

# Report

## Democratic Services Committee

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### Part 1

Date: 18 February 2016

Item No: 3

**Subject DRAFT LOCAL GOVERNMENT (WALES) BILL**

**Purpose** To consider a response to the Consultation document

**Author** Head of Democratic Services

**Ward** All Wards

**Summary** The Bill initially refers to the new Council areas that are to operate from 1 April 2020. Members will be aware that Newport is included in a new Local Government area along with the county of Monmouthshire and the county boroughs of Blaenau Gwent, Caerphilly and Torfaen. Elections will be held in May 2019. The new authorities will operate in Shadow form until April 2020.

The Draft Bill outlines:

- The establishment of new Counties by the merger of existing Counties and County Boroughs; and
- A new and reformed legislative framework for Local Government democracy, accountability, performance and finance;

The accompanying documentation seeks further views on other proposals which have not as yet been drafted as legislation. The preparatory work and consultation around the Draft Bill will provide a new Welsh Government a 'ready-made' reform bill which could be introduced soon after the Assembly elections.

The Democratic Services Committee is asked if it wishes to make a non-party political response to the Consultation document. Clearly the political groups will wish to make their own submissions.

To assist the discussion, the responses made by the Welsh Local Government Association are included in this report.

Members may consider that their response could recognise that in producing the Draft Bill, the Welsh Government has responded to many of the concerns and views expressed by councils during the White Paper consultation. There are therefore a number of proposals that would be welcomed by councils including:

- The non-introduction of some of the more controversial White Paper proposals such as term limits for councillors, review of members' remuneration and elections by thirds;
- Proposed power of general competence;
- The proposed clarification and simplification of authorities' executive and full council functions;
- Improving and streamlining of some existing burdens and duties on councils, including remote attendance and community polls; and
- A reformed improvement regime based on self-improvement and proportionate external regulation.

Members may also feel able to support the principles underpinning a number of other aspects of the Draft Bill, such as improving community involvement and public engagement, however, some of the proposals (as drafted) are prescriptive and would create additional burdens and resource implications for authorities.

Members may consider that some proposals are however overly-prescriptive and would create additional burdens, resource implications and/or complexity for local authorities. There are also some proposals which will have an impact on local democracy and are inconsistent with expectations and arrangements of other tiers of government. Such proposals include:

- 'Performance duties' for councillors;
- Establishment of 'Community Area Committees';
- Introduction of 'improvement requests';
- Councils' duties over other public bodies, such as provision of training to community councils and public participation duties over fire and rescue and national park authorities;
- The consistency of the proposed improvement and corporate planning regime with the new duties of the Wellbeing and Future Generations Act.
- Ministerial powers to direct or issue guidance to local authorities, for example on workforce matters.

**Proposal** To agree a response to the Consultation document or to conclude not to make a response

**Action by** Head of Democratic Services

**Timetable** In line with the consultation period

This report was prepared after consultation with:

- Chief Executive
- Monitoring Officer
- Head of Finance
- Head of People & Business Change

## Background

The establishment of new Counties by the merger of existing Counties and County Boroughs remains an issue under debate and discussions are continuing in relation to the proposed merger plans. Nevertheless the consultation document sets out a number of other proposals that impact on the governance arrangements of the Council and therefore fall within the remit of this committee

The main points are set out below. I have included the views of the WLGA in red under each section to help with discussions:

## General Power of Competence

- The Draft Bill introduces a **general power of competence for county councils and 'community councils with competence'**, setting out the boundaries of the power and degree to which it may be used for commercial purposes.
- The general power of competence gives a council the same power to act that an individual generally has.
- It is a power of first resort which means that an authority does not need to rely on specific powers in legislation to do something, so long as what they intend to do is not otherwise illegal.

The WLGA has long called for a general power of competence and welcomed its inclusion in the White Paper. Whilst this new power is welcomed, as drafted, it is constrained by legal provisions which local authority lawyers would have to carefully consider before the power could be used.

