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Welsh Government  
Consultation – summary of response

## **Draft Corporate Joint Committee (General) (No.2)(Wales) Regulations 2022**

**July 2022**

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 Corporate Joint Committees (General) (No.2) (Wales) Regulations.

**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: Introduction

### This consultation

The Local Government and Elections (Wales) Act 2021 provided for the creation of Corporate Joint Committees (CJCs) to further drive collaboration across local government.

Four CJCs have been established which are coterminous with the city and growth deal areas. From June 2022 all CJCs will exercise functions in relation to regional transport planning, strategic land use planning and economic well-being.

To allow for appropriate consideration, the Welsh Government has taken a phased approach in the development of the underpinning legislative framework for CJCs.

- A consultation on Establishment Regulations constituted the first phase and took place between 12 October 2020 to 4 January 2021. These provided for the establishment of four CJCs in Wales 2021. Alongside a number of other statutory instruments, these ensured CJCs would be subject to the duties which would be expected to apply to public bodies in Wales; and to ensure appropriate governance and oversight. These Establishment Regulations were made on 17 March 2021.
- A consultation on the second phase took place between 12 July 2021 and 6 September 2021. The Corporate Joint Committees (General) (No.2) (Wales) Regulations 2021 included provision on the regulation of CJCs' meetings and proceedings; the roles of certain 'executive officers', including the Chief Executive, Monitoring Officer and Chief Financial Officer; and for the functions of the CJC to be discharged by other people, for example its staff or sub-committees. These were made on 3 December 2021
- The consultation on the third phase took place between 10 November 2021 and 22 December 2021. The Corporate Joint Committee (General) (Wales) Regulations 2022 includes provisions in relation to conduct, the power to trade and a number of minor provisions relating to finance, legal proceedings, records / documents and staffing and workforce matters. These were made on 23 March 2022.

On 28 March 2022, the Minister for Finance and Local Government launched a consultation on the draft Corporate Joint Committee (General) (No.2) (Wales) Regulations 2022. This consultation ran for eight weeks until 23 May 2022.

This consultation sought views on the fourth tranche of the approach to the development of the wider CJC legislative framework and application of specific elements of that framework. In particular, the draft regulations will provide for:

- applying the local government performance and governance regime to CJCs.
- the overview and scrutiny of CJCs
- requiring a CJC to adopt certain procedural standing orders
- a small number of other consequential and miscellaneous changes to existing legislation

The link to the consultation document was sent to a wide range of stakeholders, a number of whom were key professional leads in local government who have been involved in co-producing the policy detail behind the Regulations.

The Minister has expressed her thanks on a number of occasions, including during the Senedd debates on the various CJC regulations laid to date, for the constructive engagement which has helped shape the CJs legislative framework. Local government Leaders, officers, the WLGA and other key stakeholders have been engaged throughout the development of the CJC proposals, and this input has been invaluable in shaping this work.

The phase 4 regulations will be subject to the draft affirmative procedure and will be considered by the Senedd in the summer.

## **Who responded?**

There were 17 written responses to the most recent consultation. Respondents are identified as follows:

- 5 Local Authorities
- 3 Corporate Joint Committees
- 2 Regulators / Auditor
- 4 Government agencies or other public sector bodies
- 3 Representative bodies, professional bodies or associations (including the Welsh Local Government Association)

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

## **Next steps**

The consultation responses have highlighted two areas where the Tranche 4 Regulations should be amended to ensure they work in practice as intended, and the Welsh Government is very grateful for those views. These changes will help build on what is already in place, with Regulations and Guidance providing the requested combination of clarity and flexibility. The areas where the Tranche 4 Regulations are being amended are highlighted under the “Welsh Government response” section towards the end of this document.

The Minister has confirmed her commitment to continuing to work closely with Leaders in each of the CJC regions, and with the WLGA, National Park Authorities and other partners to ensure that all work to support the implementation of CJs meets the needs of local government and partners.

## **Approach to developing the 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 a total of 8 questions. The summary of responses has been set out in line with these questions.

In some cases respondents provided a single general response or responded to specific issues on the consultation under a more general response under 'other issues'. This response includes those responses as part of the question on 'other related issues' but the Welsh Government will consider those comments against the parts of the Tranche 4 Regulations as appropriate.

