The local government scrutiny role 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.

5.3 Research into the public's awareness and understanding of the scrutiny role in Welsh local government has shown that the majority of residents do not know about the scrutiny function and how council decisions are made<sup>5</sup>. Despite some impressive work having been undertaken by several councils, it is still very difficult for some people in their communities to know how to make a difference in their area.

5.4 Engaging the public more deeply in scrutiny activity may be regarded as a hall-mark of healthy democracy. Better communication about local decision making processes and greater representative participation will help ensure more direct experiences of community life inform strategic thinking and operational practice.

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<sup>5</sup> Wrexham County Borough Council and Bridgend County Borough Council have both undertaken Citizen Panel's Surveys seeking to assess levels of public awareness regarding scrutiny. In a 2006 a resident's survey in Bridgend showed that 86% of respondents communicated they had not heard of the Council's Overview and Scrutiny function until receipt of the survey. In 2009 Wrexham undertook a resident's survey which showed that only 20% of respondents were aware of Scrutiny Committees with over 77% of respondents indicating that they were unaware they could suggest topics for Wrexham's Scrutiny Committees to consider. Additional details of these surveys are available via the Scrutiny Timebank [www.scrutinytimebank.co.uk](http://www.scrutinytimebank.co.uk)

5.5 Section 62 of the Local Government (Wales) Measure 2011 (“the Measure”) places a requirement on local authorities to make arrangements that enable all persons who live or work in the area to bring to the attention of the relevant overview and scrutiny committees their views on **any matter** under consideration by the committee.

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

5.7 This is statutory guidance issued under section 62(4) and (5) of the Measure, to which a local authority and an overview and scrutiny committee must have regard in complying with their obligations under section 62. The guidance is intended to provide practical advice to local authorities and overview and scrutiny committees as to how to comply with the requirements imposed by 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”).

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## **Complying with the Legislation**

### **Raising public awareness about Scrutiny**

5.8 In order to enable the public to better engage with overview and scrutiny committees, Welsh Government considers that people should first be informed about their council’s scrutiny function and programmes of planned work.

5.9 As such, overview and scrutiny committees are expected to make stronger efforts to raise public awareness about their role and function. This includes how citizens and communities can help shape and contribute to the delivery of scrutiny committee forward work programmes (FWP).

5.10 A number of Welsh local authorities already publish news about their scrutiny function as a part of their local authority’s resident newspaper as well as issuing press releases seeking public views. As such, it is recommended that local authority officials supporting overview and scrutiny committees link with their respective communication and marketing departments to identify opportunities for informing and engaging members of the public in a more systematic manner.

5.11 To assist in the development of any communication strategy aimed at raising public awareness, overview and scrutiny committees may wish to make the distinction between the ‘general public’ and those individuals or communities of interest that may be linked to subjects included as part of a scrutiny committee FWP.

5.12 In this respect, councils may wish to adopt a multi-method communication strategy that may inform and be guided by FWP's since some of the issues identified may be of little interest to the public at large and of great interest to relatively small groups of people. Use of the most appropriate forms of media and communication for different sections of the public may encourage wider engagement and participation in the work of overview and scrutiny committees.

### Scrutiny Websites

5.13 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.

5.14 In order to encourage more people to participate in scrutiny activity, those local authorities who do not have such arrangements in place may wish to consider establishing an area dedicated to scrutiny on their websites. Local authorities seeking to do this may wish to consider the list below which sets out some of the information that could be included on their scrutiny web pages:

- *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 FWP's*
- *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.*

5.15 Linked to the use of the local authority's own website is the use of social media as a tool for networking and communicating information. Overview and scrutiny committees are also encouraged to think creatively about tapping into relevant online forums and using them to identify issues of local interest that may inform scrutiny activity.

5.16 For example, a number of organisations like Welsh Women's Aid and public agencies such as the Police and Local Health Boards currently use 'Facebook' as a means to inform and communicate in a less formal environment. A significant advantage of this form of media is the ease by which other relevant services and information can be signposted.

5.17 As such, overview and scrutiny committees could consider creating virtual presences online as a means to make information available about such committees and about ways in which members of the public may take a more active role in their work programme.

## **Public Engagement**

5.18 The Welsh Government considers public engagement in scrutiny is vital in improving the design and delivery of local services from a citizen-perspective. In considering that many cross-cutting or 'wicked-issues' are very often improperly defined, 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.

5.19 It is recommended that local authorities develop internal mechanisms to better enable members of the public to 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.*

5.20 Arrangements may take the form of public speaking arrangements in some cases, or developing reports summarising written submissions in others.

5.21 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.