## Promoting Access to Local Government

Chapter 2 places a **duty on councils to promote access to, and public participation in, local government.**

- This duty also means that councils have to **promote access to and public participation in 'connected authorities' including community councils, fire and rescue authorities and national park authorities.**
- In exercising this duty, councils have to **produce a statutory 'public participation strategy'** (which also covers the connected authorities).
- Councils must also **take 'reasonable steps' to consult the public over budget proposals.**
- Councils are already actively seeking to engage with communities. Many have adopted the principles of public engagement, are broadcasting council meetings and undertaking extensive consultation and engagement over budgets and service planning proposals.
- It is not clear however why councils should have duties and responsibilities over other autonomous 'connected authorities'; this will inevitably have resource implications on councils and clouds accountability and responsibility for delivering on public participation duties.
- This issue of councils having duties over other bodies is featured elsewhere in the Draft Bill, including a duty to consider and provide for the training needs of community councils.

## Community Area Committees

The Bill requires the establishment by county councils of **community area committees (CACs).**

- The 'community area' will be defined by the Public Service Board

- Membership of the CAC would include: all ward members within the area; representative of each community council in the area; representatives from other bodies exercising functions of a public nature and representatives from third sector bodies.
- CACs must prepare (and consult on) a statement of priorities and objectives annually
- Councils may delegate functions to CACs. Ministers may also direct or restrict the delegation of functions to CACs.
- In response to the White Paper, the WLGA supported the concept of community based models of governance particularly should county councils merge and become more 'distant' from local communities. There were some concerns regarding the clarity and complexity of the original proposed models and, critically, the relationship with community councils and PSBs.
- The proposals as drafted could create complexity and could be construed as creating another tier of governance and it is not clear how the committee roles relate to the proposed roles of reviewed (and larger) community councils.
- It is not appropriate that a statutory partnership (the PSB), albeit which includes LA representation, should determine the area coverage and the basis for council committees. The provisions of the Wellbeing of Future Generations Act regarding community areas were set out for very different purposes (e.g. the undertaking of wellbeing assessments and planning) and not for community representative purposes and have been treated differently by councils/partnerships (some have defined them as communities of interest and therefore do not have complete geographical coverage).
- It remains unclear, as yet, how many CACs there would be in each council area, size of membership and number/regularity of meetings – however, they will present an additional burden on authorities in terms of administration (in particular policy and support staff given the need to prepare and consult on annual priorities and actions, as well as committee administration, translation and electronic broadcasting requirements).
- CACs' membership (as described) could be large and unwieldy, depending on the size of proposed community areas.
- Not all council areas would have community councils and so democratic representation could be imbalanced with community/public body 'co-optees'.
- Would community/public body 'co-optees' be subject to the member code of conduct and proposed new 'performance duties' for councillors?

## Improvement Requests

Chapter 4 places county councils under **duties in respect of 'improvement requests'**, which require a county council to enter into discussions with certain community bodies for the purpose of improving local outcomes.

- Any community group or community council can make written 'improvement requests' to the council over how it believes outcomes could be improved. This would appear to include proposals for services to be delegated and delivered by or with the community group or community council.
- Unless there are 'reasonable grounds to refuse' or a similar request has been previously considered, the council has a duty to decide to agree to an improvement request, inform the interested body and report publically and produce an annual report of improvement requests.
- A complaints process relating to improvement requests must also be set-up.
  
