
DRAFT LOCAL GOVERNMENT (WALES) BILL

REPORT OF THE DIRECTOR OF GOVERNANCE AND LEGAL SERVICES

AGENDA ITEM: 4

PORTFOLIO: SKILLS, SAFETY & ENGAGEMENT (COUNCILLOR DAN DE'ATH)

Reason for this Report

1. To consider the City of Cardiff Council's response to the Welsh Government consultation on the Draft Local Government (Wales) Bill.

Background

2. In April 2013, the Welsh Government announced the establishment of the Commission on Public Service Governance and Delivery, chaired by Sir Paul Williams (also known as the 'Williams Commission'), to examine all aspects of governance and delivery in the devolved public sector in Wales. The Williams Commission published its report on 20 January 2014, which made 62 recommendations, including proposals for local government reorganisation in Wales through the merger of local authorities.
3. The Welsh Government published its response to the Williams Commission's recommendations, entitled 'Devolution, Democracy and Delivery – Improving Public Services for People in Wales', on 8 July 2014. This report included a summary of actions to be taken forward by the Welsh Government.
4. On the same date, the Welsh Government also published a White Paper, entitled 'Devolution, Democracy and Delivery – Reforming Local Government'. The White Paper set out proposals for local government in Wales in the 21st Century and focused mainly on future legislation to support the proposed merger of local authorities in Wales. The Council's response to this White Paper was approved by Cabinet on 9 October 2014.
5. The Welsh Government published a second White Paper, entitled 'Devolution, Democracy and Delivery – Reforming Local Government: Power to Local People', on 3 February 2015. The Cabinet agreed a

response to the Welsh Government consultation on the White Paper on 2 April 2015.

6. On 24 November 2015, the Welsh Government published the Draft Local Government (Wales) Bill and Explanatory Memorandum for consultation, as well as a separate consultation paper that includes a number of specific consultation questions. The Draft Bill has no formal legislative status at this stage, but is expected to be introduced into the National Assembly for Wales by the Welsh Government later this year following the National Assembly for Wales elections on 5 May 2016.
7. This is the second Bill to be issued by the Welsh Government which relates directly to local government in Wales and follows the Local Government (Wales) Act 2015, which became law in Wales on 25 November 2015. The Draft Bill will provide the legislative framework for a programme of significant local democratic and governance reforms, including the mergers of existing councils to create 8 or 9 new county councils in Wales and the establishment of a statutory Public Services Staff Commission.
8. In producing the Draft Bill, the Welsh Government has responded to many of the concerns and views expressed by councils as part of the consultation of the previous 'Power to Local People' White Paper. This includes the non-introduction of some of the more controversial proposals that were contained in the White Paper, such as term limits for councillors, review of members' remuneration and election cycles by thirds.
9. A number of other proposals which do not currently form part of the Draft Bill are also put forward by the Welsh Government as part of the consultation paper. These include the:
 - right of recall of councillors;
 - simplification of remote attendance provisions;
 - roles and responsibilities of Chief Executives;
 - power to dismiss statutory officers on a vote of the council;
 - clarification of council functions and responsibilities;
 - repeal of community polls legislation to be replaced by duties to establish petitions and e-petitions process.

Issues

10. The various provisions of the Draft Local Government (Wales) Bill are set out in the following sections:

Part 1 – Local Government Areas and County Councils

- includes provisions for the reorganisation of county and county borough councils in Wales, and the establishment of new counties and councils with effect from 1 April 2020.
- makes provision about the constitution of the new councils and the election of their members.

Part 2 – General Power of Competence

- provides county councils and 'community councils with competence' with a general power of 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 qualifying local authority the same power to act that an individual generally has. It is a power of first resort, which means that a qualifying local 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.

Part 3 – Promoting Access to Local Government

- contains provisions requiring county councils to promote access to, and public participation in, local government.
- requires the establishment by county councils of community area committees for the purpose of ensuring that community interests and priorities are taken into account by county councils in exercising their functions.
- 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.
- makes provision about improving public access to local authority meetings.
- requires county councils to publish a guide in ordinary language to accompany their constitutions, together with official addresses for their members to which correspondence may be sent.

Part 4 – Functions of County Councils and their Members

- imposes duties upon the members of county councils relating to the performance of their functions as members, and sets out how breaches of these duties are to be dealt with.
- requires leaders of political groups to take reasonable steps to promote and maintain high standards of conduct by Members of their group.
- requires the elected mayor or executive leader of a county council operating executive arrangements to set objectives for the executive
- requires candidates who wish to stand for elected mayor or executive leader to prepare a written manifesto.
- enables the appointment of members as assistants to the executive.
- requires county councils to have a 'chief executive' instead of a 'head of paid service', and makes further provision about their role.
- makes provision about the position of the head of democratic services, including removal of the restriction on a Monitoring Officer from also being designated as the Council's Head of Democratic

Services and inclusion of the post of Head of Democratic Services within the definition of chief officer for the purposes of the pay accountability provisions.

- makes provision about overview and scrutiny committees, including the voting rights of co-opted members of those committees.
- imposes statutory duties upon the members of county councils relating to the performance of their functions as members and sets out how breaches of these duties are to be dealt with. Members would be required to:
 - attend meetings;
 - hold at least four ward surgeries each year;
 - answer correspondence within 14 days;
 - complete mandatory training courses; and
 - publish an annual report.
- extends the responsibility of standards committees to include councillors deemed not to have carried out their statutory duties.
- requires standards committees to prepare annual reports on the exercise of their functions and other matters.

