

WLGA EVIDENCE TO COMMUNITIES, EQUALITY AND LOCAL GOVERNMENT COMMITTEE

DRAFT LOCAL GOVERNMENT (WALES) BILL

1st FEBRUARY 2016

1. The Draft Local Government (Wales) Bill is potentially one of the most significant and far-reaching pieces of public service reform legislation since devolution.
2. The WLGA's evidence to the Communities, Equality and Local Government Committee provides the WLGA's views on key elements of the Draft Bill. The WLGA's final, detailed response to the Welsh Government consultation has yet to be finalised (closing date 15th February) but it will be shared with the Committee in due course.
3. Similarly, as many of the councils are yet to consider their individual responses, the WLGA (at the time of submission) does not have a formal view from all of the 22 authorities on the proposals for merger as outlined in Part 1 of the Draft Bill.

Summary

4. Much of the initial commentary on the Draft Bill when it was first published focused the anticipated merger proposals (Part 1 of the Draft Bill) and particular interest about the potential loss of 'nearly 2,000 jobs'¹. Parts 2-8 however propose local democratic and governance reforms, which if introduced (even on their own as a standalone Local Government Reform Bill) would see the most substantial local government reforms in Wales since the Local Government Act 2000.
5. A number of the Draft Bill's proposals would be supported and welcomed by local government. In terms of the wider policy proposals in the Draft Bill, the Welsh Government has responded to many of the concerns and views expressed by councils during the 'Power to Local People' White Paper consultation. There are therefore a number of proposals that would be welcomed by councils including:
 - Rejection of some of the more controversial White Paper proposals such as term limits for councillors, review of members' remuneration and elections by thirds;
 - Proposed introduction of a power of general competence (Part 2);
 - Flexible and proportionate approach to community asset transfers;
 - Proposed clarification and simplification of authorities' executive and full council functions;
 - Relaxation of Remote Attendance regulations and reform of community polls; and
 - A reformed improvement regime based on self-improvement and proportionate external regulation.

¹ For example, see: <http://www.walesonline.co.uk/news/politics/welsh-council-shake-up-would-10492295> and <http://www.bbc.co.uk/news/uk-wales-34904221>

6. There are other proposals where the underlying principles and aims are supported but the proposed detail is impractical or prescriptive and would benefit from redrafting in with input from local government.
7. There are a number of other proposals that impact on or undermine local democracy, accountability or local flexibility which are not supported by the WLGA.
8. Many of the Draft Bill's proposals would place additional administrative and bureaucratic burdens and resource implications for authorities. This additional bureaucratic burden contradicts the wider assumptions that underpin Part 1 of the Draft Bill that the anticipated savings of reorganisation would be realised through reductions in 'back-office' bureaucracy and capacity.
9. A wider concern relates to the proposed reforms being applied only to local government; it is not clear why proposed reforms regarding good governance, public engagement and transparency and elected member performance should be applied solely to local government when they could and should equally and consistently apply across all public services and all levels of government in Wales.

Part 1

10. Local authorities and the WLGA have long recognised need for public service reform. There however remain different views within local government, within political parties and across the Assembly itself, whether a compelling case has been made for reorganisation at all, whether reorganisation should occur during a period of austerity or what the future shape of local government should be if reorganisation does occur.
11. As noted above, the WLGA does not currently have a formal view from all of the 22 authorities on the proposed merger maps. However, it should be noted that six local authorities submitted an Expression of Interest (EOI) and a further eight were prepared to merge in response to the Welsh Government's original 'preferred' map of 12 in November 2014. Powys is continuing to explore integration with the Local Health Board.
12. Local government has repeatedly stated that clarity and consistency is a pre-requisite for a successful public service reform programme. The Welsh Government has outlined 3 different 'preferred' options for local government reform in the past 18 months (the current proposed maps of 8 and 9 and the map of 12 put forward in the autumn of 2014). The consultation document accompanying the Draft Bill itself describes the 8 or 9 maps only as the Welsh Government's '...current preferred options'. It is widely anticipated therefore that the Assembly elections will have a significant bearing on the final direction of travel in terms of local government reorganisation.
13. The Draft Bill's accompanying documentation outlines some rationale for the determination of the proposed map of 8 or 9 authorities. However, the rationale has not been consistently applied across all of the proposed new county councils, notably with regards scale and coterminosity with Local Health Boards.