5.22 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.

5.23 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.

5.24 In either case, any such arrangements made by local authorities would 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.

5.25 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.

5.26 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 / JOSC meetings (to include Call-In)*
- *Public involvement in Sub-Committee and / or Task & Finish Group Meetings*
- *Managing a request for scrutiny (including petitions)*
- *Dealing with requests for public co-option*

#### Publication of forward work programmes

5.27 The Welsh Ministers have the power to make regulations under Section 77 of the Measure in relation to requiring information about the exercise of an overview and scrutiny committee to be made available to the public, and, if such regulations were made, this could include information about the scrutiny committee forward work programmes (FWPs).

5.28 The programmes of overview and scrutiny committees need to be flexible in order to be responsive to changing priorities. It is therefore recommended that overview and scrutiny committees regularly update their

FWPs during the course of the year to enable the public to make a contribution to their work should they so wish.

5.29 It is expected that scrutiny committees publish details of their annual FWP on the council's web pages. If not already in place, local authorities could consider establishing a specific section of their website dedicated to this purpose.

5.30 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.

5.31 However, in the case of joint overview & scrutiny committees (JOSC), it may be more appropriate to publish their FWP as soon as is reasonably possible after their establishment. For standing JOSCs a FWP will identify the issues a JOSC intends to consider as linked to its original reasons for establishment since a JOSC is only able to undertake the functions which the appointing authorities allocate to it.

5.32 In the case where a JOSC has been established to investigate a single issue such as climate change, its project plan may be regarded as its FWP. It is recommended that this be published as soon as is reasonably possible so that interested groups and individuals will be able to provide comment and offer their views. Should a JOSC be established for the purposes of a single meeting then efforts can still be made to allow stakeholders to offer a view on the issue intended to be scrutinised.

5.33 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 (when established),
- Fire and Rescue Authorities,
- Community Health Councils,
- Youth Councils,
- Communities' First Areas
- National Parks
- Town and Community Councils.

5.34 It is recommended that this take place at the start of the FWP period and it is made 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

5.35 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.

5.36 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.

5.37 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

5.38 The voluntary 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.

5.39 For that reason the Welsh Government considers that the voluntary sector has an important role to play in providing input to local government overview and scrutiny. There are many examples across Wales as to how voluntary sector engagement with the scrutiny process has made a valuable contribution through the inclusion of enriching and authentic perspectives. This has directly led to the improvement of public services in some cases and strengthened communication between citizens, special interest groups and decision makers in others.

5.40 Whilst there is encouraging evidence of stronger links being developed between council scrutiny functions and voluntary organisations, there is still inconsistency regarding the depth and nature of those relationships.

5.41 To address this, local authorities may wish to develop comprehensive engagement with County Voluntary Councils an integral part of a local authority's arrangements in complying with section 62 of the Measure. Such engagement could 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 disenfranchised citizens in the work of scrutiny.

5.42 Separate guidance to be issued under section 76 of the Measure in relation to co-option will contain additional information for local authorities about the benefits of working more closely with voluntary sector representatives as a means to enable more public input into the work of scrutiny committees.

## Taking the public's views into account

5.43 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.<sup>6</sup>.

5.44 For example, in the event that a member of the public request 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.

5.45 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.

5.46 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 would be recommended that a summary report be presented to the relevant committees at the first appropriate opportunity.

5.47 Additional information and advice relating to existing practice within local authorities may be found in the WLGA (Welsh Local Government Association) and CfPS (Centre for Public Scrutiny) publication entitled '*Citizen-centred Scrutiny' Engaging the public in Overview and Scrutiny*' (July 2010). English and Welsh versions can be found at the WLGA website [www.wlga.gov.uk](http://www.wlga.gov.uk)

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<sup>6</sup> Authorities may also find it useful to consider the guidance issued separately under section 63 of the Measure in relation to Councillor Calls for Action; this will contain guidance, in relation to those provisions, on what may be considered discriminatory, inappropriate or unreasonable.



## **CHAPTER 6 COUNCILLOR CALL FOR ACTION**

### *Statutory Guidance made under Section 63 of the Local Government (Wales) Measure 2011*

#### **Introduction**

6.1 The Measure introduces new powers for councillors aimed at helping them tackle issues and resolve problems in their local areas. Section 63 of the Measure introduces provision for “councillor calls for action” (CCfA) which enables councillors to refer issues of local importance to an overview and scrutiny committee.

6.2 Section 63 amends Section 21A of the Local Government Act 2000 (“the 2000 Act”) 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.

