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Consultation – summary of response

Draft statutory guidance – Corporate Joint Committees (CJCs)

December 2021

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

This document provides a summary of the responses to the consultation on the draft guidance for CJsCs, to support the process of establishing CJsCs.

Action Required

This document is for information only.

Further information and related documents

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

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Additional Copies

This summary of responses and copies of all the consultation documentation are published in electronic form only and can be accessed on the Welsh Government's website.

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SECTION ONE: Background to the consultation

On 12 July 2021, the Minister for Finance and Local Government (the Minister) launched a consultation on draft Statutory Guidance for Corporate Joint Committees (CJCs), as provided for in the Local Government and Elections (Wales) Act 2021 (the LGE Act).

This was the third consultation to date on the establishment of CJCs.

The first consultation, which closed on 4 January 2021, was in regard to draft Establishment Regulations which would enable the establishment of four CJCs in Wales. These Establishment Regulations were made on 17 March 2021, alongside a number of statutory instruments, which ensured that from day one CJCs would be subject to the duties which would be expected to apply to public bodies in Wales; and also to ensure appropriate governance and oversight. The outcome of this consultation is published [here](#).

The second consultation continued the process of putting in place the legislative framework which CJCs would operate within, and sought views on the application of specific elements of that framework, as provided for by the draft Corporate Joint Committees (General) (No.2) (Wales) Regulations 2021 (“the Draft No.2 Regulations”). That second consultation ran for 8 weeks from 12 July to 6 September 2021, and the outcome of that consultation is published [here](#).

This third consultation was on the draft guidance for CJCs under part 5 of the LGE Act and was published on the Welsh Government website as part of a formal consultation process which ran from 12 July 2021 to 4 October 2021. Section 86 of the LGE Act provides that principal councils and CJCs must have regard to any guidance issued by Welsh Ministers relating to Part 5 Chapters 3, 4 and 5 of that Act, and, in respect of National Park authorities relating to Part 5 Chapters 4 and 5.

The link to the consultation document was sent to a wide range of stakeholders, a number of whom will be involved in establishing the CJCs, and their feedback is therefore key in helping us understand whether the guidance provides the level of detail and clarity they require. Online versions of the formal consultation document, draft statutory guidance and response form were also provided in Welsh and English on the Welsh Government website.

In addition to the formal consultation process, Welsh Government officials have worked closely with key local authority officers on the development of the draft guidance. Wider engagement sessions and technical briefings have been held during the previous consultations on the legislative framework, and the questions from stakeholders during those sessions have helped inform the development of the guidance to ensure the answers to those, and other potential questions, have been incorporated.

Responses received

The consultation process resulted in 17 written responses. Respondents are identified as follows:

- 9 Local Authorities (including the Welsh Local Government Association - WLGA)
- 1 Corporate Joint Committee
- 1 Commissioner
- 2 Auditor / Regulators
- 1 Third Sector organisation
- 1 Representative body, professional body or association
- 1 Trade Union
- 1 NHS organisation

A full list of respondents to the consultation is provided at **Annex A**.

SECTION TWO: Summary of responses

This document is intended as a summary of the responses received, it does not aim to capture in detail every point raised by respondents. The consultation asked ten questions, and this document summarises the response to each. The Welsh Government's response to the points raised, and the impact that feedback will have on the final guidance document, are captured at the end of this document.

Consultation Question One:

Question 1 asked for views on whether the draft guidance provided an appropriate level of support to CJsCs to put in place the necessary arrangements for the proper administration and governance of the CJC. If no, the respondent's views were sought on what further information might be added.

In total there were 14 responses to this question. Due to the nature of the question the responses included a number of broader comments on the guidance and other related matters.

Respondents generally agreed the guidance was helpful without being overly prescriptive, and that it accurately reflected the underlying principle that CJsCs should be treated as a "member of the local government family" and subject to broadly the same powers and duties as principal councils. The WLGA's response commented on the fact the guidance had been developed with local government professionals and was generally regarded as appropriately balanced in terms of detail and flexibility.

It has been noted however that there are inevitable challenges for local authorities in establishing CJsCs given the sequencing and timing of several relevant sets of Regulations and associated guidance, and the publication of the proposed Democracy Handbook. A number of respondents referenced the importance of early publication of the Democracy Handwork to supplement a number of areas covered by Chapter 1, and to provide further context.

One respondent raised a concern that the issue of funding of the CJC, and its staffing, was not dealt with in the guidance and felt that an appropriate level of funding would be required if the aims of the guidance are to be achieved.