- *This proposed power is similar to that of 'participation requests' introduced in Scotland through the Community Participation and Renewal Act 2015. It is not clear whether any analysis or evaluation of the Scottish experience has been completed since enactment, however, during the passage of the Bill, COSLA expressed the following concerns:  
"The financial impact of the Bill in this area is two-fold. Firstly, the resource required to enable communities, on an equal basis, to have the ability and capacity to take a proactive role in how services are planned and delivered. Secondly, the staff resource required to set up and manage a new process for participation requests within Local Authorities. However, the main concern from COSLA centres around the difficulty of anticipating the demand for this legislation and, in turn, quantifying the costs that will be incurred by Local Authorities. It has been suggested that the impact could be similar to the current Freedom of Information process and COSLA is therefore concerned by the potential administrative burden that these new duties could create."*
- *This proposal is based on the White Paper's 'activist council' ambitions. Councils were broadly supportive of the 'activist' concept as they are pro-actively (and increasingly) engaging with communities and partners in the design and delivery of services. Many councils have led the way in terms of developing alternative delivery models for services.*
- *Councils already initiate and respond to informal 'improvement requests' on an ongoing basis in terms of service design and delivery, both through formal consultation and engagement and ongoing, real-time service feedback or complaints.*
- *The 'improvement requests' proposal as drafted therefore over-formalises such an approach and will create a significant amount of bureaucracy which could impact on the speed of decision-making – councils will have to formally consider and report (either through executive or scrutiny) any such requests from the community received.*
- *Similarly, additional business and project planning capacity will be required as well as capacity-building support for community groups if services were to be transferred.*
- *Concerns have also been expressed that this will create complexity in terms of service delivery and deliverers across what will be larger authority areas.*
- *Concerns have been expressed regarding 'counter-improvement requests' where a different community group or body submits an alternative request in response to a request from another body.*

## Improving Public Access

Chapter 5 & 6 make provision about **improving public access to local authority meetings**.

- Councils will have to **electronically broadcast all public council meetings**
- **Ministers may allow public filming of meetings**
- **Duty to produce a user friendly summary of the constitution**
- *Whilst many councils are already proactively webcasting a range of council meetings already, a duty to broadcast all public council meetings (including proposed new CACs) will create an additional administrative burden on councils and require additional resources.*

## Part 4 – Functions of County Councils and their Members

- This part sets out '**Performance Duties**' for **councillors**, which include the requirement (unless there is 'a good reason') to:
  - **Attend at all committee/council meetings** of which the councillor is a member
  - **Hold 4 surgeries each year**
  - **Respond to correspondence within 14 days**
  - **Undertake training** deemed mandatory by the council
  - **Publish an annual report**
- Councillors can be reported for a **breach of any of the above which would be deemed equivalent to a breach of the code of conduct** and similar sanctions (including suspension) could be applied by the Standards Committee.
- *The Leader and Coordinating Committee recently called for consistency across all levels of government in Wales and a wider review of all levels of governance. The above proposals are inconsistent with expectations on Assembly Members for example, where no such 'performance duties' or standards are in place. It should be noted for example that whilst councillors would have 14 days to respond to correspondence (when they will be covering larger populations of around 4,000 voters), Welsh Ministers have 17 working days to respond to correspondence (according the WG website).*
- *The above list focuses on a simplistic interpretation of the 'formal' council role of councillors, whereas many see the most significant and valued role of councillors being their outward facing community leadership role in their communities.*
- *Similarly, the above list does not adequately equate to 'assessing' a councillor's 'performance' e.g. a councillor may attend every meeting and be deemed to be performing by the above criteria, but he or she may not contribute effectively to those meetings. Whilst surgeries are useful forums for many, councillors use varied methods of engaging with and being available to their communities.*
- *Notwithstanding the above, it is not clear why any failure to adhere to the above list could be deemed consistent with and comparable to a serious breach of the current standards regime. The proposals as drafted risk the generation of a significant number of vexatious complaints which will affect the reputation of councillors and councils and create additional workload for Monitoring Officers and Standards Committees.*
- Chapter 4 places **duties on Group Leaders to take 'reasonable steps to promote and maintain high conduct of standards by members of the group'**
- Chapter 5 requires the **leader (or elected mayor) to set objectives for the executive, and requires candidates who wish to stand for elected mayor or executive leader to prepare a written manifesto**. It also enables the appointment of members as assistants to the executive.

