

Proposed Local Government (Wales) Measure

Explanatory Memorandum to the Proposed Local Government (Wales) Measure

This Explanatory Memorandum has been prepared by the department of Social Justice and Local Government and is laid before the National Assembly for Wales.

Member's Declaration

In my view the provisions of the Proposed Local Government (Wales) Measure, introduced by me on the 22 September 2008 would be within the legislative competence of the National Assembly for Wales.

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Assembly Member in charge of the Proposed Measure

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Proposed Local Government (Wales) Measure

1. Description

- 1.1 The purpose of the Measure is to reform the statutory basis for service improvement and strategic planning by local authorities in Wales. The Measure links well-being and community planning with service improvement.
- 1.2 The Measure redefines basic duties to account for improvement. It will require local partners to cooperate in the delivery of community strategic outcomes and to engage with citizens.

2. Legislative background

2.1 The powers to make such a Measure are contained in Matters 12.4 and 12.5 of Schedule 5 of the Government of Wales Act 2006, as inserted by section 235 of and Schedule 17 to the Local Government and Public Involvement in Health Act 2007.

Matter 12.4

Provision for and in connection with strategies of county councils and county borough councils for promoting or improving the economic, social or environmental wellbeing of their areas or contributing to the achievement of sustainable development in the United Kingdom, including provision imposing requirements in connection with such strategies on other persons with function of a public nature.

Matter 12.5

Provision for and in connection with

- a) the making of arrangements by relevant Welsh authorities to secure improvement in the way in which their functions are exercised,
- b) the making of arrangements by relevant Welsh authorities for the involvement in the exercise of the functions, and
- c) the assessment and inspection of the performance of relevant Welsh authorities in exercising their functions.

The following are “relevant Welsh authorities”

- a) a county council, county borough council or community council in Wales,
- b) a National Park authority for a National Park in Wales,
- c) a fire and rescue authority in Wales constituted by a scheme under section 2 of the Fire and Rescue Service Act 2004 or a scheme to which section 4 of that Act applies,
- d) a levying body within the meaning of section 74(1) of the Local Government Finance Act 1988 in respect of which the county council or charging authority referred to in section 74(1)(b) of that Act was a council or authority for an area in Wales.
- e) a body to which section 75 of that Act applies (special levies) and which as regards the financial year beginning in 1989 had power to levy a rate by reference to property in Wales.

Matters 12.4 and 12.5 came into force on the 30th December 2007

3. Purpose and intended effect of the Legislation

- 3.1 The Local Government and Public Involvement in Health Act 2007 gives the Assembly the power to pass Measures relating to service improvement and community strategies and which could be used to amend, replace or repeal all or part of current legislation dealing with them.
- 3.2 The 2007 Local Government policy statement *A Shared Responsibility*, made a number of commitments to use these powers. Among those commitments are the Welsh Assembly Government's intentions to reform best value and strengthen community planning.
- 3.3 The fundamental purpose of the Measure is to reform and replace regimes in current primary legislation (principally the Local Government Acts 1999 and 2000). The use of the above powers is the only available means for doing so.

Problems with current regimes

Local Government Improvement

- 3.4 In policy terms, there are several major weaknesses in the current "best value" regime, set out in the Local Government Act 1999:
- a) it focuses unduly on short-term gains in service outputs, lacking any sense of wider or longer-term action;
 - b) it fosters a culture of pre-determined planning to meet pre-specified output targets, rather than responsiveness to complex local needs.
 - c) it offers little flexibility in how local authorities and others account to citizens for their performance and their plans to improve it;
 - d) it does not give regulators and Ministers an adequate role in supporting improvement; the former are largely limited to assessing compliance with procedural requirements, while the latter have sweeping powers to intervene in the affairs of a 'failing' authority, but nothing short of that 'nuclear option'.
- 3.5 As a result, best value was supplemented in 2001-2 by the "Wales Programme for Improvement" (WPI). The first guidance to authorities on WPI was contained in Circular 18/2002; it was heavily revised in late 2005 ((Circular 28/2005) and for Fire and Rescue Authorities (WPI 15/2007)). WPI sought to correct many of the above weaknesses, but in doing so departed significantly from the scheme of the 1999 Act. The result is that both circulars went significantly beyond Ministerial guidance-issuing powers in ss3, 5 and 6 of the Act, they are thus largely (and explicitly) non- statutory. While authorities and others are generally willing to comply with

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WPI on a voluntary basis, the lack of clear and robust statutory underpinning has created considerable doubt and inconsistency in this.

- 3.6 The aim of this part of the Measure is thus to replace the ‘best value’ regime with one which better reflects the WPI approach in broad terms; and in doing reflects the current policy context and the experience of authorities and others using the WPI to date. It will also give statutory expression to several of the recommendations of the Beecham Review, *Beyond Boundaries*.

Community Strategies and Planning

- 3.7 The National Evaluation of Community Strategies in Wales was published in 2006, and it identified a number of strengths and weaknesses. In general terms the report highlighted that community strategy formulation had been largely successful, but that delivery and evaluation needed further work.
- 3.8 There are two broad shortcomings with the current community strategy regime. These are as follows:
- a) Community strategy objectives are not often reflected in shorter term delivery and service change and when they are often not very effective.
 - b) Collaboration between local service providers (which is suggested in the guidance issued by Welsh Ministers) is patchy and inconsistent.
- 3.9 Community planning in Wales needs a sharper focus and a greater sense of deliverable reality if it is to maximise its potential. The proposals within the Measure seek to correct that by placing local partnership working on a more consistent and robust foundation and by providing freedoms for local bodies to define and agree community strategy priorities within a broad framework.
- 3.10 The policy underpinning this part of the Measure reflects in part the successful adoption of a new community planning regime in Scotland since 2003. The provisions in this part of the Measure have thus partly been based on sections 16 -18 of the Local Government in Scotland Act 2003 (‘the 2003 Act’).

