

Agenda – Finance Committee

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| Meeting Venue: | For further information contact: |
| Committee Room 3 – Senedd | Bethan Davies |
| Meeting date: 11 December 2019 | Committee Clerk |
| Meeting time: 11.00 | 0300 200 6372 |
| | SeneddFinance@assembly.wales |

- 1 Introductions, apologies, substitutions and declarations of interest**
(11.00)
- 2 Paper(s) to note**
(11.00) (Pages 1 – 3)
Minutes of the meeting held on 27 November 2019
 - 2.1 Letter from Minister for Finance and Trefnydd – Second Supplementary Budget 2019–20 – 25 November 2019**
(Pages 4 – 5)
 - 2.2 Letter from Minister for Finance and Trefnydd – Welsh Government’s consultation to amend the Government of Wales Act 2006 (Budget Motions and Designated Bodies) Order 2018 – 28 November 2019**
(Pages 6 – 7)
 - 2.3 Letter from Auditor General for Wales to Chair of Equality, Local Government & Communities Committee – Consultation on the Local Government & Elections (Wales) Bill – 5 December 2019**
(Pages 8 – 13)
- 3 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of this meeting and the start of the next meeting on 18 December 2019**
(11.00)
- 4 Consideration of the forward work programme**
(11.00–11.15) (Pages 14 – 17)



Paper 1 – Forward work programme for the Finance Committee

5 Consideration of proposals to amend the Public Audit (Wales) Act 2013: Consideration of draft report and draft Bill

(11.15–11.45)

(Pages 18 – 159)

Paper 2 – Cover paper

Paper 3 – Draft report

Paper 4 – Draft Bill

Paper 5 – Consultation document

6 Inquiry into a legislative budget process: Consideration of draft report

(11.45–12.00)

Paper 6 – Draft report

Concise Minutes – Finance Committee

Meeting Venue:

Committee Room 1 – Senedd

Meeting date: Wednesday, 27 November
2019

Meeting time: 09.30 – 11.48

This meeting can be viewed
on [Senedd TV](#) at:

<http://senedd.tv/en/5779>

Attendance

| Category | Names |
|-------------------|---|
| Assembly Members: | Llyr Gruffydd AM (Chair) Rhun ap Iorwerth AM Alun Davies AM Mike Hedges AM Nick Ramsay AM |
| Witnesses: | Andrew Jeffreys, Welsh Government Julian Revell, Welsh Government Cathy Madge, Future Generations Commissioner for Wales Eurgain Powell, Office of the Future Generations Commissioner |
| Committee Staff: | Bethan Davies (Clerk) Leanne Hatcher (Second Clerk) Georgina Owen (Second Clerk) Samantha Williams (Deputy Clerk) Martin Jennings (Researcher) Owen Holzinger (Researcher) |



1 Introductions, apologies, substitutions and declarations of interest

- 1.1 The Chair welcomed Members and witnesses to the meeting.
- 1.2 Apologies were received from Rhianon Passmore and Mark Reckless.

2 Paper(s) to note

- 2.1 The minutes and papers were noted.
- 2.1 **Letter from Suzy Davies AM in response to Finance Committee's report on scrutiny of Assembly Commission draft budget 2020–21**
- 2.2 **Letter from the Auditor General for Wales to Chair of Public Accounts Committee: New Zealand budgetary process**
- 2.3 **Letter from Minister for Finance to Llywydd: Non–Domestic Rating (Multiplier) (Wales) Order 2019**
- 2.4 **Letter from Minister for Health and Social Services to Chair of Health, Social Care and Sport Committee: National Health Service (Indemnities) (Wales) Bill**

3 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting

- 3.1 The motion was approved.

4 Technical briefing: Welsh tax forecasts

- 4.1 The Committee received a technical briefing from Andrew Jeffreys, Director, Welsh Treasury and Julian Revell, Head of Fiscal Analysis, Welsh Treasury on Welsh tax forecasts.