## **SECTION TWO – Summary of Responses**

### **Question 1**

**Does Part 2 of the draft regulations clearly provide for the application of the local government performance and governance regime under Chapter 1 of Part 6 of the Local Government and Elections (Wales) Act 2021 to CJs and studies by the Auditor General for Wales.**

**If no, please provide details of how they can be made clearer?**

A total 14 respondents answered this question. Of these 13 agreed Part 2 of the draft Regulations clearly provided for the application of the local government performance and governance regime. There was general agreement that given the overall approach to ensure CJs are seen as part of the local government ‘family’, it is appropriate they should be subject to the same performance and governance regime as local authorities.

Several respondents, including the WLGA, agreed and commented given CJs will initially be delivering a comparatively limited set of core functions it is important the administrative and governance requirements placed on them is proportionate and not overly burdensome.

Mid-Wales CJC, sought clarification that section 108(1)-(3) of the Local Government and Elections (Wales) Act 2021 is not revoked, but rather are substituted only in the case of CJs because CJs do not have executive arrangements.

Audit Wales responded ‘No’, querying whether the provision in Regulation 5(3) which says section 90 of the 2021 Act “is to be read as if”, which then requires cross referral between the regulations and the Act to understand the performance provisions, raises the risk of misinterpretation and could lead to poor governance and poor performance.

In their general response to the consultation the Federation of Small Businesses asked that CJs be expected to articulate engagement that has taken place with small businesses in their area as part of the consultation process on the self-assessment.

Regulation 3(2) amends section 41(1)(a) of the 2004 Local Government and Election Act 2021 to add CJs to the list of bodies the Auditor General for Wales must undertake studies of each financial year to enable recommendations for improving economy, efficiency and effectiveness in the way their functions are discharged.

In their response Audit Wales say they consider this amendment “is unnecessary and will have adverse effects”. They consider CJs already fall within the 2004 Act’s section 12 definition of local government bodies so CJs would therefore already be covered by section 41(1)(b) of the 2004 Act, which provides for the Auditor General for Wales to undertake studies of other local government bodies.

Audit Wales believe the current provision provides for the Auditor General for Wales to select the types of local government body subject to study in any particular financial year in a more “flexible, proportionate and less expensive approach.” This

amendment would remove the Auditor General's discretion and could cause unnecessary expenditure and divert CJC and audit attention from other priorities.

### **Question 2**

**Do you agree that the requirement to undertake a panel assessment of performance should be delayed until the next electoral cycle?**

A total of 14 respondents answered this question. The majority, including the WLGA, Audit Wales and all the CJs who responded, agreed it was sensible to delay the requirement to undertake a panel assessment until the next electoral cycle. The WLGA said CJC's newly established governance and audit committees and scrutiny arrangements should provide appropriate accountability and oversight as CJs establish and embed their corporate governance and self-assessment arrangements in the coming years. The delayed introduction of panel performance assessments also allows for the experiences and learning from the inaugural local authority panel assessments (during 2022-27) to shape the process as it applies to CJs.

Other respondents were sceptical on the proposed delay to the requirement. The Welsh Council for Voluntary Action said a delay until the next electoral cycle would technically allow "assessment of CJs to not take place until the early weeks of 2031".

### **Question 3**

**Does Part 3 of the draft regulations clearly provide for the overview and scrutiny of a CJC?**

**If no, please provide details of how they can be made clearer.**

A total of 10 respondents answered this question. Seven of these agreed Part 3 clearly provided for the overview and scrutiny of CJs. The WLGA said "overview and scrutiny of CJs is critical in ensuring local democratic accountability to and oversight of wider members within constituent authorities. The outlined approach, which gives maximum flexibility to local authorities and CJs, is therefore supported".

Newport City Council suggested the size of the South-East Wales CJC meant only joint scrutiny was likely to be effective. They suggested therefore joint scrutiny should be mandatory.

Regulation 8(4) provides a CJC does not have to share confidential or exempt information in response to a request from a constituent local authorities overview or scrutiny committee unless the information is relevant. In their response Newport City Council said "there is no equivalent requirement for local authorities to withhold information in this way or for an officer to determine the relevance, or otherwise, of such information". They asked for this requirement to be reconsidered.

South-West Wales CJC responded 'no' to this question saying "it would be beneficial if information could be included which confirms the political proportionality of a scrutiny committee across the region for any joint overview and scrutiny committees created."