One respondent stated an appreciation of the flexibility now provided in relation to scrutiny, but cited the need for separate support and guidance to enable the councils to move to a regional model in due course. The importance of retaining an appropriate level of local accountability was stressed.

A number of respondents raised the issue that powers and duties should be proportionate to CJsCs' anticipated functions and scale and it is important that CJsCs are not over-regulated and overburdened with significant duties more applicable to larger, more complex bodies such as principal councils.

CJsCs will be expected to develop, consult on, publish and report on several strategic objectives, plans or statements (e.g. wellbeing objectives and reporting and equality objectives and reporting) whilst also developing their approach to delivery of specific functions, such as the strategic development plan. The guidance references where

several such duties apply, however, it was felt that it would be helpful and provide clarity if the final guidance could include an annex detailing each of the corporate related objective setting, planning and reporting duties and the associated dates.

The third sector organisation that responded stated the guidance does not provide an appropriate level of support to CJsCs to ensure communities and community organisations in their areas are properly involved in their work (as required by the Well Being of Future Generations Act 2015 (WFGA)).

A number of respondents, including Audit Wales thought it would be helpful to have clear and accurate referencing of legislation throughout the guidance wherever possible and that it needed to be much clearer whether the guidance was restating the requirements of legislation or setting out policy intent. They felt the need for referencing was particularly important given the number of sets of regulations that would apply.

In addition, Audit Wales also felt it would be helpful if the language of the guidance were made clearer and more concise and in some cases more directive, for example using 'should' instead of 'could'.

Consultation Question Two

Question 2 asked for views on whether Chapter 1 of the guidance provided sufficient/appropriate guidance on the membership and constitution of CJsCs. If no, the respondent's views were sought on what they would add or change.

There were 15 responses to this question. The key points made were:

- The majority of respondents agreed that Chapter 1 provided sufficient/appropriate guidance on the membership and constitution of CJsCs.
- Respondents welcomed the flexibility within the guidance, however one respondent did raise concern about whether allowing such flexibility might also cause inconsistency across different geographical areas. There was also some concern raised that the guidance was not sufficiently definitive and therefore would leave the CJsCs with work to do in terms of deciding on the appropriate way forward.
- There was a view that the governance and administrative framework for the CJsCs should provide the same level of democratic accountability as for local authorities.
- The requirement to appoint replacement and substitute executive members, together with co-opting individuals to sit on sub-committees, was welcomed.
- One respondent believed that there was little in the guidance to ensure the full diversity of communities in a CJC area are meaningfully involved in decisions affecting their lives and sought further mandation in terms of third sector bodies etc.
- There were a number of specific areas where respondents felt clarity in the guidance might be helpful.

Consultation Question Three

Question 3 asked whether respondents felt that Chapter 2 provided sufficient/appropriate guidance on matters relating to the staffing and workforce of a CJC. If no, the respondent's views were sought on what should be added or changed.

Of the 17 responses, four did not take the opportunity to add any comments to question 3. Of those who did provide comments, the key points were:

- The majority of respondents agreed that Chapter 2 provided sufficient/appropriate guidance as it provides flexibility in terms of options.
- Respondents welcomed the guidance's indication that there may be a mixed pattern of employment but would like officials to consider volunteering and secondment to and from CJCs as something that should be addressed in the guidance.
- CJC employees should be treated no less/no more favourably than council employees.
- The same political restrictions, codes of conduct, statutory duties and indemnities that apply to local authority staff should also apply to employees and officers of the CJC.
- One respondent believed that seconding staff into the CJC potentially gives staff greater security rather than a TUPE transfer and another respondent requested further guidance on the position of TUPE and how that may apply to CJC, particularly where staff were transferring in from different authorities with different terms and conditions.
- Some respondents felt that the language used in some areas of the guidance should be more definite, for example "could" changed to "should"

In the responses, it should be noted that several respondents indicated that capacity issues, both corporately and within service areas relating to CJC functions, will be a key challenge when establishing and supporting CJCs.

Consultation Question Four

Question 4 asked whether Chapter 3 provided sufficient/appropriate guidance on the way CJCs should conduct meetings and proceedings. If no, the respondent's views were sought on what should be added or changed.

Of the 17 responses, five did not take the opportunity to add any comments to question 4. Of those who did comment, the key points were:

- The majority of respondents agreed that Chapter 3 applies the same corporate governance arrangements as local authorities.
- Respondents welcomed the guidance clarifying that arrangements should be as open and transparent as those of principal councils. Matters in relation to transparency and openness were felt to be essential, and respondents welcomed the fact the guidance mirrors the responsibilities on local authorities.