Part 5 – County Councils: Improvement of Governance

- places a general duty on county councils to make, implement and comply with governance arrangements, which must in turn comply with the requirements imposed by and under the Draft Bill.
- requires county councils 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.
- sets out how county councils' compliance with their duties in relation to governance is to be assessed through 'self assessment', 'peer assessment' and 'combined assessment' (i.e. a joint assessment carried out by certain regulators).
- provides the Welsh Ministers with a power to arrange a review of a county council's governance arrangements and to intervene when they consider it necessary or appropriate in order to ensure that a county council complies with its duties in relation to governance.
- provides for better co-ordination between certain regulators in the exercise of certain functions.
- renames audit committees of county councils as 'corporate governance and audit committees' and makes further provision about their functions and membership. This includes the requirement for one third of the committee to be comprised of lay or independent persons, with the other two thirds being council members. The chair of the committee must also be a lay person.
- Corporate governance and audit committees will be required to assess, and report on, the council's ability to:
 - comply with its duties in respect of its governance arrangements;
 - make progress in respect of the priorities as set out in its corporate plan; and
 - deal with complaints effectively.

The committee must assess, and report on, the arrangements made by the council in respect of self assessments and peer assessments. The committee must also review the council's draft

self assessment report and its draft response to peer assessment reports, combined assessment reports and governance review reports.

Part 6 – Community Councils

- requires the Local Democracy and Boundary Commission for Wales to undertake a review of community council arrangements and community boundaries within the new county council areas, for the purpose of recommending changes to the community councils and their electoral arrangements.
- places a duty on county councils to consider the training needs of community councillors, and to make arrangements to meet those needs. It also places a duty on community councillors to complete compulsory training identified by the county councils and sets out how breaches of this duty are to be dealt with.
- provides that community council elections will be fixed at every five years from 2023 in line with changes made by the Draft Bill in relation to county council elections, and makes related changes to provision about community councillors' terms of office.

Part 7 – Workforce Matters

- requires certain public bodies to have regard to any guidance on workforce matters issued by the Welsh Ministers.
- provides for the establishment and abolition of a Public Services Staff Commission to advise the Welsh Ministers on workforce matters during its existence.

Part 8 – General

- contains general provisions regarding interpretation, commencement and regulations & orders made under the Draft Bill.
- provides for the short title of the Draft Bill.
- contains provision about the application of the Draft Bill to the counties and county boroughs in existence before the changes to be made by Part 1 come into force.

Member Consultation

11. As part of the development of the Council's submission in response to the Welsh Government consultation, reports on the Draft Local Government (Wales) Bill have been considered previously by the Council's Standards and Ethics Committee (15 December 2015), Democratic Services Committee (20 January 2016) and Audit Committee (1 February 2016). In addition, details of the consultation were circulated to all Members on 12 January 2016 requesting any comments on the Draft Bill.
12. The closing date for submissions in response to the Welsh Government consultation on the Draft Local Government (Wales) Bill is 15 February 2016. As a result, a draft submission in response to the specific consultation questions will be submitted to the Welsh Government on 15 February 2016 pending formal approval by the Cabinet on 18 February 2016. It is therefore proposed that authority be delegated to the Chief

Executive, in consultation with the Leader of the Council, to notify the Welsh Government of any subsequent amendments to the Council's response. A copy of the Council's consultation response is attached as **Appendix A** to this report.

Reason for Recommendations

13. To approve the City of Cardiff Council's submission in response to the Welsh Government consultation on the Draft Local Government (Wales) Bill.

Legal Implications

14. These are as set out in the report.

Financial Implications

15. There are no direct financial implications arising from this report. However, having considered the consultation responses, any subsequent decisions made by Welsh Government in respect of the Draft Local Government (Wales) Bill will need to be understood. It is essential that the ability of the Council to deliver savings and invest in the future in a sustainable manner is not hindered.

RECOMMENDATIONS

Cabinet is recommended to:

1. approve the submission (Appendix A) to the Welsh Government on the Draft Local Government (Wales) Bill; and
2. delegate authority to the Chief Executive, in consultation with the Leader of the Council, to notify the Welsh Government of any subsequent amendments to the Council's response.

MARIE ROSENTHAL

Director

12 February 2016

The following appendix is attached:

Appendix A: Draft Local Government (Wales) Bill – Consultation Response by the City of Cardiff Council

The following background papers have been taken into account:

Report of the Commission on Public Service Governance and Delivery

(‘Williams Commission’)

<http://wales.gov.uk/topics/improvingservices/public-service-governance-and-delivery/report/?lang=en>

Devolution, Democracy and Delivery – Improving Public Services for People in Wales

<http://wales.gov.uk/docs/dpsp/publications/140708-response-to-commission-en.pdf>

Devolution, Democracy and Delivery White Paper –

Reforming Local Government: Power to Local People

<http://wales.gov.uk/docs/dsjlg/consultation/150203-power-to-local-people-full-en.pdf>

Draft Local Government (Wales) Bill

[http://gov.wales/consultations/localgovernment/draft-local-government-\(wales\)-bill-consultation/?lang=en](http://gov.wales/consultations/localgovernment/draft-local-government-(wales)-bill-consultation/?lang=en)

Consultation on the Draft Local Government (Wales) Bill

Consultation response form

The Welsh Government intends to publish a summary of the responses to this consultation. Normally, the name and address (or part of the address) of its author are published along with the response, as this gives credibility to the consultation exercise.

