



**RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL**

**MUNICIPAL YEAR 2020/21**

<p><b>AUDIT COMMITTEE</b></p> <p><b>26<sup>th</sup> April 2021</b></p>	<p><b>AGENDA ITEM NO. 7</b></p>
<p><b>REPORT OF THE DIRECTOR OF LEGAL SERVICES &amp; THE SERVICE DIRECTOR FOR DEMOCRATIC SERVICES &amp; COMMUNICATIONS</b></p>	<p><b>THE LOCAL GOVERNMENT &amp; ELECTIONS (WALES) ACT 2021</b></p>

**1. PURPOSE OF THE REPORT**

- 1.1 The purpose of this report is to summarise the various elements of the Local Government & Elections (Wales) Act 2021 which received Royal Assent on the 20<sup>th</sup> January 2021 with specific reference to those provisions which affect the terms of reference including functions and responsibilities of this Committee.

**2. RECOMMENDATIONS**

Members are recommended to:

- 2.1 Note the update provided in the report in respect of the coming into force of the Local Government & Elections (Wales) Act 2021; and
- 2.2 Note the relevant changes to the name, membership and terms of reference of the Committee, as detailed in the report, required by the Local Government & Elections (Wales) Act 2021.

**3. REASONS FOR RECOMMENDATIONS**

- 3.1 The need to provide an overview of the additional duties and responsibilities to be placed upon the Committee through the Local Government and Elections (Wales) Act 2021, which received royal assent on the 20<sup>th</sup> January 2021.
- 3.2 In accordance with the requirements of the Act, a number of actions will need to be addressed to ensure the Council complies with the legislative requirements.



#### **4. BACKGROUND**

- 4.1 The Local Government and Election (Wales) Act (the 'Act') received Royal Assent on the 20<sup>th</sup> January 2021.
- 4.2 The Act was one of only two Bills in the Welsh Government's legislative programme to continue during the Covid -19 pandemic. The Bill was prioritised given the timescales required to introduce the planned reforms in respect of the 2022 local government elections.
- 4.3 A link to the Act can be found [here](#) and explanatory notes found [here](#).

#### **5. PREVIOUS ENGAGEMENT BY WELSH GOVERNMENT**

- 5.1 The Act has been developed following engagement with local government over several years through:
- Draft Local Government Bill Wales – [Nov 2015](#)
  - Consultation on Electoral Reform – [Oct 2017](#)
  - Reforming Local Government: Resilience & Renewed White Paper – [Jan 2017](#)
  - Consultation on Powers and flexibilities – Jan 2018
  - Strengthening Local Government: Delivering for People – Welsh Government Green Paper – [June 2018](#)

- 5.2 Most recently the Council has considered and commented upon the following elements:

##### Overview of the Bill

- Council - [27<sup>th</sup> November, 2019](#)
- Council – [15<sup>th</sup> January 2020](#)

##### Webcasting

- Democratic Services Committee – [8<sup>th</sup> January 2020](#) ; [1<sup>st</sup> October 2020](#)

#### **6. THE LOCAL GOVERNMENT & ELECTIONS (WALES) ACT 2021 SUMMARY**

- 6.1 While the general focus of discussions in respect of the Act, has been based around the creation of Corporate Joint Committees (CJC) this substantive piece of legislation will change the way we operate across a range of areas from electoral reform, public participation, governance and performance management, democratic processes and stronger working arrangements with Town and Community Councils.
- 6.2 The Act includes provisions for:
- Reforming electoral arrangements for local government, including:



- Extending the voting franchise to 16 and 17-year olds and foreign citizens legally resident in Wales,
- Changes to voter registration,
- and enabling a principal council to choose between the 'first past the post' or the 'single transferable vote' voting systems;
- A general power of competence for principal councils and eligible community councils;
- Reforming public participation in local democracy;
- The leadership of principal councils, including to encourage greater diversity amongst executive members and establishing a statutory position of chief executive;
- Strengthening Scrutiny arrangements and arrangements for member conduct;
- The development of a framework and powers to facilitate more consistent and coherent regional working mechanisms;
- A new system for performance and governance based on self-assessment and peer review, including the consolidation of the Welsh Ministers' support and intervention powers;
- Powers to facilitate voluntary mergers of principal councils and restructuring a principal area;
- Local government finance including non-domestic rating and council tax;
- Miscellaneous provisions relating to:
  - Support provided for Community Councils
  - Executive arrangements
  - The status of the Head of Democratic Services
  - information sharing between regulators,
  - abolition of community polls,
  - fire and rescue authorities,
  - the Local Democracy and Boundary Commission for Wales, and
  - Public Service Boards.

6.3 The 'Coming into Force' provisions of the Act are complex, with some provisions coming into force on Royal Assent, others within two months, a number on 5<sup>th</sup> May 2022 (immediately prior to the next Local Government Elections) and the majority via Ministerial statutory instruments known as 'Commencement Orders'.



- 6.4 The remainder of this report now deals with the specific provisions that will affect the operation of this Committee going forward and the additional functions and responsibilities the Committee has become responsible for under the Act.

## **7. LOCAL GOVERNMENT AND ELECTION (WALES) ACT 2021 – AUDIT COMMITTEE PROVISIONS**

- 7.1 Part 6 of the Act deals with the performance and governance of Principal Councils including enhancing the remit and role of the Audit Committee.

### **Name**

- 7.2 Firstly, in accordance with the Act, the Committee will be renamed as the Governance and Audit Committee (change to be effected at the Council's Annual General Meeting).

### **Membership of the Committee**

- 7.3 The Act amends Section 82 ('Membership') of the Local Government Wales Measure 2011 (the 'Measure') in order to increase the number of lay members on a Governance and Audit Committee.
- 7.4 Presently the situation under section 82 of the Measure is that at least two thirds of the members of an Audit Committee must be members of the authority and at least one member of the Committee must be a lay member.
- 7.5 From 5<sup>th</sup> May 2022, two thirds of the members of a Governance and Audit Committee must be members of the authority and one third must be lay persons.
- 7.6 In addition from 5<sup>th</sup> May 2022 the Governance and Audit Committee Chair, who is appointed by the Committee, must be a lay person and the deputy chair must not be a member of the local authority's executive or an assistant to its executive.
- 7.7 Lay person means a person who—  
(a) is not a member or an officer of any local authority,  
(b) has not at any time in the period of twelve months ending with the date of that person's appointment been a member or an officer of any local authority,  
and



(c) is not the spouse or civil partner of a member or an officer of any local authority.

### **Terms of Reference**

- 7.8 The Act amends Section 81 of the Measure which relates to local authorities having to appoint audit committees and its terms of reference. The changes which have been made by the Act to the Measure are shown **bolded, underlined and in italics** in para 7.9 below.
- 7.9 Section 81 of the Measure (as amended by the Act) stipulates a Local Authority must appoint a Governance and Audit committee to —
- (a) review and scrutinise the authority's financial affairs,
  - (b) make reports and recommendations in relation to the authority's financial affairs,
  - (c) review and assess the risk management, internal control, **performance assessment** and corporate governance arrangements of the authority,
  - (d) make reports and recommendations to the authority on the adequacy and effectiveness of those arrangements,
  - (da) review and assess the authority's ability to handle complaints effectively,**
  - (db) make reports and recommendations in relation to the authority's ability to handle complaints effectively,**
  - (e) oversee the authority's internal and external audit arrangements, and
  - (f) review the financial statements prepared by the authority.
- 7.10 As can be seen from para 7.9 above the Committee will now have an additional role with regards to reviewing the performance of the Council and assessing the Council's ability to handle complaints effectively and make reports and recommendations in respect of the same.