Proposals for the Proposed Local Government (Wales) Measure

- 3.11 The Measure’s overall intention is to:
- offer authorities greater flexibility to respond to citizen and community needs with a national context, while clarifying and strengthening the Assembly Government’s ability to respond to under-performance;

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- create a statutory regime which better integrates long-term strategic planning and shorter term service improvement;
 - amend the law better to reflect the distinctive nature and role of local government in Wales;
 - build on the experience of authorities and others operating within the current regimes.
- 3.12 In particular, the Measure:
- expands authorities' duties in relation to secure improvement, in particular emphasising that enhancing local wellbeing, sustainability and social equity are as valid as improving quantified service outputs or efficiency;
 - create a general power for authorities (including local authorities, National Parks and Fire and Rescue Authorities) to collaborate with each other to secure improvement, and a reserve power for Ministers to direct this;
 - confer more scope to use performance data to account to citizens and communities about the levels of service they are providing;
 - secure greater collaboration between local government auditors, regulators and inspectors so as to maximise value and minimise burdens (this largely entails placing existing best practice on a statutory basis);
 - expand and clarify Ministers' powers to support local authority improvement and to intervene where necessary;
 - create a common duty on local service-providers to prepare and deliver a community strategy and associated action plan.
- 3.13 Much of the Measure captures existing non-statutory elements of the WPI and community planning regimes. There would be an implicit challenge for authorities to use the new programmes to optimise local citizen and community outcomes rather than simply to comply with their formal strictures or to continue 'business as usual'; failing that, the Welsh Ministers' new support and intervention powers might well come in to play.

Bodies subject to the Measure

Local Government Improvement - Part 1 of the Measure

- 3.14 **Local authorities** – a county council or a county borough council in Wales; there are in total 22 such authorities
- 3.15 **National Park Authorities** – there are three National Park Authorities in Wales – Brecon Beacons National Park Authority, the Pembrokeshire Coast National Park Authority and Snowdonia Park Authority
- 3.16 **Fire and Rescue Authorities** – there are three Fire and Rescue Authorities in Wales – North Wales Fire and Rescue Authority, Mid

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and West Wales Fire and Rescue Authority and South Wales Fire and Rescue Authority

- 3.17 These three types of authorities are, under the 1999 Act, known as “best value authorities”. The Measure removes that designation as a consequence of it replacing the best value regime.
- 3.18 In the context of the draft Measure each of the above authorities should be regarded as a **Welsh improvement authority**.
- 3.19 The proposals do not extend to community and town councils in Wales, or to police authorities in Wales. Applying the proposals to the former would be disproportionately burdensome given their size and range of responsibilities, while the latter lie outside the scope of the Measure-making power.
- 3.20 The Measure does not permit the Welsh Ministers to change the list of bodies that should be subject to proposals within the service improvement part of the Measure. If there were a future need to change the list of bodies then this could be achieved by a further exercise of the Measure-making power.

Community Strategies and Planning - Part 2 of the Measure

- 3.21 **Local authorities** – as set out in Part 1 of the Measure
- 3.22 **Fire and Rescue Authorities** – as set out in Part 1 of the Measure
- 3.23 **National Park Authorities** – as set out in Part 1 of the Measure -
- 3.24 **Police Authorities** - established under section 3 of the Police Act 1986 and Police Forces established under section 6 the Police Act 1996. (There are four authorities in Wales; Dyfed Powys Police Authority, Gwent Police Authority, North Wales Police Authority and South Wales Police Authority. There are also four forces in Wales which cover the same areas as the police authorities.)
- 3.25 **Chief Constable of Police** - appointed by a police authority under section 11 of the Police Act 1996 for a police force
- 3.26 **Town and community councils** – each local authority will have a different number of community and/or town council within their areas
- 3.27 **Local Health Boards** – There are currently twenty two local health boards in Wales which cover the same geographic area as the twenty two local authorities in Wales. The twenty two local health boards were established as a result of the Local Health Boards (Establishment) Wales Order 2003 (SI 2003/148).

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- 3.28 **National Health Service Trusts** - which are specified in relation to an authority's area by direction of the Welsh Ministers.

Others

- 3.29 The Measure confers on the Welsh Ministers the power to amend or add to the above list of bodies. Details of the Order are presented in Chapter 5 – Power to make subordinate legislation.

Local duties for local authorities

*This paragraph applies to the **Local Government Improvement** part of the Proposed Measure)*

- 3.30 Local authorities, National Park authorities and Fire and Rescue authorities will be subject to a duty to make arrangements to secure continuous improvement in the exercise of their functions. In doing so it must have regard in particular to the need to improve the exercise of its functions in respect seven aspects of improvement. The Measure also sets other duties for these authorities in terms of accounting for that improvement.

*Paragraphs 3.31 - 3.33 are applicable to the **Community Strategies and Planning** part of the Proposed Measure)*

- 3.31 Local authorities will be subject to a duty to initiate and having done so, maintain and facilitate a process known as community planning. The local authority should have a leadership role in this process, but this is supported by the duty on the other bodies listed in 3.20 – 3.28 above to co-operate in that process.
- 3.32 Once the community planning process has commenced, when the local authority believes that the conclusions are capable of being captured the local authority must publish them in a document. This document would be the community strategy for a local authority's area.
- 3.33 Once the Community Strategy is published the local authority and its partners should be under a duty to:
- Periodically to monitor the effectiveness and relevance of Community Strategy and at least every 3-4 years review it
 - If appropriate, after the review to amend and republish the Community Strategy
 - Publish a statement, at least every two years on the progress which has been made on meeting the objectives of the Community Strategy and undertaking the actions attributed to the various participating bodies

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Territorial Application

3.34 The Measure applies in relation to Wales.

Commencement

3.35 With some exceptions the Measure should come into force on a date specified in an order made by the Welsh Ministers. Such an order should be capable of appointing different dates for different purposes.

