

# **Better law making: the implementation challenge**

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# Summary report

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Effective implementation is critical to good law-making. If implementation is not adequately considered by the Welsh Government and Senedd when legislation is being developed and scrutinised, desired policy objectives are unlikely to be achieved.

**Drawing on its post-legislative examination of five significant laws, Audit Wales here considers some of the challenges faced by local authorities and other public bodies when trying to implement legislation on the ground.**

- 1 Since devolution in 1999, the legislative powers of the Senedd have grown significantly. Today, it is a mature parliamentary institution, making primary legislation (Acts of the Senedd) in a wide range of policy areas. This democratic shift has enabled the design and implementation of laws and public policy to be better tailored to the needs and priorities of Wales.
- 2 For laws passed by the Senedd to be effective, they need to be implemented, often by local government bodies or other parts of the public sector. Implementation is a complex task which needs to be fully thought through by the Welsh Government and the Senedd whenever they bring forward and make any new legislation.
- 3 The scrutiny of legislation, including consideration of the challenge of implementation, is informed by an Explanatory Memorandum that accompanies each Bill introduced into the Senedd. An Explanatory Memorandum sets out its policy objectives, details of any consultation already undertaken on the Bill, estimates of the costs of implementing the Bill and other relevant information. This provides the basis for much of the detailed examination and amendment that then takes place in the Senedd, generally through a four-stage process of scrutiny by Senedd Members in committee and plenary.
- 4 Once passed into law, good practice would be to undertake some post-legislative examination of how well new legislation is being implemented or, indeed, whether it is being implemented at all.

## Implementation of new legislation by local government

- 5 In 2019-20 and 2020-21, the Auditor General published five reports on how local authorities are responding to the challenge of implementing recent legislation adopted before the Fifth Assembly. Each of these reviews identified some difficulties faced by local authorities and their public sector partners in implementing their new responsibilities. The five reports are:
  - Local planning authority services
  - The new 'Front Door' to adult social care
  - Review of Public Service Boards (PSBs)
  - Progress in implementing the Violence Against Women, Domestic Abuse and Sexual Violence (VAWDASV)
  - Auditor General's Sustainable Development Principle Examinations
- 6 The remainder of this paper highlights some important common issues emerging from these reports. The Welsh Government and Senedd should consider these findings when developing and scrutinising future legislative proposals in order to assist the effective implementation of that legislation.

## Key findings

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### Regulatory Impact Assessments underestimate the costs associated with implementing legislation

- 7 Reliable and complete financial information is fundamental to making good law and is essential in supporting public bodies to successfully deliver their new responsibilities. We understand that preparing the RIA is not easy and can often be a time consuming, intensive process that itself can incur significant costs.
- 8 A key aspect of the legislative process is therefore for the Senedd to assess the likely costs and impact of any proposed legislation. To support this, a Regulatory Impact Assessment (RIA) is included as part of the Explanatory Memorandum that is laid alongside legislation considered by the Senedd. We acknowledge that RIAs are completed at a point in time and cannot be reasonably expected to anticipate the potential impact of unforeseeable issues such as Brexit and austerity. Welsh Government clearance processes for new legislation emphasise the importance of ensuring funding of any new responsibilities for local government is considered. However, despite these processes being in place our reviews also show that there are frequently weaknesses in important aspects of the RIAs.
- 9 For instance, the RIA that accompanied the Social Services and Well-being Bill 2013 stated that the cost of the provision of preventative and early intervention services falls to local authorities and they will have a duty to provide or arrange such services and facilities as they see fit. The RIA concludes that 'we do not expect that this duty will give rise to any costs for local authorities in Wales. The duty is intended to codify established practice and existing statutory guidance in primary legislation, rather than extend significantly the scope of local authorities' responsibilities in this area'.
- 10 Our review found that local authorities started in very different places with regard to preventative and early intervention services, and for service users there remains a postcode lottery of provision. In particular, our review found that there is still some way to go in key areas such as advocacy, befriending and help for carers. To address this, and so ensure an adequate safety net across the country, requires investment in services and greater integration of current provision.