### **Council Performance – the 'Self-assessment Report'**

- 7.11 The Act seeks to establish a more regularised performance and governance system which will place an onus on the principal council to take 'ownership of its own improvement', and should seek to build reflection on performance and action to improve into its system.
- 7.12 This will now entail a system that requires annual self-assessment of performance by principal councils and a periodic review to provide an external, expert perspective on the council's performance and its progress in improving its performance.
- 7.13 A principal council must keep under review the extent to which—
- (a) it is exercising its functions effectively, (b) it is using its resources economically, efficiently and effectively, and (c) its governance is effective for securing



the matters set out in (a) and (b) (known as the 'performance requirements'). A principal council must have regard to any guidance issued by the Welsh Ministers about those performance requirements.

- 7.14 A principal council must from time to time, and at least once in each financial year, consult the following about the extent to which the Council is meeting the performance requirements—
- (a) local people,
  - (b) other persons carrying on a business in the council's area,
  - (c) the staff of the council, and
  - (d) every trade union which is recognised by the Council.
- 7.15 A principal council must, in respect of each financial year, make a report setting out its conclusions as to the extent to which it met the performance requirements during that financial year. This report is referred to as a "self-assessment report".
- 7.16 A principal council's self-assessment report must set out any actions the Council intends to take, and any actions it has already taken, with a view to increasing the extent to which it will meet the performance requirements in the financial year following the financial year to which the report relates.
- 7.17 A self-assessment report (other than a principal council's first self-assessment report) must include the Council's conclusions as to the extent to which any actions included in the Council's preceding report increased the extent to which the Council met the performance requirements in the financial year to which the self-assessment report relates.
- 7.18 In reaching the conclusions in its self-assessment report the Council must take into account the views of the persons it is required to consult with about the extent to which the Council met the performance requirements during the financial year to which the report relates.
- 7.19 The Welsh Ministers will be able to provide support to principal councils to address difficulties they are facing. In more serious cases, the Welsh Ministers will be able to intervene to enable improvement.

#### **Self-assessment Report - Governance and Audit Committee Role**

- 7.20 The Council must make a draft of its self-assessment report available to its Governance and Audit committee.
- 7.21 The Governance and Audit Committee must review the draft report and may make recommendations for changes to the conclusions, or to anything included in the draft.



- 7.22 If the Council does not make a change recommended by the Governance and Audit Committee the Council must set out in the report the recommendation and the reasons why it did not make the change.

### **Panel Performance Assessment**

- 7.23 A principal council must also make arrangements so that, at least once during the period between two consecutive ordinary elections of councillors to the Council, a panel appointed by the Council assesses the extent to which the Council is meeting the performance requirements (known as a "panel performance assessment"). Welsh Ministers may by regulations make provision for and in connection with the appointment by principal councils of panels. The regulations may, in particular, include provision about—
- (a) the appointment of members of a panel (including the number, and any limit on the number, of members who may or must be appointed, and any conditions for appointment);
  - (b) the payment of fees to or in relation to members of a panel.
- 7.24 Again in carrying out a panel performance assessment in respect of a Council, a panel must consult those persons outlined in para 7.14 above.
- 7.25 Following a panel performance assessment a panel must make a report setting out (a) its conclusions as to the extent to which the council is meeting the performance requirements and (b) any actions the panel recommends that the Council take in order to increase the extent to which it meets the performance requirements. As soon as reasonably practicable after making the report the panel must send it to a) the Council, (b) the Auditor General for Wales, (c) Her Majesty's Chief Inspector of Education and Training in Wales, and (d) the Welsh Ministers.
- 7.26 As soon as reasonably practicable after receiving the report from the panel, the council must (a) make the report available to the Council's Governance and Audit committee, and (b) publish the report.
- 7.27 A principal council must prepare a response to each report. The response must state—
- (a) the extent to which the Council accepts the conclusions in the report as to the extent to which the council is meeting the performance requirements,
  - (b) the extent to which the Council intends to follow any recommendations in the report, and
  - (c) any actions the Council intends to take to increase the extent to which it meets the performance requirements.

### **Panel Performance Report - Governance and Audit Committee Role**

- 7.28 The Council must make a draft of the response available to its Governance and Audit Committee.



