

**RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL**

**MUNICIPAL YEAR 2015-2016**

**COUNCIL  
27<sup>TH</sup> JANUARY, 2016**

**REPORT OF THE DIRECTOR OF  
LEGAL AND DEMOCRATIC  
SERVICES**

**Agenda Item No. 11**

**WELSH GOVERNMENT  
CONSULTATION – DRAFT  
LOCAL GOVERNMENT  
(WALES) BILL**

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**1. PURPOSE OF THE REPORT**

The Purpose of this report is to advise Members of the comments of both the Cabinet Working Group and the Overview and Scrutiny Committee in respect of the Welsh Government's Consultation Document – Draft Local Government (Wales) Bill ("Draft Bill"), which needs to be responded to by the 15<sup>th</sup> February, 2016.

**2. RECOMMENDATIONS**

It is recommended that Members:

- 2.1 Take into consideration the comments of Members of the Cabinet Working Group and the Overview and Scrutiny Committee and that these, in addition to any further views (as appropriate) expressed at the meeting be submitted to the Welsh Government by the 15<sup>th</sup> February, 2016.

**3. BACKGROUND**

- 3.1 Members will recall that at the Extraordinary Meeting of Council held on the 16<sup>th</sup> December, 2015, it was agreed that Working Groups of both the Cabinet and the Overview and Scrutiny Committee be established to consider and make comment on the Welsh Government's Document – Draft Local Government (Wales) Bill, which was published on the 24<sup>th</sup> November, 2015 and responses to be made by 15<sup>th</sup> February, 2016.

- 3.2 Members of the Overview and Scrutiny Committee (including non-executive Members and Co-opted Members) met on the 7<sup>th</sup> January, 2016 and Members of the Cabinet met on the 14<sup>th</sup> January, 2016. At both meetings, the Director, Legal & Democratic Services, assisted Members in making their comments to the 53 questions posed by the Welsh Government, with the aid of PowerPoint slides which related to each of the eight parts of the Draft Bill.

#### **4. COMMENTARY ON THE DRAFT BILL**

- 4.1 As part of the package of reforms, the first Local Government (Wales) Bill (“Paving Bill” – Part 1) was passed by the Assembly on the 20<sup>th</sup> October, 2016 and given Royal Assent on the 29<sup>th</sup> November, 2015. This legislation makes provision for voluntary mergers and puts in place preparatory legislation for further mergers and reform.
- 4.2 The views/comments of Members are now sought in respect of the Welsh Government’s Draft Local Government (Wales) Bill (“Mergers Bill” – Part 2) (“the Draft Bill”) and accompanying documents – Draft Explanatory Memorandum, Draft Regulatory Impact Assessments and Specific Impact Assessments for a further period of consultation which, as already stated ends on the 15<sup>th</sup> February, 2016.
- 4.3 Whilst the views/comments of Members were sought in respect of the Draft Bill, it has no formal legislation status at this stage, as after the Welsh Assembly elections in May of this year, it could differ significantly from what is proposed and should the Draft Bill remain as it is, most of the provisions would not come into effect until 2019. It is therefore assumed that Royal Assent would be given no sooner than November, 2016 and that the majority of provisions to come into effect on a date to be decided by Welsh Ministers with the remaining provisions to come into effect two months after Royal Assent.
- 4.4 In summary the eight parts within the Draft Bill outlines:-
- The establishment of new Counties by the merger of existing Counties and County Boroughs (Part 1 – all of which come into effect two months after Royal Assent).
  - A new and reformed legislative framework for Local Government, democracy, accountability, performance and finance (Parts 2 – 8)
- 4.5 Given the range of views within the Assembly about reorganisation, there remains some debate about the direction of travel of the proposed merger plans following the Assembly elections. Notwithstanding the contested merger of Part 1 of the Draft Bill, it is important that the implications of Parts 2 – 8 are considered, as if introduced as a standalone Local Government Reform Bill, would see the most substantial Local Government Reform in Wales since the Local Government Act, 2000, which, for Rhondda Cynon Taf saw the introduction of the Leader/Executive Model.
- 4.6 Before going into detail to each of the eight Parts of the Draft Bill, it is useful to note that in producing the Draft Bill, the Welsh Government has responded to many of the concerns and views expressed by Councils during the White Paper consultation, which, would be welcomed by Councils and include:-

- The non-introduction of some of the more controversial White Paper proposals such as term limits for Councillors, review of Members' remuneration and elections by thirds;
- Proposed power of general competence;
- The proposed clarification and simplification of authorities' Executive and full Council functions;
- Improving and streamlining of some existing burdens and duties on Councils, including remote attendance and community polls; and
- A reformed improvement regime based on self-improvement and proportionate external regulation.

4.7 Also, Councils would support some of the other features in the Draft Bill, such as improving community involvement and public engagement. However, some of the proposals (as drafted) are prescriptive and would create additional burdens and resource implications for Authorities.