- A number of respondents felt that the language in paragraph 46.5 did not make it clear that CJsCs would be subject to the wellbeing duty within the Well-being of Future Generations Act.
- One respondent suggested that the provision for sub-committees may provide an opportunity to make links and meetings more focussed.
- One respondent sought clarity on the reference to the “first meeting” in paragraph 28.
- Another respondent indicated they would find it helpful to include specific provisions for CJsCs to require special majority voting requirements for specific decisions.
- Two respondents recommended the guidance should strengthen and define how CJsCs will encourage public participation and community involvement in their decision making as currently set out in paragraph 25.3.
- As with question 3, some respondents felt that the language used in some areas of the guidance should be more definite, for example “could” changed to “should”

Consultation Question Five

Question 5 asked whether Chapter 4 provided sufficient/appropriate guidance on the governance within, and scrutiny of, a CJC. If no, the respondent’s views were sought on what should be added or changed.

Of the 17 responses, 11 had additional comments in relation to question 5. Of those responses the majority agreed that Chapter 4 provided sufficient/appropriate guidance. The key points made were:

- One respondent welcomed clarification that the Part 6 (Local Government & Elections Act, Wales) performance arrangements will apply to CJsCs.
- Monitoring Officers must ensure scrutiny committees have open, accessible routes for engagement so all stakeholders, including the voluntary sector, are able to engage.
- The scrutiny provisions could be more detailed and clarify how the overview and scrutiny arrangements for the CJC will operate in conjunction with the local scrutiny arrangements within each local authority.
- The guidance could be clearer about what is expected of CJsCs in relation to how the existing statutory requirements of public bodies (e.g. Well-being Objectives, Strategic Equality Plans, Welsh Language Standards etc.) should be both implemented and resourced by CJsCs to ensure that these requirements are discharged effectively and in a timely manner.
- The guidance provided sufficient flexibility for CJsCs and authorities to determine their own arrangements for scrutiny and allowed sufficient flexibility for the adoption of the most appropriate scrutiny model to suit local needs.
- One respondent felt the guidance did not explain how the CJsCs could ensure the necessary expertise to provide thorough and robust scrutiny.

- Further guidance would be beneficial on the role of Scrutiny and the Governance and Audit process as part of overarching arrangements and the different matters that can be implemented to achieve.

Consultation Question Six

Question 6 asked whether Chapter 5 provided sufficient/appropriate guidance on the funding, finance and budgetary matters of a CJC. If no, the respondent's views were sought on what should be added or changed.

Of the 17 responses, four did not take the opportunity to add any comments to question 6. One respondent stated that they did not agree that Chapter 5 provided sufficient/appropriate guidance, however they did not use the opportunity to expand on their reasoning. Of the other responses there were a number which took the opportunity to make more general comments on the funding of CJs. The key points were:

- There is still uncertainty around the process for pooled budgets and collective resources from across the local authorities and partners.
- There is a lack of clarity as to how the voluntary sector will be viewed regarding funding in relation to CJs, as a receiver of any funding distributed by a CJC, or as a funder of CJC. Also there is a lack of clarity around how work may be commissioned between the CJs and whether the voluntary sector will be on an equal footing for funds as part of this.
- That CJs run the risk of being under-resourced due to the lack of guidance around funding more generally of a CJC.

It should be noted that a number of respondents took the opportunity in their answer to question 6 to express views that funding for CJs would need to be provided by Welsh Government in order to provide resource. One respondent took this opportunity to encourage engagement between Welsh Government and local authorities to identify funding needs.

There were a number of specific areas where respondents felt clarity in the guidance might be helpful in relation to the funding, finance and budgetary matters of a CJC:

- One respondent asked for clarity on whether an Annual Governance Statement is required.
- One respondent requested that the term "external audit" be defined with an explanation as to how this ties in with the new General Power of Competence powers.
- One respondent sought clarity as to whether reference to "amounts payable" in paragraph 36.5 was the same as the "amounts payable by each of the constituent councils" referred to in para 36.6.
- One respondent felt that it would be helpful to align paragraph 36.7 more closely to the requirements of Regulation 16(8) of the Establishment Regulations.
- One respondent noted that paragraph 38.1 does not say that the budget for 2021-22 must be set by 31 January 2022, as required by Regulation 16 of the

Establishment Regulations. They felt that this omission risks CJs overlooking the need to set their first year budgets by 31 January 2022.

- One respondent felt that the phrases “it is envisaged” and “could be expected” risk suggesting that there is some element of choice in paragraph 39.4.

Consultation Question Seven

Question 7 asked whether Chapter 6 provided sufficient/appropriate guidance on the other statutory duties which CJs will be subject to. If no, the respondent’s views were sought on what should be added or changed.