- 11 However, the funding needed to develop an effective ‘front door’ to social care was not quantified or effectively considered in the RIA. Underestimating this cost has resulted in difficulties for local authorities in implementing their new duties.
- 12 The RIA that accompanied the Planning (Wales) Bill 2014 outlined that implementing the Bill would result in a £0.5 million increase in Welsh Government expenditure and just over £1 million increase in expenditure by the 25 local planning authorities. There was no funding provided by the Welsh Government to local planning authorities to support implementation of the Bill. The analysis in our report shows that since 2014-15, local planning authorities have seen their net expenditure reduce by £3.9 million as a result of austerity. The RIA therefore failed to account for the challenging operating environment for local government and overestimated capacity within local planning authorities to implement the legislation without investment.
- 13 The RIA accompanying the Gender-based Violence, Domestic Abuse and Sexual Violence (Wales) Bill in June 2014 estimated that the additional costs of the legislation would be £7.2 million between 2014-15 and 2017-18 of which the bulk would be for training (£5.6 million). The specific costs for local authorities and Health Boards was identified to be in the region of £220,000 and related to the mapping and production of local strategies<sup>1</sup>.
- 14 Our report identified that whilst most public bodies had delivered local strategies within the timescales set by the subsequent 2015 Act, only 5% of organisations responding to our survey stated that their mapping provided a complete picture of services with no gaps. All other respondents acknowledged limitations in their assessments and highlighted that further detailed work is required to ensure a comprehensive picture of current needs and future priorities is provided. To do this requires additional resources, way beyond the £220,000 estimated in the RIA.
- 15 Many organisations also expressed serious concerns about how public bodies would be able to implement the VAWDASV Bill with ever-tightening budgets and reducing capacity. This is particularly demanding given the Act is ambitious in what it seeks to deliver in outcome terms for people affected by gender-based violence and because of the complex mix of public and third sector bodies engaged in delivering support to victims and survivors of domestic abuse and sexual violence.

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1 [Gender-based Violence, Domestic Abuse and Sexual Violence \(Wales\) Bill Explanatory Memorandum](#)

- 16 We acknowledge that the Welsh Government has sought to improve how it develops legislation since the five Acts that were covered by our recent reports<sup>2</sup>.

## Local authorities struggle with capacity and find it difficult to implement new legislation

- 17 It is apparent from much of our work that, in a period of prolonged austerity, local authorities have often had to reduce staffing in order to balance budgets. This has affected their ability to implement and manage new responsibilities. With this in mind the Welsh Government should routinely consider whether any additional funding is required to support the implementation of new legislation and associated responsibilities.
- 18 For instance, in our report on planning services, we surveyed senior planning officers, planning committee members and organisations who regularly use planning services. All of these groups noted that in the last decade there has been a significant reduction in planning staff. As a result, local planning authorities struggle to find the capacity to deliver their responsibilities. In addition, over time the more experienced planning staff are retiring and not being replaced which is leading to a deficit in skills, experience and 'know how'.
- 19 Whilst local planning authorities have sought to protect and retain skills and capacity in key areas, most notably planning policy, there have been significant reductions in others. There is a consistent picture of where gaps in resources are seen most acutely, principally in specialisms such as design, data analysis, research, infrastructure and trainee planning officers. This trend reflects the desire of authorities to protect front-line staff and service delivery as much as possible, but the reduction in the number of trainees is concerning.
- 20 Similarly, our review of PSBs found that many public bodies find it challenging to resource delivery of the requirements of Welsh Government guidance in respect of partnership working. For example, the guidance stipulates membership of Public Service Boards being split between statutory members – the local authority, Fire and Rescue Authority, local Health Board and Natural Resources Wales – and Statutory Invitees (Welsh Government, the Police, the Police and Crime Commissioners, Probation, Community Rehabilitation Company and voluntary sector representatives). PSBs are not, of course, the only partnership structures in which these public bodies are required to participate.

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2 For example, in responding to the then National Assembly for Wales' Constitutional and Legislative Affairs Committee report on Making Laws in Wales published in October 2015.



- 21 Our analysis found that all statutory partners across all PSBs frequently send deputies, particularly health boards and fire and rescue authorities, and the attendance of statutory invitees varies widely. The lack of continuity in attendance and frequency of substitutions is regularly flagged as reducing the effectiveness of PSBs. However, continuity in attendance is challenging for public bodies working regionally where capacity is stretched.

