
Local Government (Democracy) (Wales) Bill

Purpose

1. To seek members' views about the Local Government (Democracy) (Wales) Bill and proposed (non-legislative) reforms to the ethical framework in Wales.

Background

2. The Local Government (Democracy) (Wales) Bill [the Bill] was published on 26th November 2012. The Bill is currently being considered in the National Assembly at 'Stage 1 - Committee consideration of general principles'.
3. The Bill is based on the Welsh Government's 'Promoting Local Democracy' White Paper, which was issued for consultation in the summer of 2012. Broadly the consultation feedback from local government and the WLGA was supportive of many of the proposals. Some of the more controversial proposals, notably regarding Returning Officers' fees, are not included in the Bill.
4. Some policy proposals do not require legislation, notably those around the reform of the ethical framework which have been outlined in a letter to Leaders from the Minister for Local Government and Committees (15th January) which seeks authorities' responses to proposals by the end of February.

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5. In summary, the Bill:
 - 5.1 In the main, focuses on the reform of the Local Government Boundary Commission for Wales. This is in light of the Mathias Report into the Boundary Commission, which seeks not only to increase the capacity, expertise and improved processes around the Commission, but proposes a broader remit, including reviewing the membership of other public bodies in Wales.
 - 5.2 Proposes new powers for councils to separate the role of Mayor and Council Chair, where appropriate
 - 5.3 Proposes new powers for councils to establish joint Standards Committees, where appropriate

- 5.4 amends the Local Government (Wales) Measure 2011 regarding political balance in audit committees and the functions of Democratic Services Committees
- 5.5 amends the Measure in relation to the responsibilities of the Independent Remuneration Panel for Wales, including allowing the Panel to set numerical caps on senior salaries in councils, as well as setting the allowances for members of other public bodies in Wales.
- 5.6 Introduces provisions concerning community and town councils' information to be published online.

WLGA Response to the Bill

6. Given the Bill is based largely on the White Paper, which in turn sought to reform the Boundary Commission in light of the Mathias Report, feedback from authorities has been broadly supportive. Authorities have been invited to submit written evidence to the Assembly's Communities, Equality and Local Government Committee by 15th February.
7. The WLGA was invited to give Committee evidence on 17th January, and presented provisional evidence (subject to further discussion at WLGA Council) with ACSes (Association of County Secretaries and Solicitors). The WLGA's provisional evidence, based on the response to the White Paper and feedback from authorities, is included at Annex 1.

Reform of the Local Government Boundary Commission

8. The Bill's main focus is the reform of the Local Government Boundary Commission and the community and electoral review process (this reform covers Sections 2-50 out of the Bill's 70 Sections). The WLGA has hitherto supported the Welsh Government's intention to improve the procedures for undertaking boundary, community and/or electoral reviews, as well as the recommendations of the Mathias Review.
9. The Welsh Government clarifies through the Bill that, in the electoral review process, community identity and community ties have equal importance to the aim of establishing that each councillor is to represent (as closely as possible) the same number of electors. This clarity is welcomed and was a key area of concern from the previous, aborted electoral review process.
10. The Bill proposes a number of amendments to clarify, improve and streamline review procedures, as well as increase the capacity of the Commission (including additional Commissioners) which are supported. The Welsh Government has also taken on board a number of comments provided during the White Paper consultation, for example the clarification for a route of 'appeal' around the Commission's fees charged on local authorities where it undertakes Community Reviews (see S26 (5)).

11. Some councils have raised a concern regarding the timing of commencements around community reviews. Given 2013 is a non-election year, some authorities are planning to undertake community reviews shortly and there was concern that if the Bill was commenced half-way through this process, authorities would have to either wait (and miss a valuable opportunity) or restart reviews that hadn't been concluded. The Welsh Government has however reassured the WLGA that the Bill's powers would only apply to reviews started after the Bill was commenced.
12. Although councils were broadly supportive of the proposal (as outlined originally in the White Paper) that Ministers could direct the Commission to review other public bodies whose membership includes elected members, this proposal does raise other issues or queries:
 - 12.1 Capacity of the Commission - It is not clear from the face of the Bill which bodies would be included within the Commission's powers. Such public bodies would be those where membership is required under any law to include a councillor or a person appointed by a local authority and it exercises functions conferred by an Act or Measure. This therefore raises an issue of capacity within the Commission, given it already has a complex and resource intensive role conducting its core business around boundary, community and electoral reviews.
 - 12.2 Expertise/Relevance of the Commission – notwithstanding the above, the Bill proposes that the Commission should report 'whether it recommends that changes should be made to the public body's membership' which might include: 'the number of members of the body (or bodies)...consider any categories of membership (including lay membership) and the number of members in each category...[and] consider the attributes, experiences, skills or qualifications which members should possess'. It is unclear how the Commission, without wider expertise and support, could determine what experiences, skills or qualifications were appropriate for technically specific or highly specialised public bodies, for example.

