



**CYNGOR BWRDEISTREF SIROL  
RHONDDA CYNON TAF  
COUNTY BOROUGH COUNCIL**

**GWŶS I GYFARFOD PWYLLGOR**

C Hanagan  
Cyfarwyddwr Gwasanaeth y Gwasanaethau Democrataidd a Chyfathrebu  
Cyngor Bwrdeistref Sirol Rhondda Cynon Taf  
Y Pafiliynau Parc Hen Lofa'r Cambrian  
Cwm Clydach, CF40 2XX

Dolen gyswllt: Julia Nicholls - Gwasanaethau Democrataidd (01443 424098)

**DYMA WŶS I CHI** i gyfarfod o **GYNGOR BWRDEISTREF SIROL RHONDDA CYNON TAF** sydd i'w gynnal yn **Siambr y Cyngor, Y Pafiliynau, Parc Hen Lofa'r Cambrian, Cwm Clydach, Tonypany, CF40 2XX** ar **DYDD MERCHER, 27AIN TACHWEDD, 2019** am **5.00 PM**.

**AGENDA**

**Tudalennau**

**15. BIL LLYWODRAETH LEOL AC ETHOLIADAU (CYMRU)**

Derbyn adroddiad gan y Cyfarwyddwr Gwasanaeth – Gwasanaethau Democrataidd a Chyfathrebu sy'n cyflwyno crynodeb o'r Bil Llywodraeth Leol ac Etholiadau (Cymru) cychwynol.

Mae hefyd yn rhoi cyfle i'r Aelodau gydnabod yr wybodaeth sydd wedi'i chynnwys yn Atodiad 1 yr adroddiad.

**3 - 26**

**Cyfarwyddwr Gwasanaeth y Gwasanaethau Democrataidd a Chyfathrebu**

**At: Pob Aelod o'r Cyngor**



**RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL**

**COUNCIL**

**27<sup>th</sup> NOVEMBER 2019**

**LOCAL GOVERNMENT AND ELECTIONS (WALES) BILL**

**URGENT REPORT OF THE SERVICE DIRECTOR OF DEMOCRATIC SERVICES  
AND COMMUNICATIONS.**

**1. PURPOSE OF THE REPORT**

1. To provide Members with a summary of the initial Local Government and Elections (Wales) Bill and to provide Members with the opportunity to acknowledge the information contained within Appendix 1 of the report.

**2. RECOMMENDATIONS**

Members are recommended to:

- 2.1 Acknowledge the “Local Government and Elections (Wales) Bill”, which will be the subject of an initial discussion at WLGA Council on 29<sup>th</sup> November 2019.
- 2.2 Acknowledge the detailed summary provided by the WLGA, which will shortly be considered by the WLGA Council.
- 2.3 Request that the Council’s Overview & Scrutiny Committee consider formulating a proposed position on the proposals contained within the ‘Local Government & Elections (Wales) Bill’ for future endorsement by full Council.
- 2.4 Agree for the any future position and views to be fed into the WLGA’s evidence gathering on the Bill and for this Council to submit its views to the National Assembly’s Equality, Local Government and Communities Committee.

**3. REASONS FOR RECOMMENDATIONS**

- 3.1 The need to advise Members of the initial Local Government and Elections (Wales) Bill, which will be presented to the WLGA Council on the 29<sup>th</sup> November 2019.
- 3.2 The need to begin formulating a formal response of members to the proposals contained within the bill.

#### **4. BACKGROUND**

- 4.1 The Local Government and Elections (Wales) Bill was published on 18<sup>th</sup> November 2019.
- 4.2 Members are asked to consider the briefing paper to be considered by WLGA Council, attached at Appendix 1.
- 4.3 The Bill is a significant and substantial piece of legislation at 176 pages and 683 pages of accompanying documents, including an Explanatory Memorandum and Regulatory Impact Assessment.
- 4.4 It includes provisions, among other important proposals, 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 requirement to broadcast public meetings of Council
  - A requirement to facilitate remote attendance.
  - 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;
  - Increasing the lay member representation on the Audit Committee and providing the committee with additional responsibilities
  - Miscellaneous provisions relating to:
    - information sharing between regulators,
    - abolition of community polls,
    - fire and rescue authorities,
    - the Local Democracy and Boundary Commission for Wales, and
    - Public Service Boards.

