

LOCAL GOVERNMENT (WALES) MEASURE 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6 – Overview and Scrutiny

Section 58 – Joint overview and scrutiny committees

71. This section empowers the Welsh Ministers to provide by regulation that two or more principal councils may set up one or more joint overview and scrutiny committees (JOSC), and arrange for the committee or committees to make reports or recommendations to any of the principal councils setting up the committee, and to the executives of those councils.
72. The JOSCs may make reports and recommendations about any matter, but not about crime and disorder matters, about which a crime and disorder committee could make a report or recommendations by virtue of section 19(1)(b) or (3)(a) of the Police and Justice Act 2006.
73. The regulations may make provision for JOSCs to have equivalent powers to non-joint overview and scrutiny committees, as set out in existing legislation and as provided for in this Measure.

Section 59 – Scrutinising designated persons

Section 60 – Notifying designated persons of report or recommendations

74. These sections strengthen the position of overview and scrutiny committees (and by extension, JOSCs) by building on the existing power to make reports and recommendations in section 21(2)(e) of the 2000 Act, so that committees are required to scrutinise and report on matters which relate to a “designated person” (see section 61). The other main changes are new powers for a committee: to require information to be given (a requirement that must be complied with); to send a copy of a report or recommendations to a designated person; and to request such a person to have regard to the report or recommendations.

Section 61 – Designated persons

75. Allows the Welsh Ministers to designate by order those persons or categories of persons (a “designated person”) whose responsibilities or functions may be scrutinised by an overview and scrutiny committee of a local authority. The conditions in subsections (3) to (5) have the effect of limiting the designation to persons providing the public with services, goods or facilities, even if not carried out directly by those persons.

Section 62 – Taking into account the views of the public

76. Introduces provision to require local authorities to make arrangements to enable the public to express their views in relation to any matter being considered by the committee.

Section 63 – Reference of matters to overview and scrutiny committee etc

77. Amends section 21A of the 2000 Act to enable a councillor of a principal council in Wales to refer a matter to an overview and scrutiny committee which relates to the discharge of any of the functions of the council or which affects all or part of the electoral area which the councillor represents. The committee must consider the matter and report back to the member.

Section 64 – Duty to respond to overview and scrutiny committee

78. Applies in relation to Wales the provision in section 21 B of the 2000 Act setting out the steps an overview and scrutiny committee must take to inform the authority or executive of a report it has produced and the steps the authority or executive must take to respond.

Section 65 – Provision consequential on sections 63 and 64

79. Extends the definition of information which is exempt from publication in reports etc of overview and scrutiny committee to include that exempted under section 186 of the National Health Service Act 2006.

Section 66 – Provision in standing orders about appointment of persons to chair committees

Section 67 – When appointments to be made by committee

Section 68 – When appointments to be made by non-executive group

Section 69 – How appointments to be made in other cases

80. These sections require a local authority to make provision in its standing orders for the appointment of chairs for the authority's overview and scrutiny committees (the appointment procedure"). The sections also set out who will appoint the chairs, a decision which depends on the number of political groups represented on that authority and the composition of the authority's executive. The committees themselves will appoint their chairs in the circumstances described in section 67; the non-executive political group will do so if the circumstances are those in section 68. Section 69 introduces the arrangements to apply in other cases.

Section 70 – Appointments to be made by political groups

Section 71 – Failure to make appointments in accordance with section 70

Section 72 – Changes in composition of executive

Section 73 – Occasional vacancies in committee chairs

Section 74 – Appointment provision determined by authority

81. These sections set out the procedures for authorities where sections 67 or 68 do not apply, which in general will be those authorities where the membership is divided among several political groups.
82. The broad aim of these sections is the requirement for local authorities to make provision for the allocation of scrutiny committee chairs on a proportionate basis, with

the additional proviso that the political group (or groups) which comprises the executive of the council cannot allocate a greater number of scrutiny chairs to its group(s) than is proportionate to its (combined) representation on the full council (i.e. all members, whether or not they are members of political groups). If the entitlement to chairs of the group(s) in the executive is not a whole number, the entitlement is to be rounded down to the nearest whole number. The principles for allocating scrutiny chairs to political groups comprising the executive are in the new subsection (3) of section 70.

83. The remaining scrutiny chairs are then to be allocated to opposition political groups, each opposition group's allocation being in proportion to that group's numerical strength within the combined total of opposition groups (subsection (4) of section 70). The calculation of scrutiny chairs for opposition groups should not take any account of councillors who are not members of political groups on the authority.
84. **Section 71** sets out what is to happen if any committee chairs are not appointed in accordance with section 70. The executive group(s) cannot get more appointments. The opposition groups that have fully used their initial appointment allocation get additional appointments in proportion to their initial appointments. If all of the opposition groups have failed to fully use their initial appointment allocation or if an opposition group is entitled to an additional appointment, but does not use it, the power of appointment in these cases falls to the committees.
85. If the composition of the executive changes, the allocation of the scrutiny chairs must be re-visited and changes may need to be made to the allocations, as set out in section 72. The procedure if a scrutiny chair falls vacant is set out in section 73.
86. **Section 74** permits a local authority to waive the requirement to follow the procedures above if an alternative appointment procedure is agreed by all political groups, with the proviso that the alternative procedure does not result in the majority party allocating a greater number of scrutiny chairs from its party than the section 70 procedure would permit.

Section 75 – Supplementary provision and interpretation

87. Enables the Welsh Ministers to make regulations about the appointment procedure for allocating scrutiny committee chairs and to issue guidance or directions. The section also defines certain terms used in sections 66 to 75 and inserts new subsection (10A) in section 21 of the 2000 Act to refer readers to sections 66 to 75 of the Measure.

Section 76 – Guidance and directions about co-option

88. This section requires a local authority to have regard to any guidance or direction about co-option issued by the Welsh Ministers.

Section 77 – Forward plans and other information

89. Enables the Welsh Ministers by regulations to make provision to require the publication of forward plans of overview and scrutiny committees and sub-committees.

Section 78 – Prohibition of whipped votes & declaration of party whips

90. Prohibits the application of whipping at meetings of overview and scrutiny committees. The section sets out a procedure for declaring, determining and recording a prohibited party whip at scrutiny committee meetings and the consequences of a prohibited party whip being given.

Section 79 - Guidance and directions

91. Enables the Welsh Ministers to issue guidance or give directions about overview and scrutiny committees.

Section 80 – Interpretation of this Chapter

92. This section defines certain terms used in this Chapter.

Section 81 – Local authorities to appoint audit committees

Section 82 – Membership

Section 83 – Proceedings etc

Section 84 – Frequency of meetings

Section 85 - Guidance

Section 86 – Termination of membership on ceasing to be member of authority

Section 87 – Interpretation etc

93. These sections require a local authority to appoint an audit committee to review and scrutinise the authority's financial affairs and the other functions set out in section 81, including the making of reports and recommendations in relation to these. There is currently no statutory requirement upon local authorities in Wales to have such a committee.
94. The chair of the audit committee must not be a member of a group which forms part of the council's executive, except where all groups are represented on the executive (in which case the chair must not be a member of the executive).
95. The sections make provision for the audit committee's membership, chair, proceedings, frequency of meetings, discharge of functions and termination of membership. Section 85 allows the Welsh Ministers to issue guidance about the functions and membership of audit committees, to which local authorities and audit committees must have regard. Section 87 defines certain terms used in this Chapter.