Name*:

Organisation: City of Cardiff Council

Email*:

Telephone:

Address: County Hall, Cardiff CF10 4UW

* required information

Consultation questions

These questions should be read in conjunction with the Draft Bill, draft Explanatory Notes and draft Explanatory Memorandum

PART 1

Question 1.1: Do you have any comments on any of the provisions in Part 1 of the Draft Bill?

Public services in Cardiff are facing the twin challenges of population growth and financial austerity. The City of Cardiff Council has made over £120m in savings over the past 5 years, and is facing a budget shortfall of over £73m over the next three years. Cardiff is also set to be the fastest growing UK City (and Welsh local authority) in percentage terms over the next 20 years.

The capital city is the economic engine of the city-regional economy. Each day around 80,000 people – over a third of the city's 200,000 workforce – commute in to Cardiff from elsewhere in the Cardiff Capital Region. Similarly, the capital city hosts major events on behalf of the whole of Wales, and is the centre for culture and leisure for the city region's 1.4m population. These additional capital city responsibilities come with additional costs, and for Cardiff to continue to play this important role on behalf of Wales this needs to be reflected in the funding settlement.

Accommodating this population growth at a time of rapidly reducing budgets in an inclusive, sustainable manner, and doing so in a way which does not damage Cardiff's economic performance is a major long term challenge for the city, and given its importance for the Welsh economy, for Wales.

We recognise that this will mean that the way public services are delivered will need to change. However, the approach to reform should not be dominated simply by a debate about structures. Local government reorganisation can only ever be part of the solution.

What is more, the challenges facing local services are immediate. Change to services are happening on the ground now. There are pressing demand and financial challenges facing all public services, and these cannot wait for – and in any case will not be solved by – Local Government Reorganisation in Wales, which will not be completed until 2023.

We believe that reforming public services and securing economic growth in the face of cuts, and catalysing local democratic renewal, will require responses which are sensitive to the complexities of place.

For supporting economic growth, this will mean pursuing a city-regional approach, aligning strategic planning and investments across the functional economic area. This is currently being taken forward in the Cardiff Capital Region as part of the City Deal process. The Council would argue strongly that this city-regional approach continue irrespective of whether local government re-organisation takes place.

For public service reform this will mean a fundamental rethink about how public money is spent in a more effective way, asking how the totality of public resources can be deployed to best effect in a city or a neighbourhood, aligning local budgets and services over several years. This will require moving towards budgets that are multi-year and increasingly pooled across local delivery partners, free of national ring-fence constraints and conflicting outcome measures.

Furthermore, the Council believes that the Welsh Government should give consideration to using the powers that it currently has more inventively, working with local partners to develop policies which meet the distinct needs of each part of Wales.

The City of Cardiff Council continues to argue for local fiscal flexibilities to be devolved to local authorities to ensure that Cardiff is not left behind in terms of economic competitiveness by other UK and European cities. In particular, the Council believes that the Welsh Government should revisit the issue of business rate devolution and reform and that localisation of business rates should be a priority area of fiscal reform. This reform would both incentivise local authorities to promote growth and provide additional revenues to help balance budgets. We believe that the Welsh Government should look again at this issue to ensure that Cardiff and the wider city-region are not left behind cities in England.

Question 1.2: What are your views on the options for 2 or 3 Counties in North Wales, as set out in Schedule 1 to the Draft Bill?

No comments.

Question 1.3: What are your views on the proposed configuration of Local Government areas in Wales?

See 1.1

Question 1.4: Do the Welsh Ministers need to seek any further powers to support the integration of Powys Teaching Health Board and Powys County Council?

No comments.

Question 1.5: What are your views on the procedure for naming the new Counties?

The procedure as outlined in the Draft Bill is supported.

The City of Cardiff Council supports the move towards consistency of titles for comparable local authorities across Wales. However, given the recognised importance of cities in driving economic growth and the role that Cardiff as the capital city should play as a leading economic and cultural brand for Wales, the discretion and flexibility should exist for local variation.

Question 1.6: What are your views on the proposed changes to the Local Government election timetable?

The proposals outlined in the Draft Bill appear appropriate, though it should be noted that there is scope for electoral congestion should timetables slip and significant burdens will be placed on local election staff.

Question 1.7: Do you have any general comments on the provisions in section 16 and Schedule 3 of the Draft Bill relating to Local Government finance?

The Council would reiterate its view that the Local Government Finance system is no longer adequate. The current system does not provide the required budgetary flexibility to address the unprecedented financial challenges or unlock the growth potential of local areas. The current financial arrangements also fail to adequately recognise the unique pressures faced by the capital city. This, it should be noted, is in the context of Cardiff facing significant levels of growth and associated demand pressures. Furthermore, this has the potential to place Cardiff and the Cardiff Capital Region at a competitive disadvantage against other UK Core Cities that are being given greater freedom and flexibilities - in areas such as local business rate retention - to drive their city-regional economies.

Question 1.8: How could the Welsh Government measure the current level of avoidance of Non-Domestic Rates?

