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Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation Document

Draft statutory guidance - Performance and
governance of principal councils

Date of issue: 11 November 2020
Action required: Responses by 3 February 2021

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

Overview

Part 6, Chapter 1, of the Local Government and Elections (Wales) Bill provides for a new performance and governance regime for principal councils. We would like your views on the draft statutory guidance for principal councils about how they should exercise their performance and governance functions under the new regime.

How to respond

This is a written, electronic consultation. Please respond by:

- Completing the consultation response form; or
- Emailing or posting your response to the contact details below.

The consultation closes on 3 February 2021

Further information and related documents

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

[The Local Government and Elections \(Wales\) Bill](#)

Contact details

For further information, please contact:

Local Government Transformation & Partnerships
Division
Local Government Directorate
Welsh Government
Cathays Park
Cardiff
CF10 3NQ
e-mail: LGPartnerships@gov.wales

Also available in Welsh at:

[Welsh Government Consultations Website](#)

General Data Protection Regulation (GDPR)

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data. In order to show that the consultation was carried out properly, 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. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation. If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer:
Welsh Government
Cathays Park
CARDIFF
CF10 3NQ

The contact details for the Information Commissioner's Office are:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745 or
0303 123 1113
[ICO Website](#)

e-mail: Data.ProtectionOfficer@gov.wales

Foreword by the Minister for Housing and Local Government

The Local Government and Elections (Wales) Bill has strengthening and empowering local government at its core. I want to support councils to continuously improve, be innovative, take measured risk and have sound governance. The performance and governance provisions contained in the Bill are a fundamental component of this.

The new performance and governance regime firmly defines principal councils as self-improving organisations which, through a system based on self-assessment and panel performance assessment, continuously challenge the status quo, ask questions about how the council is operating, and consider best practice in Wales and wider. My ambition is for a culture where all parts of a council always aim to do better in everything they do, no matter how well they are performing already.

My expectation is that when considering how well a council is meeting the performance requirements set out in the Bill, either as part of self-assessment or panel performance assessment, the focus should always be on aiming to be the best. The extent to which they are delivering to their legal duties and functions are a core part of a council's performance requirements. However, councils should always be striving for more - not simply meeting the minimum requirements, but seeking to ensure the best outcomes for the people they serve. Taking housing as an example, we can all sign up to the ambition of provision of adequate housing for all, with authorities intervening earlier and going beyond achieving only the minimum legislative requirements.

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

Principal councils will be able to use the findings of self-assessment and panel performance assessment to identify areas where support for improvement might be most valuable. I have committed to funding, through the WLGA, a new Improvement and Support Programme. I believe this will provide councils with sector-led capability to deliver the financial resilience and service transformation needed for the future of our citizens and communities.

I am grateful to local government colleagues and other stakeholders for working so constructively to co-produce this draft guidance with Welsh Government. The principle of co-development is central to ensuring this guidance is valuable for councils, facilitates the implementation of the provisions and, above all, ensures the new approach is a meaningful opportunity to continually strengthen local government. I welcome your views on the draft guidance so that it can effectively contribute to this ambition.

Julie James MS
Minister for Housing and Local Government

What this consultation is about

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

[The Bill](#) was introduced in the Senedd in November 2019

Part 6 of the Bill relates to the performance and governance of principal councils, and Chapter 1 of that part provides for a new system for improving performance and governance, replacing the current improvement duty for councils set out in the Local Government (Wales) Measure 2009. Part 6 of the Bill also makes provision for the Welsh Ministers to provide support and, where necessary, to intervene in principal councils facing significant problems.

The new approach set out in the Bill is designed to provide for a more streamlined, flexible, sector-led approach to performance, good governance and improvement. The intention is for councils to be proactive in considering how internal processes and procedures should change to enable more effective planning, delivery and decision-making to drive better outcomes.