14. It is not clear how the proposed map of 8 or 9 address the issue of scale of local authorities in Wales. There appears to be no underpinning rationale regarding optimum size of a local authority in terms of economies of scale, corporate and service capacities, geographical and population coverage and local democratic links to communities.
15. The variation in population between the proposed 'Anglesey-Gwynedd' and 'Gwent' councils sees units of local government ranging in population from 190,000 to 575,000 (Powys County Council would be smaller at 133,000 however will be a more complex organisation following integration with the Local Health Board). Furthermore, merging Anglesey and Gwynedd would create an authority with a population of 190,000 and an area of 3,262 sq km; the current Carmarthenshire has similar rural characteristics, a population of 181,000 people and a land area of 2,371 sq km but will merge with Pembrokeshire and Ceredigion to create an authority of 374,000 people and a land mass of 6,158 sq km.
16. Given these issues, it is unclear why the Minister states that '...the case in North Wales is finely balanced between two and three Local Authorities'² whereas the proposals appear to be clear-cut for the rest of Wales.
17. Similarly, the Welsh Government was previously clear (as was the Williams Commission) that coterminosity with Local Health Board boundaries was a key consideration to ensure consistency, clarity and avoid complexity. It is therefore unclear why coterminosity is being relaxed for one proposed council configuration, but not in others, particularly where it might result in different and more appropriate council areas being proposed. Since the establishment of the Williams Commission, the WLGA's position has been that all public services should be subject to reform and a more holistic approach to structural alignment might lead not only to better consistency and contiguity, but also a more appropriate geographical scale of other public services.
18. The Regulatory Impact Assessment provides a cost-benefit analysis that was largely absent from the Williams Commission and previous Welsh Government proposals. The cost-benefit analysis is consistent (in parts) with the WLGA commissioned CIPFA analysis, but the financial analysis focuses in places on the more optimistic, lower-end cost estimates, underestimates the likely redundancy costs and implications of pay and terms and conditions harmonisation. Most significantly, the Regulatory Impact Assessment has not adequately consider the options for or the financial impact of council tax harmonisation.
19. The cost-benefit analysis is also inevitably based on historical employment and expenditure in a climate of austerity; by 2019-20 when reforms are scheduled to take place, a substantial proportion of the proposed savings (largely senior-management and back-office rationalisation) will have already been realised, so the proposed return on investment of reorganisation is likely to be lower and over a longer period.

² Ministerial Foreword - P1 Consultation Document -

<http://gov.wales/docs/dsjlg/consultation/151124-lg-bill-consultation-en.pdf>

20. The Draft Bill's Options Appraisal presents each of the options as if they are mutually exclusive and achievable after almost a decade of austerity. Option 1 seems to be predicated on the assumption that no savings will be made in the future despite the fact that continuing austerity means that cost is being taken out of budgets especially in the areas of corporate support identified in the KPMG review and the work commissioned on the costs and benefits of reorganisation (for example, the KPMG study identified that £33m of savings for 14-15 and 15-16 were already planned).
21. The Regulatory Impact Assessment (RIA) bases redundancy cost estimates on work undertaken by KPMG during the Administrative Services Review. Under the current proposals the cost of redundancy is estimated between £16k and £21k for 'administrative staff'. It is not clear what assumptions are made for pension strain and the RIA (p46) acknowledges that further actuarial work is required and we would support this. However the assumption that each employee has 10 years' service understates length of service that most in corporate support roles have. The CIPFA work showed this to be 15-20 years.
22. The approach eventually taken on pay harmonisation, like council tax harmonisation, will have significant implications on the costs and future financial planning. The WLGA notes that the Minister is '...committed to ensuring the terms and conditions of Local Authority staff are protected so no-one will be disadvantaged by transfer to a new Authority'³. The RIA (p49) however states that it is possible to be cost neutral if newly formed authorities 'converged to a weighted average' but uses the pay harmonisation estimate from the CIPFA study of £27m. We now think this to be a low estimate.
23. Council tax harmonisation has not been adequately considered as part of the Draft Bill nor the RIA. Council tax harmonisation is a significant component and a potential risk to the reform proposals not only in terms of potential income forgone and financial volatility, but in terms of political and public acceptability of proposed reforms. It is therefore essential that the Welsh Government urgently considers the implications and plans for transition at an early stage. Council Tax payers will need some assurance about the future direction of Council Tax Bills in merged authorities and practitioners will need to take account of any future constraints on Council Tax to make reasonable estimates of income forgone for financial planning purposes.
24. The limiting cases are for Council Tax levels to 'level up' or 'level down' or convergence to a weighted average. The 'levelling up' scenario where the highest Council Tax is held constant and the others catch up was described by CIPFA as the 'most prudent' in terms of ensuring local financial stability and minimising income forgone. The WLGA is currently modelling the potential income forgone under this method for the Welsh Government's preferred maps of 8 or 9 authorities, as it could take up to 7 years in the Dyfed area and up to 9 years in the Gwent area to harmonise. The CIPFA study conservatively estimated the income forgone annually at £56.9m for 12 authorities (option 3a) over a shorter period of harmonisation. Whichever