5 Private briefing: Future Generations Commissioner for Wales monitoring of the Welsh Government budget – key findings to date

- 5.1 The Committee received a private briefing from Cathy Madge, Lead Change Maker and Eurgain Powell, Change Maker, Office of the Future Generations Commissioner for Wales, on the Future Generations Commissioner for Wales' monitoring of the Welsh Government budget.

**6 Scrutiny of the Wales Audit Office and the Auditor General for Wales's
Annual Report and Accounts 2018–19 and Estimate 2020–21:
Consideration of draft report**

6.1 The Committee approved the draft report.



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref: MA/RE/5507/19

Llyr Gruffydd AM
Chair, Finance Committee
The National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

25 November 2019

Dear Llyr,

In line with established practice I intend to publish a Second Supplementary Budget for 2019-20. This letter is advanced notice of my intention which will allow you to plan for the appropriate scrutiny.

The main purpose of the Second Supplementary Budget will be to reflect budgetary changes since the First Supplementary Budget 2019-20, which was published by the Welsh Government in June. It will set out a number of allocations from our reserves, transfers between Welsh Government portfolios, transfers with UK Government Departments and will include revised Annually Managed Expenditure forecasts. It will also include revisions to forecasts of devolved taxes, the Block Grant Adjustment, funds drawn from the Wales Reserve, and proposed borrowing from the National Loan Fund.

I intend to table the Second Supplementary Budget for 2019-20 on 4 February. The budget will also be published on the Welsh Government internet site the same day.

Given the spring recess, I have agreed to delay moving the Second Supplementary Budget by a week until 3 March. This provides an additional week beyond the three-week period outlined in Standing Orders.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding. **Pack Page 4**

I hope you find this update helpful.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans". The script is cursive and fluid.

Rebecca Evans AC/AM
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd



Llŷr Gruffydd AM
Chair of the Finance Committee
National Assembly for Wales
Cardiff Bay
Cardiff

28 November 2019

Dear Llŷr,

I agreed to inform the Committee of my conclusions in respect of the Welsh Government's consultation to amend the Government of Wales Act 2006 (Budget Motions and Designated Bodies) Order 2018 including an explanation for any bodies that will be excluded and their impact where appropriate.

Nine individual responses and two group responses on behalf of the Sponsored Bodies Finance Sub Group and NHS Charities were received to the consultation. During the consultation process, my officials met, or offered to meet, with all bodies proposed to be designated to discuss any concerns. The key findings from the consultation were:

- Lack of understanding and awareness of the public expenditure framework and the purpose of classification by the Office of National Statistics (ONS) to the central government sector and its implications;
- Inconsistent treatment of budgeting of arms-length bodies and approach to reserves;
- Misunderstanding of the purpose of designation and its implications;
- Concerns with aligning accounting treatments across sectors with different accounting requirements to central government e.g. charities sector, and needing to ensure no undue consequences on the arms-length bodies.

Given the broad scope and complexity of the issues raised, I have decided to postpone designation for most of the bodies included within the consultation. An action plan to address the issues raised will be produced, which will then be implemented within an appropriate timescale to allow constructive engagement with the bodies concerned. The action plan will include:

- an awareness and training programme of the public sector framework and ONS classifications;
- implementation of consistent treatment of budgeting across all arms-length bodies;
- building technical capability and capacity to consolidate bodies within the Welsh Government's Consolidated Accounts.

We will also address the specific concerns raised by the various bodies, particularly in respect of classification, use of reserves, and bodies that have charitable status.

I expect this postponement to be a year to two years in most cases. However, this would be subject to resolution of any specific technical issues that arise in respect of budgeting and/or accounting with individual bodies.

Whilst this postponement applies to most bodies included within the consultation, I am continuing the alignment exercise and propose to designate 3 bodies for 2019-20 where no significant issues have arisen. These are:

- Health Education and Improvement Wales;
- International Business Wales; and
- Royal Commission on the Ancient and Historical Monuments of Wales.