The Council would argue that there is a need in the first instance to agree a definition of what constitutes 'avoidance'. This will be difficult to measure and in some cases could be subjective. It is also very difficult to produce a report from billing systems to identify avoidance cases and this may rely upon the knowledge and experience of Rating Officers to individually identify properties in their area. In Cardiff, some of the common methods of rate avoidance include:

- **Charitable use**

The total award of mandatory charitable rate relief for Cardiff has been increasing year on year from around £10.2m in 2012 to £12.7m so far this year. It peaked at £14.2m for 2014. In addition we currently award £320k empty charitable rate relief for 2015. There is a trend for large empty properties to be let to charities while seeking a genuine commercial tenant or awaiting planning consent for redevelopment. In addition, charities have leased office space with a Rateable Value of £120,000 in the City Centre, which they then occupy for training purposes for one day each quarter. There are other assessments where the Council has refused to award charitable relief as we are not persuaded that the use is wholly or mainly for charitable purposes. In these cases, the Council obtained liability orders which often involved contested Court cases, which were both time consuming and expensive. The rate liabilities have never been paid and the charity is eventually wound up. The Council believes that the Charity Commission and the law in general should be much more proactive in identifying and prosecuting the people who run these fraudulent charities.

- **Contrived short term occupation**

This practice is now so widespread that some ratepayers are surprised that they actually have to tell us about the 6-week 'occupation'. One ratepayer assumed that we would automatically charge for six weeks and then award another three month void on a repeat cycle until they tell us otherwise. All surplus government property has been utilising this method of empty rate avoidance since 2008. For example, one company in Cardiff has had 37 separate short term occupations over a number of different properties. In some cases, the Rateable Value has been as high as £257,500. It is possible that the use made of these properties does not constitute occupation as the items stored in the properties are of little or no value, but there is no appetite for billing authorities to challenge this in Court due to the time, expertise and expense that a contested case would entail.

- **Small Business Relief on properties with Rateable Value below £6,000**

As there is nothing to pay when occupied, many businesses do not inform the Council when they move in and out. Landlords also do not inform the Council when their tenants move out because they would wish to avoid being left with an empty rate bill. It is an anomaly that rates are chargeable when empty, but not when occupied. This leads to contrived occupations where ratepayers claim property is occupied for storage purposes.

- **Abuse of Limited Liability Companies**

Many individuals abuse the Companies Act to avoid paying business rates. Businesses trade with no intention of paying any business rates and are then put into liquidation and a new company is set up. By operating in this way, there is no legal remedy to collect rates as the companies placed into liquidation, in most cases, have no assets and the new companies usually have new director names. To compound these problems, as a Licensing Authority, we are not allowed to take non payment of business rates into account when granting a license. This is a glaring error and if the legislation were changed to enable the linking of the two, it would help to reduce the incidence of rate evasion. There have been multiple cases owing significance debts that have been written off totalling hundreds of thousands of pounds in Cardiff.

Question 1.9: Do you have any comments or suggestions on how future legislation could help to reduce instances of avoidance of Non-Domestic Rates?

Avoidance has become so normalised that it is difficult to see how the trend can be reversed. Unless there the financial incentive to manipulate occupation periods is removed, then this trend is likely to continue. Even if empty rates were reinstated at 50% of the occupied charge, property owners would still seek to benefit from multiple void periods. As 6 weeks at 100% charge and 13 weeks at nil charge would average around 32% charge, this would be more beneficial than 19 weeks at 50%.

With small properties benefiting from high levels of Supplementary Business Rate (SBR) when occupied and the test for occupation being set so low, it would be very difficult to refuse SBR to properties with low Rateable Values. The Council would therefore argue for occupation periods and void allowances to be set at a level where there is no financial incentive to contrive occupations. This could involve restricting the number of void allowance periods unless there is a long term occupation (e.g. 1 year).

Question 1.10: In what other ways could the Welsh Government enable Local Government to reduce the level of avoidance and fraud within the Non-Domestic Rates system?

The Council would welcome proposals that would require businesses to notify Local Authorities of changes in circumstances. However, in order to be effective, there would need to be a time limit on awarding rate reliefs retrospectively.

Perhaps the biggest fraud in respect of rate avoidance is the mis-use of limited liability status. There are many examples in Cardiff of high value properties being let out to market stall type traders. There are currently around ten such places in Queen Street where Rateable Values are up to £400,000. Typically, the properties are let at a fraction of the market value to a company which, in turn, immediately sub-lets to another company. The company which claims to occupy will be a sham, the director will register a false address with Companies House and the company will trade for as long as it takes for the Local Authority to obtain a Liability Order. When the bailiff calls to enforce the Liability Order, he will be told that the business changed hands in the previous week and a new sub-lease will be produced to support the claim. Enforcement action is frustrated because the company has no assets and the company director cannot be located because he has registered a false address.

The Council recognises that this type of scenario may be outside the scope of the amendments that are being considered by the Welsh Government, but this is probably the biggest type of business rate avoidance/fraud currently experienced in Cardiff.

In addition, in relation to properties in the nature of pubs/clubs where licenses are involved, it might be easier to stop repeat offenders avoiding paying rates if it was easier to refuse applications for new licenses in the first place, particularly if the applicant was a known avoider of paying NNDR historically.

Question 1.11: Do you agree that the preserved counties be abolished and that consequential amendments are made so that the appointments of Lord-Lieutenants and High Sheriffs are made in respect of the counties in existence after 1 April 2020?

It would be appropriate for purposes of consistency and clarity that the new counties should be used for the appointment of Lord-Lieutenants and High Sheriffs from 1st April 2020. The creation of new counties to replace the current preserved counties in Wales should also result in associated changes to the postal counties used by the Royal Mail as part of their geographical referencing data that used widely by businesses.