³ Ministerial Foreword - P1 Consultation Document -

<http://gov.wales/docs/dsijlg/consultation/151124-lg-bill-consultation-en.pdf>

approach is taken there needs to be a balance in terms of impact on the council tax payer and income forgone.

25. The merger of local authorities as outlined in the Draft Bill will have consequential impacts on other authorities, such as Fire and Rescue Authorities, which do not appear to have been adequately considered in the Draft Bill's provisions.

Part 3

26. The WLGA is supportive of the underlying principles and ambitions of the Welsh Government around public engagement in Part 3.
27. Many authorities have adopted the nationally developed principles of public engagement, the majority broadcast council meetings and undertake extensive consultation and engagement over budget and service planning proposals. Local authorities engage with communities over local priorities around the delivery of services or provision of assets, some of which may lead to alternative delivery models or community asset transfers.
28. A number of proposals in Part 3 however will create additional burdens on authorities which will require additional investment in administrative and 'back-office' capacity during a period where resources are being focused on front-line services. Some proposals are impractical and their likely effectiveness and impact are therefore questioned.
29. The WLGA also notes that some provisions in Part 3 and elsewhere in the Draft Bill apply only to local government. The WLGA notes for example that expectations and duties to broadcast meetings do not apply to meetings of Local Health Boards, Welsh Government Sponsored Bodies or the Welsh Government cabinet. Local authority leaders believe that there should be consistency of expectations across all public services and levels of government; the Welsh Government and National Assembly should lead by example, particularly when seeking to legislate for others to follow.

Community Area Committees

30. Whilst WLGA agrees that local 'area-based' community governance is needed to counter the remoteness of larger post-reform councils, Community Area Committees (CACs) as drafted are problematic. Such arrangements should therefore be left to local discretion.
31. The Draft Bill proposes that the areas covered by CACs would be established by Public Service Boards under S37(5) of the Wellbeing of Future Generations (Wales) Act 2015. The WLGA does not support this proposal as it is not appropriate that a statutory partnership (the PSB), should determine the area coverage and the basis for local democratic and community governance mechanisms (which would form the basis of statutory council committees). This appears to be a post-hoc policy proposal as the community area provisions of the Wellbeing of Future Generations (Wales) Act 2015 were set out for very different purposes (e.g. the undertaking of wellbeing

assessments and planning) and not for determining identifiable communities for community governance or representative purposes.

32. It is not clear how the proposed committees relate to the future roles or geographical areas of community councils, which will be reviewed (and probably enlarged or at least grouped) by the Local Democracy and Boundary Commission during the same period. Furthermore, not all council areas would include community councils (given incomplete coverage across Wales) and so geographical spread of community representation could be imbalanced as could the balance of democratically elected members with community and public body 'co-optees'.
33. Depending on the membership of public bodies on CACs, there could be implications in terms of burden of representation on multiple bodies which the current PSB reforms are seeking to address. Larger public bodies such as fire and rescue authorities, local health boards and police representatives have found it challenging to sit on numerous LSBs within their area. Whilst there will be fewer PSBs (8 or 9 under the proposals), these bodies could be invited to attend numerous CACs, for example, South Wales Fire and Rescue Service currently sits on 10 LSBs and would sit on 3 PSBs under the new reforms, but could feasibly be invited to attend at least 30 CACs (assuming 10 per authority as noted in the Draft Bill documentation). Should community safety planning functions be devolved to CAC areas, fire and rescue authorities would be required to attend as statutory members.

