

LOCAL GOVERNMENT (WALES) MEASURE 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1 - meaning of “Welsh improvement authority”

2. This section sets out the bodies which are ‘Welsh improvement authorities’ for the purposes of 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

3. Subsection (1) requires Welsh improvement authorities to make arrangements to secure continuous improvement in the exercise of their functions (‘the general duty’).
4. 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

5. 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.
6. Subsection (2) provides that a Welsh improvement authority must have in place arrangements to achieve those objectives.
7. 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

8. [Section 4](#) defines the aspects of improvement which feature in this Part of the Measure. Section 4 allows Welsh improvement authorities to demonstrate improvement in a variety of different ways. The section creates a number of aspects of improvement which are used to assess whether improvement has taken place. Some aspects relate solely to improvement in the provision of services, for example a local authority demonstrates improvement in terms of ‘service availability’ if it improves the availability of its services. By contrast, improvement in terms of ‘sustainability’ would be demonstrated if any of a local authority’s functions (and not just those which involve the provision of a service) are exercised in a way which contributes towards the achievement of sustainable development in the authority’s area.

9. 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.

Section 5 - consultation about the general duty and improvement objectives

10. 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 non-residents such as commuters); and
 - representatives who appears to the authority to have an interest.

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

11. 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

12. 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). In addition, before making such an order the Welsh Ministers are required to consult persons appearing to them to represent Welsh improvement authorities and other persons that they think fit.

Section 8 - performance indicators and standards

13. **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.
14. 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 the Auditor General for Wales, representatives of Welsh improvement authorities and others as they see fit.
15. 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 etc

16. 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). Section 9 allows an authority to collaborate with another authority to facilitate the discharge of the other authority's duties, whether or not that would facilitate the discharge of its own duties.
17. 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.

18. 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

19. **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"

20. **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

21. 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

22. **Section 13** relates to the collection of information related to performance. During each financial year a Welsh improvement authority must make 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 standards which it chooses to use ('self-imposed indicators and standards').

Section 14 - use of performance information

23. **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.
24. 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.
25. 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

26. **Section 15** requires a Welsh improvement authority to make arrangements to publish specified information relating to its performance.
27. 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.
28. The information should be published before 31 October immediately following the financial year to which it relates by the relevant authority.
29. Under this section a Welsh improvement authority must ensure they publish a summary of any report relating to a special inspection.
30. 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.
31. [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”

32. [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.
33. Before using the order making power the Welsh Ministers must consult with Welsh improvement authorities, the Auditor General for Wales and relevant regulatory bodies.
34. It is possible that Welsh Ministers may use this power to add a regulator which has not yet come into being. The duty to consult would not work in such cases as Welsh Ministers cannot consult a body which does not exist. Subsection (6) deals with that by removing the duty to consult a new regulator in those circumstances.

Section 17 - improvement information and planning: audit

35. 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 assessments

36. [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. Under this section the Auditor General for Wales will be able to carry out an assessment covering more than one year

if s/he wishes. In undertaking the assessment, the Auditor General would be expected to take into account relevant information and documents received from other regulators and inspectors under s33.

Section 19 - audit and assessment reports

37. **Section 19** 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 reports 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;
 - explain how the Auditor General has used the information he/she has received from other regulators under section 33 for the purpose of producing an authority's improvement assessment under section 18;
 - state 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.
38. Copies of the reports should be sent to the relevant Welsh improvement authority and Welsh Ministers by 30 November each year. Welsh Ministers may change this date by order (subsection (3)).
39. In addition, subsection 4 deals with circumstances in which it would be unreasonable or impractical for the Auditor General to issue a report on a specific authority by 30 November or, where an order has been made under subsection (3), the date specified in the order . It provides the Auditor General for Wales with the flexibility to ask Welsh Ministers for an extension to complete the audit and assessment reports for one or more named authorities (without the need of an order).
40. The report or reports under section 19 may include recommendations to the authority about how it should comply with the requirements of this part and what it should do to act in accordance with guidance.

Section 20 - response to section 19 reports

41. This section requires an authority to respond to a report or reports from the Auditor General for Wales under s19 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.

42. 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 29, the authority must also send a copy of its statement to Welsh Ministers within 30 working days.

Section 21 - special inspections

43. **Section 21** permits the Auditor General for Wales to conduct a special inspection of a Welsh improvement authority.
44. 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.
45. The Auditor General for Wales must consult the Welsh Ministers before making his/her decision to conduct a special inspection
46. 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 consult the Auditor General for Wales.