Of the 17 responses, four did not take the opportunity to add any comments to question 7. Of those who did provide comment, the key points were:

- The majority of respondents agreed that Chapter 6 included a useful summary of the statutory duties and the detail covered by this section of the guidance is welcomed.
- Respondents agreed that the guidance covered all key legislative and policy areas required for public organisations such as CJs.
- One respondent believed it would be useful for the guidance to reference that regulations place an obligation on CJs to set, and report on, a number of Equality Objectives. They felt the guidance should suggest how the obligation would be achieved, recognising that each constituent local authority will already have existing Strategic Equality Plans and Objectives in place.
- One respondent noted that the guidance does not refer to the Gender Pay Gap Information Regulations 2017, although it is assumed this will not apply due to a CJC having less than 250 employees it was felt it may be useful to state that this is the case.
- Again, one respondent felt that the language used in some areas of the guidance should be more definite, for example “optional” changed to “mandatory”.
- Whilst the guidance referenced where duties applied, one respondent felt it would be helpful and provide clarity if the final guidance could include an annex detailing each of the corporate related objective setting, plan publication and reporting duties and the associated dates.

Consultation Question Eight

Question 8 asked for respondents’ 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. It asked what effects respondents thought there would be, and how positive effects could be increased, or negative effects mitigated.

Of the 17 responses, six did not take the opportunity to add any comments to question 8. Of those who did provide comments, the key points were:

- Respondents welcomed confirmation in the guidance that CJsCs will be bound by the same regulations and standards as other public bodies when it comes to the use and promotion of the Welsh language.
- Respondents sought to ensure that support is given to CJsCs to promote the Welsh language, making the language part of workforce planning, providing services to members of the public in the language of their choice and complying with duties introduced under the Welsh Language (Wales) Measure 2011.
- Two respondents raised the issue of costs to translate and felt that it would be helpful if funding could be made available to assist with ensuring full translation can be achieved.
- One respondent raised concerns in regards to boundaries and how a CJC might erode the current Welsh language practices in the constituent local authorities. To protect against this the respondent's view was that a CJC should always adhere to the practices of that authority currently with the "best practice" and suggest amending the guidance to promote closer collaboration, or specific collaboration, with regards to the Welsh language.
- The Welsh Language Commissioner in her response thought this was an excellent opportunity to establish the practice of administering the CJsCs through the medium of Welsh from the outset.

Consultation Question Nine

Question 9 asked respondents to explain how they believed 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.

Of the 17 responses, only 7 provided additional comments to question 9. The key points were:

- Respondents welcomed confirmation in the regulations that CJsCs will be bound by the same regulations and standards as other public bodies when it comes to the use and promotion of the Welsh language.
- Respondents were content with the guidance covering compliance with the Welsh Language Standards.
- As with question 8, the issue surrounding costs of translation was reiterated. Respondents felt it would be helpful if funding could be made available to assist in ensuring full translation can be achieved.
- A number of respondents believed that consulting on the Standards and an analysis on the different levels of compliance and compliance notices across constituent LAs could help mitigate negativity when it comes to CJsCs bringing together authorities that may have different Standards.

Consultation Question Ten

Question 10 asked respondents whether they had any related issues which we had not specifically addressed, and invited them to express their views.

Of the 17 responses, 6 provided additional comments to question 10.

The majority of responses to this question however did not relate specifically to the draft guidance and included comments in relation to:

- Existing regional transport planning activity by local government
- Local Transport Plans
- Funding of CJsCs generally
- Engagement with local authorities
- The potential impact of UK procurement legislation on the local authority power to trade

There were a number of specific areas where respondents felt clarity in the guidance might be helpful. For example:

- Further clarity was sought on the statutory basis for imposing a number of the duties of a Head of Democratic Services on to the CJC Monitoring Officers.
- Further clarity was sought on the statutory basis for the calling of an extraordinary general meeting of a CJC, particularly when compared to provisions within the Local Government Act 1972 for principal councils.
- Further clarity was sought on the voting rights of National Park Authorities.
- It was felt the term “co-opted participants” should be amended to “co-opted members” to better reflect local authority legislation.
- Consistency was requested on the terminology used when referring to individuals who can attend CJC meetings as advisors or observers, citing references in paragraphs 4.5 and 12.5 as needing further clarity.

SECTION FOUR – Next steps

The Welsh Government values all of the responses received to this consultation as part of the ongoing co-development of the approach to, and implementation of, the CJC model. Whilst this report will not be providing a response to each of the issues raised, the responses will be carefully considered and taken into account when considering the finalisation of the statutory guidance and, where relevant, to the development of the remaining aspects of the legislative framework for CJsCs.