#### **Question 4**

**Does Part 4 of the draft regulations clearly provide for the adoption of certain standing orders?**

**If no, please provide details of how they can be made clearer.**

A total of 11 respondents answered this question and all agreed the draft Regulations clearly provided for the adoption of certain standing orders.

South-West Wales CJC commented it would be beneficial if it could be made clear such arrangements are also applicable where the Corporate Joint Committee engages staff directly as opposed to purchasing arrangements from local authorities.

#### **Question 5**

**Do you agree that the Local Authorities (Standing Orders) (Wales) Regulations 2006 should be amended to apply to CJsCs?**

A total of 10 respondents answered this question and all agreed the Local Authority Standing Orders) (Wales) Regulations 2006 should be amended to apply to CJsCs.

#### **Question 6**

**Does Part 5 of the draft regulations clearly provide for the small number of miscellaneous and consequential amendments identified?**

**If no, please provide details on how they can be made clearer.**

Seven of the respondents answered this question. Six of these felt Part 5 provides sufficient details in relation to this area.

The Independent Remuneration Panel for Wales however felt the miscellaneous amendments to the Establishment Regulations were not clear in terms of what the membership requirements were of governance and audit sub-committees.

#### **Question 7**

##### **Welsh Language**

**If you have any views on the specific effects the draft Corporate Joint Committees (General) (No.2) (Wales) Regulations 2022 might have on the Welsh Language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English, we would welcome your views.**

Two of the respondents answered this question. The WLGA, agreed these regulations do not appear to have any effect on the Welsh language and CJsCs will be subject to statutory requirements in respect of Welsh language.

Gwynedd County Council said the regulations are semi-procedural with no specific impact on the Welsh language anticipated.

### **Question 8**

**If you have any related issues which we have not specifically addressed, please feel free to provide information on those also.**

The Wales Council for Voluntary Action said that the ability for CJsCs to co-opt members, including from the third sector, did not sufficiently endorse the principle of the importance of engaging with this sector. They felt the requirement for CJsCs to engage with third sector should be mandatory.

Similarly, UNISON said formal trade union involvement in the work of CJsCs should be mandatory.

The Hywel Dda University Health Board said it was important to ensure that partnerships between local government and health are maintained and maximised in any new structures.

## **SECTION THREE - Welsh Government Response to the Consultation on the Draft Corporate Joint Committee (General) (No.2) (Wales) Regulations 2022.**

The Welsh Government remains committed to work with local government and wider stakeholders to support the implementation of CJsCs.

This section sets out the Welsh Government's response to the consultation on the draft Tranche 4 Regulations, including details of an amendment which will be made to the draft Regulations and clarifications to be set out in updated statutory guidance.

### **Part 2**

#### Performance and information related to performance

The Welsh Government is pleased the majority of respondents felt the draft regulations clearly provide for the application of the local government performance and governance regime.

#### Duty to consult local people etc. on performance

The Federation of Small Businesses set out the importance of CJsCs engaging with small businesses when undertaking an annual assessment. Section 90(b) of the Local Government and Election Act 2021 already requires local authorities to consult with persons carrying out businesses in the council's area when undertaking an annual self-assessment. The general modifications in paragraph 2 of the new Schedule 10A of 2021 Act says 'references to the area of a principal council are to be read as references to the area specified as a corporate joint committee's area'.

In response to the Federation of Small Businesses, and the concerns raised by Audit Wales about clarity in relation to the performance requirements within the legislation generally, the Welsh Government will revisit statutory guidance to ensure there is clarity about the performance and assessment requirements for CJsCs.

#### Amendment of the Public Audit (Wales) Act 2004 to provide for studies and directions by the Auditor General for Wales

Audit Wales raised concerns that amendments to section 41(1)(a) of the Public Audit (Wales) Act 2004, to require the Auditor General to undertake studies of each financial year in the way CJsCs discharge their *functions*, would lead to excessive study work, as well as unnecessarily diverting CJC and audit attention from other priorities.

CJsCs fall within the Public Audit (Wales) Act 2004 definition of local government bodies, so would therefore already be caught under section 41(1)(b) as one of the bodies the Auditor General for Wales must undertake studies of each financial year to enable recommendations for improving economy, efficiency and effectiveness in the way their *services* are discharged.

Not providing for this amendment will result in the Auditor General only being obliged to carry out studies in relation to *services* provided by CJsCs rather than in relation to the discharge of their *functions*.