- Confirming the role of the Head of Democratic Services
- 4.5 There are a number of other policy proposals contained within the bill which can be found at the [Local Government Elections \(Wales\) Bill](#).

4.6 The WLGA has been invited to provide 'Stage 1 - consideration of general principles' evidence to both the Assembly's Finance Committee on 11<sup>th</sup> December 2019 and the Equality, Local Government and Communities Committee on 23<sup>rd</sup> January 2020.

4.7 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.

## **5. DEVELOPMENT OF THE BILL**

5.1 The Bill is the culmination of several years of policy consultation, including:

- Draft Local Government (Wales) Bill – November 2015
- Consultation on Electoral Reform – October 2017
- Reforming Local Government: Resilient and Renewed White Paper - January 2017
- Consultation on Powers and Flexibilities – January 2018
- Strengthening Local Government: Delivering for People Welsh Government Green Paper - June 2018

5.2 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.

5.3 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.

5.4 Under the auspices of these groups, work has also progressed at an official level to consider the implications of some anticipated reforms and what future statutory guidance might need to include. There is ongoing engagement around the implications of the proposed reforms on the performance regime, electoral reform, democratic services and Corporate Joint Committees.

5.5 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.

5.6 The Welsh Government's policy intentions and proposals have evolved significantly in the four years since the Draft Local Government (Wales) Bill

was published and several of the more controversial proposals for reforms have not been included, including prescribed mergers of local government, performance duties for councillors (e.g. response times for correspondence) and petitions to recall councillors. Some proposals have also been redrafted in light of local government views during consultation, for example, the proposal reforms to the performance regime have been streamlined significantly in the final Bill.

- 5.7 At the time of drafting, given the Bill was published on the 18<sup>th</sup> 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.

## **6.DEVELOPING A RESPONSE OF THE COUNCIL**

- 6.1 In line with the approach previously adopted for developing formal responses for consideration and adoption by Council, it is proposed that this matter be considered by the Council's Overview & Scrutiny Committee, by receiving a detailed report outlining the proposals contained and the ability of the Council to effectively respond to these proposals.
- 6.2 With the support of Full Council, it is proposed that the Overview & Scrutiny Committee, develop a view on the detail contained within the Bill, based on the information provided by the appropriate Officers and that this response is subsequently presented for endorsement and adoption by Full Council at a future meeting.

## **7. EQUALITY AND DIVERSITY IMPLICATIONS**

- 7.1 Equality and diversity implications will be considered as part of the WLGA's recommendations and any subsequent implementation arrangements

## **8. CONSULTATION**

- 8.1 There are no consultations implications arising from this report. The WLGA has been invited to provide 'Stage 1 - consideration of general principles' evidence to both the Assembly's Finance Committee on 11<sup>th</sup> December 2019 and the Equality, Local Government and Communities Committee on 23<sup>rd</sup> January 2020.

## **9. FINANCIAL IMPLICATIONS**

- 9.1 There are no financial implications aligned to this report.

## **10. LINKS TO THE COUNCILS CORPORATE PLAN / OTHER CORPORATE PRIORITIES**

10.1 The Local Government Elections (Wales) Bill links with the three priorities within the Corporate plan of People, Economy and Place, as it will help People and Communities by encouraging 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.

10.2 The revised Bill reflects the seven well-being goals and the five ways of working, from within the Wellbeing of Future Generations Act, with particular reference to:

- A Wales of cohesive communities
- A resilient Wales
- And all of the 5 ways of working - collaboration, involvement, long term, integration, prevention.

## **11. CONCLUSION**

11.1 The Bill will be the subject of an initial discussion at WLGA Council on 29<sup>th</sup> November and the WLGA has already been invited to give evidence to two separate Assembly Committees scrutinising the Bill on 11<sup>th</sup> December 2019. 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.

**LOCAL GOVERNMENT ACT 1972**

**AS AMENDED BY**

**THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**

**RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL**

**NOVEMBER 2019**

**REPORT OF THE SERVICE DIRECTOR DEMOCRATIC SERVICES &  
COMMUNICATION.**

**Local Government and Elections (Wales) Bill**

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## **LOCAL GOVERNMENT AND ELECTIONS (WALES) BILL**

### **Purpose**

1. To give initial consideration to the Local Government and Elections (Wales) Bill.

### **Background**

2. The Local Government and Elections (Wales) Bill<sup>1</sup> [the Bill] was published on 18<sup>th</sup> November 2019.
3. The Bill is a significant and substantial piece of legislation at 176 pages and 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:
    - information sharing between regulators,
    - abolition of community polls,
    - fire and rescue authorities,
    - the Local Democracy and Boundary Commission for Wales, and
    - Public Service Boards.