In agreement with local government a staged approach was taken to the development of the legislation underpinning CJsCs. This staged approach brings a unique challenge to the development and publication of the guidance, one which many respondents noted in calling for further clarity between where the guidance reflects legislation that has been made, and the policy intention for those regulations yet to be made. The Welsh Government's ambition is to ensure that the guidance is published as early as possible to support the establishment of the CJsCs, work on which is already underway. In response, we will ensure that the published guidance clearly sets out where the guidance is relating to legislation that has been made, and where it relates to intended future legislation. As the remainder of the relevant local government legislation is put in place, the CJC guidance will be updated to ensure it continues to fully reflect the latest position on the legislative framework for the CJsCs.

It is noted that there was broad support for the guidance as drafted, and the approach to co-development was seen as constructive and integral to ensuring that the guidance reflected the needs of CJsCs and their constituent councils. There were some general points raised where changes could be made to the guidance to strengthen the accessibility of the legislation for CJsCs, for example to ensure that wherever possible clear references to the relevant legislation are included. There were also many responses to specific wording within the guidance, either seeking strengthening of purpose or further clarity of meaning. Each of these will be considered in turn as the guidance is finalised.

As is often the case with the development of guidance there were mixed views on the approach within the guidance to providing for local flexibility, with some respondents welcoming this and others preferring more direction and detail. The guidance seeks to set out the core principles and values around how CJsCs should operate, and the issues members will wish to consider when putting in place the constitutional and operational arrangements of a CJC. The regulations establishing CJsCs are designed to provide flexibility and enable local discretion, and it is important that the members of CJsCs determine for themselves what is appropriate, and what meets their needs in the development of their constitutional and operational arrangements. The guidance is therefore not intended to be prescriptive about what form these arrangements take but to support CJsCs to take a proportionate approach to such arrangements, enabling adaptation to local circumstances. It is recognised that this will bring some variation in how CJsCs might look and operate in each region. This is intentional.

Similarly a number of respondents sought for the statutory guidance to be much more prescriptive and to require the CJC to do certain things as opposed to suggesting things they could do. It is important that the guidance not only delivers the flexibility requested by local government, as discussed above, but that, in addition, the guidance does not include, or seek to include, any duties which are not provided for in the CJC legislation itself.

It is important to note that this guidance is on the constitutional and operational arrangements of a CJC, not on the functions that will be exercised – there will be separate guidance on preparing a Strategic Development Plan and preparing a Regional Transport Plan. Similarly many of the public body duties which will apply to CJsCs will also have their own guidance. It is not the intention of this guidance to re-create or re-interpret other guidance, but to signpost the CJC to the appropriate guidance where possible. For example in the case of the Local Democracy Handbook due to be published early next year, where many of the legislation provisions which are included within the handbook will apply to the governance of a CJC.

We also recognise that a number of respondents took the opportunity to raise issues around the funding of the CJsCs more generally as part of this consultation, seeking assurance on the adequacy of funding of CJsCs. We do not believe it is appropriate for this guidance to address issues of funding, these will need to be considered separately.

Welsh Government is committed to continuing to work with WLGA, principal councils and partners following this consultation process and publication of the final statutory guidance to ensure the successful implementation of the CJsCs.

The intention is to publish the first iteration of the guidance before the end of 2021. As previously noted, due to the staged nature of the development of the CJC legislation the guidance will then be updated as the relevant regulations are approved.

As part of the next stage of putting in place the legislative framework a consultation on a further set of regulations will close on the 22 December 2021. It is hoped this set will be considered by the Senedd in March 2022. A final main set of regulations will be consulted on early in 2022 with a view to these regulations being considered by the Senedd in the summer of 2022.

Annex A: List of respondents

Local Authorities (including the Welsh Local Government Association - WLGA)

Vale of Glamorgan Council
Conwy County Borough Council
Isle of Anglesey County Council
Denbighshire County Council
Newport City Council
Cardiff City Council
Carmarthenshire County Council
Neath Port Talbot County Council
Welsh Local Government Association

Corporate Joint Committee

Mid Wales CJC (Powys County Council / Ceredigion County Council)

Commissioner

Welsh Language Commissioner

Auditor / Regulators

Audit Wales
Public Services Ombudsman for Wales

Third Sector organisation

Building Communities Trust

Representative body, professional body or association

Wales Council for Voluntary Action

Trade Union

UNISON Cymru Wales

NHS organisation

Aneurin Bevan University Health Board