4. Consultation

- 4.1 We consulted on the policy proposals for the Measure in *Delivering a shared responsibility – Performance Improvement and Community Planning*.
- 4.2 The consultation commenced on 15 February 2008 and closed 30 April 2008. The proposals within the consultation were previously signalled by the policy statement *A Shared Responsibility* and the consultation *Local Vision – Preparing Community Strategies*.
- 4.3 Consultees included: local authorities; police authorities & police forces, fire & rescue authorities; third sector, local health boards; NHS trust; Wales Audit Office; National Parks and other public and private sector organisations.
- 4.4 We received 37 responses from a broad spectrum of stakeholders and interested parties.
- 4.5 Almost all responses welcomed the proposals set out within the consultation paper and acknowledged the need to legislate.
- 4.6 However some consultees did raise concerns about some of the proposals for the Measure.
- 4.7 Issues which have entailed changes to the Measure proposals are as follows:

Collaboration – Welsh Minister reserve power to direct collaboration

- 4.8 We consulted on placing a duty on authorities to consider collaborating with each other where this would better achieve the authority's improvement objective. To support this further we also consulted on Welsh Ministers having reserve power to direct relevant authorities to collaborate with each other. The power should enable the Welsh Ministers to direct two or more relevant authorities where it appears to the Welsh Ministers that collaboration between those relevant authorities would better secure the attainment of the improvement objectives, but that the authorities in question had failed to collaborate with each other.
- 4.9 Many consultees were hostile to this proposal, seeing it as giving Ministers too much power to interfere in local decisions and/or as a precursor to local government reorganisation.
- 4.10 As a result of consultation responses, we have emphasised in the Measure that the Welsh Ministers' power to direct collaboration is in effect a power to intervene, which will be similar to the power to

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intervene that the Welsh Ministers currently have under the best value legislation. It would not be a power of first resort; it would require evidence that the local authority or authorities concerned had failed to meet their duties as regards collaboration and/or had not responded to offers of support by the Welsh Ministers in this area.

Support and Intervention – Ministers’ ‘power to do anything’

- 4.11 We consulted on giving a power to Welsh Ministers ‘to do anything’ to support relevant authorities individually or collectively to secure improvement.
- 4.12 Many consultees felt the term ‘to do anything’ was too wide ranging, open to interpretation and requires further clarification. They felt that the power could be used by Welsh Ministers to direct local authorities to take any action that they saw fit.
- 4.13 The intention was to confer on the Welsh Ministers a broad power to assist relevant authorities to comply with the provisions of the Measure. It would have been too limiting to seek to specify the exact forms of assistance in each and every case, which is why the consultation document used the wording ‘to do anything’. That would not have given the Welsh Ministers licence to do as they pleased: they would always have needed to demonstrate that they were supporting relevant authorities in complying with the Measure.
- 4.14 The Measure makes provision on similar terms to the Welsh Ministers’ existing powers in s60 of the Government of Wales Act 2006 (well-being). These powers do not include a power to direct to a local authority or any other person.

The Auditor General for Wales – Relationship Manager

- 4.15 We consulted on a proposal to place the functions of the Wales Audit Office (WAO) ‘Relationship Managers’ (RM) on a statutory footing giving them formal responsibility for co-ordinating local audit, regulation and inspection and preparing a single report on the findings.
- 4.16 The majority of responses fully and strongly support this proposal. However, the WAO believes that RMs themselves should not be statutory office-holders. They would rather place a duty to carry out RM functions directly on the Auditor General for Wales.
- 4.17 The WAO’s view is that while it strongly agrees with the spirit of the proposal, it does not wish to see RMs themselves become statutory office-holders. They would rather place a duty to carry out RM functions directly on the Auditor General for Wales (AGW).

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- 4.18 They believe that this would further complicate a system in which relevant authorities' appointed auditors are already statutory office – holders. In their view it would be simpler to place a duty to carry out RM functions directly on the AGW. The AGW would delegate that function to a WAO member of staff for each local authority – so the practical result would be exactly the same. This approach could also allow another regulatory or inspection body to carry out the RM function if appropriate, whereas the original proposals may have not done so. We agree with the WAO's suggestions on these points.

Summary of consultation responses

- 4.19 A summary of responses has been published on the Welsh Assembly Government internet site and can be found using the following link:
<http://new.wales.gov.uk/topics/localgovernment/consultation/closed/deliveringasharedresponsibility/?lang=en>

5. Power to make subordinate legislation

- 5.1 This chapter provides details of each provision to make subordinate legislation within the Measure. In each case, such powers allow the Welsh Ministers to make minor amendments to the details of the Measure to cover matters or developments which are not known at this stage. This avoids the need to bring forward an amending Measure to deal with issues such as administrative deadlines.

Local Government Improvement

Section 7 - General Improvement Duty

- 5.2 A Welsh improvement authority must make arrangements to secure continuous improvement in the exercise of its functions. In discharging its duty, an authority must have regard in particular to the need to improve the exercise of its function in terms of:
- a) strategic delivery
 - b) service quality
 - c) fairness
 - d) sustainability
 - e) efficiency; and
 - f) innovation
- 5.3 The above set of categories seeks to be comprehensive but given the breadth of authority services and their longer-term impact we cannot rule out the possibility that it might need to change. Therefore it is the desire that the Welsh Ministers should have an Order making power to add to, amend or remove elements of the above improvement objective or add or remove objectives.
- 5.4 As the exercise of such a power could fundamentally reshape or expand the strategic focus of authorities, we believe that such an order should be subject to the **affirmative procedure**.

Section 8 - Performance indicators and standards

- 5.5 Welsh Ministers are provided with a power to prescribe by order factors of performance (performance indicators) against which a Welsh improvement authority's performance will be measured. In addition Welsh Ministers may set performance standards in respect of the performance standards set by them. The Measure also gives Welsh Ministers by order the discretion to specify different performance indicators and standards for different authorities or types of authorities. Such an order would be concerned only with the detailed definitions of performance indicators and standards. These necessarily change over time to reflect wider changes in law, policy and professional practice relating to local government services. Accordingly, these powers should be subject to the **negative procedure** (as is currently the case with the equivalent powers of

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the Welsh Ministers in s4 of the Local Government Act 1999, which the Measure would repeal and replace).