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

4. The WLGA has been invited to provide 'Stage 1 - consideration of general principles' evidence to both the Assembly's Finance Committee on 11<sup>th</sup> December 2019 and the Equality, Local Government and Communities Committee on 23<sup>rd</sup> January 2020.
5. 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.

## **Development of the Bill**

6. The Bill is the culmination of several years of policy consultation, including:
  - Draft Local Government (Wales) Bill – November 2015
  - Consultation on Electoral Reform – October 2017
  - Reforming Local Government: Resilient and Renewed White Paper - January 2017
  - Consultation on Powers and Flexibilities – January 2018
  - Strengthening Local Government: Delivering for People Welsh Government Green Paper - June 2018
7. 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.
8. 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.
9. Under the auspices of these groups, work has also progressed at an official level to consider the implications of some anticipated reforms and what future statutory guidance might need to include. There is ongoing engagement around the implications of the proposed reforms on the performance regime, electoral reform, democratic services and Corporate Joint Committees.
10. 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.
11. The Welsh Government's policy intentions and proposals have evolved significantly in the four years since the Draft Local Government (Wales) Bill was published and several of the more controversial proposals for reforms have not been included, including prescribed mergers of local government, performance

duties for councillors (e.g. response times for correspondence) and petitions to recall councillors. Some proposals have also been redrafted in light of local government views during consultation, for example, the proposal reforms to the performance regime have been streamlined significantly in the final Bill.

12. At the time of drafting, given the Bill was published on the 18<sup>th</sup> 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.

13. As noted, some proposals have been subject to consultation previously. Where the WLGA has an existing policy position on any proposal this is included in *italics*, however members might wish to reconsider the WLGA position on some proposals given the passage of time and changing circumstances.

## **Part 1: Elections**

14. The proposals around electoral reform includes several that were included in the Welsh Government's Consultation on Electoral Reform in 2017.

15. 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.

16. It will not be possible to provide a full and thorough assessment of the proposals or the accompanying Regulatory Impact Assessment (which has been developed since the 2017 consultation document) until the New Year given local authority Returning Officers and electoral services managers are working extensively on preparations for the General Election on 12<sup>th</sup> December.

17. The following therefore provides a general summary of the key reforms and the WLGA's views in response to the 2017 consultation:

### **Extending the franchise to 16-17 year olds (Section 2)**

15.1 The WLGA's position in 2017 was:

*The WLGA supports this proposal as a key part of widening democratic engagement and participation. As with many of the other proposed reforms contained in the consultation paper, it is important that adequate notice is given to Electoral Registration Officers to enable a smooth transition and to update and collate the Electoral Register.*

### **Extending the local government franchise to citizens from any country (Section 2)**

15.2 The WLGA's 2017 position was:

*The WLGA agrees that European Union citizens who have moved and settled in Wales should have the right to vote in local elections following UK withdrawal from the UK, subject to clarification of Assembly competence in this area. The WLGA agrees that lawful citizens who are resident in Wales should have the right to vote in local elections in Wales, subject to clarification of Assembly competence in this area.*

### **Extending the local government franchise to prisoners**

15.2 This was part of the Consultation on Electoral Reform in 2017, but is not included in the Bill at this stage. However, the Minister confirmed in Assembly plenary on 19<sup>th</sup> November that she intends that prisoners and young people in custody from Wales, who are serving a custodial sentence of less than four years will be able to vote in local government elections but that there '...has not been enough time to work through and test with the UK Government, HM Prison Service and electoral registration officers all the new legal and administrative requirements to enable us to have provisions ready in time for this introduction. I will be keeping the Equalities, Local Government and Communities Committee informed of these developments and hope to share provisions on prisoner voting with the committee well in advance of Stage 2.'