Question 1.12: Are there other matters of a technical nature which should be considered?

No comments.

PART 2

Question 2.1: Do you have any comments on any of the provisions in Part 2 of the Draft Bill?

The City of Cardiff Council welcomes the introduction of the power of general competence.

Question 2.2: Do you have any comments on our proposals relating to Community Councils with competence?

No comments.

PART 3

Question 3.1: Do you have any comments on any of the provisions in Part 3 of the Draft Bill?

The Council supports the proposals in the Draft Bill to promote access to local government by placing duties on councils to promote access to, and public participation in, local government. However, the Council is concerned that many of the proposed new duties will create additional burdens on authorities which will require additional resources for the provision of administrative support.

Question 3.2: Do you have any comments on the proposed public participation duty and the requirement to consult on the annual budget?

The City of Cardiff Council is supportive of the spirit of the Welsh Government's ambitions and councils are committed to promoting access to local government.

It is not clear what improvements a new 'public participation duty' on local authorities would achieve, apart from creating an additional regulatory burden. Such a duty should already be covered as public engagement would be a key aspect of the proposed new general 'good governance' duty outlined in Part 5 of the Draft Bill.

The Council does not agree with the proposed statutory Public Participation Strategy, in particular the proposal to place statutory responsibilities on councils to discharge duties over or on behalf of other autonomous 'connected authorities' such as community councils, fire and rescue authorities and national park authorities; this will inevitably have resource implications for councils and clouds accountability and responsibility for delivering on any public participation duties.

Question 3.3: How should community representatives to sit on community area committees be sought and selected?

The proposed appointment of community representatives from "at least one body whose functions are of a public nature in relation to the whole or any part of the community area". Further guidance from the Welsh Government is required in relation to this process.

The nomination and appointment process for voluntary sector representation within each community area should be coordinated by the voluntary sector council operating in the Council's administrative area.

Question 3.4: Do you agree County Councils should be able to delegate functions to a community area committee? If yes, are there any functions that should or should not be capable of being delegated?

Yes, the Council would support flexibility to allow councils to delegate functions to more localised community governance models.

There are implications around delegations of powers and functions given the broad membership of the committee which could include executive and scrutiny members, and, potentially, members of the community with particular interests. Levels of delegation therefore need to be carefully considered in order to avoid any confusion of roles and responsibilities around quasi-judicial, executive or scrutiny functions.

Question 3.5: Do you have any views on whether transitional arrangements need to be put in place for existing area committees, or is a good lead-in time sufficient?

There are no significant implications in terms of the transition from the existing neighbourhood management area arrangements which are currently in place within Cardiff.

Question 3.6: Do you have any comments on the revised provisions for 'improvement requests' or on the interaction between these provisions and those relating to the public participation duty (Part 3, Chapter 2) and community area committees (Part 3, Chapter 3)?

The Council is supportive of the 'activist' or 'co-operative council' model and has taken steps to increase the engagement with communities and partners in the design and delivery of services.

The Council has some concerns relating to the provisions for 'improvement requests.' 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.

The 'improvement requests' proposal in the Draft Bill over-formalises such an approach and will create a significant amount of bureaucracy, which would be an additional administrative burden on local authorities and could impact on the speed of decision-making. It is likely that councils will have to consider and report formally (either by the executive, scrutiny or both) on any such requests that are received from the community.

Question 3.7: Do you have any comments on any of our further proposals relating to access to meetings?

The Council would support provisions for the use of webcasting to be extended to all formal council, committee or sub-committee meetings of the Council that are open to the public. However, the Council believes that this provision should not extend to any such meetings (e.g. Community Area Committees) that are held in non-council owned premises within local communities due to associated logistical issues and resource implications relating to the staffing and portability of webcasting equipment to CAC meetings.

Question 3.8: Do you have any comments on our proposals to enhance participation by children and young people through the public participation duty?

The Council believes that the existing requirements placed on local authorities under Section 12 of the Children and Families (Wales) Measure 2010 are sufficient. The Council would request further clarification on how the proposed requirement for local authorities to involve children and young people in the decision-making process of the Authority would work in practice.

PART 4

Question 4.1: Do you have any comments on any of the provisions in Part 4 of the Draft Bill?

The Council is sceptical about whether the additional obligations in the Draft Bill would ensure a better public service for their electorate. In particular, the Council does not believe that the 'performance duties' or obligations set out in the Draft Bill assist in assessing effectively how well a Councillor has performed in his/her Ward in furtherance to their community leadership role. The ultimate determinant of a Councillor's performance by local people is through the democratic process at the ballot box in local elections.

Furthermore, the Council is concerned that an overly prescriptive approach which places new 'performance duties' on councillors will deter potential new candidates from putting themselves forward for election, particularly if they have other personal business, childcare or caring commitments. This would run counter to the aspiration to 'renew local democracy.'

The Council would also support the arguments put forward by the WLGA about the need for any proposals relating to the performance duties, remuneration and standards of conduct of elected representatives should be applied consistently across all levels of government in Wales.

Section 82 – Attendance at Meetings

The obligation to attend all relevant meetings would be difficult to meet as Councillors are often invited to meetings that will inevitably clash with other community meetings, events and commitments as part of their Council role. For example, school governor and PACT meetings, briefing and training sessions, other community events and meetings with officers.