I hope you find this information helpful.

Yours sincerely,



Rebecca Evans AC/AM

Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Mr John Griffiths AM
Chair of Equality, Local Government &
Communities Committee
National Assembly for Wales
Cardiff Bay
Cardiff CF99 1NA

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Reference: AC/170/caf
Date issued: 5 December 2019

Dear John

Consultation on the Local Government & Elections (Wales) Bill

1. Thank you for your letter of 22 November 2019 in which you invite views on the Local Government and Elections (Wales) Bill. I understand that you would like comments particularly in relation to the provisions of the Bill that concern the role of the Auditor General. In the time available, I can only provide preliminary views, but I hope that they are helpful. My colleagues will provide further views and clarification at your session on 11 December 2019, and we will provide a further submission by 3 January 2020.

Performance assessment arrangements: performance requirements

2. I welcome the Bill's intended improvement of performance assessment arrangements. The duty to keep performance under review, provided by section 88, appears to me to be a more realistic and coherent approach than the improvement principles and duties set out in the Local Government (Wales) Measure 2009.
3. My predecessor and colleagues at the Wales Audit Office have long had concerns at the onerous complexity of the 2009 Measure. The numerous functions and principles imposed by the 2009 Measure have led to performance improvement work being seen as burdensome and bureaucratic by some authorities. At the same time, it is not clear that the performance improvement requirements of the Measure have actually led to improvement in authorities' performance, though it is difficult to identify particular effects given the complex environment that local government operates in, especially with reductions in funding. It is clear that legislation is needed to repeal the requirements of the 2009 Measure and to replace them with more realistic and coherent requirements.

4. I would also note that the current Bill is much more realistic and proportionate in this respect than the November 2015 draft local government bill.

Self-assessments

5. While acknowledging the benefits of encouraging greater self-awareness, I am somewhat sceptical about whether the requirements of section 90 in themselves will improve the quality of self-assessment. The experience of the “Best Value Reviews”, which authorities were required to do under the Local Government Act 1999, and more recently of the 2009 Measure, demonstrates the potential weaknesses in the approach. These were a lack of consistent objectivity and rigour; a reluctance to be critical and a tendency to be superficial in gathering and assessing evidence of performance; and shortages of the necessary skills and capacity to undertake comprehensive assessments. I have no reason to believe that the appetite and capacity for objective self-appraisal have increased in the past decade, and I am also not convinced that new requirements in themselves will lead to an improved situation.
6. The new provisions for self-assessment are, however, more streamlined than the requirements under the 1999 Act and the orders and guidance made under that Act and are more coherent and comprehensive than the requirements of the 2009 Measure. This should be helpful in connecting performance assessment with the audit consideration of arrangements for securing economy, efficiency and effectiveness (required by section 17(2)(d) of the Public Audit (Wales) Act 2004).
7. Finally, it would be helpful if there were a deadline for producing self-assessments in respect of each financial year: perhaps four months after the end of the year. Without a deadline, it would seem that a self-assessment for a financial year could be undertaken at some indefinite time in the future.

Panel assessments

8. I also have some reservations about whether panel assessments (section 91) will achieve Welsh Ministers’ intended objectives. As panel members are to be appointed by the councils that they are to assess, there is a risk of self-interest undermining the objectivity of the panel members. I am also concerned that the supply and availability of appropriately skilled panel members may be rather limited given the number and timing of panel assessments required in any given year. I note that section 93 provides for the Welsh Ministers to make regulations concerning the appointment of panels. Such regulations could be used to set appropriate requirements in terms of skills, knowledge and experience of panel members. I am nonetheless sceptical that a sufficient pool of suitably qualified and capable potential panel members will be available.