15.3 The WLGA's position in 2017 was:

*There are mixed council views on this proposal, both in principle and in terms of practicalities on electoral administration. The WLGA notes the views of the European Court of Human Rights and a previous Parliamentary Select Committee and believes that clarification of Assembly competence is necessary prior to further consideration of this proposal.*

15.4 The Assembly's Equality, Local Government and Communities Committee conducted an Inquiry into voting rights for prisoners, which reported in June 2019<sup>2</sup>. It suggested the franchise would increase by less than 2,000 should the Welsh Government proposals be introduced. Despite noting that public opinion was not in favour of prisoner voting (in a 2017 survey, 60% were opposed), the Committee recommended (on a minority basis, without the support of the Conservative members of the Committee) that the franchise should be extended as per the Welsh Government's intentions.

### **Two voting systems (Section 5)**

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

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<sup>2</sup> <https://www.assembly.wales/laid%20documents/cr-ld12550/cr-ld12550-e.pdf>

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.

15.6 The WLGA's position in 2017 was:

*The majority view of the WLGA is that individual councils should not be able to choose their own voting systems. It should be noted that the WLGA Plaid Group supports the introduction of the Single Transferable Vote for local elections.*

*There are various views across local government of the benefits or otherwise of the Single Transferable Vote for local elections, with the general view concerned that the approach would be administrative complex and confusing if held on the same day as 'first past the post' community and town council elections and that larger electoral wards would need to be created which may undermine the local links between a councillor and his/her community.*

*The WLGA view was generally supportive of the Electoral Commission's position that there should be a common electoral system across all local authorities to avoid complexity and voter confusion.*

*The Electoral Commission in its response to this proposal in the Reforming Local Government White Paper in April 2017 stated:*

*"...we would note that allowing councils to decide which electoral system to use in their own area could create significant risks and challenges, particularly in relation to voter understanding of how to cast their vote...The question of public awareness around two different electoral systems for one set of elections is likely to be a major challenge and one where there is a very real risk of confusion to electors if this type of change is implemented."*

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

15.8 This has not been the subject of previous consultations, but 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 as well (Section 17).

*The WLGA has previously supported the extension of 4 year terms to 5 years.*

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

15.9 The Bill amends the eligibility criteria for candidates at local government elections to allow a citizen of any country to stand for election.

*15.10 The WLGA previously supported this proposal.*

15.11 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.

15.12 The WLGA's position in 2017 was:

*The WLGA supports approaches to make it easier for people to stand for election and encourage a broader cross-section of the community to consider standing.*

*The WLGA however does not support the proposal to allow council staff to stand for their own authority. Lifting such a restriction is unlikely to have a significant impact in encouraging more candidates to stand but would disproportionately impact on good governance and employment relations with increased employer-employee tensions, potential conflicts of interest and team dynamics and relationships undermined. Staff at all levels have to demonstrate impartiality and a responsibility to serve the council as a whole; this risks being compromised should an employee stand or serve as a councillor....*

*Whilst the WLGA would be supportive of further exploration of this proposal to support staff who wish to stand as candidates, there is a risk though that where an individual is unsuccessful, he or she may have implicitly or explicitly publicly criticised colleagues, councillors or council policies during campaigning, which may affect their ability to continue in their employed role following the elections. The WLGA would therefore wish to explore the implications and options of this further with the Welsh Government.*

15.13 The Bill amends the disqualification provisions in Wales to disqualify individuals, from standing for election, or holding office as a member of a principal council or community council in Wales, if they are subject to a the notification requirements of, or an order under, the Sexual Offences Act 2003.

15.14 This has not been previously consulted upon, but it is proposed that the WLGA supports the proposed amendment to the disqualification criteria.

### **Meeting expenditure of returning officers (Section 28)**

15.15 The Bill clarifies that Returning Officers can only claim expenses properly incurred in the running of a local government elections. Personal fees in respect of services rendered during the conduct of a local government elections could not in future be claimed as they would not be deemed as "expenses". It is proposed that the personal fee will also be removed for National Assembly for Wales elections when an order is next made under article 23 of the National Assembly for Wales (Representation of the People)

Order 2007 (currently the National Assembly for Wales (Returning Officers' Charges) Order 2016 is in force).

15.16 The Welsh Government has decided not to proceed with the previously consulted upon proposal to incorporate the Returning Officer role within that of the Chief Executive. The WLGA did not support this proposal and so the Welsh Government's decision is welcome.

15.17 The removal of fees for Returning Officers has however proved a contentious issue, given the role is independent of the council, is a significant additional workload and there are personal liabilities and risks in discharging the role.