Section 15 - Improvement planning and publication of improvement information

- 5.6 One aim for the Measure is that the proposals relating to service improvement should be broader and more reactive to the circumstances of each particular relevant authority than the 1999 Act.
- 5.7 It is intended to replace the concept of best value performance plan (section 6 of the 1999 Act) with an Improvement Plan. Authorities are under an obligation to prepare and publish specified information by specified dates. The Welsh Ministers would like the power to amend these dates. That Order should be subject to the **negative procedure** as such an order would merely alter an administrative deadline; it could not alter the overall effect of section 15. It might also be necessary to make an order rapidly to with exceptional circumstances which prevented a local authority from issuing a report on time.

Section 16 - Meaning of “relevant regulators” and “relevant functions”

- 5.8 The Measure makes several provisions about the audit, regulation and inspection of local authorities, and about the roles of the various bodies which carry out such work. In particular, it includes provisions requiring them to co-ordinate their activities in each local authority and to assist the Auditor General for Wales in reaching overall conclusions about how far a local authority has improved and might continue to do so.
- 5.9 The regulatory and inspection bodies covered by these provisions are:
- the Auditor General for Wales;
 - an auditor appointed by him under section 13 of the Public Audit (Wales) Act 2004;
 - Her Majesty’s Inspectorate of Education and Training in Wales or Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru – ie Estyn;
 - the Care and Social Services Inspectorate for Wales or, any person authorised to carry out the functions of the Welsh Ministers under Chapter 6 of Part 2 of the Health and Social Care (Community Health and Standards) Act 2003;
 - Bwrdd yr Iaith Gymraeg or the Welsh Language Board;
 - a fire inspector, assistant inspector or any other officer appointed under section 28 of the Fire and Rescue Services Act 2004; and
 - any other body which has a responsibility for auditing, regulating or inspecting relevant authorities and/or the services they provide at

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which the Welsh Ministers specify by Order. The configuration of such bodies changes from time to time – for instance, the Benefit Fraud Inspectorate was abolished in April 2008 – and it would be necessary to deal with the consequences of any such changes. Additionally, the Assembly Government may also wish to consider extending the coverage of this section to include existing bodies not currently listed, although we have no plans to do so at this stage. Such an order would make textual amendments to the Measure and would confer duties directly on named audit, regulatory or inspection bodies. Accordingly, orders under this provision should be subject to the **affirmative procedure**.

Section 20 - Audit and Assessment Reports

- 5.10 It is intended that auditors should no longer be responsible for undertaking any audit other than the audit of the relevant authority's accounts under section 13 of the Public Audit (Wales) Act 2004.
- 5.11 It is desired that the Auditor General for Wales should be responsible for auditing each relevant authority to check whether it has complied with the provisions of the Measure relating to the publication of specified information and any associated guidance. This audit must happen annually.
- 5.12 The Auditor General for Wales should prepare a report on the basis of his/her audit.
- 5.13 It is the intention that the Auditor General for Wales' report should be submitted by 31 November after the financial year to which the plan relates ends (or such other date as the Welsh Ministers specify by Order) to the relevant authority and the Welsh Ministers if he recommends support or intervention. Such an order would merely change an administrative deadline: it could not alter the overall effect of section 20. It might also be necessary to make an order rapidly to deal with exceptional circumstances which prevented the Auditor General from issuing a report on time. Accordingly, such an order should be subject to the **negative procedure**.

Sections 32 - 33 - Powers of Welsh Ministers to modify enactments and confer new powers

- 5.14 The Measure also provides Welsh Ministers with a power (by order) to make provision to modify or exclude the application of enactments which apply to Welsh improvement authorities. The Welsh Ministers may do so only if they are satisfied that such an enactment prevents or obstructs a Welsh improvement authority from complying with the provisions of Part 1 of the Measure.

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- 5.15 The Welsh Ministers also have a power to confer upon a Welsh improvement authority any additional power they consider necessary in order to facilitate compliance with Part 1 of the Measure.
- 5.16 The law covering local government and its services is very extensive and these powers are necessary to deal with any unforeseen obstructions and impediments to authorities' overriding improvement duties as set out in Part 1. Accordingly, the powers in ss32-33 are wide-ranging and could allow the amendment of Measures and Acts by Order. Orders under these provisions should thus be subject to the **super-affirmative procedure** as described in s33. This reflects the position with the similar powers of the Welsh Ministers in ss17A-B of the Local Government Act 1999 (which the Measure would repeal and replace).

Community Planning

Section 38 - Bodies which should be subject to the duty to participate

- 5.17 To address the inconsistency and weakness of local co-operation in community planning the Measure imposes a duty on relevant public bodies to participate in community planning.
- 5.18 The Measure applies to the following bodies in each local authority area:
- a) Local authorities;
 - b) Fire and rescue authorities;
 - c) Police authorities;
 - d) Chief constable of police
 - e) National Park authorities, where relevant;
 - f) Town and community councils;
 - g) Local health boards; and
 - h) NHS Trusts (which are specified in relation to the authority's area by direction of the Welsh Ministers)
- 5.19 The Welsh Ministers also have a power to amend or add to the list of bodies by order. As such an order would create a significant new duty on a public body who has functions of a public nature, it should be subject to the **affirmative procedure**. Where additions are made to the list, an order could only be made following consultation with the body concerned, and with the local authority or authorities which would co-operate with it.

Section 51 - Consequential etc amendment and transitional and saving provision

- 5.20 The Welsh Ministers are given a power by order to amend, repeal, revoke enactments for the purpose of making consequential

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amendments to give full effect to any provision made by the Measure. This aims to deal with any unknown loopholes and obstacles to the implementation of the Measure. As is normal practice for powers of this nature, such an order should be subject to the **negative procedure** unless it amends an Act or a Measure, in which case the **affirmative procedure** must be used.