6.3 This is statutory guidance issued under section 21A(3) of the 2000 Act (as amended by section 63 of the Measure), to which a member of an authority must have regard in considering whether to make such a referral. CCfAs are intended to 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.

6.4 The potential value of CCfA links to an appreciation that services by themselves do not produce social outcomes, people do. Outcomes such as improved health, educational attainment and employment are co-produced through the joint efforts of service users and services. CCfAs can offer a valuable form of community intelligence which can contribute to developing and delivering a shared vision for the locality.

6.5 As is the case with the CCfA for crime and disorder matters, the CCfA under section 63 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.

6.6 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. Sign-up will be required by the executive and local partners while individual authorities are putting together their CCfA processes.

## Purpose and objectives of the CCfA

6.7 The CCfA provisions introduced by section 63 of the Measure should be seen in the wider context of the legislative provisions in the Measure aimed at strengthening local democracy and widening participation in local decision making.

6.8 CCfA is being introduced alongside other powers for scrutiny in the Measure, including powers to scrutinise a wide range of bodies not previously subject to local authority scrutiny. It is directed by an appreciation of the value inherent in elected members being the '*voice of the community in the council, and the voice of the council in the community*<sup>7</sup>' and a wish to make full use of councillors' dual capacity in achieving improved outcomes.

6.9 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.

6.10 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.

6.11 In considering how CCfA has been implemented in England, councils may find the Centre for Public Scrutiny's CCfA Best Practice guidance document helpful. This document draws on examples of councils who have already developed practice in this way of working. Copies may be found at the following link:

<http://www.cfps.org.uk/what-we-do/publications/cfps-general/?id=92>

## Legislative context

6.12 CCfA is being introduced alongside other powers for scrutiny in the Measure, including powers to scrutinise a wide range of bodies not previously subject to local authority scrutiny. Section 63 of the Measure amends section 21A of the Local Government Act 2000 (reference of matters to overview and scrutiny committee etc) 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.

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<sup>7</sup> WLGA (2008), *Member Development: Good Practice Principles*. Welsh Local Government Association and Member Development Network, 2008.

6.13 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.

6.14 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,

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.

6.15 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.

6.16 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.*

6.17 It is anticipated that a Ministerial order will be made in due course to exclude certain kinds of matters from being local government matters for the purposes of section 21A.

6.18 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.

6.19 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 deployment of scrutiny committee powers under section 59 of the Measure (scrutinising designated persons) after attempts to address the issue have first been made. In these instances CCfA can be used to develop closer links between councils and external partners.

6.20 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. The Guidance for Councillors document produced by the Association of Council Secretaries and Solicitors (ACSeS) in relation to implementing sections 19 and 20 of the Police and Justice Act 2006 (local crime and disorder referrals) provides a useful starting place.

6.21 The guidance is also helpful in setting out a suggested process for dealing with Community Safety CCfAs which may be adapted for use by councils under section 63 of the Measure.

A copy of the document can be found at the following web address:

<http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislation-measures-localgov/business-legislation-local-government-measure-consultation-responses-log.htm>

6.22 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.

6.23 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'**

6.24 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.

6.25 Due to the likely cross-cutting and intractable nature of the social problems likely to be raised under CCfA, it is unlikely that there be any '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.

6.26 In practical terms it may help if local authority procedures specified that the councillor raising an issue articulate 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.

6.27 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' such as Community Health Councils 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.*

6.28 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 citizen centred improvement;
- 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.

6.29 Each issue attempted to be raised as a CCfA will have to be considered on its own merits. In addition, councils should also not be put off exploring the subject matter intended to be escalated by the perceived 'politicking' of the person raising it.

6.30 Scrutiny committees often examine issues which are highly political in nature and this should not necessarily be viewed as a negative thing. There are many examples of the Scrutiny Call-In process having been used in councils where elected members have used the power of political debate to give proper consideration and analysis to controversial issues. In some instances, councillor's local knowledge has resulted in significant investigatory impact in helping identify constructive ways forward.

## **Working with Partners**

6.31 As highlighted in the introduction, CCfA is being introduced alongside a range of powers for scrutiny committees, most notable of which is the requirement for scrutiny committees to scrutinise public service providers in their area.

6.32 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.

6.33 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. Welsh experiences of partnership scrutiny have been shown to assist integration as well as ensuring local needs and aspirations are represented in decision making processes.

6.34 Additional guidance and information regarding lessons learnt from partnership scrutiny and how to develop good quality relationships with partners can be found in the WLGA's document entitled 'Scrutiny of Multi-Agency Partnerships'.

