



Local Government and Elections (Wales) Act 2021

2021 asc 1

PART 6

PERFORMANCE AND GOVERNANCE OF PRINCIPAL COUNCILS

CHAPTER 1

PERFORMANCE, PERFORMANCE ASSESSMENTS AND INTERVENTION

Special inspections by Auditor General for Wales

95 Power of Auditor General to carry out a special inspection

- (1) If the Auditor General for Wales (“the Auditor General”) considers that a principal council is not, or may not be, meeting the performance requirements, the Auditor General may carry out an inspection in order to assess the extent to which the council is meeting those requirements.
- (2) In this Chapter, an inspection under subsection (1) is referred to as a “special inspection”.
- (3) The Welsh Ministers may request the Auditor General to consider whether—
 - (a) a particular principal council is not, or may not be, meeting the performance requirements, and
 - (b) to carry out a special inspection.
- (4) Before determining whether to carry out a special inspection of a principal council, the Auditor General must consult the Welsh Ministers, unless the Welsh Ministers made a request under subsection (3) in relation to the council.

- (5) Before carrying out a special inspection of a principal council the Auditor General must give notice in writing to the council specifying—
 - (a) the Auditor General’s reasons for considering that the council is not or may not be meeting the performance requirements, and
 - (b) the matters that the Auditor General intends to inspect (but the Auditor General is not restricted to inspecting only the matters specified in the notice).
- (6) Following a special inspection of a council the Auditor General must make a report setting out—
 - (a) the Auditor General’s conclusions as to the extent to which the council is meeting the performance requirements, and
 - (b) any actions which the Auditor General recommends that the council or the Welsh Ministers take for the purposes of—
 - (i) increasing the extent to which the council meets the performance requirements;
 - (ii) improving the effectiveness of local government for the area of the council.
- (7) As soon as reasonably practicable the Auditor General must—
 - (a) publish the report, and
 - (b) send the report to—
 - (i) the council,
 - (ii) Her Majesty’s Chief Inspector of Education and Training in Wales, and
 - (iii) the Welsh Ministers.
- (8) As soon as reasonably practicable after receiving the report from the Auditor General, the council must make it available to its governance and audit committee.
- (9) If a report deals with the administration of housing benefit by the council, the Auditor General may send the report to the Secretary of State.

96 Duty of principal council to respond to Auditor General’s recommendations

- (1) If a report made by the Auditor General under section 95(6) contains recommendations under section 95(6)(b) for action to be taken by a principal council, the council must prepare a response to the recommendations.
- (2) The response must state what action, if any, the council intends to take in response to the recommendations.
- (3) The council must make a draft of the response available to its governance and audit committee.
- (4) The governance and audit committee must review the draft response and may make recommendations for changes to the statement made in the draft under subsection (2).
- (5) If the council does not make a change recommended by the governance and audit committee under subsection (4), the council must set out, in the response, the recommendation and the reasons why it did not make the change.
- (6) The council must send the response to the Auditor General before the end of—

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- (a) the period of 30 days beginning with the day on which the council receives the Auditor General's report, or
 - (b) any longer period which the Auditor General specifies in writing.
- (7) As soon as reasonably practicable after sending the response to the Auditor General the council must—
- (a) publish the response, and
 - (b) send the response to—
 - (i) Her Majesty's Chief Inspector of Education and Training in Wales, and
 - (ii) the Welsh Ministers.

97 Duty of the Welsh Ministers to respond to Auditor General's recommendations

- (1) If a report made by the Auditor General under section 95(6) contains recommendations under section 95(6)(b) for action to be taken by the Welsh Ministers, the Welsh Ministers must prepare a response to the recommendations.
- (2) As soon as reasonably practicable the Welsh Ministers must—
- (a) publish the response, and
 - (b) send the response to—
 - (i) the Auditor General,
 - (ii) the principal council to which the Auditor General's report relates, and
 - (iii) Her Majesty's Chief Inspector of Education and Training in Wales.

98 Auditor General's powers of entry and inspection etc.

- (1) An inspector may at any reasonable time enter any premises of a principal council and do anything that the inspector considers necessary for the purposes of a special inspection of that council, including inspecting a document held by the council.
- (2) An inspector may require a principal council to provide the inspector with any of the following that the inspector considers necessary for the purposes of a special inspection of that council—
- (a) a document held by the council;
 - (b) facilities and assistance.
- (3) If an inspector considers a person may be able to provide information, an explanation or a document that the inspector considers necessary for the purposes of a special inspection, the inspector may require that person to attend before the inspector at any reasonable time to provide the information, explanation or document.
- (4) An inspector may—
- (a) copy a document inspected under subsection (1) or provided under subsection (2)(a) or (3);
 - (b) require a principal council to provide the inspector with a legible copy, including a legible electronic copy, of a document inspected under subsection (1) or provided under subsection (2)(a);

- (c) retain a document inspected under subsection (1) or provided under subsection (2)(a) or (3), but only for as long as is necessary for the purposes of the special inspection.