The Council also feels that a more nuanced approach to measuring participation should be developed, which could potentially include, for example, a minimum attendance commitment for all Members. The current system recognises those Members who had 100% attendance at Committee meetings - even if they only attended the minimum requirement of attendance at Full Council (9 meetings a year in Cardiff). However, if a Councillor sat on many Committees, resulting in a requirement to attend a large number of

meetings a year, and missed a small number of these, their performance would appear to be worse than another member who had a 100% attendance rate from a small number of meetings.

Section 84 – Correspondence

The Draft Bill proposes that councillors would have 14 days to respond to correspondence that is sent to their 'official address', as required under Section 80 of the Draft Bill. Section 84 does not specify whether this is based on working or calendar days. In contrast, it is noted that Welsh Government Cabinet Members have 17 working days to respond to ministerial correspondence. The Council objects to this proposal in terms of the additional resource implications of supporting both Cabinet Member and Ward Member correspondence and casework in order to comply with these timescales, as well as the lack of consistency with other public services in Wales in terms of standards of customer service in replying to correspondence.

Section 85 – Training

The proposal to require Elected Members to attend mandatory training on key topics in order to develop appropriate skills is supported.

Section 86 – Annual Reports

The Council disagrees with the proposed statutory requirement for all members to produce an Annual Report. The current provisions of the Local Government (Wales) Measure 2011 are sufficient in that local authorities "must make arrangements" for Members to make an annual report should they wish to do so. Many Councillors already produce regular newsletters detailing their activities throughout the year which are valued by their communities and often provide much greater detail than a single, size-limited annual report.

Sections 87-94 – Complaints about a Member's non-compliance with 'performance duties'

The Council is concerned about matters relating to Members' performance duties being brought within the remit of the Council's Standards Committee due to the implication that any failure to meet these duties is comparable with more serious breaches of the Code of Conduct for Members. As it stands, the Standards Committee will not routinely consider serious complaints about Members who may have breached the Code of Conduct for Members unless the complaint has been referred to the Standards Committee by the Public Services Ombudsman for Wales. The Council is also concerned that the proposals will lead to an increase in the number of vexatious complaints about councillors' performance, which will place additional burdens on the workload of Monitoring Officers, Standards Committees and Heads of Democratic Services.

Section 99 – Objectives to be met by council executives

In order to be effective, the Council believes that this proposal needs to be supported by a requirement for a 'performance review' of executive members to be undertaken by the Leader of the Council.

Section 100 – Manifestos: election of executive leader

The Council is concerned about the timescales in which a written manifesto would need to be prepared (e.g. publication prior to consideration at the Annual Meeting of the Council) and would request further clarification on this. The Draft Bill also implies an open competition among candidates for the role of Leader, which does not always take place as it is an internal matter for the ruling political group to determine before being ‘ratified’ by the Council.

Section 101 – Appointment of assistants to the executive

This provision is supported and has already been implemented in Cardiff.

Section 104 – Council leaders to set objectives for chief executives etc.

This proposal is supported and has already been implemented in Cardiff.

Section 105 – Head of Democratic Services

The Council agrees that the requirement preventing the Monitoring Officer from also being the Head of Democratic Services be removed.

More generally, the Council believes that the Welsh Government needs to support the work of Councillors by improving the way in which it communicates and consults with local Councillors more widely in Wales. For example, the Welsh Government should make clearer to Councillors their plans for future legislation and initiatives; alert Councillors to relevant consultations more effectively, and provide direct and concise updates on Assembly legislation and Welsh Government policy developments.

Question 4.2: Do you have any comments on the proposed duty on leaders of political groups or the monitoring and reporting roles of the Standards Committee?

The Council supports the proposed duty on leaders of political groups to promote and maintain high standards of conduct by members of their groups. This will assist in upholding the Code of Conduct for Members and supporting good governance within councils. However, the Council’s Standards & Ethics Committee has expressed some concerns about the proposed new role and remit of Standards Committees in monitoring the work of political group leaders and their compliance with the duties imposed on them.

The Council’s Standards & Ethics Committee has also noted with concern the proposed new function for Standards Committees to consider complaints about Councillors that have breached the proposed new statutory duties relating to replying to correspondence, holding ward surgeries, attending meetings and attending mandatory training. The Committee believes that this proposed new role will amount to a ‘performance management’ role for Standards Committees, as opposed to a standards monitoring role ensuring adherence to the Members’ Code of Conduct.

In Cardiff, the Council’s Standards & Ethics Committee already submits an annual report to the Council on its work during the municipal year, as proposed in Section 109 of the Draft Bill.

Question 4.3: Do you have any comments on our proposals in relation to the delegation of functions by Local Authorities?

The proposals are supported.

Question 4.4: Do you have any comments on our proposal to give the Welsh Ministers a power to direct the IRPW to have regard to guidance when reviewing the remuneration framework for Councillors?

The Council would question the future 'independence' of the Independent Remuneration Panel for Wales if its work is placed under proposed Ministerial Directions. This would be similar to the Directions issued to the Local Democracy and Boundary Commission for Wales. It is noted that the word 'independent' does not form part of the Commission's official title.

Question 4.5: Do you agree the provisions relating to remote attendance in the 2011 Measure should be made more flexible?

The proposed intention to provide increased flexibility for remote attendance at meetings is supported in principle, but the Council believes that a lack of demand for this facility and related technical challenges are likely to persist. There is also a need to ensure that increased flexibility for remote attendance does not impair the proper and effective conduct and business of formal meetings, particularly if they are being webcast.