15.18 The WLGA's response in 2017 was:

*The WLGA agrees with the SOLACE response that...one option is for any remuneration for the oversight of local elections to be included within a single consolidated salary for the position. A form of this arrangement is already operated by several employing councils in Wales, where the Chief Executive is also contracted to be the Returning Officer but for no additional fee beyond their evaluated salary. The decision should remain a matter of local discretion. The additional responsibilities, demands and risks of being a Returning Officer should be appropriately reflected in any local review of remuneration and should not be dismissed.*

## **Part 2: General Power of Competence**

18. 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.

19. The WLGA's response to the Draft Bill in 2015, when this was first proposed was supportive but proposed slight amendments in the Welsh context:

*The WLGA welcomes the proposed introduction of the power of general competence. The WLGA has long called for a general power of competence and welcomed its inclusion in the White Paper.*

*Whilst this new power is welcomed, as drafted, it is constrained by legal provisions which local authority lawyers would have to carefully consider before the power could be used, as has been the case in England where a power of general competence was introduced under the Localism Act 2011. Despite legal constraints, the Local Government Association has said that it has given authorities the confidence to work in new ways and develop new services and partnerships.*

20. Research in England demonstrates some successful application of the power, but usage has been relatively limited. Legal opinion is mixed and Lawyers in Local Government have expressed concern that the power is too limited given the complex interplay between the power and many other Acts which creates multiple possible risks; unless it is possible to satisfactorily mitigate or resolve those risks then it might not be prudent for councils to proceed with a project using the power however valid the proposal under consideration might be.
21. It is therefore proposed that the power is welcomed, but that further work be undertaken with lawyers to seek to amend the power to provide greater flexibility and assurance to councils.

### **Part 3: Promoting Access to Local Government**

22. 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
23. The WLGA promotes and supports democratic engagement, public participation and openness and transparency and has endorsed several previous proposals to support improvements.

#### **Duty to encourage local people to participate in local government (Section 46)**

- 23.1 The WLGA's response to the 2015 Draft Bill was:

*The WLGA is supportive of the spirit of the Welsh Government's ambitions and councils are committed to promoting access to local government. It is therefore not clear what improvements a new 'public participation duty' on local authorities would achieve, apart from creating an additional regulatory burden; there is already a requirement on local authorities to 'involve' the public through the Wellbeing of Future Generations (Wales) Act 2015...*

*The WLGA does not agree with the proposal to place statutory responsibilities on councils to discharge duties over or on behalf of other autonomous 'connected authorities' such as community councils...and national park authorities; this will inevitably have resource implications for councils but, critically, clouds accountability and responsibility for delivering on any public participation duties.*

- 23.2 The WLGA might wish to revise its position to agree to a duty to encourage participation as it already discharges this function already, to underline its commitment to participation and as an opportunity to share existing good practice. However, the final point remains a concern as a local authority cannot be responsible for the participation in other levels of government as the responsibility (and risk of non-compliance) should rest with them as separately accountable bodies. Placing a duty on a local authority to promote participation in

National Park Authorities or community and town councils also undermines their own status, accountability and sovereignty as separate bodies.

### **Strategy on encouraging participation (Section 47)**

23.3 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'.

23.4 The WLGA does not have a current position on this specific proposal. Many councils already have engagement and participation strategies and, as noted above, involvement is already part of the sustainable development principle. A new duty is unlikely to cause significant additional burden on authorities, and there would be scope for sharing leading practice and applying consistent expectations through future WLGA improvement support.

23.5 It is therefore proposed that this new duty could be supported by the WLGA, though it should apply only to local authorities themselves and not cover 'connected authorities' as noted in the reference to the wider duty above. 'Connected Authorities' such as National Park Authorities should be subject to a similar arrangement separately to the member local authorities not least as there would be duplication, as it would appear from the current Bill, that 7 local authorities would each have to make a strategy that encouraged participation in Brecon Beacons National Park Authority.

### **Duty to make petition scheme (Section 49)**

23.6 The Bill repeals community polls and introduces a duty to make a petition scheme.

23.7 The WLGA's response to the 2015 Draft Bill was:

*The WLGA welcomes this proposal as it will reduce burden and costs for the local authority, as well as encouraging a more accessible and immediate mechanism for communities to express their views. Although community polls have generally not been widely used, there is a risk that they can be misinterpreted by the community as binding local referendums which can cause tension between communities, their elected representatives and the council*

### **Duty on principal councils to publish official addresses (Section 50)**

23.8 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 have already adopted and is a reform which the WLGA has called for, given some members' concerns about privacy in the current environment where intimidation and harassment is a risk.

23.9 It is therefore proposed that the WLGA supports this reform.

### **Electronic broadcasts of meetings of certain local authorities (Section 53)**

23.10 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.

23.11 Most councils already webcast many of their meetings and are committed to openness and transparency. Local government would therefore generally support the principle of this reform.

23.12 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.

23.14 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.

23.15 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.

### **Conditions for remote attendance of members of local authorities (Section 54)**

23.16 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.

23.17 The WLGA has therefore supported proposals to streamline the remote attendance arrangements, allowing council standing orders to determine how the arrangements will work locally in order to promote accessibility and support flexibility for members to attend meetings remotely.

23.18 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.

## **Part 4: Local Authority Executives, Members, Officers and Committees**

24. 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

25. The WLGA has previously considered and supported the above proposed reforms and welcomes the proposals to extend family absence provisions (updating and aligning them with family absence provisions available to employees), which is in response to a WLGA request.

26. Many of the other proposals have been previously supported, however the WLGA will wish to explore the implications of reforms affecting Chief Executives with SOLACE and ALACE.

27. The WLGA and SOLACE have previously expressed reservation 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.*

## **Part 5 Collaborative Working by Principal Councils**

28. This section of the Bill introduces the powers for local authorities and Ministers to establish Corporate Joint Committees (CJCs).

29. This part of the Bill has been trailed for several months and 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.

30. As anticipated, 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.

31. The previously circulated Q&A note at Annex 1 provides a summary of the CJC proposals.

32. The WLGA Council and Executive Board have previously expressed concerns about the mandation of CJCs and the need for assurances and safeguards against future Ministers using the power in other service areas.

33. The WLGA Executive Board agreed the following resolution at its meeting of 25<sup>th</sup> October:

“Whilst we welcome the new and revised approach to local government by the present Minister, the WLGA remains opposed to the proposals in the Draft Bill allowing the Welsh Government to mandate Corporate Joint Committees.”

34. WLGA Council on 27<sup>th</sup> September resolved that:

“The WLGA Council has fundamental concerns over the principle of mandation which is seen as undermining local democracy but will continue to engage and seek to co-produce the Corporate Joint Committee proposals and that any final decision should be agreed by Council. The WLGA will review its position and approach to engagement when the Draft Bill and accompanying documents are available.”

35. In meetings with WLGA members, the Minister has clarified:

- that local authorities could determine the CJC footprints and which functions (within the 4 services) were transferred into CJCs;
- the intention that a baseline budget for CJC services would be established based on a formula, however, CJCs could choose to vary this up;
- she was keen to consider exploring the devolution of powers from Welsh Government to local government via CJCs;
- clarified that existing regional arrangements, such as Cardiff City Region’s strategic planning panel and voting arrangements, could be transferred to

or replicated in a new CJC or CJC sub-committee to build on what's already working and to avoid too much disruption;

- confirmed the membership of CJs would be local authority leaders and that the CJC would be the decision-making forum.
- Sub committees (which may include co-optees if CJs were in agreement) would make recommendations to the CJC for decision, the Minister however outlined that a CJC would however operate on 'Wednesbury unreasonableness principles' i.e. a CJC could not take a different decision to a sub-committee on any unreasonable grounds.

36. 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.

**37. The Minister has expressed her desire that the Regulations are co-produced with local government and there is scope for existing governance agreements and arrangements (such as City Deal or Growth Bid Joint Working Agreements or Governance Agreements) to be transferred into Regulations to avoid duplicating, 'reinventing the wheel' or undoing or undermining existing, effective arrangements.**

38. Furthermore, the Minister has requested that local government comes forward with proposals for the functions and areas covered by CJs, during recent meetings with leaders and in recent correspondence (see Annex 2).

39. The Minister has sought to reassure leaders that the Bill would place limits on Ministers' powers around CJs and Part 5 of the Bill does include constraints on Ministerial powers:

- **S79 states that Ministers 'may by regulations establish...' CJs covering the functions of improving education, strategic planning, transport and economic development. The Bill and appended letter do not include the term 'mandation', although the Minister has made it clear that she intends to introduce regulations to this effect which would be co-produced with local government.**
- Notwithstanding the Minister's desire to co-produce regulations, Ministers must also consult with principal councils (and others, including PSBs) before CJC Regulations can be introduced.
- **Although the Bill allows Ministers to add, modify or remove functions to CJC (in addition to the 4 functions above) they cannot do so without the consent of the CJC and the principal councils for the area. Section 82 effectively provides local authorities and CJs with a veto over any future Ministerial intentions to add functions or services to CJs .**

## **Part 6: Performance and Governance of Principal Councils**

40. 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.
41. In summary, 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).
42. 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.
43. The proposals have been subject to wide consultation and engagement with local government and the overwhelming view is that the reforms are positive. The final proposals are less onerous than original proposals consulted upon in the Draft Bill 2015.
44. The WLGA has previously not supported Panel Assessments as they would replace effective voluntary corporate peer challenges with less effective quasi-regulatory peer reviews. Council feedback and independent evaluation shows that corporate peer challenges are credible, effective and well regarded and prescribing a more inflexible quasi-regulatory statutory approach would stifle engagement, openness and ownership and undermine their value.
45. The WLGA is however engaged in ongoing discussions to explore how Panel Assessments may be coordinated and delivered as effectively as possible, however, the Welsh Government expects councils to commission and pay for Panel Assessments themselves (estimated at around £26,000, once per term).
46. 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**

47. 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

48. The WLGA's response to the Draft Bill 2015 was:

*The WLGA supports the proposed role of new Corporate Governance and Audit Committees.*

*The relationship with and role of councils' overview and scrutiny committees will however need to be reviewed in the new constitutional arrangements to avoid confusion and duplication of roles.*

*The WLGA does not support the proposed changes to the membership of corporate governance and audit committees. Lay members are valued members of audit committees currently, but the balance of membership should be left to local discretion. The proposed prescription regarding the increased proportion of lay membership and that the chair must be a lay member 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 Mergers and Restructuring of Principle Areas**

49. 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 (as noted above).

50. 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.'

51. The Bill provides extensive detail around how voluntary mergers would be requested, consulted upon, managed, elected, restructured etc. These provisions will need to be considered carefully in due course, but it has not been possible to do so at the time of writing.

52. A draft 'Prospectus for Voluntary Mergers' outlining guidance and support for authorities has been co-developed through the Local Government Working Group, chaired by Derek Vaughan.

## **Parts 8 and 9: Finance and Miscellaneous Reforms**

53. 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

54. 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.

55. The Bill also includes changes to the performance and governance arrangements of Fire and Rescue Authorities, including changes to 'local inquiry criteria' including '...provisions which would restrict the current requirement for a local inquiry into proposed amendments to combination orders, so that it applied only to changes which would alter the area served by the fire and rescue authority concerned.'

56. The WLGA is seeking views from Fire and Rescue Authorities on the implications of the proposed reforms and this will feed into the WLGA's evidence to the Assembly's Stage 1 Scrutiny session.

## Next Steps

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

58. As noted earlier, the WLGA will provide initial evidence to the Finance Committee on 11<sup>th</sup> December and fuller evidence to the Equality, Local Government and Communities Committee on 23<sup>rd</sup> January 2020. It is also anticipated that local authorities will also be invited to submit evidence, as will SOLACE and the Association of Electoral Administrators.

59. WLGA officials will seek views from authorities and will work with relevant professional groups during December to assess the impact of proposed reforms and to begin developing a formal WLGA response on the Bill.

60. WLGA members will consider the Bill further at:

13 <sup>th</sup> December 2019	Management Sub-Committee
31 <sup>st</sup> January 2020	Executive Board
21 <sup>st</sup> February 2020	Management Sub-Committee
28 <sup>th</sup> March 2020	Council

There will also be several Partnership Council Sub-Group meetings during this period, where WLGA members can make representations to the Minister (as well as the Assembly Committees) regarding possible amendments to the Bill.

## **Recommendations**

**61. It is recommended that members:**

- 61.1 give initial consideration to the implications of the Local Government and Elections (Wales) Bill;**
- 61.2 review its position on Corporate Joint Committees, in line with the previous Council resolution;**
- 61.3 consider the Minister's invitation to submit proposals identifying which local authorities might work together as Corporate Joint Committees (as per Annex 2); and**
- 61.4 encourage all member authorities to submit views to feed into the WLGA's evidence on the Bill and submit their own evidence to the Assembly's Equality, Local Government and Communities Committee in due course.**

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