## Implementation of legislation often requires the Welsh Government to support local authorities and publish timely guidance, but this is not always provided nor is it sufficiently clear and aligned

- 22 Each of the recent Acts we examined is supported by detailed supplementary guidance that sets out specific tasks and expectations for local authorities and their partners to deliver against. Often, it is this additional policy guidance that sets out the detail of what needs to be done. Without the guidance, delivering the expectations of the various Acts becomes difficult, if not impossible. We acknowledge that public bodies have different expectations of Welsh Government guidance. Some want detail, others want flexibility and getting this balance right can be challenging.
- 23 We found some weaknesses in how the Welsh Government has developed and implemented its guidance – a mix of unclear expectations, over ambitious targets and delays. Limited or poorly written guidance creates uncertainty and is potentially costly for public bodies to implement. Robust, coherent guidance enables appropriate action to be taken without public bodies being required to seek additional support or take expensive independent legal advice.
- 24 For instance, the guidance on development of local VAWDASV strategies, originally due in May 2016, was delayed and eventually published almost two years later in March 2018.
- 25 Many local authorities commented that they received limited support from the Welsh Government, partly because of the size of the Welsh Government VAWDASV team and the significant staff turnover it had experienced. One interviewee, for instance, stated that, ‘due to the nuanced and complex nature of VAWDASV, it takes time to get people up to speed with the issues. Hence the Welsh Government team has not yet been well-placed to offer support’.

- 26 With regard to Public Service Boards, we found that Welsh Government guidance and advice, was considered by local authorities to be overly bureaucratic and too prescriptive. For instance, one noted that ‘the legislation has been very prescriptive, and it has delayed the start of work on projects. Early discussions focussed on dates when things had to be done by and perversely dates things couldn’t be started until a time lapse had occurred’. Other comments received noted that to support the PSBs to flourish requires ‘less nationally imposed demands and expectations; less central generated bureaucracy’ and that PSBs should have ‘greater flexibility to enable the PSB to focus on initiatives rather than compliance with the guidance’.
- 27 The Social Services and Well-being (Wales) Act 2014 strengthened social services support for carers, providing them with rights to a needs assessment and to support for any ‘eligible needs’. It also placed duties on local authorities to provide ‘information, advice and assistance’ to carers regardless of whether such an assessment is undertaken. The Act aimed to improve service planning by requiring local authorities and health boards to assess the care and support needs of their populations, including carers who need support. Despite the Act seeking to strengthen rights and provide better services for carers, our evidence shows that progress has been mixed at best. Our detailed survey and engagement with carers consistently highlighted ongoing difficulties in accessing the information they need to understand their rights and entitlements and make informed choices. Our findings echo the conclusions of others, most notably Carers Wales<sup>3</sup> and Care Inspectorate Wales<sup>4</sup>.

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3 Carers Wales, [Track the Act Briefings](#)

4 Care inspectorate Wales, [In support of carers – carers engagement overview report](#)

## Different pieces of legislation and guidance are not sufficiently integrated to ensure public bodies are able to deliver their new responsibilities effectively and efficiently

- 28 With capacity and resources stretched, and public bodies struggling to maintain and deliver key services, it is important that local authorities and their partners find the most efficient and effective way of working. This can be greatly assisted if the Welsh Government fully considers the 'read across' in drafting its statutory guidance and seeks to join up and integrate guidance wherever possible.
- 29 This is an important issue that needs addressing. As emphasised in the Auditor General's May 2020 publication summarising his examination work under the Well-being of Future Generations (Wales) Act 2015<sup>5</sup>, we found that there is a lack of integration between separate Acts. This makes it difficult for public bodies to join-up statutory requirements and is a barrier to progress.
- 30 The demands of different legislation are also seen as a barrier to integration by some. This is partly a result of poor alignment between acts – the requirements of the Local Government Measure 2009 and the Well-being of Future Generations (Wales) Act 2015 for example. It is also a reflection of inconsistency in language and meaning. For example, the understanding of what integration means in practice is not helped by inconsistencies between the Social Services and Wellbeing (Wales) Act 2014 and the Well-being of Future Generations (Wales) Act 2015. One area has proved particularly challenging in this respect – the demands placed on public bodies by new statutory partnership arrangements. Our reviews show that public bodies have found it challenging to respond to and align partnership activity under different pieces of legislation. As well as having to create Public Service Boards, public bodies have also been required to form regional partnership boards under the Social Services and Wellbeing Act and regional delivery arrangements under the VAWDASV Act.

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5 So, what's different? Findings from the Auditor General's Sustainable Development Principle Examinations, May 2020.