Copies of the document can be found at the following web addresses:

English version: <http://www.wlga.gov.uk/english/overview-scrutiny/>

Welsh version: <http://www.wlga.gov.uk/cymraeg/trosolwg-a-chraffu/>

## **Links to Community Safety Issues**

6.35 The Crime and Justice Act 2006 provides for a CCfA mechanism to deal with community safety and crime and disorder matters. The provision for crime and disorder CCfAs is essentially the same as that set out in section 63 of the Measure. This means that councils in responding to the Measure will be able to develop existing processes and frameworks.

6.36 The Police and Justice 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.

6.37 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 Measure (exercise of functions by councillors)**

6.38 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 improving the council's responsiveness in improving local services.

## **CHAPTER 7 APPOINTMENT OF PERSONS TO CHAIR OVERVIEW AND SCRUTINY COMMITTEES**

*Statutory Guidance made under Section 66 of the Local Government (Wales) Measure 2011*

### **Introduction**

7.1 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 inclusion of these provisions within the Measure was in keeping with a Welsh Government commitment to carry into legislation the recommendations of Assembly committees (the Local Government and Public Services Committee report, 'The Operation of New Political Management Structures in Local Government' in 2004 and the Health, Well-being and Local Government Committee 'Inquiry into Local Government Scrutiny and Overview Arrangements - April 2009) that the chairs of scrutiny committees should not be allocated wholly to members of the same political group(s) as the council leadership.

### **What the Measure requires**

7.2 Local authorities must include within their standing orders (or rules of procedure) 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 each only appoint as many chairs as are proportionate to their share of the council's overall membership, rounding down if this does not equal a whole number of chairs. For example:

Number of committees = 5

Number of members of council = 50

Number of political groups represented in executive = 2



Size of executive group A = 21  
Size of executive group B = 5  
Entitlement to scrutiny chairs of A = 2  
Entitlement to scrutiny chairs of B = 0

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 (3 in the example above). If there is more than one non-executive group, each gets a share of the chairs in proportion to their membership, rounding up if required. Extending the example above:

Number of chairs remaining = 3  
Number of non-executive groups = 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

#### 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. There are no immediate plans to do either.

### **Guidance**

7.3 The provisions of sections 66 onwards provide little room for manoeuvre. The appointing of chairs by political groups, or, in some cases, the allocation by committees themselves, will be a new development for local authorities. Councils' standing orders should set a timetable for the appointment processes to be completed.

7.4 Where a situation arises where the allocation procedures outlined in this guidance appear inadequate to deal with a particular situation, councils should first consult their legal advisers for an opinion. Welsh Government officials may be contacted for advice by those legal advisers if necessary.

7.5 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.

## **CHAPTER 8 CO-OPTED MEMBERS OF OVERVIEW AND SCRUTINY COMMITTEES**

### *Statutory Guidance made under Section 76 of the Local Government (Wales) Measure 2011*

#### **Introduction**

8.1 The Measure introduced changes intended to strengthen the structures and working of local government in Wales at all levels and to ensure that local councils reach out to and engage with all sectors of the communities they serve.

8.2 This statutory guidance is issued under section 76 of the Measure, and 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.

#### **Policy Intent**

*‘Coming together is a beginning. Keeping together is progress. Working together is success.’*

*Henry Ford.*

8.3 The evidence from overview and scrutiny committees in Wales is that the contribution of co-opted members on committees can significantly strengthen their effectiveness. As greater emphasis is placed by Welsh Government upon integrated working and shared service delivery, so scrutiny committees can play an important part in assisting transformational change by enabling co-opted members to more fully participate in their work.

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

8.5 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 citizen-centred services and partnership working through their own structures and practice.

8.6 In recognition of the rich impact multi-perspective scrutiny can have in driving improvement, a number of Welsh councils have already established Local Service Board (LSB) scrutiny arrangements whose membership span sectoral, organisational and geographic boundaries.

8.7 To date LSB Scrutiny Panels have included co-optees from voluntary organisations, local health boards, community health councils, police authorities, Environment Agency Wales, and local business forums who have been working alongside elected members to improve local services.

8.8 Some of the important benefits accruing from these arrangements have been the cross-transference of learning and the breaking down of organisational fragmentation in addressing 'wicked issues'. These practices have indicated that partnership working and co-option may be seen as processes that increase local democratic input and integration across different parts of the public sector.

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

8.9 Any appointment of co-optees should be informed by scrutiny forward work plans and what outcomes elected members are seeking to achieve as the result of planned scrutiny exercises. Councils are advised to think carefully about the use of co-option as a means to develop partner relations or improved public connections that may add significant value to the work of scrutiny committees.