Section 53 - Commencement

5.21 Section 53 contains a power for the Welsh Ministers to make an order to commence provisions of the Measure. Such an order may specify different days for different purposes, but could not make any other provision. As is normal practice for commencement orders, **no procedure** will apply to such orders.

Section 51 and section 53 relate to Part 1 and 2 of the Measure

6. Regulatory Impact Assessment (RIA)

6.1 A Regulatory Impact Assessment is not required for this Measure.

6.2 The draft Measure is concerned with structures of business and strategic planning, governance, accountability and reporting by local authorities and other public bodies. The provisions of the proposed Measure do not give rise to any administrative, compliance or other costs. Strategic and business planning and reporting, and the associated costs of doing so, are unavoidably fundamental to any organisation, and the Measure merely provides a common framework and set of purposes for them.

6.3 Nonetheless, we believe that the structures and systems proposed in the Measure are superior to those that they would replace. For instance, they confer greater flexibility on local authorities to operate in ways which better suit them and their operating contexts. In the longer term, it would be reasonable to hope that these provisions would allow the bodies subject to the Measure to identify and generate efficiency gains, but that would depend on local actions and contexts and it is not possible to quantify any such gains at this stage.

Explanatory Notes

Introduction

1. These Explanatory Notes relate to the proposed Local Government (Wales) Measure as introduced in to the National Assembly for Wales on 22 September 2008.
2. The Welsh Assembly Government's Department for Social Justice and Local Government has prepared them in order to assist the reader of the proposed Measure and to help inform debate on it. They do not form part of the draft Measure and have not been endorsed by the National Assembly for Wales.
3. The Explanatory Notes should be read in conjunction with the proposed Measure. They are not, and are not meant to be, a comprehensive description of the Measure. So where a section or part of a section does not seem to require any explanation or comment, none is given.
4. These Explanatory Notes are for an Assembly Measure to reform the statutory basis for service improvement and community planning by local authorities and other public bodies in Wales. The powers to make such a Measure are contained in Matters 12.4 and 12.5 of Schedule 5 to the Government of Wales Act 2006, as inserted by Schedule 17 to the Local Government and Public Involvement in Health Act 2007.

Commentary on Sections

Part 1 – Local Government Improvement

Section 1 - Meaning of “Welsh improvement authority”

This section sets out the bodies which are ‘Welsh improvement authorities’ for the purpose this Measure: a county council or a county borough council in Wales, a National Park authority for a National Park in Wales; and a fire and rescue authority in Wales. In these explanatory notes, references to “authority / authorities” have the same meaning as Welsh improvement authority/authorities, unless the contrary is stated.

Section 2- General duty in relation to improvement

Subsection (1) requires Welsh improvement authorities to make arrangements to secure continuous improvement in the exercise of their functions (‘the general duty’).

In doing so, a Welsh improvement authority must have regard in particular to the need to improve the exercise of its functions in terms of: strategic effectiveness; service quality; service availability; fairness; sustainability; efficiency; and innovation. These terms are defined in section 4 of the Measure.

Section 3 - Improvement objectives

Subsection (1) requires a Welsh improvement authority, for each financial year, to set itself improvement objectives. These are objectives for improving the exercise of particular functions of the authority. Subsection (2) provides that a Welsh improvement authority must have in place arrangements to achieve those objectives.

Subsection (3) specifies that an authority must frame each improvement objective so as to bring about improvement in at least one of the aspects of improvement listed in that subsection and defined in section 4 of the Measure.

Section 4 - Aspects of Improvement

Section 4 defines the aspects of improvement which feature in this Part of the Measure. Explanation of the definitions and how they will operate in practice, such as illustrative examples and circumstances in which authorities might apply the aspects of improvement, will be set out in guidance.

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Section 5 - Consultation about improvement objectives

For the purposes of fulfilling the general duty under section 2 and setting improvement objectives, section 5 places a duty on a Welsh improvement authority to consult with representatives of people falling within specified categories:

- Residents in the authority's area;
- those who pay non-domestic rates;
- service-users (thus covering residents who do not pay council tax, and non-residents such as commuters); and
- representatives of those who have an interest.

Section 6 - The general duty, improvement objectives and consultation: guidance

In performing the duties under s2(1), s3(1), s3(2) and s5 a Welsh improvement authority must have regard to any guidance issued by the Welsh Ministers.

Section 7 - Aspects of improvement: amendment

This section allows the Welsh Ministers to make an order to amend, remove or add to any of the aspects of improvement set out in section 4(2).

Section 8 - Performance indicators and standards

Section 8 provides Welsh Ministers with a power to prescribe by order factors of performance (performance indicators) against which a Welsh improvement authority's performance will be measured. In addition Welsh Ministers may set performance standards in respect of the performance indicators set by them. This section also gives Welsh Ministers by order the discretion to specify different performance indicators and standards for different authorities or types of authorities.

In setting indicators and standards, and in deciding whether to do so, Welsh Ministers must aim to promote improvement of the exercise of the Welsh improvement authority's functions, and must in particular reflect the need to improve the exercise of those functions in terms of each of the aspects of improvement set out in s4. In addition, before specifying performance indicators or standards the Welsh Ministers must consult with representatives of Welsh improvement authorities and others as they see fit.

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Subsection (7) specifies that a Welsh improvement authority must make arrangements to exercise its functions so that any performance standards are met.

Section 9 - Powers to collaborate

This section confers on Welsh improvement authorities broad powers to enable them to collaborate with each other and with other bodies, for the purpose of discharging or facilitating the discharge of the duties under section 2(1), 3(2) and 8(7). Whilst the Measure confers the same powers on all types of authority covered by the Measure, it does not empower or compel other bodies to collaborate with a Welsh improvement authority. However, many such bodies may be able to do so under their existing powers. This section ensures that the three types of Welsh improvement authorities have equivalent powers.

Subsection (3) provides that these new powers do not affect any Welsh improvement authority's powers in other legislation.