- 31 We found that the lack of alignment between these partnerships – which operate on different geographical boundaries – is diluting impact, stretching capacity and increasing the complexity of service delivery. Generally, it is the same organisations and broadly the same people who are having to attend the various, and often numerous, partnership meetings. Respondents to our surveys and calls for evidence noted that multiple partnerships also create difficulties in aligning priorities and reduce opportunities for greater collaboration and integration of services. This is a particular issue for partners who cover more than one PSB area – Fire and Rescue authorities for instance – and for partners that are not included as members of relevant forums – for example the Police and Police and Crime Commissioners, who do not sit on Regional Partnership Boards.
- 32 We also found that public bodies often duplicate activity by, for example, completing separate needs analyses and plans or strategies. And often because the requirements of different pieces of legislation are not aligned, the potential for integration and collaboration of services is limited and perpetuates the fragmented nature of delivery. One interviewee concluded that the ‘biggest challenge is the demands placed on public bodies to deliver the expectations of different pieces of legislation and their core responsibility. The lack of co-terminus between guidance, policy and legislation is creating operational challenges with separate and disjointed groups to plan and deliver services. All have different focus but often cover the same territory with the same persons servicing all these fora. This is neither efficient nor effective. Too often the same people are dealing with this work and are not doing the day job’.
- 33 Similar issues were picked up in a post legislative review conducted by the Equality, Local Government and Communities Committee on the VAWDASV Act published in December 2016<sup>6</sup>. The report concluded that: ‘Witnesses including the National Adviser told us that more could be done to reduce the burden of legislative requirements on local authorities (specifically training and needs assessments), by helping them to align the various legislative obligations of different legislation, in particular those contained in the Social Services and Well-being (Wales) Act 2014 and the Well-being of Future Generations (Wales) Act 2015’.

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6 Equality, Local Government and Communities Committee Post-legislative scrutiny report on the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015

# A way forward

- 34 Drawing on this set of reviews, it is clear that there are some common and important issues arising from the implementation of recent Acts of the Senedd. It is in all our interests for new legislation to be implemented effectively and efficiently if the public service improvements needed are to be achieved. With this in mind, we believe that the Welsh Government and the Senedd need to consider these findings to help strengthen the production and scrutiny of future legislative proposals.
- 35 Having established that legislation is necessary in the first place, the Welsh Government and the Senedd should routinely address four key questions:

<p><b>1</b> How can public bodies implement this legislation?</p>	<p>Assess capacity within public bodies when developing legislation to determine and ensure that they are able to implement their new duties in a timely and effective way.</p>
<p><b>2</b> What additional resources are needed to support implementation?</p>	<p>Work with the public bodies responsible for implementing legislation to jointly understand, assess and agree the likely additional cost associated with taking on new duties.</p>
<p><b>3</b> What guidance is needed by when?</p>	<p>Work with responsible public bodies well in advance of the law's commencement date to develop and finalise the key guidance required to support implementation. Reduce the burden on public bodies by integrating and aligning guidance where possible.</p>
<p><b>4</b> How do the requirements of the legislation align with other requirements placed on public bodies?</p>	<p>Consult and work with public bodies to ensure that the requirements of new legislation can be integrated with existing requirements to reduce burden, avoid duplication and aid simplification.</p>

# Appendix – Our reports

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## Our reports

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- **Local planning authority services** – the report considers the progress of local planning authorities in delivering their new responsibilities established by the Planning (Wales) Act in 2015 and how planning services are acting in accordance with the sustainable development principle contained within the Well-being of Future Generations (Wales) Act 2015.
- **The new ‘Front Door’ to adult social care** – this report considers how local authorities are delivering the new responsibilities of the Social Services and Well-being (Wales) Act 2014. The report summarises the comprehensiveness of Information, Advice and Assistance (IAA) services, the availability of preventative and community-based support, and the assurance systems put in place to ensure those who need care and support or are at risk are identified and assisted. The report also reviews the impact of the front door on demand for social care (expenditure, assessments and services) and in respect of improving wellbeing.
- **Review of Public Service Boards** – this study examined how Public Service Boards (PSBs) are operating, looking at their membership, terms of reference, frequency and focus of meetings, alignment with other partnerships, resources and scrutiny arrangements. The statutory basis for PSBs is the Well-being of Future Generations (Wales) Act 2015. A second phase report looking at how partners are working together to tackle rough sleeping is currently underway.
- **Progress in implementing the Violence Against Women, Domestic Abuse and Sexual Violence Act** – this report examines how the new duties and responsibilities of the Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 (VAWDASV) are being rolled out and delivered. In particular, the review focuses on the key expectations of the Act and considers how public bodies are helping to prevent, protect and support victims and survivors in the planning, commissioning and delivery of services.

## Our reports

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- **So, what's different? Findings from the Auditor General's Sustainable Development Principle Examinations** – the report sets out the main findings from the 71 sustainable development principle examinations, carried out during 2018-19 and 2019-20 across the 44 Welsh public bodies named under the Act. The report provides an overview of what we looked for, what we found and what we will expect to see in future. It also draws on other relevant findings across the breadth of our audit work.



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