*In terms of consistency with other tiers of government, is not clear why a leader of a majority group elected on an electoral manifesto should need to set out a further manifesto for election as leader. The leader once elected would also have to set annual objectives for the Chief Executive (see below).*

- Chapter 6 requires councils to replace the term and role of **'head of paid service' with that of 'chief executive'**.
- Council leaders must also set and review objectives for the Chief Executive
- The leader must prepare and publish a report on the above, and share it with all members.
  
- Chapter 7 **allows voting rights for co-opted members of overview and scrutiny committees**, such rights would be determined by councils. It also requires standards committees to prepare annual reports on the exercise of their functions and other matters.

*A number of authorities actively involve cooptees on committees and this proposal allows the strengthening of cooptees' roles but leaves it to local discretion which is welcome.*

## **Part 5 – County Councils: Improvement of Governance**

Part 5 sets out arrangements for a new regime to improve the governance of county councils; it largely dis-applies much of the Local Government (Wales) Measure 2009 as it applies to councils.

- Chapter 1 places a **general duty on county councils to 'make, implement and comply with governance arrangements for the purpose of securing good governance; accountability; and economy, efficiency and effectiveness in the use of resources'**
- Councils will have a **duty to prepare and publish a corporate plan, consult on it, keep it under review and report on progress** made against the matters set out in the plan. The Draft Bill lists all the features expected of a corporate plan, including workforce planning, risk management, asset management and financial planning.
- Councils' will have a **duty to undertake and publish an annual 'self-assessment'** of its compliance around the general duty around good governance.
- Councils must also **commission a peer assessment once every term**. The peer assessment report and council's action plan in response must be published.
- The Draft Bill clarifies **Ministerial powers of intervention**, support and commissioning of a governance review.
  
- *The WLGA welcomed the White Paper proposals regarding the reduction of regulation and promoting self-assessment and peer assessment. The WLGA, with local government, had developed a programme of self-assessment and peer assessment which has largely been translated onto the face of the Bill. The WLGA warned about turning a successful voluntary and sector-developed model into a prescriptive statutory assessment and regulatory regime.*
- *The Draft Bill however includes some prescription around processes. The statutory prescription in particular of the peer assessments means they will become quasi-inspections and will be less effective as improvement tools. The prescription included in the associated documents is too detailed and inflexible, to the point that the only Welsh peer Powys is permitted to use would be from the new Cardiff-Vale of Glamorgan council.*
- *It is not clear how well the corporate planning and reporting proposals align with the new duties of the Wellbeing of Future Generations Act. It appears that the detailed proposals in the Draft Bill duplicate many of the new duties on councils and therefore will increase internal bureaucracy. Combining the new duties of the FG Act and those of the Draft Bill, councils will have to produce (or contribute to) 5 sets of annual priorities and also report on them:*
  1. *Councils set Wellbeing Objectives and report annually (FG Act)*
  2. *PSBs set Wellbeing Objectives and report annually (FG Act)*
  3. *Leaders set priorities for Chief Executives and report annually (Draft Bill)*



4. *Councils set corporate plan priorities (including performance priorities) and report annually (Draft Bill)*
  5. *(A number of) Community Area Committees' set annual priorities and objectives (Draft Bill)*
- *Statutory Performance Indicators do not feature on the face of the Bill (unlike the predecessor 2009 Measure) but it is understood that they are likely to feature in a final Bill. According to civil servants, the statutory national strategic indicators are currently being reviewed – it is not clear, however, why this review is being undertaken in isolation and after the Welsh Government has consulted on the national Wellbeing Indicators which also cover local government performance in many areas.*
  - *Whilst the Ministerial powers of intervention and support are similar to the present 2009 powers, there are no criteria (such as evidence considered) before the triggering of an intervention.*
  - **WAO, Estyn and CSSIW 'at intervals as they see fit' must carry out a combined assessment in relation to each council.** The council must prepare a formal response to the combined assessment. Regulators must also coordinate their functions.
  - *The annual external regulatory burden around such assessments and plans appears to have reduced, but it is unclear how burdensome and regular the combined external regulatory assessments will be.*
  - *It is unclear how the improvement duties and timescales in this Part of the Draft Bill align with wider wellbeing planning and reporting duties in the Wellbeing of Future Generations Act, likewise, it is unclear how the AGW's duties under the Draft Bill align with the AGW's new duties under the Wellbeing of Future Generations Act.*
  - *Whilst the reference to the coordination of regulators' functions is welcomed, this is not significantly different to the current duties as per the 2009 Measure, so it is not clear what impact this will have.*
  - **Audit Committees renamed Corporate Governance and Audit Committees and membership would include a third lay member and the chair must be a lay member.** The Committee's role in considering regulatory and assessment reports would be strengthened.