The performance and governance provisions contained in Part 6 of the Bill will require councils to review the extent to which they are meeting their performance requirements, that is the extent to which they are:

- a) exercising their functions effectively;
- b) are using their resources economically, efficiently and effectively; and
- c) are governed effectively.

The formal process of review will be through self-assessment, with the conclusions of the self-assessment process published annually through a self-assessment report. The self-assessment report will include actions to be taken to increase the extent to which a council is meeting its performance requirements in the following financial year.

The performance and governance provisions in the Bill are framed within the wider sustainable development duties of the Well-being of Future Generations (Wales) Act 2015, which provides the context within which councils should be exercising their functions, using their resources and ensuring their governance is effective.

The Bill requires that a council should have regard to any guidance issued by Welsh Ministers in relation to the exercise of its functions under Part 6, Chapter 1 of the Bill once commenced. This means that councils must take account of the guidance, and if they decide to depart from it, have clear and justifiable reasons for doing so.

We are therefore seeking views on the draft guidance for principal councils about the exercise of their functions under Part 6, Chapter 1 of the Bill.

Where we are now

We are consulting on the draft guidance to underpin the provisions in the Bill now to ensure the final guidance is ready for when the new powers are in place.

In developing draft guidance to support the implementation of the provisions in Part 6 of the Bill we have worked with local government officers and other stakeholders to develop the detail of how the new regime will operate, well in advance of it coming into force. We want to ensure that this guidance is something which is valuable for local government and provides a meaningful opportunity to continually strengthen councils.

A clear message during this period of co-production has been that local government want flexibility to determine its own approach to self-assessment and panel performance assessment, designed to fit local circumstances and corporate structures, and informed by best practice. In response, the draft guidance has been developed and drafted in a way that seeks to support principal councils to understand and apply the duties in a manner that is appropriate to its own circumstances, taking an enabling approach rather than being overly prescriptive. It will be for principal councils to apply the guidance in the development of their own robust and meaningful processes.

Development of the guidance has been a collaborative and iterative process. As a starting point, we worked with a small group of local government officers with a role in performance and governance in their councils to co-produce initial drafts of the elements of guidance. Drafts were then shared and tested at intervals with a range of other partners to inform thinking and further refinement. We have also engaged with various departments within Welsh Government to ensure connection and alignment with other policy areas.

Valuable information and insight was gained from this involvement period and we are very grateful to those that participated and supported this work. Some key messages that emerged were:-

- Be clear on the purpose of the new performance and governance provisions, and how they relate to the wider landscape, ensuring alignment with other statutory performance arrangements and the work of auditors, inspectors and regulators;
- Empower councils to develop their own approach to keeping their performance under review, within the parameters of the legislation, to enable alignment with existing corporate governance structures and processes;
- Provide clarity that the provisions should underpin a meaningful process to contribute to strengthening local government and not result in an exercise in compliance;
- Support local government to build capability and expertise in undertaking self-assessment, and meaningfully responding to the findings.

These messages have informed the draft guidance.

The proposed guidance

The draft guidance covers the following duties set out in Part 6 of the Bill:-

- **Duty to keep performance under review**
- **Duty to consult on performance**
- **Duty to report on performance**
- **Duty to arrange a panel assessment of performance**
- **Duty to respond to a panel performance assessment report**

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

The purpose of the guidance is to guide and support principal councils to successfully discharge their duties as contained in Part 6 of the Bill.

The guidance is set out in chapters as follows:-

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

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

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

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

Chapter 5 - describes the powers and duties for both Welsh Ministers and councils in relation to supporting and assisting with improving performance; and powers for intervention by Welsh Ministers where Ministers consider that it is likely that the council is not, or that the council is not, meeting the performance requirements.

Consultation questions

We are inviting views on the draft statutory guidance and have identified eight consultation questions below. If you wish to respond please complete the online consultation response form or write to or email the addresses on page 2 of this document.

Responses to the consultation may be made public on the internet or in a separate report. If you would prefer your response to be kept confidential please indicate this by ticking the relevant box on the response form or clearly in your written response.