4.8 Furthermore, there are some proposals which will have an impact on local democracy and are inconsistent with expectations and arrangements of other tiers of Government, such as:

- `Performance duties` for Councillors (Part 4)
- Establishment of `Community Area Committees` (Part 3 (Chapter 3))
- Introduction of `Improvement Requests` (Part 3 (Chapter 4))
- Councils' duties over other Public Bodies, such as provision of training to Community Councils (Part 6)
- Ministerial powers to direct or issue guidance to local authorities, for example, on workforce matters (Part 7)

## **5. VIEWS/COMMENTS OF MEMBERS OF THE OVERVIEW & SCRUTINY COMMITTEE (INCLUDING NON-EXECUTIVE & CO-OPTED MEMBERS) AND THE CABINET**

5.1 At meetings of both the Overview and Scrutiny Committee and the Cabinet Working Group, Members did not wish to respond to each of the 53 questions, 17 of which included additional proposals which are not included on the face of the Draft Bill, but wished to give a general overview to each of the eight parts:-

### **5.2 Part 1 – Local Government Areas and County Councils**

5.2.1 Welsh Ministers have stated publicly their guiding principle is that any new Local Government area will be based on the merger of two or more whole existing Local Government areas and on the 17<sup>th</sup> June, 2015, Welsh Government announced its preference on 8 or 9 new Principal Local Authorities. The consultation document provides a rationale for the proposed merger options of two or three Councils in North Wales and the inclusion of Bridgend with Merthyr Tydfil and Rhondda cynon Taf, despite the new authority crossing a Health boundary.

- 5.2.2 It was also proposed that the Shadow Authorities to be elected in May, 2019 will determine the names of their new County Council (in English and Welsh forms)
- 5.2.3 Members were concerned that the merging of authorities to form larger Councils, coupled with the proposal for a higher ratio of electorate to Councillors could result in a further distancing of elected Members from the people they represent. The aims of the Bill to bring politics and accountability closer to the people, may then, in fact, be harmed and not advanced by these proposals.
- 5.2.4 Members felt that whilst a further aim of the proposals would be to achieve cost savings, this assumption is not supported by a coherent evidence base. There is no evidence to suggest that larger Councils would necessarily deliver better services in a more efficient way, nor has sufficient work been undertaken to outline the initial cost of mergers to local authorities, how these costs could be absorbed nor at what point the savings become advantageous to Local Government. Moreover, further work needs to be done to support claims that services could be delivered more efficiently and in an improved way to local people by the introduction of larger Councils.
- 5.2.5 Members agreed that should a new County Council be established then it is right that the name of the Authority should be decided by the Authority itself.

### 5.3 **Part 2 – General Power of Competence**

- 5.3.1 Members welcomed the proposals contained within Part 2 of the Bill concerning General Power of Competence as under the Localism Act, it had been in England for the past 6 years without any problems.

### 5.4 **Part 3 – Promoting Access to Local Government**

- 5.4.1 Members agreed that the creation of larger Councils does make it necessary for new models of local engagement to be developed. For the reasons as stated above, large authorities may well increase the distance between decision makers and the local electorate and questions of accountability are of paramount importance. However, Members felt that the proposals for Community Area Committees as contained within Chapter 3 of Part 3 of the Bill provide little flexibility for local authorities to respond to the needs of local communities in different ways. The geography and culture of Wales is such that one size does not fit all. It was therefore suggest that the ways in which Members promote access to local government are left at the discretion of local authorities in consultation with local communities.
- 5.4.2 Notwithstanding the general comment above, it was felt that there are several considerable complications which could arise should the specific proposals contained within this section proceed, including the designated area covered by the Committee, the membership and the legitimacy of the mandate of its representatives and their own accountability to local people, the method of selection of the members, political balance, the responsibility of

members of such Committees to the Code of Conduct together with delegation of functions

- 5.3.3 This Authority is already engaged with Improvement Requests and therefore supports this proposal.
- 5.3.4 Whilst Members felt that there are advantages and disadvantages to the broadcasting of Council meetings, again it was suggested that the proposals in the Bill were too prescriptive and should be left to the discretion of local authorities in consultation with local communities. Evidence from webcasting both from this Authority and elsewhere suggests that there is not a high level of demand for a service, which potentially could be very costly.
- 5.3.5 Members did not support the ad hoc filming and recording of Council meetings by the public as there would be no control over the potential of filming of other members in the public gallery who would not have given consent to be filmed and could result in complications especially in cases of children and vulnerable adults.
- 5.3.6 Rhondda Cynon Taf already conducts an annual Leader's Debate at a full meeting of the Council at which members of the public can attend and submit questions and indeed can put questions and make a presentation to full Council within the procedural rules contained within the Council's Constitution. This proposal is therefore welcomed.
- 5.3.7 Members also welcomed a more user friendly publication of the Council's Constitution.
- 5.3.8 Agreed that local members should be freely accessible to local people and their respective contact details are and always have been published on the Council's website.