*Although lay members are valued members of audit committees currently, the prescription around proportion of membership and chairmanship will affect local discretion and local democracy.*

## Part 6 – Community Councils

- Chapter 1 requires the **Local Democracy and Boundary Commission for Wales to undertake a review of community council arrangements.** That is, a review of the communities within the new counties, to be established under the Draft Bill on 1 April 2020, for the purpose of recommending changes to the community councils and their electoral arrangements.
- This is welcomed, as the WLGA expressed concern that the White Paper placed such duties for review on county councils*
- Chapter 2 places a **duty on county councils to consider the training needs of community councillors, and to make arrangements to meet those needs.**
  - *This would be an additional burden for local authorities.*
  - *It is not clear why councils should have duties and responsibilities over another tier of democratically accountable government (and builds on the responsibilities outlined above in relation to council duties over public participation in community councils).*



## Part 7 – Workforce Matters

- **Establishment of a statutory Public Services Staff Commission**
- Welsh Ministers may **produce guidance on workforce matters which public bodies (including councils) would have to have regard to**. Such guidance could include:
  - 'planning by public bodies in relation to the size and composition of their workforce
  - recruitment and retention of staff of public bodies;
  - The management, organisation and remuneration of staff of public bodies;
  - Training and development of staff of public bodies'
- *The WLGA is supportive of the Staff Commission as a vehicle to assist with workforce issues around the transfer of staff as part of any re-organisation.*
- *The powers for Ministers to issue guidance which councils must have regard to over such matters of management and staffing is potentially a significant Ministerial power which could effectively give the Minister more influence over a council's staffing structure, complement and management arrangements including pay than locally elected members will have, and could impact on current contractual arrangements.*

## Part 8 – General

- Contains general provisions regarding interpretation and **commencement**
- Most provisions commence following Ministerial orders in statutory instruments, but the following would come into force within 2 months of Royal Assent (*possibly April 2017*):
  - **Establishing new councils (Chapters in Part 1)**
  - **General power of competence (Part 2)**
  - **Improvement Requests (Chapter 4 of Part 3)**
  - **Review of community councils (Part 6)**

## Other proposals included in the [Consultation Document](#)

The Welsh Government is further seeking views on a number of other proposals not included on the face of the Draft Bill and build on the White Paper consultation. Proposals include:

- **Right of Recall of councillors (p29)** – Although not included within the Draft Bill, provisions are being considered whereby if a Councillor becomes subject to a suspension from office following a breach of the code of conduct, local people could raise a petition calling for a by-election. If a petition was signed by at least twenty percent of the electorate in that ward, a by-election would have to be called.  
  