Special inspections

9. The Bill's provisions for special inspections by the Auditor General (sections 94 to 99) appear appropriate in themselves. While these new provisions seem generally similar to the special inspection provisions of the 2009 Measure, as the focus of the inspections is to be assessing whether councils are meeting the performance requirements of section 88, rather than the various requirements of Part 1 of the 2009 Measure, these new provisions are necessary. And the clearer focus of the new provisions should be helpful in scoping and delivering inspections.
10. I am, however, concerned at how, under section 128 of the Bill, the receipt of a report of a special inspection is to be the first condition (along with the alternative of an abolition request) for Welsh Ministers making restructuring regulations. I realise this is not a simple trigger, as the fourth condition is that the Welsh Ministers must be satisfied that, unless they make restructuring regulations, effective and convenient local government is not likely to be achieved in the area. Nevertheless, with such a link to restructuring regulations, I think that there is a real danger of the arrangements compromising the Auditor General's independence and so undermining wider audit effectiveness and public trust and confidence in the management of public money.
11. This is particularly likely in a case where the Welsh Ministers request an inspection in relation to a council about which there has been speculation as to the possibility of restructuring. Having a received a request, the Auditor General may be put in an invidious position: be seen as the agent of Welsh Ministers in facilitating change against local opposition or side with local interests against the wishes of Welsh Ministers.
12. I also do not think that the conditions set out in section 128 are sufficient or helpful in providing a sound basis for deciding on restructuring regulations. Aside from special inspection reports (or abolition requests), there is only consultation, notice and the Welsh Ministers' judgement. Focus on these conditions seems likely to lead to neglect of consideration of broader relevant matters, such as the views of the population of the area.
13. With the inclusion of special inspections as a condition for making restructuring regulations, undertaking a special inspection may become a rather difficult process. There is the possibility of reduced co-operation and extensive challenge of the inspection process, which may extend to judicial review. This would cause the Wales Audit Office to incur significant costs.
14. I am also concerned that the fee provisions in section 100 of the Bill include a strict prohibition on fees exceeding the full cost of the activities to which they relate. This adds to the existing problems caused by the Public Audit (Wales) Act 2013 prohibiting fees from exceeding the full cost of each function at each body to which they relate. As the work of the Auditor General involves many different statutory functions—more than a dozen in the case of a single local government audit—this leads to a large administrative burden in terms of time recording and invoicing. The

Committee will be aware of the Finance Committee's separate consideration of the "no more than full cost" rule, which currently governs the charging of audit fees, and whether it should be replaced with a more practical requirement for fees and expenditure to broadly match over time in aggregate so as to reduce the complexity of fees and their administration.

Co-ordination between regulators

15. Having regard for the need for co-ordination is clearly desirable. However, the extensive requirements in section 118 of the Bill, particularly the requirement to produce timetables for each council for the exercise of functions, are over-prescriptive, largely impractical and unnecessary. For example, many inspections by CIW and Estyn are on short notice in order to be effective, and it is therefore not appropriate to explicitly timetable these. I already have a strategic agreement in place with CIW, Estyn and HIW in pursuit of cooperation and coordination through "Inspection Wales". This operates well at both a strategic and operational level, and I therefore view prescription of section 118 as unnecessary.
16. I am also concerned that section 118 may be outside the Assembly's legislative competence. This is because the section requires the Auditor General to have regard to the need for co-ordination in the exercise of functions, which amounts to a modification by way of an implied amendment to section 8(1) of the Public Audit (Wales) Act 2013. Section 8(1) of the 2013 Act says that the Auditor General has complete discretion in the exercise of his functions and is not subject to direction by the Welsh Ministers. Section 118 therefore seems to fall foul of the prohibition found in section 108(6)(a) and para 5 of Part 1 of Schedule 7B to GOWA 2006, which protects section 8(1) of the 2013 Act from amendment. I recognise that section 118 of the Bill is in part a restatement of section 23 of the 2009 Measure. However, the 2013 Act is subsequent to the 2009 Measure, so its provisions prevail—section 23 of the 2009 Measure was no longer valid following the commencement of the 2013 Act, so cannot be restated.