Question 4.6: Do you have any comments on our proposal that Shadow Authorities should be required to appoint interim Returning Officers?

This proposal is supported.

Question 4.7: Do you have any comments on the desirability of giving Councils the power to dismiss the Chief Executive, the Chief Finance Officer, the Monitoring Officer and the Head of Democratic Services through a vote?

This proposal is supported based on the substantial costs associated with the current Designated Independent Person (DIP) process, which can be both lengthy and bureaucratic. However, any consideration of the dismissal of statutory officers by the Council must be informed by an investigation report or legal advice that should be provided by an independent third party in the interests of fairness.

Question 4.8: Do you have any comments on our proposal to change the framework within which Councils and their Executive determine how their functions are to be allocated?

This proposed amendment to Section 13 of the Local Government Act 2000 is supported, but the Council believes that the proposed power of direction for Welsh Ministers to require local authorities to allocate responsibility for a function in a particular way is not needed.

Question 4.9: Do you have any comments on our proposals in relation to the disposal and transfer of Local Authority assets?

The proposals are supported and are consistent with the Council's Community Asset Transfer strategy and 'Stepping Up' tool.

PART 5

Question 5.1: Do you have any comments on any of the provisions in Part 5 of the Draft Bill?

The Council welcomes the approach to performance and improvement based on the principles of self-improvement, self-assessment and good governance outlined in the Draft Bill. In its response to the previous consultation on the 'Power to Local People' White Paper, the Council raised concerns that the approach put forward was not proportionate to risk and, in practice, will be resource intensive, bureaucratic and complex. The Council therefore welcomes the proposals regarding the reduction of regulation and promoting self-assessment and peer assessment.

Although the detail and likely burdens around external regulation needs to be explored further, it appears on the face of the Draft Bill that external regulation is likely to be more timely and proportionate than the current regime (under the Local Government (Wales) Measure 2009).

The City of Cardiff Council agrees with the requirement that Local Authorities should produce a Corporate Plan and supports the proposals around corporate planning (S112), which largely build on the processes that councils already follow, albeit prescribing a list of specified documents or policies (or links to such documents) that should be included in a council corporate strategy.

The Council would like to re-iterate that there is a clear disconnection between the expectation that the Corporate Plan is a long term document and the absence of a commitment to move towards a longer term financial planning regime. Effective multi-year planning will require multi-year budgeting.

The corporate planning and reporting proposals, as outlined in the Draft Bill should be better aligned with the new duties of the Wellbeing of Future Generations (Wales) Act 2015. The specific corporate planning proposals (and other objective setting proposals elsewhere in the Draft Bill) duplicate new Wellbeing duties and therefore will increase internal bureaucracy and do little to aid public understanding or accountability.

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 will have to annually set (or at least participate in the setting of) and report on six sets of similar corporate priorities:

1. **Councils must set and report annually ‘Wellbeing Objectives’** (S7 of the Wellbeing and Future Generations (Wales) Act 2015)
2. **PSBs must set and report annually ‘Wellbeing Objectives’** (S39 of the Wellbeing and Future Generations (Wales) Act 2015)
3. **Leaders must set and report annually ‘objectives to be met by the Executive’** (S99 of the Draft Bill)
4. **Leaders must set and report annually ‘objectives to be met by the chief executive’** (S104 of the Draft Bill)
5. **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)
6. (A number of) **Community Area Committees must 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)

As stated above, care must be taken to ensure that the Draft Bill and the Future Generations Act do not create duplication, and overly-bureaucratic or a confused approach to planning and performance management.

Statutory Performance Indicators do not feature on the face of the Draft Bill (unlike the predecessor 2009 Measure) but it is understood that they may feature in a final Bill. At this stage, it is not clear what the relationship of any new national local government performance indicators will have with the proposed new National Wellbeing Indicators, nor why any local government review is being undertaken separately from the wider consultation on the national Wellbeing Indicators, many of which cover local government performance.

Crucially, it is important that the Welsh Government recognises the distinction between area wide outcomes and organisational effectiveness. Achieving area wide outcomes is a collective and long term endeavour, whereas organisational effectiveness is measured by more immediate performance indicators. The lines between the two should not be blurred. **The Corporate Plan must be about organisational effectiveness measured through performance information. It contributes to wider outcomes measured by broader “macro level” data.**

The Council agrees with the need to better coordinate external regulators, notably the WAO, CSSIW and Estyn. The principle of the proposed 'whole system assessment' of local authorities undertaken jointly by the main regulatory bodies is much welcomed. Similarly, Local Authorities should not be compelled to respond separately to Self-Assessment, Peer Review and WAO reports as it will create a fragmented policy position that is ultimately unworkable. The three reviews should be mutually re-enforcing and inform the Corporate Plan.

The Council would agree that in some circumstances Welsh Ministers should intervene where a Local Authority is showing signs of failure; however, only under extreme circumstances and as a last resort. 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.

Question 5.2: Do you have any comments on our proposal to subject Local Authorities to a governance arrangements duty?

The Council broadly welcomes the proposed governance arrangements duty, but better alignment is needed with the 'governance' duties of the statutory sustainable development principle of the Wellbeing of Future Generations (Wales) Act 2015 (see above).

Question 5.3: Do you have any comments on the model approach to peer assessment set out in Annex A?