8.10 In all instances where co-option is being considered, care should be taken to ensure that co-option is in fact the best way for some individuals or groups of interest to be involved in the work of scrutiny committees. In some circumstances it may be more appropriate for stakeholders to act as 'expert advisors' of a task and finish group or to be included as an invitee at scrutiny committee meetings. For example, some vulnerable groups or service users may feel intimidated by the formality of full committee meetings and may wish to submit written or oral evidence in support of a scrutiny review. The nature of stakeholder involvement in scrutiny work will need to be established on a case by case basis.

8.11 Also, organisations who are financially supported by partner agencies may feel reluctant to challenge the performance of funding providers in a public arena. Steps should be taken to minimise the risk of co-optees experiencing conflicts of interest as a result of being involved in scrutiny work.

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

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

For example, councils may wish to:

- approach Town and Community Councils to nominate representatives for co-option onto 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;
- write to complementary improvement agencies such as Community Health Councils;
- invite former co-optees with specific interest or expertise, to attend scrutiny meetings in an 'advisory capacity' when there are relevant items on the agenda.

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

## **Recruiting Co-opted Members**

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

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

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

8.17 However, as a general rule it is suggested that committees should ensure that 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 borough area.

8.18 To assist Councils to develop approaches to co-option that strengthen the effectiveness of their overview and scrutiny function, a series of good practice case studies is contained within Appendix B.

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

8.19 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.

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

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

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

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

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

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

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

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

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

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

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

## **Voting Rights**

8.28 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.

8.29 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>

8.30 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>

8.31 Those councils who have already established Panels or Boards to scrutinise the work of LSBs, and who have granted voting rights to the non-council members of these panels will need to maintain these panels as informal bodies, or have their decisions subject to approval by a formal scrutiny committee/sub-committee of the council.

## **Joint Overview & Scrutiny Committees (JOSC)**

8.32 Section 58 of the Measure provides the Welsh Ministers with a power to make regulations for the appointment of JOSCs, and such regulations can provide for the appointment of co-opted members onto JOSCs.

8.33 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.

8.34 Appendix B sets out three examples of co-option which have been undertaken by Welsh councils. They provide examples of methods of recruiting and appointing suitable co-optees, and demonstrate the benefits of making such appointments.



## **CHAPTER 9 AUDIT COMMITTEES**

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### *Statutory Guidance made under Section 85 of the Local Government (Wales) Measure 2011*

#### **Introduction**

9.1 Part 6 of the Measure, deals with Overview and Scrutiny, including, at Chapter 2 of that Part, Audit Committees. The Welsh Government's intention through these provisions was to ensure that all local authorities in Wales would have an audit committee (as has been recommended by the Chartered-Institute of Public Finance and Accountancy [CIPFA] since 2005). Our view is that audit committees are positive features which should help improve strategic planning and facilitate both scrutiny and challenge within the structures of a council.

#### **What the Measure requires**

9.2 Sections 81 to 87 make provision for audit committees. They require each county or county borough council to appoint an audit committee with the following functions:

- Review, scrutinise and issue reports and recommendations in relation to the authority's financial affairs.
- Review, scrutinise and issue reports and recommendations on the appropriateness of the authority's risk management, internal control and corporate governance arrangements.
- Oversee the authority's audit arrangements and review its financial statements.

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

9.4 The full council should decide who to appoint as members of its audit committee and it can determine that up to a third of its members are to be from outside the council. In fact, at least one member of the committee must be a lay member. It is permissible for only one of the committee's members to be from the council's executive, and this must not be the leader (or elected mayor). The council must have regard to this guidance when determining the membership of its audit committee.

9.5 The chair of the committee is to be decided upon by the committee members themselves. It can be a councillor or a lay member but, in the former case, must not be a councillor who belongs to a group with members in the executive. An exception to this is where there are no opposition groups, in which case any of the committee's members may become chair except for any member of the committee who is also a member of the executive. All

committee members, including lay members, have the right to vote on any issue considered by the committee.

9.6 Any officer or member called to attend an 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.

9.7 The 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.

9.8 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 likes.

### **Functions of an audit committee**

9.9 The Assembly Government has previously endorsed CIPFA’s publication *“Audit Committees: Practical Guidance for Local Authorities”* and continues to do so, together with their publication *“A toolkit for Local Authority Audit Committees”*.

Information on these publications can be found here:

<http://secure.cipfa.org.uk/cgi-bin/CIPFA.storefront/EN/product/AU025>

<http://www.cipfanetworks.net/governance/shop/pubs/default.asp?pub=laatoolkit&page=4>

9.10 Although the former publication is somewhat dated (published in 2005) its principles are still valid. Local authorities are advised to view those documents as being complimentary to this guidance.