Audit Committees, Democratic Services Committees, Joint Standards Committees and Presiding Members (Sections 51, 56, 57 and 63)

13. The WLGA supports these parts of the Bill given they have largely been in response to feedback from local authorities.
14. Proposed amendments to the functions of Democratic Services Committees is in direct response to feedback from authorities following the establishment of Democratic Services Committees following the Measure; in summary, the interpretation of specific provisions in the Measure regarding the powers and functions of the Democratic Services Committee could, unintentionally, constrain the remit and ambition of a

Committee. The Bill seeks to give greater local flexibility which is welcomed.

15. Similarly, feedback from authorities following implementation of the Measure since May's elections has been that Audit Committees should be politically balanced in line with other committees.
16. Proposed council powers to establish joint standards committees, either to supplement or, where councils viewed it as appropriate, to replace local standards committees are welcome. It should be noted that this is a permissive power. ACSeS has proposed that an additional power might be included for an authority to refer a matter to another authority's standards committee where there might be a difficulty in the 'home' authority's standards committee dealing with a case.
17. The increased flexibility around the proposal to allow councils to separate the roles of the Mayor and Council Chair, according to local circumstance and choice, is also welcome. ACSeS have highlighted an issue which will require further consideration and some redrafting, however, around terms of office of elected members and who should chair the first AGM following a council election prior to a new Chair being appointed.

Independent Remuneration Panel for Wales

18. The WLGA supports a number of the proposed changes to the Independent Remuneration for Wales (the Panel).
19. The WLGA previously supported the proposed changes to timescales for publication and consultation around the Panel's reports; the proposal to allow the back-dating of allowances is also welcomed, however, there is an issue around linking the Panel's reports into councils' financial planning arrangements which currently works well. Whilst minor adjustments to members' allowances can be accommodated by councils, a significant and fundamental overhaul by the Panel of the allowances framework could provide a financial challenge if councils have already set their budget in advance of the Panel's recommendations. In its response to the White Paper consultation, the WLGA suggested that legislation or Ministerial guidance could state that when the Panel undertakes a wholesale review of an existing allowances framework, that these determinations should be reported by 31st December, to allow authorities an opportunity to take into account any necessary financial implications within its budget setting process.
20. In its response to the White Paper, the WLGA stated that it did not support the proposed amendment to the Measure to allow the Panel to prescribe the numeric limitation on those entitled to senior salary payments. The established approach had hitherto worked well and allowed local discretion and flexibility set within an overall cap; whilst the WLGA

supports the independence of the Panel and recognizes that there should be a cap on senior salaries, the proposed approach as outlined allows the Panel to constrain and effectively determine the governance arrangements for each local authority. Local authorities are best placed to decide on the most appropriate governance arrangements required to conduct local business effectively, this includes the appropriate constitutional structures as well as the number of members required to exercise executive, scrutiny and statutory functions accordingly. The WLGA would propose that the legislation is amended to the pre-2011 Measure position where no more than 50% of council members could receive a senior salary.

21. The Bill also proposes to expand the responsibilities of the Independent Remuneration Panel to oversee payments made to other public bodies which include councillors in their membership. Such bodies will be prescribed by Ministers. Whilst this should allow some consistency between the considerations around public service payments and was broadly welcomed by councils in the White Paper, it is unclear at this stage which bodies would be covered and the consequent implications on the Panel's capacity, experience and expertise; the Panel's current workload (particularly given the more recent remit around community and town councils) is significant and the current Panel has been appointed with a focus around local government experience and expertise.

Local Government Ethical Framework – Ministerial Letter

22. Following on from the publication of the Bill, the Local Government Minister has written to Leaders on 15th January (see Annex 2) outlining a number of proposed changes to the ethical framework, many of which were included in last year's 'Promoting Democracy White Paper', that would not require legislation and some of which he is keen for councils to introduce voluntarily.

23. The Minister has indicated that he intends to amend the Code of Conduct to remove the requirement on members to report alleged breaches of the code of conduct to the Ombudsman (paragraph 6(1)(c) and to remove paragraph 10(2)(b) from the Code. These are welcome amendments, notably the removal of paragraph 10(2)(b), the interpretation of which has caused concern for some time and has confused and constrained some members regarding balancing their local representational role and their decision-making roles.

24. Members' views are therefore requested on the below proposals.

Capping of Indemnities for members

25. WLGA Council agreed on 24th February 2012 that all councils should seek to set a voluntary cap on indemnities provided for members. This decision followed concerns about the scale of indemnity provided to some

members when defending themselves against alleged breaches of the code of conduct. WLGA Council agreed that councils should:

- Set a cap of up to £20,000, though there was recognition that some councils had insurance arrangements
- Standards Committees (or other local mechanisms) should approve any request for indemnity (up to a maximum of the cap) on a case by case basis, with the level depending on the nature of any case
- Ombudsman's costs should be set at any cap applied to individual cases.