Improvement Requests

34. The proposal for 'improvement requests' builds on the Welsh Government's 'activist council' ambitions as outlined in the Power to Local People White Paper. Councils and the WLGA were broadly supportive of the 'activist' concept as councils are pro-actively 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.
35. Councils already initiate and respond to informal 'improvement requests' on an ongoing deliberative basis in terms of service design and delivery, both through formal community consultation and engagement and ongoing user and service feedback or complaints.
36. This proposed 'improvement request' 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, the Convention of Scottish Local Authorities (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.”

37. The WLGA would echo those concerns. As noted above, councils already initiate and respond to ‘improvement requests’ on an ongoing basis through formal consultation or service user and community feedback.
38. The ‘improvement requests’ proposal as drafted over-formalises such an approach and will create a significant amount of bureaucracy which would add burden and could impact on the speed of decision-making; it is likely that councils will have to formally consider and report (either through executive or scrutiny or both) any such requests from the community received.
39. 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. There should therefore be proportionate criteria to indicate levels of wider community support for any proposal and proportionate accountability and governance arrangements should be built into any alternative delivery model that may arise as a result.

Part 4

40. Part 4 of the Draft Bill outlines proposed new Functions of County Councils and their Members, including ‘Performance Duties’ for councillors.
41. In its response to the White Paper consultation, the WLGA argued that any new proposals affecting councillors’ remuneration and standards of conduct should be applied consistently across all levels of representative government. Leaders continue to call for a wider review of all levels of governance as there should be consistency of expectations and the Welsh Government and National Assembly should lead by example, particularly when seeking to legislate for others to follow.
42. The proposed ‘Performance Duties’ on councillors are therefore not supported by the WLGA as they are not only inconsistent with expectations placed on Assembly Members for example, but also appear to be based on an outdated understanding of the role of a local councillor which is at odds with the community activist concept outlined elsewhere in the Draft Bill.
43. Similarly, the implicitly critical undertone of an excessive and prescriptive ‘performance’ and standards regime for councillors is at odds with the wider narrative of trust between devolved and local government and enhanced local accountability. The prescriptive and burdensome implications of the proposed ‘performance duties’ are excessive in that there is not a wide-spread problem with regards councillor attendance or ‘performance’.
44. The list of performance duties in the Draft Bill, including compulsory meeting attendance and the holding of surgeries, presents 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, facilitating community engagement with public services and providing an advocacy and support role to members of the community with particular needs.

45. Similarly, the above list does not adequately equate to assessing a councillor’s ‘performance’, for example, a councillor may attend every council meeting and therefore be deemed to be performing well by the above criteria, but he or she may not contribute effectively or at all to those meetings. Likewise, the proposal that councillors must reply to correspondence within 14 calendar days is inconsistent with the Welsh Minister’s ‘aim to reply within 17 working days’.⁴
46. Notwithstanding the above, the conflation of ‘performance duties’ with the current standards regime is problematic, as the comparable seriousness of breaches is questionable. Indeed, the Assembly’s Standards Commissioner whilst recognising perceptions of Assembly Member ‘performance’ are increasingly important is “...clear that “performance” issues were not matters for standards [and] I am clear that it would be very difficult to set down prescriptive time scales for letter answering or phone call replies – even if it were desirable, which I do not accept”⁵.
47. 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.
48. Whilst there are some individual councillors whose attendance, whilst lawful (under the terms of the ‘6 month rule’ (Section 85 of the Local Government Act 1972), is not satisfactory given the current expectations placed on councillors, they are in the minority and wholesale reform with the consequent burdens of bureaucracy is not a proportionate response.
49. In order to address its concerns about councillor ‘performance’, the Welsh Government might instead consider the effectiveness of the current ‘6 month rule’ and empower councils to set and ‘enforce’ their own attendance and/or performance standard regimes, as is the case in the Assembly. A number of councils already operate local ‘customer service’ standards or council-agreed expectations of attendance and conduct.

Part 5

50. 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 Draft Bill.