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

9.11 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 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.

9.12 This is an area which is given close attention by the authority’s external auditors and ties in with the duty of the 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.

## Risk management, internal control and corporate governance

9.13 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 audit committee forms a significant part of the authority's corporate governance structure.

9.14 The authority should adopt a Statement of Purpose for its audit committee along the lines included in Chapter 2 of the CIPFA guidance, ensuring that the committee is given a prime role in ensuring that effective corporate governance is central to the organisation's procedures. A high profile for the audit committee should help to raise public confidence that the authority has a solid approach towards its financial and organisational propriety.

9.15 The audit committee will need to report on the adequacy of the authority's risk management and internal control arrangements, and comment on their effectiveness, as well as following up on risks identified by auditors and requiring reports as to action taken in response. This means that the authority must ensure that audit committees are provided with all copies of auditor's reports.

## Internal and external auditors

9.16 A properly operating 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.

9.17 The audit committee will expect to input into the planning of the internal audit priorities, approving the annual programme of audits and ensuring that 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 his/her annual report.

9.18 The 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.

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

## Financial statements

9.20 Before their approval by the authority, the audit committee should consider and comment on the authority's 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.

9.21 This means the audit committee will need to meet between the production of the statements and their approval by the authority. This may be quite a tight timetable.

9.22 CIPFA's "toolkit" should be used to assist in the proper scrutiny of these statements.

9.23 Reports and recommendations by the audit committee should be considered by full council in particular, as well as the executive.

## **Membership**

9.24 The rules within section 15 *et seq* of the Local Government and Housing Act 1989 do not apply to audit committees. It is not therefore a statutory requirement to ensure that political balance is achieved when the committee members are appointed. 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 audit function. It is strongly recommended that the balance of members of the committee is at least as favourable to non-executive groups as would be achieved by political balance rules. It will help the authority if the audit committee has the appearance of independence from the leadership.

9.25 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 audit role. That might be particularly the case in the choice of any executive member on the committee. It may also mean that the members should not have too many other commitments, in general, in terms of committee membership because of the significant commitment which being a member of the audit committee implies. All members should receive adequate training and development, and particular attention should be paid to the section on training and awareness in the CIPFA "toolkit".

9.26 The 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.

9.27 There must be at least one lay member on the committee but they could constitute up to a third of the membership if an authority so decided. 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, local authorities should also try to avoid appointments of persons whose political allegiances are well known. It is recommended that councils follow a public recruitment exercise, similar to that used to appoint members of standards committees, to recruit their lay members. Any lay member with voting rights is subject to the provisions of the authority's Code of Conduct for Members.

9.28 As a committee of the council, meetings of the audit committee should be open to the public, except when exempt matters are being discussed.

## Appendix A

### Outline Role Description for Co-opted Members

#### General

- To ensure the needs, views and experiences of service users and citizens are represented in overview and scrutiny work as a means to help promote mutuality and joint approaches to the improvement of local services.
- To contribute to a shared understanding of the roles and responsibilities of the organisation, community or stakeholder group represented by the co-optee and the relevant overview and scrutiny committee;

#### Specific

- To be involved in the overview and scrutiny committee forward work programme planning, delivery and review process as follows:
  - (i) To share perspectives about local issues and service delivery to help identify priorities for the work programme.
  - (ii) To share information about the organisation, user group or community of interest represented by the co-optee in order to identify opportunities for:
    - *Informal sharing of information*
    - *Complementary review activity*
    - *Joint working*
    - *Joint briefing and/or training*
    - *Helping to ensure that public service providers are fulfilling their duties to engage and that they hear a diversity of views from local people*
    - *Co-ordination of input to, consultation on, and regulation and assessment of local services*
    - *Following up on the implementation of scrutiny recommendations/outcomes of consultation to find out what difference has been made*
    - *Joint communication with local people to seek views in connection to planned programmes of scrutiny review or policy*

*development and to demonstrate the opportunities provided by the scrutiny process to influence local service delivery.*

- When involved in review activity, to put forward evidence-based views/comments/suggestions on a given topic on the basis of knowledge or experience.
- To help establish where the organisation/community of interest/user group represented by the co-optee and the overview and scrutiny committee will work separately.
- To be involved, or identify the right person to be involved, in scrutiny review activity if requested.
- To report on progress and constraints with the delivery of respective work programmes, including presenting the Committee with annual reports where relevant.
- To share good practice and organisational learning.
- To help identify the support needed for an effective working relationship between the organisation or stakeholder group represented by the co-opted member and the relevant scrutiny committee.