Section 10 - Fire and rescue authorities: powers of delegation.

Section 10 confers on fire and rescue authorities a power to delegate its functions. This power is linked to the power which local authorities and national park Authorities already have under section 101 of the Local Government Act 1972. Section 10 therefore ensures that fire and rescue authorities have the same power as the national park authorities and local authorities have under section 101 of the Local Government Act 1972 for the purpose of discharging or facilitating the discharge of the duties under section 2(1), 3(2) and 8(7).

Section 11 - Meaning of “powers of collaboration”

Section 11 sets out what constitutes a Welsh Improvement authority's 'powers to collaborate', which includes powers in other legislation and those conferred by the Measure.

Section 12 - Duties in relation to powers of collaboration

The section requires a Welsh improvement authority to consider whether the powers to collaborate would help it to discharge the duties under section 2(1), 3(2) and 8(7). If it thinks they would, then a Welsh improvement authority must seek to exercise the powers of collaboration.

Section 13 - Collection of information related to performance.

Section 13 relates to the collection of information related to performance. During each financial year a Welsh improvement authority must make

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arrangements for the collection of information which will allow it to assess its performance in achieving its improvement objectives. The Welsh improvement authority must also make arrangements to collect information which would allow it to measure its performance against performance indicators or standards set by Welsh Ministers and any other indicators or standard which it chooses to use ('self-imposed indicators and standards').

Section 14 - Use of performance information

Section 14 requires a Welsh improvement authority to use the information it collects under section 13 to measure its performance against a previous year's performance. It also requires a Welsh improvement authority to compare its performance so far as is practicable with the performance of other Welsh improvement authorities and other public authorities.

In addition, a Welsh improvement authority must use the information it collects to assess whether it could improve its performance, and, based on that, must decide on steps to take to improve its performance in exercising its functions.

Subsection (3) requires authorities to have regard to any guidance issued by the Welsh Ministers on their duties under sections 13 and 14..

Section 15 - Improvement planning and publication of improvement information

Section 15 requires a Welsh improvement authority to make arrangements to publish specified information relating to its performance.

The information to be published for a financial year includes:

- the authority's assessment of how it has performed in a financial year in relation to discharging its duty under section 2;
- the authority's assessment of how it has performed in a financial year in relation to achieving its improvement objectives;
- the authority's assessment of how it has performed in a financial year in relation to meeting local performance indicators and standards set by the Welsh Ministers and self imposed indicators and standards;
- the authority's assessment of how it has performed in a financial year in comparison with a previous year's performance;
- the authority's assessment of how it has performed in a financial year and in previous years in relation to the performance of another Welsh improvement authority.
- details of the ways in which it has exercised its powers of collaboration; and
- details of the information collected under section 13 and what the authority has done to discharge its duties under section 14.

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The information should be published before 31 October immediately following the financial year to which it relates by the relevant authority.

Under this section a Welsh improvement authority must ensure they publish a summary of any report relating to a special inspection.

This section also requires a Welsh improvement authority to publish an 'improvement plan' which sets out its plans for discharging its duties under sections 2(1), 3(2) and 8(7) for a financial year and, if appropriate, subsequent years. This must be published as soon as practicable after the start of the financial year to which it relates.

Section 15(8) provides that a Welsh improvement authority must have regard to any guidance published by the Welsh Ministers in relation to this section.

Section 16 - Meaning of “relevant regulators” and “relevant functions”

Section 16 lists the relevant regulators and their relevant functions. It also provides the Welsh Ministers with a power to change that list by order.

Section 17 - Improvement information and planning: audit

This section requires the Auditor General for Wales to carry out an audit to assess whether a Welsh improvement authority has discharged its duties under s15 of the Measure and acted in accordance with any guidance issued by the Welsh Ministers under that section.

Section 18 - Improvement assessment

Section 18 places a duty on the Auditor General for Wales to carry out a forward-looking assessment of how far a Welsh improvement authority is likely to meet the requirements of Part 1 of the Measure in that year. In undertaking the assessment, the Auditor General must take into account reports received from other regulators and inspectors under s19.

Section 19 - Relevant regulators: improvement reports

The relevant regulators may have valuable information about an authority's potential to improve. Section 19 deals with their role in supporting assessments undertaken by the Auditor General under s18. Section 19 allows the Auditor General to require the relevant regulators to produce reports outlining what they have found in the exercise of their relevant functions.

Section 20 - Audit and assessment reports

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Section 20 places a duty on the Auditor General for Wales to produce a report or reports for each Welsh improvement authority in relation to his duties under sections 17 and 18.

The report or report should:

- certify the Auditor General has carried out the audit under section 17;
- state whether as a result of the audit he/she believes that the authority has discharged its duties under section 15 and acted in accordance with guidance;
- certify that the Auditor General has carried out the assessment under section 18;
- states whether as result of the assessment he/she believes that the authority is likely to comply with the requirements of Part 1 of this Measure;
- recommend (if appropriate) any action the authority should undertake to discharge its duties or to act in accordance with guidance;
- recommend (if appropriate) that the Welsh Ministers provide support under section 29 or give a direction under section 30; and
- state whether the Auditor General is minded to undertake a special inspection under section 22.

Copies of the reports should be sent to the relevant Welsh improvement authority and Welsh Minister by 30 November each year. Welsh Ministers may change this date by order.

The report or reports may include recommendations to the authority about how it could comply with the requirements of this part and how it should act in accordance with guidance.

Section 21 - Response to section 20 reports

This section requires an authority to respond to a report or reports from the Auditor General under s20 if it contains:

- a recommendation to the authority as to the action it should take to comply with the requirements of this Part of the Measure;
- a statement that the Auditor General for Wales intends to undertake a special inspection; or
- a recommendation to the Welsh Ministers to use their support or intervention powers.

The authority must prepare a statement setting out the actions that the authority proposes to take and the timetable for doing so. The authority must also include the statement in the improvement plan for the next financial year. Where a report includes a recommendation to the Welsh Ministers that they use the power of intervention in section 30, the authority must also send a copy of its statement to Welsh Ministers within 30 working days.