Given the clear view of Audit Wales that existing provision provides for proportionate audit coverage however, the amendment to section 41(1)(a) will be withdrawn from the Regulations.

### Panel Assessment

Although most respondents agreed the requirement would take a panel assessment should be delayed until the next electoral cycle, in response to concerns raised about the length of time it might be before a panel assessment takes place it is worth noting that the panel assessment could be undertaken at any point following the start of the next electoral cycle in 2027 after which the CJsCs will have undertaken enough activity to make a panel assessment meaningful and proportionate

CJsCs would still be required to undertake an annual self-assessment exercise. Audit Wales also noted that they would be undertaking the annual audit of accounts which would assess whether a CJC had made proper arrangements for securing economy, efficiency and effectiveness in its use of resources.

## **Part 3**

### Overview and Scrutiny

The Welsh Government is pleased the majority of respondents agreed that part three clearly provided for the overview and scrutiny of CJsCs.

In response to concerns raised by Newport City Council, whilst Welsh Government agrees joint scrutiny might be more effective in some instances for economy of scale, we have deliberately provided flexibility in CJsCs legal framework to allow regions to put in place scrutiny arrangements based on their specific circumstances, rather than a 'one size fits all' approach.

### Duty to co-operate on overview and scrutiny

Newport City Council also raised concerns about the regulation providing a CJC does not have to share confidential or exempt information in response to a request from a constituent local authorities overview or scrutiny committee unless the information is deemed relevant by a proper officer – arguing that they did not believe there was equivalent requirement for local authorities to withhold information in this way.

We can confirm there is equivalent provision in Regulation 11 of the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001 in relation to rights of access for members of overview and scrutiny committees.

### Political proportionality of a scrutiny committee

This Tranche 4 consultation included a link to separate consultation on revised statutory guidance issued under the Local Government (Wales) Measure 2011 on overview and scrutiny which is scheduled to close on 22 July 2022.

Comments from the South-West Wales CJC about clarifying requirements on political proportionality will be considered in the analysis of the overview and scrutiny guidance consultation. That draft guidance currently sets out a detailed approach to establishing a joint overview and scrutiny committee (JOSC), including saying, at para 12.29:

*“In order to ensure JOSCs represent fairly the interests of each local authority, an equal number of committee seats must be allocated to each of the participating councils. JOSCs are not required to be politically balanced themselves but each participating council should aim to ensure that the membership of the JOSC it puts forward reflects, as far as possible, the political balance in the council.”*

## **Part 5**

### **Governance and audit sub-committees**

Guidance will be revisited to ensure it clarifies that at least one third of members of governance and audit sub-committees must not be a member of any county or county borough council anywhere in Wales. This does not apply to community councillors. The remaining two thirds must be constituent council members, but not members of the executive of any of the CJC’s constituent councils.

### **Welsh Language**

With regards to the impact of the draft Tranche 4 Regulations on the Welsh Language, the Welsh Government welcomes the general view of respondents that the Tranche 4 Regulations would have no significant impact on the Welsh Language. Amending Regulations to the Welsh Language Standards No.1 Regulations came into force on 3 December 2021 which added CJCs to the Welsh Language Standards No.1 Regulations.

### **Other issues**

#### **Third Sector and Trade Union Engagement**

Statutory guidance is clear there is an expectation CJCs should engage and involve others in their work through co-option. The legal framework for CJCs was however designed to provide flexibility for regions to engage with others based on their own unique circumstances.

The Welsh Government intends to continue to engage with CJCs to support their implementation. This includes holding a series of workshops to discuss shared challenges and opportunities, such as how to effectively engage and involve others, including the third sector.

## **Annex A: List of respondents**

### **Local Authority**

Gwynedd Council  
Swansea City Council  
Newport City Council  
Merthyr Tydfil County Borough Council  
Pembrokeshire County Council  
Welsh Local Government Association  
Mid Wales Corporate Joint Committee  
South-East Wales Corporate Joint Committee  
South-West Wales Corporate Joint Committee

### **Government agency / other public sector body**

Audit Wales  
South Wales Fire and Rescue Service  
Public Services Ombudsman for Wales  
Hywel Dda University Health Board  
Independent Remuneration Panel for Wales

### **Third Sector**

WCVA

### **Representative bodies, professional bodies or associations**

Federation of Small Businesses  
UNISON