#### 5.4 **Part 4 – Functions of County Councils and their Members**

- 5.4.1 Members were of the view that the consequences of the proposals contained within Part 4 are highly complex and wide ranging, as a general view, Members felt that the performance of elected Members ought not be a matter for legislation but is rather a judgment best left in the hands of local people. It is important to distinguish between behaviour under the current Code of Conduct from subjective opinion of the performance of individual Councillors.
- 5.4.2 Likewise, it cannot be deemed that a Member who attends every meeting is performing effectively as that person may not contribute or participate whatsoever. The same view was given in respect of the holding of surgeries, as many long standing experienced Members felt there were various methods of engaging with their constituents e.g. the holding of street surgeries, walking their Wards, communicating by way of the use of email, and therefore it was found that these alternative arrangements was a better use of their time and were certainly more productive.

- 5.4.3 Chapter 5 misunderstands the way in which Councils select their Leader at an annual meeting of the Council. The Leader of the Council in most situations is nominated by a political group or group which command a majority of support within the Council. There is already an opportunity at the AGM for an alternative nomination to be made upon which a debate would then ensue as to the merits of each candidate. The manifesto as proposed would already have been the subject of debate in the preceding election upon which the respective nominees for leader of the Council would be expected to deliver. Further, there was no definition of a candidate or how a candidate can be determined within the Draft Bill.
- 5.4.4 Members were of the view that the granting by County Councils of voting rights to co-opted Members should remain discretionary.
- 5.4.5 Members felt that the Independent Remuneration Panel for Wales should remain **independent** and should be able to conduct its work without direction from Ministers.
- 5.4.6 Members were not opposed to the principle of Remote Attendance but given the complications and resources required, it was felt that it ought to be discretionary.
- 5.4.7 Members appreciated the idea behind the proposal for Recall of Councillors which is that elected Members should be accountable to their local electorate. However, current statistics from the Public Service Ombudsman for Wales would not support the suggestion that there are widespread breaches of the Code, severe enough to warrant the suspension or disqualification of elected Members. Members had confidence in the work of the Ombudsman and local Standards Committees to investigate and punish breaches of the Code, as seen fit, without resorting to this complicated and potentially costly proposal. A proposal for recall has the potential to be open to widespread political abuse. Furthermore, it was noted that the proposal does not extend to MPs and AMs.

## 5.5 **Part 5 - County Councils – Improvement of Governance**

- 5.5.1 Whilst Members welcomed the proposals contained within Part 5 of the Draft Bill, as many of which are already being undertaken by this Authority e.g. the production of a Corporate Plan, they still felt that they were too prescriptive and too bureaucratic.
- 5.6 Since the introduction of the Local Government (Wales) Measure, 2011, the appointment of Chair of the Council's Audit Committee has been a layperson, and the individual concerned is a very valued Member of that Committee as he has a wealth of experience, having been previously employed as an `Auditor` and is familiar with the workings of local government. However, there were many questions surrounding the membership of the Corporate Governance and Audit Committee, such as where does the role of an elected Member begin and end, should a third of its membership comprise laypersons and if payments were to be made to the lay Members then that would be an added cost to local government. How would the lay Members be selected?

Again, it was felt that the prescription around the membership of this Committee would affect local discretion and local democracy.

## 5.7 **Part 6 – Community Councils**

5.7.1 Members welcomed the proposal contained in Chapter 1 of Part 6 of the Draft Bill in that the Local Democracy and Boundary Commission for Wales to undertake a review of Community Council arrangements.

5.7.2 In respect of the proposal contained within Chapter 2, which places a duty on County Councils to consider the training needs of Community Councillors and to make arrangements to meet those needs. Members were of the view that this would be an additional burden for County Councils.

5.7.3 Members were further of the view that the monitoring of Members' performance should not be the responsibility of the Clerk as the "Clerk is the servant of the Councillors so how can that person also be the judge?" and should therefore be the responsibility of the Standards Committee.

5.7.4 Members welcomed the repeal of community polls, which will be replaced by duties to set up petitions and e-petitions as it would reduce bureaucracy and costs.

5.7.4 Members also felt that not many people would wish to sign up to a six year term as a Community Councillor following the elections in May, 2017.

## 5.8 **Part 7 - Workforce Matters**

5.8.1 Members welcomed the proposals within Part 7 of the Draft Bill.

## 5.9 **Part 8 – General and Schedules**

5.9.1 Members had no comment to make in respect of this Section of the Bill.

## 6. **CONCLUSION**

6.1 Members are asked to take into consideration the comments of Members of the Cabinet Working Group and the Overview and Scrutiny Committee, as outlined in paragraph 5 above, and that these, in addition to any further views (as appropriate) expressed at the meeting be submitted to the Welsh Government by the 15<sup>th</sup> February, 2016.

**LOCAL GOVERNMENT ACT 1972**

**AS AMENDED BY**

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

**RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL**

**COUNCIL**

**27<sup>th</sup> January, 2016**

**REPORT OF THE DIRECTOR, LEGAL & DEMOCRATIC SERVICES**

**Background Papers**

**Local Government (Wales) Bill**

Freestanding Matter