- 7.29 The Governance and Audit Committee must review the draft response and may make recommendations for changes to the statements made in the draft.
- 7.30 If the Council does not make a change recommended by the Governance and Audit Committee the Council must set out, in the response, the recommendation and the reasons why it did not make the change.

### **Power of Auditor General to carry out a special inspection**

- 7.31 The Auditor General for Wales has a power to carry out an inspection of a principal council to assess the extent to which the Council is meeting the performance requirements (known as a 'special inspection').
- 7.32 The Auditor General for Wales may conduct such an inspection where he or she considers that a principal authority is not, or may not be, meeting the performance requirements. The Auditor General for Wales must consult the Welsh Ministers before making his/her decision to conduct a special inspection. The Welsh Ministers may also ask the Auditor General to consider undertaking a special inspection. Before carrying out a special inspection, the Auditor General must provide notice to a principal council giving the reasons for the special inspection and any matters the Auditor General for Wales intends to inspect.
- 7.33 In such circumstances the Auditor General is required to produce a report of the special inspection which must be published and sent to the council, Estyn and Welsh Ministers. A Council must make the report available to its Governance and Audit Committee as soon as is reasonably practicable.
- 7.34 If a report made by the Auditor General contains recommendations for action to be taken by a principal council, the Council must prepare a response to the recommendations. The response must state what action, if any, the Council intends to take in response to the recommendations.

### **Auditor General 'Special Inspection' Report - Governance and Audit Committee Role**

- 7.35 The Council must make a draft of the response available to its Governance and Audit Committee.
- 7.36 The Governance and Audit Committee must review the draft response and may make recommendations for changes to the statement made in the draft.



- 7.37 If the Council does not make a change recommended by the Governance and Audit Committee the Council must set out, in the response, the recommendation and the reasons why it did not make the change.
- 7.38 The Council must send the response to the Auditor General before the end of—  
(a) the period of 30 days beginning with the day on which the Council receives the Auditor General's report, or  
(b) any longer period which the Auditor General specifies in writing.
- 7.39 As soon as reasonably practicable after sending the response to the Auditor General the Council must—  
(a) publish the response, and  
(b) send the response to—  
(i) Her Majesty's Chief Inspector of Education and Training in Wales, and  
(ii) the Welsh Ministers.
- 7.40 If a report made by the Auditor General contains recommendations for action to be taken by the Welsh Ministers, the Welsh Ministers must prepare a response to the recommendations, publish the response and send the response to the Auditor General, the principal council to which the Auditor General's report relates, and Her Majesty's Chief Inspector of Education and Training in Wales.

### **Complaints Handling**

- 7.41 A further function of Governance and Audit Committees as a result of the Act is to (a) review and assess the authority's ability to handle complaints effectively and (b) make reports and recommendations in relation to the authority's ability to handle complaints effectively.
- 7.42 Presently this function sits with the Council's Cabinet and Overview and Scrutiny Committee. It is envisaged they would still play a role in considering feedback about the handling of complaints albeit any recommendations emanating from such reports made by those committees would be fed back to the Governance & Audit Committee for further consideration and decision as to implementation as part its statutory role.

## **8. LEGAL IMPLICATIONS**

- 8.1 The legal implications are set out in the main body of the report.

## **9. EQUALITY AND DIVERSITY IMPLICATIONS**

- 9.1 There are no specific equality and diversity implications arising from the report.

## **10. FINANCIAL IMPLICATIONS**



- 10.1 The regulatory impact assessment relating to the Act contains Welsh Government's costs analysis of the implementation of the provisions within the Act.
- 10.2 Where the costs of implementation by the Council of the required measures in the Act are not drawn from existing budgets then these will be the subject of future reports. Separate reporting will be required in relation to the matter of Corporate Joint Committees and new performance measure costs.

## **11. CONCLUSION**

- 11.1 This report sets out the various elements of the Local Government & Elections (Wales) Act 2021 that have specific relevance to the name, membership & terms of reference (including functions and responsibilities) of this Committee moving into the new 2021-2022 Municipal Year and beyond. Further reports will be brought before the Committee as and when required as a consequence of the provisions of the Act.

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