



# Governance and accountability for Local Councils

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**A Practitioners Guide 2008 (Wales)**

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# Acknowledgements

The first edition of the Practitioners' Guide for local councils in England and Wales was published in 2002 and was the result of work overseen by a project group with membership drawn from key stakeholders. It was always recognised that the Practitioners' Guide would need to be kept up to date with developments relevant to the local council sector.

Since 2005, community councils in Wales operate within a separate, albeit very similar, legal framework to that of parish councils in England. The responsibility for issuing guidance for Wales has now transferred to Wales. This edition of the guide is the first prepared specifically for local councils in Wales and approved by the Local Councils Audit Liaison Group.

The Local Council Audit Liaison Group was established in September 2007 with members drawn from key stakeholders. One of its objectives is to help ensure that the guidance remains relevant to the needs of local councils in Wales and is updated as appropriate.

The current members of the Local Councils Liaison Group are:

Simon Edge	Wales Audit Office (Chair)
Deryck Evans	Wales Audit Office (Secretary)
Simon White	One Voice Wales
Lyn Llewellyn	One Voice Wales
Jim Griffiths	SLCC
Ian Skinner	Welsh Assembly Government

And representing audit suppliers:

Emma Prince	BDO Stoy Hayward
Stephen Christopher	Mazars LLP
Nick Jenkins	UHY Hacker Young

The contributions of the members of the group, and of those individuals who have contributed from time to time to the development of the guide are gratefully acknowledged.

In particular, this first edition of the local council guide for Wales draws on the Practitioners' Guide for local councils in England that is approved by the Joint Practitioners Advisory Group (JPAG). Established as a standing group in April 2002, JPAG's members are drawn from key stakeholders from small bodies in England which are required to prepare an annual return. JPAG's purpose is to develop guidance for small bodies in England.

We are grateful to JPAG for allowing this and for its continuing support.

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# Part 1: The legal framework for local councils in Wales

This part of the guidance describes the nature of local councils and the legal framework within which they operate. It also covers the development of the annual return approach to statutory reporting and the supporting audit process.

## What are local councils?

- 1.1 For the purposes of this guidance the general term local council refers to a number of bodies which have roles in the administration of community affairs. These include Community Councils and Town Councils. This guidance also applies to Joint Committees of local councils. The roles of these bodies are similar and there is a commonality of stakeholders in the local areas served by these bodies. It is appropriate, therefore, that a common accounting, audit and public reporting framework apply to them all.
- 1.2 Local councils are local government bodies, and can only do that which they are empowered to do by law. Anything else, no matter how apparently justifiable or useful will be beyond the powers of the council ('ultra vires').

## Community Councils

- 1.3 Community Councils are currently the most common type of local council. They were constituted by the Local Government Act 1972 taking on powers and duties which, until then, had been administered by rural parishes and urban districts. The current powers and duties of local councils are derived from various parts of legislation. Appendix 1 provides a short summary of the main local council services and powers.
- 1.4 Local councils exist to discuss community affairs and exercise the powers bestowed on them. The council itself is made up of councillors who are either elected by local residents or selected to fill vacancies. Each council has a clerk who acts as the chief officer and, depending on its size, a number of additional staff may be employed.
- 1.5 For most local councils, the majority of income is derived from an annual charge, the precept, on local electors. It is set each year by a local council as part of its annual budgeting process and is collected on the local council's behalf by the local unitary authority responsible for collecting council tax for its area. The level of precept depends on the nature and scope of the local council's activities.
- 1.6 There are other potential resources available to local councils in addition to the precept. Many councils receive interest on bank balances and income from charges for the use of their facilities

(through, for example, hall hire charges, burial fees, car parks etc) and in some cases, receipts from investments and grants.

- 1.7 Some very small local councils incur no financial transactions in a financial year, hold no balances and own no assets. A short form annual return caters for such cases. Local councils fulfilling this criterion should send to their appointed auditor on receipt of notification of audit, a signed short form 'no transactions' annual return supplied to them by the auditor for this purpose.

## **Town Councils**

- 1.8 In some areas the community council is known as the Town Council. As they often cover a larger population than many rural communities, Town Councils tend to have larger precepts and provide a wider range of services.

## **Joint Committees**

- 1.9 Section 12 of the Public Audit (Wales) Act 2004 identifies that 'a joint committee of two or more (local) authorities' are local government bodies in Wales. Section 13 of the Act requires local government bodies in Wales to maintain accounts which are subject to annual audit. Such joint committees will have an external auditor appointed by the Auditor General for Wales (the Auditor General). Although they are not independent legal entities, for the purposes of keeping accounts and submitting to audit, they are separately subject to the same rules and regulations as other local councils.
- 1.10 The management of joint committees usually is located with one of the participating councils known as the 'lead' council. The lead council is responsible for meeting the accounting and reporting responsibilities of the joint committee although all participants should approve the arrangements.

## **Councils accounts and audit arrangements**

- 1.11 Two pieces of legislation set out how local councils should behave when accounting for the public funds they manage and what rights local taxpayers have in relation to those accounts. These are the Public Audit (Wales) Act 2004 (the Act) and the Accounts and Audit (Wales) Regulations (the Regulations) issued from time to time under the Act.
- 1.12 The requirement for local councils to prepare accounts annually and to subject them to external audit comes from the Act. Each local council is required irrespective of size, to prepare accounts annually and to have an audit. The Act describes the rights of taxpayers and other interested parties in relation to those accounts.
- 1.13 The Act also provides that the Welsh Assembly Government (the Assembly) may make regulations covering:
- how accounts should be kept;
  - the form of accounts and how and when they must be approved and published;

- where and for how long taxpayers can view the accounts and the details behind them; and
  - how taxpayers exercise their rights in relation to the accounts<sup>1</sup>.
- 1.14 A current (January 2008) copy of the Regulations is provided as a reference tool for practitioners at Appendix 7. Practitioners are reminded of the need to make sure that they are always viewing the latest version of the Regulations when considering how they should be applied.

## **Roles and responsibilities within local councils**

- 1.15 Local councillors are elected every four years in local elections, the whole council retiring at the same time. A chairman or town mayor must be elected annually by the council from among its members. From time to time vacancies occur which may be filled following a bye-election or by co-option or by appointment. Whilst the status of co-opted and appointed members is marginally different in law, all members have the same duties and responsibilities in relation to a local council's governance and accountability.
- 1.16 Community affairs are discussed at council meetings. Councils must convene an annual meeting. In most communities, further meetings are convened through the year in addition to the annual council meeting that must be held. In most communities they are held on a monthly basis and local electors may attend to observe the proceedings.
- 1.17 Most local councils employ a clerk to oversee the administration of their affairs. Local councils are also required, by section 151 of the Local Government Act 1972, to appoint a Responsible Financial Officer (RFO) to manage their financial affairs. In many instances the clerk also holds the post of RFO. Larger councils may also have other employees such as administrative assistants and grounds staff. As an employer, the council has the same duties and responsibilities, including the operation of PAYE, as any other employer. Councils should however note that section 116 of the Local Government Act 1972 prohibits the appointment of members to any paid office (including that of RFO) until twelve months after they cease to be members.
- 1.18 If no RFO has been appointed the person responsible for the administration of the financial affairs of a local council or, if no person is so responsible, the person who is responsible for keeping the accounts of the council is deemed to be the RFO.
- 1.19 It is the council as a whole, however, that is responsible in law for ensuring that their financial management is adequate and effective and that the council has a sound system of internal control which facilitates the effective exercise of their functions and which includes arrangements for the management of risk.

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<sup>1</sup> See paragraph 7 above for a link to more detailed guidance on electors' rights.

- 1.20 Under the regulations, all local councils are required to conduct, in accordance with proper practices, a review at least once a year of the effectiveness of their system of internal control and publicly report the outcome. This annual governance review must include a separate review of internal audit. Guidance on how this review may be carried out may be found at paragraphs 2.81 to 2.98 of this guide. Section 2 of the annual return provides the means for local councils to report their annual governance statement.
- 1.21 Practitioners may wish to refer to a helpful booklet produced by the Auditor General entitled *Statement of responsibilities of auditors and small local councils* which describes the relationship between local councils and their external auditors. It seeks to clarify where the different responsibilities of the local council and its auditor begin and end. This statement is reproduced at Appendix 2.

## The Auditor General for Wales and the limited assurance audit

- 1.22 In 2006, the Auditor General reviewed the limited assurance audit and endorsed the continuation of the approach to local council audit in Wales. A key feature of the audit approach is that it seeks to recognise the differing circumstances of local councils of different size. This is described in the flowchart at Appendix 3.
- 1.23 This guidance focuses primarily on the needs of practitioners within local councils. However, the following paragraphs may be helpful as background to the development of the audit approach. Extracts from the Auditor General's *Code of Audit and Inspection Practice* can be found at Appendix 4 and the key elements of the Auditor General's guidance to external auditors are reproduced at Appendix 5.
- 1.24 The Auditor General has statutory responsibility to regulate the audit of local government in Wales. The Auditor General's *Code of Audit and Inspection Practice* (the Code) published in May 2005 sets the required standards for appointed auditors in Wales. The Code, when talking about how auditors should discharge their statutory annual audit duties at local councils, states:

*"S1. It is the responsibility of small bodies (as defined by the Auditor General in accordance with Section 3 of the Code) to put in place proper arrangements to ensure the proper conduct of their financial affairs, and to monitor the adequacy and effectiveness of those arrangements in practice. Small bodies are required to prepare their accounts in accordance with their statutory responsibilities, and to maintain an adequate system of internal audit of their accounting records and control systems.*

*S2 Small bodies meet their responsibilities by preparing and publishing, and providing the auditor with, the accounts prepared for the financial year, together with such additional information and explanation as is necessary to provide sufficient evidence*

*that they have maintained adequate systems of internal control and internal audit throughout the financial year.”.*

- 1.25 In 2001, working with the Audit Commission (the Auditor General’s predecessor regulatory body in Wales), the representative bodies for local councils and their clerks, responsible government departments and the Chartered Institute of Public Finance and Accountancy (CIPFA), undertook to develop a simple approach to meeting this legal responsibility which could be:
- easy to prepare and be easily understood by readers;
  - subjected to an appropriate level of external audit without the need for lengthy preparation and inconvenience; and
  - cost efficient.
- 1.26 The outcome was the annual return, a sample copy of which is attached as Appendix 6. For accounting years ending 31 March 2006 and thereafter, completion of the annual return by local councils where annual income or expenditure is £1,000,000 or less is a requirement under the Regulations. However, councils with annual income or expenditure exceeding £100,000 may prepare their accounts in accordance with the SORP if they wish. In such cases, the audit arrangements would fall outside of the Limited Assurance Audit Arrangements.
- 1.27 Part 2 of this guidance considers the annual return in more detail, but some general points about this approach should be noted.
- 1.28 The external audit approach described above relies heavily on the co-operation of the council with the external auditor and on a significant amount of self certification by the council. The corporate governance arrangements within the council must be demonstrably sound and the annual return is expected to be accurate and complete when presented to the auditor. The annual return should be prepared in accordance with the proper practices presented in this guide.

## **Proper practices**

- 1.29 The Regulations refer in a number of places to the need for local councils, in fulfilling the requirements of the Regulations, to follow proper practices. In the guidance which accompanies the revised 2005 Regulations in Wales (reproduced here as an annex to Appendix 7), the Assembly explains the source of the term proper practices, its legal standing and where they may be found. The Assembly guidance states that for local councils, proper practices in relation to both the accounts and internal audit may be found in the publication, *Governance and Accountability in Local Councils in England and Wales – a Practitioner’s Guide 2003 and its successor publications*. This guide replaces the 2003 Guide in Wales.

## The council as trustee

- 1.30 Certain local authorities have powers to be appointed as trustee of local, usually charitable, trusts and fulfil this role as either custodian or management trustee.
- 1.31 Charitable trusts in Wales are regulated by the Charity Commission which sets out minimum standards of accounting and audit requirements where these are not covered by the Trust Deed. The Charity Commission also requires annual reporting by registered charities.
- 1.32 In cases where local authorities are sole managing trustees (i.e. hold legal title to and manage the property and/or investments of the trust) the accounts of the trust are a separate account of the local authority and are therefore subject to separate disclosure. This requirement is in addition to any reporting or audit required by Charity law.
- 1.33 Larger authorities preparing accounts in accordance with the SORP, meet this requirement via disclosure in the notes to the accounts which are covered by an audit opinion. For smaller local councils preparing an annual return there are no provisions for notes and so the required disclosure is achieved through the annual return.
- 1.34 Section 1 of the annual return (the statement of accounts) requires the following disclosure:  
  
“The council acts as sole trustee for and is responsible for managing (a) trust fund(s)/assets (readers should note that the figures above do not include any trust transactions)”
- 1.35 If the council has disclosed that it is a sole managing trustee it must also complete the associated assertion in Section 2 of the annual return (the annual governance statement)  
  
“Trust Funds– in our capacity as trustee we have: discharged our responsibility in relation to the accountability for the fund(s) including financial reporting and, if required, independent examination or audit.”
- 1.36 Small local councils may in this way meet the disclosure requirements under the Act of ‘an account of the body’. Auditors can plan work around these disclosures if required.
- 1.37 There is no requirement for local councils to prepare consolidated or group accounts including the charitable trust funds. Where councils have historically consolidated trust funds within the main accounts of the council, these should be excluded for reporting purposes to avoid the risk of misleading readers of the accounts.
- 1.38 Councils should ensure separate bank accounts operate for the Charity. If however, the Councils bank account is used to pay for expenditure of the Charity or to receive income of the Charity then these transactions must be included in the Annual Return of the Council as they are under

the direct control of the Council. However it is recommended that a separate bank account is established for the Charity as soon as possible. The reserves of the Council should not include those of the Charity.

- 1.39 It is important that meetings of the Council as Charity Trustee should take place separately from those of those of the local authority and separate minutes should be kept. In order to avoid confusion charity business items should be minuted separately and separate notices and agendas for meetings should be issued.
- 1.40 Charity property should not be shown as Council property in the Councils books and Annual Return.
- 1.41 The clerk should take responsibility for guiding the council regarding the capacity, either as the council or the trustees for a charity, in which members are meeting. The chairman should also seek to make the current capacity clear to the meeting at the outset and throughout, particularly if meetings are held one after the other or where confusion around capacity is possible.
- 1.42 The value of charity property should **not** be shown in the council's books of account and annual return as council property. Charity assets held as custodian or managing trustee should, however, be recorded in the council's asset register and identified there as 'charity assets managed by the council as trustee'.