

# Report



## Cabinet

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### Part 1

Date: 8 January 2021

**Subject** Local Government and Elections (Wales) Bill - Performance & Governance Consultation

**Purpose** To present to Cabinet an overview of the Local Government and Elections (Wales) Bill and determine a response to the consultation regarding the guidance issued over the implementation of proposed Performance and Governance arrangements.

**Author** Head of People and Business Change  
Head of Law and Regulation

**Ward** All

**Summary** The Local Government and Elections (Wales) Bill proposes to reform the legislative framework for local government electoral arrangements, democracy, performance and governance. This is an extensive piece of legislation covering the powers of local government, elections, performance and governance of principal Councils, and collaborative working by Principal Councils – the establishment of Corporate Joint Committees (CJCs). This was also the subject of a Cabinet Report on the December agenda.

The Minister for Housing and Local Government is seeking views on the draft guidance that will support local authorities to successfully discharge their duties as contained in the Bill and this report proposes a draft response to the consultation regarding Performance and Governance arrangements within Principal Councils.

**Proposal** Cabinet is asked to consider the contents of the report and agree the consultation response for submission by the closing date of 3<sup>rd</sup> February 2021.

**Action by** Chief Executive

**Timetable** Immediate

This report was prepared after consultation with:

Councillors, Chairs of Scrutiny and Audit Committee  
Heads of Service

**Signed**

## Background

The current local government structure in Wales, consisting of 22 county and county borough councils (“principal councils”) was established in 1996 by the Local Government (Wales) Act 1994. There have been a number of reports, commissions and white paper consultations, with the aim of reforming the local government structure, strengthening democratic accountability and increasing diversity of representation.

On 18<sup>th</sup> November 2019, the Welsh Government introduced the [Local Government and Elections \(Wales\) Bill](#) (“the Bill”) along with the [Explanatory Memorandum](#) (EM). The EM also incorporates the Regulatory Impact Assessment (RIA) and Explanatory Notes (EN). The Minister for Housing and Local Government, Julie James AM, on introducing the Bill in Plenary on 19 November 2019, stated that the Welsh Government is “changing the governance framework for local government to better enable innovation, transparency and local ownership for driving up service delivery outcomes and standards across Wales.”

The Local Government and Elections (Wales) Bill proposes to reform the legislative framework for local government electoral arrangements, democracy, performance and governance. The EM states that it seeks to provide local government with “new ways to support and serve their communities”, and to “reinvigorate local democracy in Wales”.

Following the consultation regarding the establishment of Corporate Joint Committees which was the subject of a previous Cabinet Report, the Welsh Government are now inviting views on the draft statutory guidance regarding the Performance and Governance of Principal Councils.

## The Bill

The Bill covers:

- Elections;
- General Power of Competence;
- Promoting Access to Local Government;
- Local Authority Executives, Members, Officers and Committees;
- Collaborative Working by Principal Councils - Corporate Joint Committees (CJCs);
- **Performance and Governance of Principal Councils;**
- Merges and Restructuring of Principal Areas;
- Local Government Finance; and
- Other matters relating to Local Government and Fire and Rescue Authorities.

Welsh Government has reprioritised its legislative programme due to COVID-19. The Bill remains a priority for the remainder of this Senedd term, given the need to introduce planned electoral reforms in time for the 2022 local elections. It is anticipated that the Bill will receive Royal Assent early in the New Year.

Detail on the above sections was included in a Report to Cabinet in December 2020. This report will consider the consultation on performance and governance which must be submitted by 3<sup>rd</sup> February 2021.

### Part 6 - Performance and Governance of Principal Councils

The Local Government (Wales) Measure 2009 places a general ‘improvement’ duty on principal councils, and requires them to produce an improvement plan. The plans, which are reviewed by the Auditor General for Wales (AGW), have become “process orientated” according to the Welsh Government, focussing on activity or outputs which can be easily measured.

It is currently for the AGW to determine whether local authorities have “achieved continuous improvement each year, whether they have the capacity to improve further and whether either the principal council or the Welsh Ministers should take action”.

Under the proposals in the Bill, **principal councils will be required to conduct an annual self-assessment of performance** and a “periodic review to provide an external, expert perspective” on performance. The Bill also **gives the Welsh Ministers powers to intervene where principal councils face significant problems**, and include powers for the AGW to “carry out a special inspection”. The Bill also proposes additional responsibilities for councils Audit Committees and Scrutiny Committees in the monitoring and reporting of performance.

### **Impact on Newport City Council and Consultation response**

Over the last five years, Newport City Council has been making continuous improvements in the monitoring, reporting and scrutiny of its performance against its Corporate Plan and statutory duties across the Councils services including (but not exclusive to) the Well-being Act, Equalities, Welsh Language and Audit & Regulatory requirements. The proposals set out in the Bill will build upon this work completed to date. The Bill also includes the requirement for councils to engage and involve its key stakeholders through the Annual Self-Assessment report and periodic reviews to assess the performance of the Council against its Objectives and Statutory Duties.

This financial year (2020/21) the Council adopted the Integrated Planning, Performance and Risk Framework including supporting Planning and Performance Policy and Risk Management Policy. The Framework, policies and supporting procedures will be updated to support the Bill and the Statutory Guidance that will be issued by Welsh Government. The Council’s Constitution will require to be updated and the terms of reference for its Audit and Scrutiny Committees to align to the new requirements set out in the Bill.

The Consultation set out by The Minister for Housing and Local Government is focused on the Draft Statutory Guidance and its merits for enabling principal councils to effectively implement the new requirements ready for 2022.

