



AUDIT COMMITTEE – 26TH JANUARY 2021

SUBJECT: LOCAL GOVERNMENT AND ELECTIONS (WALES) BILL

REPORT BY: ACTING INTERNAL AUDIT MANAGER

1. PURPOSE OF REPORT

- 1.1 To provide the Audit Committee with details of the key proposals of the Local Government and Elections (Wales) Bill in so far as they directly impact on the work of the Audit Committee.

2. SUMMARY

- 2.1 The report provides an overview of the Local Government and Elections (Wales) Bill for members of the Audit Committee.
- 2.2 The report identifies the main areas that the Bill affects the work of the Audit Committee.

3. RECOMMENDATIONS

- 3.1 It is recommended that the Audit Committee notes the report.

4. REASONS FOR THE RECOMMENDATIONS

- 4.1 To ensure that the Audit Committee is aware of the impact of the forthcoming new legislation and specifically changes to name, roles and make up.

5. THE REPORT

- 5.1 The Local Government and Elections (Wales) Bill was presented in November 2019 to the National Assembly for Wales with the intention to reform and strengthen local government and improve electoral arrangements. It was passed in the Senedd in November 2020 and is due to become an Act in April 2021.
- 5.2 It is a substantial piece of legislation at 176 pages with over 600 pages of accompanying documents and it has a number of far reaching implications for many aspects of local government including: -

- Local Government Electoral arrangements.
- Criteria to stand as a Councillor.
- Governance arrangements.
- Collaborations and mergers.
- Public engagement.
- Finance and miscellaneous reforms.
- New Performance Duty, Performance and Governance: -
Repeal of the 2009 Measure duties, replacing audit and reporting duties with self-assessment and panel assessment (peer review).
- Renaming Audit committees and terms of reference.
- Local authority executives, members, officers and committees.

5.3 There are a number of direct impacts on the Audit Committee. The **Performance Duty** requires an ongoing self-assessment and a requirement to partake in a 'peer review', which the legislation calls 'Panel Review' once every 5 years. The performance duty is broken into 5 parts which are: -

- 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.

5.4 **The Duty to keep performance under review** requires a council to keep under review the extent to which it is fulfilling the 'performance requirements', that is the extent to which it is exercising its functions effectively;

- using its resources economically, efficiently and effectively; and
- has effective governance in place for securing the above.

5.5 The extent to which these requirements are met is for the council to determine. The key principles are;

- Not about 'whether performance indicators are going up or down' but the processes or governance in place to address changes in performance, to think strategically into the future.
- A way of critically, and honestly, reviewing the current position to make decisions on how to secure improvement for the future. Not a fixed judgement but part of an ongoing process, responding in real time to challenges and opportunities.
- An opportunity for a meaningful process to strengthen local government and not an exercise in compliance. It should encourage honesty, objectivity and transparency about the council's performance and governance and be 'evidenced-based'.
- Not a standalone process but integrated as part of the council's corporate planning, performance and governance processes.

5.6 As part of the self-assessment we have a **duty to consult on performance** with a range of people at least once in each financial year about the extent to which we are meeting the performance requirements. The statutory consultees are;