The Council welcomes the Welsh Government's recognition of the value of peer review and agrees that it should remain a key component of a reformed improvement regime in the future.

However, there is a danger that legislating and prescribing a peer review process as drafted in the Draft Bill essentially creates a peer inspection framework, rather than a peer review framework; although the membership and process would remain largely the same, the purpose, ownership and implications of a review will significantly change.

At present, peer review is an effective improvement process owned by, designed and timed to meet the needs of authorities. Formalising the process will affect the dynamics and flexibility of the review process and the openness and ownership of the authority.

Furthermore, the Chief Executive should have the discretion to commission the peer review, focusing on areas identified by the self-assessment and Wales Audit Office as requiring improvement.

Question 5.4: Do you have any comments on the proposed role for the Corporate Governance and Audit Committee in relation to the Local Authority's response to the self assessment, peer assessment, combined assessment and governance review?

This proposal is supported.

The Council agrees that the proportion of independent members sitting on a Local Authority's Audit Committee should be increased, with existing arrangements for the appointment of independent members to the Audit Committee in Cardiff already benefiting the work of the Council. Even before the Local Government (Wales) Measure 2011 and the statutory provision for the establishment of Audit Committees, the Council had more than one independent member on its former Independent Audit Panel. The Council believes that independent members bring a wealth of experience from a range of disciplines and helps ensure that the Audit Committee remains apolitical.

The Council also agrees that the chair of a Local Authority's Audit Committee should be an independent member, which is consistent with the current position in Cardiff. The Council currently has 8 Councillors and 4 independent members on its Audit Committee and we would consider this 2:1 ratio to work well. The Council believes that elected members provide local knowledge and experience, whilst independent members can offer an external perspective from a wide range of professional disciplines, as well as experiences from other organisations and sectors.

Question 5.5: Do you have any comments on our proposal to reject local public accounts committees?

No comments.

Question 5.6: Are Public Services Boards the right bodies to examine the policy choices facing local public services?

The Public Services Boards are the right bodies to examine long term trends and strategic policy choices facing local public services. They are also the right bodies to examine issues which in their nature require a partnership response (including the pooling of data, resources and assets) to achieve shared outcomes. However, the decision-making responsibilities should continue to rest with the individual member bodies of the PSB.

Question 5.7: If so, would they benefit from additional legal powers?

The legal powers of Public Service Boards as introduced in the Wellbeing of Future Generations (Wales) Act 2015 appear appropriate.

Question 5.8: What legislative measures could be considered to enable Local Government to take a public sector-wide shared services role?

No comments.

PART 6

Question 6.1: Do you have any comments on any of the provisions in Part 6 of the Draft Bill?

The Council supports proposals for a review of community council arrangements to be conducted by the Local Democracy and Boundary Commission.

Question 6.2: Should the Boundary Commission be required to submit their draft reports to Shadow Authorities from May 2019?

Yes, this proposal is supported.

Question 6.3: Should the new County Councils implement the Boundary Commission's recommendations or should this be a responsibility of the Boundary Commission itself?

The Council believes that this should be a matter for implementation by the new County Councils.

Question 6.4: Do you have any comments on our proposals relating to compulsory training for Community Councillors?

The Council does not support the proposed duty on County Councils to consider the training needs and 'secure the provision' of training for community councillors. This should be solely a matter of responsibility for Community Councils.

Question 6.5: Do you have any comments on our proposal to extend the term of Community Councillors elected in 2017 to six years?

The Council is concerned that this would include provision for the undemocratic co-option of community councillors for a potential 5-6 year term.

Question 6.6: Do you have any comments on our proposal that Community Councils should be required to consider and plan for the training needs of their own members and employees?

This proposal is supported (see also response to Question 6.4)

Question 6.7: Do you have any comments in relation to the setting of objectives for a Community Council clerk?

No comments.

Question 6.8: Do you have any comments on our proposal to repeal the legislation relating to community polls and to require instead that Local Authorities should implement a system of e-petitions?

This proposal is supported and is consistent with the Council's previous submission in response to the recent Welsh Government consultation on the community polls legislation which was undertaken from November 2013-February 2014.

PART 7

Question 7.1: Do you have any comments on any of the provisions in Part 7 of the Draft Bill?

The Council is concerned about proposed Ministerial powers over workforce matters, including 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, which should be matters for local authorities to determine.

Question 7.2: Do you have any views on whether it would still be desirable to establish a statutory Public Services Staff Commission if it would be more constrained in the matters on which it could issue guidance than a non-statutory Commission?

The establishment of a statutory Public Services Staff Commission to specifically support the process of local government reorganisation in Wales is a logical next step following provisions in the Local Government (Wales) Act 2015 to establish a Commission on a non-statutory basis.

PART 8

Question 8.1: Do you have any comments on any of the provisions in Part 8 of the Draft Bill or on any of the Schedules?

No comments.

ADDITIONAL QUESTIONS

Question 9.1: Are you aware of any consequential amendments to legislation that will need to be made?

No

Question 9.2: Please provide feedback you think would be useful in relation to the supporting documents published alongside the Draft Bill i.e. Draft Explanatory Memorandum (including the Regulatory Impact Assessment) and specific Impact Assessments.

n/a

Question 9.3: We have asked a number of specific questions. If you have any related issues which we have not specifically addresses, please use this space to comment.

Responses to consultations may be made public – on the internet or in a report. If you would prefer your response to be kept anonymous please tick the box: