

Number: **WG17306**

Appendix 1



Llywodraeth Cymru
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Consultation Document

Designated Persons Order (Number 1)

Under the Local Government (Wales) Measure 2011

Date of issue: **29 August 2013**

Action required: Responses by **21 November 2013**

Overview

This consultation paper is seeking views on the proposed list of public service providers to be included in the Designated Persons Order (No 1) under section 61 of the Local Government (Wales) Measure 2011. It also seeks views on whether additional organisations which deliver public services should be designated, either in the initial phase of implementation, or under a future Order.

How to respond

Please complete the separate questionnaire at Annex A and submit your comments on any aspect of the Regulations by **21 November 2013** in any of the following ways:

E-mail: LGDTMailbox@wales.gsi.gov.uk

Post: to the address in the contact details below.

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Local Government (Wales) Measure 2011

Contact details

For further information:

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Data protection

How the views and information you give us will be used.

Any response you send us will be seen in full by Welsh Government staff dealing with the issues set out in this consultation paper. It may also be made available to other Welsh Government staff to help them when planning future consultations.

The Welsh Government intends to publish a summary of the responses to this document. It may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response is published with the response to validate the consultation approach taken. If you do not want your name or address published, please make this clear in writing when you send your response. We will then blank out the details.

Names or addresses that are blanked out might still be published at a later date, although this is unlikely to happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by a range of public bodies, including the Welsh Government, including information which has not been published. The law also allows us to withhold information in some circumstances, and if anyone asks to see information we have initially withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, in some cases there might be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. In such cases the Welsh Government would contact the affected person to seek their views, before deciding whether or not to reveal the information.

1. Background to this consultation

1.1 Chapter Two of [Programme for Government](#) sets out the Welsh Government's approach to public service reform. Central to these reforms is strong democratic accountability as a vital means of ensuring the views and needs of people are put at the heart of improving service quality. Good scrutiny is essential to improving the efficiency, effectiveness and quality of service delivery, including delivery through ever-increasing collaboration between those organisations which deliver public services.

1.2 Scrutiny of the way public services work together as a whole will provide effective challenge to, and governance of, collaborative projects. The development of local scrutiny capability and capacity to deliver wider public service scrutiny is currently supported by the Welsh Government in a number of ways, including through the third phase of the Scrutiny Development Fund; through our work with the Centre for Public Scrutiny¹ (CfPS); and through a programme of research into the current delivery of collaborative scrutiny.

1.3 The Welsh Government believes that cross public service collaborative projects should be scrutinised and this will be essential to ensure and promote shared responsibility and delivery, and maintain a clear line of accountability.

2. The scrutiny of public services

2.1 All local authorities and their partners are expected to have a Single Integrated Plan in place for their area from April 2013, as set out in "[Shared Purpose Shared Delivery](#)." In addition, we are currently consulting on placing integrated planning on a single statutory footing as part of the consultation on the [Sustainable Development Bill](#) (now re-named The Future Generations Bill.) This recognises no single public service organisation working in isolation can deliver improved outcomes for citizens and communities. However, while planning and delivery are part of the overall process of working collaboratively, organisations also need to ensure that strong accountability is in place, including arrangements for collective scrutiny.

3. What does the Local Government (Wales) Measure 2011 require?

3.1 The Local Government (Wales) Measure 2011 provides the Welsh Ministers with the legal power to 'designate' public service providers for the purposes of local authority scrutiny under section 21 of the Local Government Act 2000 ("the 2000 Act"). In other words it broadens the application of local government scrutiny to the wider public service (those organisations which are 'designated'), placing a new duty on local authority scrutiny committees to scrutinise public service providers in their area.

¹ The Centre for Public Scrutiny is the national body providing guidance, advice and support for council scrutiny committees. It was created to help those working across the public sector look at the effectiveness of public services.

3.2 Section 59 of the Measure (inserting new section 21(2ZA) into the 2000 Act) provides that local authorities' executive arrangements must ensure overview and scrutiny committees (or joint overview and scrutiny committees) make reports or recommendations on matters which relate to designated persons, and which affect the authority's area, or the inhabitants of that area.

3.3 Section 59 also amends section 21(13) to provide that an overview and scrutiny committee, in connection with making a such report or recommendations, may require a designated person to provide the committee with information (except in relation to an excluded matter) and may require an officer, employee or other representative of a designated person to attend meetings of the committee (except in relation to an excluded matter, i.e. a crime and disorder matter within the remit of a local authority's crime and disorder committee under section 19 or 20 of the Police and Justice Act 2006).

3.4 Section 60 (inserting new section 21F into the 2000 Act) provides that an overview and scrutiny committee may send a copy of the report or recommendations to a designated person, and request the designated person to have regard to the report or recommendations.

3.5 Section 61 (inserting new section 21G into the 2000 Act) provides that the Welsh Ministers may by order designate one or more persons or categories of persons for scrutiny by the local authority under section 21 of the 2000 Act.

3.6 The scrutiny of designated persons by overview and scrutiny committees may be enhanced by thoughtful consideration of the role co-option can play. Guidance on co-option has been published by the Welsh Ministers under Section 76 of the 2011 Measure. It makes it clear that utilising the expertise of specialists, community representatives and service users to support scrutiny activity may be desirable, and provides an additional and appropriate pool of resource to assist local authorities in responding to the requirements of their strengthened scrutiny powers.

[Statutory Guidance from the Local Government Measure – Chapter 8 – Co-option](#)

4. What do we mean by a Designated Person?

4.1 The Welsh Ministers will, subject to consultation, make a "Designated Persons Order". The Order will designate the individuals and organisations which will, as a consequence, be subject to scrutiny by local authority scrutiny committees.

4.2 This is not intended to duplicate existing systems of accountability. The aim is to complement these by focusing on areas where public services work together.

4.3 The statutory basis for the designation of persons is set out in section 61 of the Measure and the conditions to be met for the designation of a person or a category of persons are that the person:

- provides the public (or a section of the public) with services, goods or facilities of any description (whether on payment or not);
- provides those services, goods or facilities in the exercise of functions of a public nature; and
- is wholly or partly funded by public money.
- is not a local authority (meaning a county or county borough council).

5. Who will be Designated Persons?

5.1 The criteria in the Measure for establishing “designated persons” allow for many statutory and non-statutory organisations providing public services to be named (“designated”).

5.2 The Welsh Government’s policy is for public services, in the future, to be subject to effective scrutiny. The Designated Persons provisions in the 2011 Measure will impose a duty to scrutinise persons which have been designated. However, the Welsh Government recognises it will need to take a phased approach to the designation of bodies involved in the delivery of public services in Wales. We are therefore proposing, in the first instance, to designate those bodies listed in section 38 of the Local Government (Wales) Measure 2009 placed under a statutory duty to collaborate with local authorities in their community planning duties (now discharged as part of the development and operation of Single Integrated Plans). The first Designation Order under the 2011 Measure is likely to have the practical effect of placing a major focus of local authority scrutiny of “designated persons” on the contribution their Local Service Board (LSB) partners make to the delivery of shared outcomes in the SIP. There are, though, suggested additions to this list, as set out below, which will have the potential to enable local authority scrutiny of a wider range of public service outcomes set out in the SIP.

5.3 We recognise some local authorities may already be undertaking this kind of scrutiny of their partners, and the Order will simply aim to formalise those existing arrangements. We intend to make the Order as soon as we can after proper consideration of the responses to the consultation. This is likely to be in the early part of 2014, and will provide the statutory basis for the scrutiny of designated persons to be in place at that time.

6. Which bodies are under consideration?

6.1 The relevant bodies under consideration in this first designation phase are:

- Local Health Boards
- NHS Trusts
- Fire and Rescue Authorities
- National Park Authorities

6.2 Town and Community Councils are also named community planning partners. Given their existing democratic mandate, we are seeking views on whether and how they could contribute to local collaborative scrutiny and if it is necessary to designate them in this first phase.

6.3 In addition, acknowledging their importance in delivering better outcomes for communities across Wales through single integrated planning, we are proposing two significant additions to this list:

- Registered Social Landlords;
- Third sector organisations delivering services to the public, and that meet the criteria set out above in 4.2 ‘What do we mean by a Designated Person?’

6.4 The Welsh Government will set out in statutory guidance its expectations on ensuring this approach to scrutiny does not have an adverse impact on either national or very small and more localised third sector service providers.

7. What is good scrutiny?

7.1 Good scrutiny must sit at the heart of the decision-making process if it is to be effective, and offer rigorous and constructive challenge. The four key principles of good scrutiny, as defined by the CfPS², are that it:

- provides constructive ‘critical friend’ challenge;
- amplifies the voice and concerns of the public;
- is led by independent people who take responsibility for their role; and
- drives improvement.

7.2 Public service scrutiny aims to recognise different organisations’ contributions to delivering and promoting shared responsibility for shared outcomes. This can be achieved by broadening the application of local government scrutiny to the wider public service, and by clearly designating those bodies that fall within the envelope of ‘local public service provider’.

8. How can good scrutiny be ensured?

Maintaining clear accountability

8.1 Where collaborative scrutiny currently takes place it is on a voluntary basis; where there is no scrutiny of public service providers it represents a gap in organisations’ accountability framework. This gap will need to be filled if we are to ensure improved outcomes for citizens and communities. In her covering letter to this consultation paper the Local Government Minister sets

² Centre for Public Scrutiny: 2006.

out clearly the overall policy framework in which the Designated Persons provisions will operate.

8.2 To support this, the Welsh Government will issue statutory guidance to provide clarity on the operation of Designated Persons scrutiny when it makes the Designated Persons Order early in 2014.

Forward work programmes – ensuring impact is maximised

8.3 The Welsh Government will also set out in statutory guidance how it expects local authorities to work jointly with partners and neighbouring local authorities when constructing forward work programmes for scrutiny, in order to maximise the impact of scrutiny and avoid placing an undue burden on organisations operating across a number of local authority areas, such as Local Health Boards, National Park Authorities, Fire and Rescue Authorities, and designated Third Sector service providers.

Capacity and capability

8.4 The capacity of local authorities and their partners will be critical to ensuring this extension in local authorities' scrutiny powers contributes to delivering better outcomes for citizens and communities. Scrutiny Committees may benefit from co-opting individuals with professional expertise and/or useful experience onto a committee. As outlined in paragraph 3.6 above co-optees are seen as experts that strengthen the committee whilst the Local Authority retains overall control of the scrutiny function. A Local Authority may require the added knowledge brought to the table by co-optees on a temporary 'issue-specific' basis, or on a more permanent basis. Co-optees would be expected to enrich the line of questioning and as such their capability and representation as an expert advisor is important.

How to make your views on designated persons heard

Welsh Government welcomes your views and observations on the proposed designated persons listed above; and on individuals and organisations that you consider it appropriate to designate in future phases. Please complete Annex A.