⁴ <http://gov.wales/about/cabinet/writingtoministers/?lang=en>

⁵ P1 Standards Commissioner: Annual Report 2014-15
<http://standardscommissionerwales.org/wp-content/uploads/2015/07/Annual-Report-Final-2014-15-English.pdf>

51. The underpinning principles around self-improvement, self-assessment and good governance are therefore generally welcomed and shared by local government. It is however unclear how the corporate planning and improvement proposals align with the new duties under the Wellbeing of Future Generations (Wales) Act 2015. Similarly, the Welsh Government has not adequately reflected on White Paper feedback about the risks of bureaucracy flowing from prescription with regards corporate planning and objective setting arrangements.
52. As a result, when the proposed objective-setting duties in the Draft Bill are combined with the new duties of the Wellbeing of Future Generations (Wales) Act 2015, councils would have to set (or at least participate in the setting of) and report on six sets of broadly similar annual corporate priorities:
- **Councils set and report annually ‘Wellbeing Objectives’** (S7 of the Wellbeing and Future Generations (Wales) Act 2015)
 - **PSBs set and report annually ‘Wellbeing Objectives’** (S39 of the Wellbeing and Future Generations (Wales) Act 2015)
 - **Leaders set and report annually ‘objectives to be met by the Executive’** (S99 of the Draft Bill)
 - **Leaders set and report annually ‘objectives to be met by the chief executive’** (S104 of the Draft Bill)
 - **Councils set and report annually on corporate plan priorities** (‘council’s priorities in relation to the exercise of its functions (including its priorities in relation to its performance in the short-term, medium term and long-term) (S112 of the Draft Bill)
 - (A number of) **Community Area Committees set an annual ‘statement of priorities and objectives’** in relation to the exercising of council functions in relation to the area of the committee (S52 of the Draft Bill)
53. The Draft Guidance accompanying the Wellbeing of Future Generations (Wales) Act states that public bodies ‘...should not treat well-being objectives as separate from the objectives that guide and steer the actions and decisions of the organisation...’. It is therefore unclear why there needs to be numerous separate statutory duties (across two pieces of legislation) to produce what are, in essence, the same set of priorities. This will therefore create administrative burden and complexity and do little to aid public engagement or understanding.
54. Furthermore, although the WLGA supports the principles around ‘good governance’ as outlined in the Draft Bill, the Wellbeing of Future Generations (Wales) Act 2015 already sets out a statutory governance framework for all public bodies with regards the discharge of the sustainable development duty, which includes: ‘taking all reasonable steps (in exercising its functions) to meet those [wellbeing] objectives’ and taking into account the statutory sustainable development principle (S5) which broadly refers to governance arrangements in the form of: long term decision-making, integration, involving other persons with an interest, collaboration with other persons and prevention.

55. Whilst the Ministerial powers of intervention and support are similar to the present powers (under the Local Government (Wales) Measure 2009), there are no criteria (such as evidence which might be considered) before the triggering of an intervention.
56. There are other proposals that undermine local flexibility and local democracy, for example, proposals that strengthened Corporate Governance and Audit Committees must be chaired by a lay member and lay members must make up a third of the committee membership. Lay members are valued members of audit committees currently, but the balance of membership should be left to local discretion. The proposed prescription fetters local discretion and undermines local democracy, particularly as the reformed committees will have an enhanced role in terms of overseeing the governance and service performance of councils.

Part 7

57. The WLGA has concerns over the proposed Ministerial powers over workforce matters in Part 7 of the Draft Bill. The proposed powers are far reaching and potentially allow Welsh Ministers to issue guidance or make regulations that can affect all of the local authority workforce (and the workforce of other public bodies) on a wide range of matters as fundamental as: the planning of the size and composition of the workforce; recruitment and retention of staff; the management, organisation and remuneration of staff; and the training and development of staff.
58. These powers could potentially ‘cut across’ and affect the legal contractual relationship between the local authority as the employer and its employees, as well as undermine local democracy and local planning. This is particularly relevant in local government where there are 22 individual sovereign employers.
59. Democratically elected councillors are best placed to determine how to shape the workforce to deliver services most cost effectively. Different councils face different challenges and demands from their electorate. A ‘one-size fits all’ approach will not enable local needs to be met and councils need the freedom and flexibility to make and implement decisions on recruiting and restructuring (including decisions on pay) that are designed locally to best meet the needs of the communities they serve.
60. Local authorities have demonstrated that they can successfully develop and improve services working in partnership with others, and engaging with their workforce and their representatives to improve services. A managed approach to workforce reduction has also been successful whilst maintaining as best as possible the local services the community want. However there are some areas that the WLGA could work in partnership with Welsh Government to develop and agree guidance that could help support Councils on workforce issues.