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Section 22 - Special inspections

Section 22 permits the Auditor General for Wales to conduct a special inspection of a Welsh improvement authority.

The Auditor General for Wales may conduct such an inspection where the Auditor General or any of the relevant regulators believe that a relevant authority may fail to comply with the requirements of this part.

The Auditor General for Wales must consult the Welsh Ministers before making his/her decision to conduct a special inspection

Subsection (4) allows the Welsh Ministers to direct the Auditor General for Wales to carry out a special inspection, but before doing so they must to consult the Auditor General for Wales.

Section 23 - Reports of special inspections

Section 23 requires the Auditor General for Wales to produce a report for each special inspection he/she carries out. The Auditor General for Wales must mention in the report if he/she believes as a result of the special inspection that the Welsh improvement authority is failing to comply with the requirements of Part 1 of the Measure. It may also recommend that the Welsh Ministers use their support or direction powers in sections 29-30 of the Measure.

A copy of the report should be sent to the inspected Welsh improvement authority and to the Welsh Ministers.

Section 24 - Co-ordination of audit etc

Section 24 places a duty on all relevant regulators to have regard to the need for co-ordination in the exercise of regulatory functions. It also requires the Auditor General to consult the relevant regulators and to draw up a timetable for the regulation and inspection of each authority. All relevant regulators and the Auditor General for Wales must then take all reasonable steps to adhere to the timetable.

Section 25 - Annual improvement reports

This section requires the Auditor General for Wales to produce and publish each year an annual improvement report for each Welsh improvement authority. The report must contain a summary of the results of any report issued under sections 19, 20 or 23 of the Measure. The Auditor General for Wales must consider in the light of the report whether to:

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- recommend to a relevant regulator how it should exercise its functions;
- make a recommendation that the Welsh Ministers exercise their powers under section 29 and section 30; or
- exercise any of its functions in relation to the authority.

Section 26 - Statement of practice

Under section 26 the Auditor General for Wales must produce a statement which set out how he/she will carry out his/her functions under sections, 17, 18, 19, 20, 24 and 25 of the Measure. The statement should be kept under review and must be approved by the Welsh Ministers before being published and before any revisions to it are published.

Section 27 - Inspectors' powers and duties

Section 27 sets out the powers and duties of an inspector when carrying out an audit under section 17, an assessment under section 18 or a special inspection under section 22 of the Measure. It grants the inspector rights of access to premises and documents and is similar to those enjoyed by the Audit Commission under section 11 of the Local Government Act 1999.

Section 28 - Fees

Section 28 requires the Auditor General for Wales to set a scale or scales of fees to carry out audits, assessments and special inspections. The Auditor General for Wales will have discretion to charge a fee which departs from the set scale if the work in relation to an audit, assessment or inspection is substantially more or less than originally envisaged. Before setting a scale of fees, the Auditor General for Wales must consult the Welsh Ministers and representatives of Welsh improvement authorities.

Section 29 - Welsh Ministers: support for Welsh improvement authorities

Section 29 provides the Welsh Ministers with a power to do anything they consider likely to assist a Welsh improvement authority to comply with the requirements of this part of the Measure. This power is broad as it is impossible to specify precisely all of the forms that such support might take. However, the Welsh Ministers cannot use it to direct an authority or anyone else: for that, they would need to use the powers in s30, which are subject to pre-conditions.

This section also requires the Welsh Ministers to consider providing support if an authority requests them to do so.

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Section 30 - Welsh Ministers: powers of direction etc

Section 30 contains powers for the Welsh Ministers to intervene in and direct a local authority which is failing, or is at risk of failing to comply with the Measure. This power may only be exercised by them if:

- the Welsh improvement authority has been the subject of support under s29, but that has not rectified the problem; or
- the Welsh improvement authority is failing or likely to fail to comply with the requirement of this part of the Measure and the situation is so urgent and/or serious as to preclude an offer of support.
- the Welsh improvement authority is failing or likely to fail to comply with the requirement of this part of the Measure, the Welsh Minister have decided that they wish to exercise the power of support under section 29, but it cannot be exercised because the authority has failed to co-operate with the Welsh Ministers.

The options open to the Welsh Ministers are then as set out in subsections (2) to (6). These are similar to the existing powers in s15 of the Local Government Act 1999. However, the power goes beyond the power of the Secretary of State in the Local Government Act 1999 because it provides that the Welsh Ministers may direct an authority to collaborate with another authority (subsection (2c)).

Section 31 - Powers of direction: collaboration arrangements

Section 31 permits the Welsh Ministers to direct a Welsh improvement authority which may not itself be failing (or be at risk of failing) to collaborate with one that is. The Welsh Ministers must consult that first authority before issuing the direction. This is to ensure that if a weakness in authority A could be addressed by it collaborating with authority B (which had no such weaknesses), then the Welsh Ministers could direct authority B to collaborate, but would have to consult authority B before issuing any direction.

Section 32 - Powers of Welsh Ministers to modify enactments and confer new powers

Section 32 provides Welsh Ministers with a power (by order) to make provision to modify or exclude the application of enactments which apply to Welsh improvement authorities. The Welsh Ministers may do so only if they are satisfied that such an enactment prevents or obstructs a Welsh improvement authority from complying with the provisions of Part 1 of the Measure.

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The Welsh Ministers also have a power to confer upon a Welsh improvement authority any additional power they consider necessary in order to facilitate compliance with Part 1 of the Measure.

In exercising a power conferred on them a Welsh improvement authority must take account of any guidance issued by Welsh Ministers.

Section 33 - Orders under section 32: procedure

Section 33 describes the extra procedures that the Welsh Ministers must follow in making an order under section 32. Unless such an order merely amends an existing order, the Welsh Ministers must consult such authorities or persons who appear to the Welsh Ministers to be representative of interest affected by their proposals. They must also lay a document before the National Assembly for Wales explaining their proposals for a minimum of 60 days (excluding periods when the Assembly is in recess) before the Assembly considers the draft order. These requirements are in addition to the order normally being subject to the affirmative procedure as required by section 50.