Section 22 - reports of special inspections

47. **Section 22** 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 28-29 of the Measure.
48. A copy of the report should be sent to the inspected Welsh improvement authority and to the Welsh Ministers.
49. **Section 22** also requires the Auditor General for Wales to send reports which relate to local authorities' benefit functions to the Secretary of State for Work and Pensions.

Section 23 - co-ordination of audit etc

50. **Section 23** 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 for Wales 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 24 - annual improvement reports

51. 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 and 22 of the Measure. The Auditor General for Wales must consider in light of the report whether to:
- recommend to a relevant regulator how it should exercise its functions;
 - make a recommendation that the Welsh Ministers exercise their powers under section 28 and section 29; or
 - exercise any of his/her functions in relation to the author.

Section 25 - statement of practice

52. Under section 25 the Auditor General for Wales must produce a statement which sets out how he/she will carry out his/her functions under sections, 17, 18, 19, 23 and 24 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 26 - inspectors' powers and duties

53. **Section 26** 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 21 of the Measure. It grants the inspector rights of access to premises and documents and is similar to those enjoyed by the Auditor General for Wales under section 11 of the Local Government Act 1999.

Section 27 - fees

54. **Section 27** 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.
55. This section also ensures that Auditor General for Wales' fees charged under this Measure are treated in the same way as fees charged by him/her for other purposes.

Section 28 - Welsh Ministers: support for Welsh improvement authorities

56. **Section 28** 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 s29, which are subject to pre-conditions. Under this section Welsh Ministers are required to consult the relevant Welsh improvement authority before providing support unless the relevant authority has asked for such support. Section 28 also requires Welsh Ministers to consult persons appearing to be "key stakeholders" affected by the exercise of the power in subsection (1).

Section 29 - Welsh Ministers: powers of direction etc

57. **Section 29** 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 s28, 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 28, but it cannot be exercised because the authority has failed to co-operate with the Welsh Ministers.
58. 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 30 - powers of direction: collaboration arrangements

59. **Section 30** 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 31 - power of Welsh Ministers to modify enactments and confer new powers

60. **Section 31** 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.
61. 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.
62. In exercising a power conferred on them a Welsh improvement authority must take account of any guidance issued by Welsh Ministers.

Section 32 - orders under section 31: procedure

63. **Section 32** describes the procedures that the Welsh Ministers must follow in making an order under section 31. 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 33 - information sharing

64. **Section 33** creates a mutual duty on the Auditor General for Wales and on relevant regulators to supply each other with information which would assist them in discharging those of their functions described in subsection (4).

Section 34 - use of information by regulators

65. 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

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

Section 36 - finance

67. **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.

Section 37 - community planning

68. **Section 37** places a duty on local authorities to initiate, maintain, facilitate and participate in community planning for their area.
69. 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.
70. 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
71. **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"

72. **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.
73. 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.
74. 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.
75. 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

76. Once local authority and community planning partners have reached a consensus as to community strategy objectives and actions, this section specifies that a local authority must produce a document (known as a community strategy in the Measure) capturing that consensus.
77. The community strategy must contain appropriate objectives, and actions for meeting those objectives.
78. 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

79. **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

80. 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.

81. 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

82. [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.
83. [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

84. 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

85. [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;
 - 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

86. [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.
87. 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

88. [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.

Section 47 - Part 2: interpretation etc

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

Section 48 - guidance

90. 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

91. 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

92. 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

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

94. [Schedule 1](#) contains consequential amendments relating to Part 1 of the Measure.

95. [Schedule 2](#) contains consequential amendments relating to Part 2 of the Measure. For example, it requires local authorities and National Park authorities to have regard to community strategies published under the Measure (and not, as at present, those published under the Local Government Act 2000) in producing their Local Development Plans.

96. [Schedule 3](#) contains transitional provisions to “preserve” community strategies prepared under the Local Government Act 2000 until local authorities prepare new strategies under the Measure. Local authorities and National Park authorities will have to continue to have regard to their ‘old’ community strategies until a new one is published under the Measure.

Section 52 - repeals

97. [Schedule 4](#) contains repeals including, in particular, of Part 1 of the Local Government Act 1999 insofar as it relates to Welsh improvement authorities.

Section 53 - commencement

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

Section 54 - short title

99. This section establishes the Measure’s title as the ‘Local Government (Wales) Measure 2009’.