

REPORT OF THE HEAD OF DEMOCRATIC SERVICES

LOCAL GOVERNMENT AND ELECTIONS (WALES) BILL

Purpose

1. To provide the Democratic Services Committee with an outline of the Local Government and Elections (Wales) Bill.

Background

2. The Local Government and Elections (Wales) Bill¹ [the Bill] was published on 18th November 2019. It is a significant and substantial piece of legislation consisting of 176 pages with a further 683 pages of accompanying documents, including an Explanatory Memorandum and Regulatory Impact Assessment. It includes provisions for:
 - Reforming electoral arrangements for local government, including:
 - extending the voting franchise to 16 and 17 year olds and foreign citizens legally resident in Wales,
 - changes to voter registration, and
 - enabling a principal council to choose between the ‘first past the post’ or the ‘single transferable vote’ voting systems;
 - A general power of competence for principal councils and eligible community councils;
 - Reforming public participation in local democracy;
 - The leadership of principal councils, including to encourage greater diversity amongst executive members and establishing a statutory position of chief executive;
 - The development of a framework and powers to facilitate more consistent and coherent regional working mechanisms;
 - A new system for performance and governance based on self-assessment and peer review, including the consolidation of the Welsh Ministers’ support and intervention powers;
 - Powers to facilitate voluntary mergers of principal councils and restructuring a principal area;
 - Local government finance including non-domestic rating and council tax;
 - Miscellaneous provisions relating to:

¹ <http://senedd.assembly.wales/mglIssueHistoryHome.aspx?IId=26688>

- information sharing between regulators,
 - abolition of community polls,
 - fire and rescue authorities,
 - the Local Democracy and Boundary Commission for Wales, and
 - Public Service Boards.
3. It is anticipated that, subject to successful passage through the Assembly, the Bill would receive Royal Assent by the end of the Summer of 2020, with some provisions being commenced immediately and others being introduced for the start of the 2022 municipal term.
 4. The Bill is the culmination of several years of policy consultation. Reform of local government including collaboration, governance arrangements, improvement and structural reform have been the subject of discussions between the Minister for Housing and Local Government and local government leaders during the past 18 months initially through the Local Government Working Group chaired by Derek Vaughan and subsequently via the Local Government Sub-Group of Partnership Council. Through these groups, the Minister has sought to engage constructively with local government, sharing proposals and seeking views to ensure the Bill addressed local government's concerns and requirements where possible.
 5. All such engagement has been non-committal and on the understanding that dialogue did not necessarily indicate local government endorsement of or commitment to any proposals prior to them being published in full through the Bill.
 6. Given the Bill was published on the 18th November, it has not been possible to consider the entirety of the Bill in detail in this report, however, the following provides a summary of some of the more significant proposed reforms.

Issues:

Elections

7. These are some of the most fundamental reforms included in the Bill, and will have a significant impact on local authorities and, in particular, electoral services administration. Many of the proposals are consistent with or support the Assembly electoral reforms outlined in the current Senedd and Elections (Wales) Bill.
8. The following provides a general summary of the key reforms:
 - a. Extending the franchise to 16-17 year olds (Section 2)

In Wales, only people aged 18 and over are currently eligible to vote in elections, although people aged 16 and 17 are able to register to vote if they will turn 18 during the period the register is in force. 16 and 17 year-olds were allowed to vote in the UK for the first time in the referendum on Scottish independence, held on 18 September 2014. Since the Scottish referendum, 16 and 17 year-olds in Scotland have also voted in Scottish local and Scottish parliamentary elections. The Isle of Man extended the franchise to 16 and 17 year-olds in 2006.

The Bill provides for the extension of the local government franchise to allow 16 and 17 year-olds to be able to register to vote in Welsh local government elections and any poll in Wales which uses the local government franchise such as mayoral elections and referendums.

b. Extending the local government franchise to citizens from any country (Section 2)

The local government franchise currently applies to citizens of the Republic of Ireland, the EU and the Commonwealth. The Welsh Government see no reason why a person who is resident in Wales and who is lawfully in the country should not be eligible to register to vote in Welsh local government elections, irrespective of their nationality.

The Bill therefore extends the local government franchise to citizens from any country provided that they meet the criteria set out in Section 4(3) of RPA 1983, and can satisfy the local ERO that they are resident in the area in which they wish to register and vote, under Section 5 of RPA 1983.

c. Two voting systems (Section 5)

The Bill would allow councils to choose their own voting system, either the current first past the post system or Single Transferable Vote.

The first past the post (FPTP) system, also known as “the simple majority system”, has been the only voting system used to elect local councils in Wales since the introduction of elected local government in the late 19th century. It is also the system used to elect Members of Parliament, constituency Assembly Members and town and community councillors in Wales. Accordingly, it is the voting system with which Welsh voters are most familiar.

STV is a preferential voting system, which means voters are asked to rank the available candidates in order of preference, using numbers. Voters may choose to rank all the available candidates or only as many as they wish. STV is considered to be a system of proportional representation. It usually produces results which generally reflect the proportions of votes cast for the different political parties, groups and independents in an individual electoral area and across the election as a whole.

Councils would need a majority of two-thirds to change the voting system and the system could not be changed back for the period of two ordinary elections.

d. Change of electoral cycle for principal councils from four years to five years (Section 14)

The Welsh Government has extended recent terms (including the current term) to 5 years, to align with Parliamentary and Assembly terms. The Bill would also allow Ministers to vary the day of elections (Section 17).

e. Qualification and Disqualification for election and being a member of a local authority (Sections 24-26)

The Bill amends the eligibility criteria for candidates at local government elections to allow a citizen of any country to stand for election. The Bill provides that council officers and employees, other than those holding politically restricted posts, will be entitled to stand for election to their own council. They will only be required to resign their paid employment with the council if they are elected. The Welsh Government's intention is that this will widen the pool of potential candidates while ensuring there is no conflict of interest once the candidate is elected.

General Power of Competence

9. The Bill provides principal councils and 'eligible' community councils with a general power of competence, with the aim of bringing about more effective, capable and innovative local government. The general power will allow local authorities to act in their communities' best interests, generate efficiencies and secure value for money outcomes. They will also be able to raise money by charging for discretionary services and to trade in line with existing powers.

Promoting Access to Local Government

10. The Bill outlines several proposals to encourage a more diverse range of members of the public to engage with local democracy, encourage public participation in council decision-making and support openness and transparency

- a. Strategy on encouraging participation (Section 47)

The Bill outlines a new duty for councils to prepare a 'participation strategy' with 'the aim of making it easier for members of the public to understand how local government functions; how it makes decisions; and how local people can follow proceedings, input their views, and have them taken into account'.

- b. Duty to make petition scheme (Section 49)

The Bill repeals community polls and introduces a duty to make a petition scheme. In order to promote greater and more effective use of petitions within the local government sector, the Bill includes provisions to require a principal council to make a petition scheme setting out how it will handle and deal with petitions, including e-petitions. Such a proposal is similar to schemes already in place within a number of public bodies in Wales, such as the Assembly. Encouraging the use of electronic petitions specifically is in line with the Welsh Government's digital agenda

The Council's Constitution Committee has the review of the Council Petition scheme on its forward work programme and the Monitoring Officer has indicated that any views of the committee regarding the petition scheme would be welcomed.

- c. Duty on principal councils to publish official addresses (Section 50)

The Bill places a duty on councils to publish an electronic and postal address where councillors can be contacted by their electorate to ensure councillors are '...freely accessible to local people'. The duty however allows these contact details to be a general council address, rather than councillors' personal addresses, which is an approach many councils including Cardiff Council have already adopted. This is a reform which a number of Authorities have called for, given some members' concerns about privacy in the current environment where intimidation and harassment is a risk.

d. Electronic broadcasts of meetings of certain local authorities (Section 53)

The Bill requires local authorities to electronically broadcast all meetings which are open to the public as they take place, and to make the broadcast available electronically for a reasonable period after the meeting. The Welsh Government will provide guidance to authorities.

Public viewing figures and engagement with council webcasts however varies. Webcasting can be costly, in terms of broadcast equipment, server and/or streaming costs and administration. The Regulatory Impact Assessment indicates that the additional costs of broadcasting all council meetings would be in the region of £12,000 per annum, based on a single contract for Wales. It remains unclear whether such a single, all Wales contract is feasible in the future, however, initial feedback from authorities suggests the costs are significantly underestimated, with estimates of additional annual expenditure of between £30,000 to £250,000 per authority. At least one council currently uses YouTube to broadcast meetings, which is a significantly lower cost approach to broadcasting.

Any legislative duty to broadcast all meetings would need appropriate safeguards to allow for instances for meetings to continue and decisions to be made even where the public broadcast is either interrupted or not possible due to technological issues.

Further work is being undertaken with Heads of Democratic Services and Monitoring Officers to provide robust estimates of costs and any administrative and governance implications of such a duty.

e. Conditions for remote attendance of members of local authorities (Section 54)

The Bill amends the prescriptive and restrictive remote attendance provisions of the Local Government (Wales) Measure 2011. The WLGA supported the concept of remote attendance when first proposed as it supported access and flexibility for members, but expressed concern when during the passage of the 2011 Measure as the legislation made the provisions unduly restrictive and effectively unworkable. Unfortunately, the Measure was not amended in light of local government's concerns.

It may be necessary to include on the face of the Bill appropriate protection to provide for instances where remote attendance is either interrupted or not possible due to technological issues and further discussions are ongoing between Welsh Government, Heads of Democratic Services and Monitoring

Officers to consider any administrative and governance implications of the revised powers.

Local Authority Executives, Members, Officers and Committees

11. This Part of the Bill is broad and covers a range of areas of employment and governance, including:

- Appointment of Chief Executives (rather than a head of paid service) with specific duties and specified chief executive performance management;
- appointment of assistants to cabinets and allowing job-sharing leaders or cabinet members
- updating family absence provisions in line with those available to employees;
- requiring leaders of political groups to take steps to promote and maintain high standards of conduct by members of their groups

12. The WLGA and SOLACE have previously expressed reservations regarding Ministerial Guidance making powers with regards the performance management of Chief Executives, commenting on the 2015 Draft Bill:

Welsh Ministers may issue guidance, to which the Council must have regard. The WLGA and SOLACE has concerns about the potential risks of Welsh Ministerial intervention in local relations and arrangements between a leader and a chief executive. This risks considerable incursion into the running of a local authority without any parameters around the Minister's reason for issuing such guidance.

Collaborative Working by Principal Councils

13. This section of the Bill introduces the powers for local authorities and Ministers to establish Corporate Joint Committees (CJCs). It has been the subject of extensive dialogue and engagement between the Minister for Housing and Local Government and leaders and has been considered at several WLGA meetings.

14. The Bill provides for powers local authorities to request the establishment of CJCs covering any functions. The Bill also provides Ministerial powers to establish CJCs in the functions of school improvement, economic development, strategic planning and transport.

15. The Bill provides the outline of the CJC proposals, however, the detail including specific functions, boundaries and governance arrangements will be covered in Regulations introduced by the Minister.

Performance and Governance of Principal Councils

16. The Bill proposes a new streamlined performance framework for local government, repealing the Wales Programme for Improvement and performance provisions of the Local Government (Wales) Measure 2009.

17. The Bill will introduce a new duty for a council to keep its performance under review to the extent to which it is

- (a) it is exercising its functions effectively,
- (b) it is using its resources economically, efficiently and effectively, and

(c) its governance is effective for securing the matters set out in paragraphs (a) and (b).

18. In addition, a council must conduct an annual self assessment of the above duty, publishing a report of this assessment and also commission an independent Panel Assessment of its performance once per municipal term.

19. Alongside the proposed reforms to strengthen self-assessment and self-improvement, the Minister has committed to reinvesting in sector-led improvement support through the WLGA. This commitment and recognition of the value of sector-led improvement is particularly welcome and it is hoped that the new improvement capacity will be in place from 2020-21. A WLGA improvement proposal is currently being developed and will be considered by WLGA Management Sub Committee and presented to the Minister in December.

Governance and Audit Committees

20. The Bill introduces previously consulted upon reforms to change Audit Committees, including:

- Renaming as Governance and Audit Committees
- Prescribing that one third of members must be lay members
- Prescribing that the chair must be a lay member

Mergers and Restructuring of Principle Areas

21. The Welsh Government has decided not to proceed with prescribed mergers of local government, as had been outlined in the Green Paper 2018. These proposals were roundly rejected by local government. Instead, the Welsh Government is seeking to encourage and facilitate greater collaborative reform as outlined through Corporate Joint Committees.

22. The WLGA and local government were however supportive of the concept of voluntary mergers when previously consulted, as '...these are a matter for local discretion and if individual councils develop a business case, negotiate and agree a merger locally, then they should be supported in their local reforms.'

Finance and Miscellaneous Reforms

23. The Bill also includes several finance and specific reforms, including:

- Removal of power to provide for imprisonment of council tax debtors
- Removal of the powers of the Independent Remuneration Panel over Chief Officer salaries (which had been introduced as a temporary measure in the Local Government (Wales) Act 2015).
- Abolition of community polls
- Amendments to Wellbeing of Future Generations (Wales) Act 2015 to allow PSBs to demerge

24. The proposed Finance reforms will need some further exploration with local authorities and Treasurers. The Bill includes several provisions aimed at reducing opportunities for avoidance behaviour relating to non-domestic rates. The Bill will provide authorities

with powers to request information from ratepayers and third parties and to inspect properties for the purposes of exercising their functions in relation to non-domestic rates billing and collection. The Welsh Government believes that this would assist an authority to carry out its billing and collection functions relating to non-domestic rates.

Next Steps

25. The legislative timetable is currently being finalised by the Assembly's Business Committee, but if the Bill is to be passed by the Summer Recess as is the Welsh Government's intention, the following indicative timeline is anticipated:

21 st November	Stage 1 scrutiny of the general principles begins
Mid March 2020	Stage 1 Reports
Mid May 2020	Stage 2 Committee consideration of amendments
TBC	Stage 3 Plenary consideration of amendments concludes
By Summer Recess	Stage 4 Passing of the Bill in Plenary

26. It is anticipated that local authorities will also be invited to submit evidence, as will SOLACE and the Association of Electoral Administrators.

Legal Implications

27. There are no direct legal implications arising from this report. Any legal implications will be provided in a subsequent report following the Royal Ascent of the Bill later this year.

Financial Implications

28. There are no direct financial implications arising from this outline report of the Local Government and Elections (Wales) Bill. Following Royal Ascent of the Bill later this year, and in consideration of anticipated guidance information from the Welsh Government, the financial implications will be provided in a subsequent report.

Recommendation

The Committee is recommended to note the content of the report

GP JONES
Head of Democratic Services
03 January 2020

Background papers:

[Local Government & Elections \(Wales\) Bill](#)

[Local Government & Elections \(Wales\) Bill – Explanatory Memorandum](#)