Section 34 - Use of information by regulators

The use of information which relevant regulators gather in the exercise of their relevant functions is restricted by other legislation. Section 34 allows regulators to use any relevant information and documents presented to or obtained by them for the purpose of exercising their functions under this Measure.

Section 35 - Part 1: Interpretation

This section defines a number of terms used in Part 1.

Section 36 - Finance

Section 36 amends section 33 of the Local Government Act 1999. This section ensures that the Welsh Ministers' funding of the Auditor General for Wales may take into account expenditure arising under this Measure.

Part 2 – Community Strategies and Planning

Section 37 - Community Planning

Section 37 places a duty on local authorities to initiate, maintain, facilitate and participate in community planning for their area.

The section defines community planning as a process by which a local authority and its community planning partners identify long-term objectives for improving the economic, social and environmental well-being of the local authority's area and also contribute to the achievement of sustainable development in the United Kingdom.

The definition of community planning also includes identifying actions to be performed and functions to be exercised for the purpose of meeting the long term objectives

Section 37 also places a duty on community planning partners to:

- participate in community planning;
- assist the local authority in the discharge of the local authority's duties.

Section 38 - Meaning of “community planning partners”

Section 38 lists the public bodies who are defined under Part 2 of the Measure as ‘community planning partners’. They are: community councils; fire and rescue authorities; Local Health Boards; NHS Trusts; National Park authorities; police authorities; and the chief constable of police force for a police authority area.

Subsection (1)(d) gives the Welsh Ministers a power by direction to specify which NHS Trusts are community planning partners of particular local authorities. This is necessary because NHS Trusts are not aligned to local authority boundaries.

Under section 38 Welsh Ministers have a power, by order, to amend, to add to or to remove bodies from those listed as community planning partners. Such an order can only be made following consultation with the body concerned, and with representatives of the local authority or authorities which would co-operate with it.

An order made under this section cannot designate a person who does not have functions of a public nature as a community planning partners.

Section 39 - Production of community strategy

Once local authority and community planning partners have reached a consensus as to community strategy objectives and actions, this section

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specifies that a local authority must produce a document (known as a community strategy in the Measure) capturing that consensus. The community strategy must contain appropriate objectives, and actions for meeting those objectives.

The community strategy must be produced and published as soon as reasonably practicable after the consensus between the local authority and the community planning partners has been reached.

Section 40 - Community strategies: duty to review

Section 40 specifies that a community strategy should be reviewed by the local authority and its community planning partners at least every four years.

Section 41 - Community strategy reviews

A community strategy should be reviewed to consider the extent to which objectives have been met and, if not met, the progress made towards that.

In the light of the review, the local authority and its community planning partners may consider it appropriate to amend the community objectives and the actions or to agree new ones. Once consensus has been reached the local authority should amend the community strategy and republish it as soon as reasonably practicable.

Section 42 - Community strategies: monitoring

Section 42 requires a local authority and its community planning partners to make arrangements for monitoring progress made on meeting the community strategy objectives and the associated actions.

Section 42 also places a duty on a local authority to publish a statement at least every two years on the progress which has been made towards meeting the community strategy objectives and undertaking the actions attributed to the various community planning bodies.

Section 43 - Community strategies: implementation

This section specifies that where the community strategy specifies an action to be taken or function to be exercised by the local authority or community planning partners, then it must take all reasonable steps to perform the action or exercise the function in accordance with the community strategy.

Section 44 - Community planning etc: community involvement

Section 44 requires a local authority and its community planning partners to make arrangements to involve and take account of the views of:

- local residents;

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- non-residents who receive services provided by the authority or one of its community planning partners;
- representatives of voluntary organisations;
- representatives of business interests; and
- anyone else whom the authority considers to have an interest in improving the area's social, economic or environmental well-being in connection with community planning, preparation of a community strategy and the review of a community strategy.

Section 45 - Community planning etc: guidance

Section 45 provides Welsh Ministers with a power to issue guidance on:

- the community planning process;
- producing and reviewing a community strategy; and
- the duties in sections 42 to 44.

This section also specifies that a local authority and its community planning partners must have regard to any guidance issued under this section.

Section 46 - Community planning etc: role of Welsh Ministers

Section 46 places a duty on Welsh Ministers to promote and encourage community planning when exercising a function which might affect community planning as far as it is reasonably practicable for them to do so.

47. Part 2: interpretation

This section defines a number of terms used in Part 2.

Part 3 – General

Section 48 - Guidance

Numerous provisions in the Measure allow the Welsh Ministers to issue guidance. This section allows the Welsh Ministers to issue different guidance to different bodies, thus allowing flexibility. Section 48 also provides that the Welsh Ministers must, before issuing guidance consult the authority or parties concerned or those who appear to represent them. It also requires the Welsh Ministers to publish all such guidance.

Section 49 - Directions

Several provisions in the Measure contain a power for the Welsh Ministers to issue directions to a named body. Section 49 allows the Welsh Ministers to vary or revoke any direction by a subsequent direction, and requires all directions to be in writing.

Section 50 - Orders and regulations

This section provides for orders and regulations under the Measure to be made by statutory instrument and sets out the Assembly procedures in respect of these instruments.

Section 51 - Consequential etc amendments and transitional and saving provision

The Welsh Ministers are given power by order to amend, repeal or revoke enactments for the purpose of making consequential amendments.

Schedule 1 contains consequential amendments relating to Part 1 of the Measure.

Schedule 2 contains consequential amendments relating to Part 2 of the Measure.

Section 52 - Repeals

Schedule 3 contains repeals including, in particular, Part 1 of the Local Government Act 1999 in so far as it relates to Welsh improvement authorities.

Section 53 - Commencement

This section makes provision about commencement. In general, provisions of the Measure will be brought into force by order made by the Welsh Ministers.