*WLGA White Paper response stated that the WLGA does not support the concept of right of recall. While WLGA members are prepared to engage in a national debate on the right to recall this must be on the condition that it covers all levels of political representation in Wales.*
- **Simplification of remote attendance provisions (p32)**  
  
*This would be welcomed, as there was in principle support about the original concept of remote attendance by members at committee meetings, but the prescription of the 2011 Measure made the provisions unworkable.*
- **Roles and responsibilities of Chief Executives** - WG '...will seek a further appropriate legislative opportunity to provide that the Returning Officer role in each Principal Authority should form an intrinsic duty of the Chief Executive, for which no additional personal fee would be payable' (P33)

*Local authority views are being sought on this proposal.*

- **Power to dismiss statutory officers on vote of the council** (rather than following the Designated Independent Person process) (p34)

*Local authority views are being sought on this proposal.*

- **Clarification of council functions and responsibilities** – this is in response to council requests to simplify and clarify functions and responsibilities, the paper (p34) proposes principles which would guide the allocation of functions:
  - quasi-judicial functions must not be for the Executive. This would include decisions in relation to planning and licensing;
  - approval of the Council’s budget and financial planning, including the amount of Council Tax required, should fall to full Council;
  - appointments of senior staff should be reserved to full Council;
  - appointment of the Electoral Registration Officer and electoral matters more generally should fall to full Council;
  - remuneration of Members of the Authority should be reserved for full Council;
  - functions related to the provision of services by the Council should be the responsibility of the Executive;
  - allocation of functions requires the agreement of both full Council and the Executive; and
  - Council’s scheme of delegation should be published and be accessible through the Council’s website.

*Councils would welcome a clarification of council functions and responsibilities as successive local government legislation has meant the distribution of statutory duties and functions is complicated and open to interpretation.*

- **Repeal of community polls duties, replaced by duties to set up petitions and e-petitions process** (P48) - This would enable communities to express their views on matters of concern, without the restrictions and costs which currently apply to community polls as well as the incorrect expectations that community polls are, in effect, binding referendums.

*These proposals would be welcomed as it would reduce bureaucracy and costs.*

## Financial Summary

There are no costs to agreeing a non- party political response

## Risks

Risk	Impact of Risk if it occurs* (H/M/L)	Probability of risk occurring (H/M/L)	What is the Council doing or what has it done to avoid the risk or reduce its effect	Who is responsible for dealing with the risk?
No response is made and the opportunity to contribute to the debate is lost	M	L	The Council's Democratic Services Committee is considering a response	Head of Democratic Services

## Links to Council Policies and Priorities

The response will concentrate on the proposals for significant reforms to councils' democratic, governance and improvement arrangements.

## Options Available

To agree the proposed response; to agree amendments to the response or to take no action

## Preferred Option and Why

To agree a response to the proposals relating to reforms to councils' democratic, governance and improvement arrangements in order that the Committee is able to contribute to the debate on these matters

## Comments of Chief Financial Officer

There are no costs to making the response other than officer time

## Comments of Monitoring Officer

There are no specific legal issues arising from the Report at the present time as Welsh Government is seeking responses to the consultation on the draft Mergers and Reform Bill. The draft legislation sets out a proposed framework for the implementation of local government reorganisation in Wales, the process and timescales for the establishment of the new merged authorities and local government reforms. Some of the underlying principles are to be supported, particularly the proposals for improved governance arrangements, public engagement, greater flexibility and local discretion. Some of the more controversial White Paper proposals have also been discounted, such as the limitations on Councillors terms of office. However, some of the proposals would have considerable resources implications and others would impose additional burdens in terms of Councillors performance, community area committees and improvement requests. Therefore, Democratic Services Committee may wish to endorse the concerns about these particular issues expressed in the WLGA response.

## Staffing Implications: Comments of Head of People and Business Change

There are no direct staffing implications in making the response from this report.

## Comments of Cabinet Member

Report author to confirm that the Cabinet Member has approved the report for consideration by cabinet.

## Local issues

There are no local issues arising from the report as it affects all members of the Council.

### **Scrutiny Committees**

This is a matter for consideration by the Democratic Services Committee

### **Equalities Impact Assessment**

An Equalities Impact Assessment is not required to agree a response to the document

### **Children and Families (Wales) Measure**

Nothing in the proposed response directly affects children and young people

### **Consultation**

The report has included responses by the WLGA

### **Background Papers**

Set out a list of any relevant background papers and whether they are available to the public.

Dated: 11 February 2016