26. Although not all councils have formally adopted a cap, most councils currently operate well within this cap where they provide an indemnity. However, some do not regard member indemnities as a significant issue as these are decided and moderated on a case by case basis, often by the Standards Committee. A number of councils' wider insurance arrangements also provide indemnity cover, which is not covered by the voluntary cap (one authority has specifically asked for this to be capped and the insurance company has refused to alter the policy).

27. The Minister could set a cap within regulations, however, is minded to support a consistent voluntary approach across councils. The Minister's letter states that he is '...concerned that perhaps not all authorities have made progress and...impress upon those who have yet to do so the importance that I place on taking this forward.'

28. It is recommended that members agree to recommit to the WLGA Council decision of February 2012 and that those councils without a voluntary cap seek to introduce a cap at or before their next AGMs.

Local Resolution Protocols

29. A number of authorities have established informal, local resolution protocols and procedures to manage 'low-level' complaints regarding members' conduct. These have been introduced to provide speedy, informal resolution of relatively minor issues rather than escalating the matter to the Ombudsman. This approach has been welcomed by the Ombudsman and WLGA officials have worked with ACSeS to develop common principles and models and to share experiences. The Minister, both in the White Paper and in his recent letter to leaders, also welcomed this but challenged all authorities to introduce similar models.

30. The WLGA is aware that, to date, 8 councils (Anglesey, Blaenau Gwent, Denbighshire, Gwynedd, Monmouthshire, Rhondda Cynon Taf, Swansea and Torfaen) have introduced local resolution arrangements of some form and 2 further councils are currently consulting on or developing models

(Cardiff and Pembrokeshire). Experience suggests that, on the whole, the approaches have worked well (and some have not even had to be triggered), that they can take the 'heat out' of complaints and lead to speedier, more proportionate resolution and they have not created significant workload that would not have otherwise been expected if the issues had been referred to the Ombudsman.

31. Feedback from those councils that have not introduced arrangements have however highlighted a number of issues of concern:

- that current informal arrangements where the relevant members discuss low-level issues with Monitoring Officer involvement works well (although these rely on inter-personal relationships and informal arbitration);
- the Code of Conduct currently requires members to report any alleged breach directly to the Ombudsman; and
- there is some concern that local arrangements, whilst relieving the burden on the Ombudsman, will increase the local burden and workload of members and officers.
- There should be a clear, common set of national principles underpinning any local approaches, if not a common model process.

32. The Minister's letter confirms that he intends to revise the Code to remove the obligation on members to report alleged breaches of the Code to the Ombudsman in the first instance, which in turn would encourage local processes. The Ombudsman has also issued guidance on how he intends to deal with 'low-level' alleged breaches:

"Typically these complaints will be about alleged failures to show respect and consideration for others as required by paragraph 4(b) of the Code or the duty not to make vexatious, malicious or frivolous complaints against other members under paragraph 6(1)(d) of the Code. Whilst a member may still complain directly to me about a fellow member if the matter being complained about concerns paragraphs 4b and 6(1)(d) I am likely to refer the matter back to the Council's Monitoring Officer for consideration under this process."

33. Some councils have expressed concern about the practicability of extending local resolution processes to cover community and town councils (in particular where there are a number of councils in the unitary authority area). Although the Welsh Government asked this question in its White Paper, it appears from the Minister's letter that he is content that local resolution protocols would apply only to 'county and county borough councils, national park authorities and fire and rescue authorities'.

34. Given experiences of those councils with protocols in place have been positive, ACSeS will be discussing local resolution processes at its meeting on 1st March and the Annual Welsh Standards Conference in April will

include a session promoting the learning from authorities who have processes in place.

- 35. It is recommended that members agree that the WLGA and ACSeS continue to develop a consistent set of local resolution principles, and that all councils seek to introduce local resolution protocols and processes at or before their next AGMs.**

Publication of Registers of Members' Interests online

36. The Minister's letter indicates his intention to bring forward an amendment to the Local Democracy (Wales) Bill to place a duty on councils to publish Members' Interests on council websites. Councils currently have to make the registers 'available at an office of the authority for public inspection by members of the public at all reasonable hours'. To date, the WLGA is aware of at least 11 councils who already or in the process of or are considering publishing Registers online (Anglesey, Bridgend, Caerphilly, Cardiff, Conwy, Merthyr Tydfil, Monmouthshire, Pembrokeshire, Powys, Swansea and Torfaen). Feedback from other Monitoring Officers suggests support for this in principle. The National Assembly for Wales and UK Parliament also publishes Registers of Members' Interests online.

- 37. It is recommended that members agree that all councils should take steps to publish the Registers of Members' Interests on council websites at or before their next AGMs.**

Recommendations

38. Members are asked to:

38.1 Endorse the WLGA response to the consultation on the Local Government (Democracy) (Wales) as outlined above and at Annex 1, subject to additional views expressed at the meeting;

38.2 Endorse the recommendations in response to the Minister's letter on the Ethical Framework in Local Government as per paragraphs 28, 35 and 37 above.

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