### **Suggested Competencies to Consider for Co-opted Members**

*Please note that these competencies have been provided to assist councils develop their own individual arrangements to co-option and should not be considered as prescriptive or exhaustive.*

#### ***Essential***

Co-opted Members should:

- *Be able to contribute to the work of the Scrutiny Committee as a whole in terms of debate, local knowledge and insight into issues of local concern.*
- *Have a working knowledge and/or experience in the subject matter intended to be investigated.*

#### **AND/OR**

Co-opted Members should:

- *Have experience of working with local communities and or other agencies*
- *Be a good communicator*

- *Be committed to the values of accountability, probity, openness and equality of opportunity*
- *Be available to attend committee meetings and possibly Task and Finish Group meetings*
- *Have the ability to understand complex issues.*
- *Live or work in the borough.*

### ***Desirable***

- *Have experience of serving the local community in or in partnership with local government or some other public sector organisation in a similar capacity.*
- *Have experience of working with locally elected Councillors*
- *Be able to offer relevant specialist skills, experience or knowledge relevant to the work of the Overview and Scrutiny Committee.*
- *Be supported by one or more community organisations or service user groups within the borough.*



## Appendix B

### Co-option Case Studies

#### Case Study 1

##### **Developing the dialogue: Co-option in Merthyr Tydfil**

###### **Case study: Voluntary Action Merthyr Tydfil**

Merthyr Tydfil County Borough Council introduced voluntary sector co-optees in May 2010.

By working in partnership with Voluntary Action Merthyr Tydfil (VAMT) it was agreed that VAMT would take the lead in recruiting one non-voting voluntary sector co-opted member per Overview & Scrutiny Committee on behalf of the council to represent the third sector and citizen interest.

VAMT ensured that third sector co-optees were part of existing community networks such as the Health and Social Care Forum and the Children and Young People's Voluntary Organisations Forum, so that they were able to represent the interests of particular groups who may be marginalised from local democratic processes, thus ensuring that voluntary sector co-optees were able to provide a unique and linked-in perspective at scrutiny.

The VAMT recruitment literature highlighted the skill sets necessary for a voluntary sector co-opted member to make a meaningful contribution to Scrutiny Committees which included;

*"...an interest in and understanding of local issues; being able to work in a team and with a diverse range of people; an ability to listen to others, exchange views, and challenge effectively; and an ability to keep in mind the bigger picture."*

The role and expectations of the voluntary sector co-optees were clearly described by VAMT as;

*"...providing 'critical friendship', challenging how services are planned, delivered and improved, ensuring that third sector involvement and the citizen's voice is heard at all points in the process."*

Once the appointments had been confirmed, the co-optees were provided with appropriate training and developmental opportunities, including induction and code of conduct training provided by Council officers and VAMT.

Co-optees also received comprehensive support in their Scrutiny role from VAMT which helped ensure voluntary sector co-optees were not only able to fully participate in scrutiny processes, but that they reported outcomes from scrutiny activity back to their particular network.

Scrutiny Chairs have reported positively on the knowledgeable contributions made by the voluntary sector co-optees during the course of investigative work. Similarly, co-optees have felt pleased at being able to provide representation of wider communities within scrutiny processes;

*"I have been welcomed by fellow scrutiny members, I have an opportunity to be involved in and influence local processes; professionally I am able to represent my colleagues within the voluntary sector and offer input to a meeting that promotes far wider perspectives."* (Voluntary Sector representative, April 2011).

In addition to the voluntary sector co-opted members on each of the four scrutiny committees, Merthyr Tydfil County Borough Council has two public appointed co-opted members (non-voting) on each committee. These co-opted members have been recruited utilising a variety of methods including advertising in the local press and in the Council's own 'Contact' magazine which is circulated to all households in the county borough on a four-monthly basis.

More information can be found from the following website  
<http://www.merthyr.gov.uk/Home/Council/Scrutiny>

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## Case Study 2

### Engaging Others, Adding Value

#### Case study: Mantell Gwynedd

Mantell Gwynedd (County Voluntary Council) and Cyngor Gwynedd (Gwynedd Council) have worked closely in order to maximise third sector participation in the scrutiny process.

Building upon a strong history of involving non-elected Members in the work of Scrutiny, an understanding of the value of co-opted members led to the progression of a more systematic collaboration between the two organisations.

In discussing how this could be taken forward the idea of establishing a bank of third sector scrutineers was developed and agreement was reached that non-elected members would initially work as part of the Council's Scrutiny Working Groups.

It was felt that incorporating co-optees in this way allowed them to make more use of their representative roles due to the nature of the working groups being more participative and 'hands on' than full Committee meetings.