The consultation paper can be found here: <https://gov.wales/performance-and-governance-local-authorities-draft-guidance>

Attached at **Appendix 1** is NCC’s draft response to the consultation which ends 3<sup>rd</sup> February 2021.

### **Financial Summary**

There are no direct financial implications as a result of replying to the consultation. There would be significant financial implications as a result of the changes proposed in the Bill.

### **Risks**

Risk	Impact of Risk if it occurs* (H/M/L)	Probability of risk occurring (H/M/L)	What is the Council doing or what has it done to avoid the risk or reduce its effect	Who is responsible for dealing with the risk?
Not properly preparing for the implications of the Local Government and Elections (Wales) Bill	High	Low	Cabinet will receive update reports as the consultation and programme progresses and respond to consultations accordingly.	Chief Executive

The needs of Newport residents are not best served by the Bill.	High	Medium	Response to the consultation as outlined in this report	Chief Executive
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\* Taking account of proposed mitigation measures

## **Links to Council Policies and Priorities**

The Bill sets out the vision for the future of local government, reference is made to the Well-being of Future Generations Act (Wales) 2015 and the work of Public Services Boards and the Well-being Plan.

The proposed changes being considered will require changes to Council policies and priorities as outlined in the report and proposed response.

## **Options Available and considered**

1. To note the proposals as outlined in the Bill and endorse the proposed response to the consultation (Appendix 1).
2. To amend the response to the consultation and respond to Welsh Government by the consultation deadline.

## **Preferred Option and Why**

To endorse the proposed response to the consultation.

## **Comments of Chief Financial Officer**

As noted in the report, the consultation itself has no financial impact but the Bill will have wide ranging and significant financial impact. Much of the detail will be developed over the next few months but the most significant area of impact will be the establishment of 'Corporate Joint Committees'. Essentially, they will be able to 'levy' a revenue budget requirement from Councils within its area, in a similar way the Fire Services are able to do now. Therefore, establishing practical and good working arrangements will be essential as well as ensuring the financial context of Principal Councils who pay it are understood. The use of existing democratic leaders of the principal Councils in its area on its governance structure will be helpful in that respect.

There will be a potential small financial impact from these in the 2021/22 financial year and will need to be considered as part of budget setting. As the function develops, the impact will become greater over time. A key issue is the extent to which any new 'levy' is mitigated by corresponding saved costs in principal councils as functions/projects, and therefore costs, are transferred.

## **Comments of Monitoring Officer**

There are no specific legal issues arising from the report at this stage, as the Welsh Government is simply seeking comments in response to its Performance and Governance consultation document and draft guidance. For the most part, the provisions in Part 6 of the Local Government and Elections (Wales) Act are to be welcomed as they provide greater flexibility in relation to the Council's policy management framework. The continuous improvement duty under the 2009 Measure is replaced with a self-assessment process, with greater emphasis on consultation and engagement and a peer review by an independent panel during each Council term. The draft guidance is also generally helpful, but greater clarity is required in some areas, particularly the powers of the Auditor General to undertake a special investigation and the Welsh Ministers powers of intervention. The self-assessment process will require greater involvement on the part of Scrutiny and also the new Governance and Audit Committee, which will require additional independent members. Performance Scrutiny Committees will need to be engaged in the performance self-assessment process and their terms of reference will need to be amended to reflect this. The legislation and guidance also requires the Council to submit a draft of its self-assessment report to the Governance and Audit Committee and the Committee may make recommendations for changes to the conclusions or action that the Council intends to take.

## **Comments of Head of People and Business Change**

From an HR perspective, there are no staffing implications to this report.

The Well-being of Future Generations (Wales) Act 2015 and the sustainable development principle has been fully considered when developing this consultation response.

The principle of the guidance which is to support councils to understand and discharge their duties in relation to performance and governance is welcomed, subject to the detail of the advice as set out in the proposed consultation response. This will require changes to the Council's governance and performance arrangements as outlined in the report.

### **Comments of Cabinet Member**

The Leader of the Council is engaged in the consultation on the development of the LG Bill.

### **Local issues**

None.

### **Scrutiny Committees**

NA

### **Equalities Impact Assessment**

Not applicable.

The Bill and the Statutory Guidance are aligned with the Equalities Act and also include the Socio-Economic Duty that will be implemented in 2021/22.

### **Children and Families (Wales) Measure**

Although no targeted consultation has taken place specifically aimed at children and young people, previous consultation responses would show that children and young people are concerned about sustaining local government services in the future.

### **Well-being of Future Generations (Wales) Act 2015**

The Bill and draft Statutory Guidance both align to the Well-being of Future Generations Act and have put this at the core for implementing the Bill. In the long term the Bill will enable greater scrutiny and accountability for principal councils to demonstrate how they are contributing towards the Well-being Goals, 5 ways of working principles and sustainable development principle. This will also ensure that where underperformance is reported that principal councils will have to demonstrate and provide assurance on how it will improve.

The Council has considered the Act and the sustainable development principle in the response to this proposal as outlined in the report.

### **Crime and Disorder Act 1998**

Not applicable.

### **Consultation**

Comments received from wider consultation, including the Senior Leadership team and from elected members, are included in the proposed response.

### **Background Papers**

Cabinet Report December 2020 – Local Government Bill and CJC consultation response  
[Local Government and Elections \(Wales\) Bill](#)  
[Local Government and Elections \(Wales\) Bill: Explanatory Memorandum \(November 2019\)](#)

Dated: 21<sup>st</sup> December 2020