- 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 (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 92)) by the council.
- 5.7 Having made a conclusion from our self-assessment the council has a **duty to report on performance** and must produce a self-assessment report for each financial year. The report must set out how we think we met our performance requirements and any actions we intend to take, or have already taken, to increase the extent to which we meet the performance requirements. The self-assessment report is a learning document. It may simply be a summary of the learning which has emerged and the sources that have informed the conclusions.
- 5.8 The council must make a draft of its self-assessment report available to its Governance and Audit Committee. The committee must review the draft report and may make recommendations for changes to the action the council intends to take. If the council does not make a change recommended by the Governance and Audit Committee, it must set out in the final self-assessment report why it did not.
- 5.9 Under the **duty to arrange a panel assessment of performance** a council must arrange for a peer-led panel to undertake the assessment. This must be carried out at least once during each electoral cycle (every 5 years) and the panel will consider the extent to which the council is meeting its performance requirements.
- 5.10 The **duty to respond to a panel performance assessment report** requires the council to prepare a response to each panel report setting out the extent to which we accept the conclusions in the report, the extent to which we intend to follow any recommendations in the report, and any actions the council intends to take.
- 5.11 The panel are not responsible for holding the council to account but should offer an external view of how the council is operating. This does not replace auditors, inspectors, or regulators' assurance roles. It is for the council to determine how to make most effective use of the panel performance assessment, and ensure its findings are used effectively alongside other sources for effective corporate performance, governance and improvement.
- 5.12 The council must make a draft of its response to the panel performance assessment report available to its Governance and Audit committee, who must then review the draft response and make any recommendations for changes to the response to the panel assessment. If the council does not make a change recommended by the committee, it must set out in the final response the recommendation and the reasons why it did not make the change. As soon as reasonably practicable after finalising the response, the council must publish the response at least four months before the next ordinary election of councillors to the council is due to take place.
- 5.13 Audit Committees provide important checks and balances to a principal council's governance arrangements, as required by the 2011 Measure. Councils have a statutory duty to establish an Audit Committee to review and scrutinise its financial affairs, risk management, internal control and corporate governance arrangements. Councils can determine the most appropriate form of the Audit Committee for their organisation
- 5.14 The Local Government and Elections Bill has proposed several reforms to the

operation of Audit Committees and the Bill recommends changes to the name, the roles and the independence of the Audit Committee. As described above the Bill proposes that in addition to existing functions the Committee will in future scrutinise performance and governance and therefore in future will be renamed as the **Governance and Audit Committee**. This is a reflection of the broader role and powers of the Committee and the increased aspect of governance process within the functions of the Committee. This change in name is required to be implemented by April 2021.

- 5.15 While Audit Committees are committees of a principal council, in order to provide effective scrutiny, they must be independent from the executive, this is achieved by requiring the Audit Committee to have several “lay members” A lay member is a financially competent independent member who is not a member of a principal council. However up until this point the number of these lay members on the Audit Committee has not been specified.
- 5.16 Lay members can bring a range of skills, perspectives and experience which can strengthen the scrutiny and challenge that the Audit Committee can provide. The Bill has proposed an increase in the number of lay members of the Audit Committee to **one third of membership** in order to bring in external expertise and to strengthen challenge and effective scrutiny while retaining most elected members.
- 5.17 In addition **the Chair of the Audit Committee** will, under the provisions of the legislation, **be required to be lay member**. These changes will require Caerphilly CBC to undertake a recruitment process to appoint these additional lay members and may also result in increased costs in relation to attendance allowances payable to the additional lay members. These changes are not required until after the AGM in 2022.
- 5.18 It is understood that the WLGA is working on providing guidance and training on these issues and further updates and training will be provided when it is available.

Conclusion

- 5.19 There are several changes in the Bill that will affect the Audit Committee, including a name change, the makeup of lay members and a requirement to include the Audit Committee in the conclusions of the council’s performance self-assessments and panel review.
- 5.20 The Bill brings different aspects into effect at different times, with the change of name being required by April 2021 and the Performance Duty, the requirement for additional lay members and the requirement for the Chair to be a lay member starting in 2022.

6. LINKS TO RELEVANT COUNCIL POLICIES

- 6.1 The council’s Performance Framework and Constitution.

7. WELL-BEING OF FUTURE GENERATIONS

- 7.1 Strong corporate governance arrangements are a key element in ensuring that the Well-being Goals within the Well-being of Future Generations Act (Wales) 2015 are met

8. EQUALITIES IMPLICATIONS

- 8.1 No equalities implications have been identified within the Performance Duty and changes to the Audit committee aspect of the report, although there may be implications in other aspects such as the extension of voting to 16 to 17-year olds.

9. FINANCIAL IMPLICATIONS

- 9.1 As noted above additional lay members will result in increased costs in respect of the allowances payable to these independent members.

10. PERSONNEL IMPLICATIONS

- 10.1 No personnel implications have been identified

11. CONSULTATIONS

- 11.1 Any comments received from consultees have been included within the report.

12. STATUTORY POWER

- 12.1 Local Government Act 2000

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