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| Q1 | Does the draft guidance make it clear what is expected of principal councils as set out in the provisions of Part 6 of the Local Government and Elections (Wales) Bill in a way that can be understood by principal councils? If not, why not? |
| Q2 | Does Chapter 2 of the guidance set out the performance requirements and the duty to keep performance under review sufficiently clearly? If not, what would you add or change? |
| Q3 | Does Chapter 2 of the guidance explain how a council could meet the requirement to undertake self-assessment in order to fulfil its duties? If not, what would you add or change? |
| Q4 | Does Chapter 3 of the guidance make the minimum requirements for principal councils to arrange and respond to a panel performance assessment clear, as well as provide sufficient flexibility for each council to determine its own approach? If not, what would you add or change? |
| Q5 | Chapter 4 outlines the Auditor General for Wales' powers to carry out a special inspection, and the duties of principal councils and Welsh Ministers to respond to any recommendations. Chapter 5 describes the powers and duties for both Welsh Ministers and councils in relation to supporting and assisting with improving performance; and powers for intervention by Welsh Ministers. Do Chapters 4 and 5 sufficiently describe and explain these powers? If not, what would you add or change? |
| Q6 | We would like to know your views on the effects that the guidance would have on the Welsh language, specifically on opportunities |

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| | <p>for people to use Welsh and on treating the Welsh language no less favourably than English.</p> <p>What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?</p> |
| Q7 | <p>Please also explain how you believe the guidance could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language, and on treating the Welsh language no less favourably than the English language, and ensure there are no adverse effects on opportunities for people to use the Welsh language.</p> |
| Q8 | <p>We have asked a number of specific questions on the draft guidance. If you have any related issues which we have not specifically addressed, please use the consultation response form to express your views.</p> |

Next steps

It is anticipated that the Bill will receive Royal Assent in January 2021. It is planned that the duties to which the guidance relate will apply from 1 April 2021, with the exception of the duties in respect of panel performance assessment which will come into force following the next ordinary local government elections in May 2022.

In practice, this means that the first self-assessment reports will be prepared on the financial year 2021-22, and published early in the 2022-23 financial year.

It is intended that, following this formal consultation, the final statutory guidance will be issued to principal councils under Part 6 of the Local Government and Elections (Wales) Bill when commenced.

Principal councils will continue to report under the Local Government (Wales) Measure 2009 for the 2020-21 financial year, with reports to be published in accordance with section 15 of the Measure by October 2021.

Consultation Response Form

Your name:

Organisation (if applicable):

E-mail / telephone number:

Your address:

Q1: Does the draft guidance make it clear what is expected of principal councils as set out in the provisions of Part 6 of the Local Government and Elections (Wales) Bill in a way that can be understood by principal councils?

If not, why not?

Q2: Does Chapter 2 of the guidance set out the performance requirements and the duty to keep performance under review sufficiently clearly?

If not, what would you add or change?

Q3: Does Chapter 2 of the guidance explain how a council could meet the requirement to undertake self-assessment in order to fulfil its duties?

If not, what would you add or change?

Q4: Does Chapter 3 of the guidance make the minimum requirements for principal councils to arrange and respond to a panel performance assessment clear, as well as provide sufficient flexibility for each council to determine its own approach?

If not, what would you add or change?

Q5: Chapter 4 outlines the Auditor General for Wales' powers to carry out a special inspection, and the duties of principal councils and Welsh Ministers to respond to any recommendations.

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

Do Chapters 4 and 5 sufficiently describe and explain these powers?

If not, what would you add or change?

Q6: We would like to know your views on the effects that the guidance would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Q7: Please also explain how you believe the guidance could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language, and on treating the Welsh language no less favourably than the English language, and ensure there are no adverse effects on opportunities for people to use the Welsh language.

Q8: We have asked a number of specific questions on the draft guidance. If you have any related issues which we have not specifically addressed, please enter here.