It was agreed that an open and transparent system was needed to select third sector members onto these scrutiny working groups, and for this reason it was decided that the Voluntary Sector Liaison Group election would be used as a means of identifying Third Sector scrutineers.

By 2007, a bank of 21 potential third sector scrutineers was identified from which the council could draw upon to add value to the topics considered by scrutiny committees. In wishing to best utilise co-optees expertise, their views were sought at all stages of scrutiny work programming, from setting the agenda through to participating in the formulation of recommendations.

In an attempt to gain some insight into the experiences of third sector representatives, a survey was undertaken to explore their thoughts and perceptions which revealed some positive benefits;

*“This type of joint working and collaboration should happen far more often. It is a process which should extend beyond the scrutiny process; it is an inclusive way of working which is great for everybody”* (Co-opted representative – Mantell Gwynedd, 2010).

Gwynedd Council reports that the collaboration between Mantell Gwynedd and Cyngor Gwynedd is on-going, and that the development of a system to facilitate the reporting back to, and picking up of main messages from groups of interest in the third sector, is being pursued.

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### **Case Study 3**

## **Scrutiny of Local Service Boards – realising the value of partnership**

### **Case Study: Rhondda Cynon Taff’s LSB Scrutiny Working Group**

Rhondda Cynon Taff has a positive history of co-opting external representatives onto their scrutiny structures for the purposes of enriching scrutiny activity.

In developing their approach to the scrutiny of Rhondda Cynon Taff’s Local Service Board, it was decided to form a cross-party, multi-agency Scrutiny Working Group comprising 5 councillors and representatives from the South Wales Police Authority, the Voluntary Sector (Interlink) and Cwm Taf Health Board.

To date, the Scrutiny Working Group has focused on scrutinising ‘Domestic Abuse’ which is one of the LSB’s six priorities. Primarily, the Group adopted a citizen-centred approach and investigated whether the identification of Domestic Abuse by the LSB would lead to improvements and better outcomes for victims and their families.

The choice of topic was influenced by earlier work that had been undertaken by the council’s scrutiny function which is significant to note, since some Members already had a working knowledge of the subject matter and had recognised the need for a strategic, local response.

The decision to examine Domestic Abuse was also underpinned by a strong evidence base and a desire to put the needs of victims and their families at the forefront of the investigation following a ‘Kafka Brigade’ inspired methodology which aims to use personal experiences to remedy overly bureaucratic processes.

The Scrutiny Working Group's membership mirrored the organisations represented on the LSB, as each organisation was regarded as having '*an equal role to play in ensuring the LSB were delivery identified priorities*'.

In order to contribute to an inclusive culture the Chair and Vice Chair of the Scrutiny Working Group were not permitted to be members of the same organisation. This meant that the group's leaders could not be dominated by one organisation's point of view. The positive results facilitated by this approach may be seen in the quote from one of the Group's co-opted Members;

*"As a Co-opted member of the RCT Joint Scrutiny Panel, I have experienced first hand partnership working at its best. I have appreciated the opportunity to use my area of expertise alongside elected member's expertise and have felt an inclusive and valued member of the scrutiny team."* (Co-opted Member, Scrutiny Working Group, April 2011).

The parameters of the LSB Scrutiny working group were governed by terms of reference which had been agreed by both the Council's Scrutiny Committee and the LSB. As such, a common understanding of the scope of the project was developed amongst stakeholders. The Group also left themselves space to review the terms of reference periodically to allow for any amendments or adjustments to be made after having had practical experience of LSB Scrutiny.

The Group focused on monitoring the LSB's performance in delivering upon the Domestic Abuse Action plan. A significant amount of time was devoted to developing the Group's team dynamic which helped ensure that organisational perspectives could be used coherently in a way that enriched the Inquiry.

*"The partnership approach to the scrutiny of the work of the LSB has brought great value to the outcomes. Partners bring differing perspectives that broaden the constructive challenge, and also lead to the scrutiny being informed and truly probing. However it proved to be essential to be clear about the role of the scrutiny, and to define the parameters and milestones to prevent it becoming an open ended process."*

*I do believe that the LSB's partnership delivery of services around domestic abuse will improve as a result of our work."* (Co-opted Member, Scrutiny Working Group, April 2011).

An interim report replete with findings and recommendations to date was presented to the council's Overview & Scrutiny Committee on 2 February 2011. The report has since been considered by the LSB who will shortly report back to the LSB Scrutiny Working Group.

Further details may be found by contacting [Scrutiny@Rhondda-cynon-taff.gov.uk](mailto:Scrutiny@Rhondda-cynon-taff.gov.uk)