- (5) In this section and sections 99 and 100, “inspector” means the Auditor General for Wales or a person exercising a function of the Auditor General for Wales under this Chapter by virtue of a delegation made under section 18 of the [Public Audit \(Wales\) Act 2013 \(anaw 3\)](#).

99 Auditor General’s powers of entry and inspection etc.: notice and evidence of identity

- (1) An inspector may enter the premises of a principal council in exercise of the powers under section 98(1) (powers to enter council premises and do things for the purposes of a special inspection) only if—
 - (a) an inspector has given notice in writing to the council, and
 - (b) there are at least three working days between the day on which the inspector gives the notice and the day on which the inspector enters the premises.
- (2) An inspector may exercise the powers under section 98(2) (powers to require documents, facilities and assistance) only if—
 - (a) an inspector has given notice in writing to the council, and
 - (b) there are at least three working days between the day on which the inspector gives the notice and the day on which the council is required to provide the document, facilities or assistance.
- (3) The requirements in subsections (1) and (2) do not apply if an inspector considers that giving notice to a principal council would, or would be likely to, prejudice a special inspection of that council.
- (4) An inspector may exercise the power under section 98(3) (power to require persons to attend before an inspector) only if—
 - (a) an inspector has given notice in writing to the person, and
 - (b) between the day on which the inspector gives the notice and the day on which the person is required to attend before the inspector there are at least—
 - (i) three working days if the person is a member of a principal council or a member of the staff of a principal council, or
 - (ii) seven working days in any other case.
- (5) Notice under subsection (1) or (2) to a principal council may be given by—
 - (a) leaving the notice at the principal office of the council;
 - (b) sending the notice by first class post, or by an alternative service which provides for delivery no later than the next working day, to the principal office of the council;
 - (c) sending the notice to any e-mail address which the council has specified to the Auditor General for Wales for the purposes of receiving notices under this section.
- (6) Notice under subsection (4) to a member of a principal council or a member of the staff of a principal council may be given by—
 - (a) leaving the notice at the principal office of the council;

- (b) sending the notice by first class post, or by an alternative service which provides for delivery no later than the next working day, to the principal office of the council;
 - (c) handing the notice to the person;
 - (d) leaving the notice at the last known residence of the person;
 - (e) sending the notice by first class post, or by an alternative service which provides for delivery no later than the next working day, to the last known residence of the person.
- (7) Notice under subsection (4) to a person other than a member of a principal council or a member of the staff of a principal council may be given by—
- (a) handing the notice to the person;
 - (b) leaving the notice at the last known residence or place of business of the person;
 - (c) sending the notice by first class post, or by an alternative service which provides for delivery no later than the next working day, to the last known residence or place of business of the person.
- (8) An inspector must produce evidence that they are an inspector if requested to do so by a person in respect of whom the inspector attempts to exercise a power under section 98 (and if the inspector does not produce that evidence the power is not exercisable).

100 Auditor General’s powers of entry and inspection etc.: offences

- (1) A person who without reasonable excuse fails to comply with a requirement imposed under section 98(2), (3) or (4)(b) commits an offence.
- (2) A person who intentionally obstructs an inspector exercising or attempting to exercise a power under section 98(1) or (4)(a) or (c) commits an offence.
- (3) A person guilty of an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) The reasonable expenses incurred by an inspector in proceedings for an offence under subsection (1) or (2) alleged to have been committed in relation to a special inspection are, so far as not recoverable from any other source, recoverable from the principal council to which the special inspection relates.

101 Auditor General’s fees

- (1) The Wales Audit Office must prescribe a scale of fees in respect of special inspections.
- (2) A principal council in respect of which a special inspection is carried out must, subject to subsection (3), pay to the Wales Audit Office, in accordance with a scheme for charging fees prepared under section 24 of the [Public Audit \(Wales\) Act 2013 \(anaw 3\)](#), the fee payable under the scale prescribed under subsection (1).
- (3) If it appears to the Wales Audit Office that the work involved in a particular special inspection was substantially more or less than that envisaged by the scale prescribed under subsection (1), the Wales Audit Office may charge a fee which is larger or smaller than that mentioned in subsection (2).
- (4) But a fee charged under this section may not exceed the full cost of carrying out the activity to which it relates.

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- (5) Before prescribing a scale of fees under this section the Wales Audit Office must consult—
- (a) the Welsh Ministers, and
 - (b) such persons representing principal councils as the Wales Audit Office considers appropriate.