General power of competence

17. The provision for a local authority general power of competence is in principle, I think, appropriate. There has been confusion in both community councils and unitary authorities in Wales as to whether the general power of competence provided by the Localism Act 2010 applies. Welsh provision should help prevent such confusion in the future.
18. I do, however, think that expectations of the flexibility of the general power of competence should not be too high. It is not simply a power to do anything that individuals may do; it is subject to significant constraints, such as limitations on charges, pre-commencement power restrictions, pre- and post-commencement limitations, and the principles of public law. Authorities will need to spend expert time on checking limitations. That said, the general

power of competence does provide some additional freedom of action that can be useful in some circumstances.

19. I am, however, somewhat concerned that as community councils have limited affordable access to suitably qualified and expert advisers in public law there may be an increase in inappropriate projects undertaken by such councils. The committee may be aware that I have issued several public interest reports in 2019 regarding unlawful expenditure on projects.
20. I note that section 43 of the draft Bill requires community councils to have regard to guidance issued by Welsh Ministers in relation to the exercise of general power of competence. I think this is appropriate: such guidance will be very important, as many community councils are not familiar with the limits of competence set out in Chapter 1 of Part 2 of the Bill and by principles of public law.
21. In relation to the draft Bill's provision for the use of audit opinions in determining community council competence (section 37), I should note that while such opinions are of relevance to the abilities of bodies in terms of financial management and governance, audit work is not designed to provide assurance as to whether a council meets competency requirements. The audit provisions in section 17 of the Public Audit (Wales) Act 2004 do not require audits to address fitness for general competence.
22. If audit opinions are to be fully appropriate to determining whether a council has competence, it will be necessary to amend the scope of audit work. This will increase community council audit fees (or they will need to be funded by other means). Rather than making this a blanket requirement for all audits, it may be more cost-effective if provision were made to require community councils to obtain specific reports on fitness for competence. Such reports could be provided on an agreement basis under section 19 of the Public Audit (Wales) Act 2013.

Corporate Joint Committees

23. It seems to me that Corporate Joint Committees fall within the definition of joint committees set out in section 12 of the Public Audit (Wales) Act 2004. However, the Bill and the Explanatory Memorandum do not make this explicit. It would be helpful if this were clarified. In any event, and especially as they are to hold assets. Corporate Joint Committees will need to prepare accounts and be audited.
24. The Committee may want to note that I, and my predecessor, have frequently commented on the complexity of structures and governance in the public service landscape in Wales. I am not clear from the provisions of Part 5 of the Bill, or the explanatory memorandum, whether this will improve or worsen complexity. Careful consideration will need to be given through guidance and regulation to ensure that there is proper coherence, integration and efficiency in the exercise of these provisions.

25. The appropriateness of powers to make subordinate legislation, and the financial implications of the Bill
26. It not possible in the time available to provide properly considered comments on the appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation. Likewise, it is not possible in the time available to provide proper consideration of the financial implications of the Bill as set out in the Explanatory Memorandum. We will, however, endeavour to provide such comments by 3 January 2020.
27. Given the Public Accounts Committee's interest in issues such as community council competence and my comments on the proposed fee regime for special inspections, I am copying this letter to the Chairs of the PAC and Finance Committee.
28. My colleagues and I should be happy to support the Committee further, and I hope that this material is helpful to you.

Yours sincerely



Adrian Crompton
AUDITOR GENERAL FOR WALES

cc: Mr Llyr Gruffydd AM, Chair, Finance Committee
Mr Nick Ramsay AM, Chair Public Accounts Committee

Agenda Item 4

By virtue of paragraph(s) vi of Standing Order 17.42

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Agenda Item 5

By virtue of paragraph(s) vi of Standing Order 17.42

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