

National Assembly for Wales
Communities, Equality and Local
Government Committee

Draft Local Government (Wales) Bill

March 2016

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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Communities, Equality and Local Government Committee

The Committee was established on 22 June 2011 with a remit to examine legislation and hold the Welsh Government to account by scrutinising expenditure, administration and policy matters encompassing: Wales's culture; languages communities and heritage, including sport and the arts; local government in Wales, including all housing matters; and equality of opportunity for all.

Current Committee membership:



Christine Chapman (Chair)
Welsh Labour
Cynon Valley



Peter Black
Welsh Liberal Democrats
South Wales West



Alun Davies
Welsh Labour
Blaenau Gwent



Janet Finch-Saunders
Welsh Conservatives
Aberconwy



Mike Hedges
Welsh Labour
Swansea East



Mark Isherwood
Welsh Conservatives
North Wales



Bethan Jenkins
Plaid Cymru
South Wales West



Gwyn Price
Welsh Labour
Islwyn



Gwenda Thomas
Welsh Labour
Neath



Lindsay Whittle
Plaid Cymru
South Wales East

The following Member attended as a substitute member of the Committee during this Inquiry



John Griffiths
Welsh Labour
Newport East

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1. Introduction

1. On 24 November 2015, the Minister for Public Services published the draft Local Government (Wales) Bill (the draft Bill) and consultation documents.¹ The Minister made a statement in plenary on the same day.
2. The objective of the draft Bill is “to complete the programme of local authority mergers and set out a new and reformed legislative framework for Local Authority democracy, accountability, performance and elements of finance. It will also establish a statutory Public Services Staff Commission”.²
3. The Welsh Government has recently consulted on the draft Bill with a view to bringing forward the final Bill during the 5th Assembly subject to the outcome of the election.

The Committee’s inquiry

4. On 10 December 2015, the Committee agreed to undertake pre-legislative scrutiny of the draft Bill.

Terms of reference

5. The Committee agreed the following terms of reference for its inquiry:

To consider the draft Bill and accompanying documents, including the Explanatory Memorandum and the Regulatory Impact Assessment (which assesses the potential costs and benefits of the policy intentions included in the draft Bill).

Approach

6. Between 14 December 2015 and 21 January 2016, the Committee conducted a public consultation to inform its work, based on the agreed terms of reference.
7. The Committee received nine written responses which are available on the Assembly’s website.³ In addition, the Committee heard oral evidence

¹ Draft Local Government (Wales) Bill, available at:
[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)

² Draft Local Government (Wales) Bill, Draft Explanatory Memorandum, available at:
[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)

³ <http://www.senedd.assembly.wales/mgConsultationDisplay.aspx?ID=209>

from a number of witnesses. The transcripts of oral evidence sessions are also available on the Assembly's website.⁴

8. The Committee would like to thank those who contributed to its inquiry.

⁴ <http://abms/mgIssueHistoryHome.aspx?IId=1306>

2. Financial implications

Costs of mergers

9. According to the Regulatory Impact Assessment (RIA) accompanying the draft Bill, during the period 2019-20 to 2023-24, the merger process will cost local authorities between £97 million and £246 million. It is estimated that in 2019-20, the year prior to the establishment of the new authorities, £54 million to £90 million will need to be spent by current authorities on activities associated with mergers.

10. The Welsh Local Government Association (WLGA) did not dispute the cost estimates set out in the RIA, which were similar to those contained in the report by the Chartered Institute of Public Finance and Accountancy (CIPFA) that it had commissioned. Further, it acknowledged the potential for savings following restructuring, but questioned the level of savings identified in the RIA.

11. Notwithstanding the above, the WLGA raised serious concerns about the ability of authorities to meet the costs of mergers. It asserted that it would be “impossible” for authorities to meet these costs without significant cuts to front-line services, particularly against a background of austerity measures.⁵ It also asserted that “the burden of proof is on the Welsh Government” in this regard and that, in driving forward change, the government had “a responsibility to make sure that success is possible”. The WLGA called on the Welsh Government “to ensure that there is a funding package available across the board to make sure that the change is possible, and that it doesn’t affect the front-line services of local authorities”.⁶

12. In contrast to the above, the Minister for Public Services (the Minister) told us that he was “very confident that [authorities] can bear the additional costs of mergers” and that “all of the studies have indicated that there will be significant savings from the process of mergers”.⁷ The Minister reported that local government reserves were in the region of £1 billion. He also highlighted the ability of authorities to borrow, and stated “there are plenty

⁵ Record of Proceedings (RoP), para 50 & 68, 10 February 2016 (*all references to the Record of Proceedings refer to the proceedings of the Communities, Equality and Local Government Committee*)

⁶ RoP, para 68, 10 February 2016

⁷ RoP, para 185, 10 February 2016

of routes open to them for the way in which [the costs of mergers] can be managed”.⁸

13. Taking account of the above evidence, we remain concerned about the costs of mergers. While we recognise the potential for savings in the medium to long term, we consider it unrealistic to expect authorities to meet the upfront costs without any assistance from the Welsh Government. As such, we were pleased to hear that the Minister would “not rule out” the introduction of repayable grants similar to the government’s Invest to Save initiative.⁹ While this may not be the preferred solution for local government, we believe it would be more acceptable than the current position and a positive step forward. **We urge the Minister to give further consideration, in conjunction with the Welsh Local Government Association, to how such an approach could be taken forward.**

Council tax harmonisation

14. The WLGA raised concern that council tax harmonisation “has not been adequately considered” either as part of the draft Bill or RIA.¹⁰ It believed that council tax harmonisation was “a significant component and a potential risk to the reform proposals not only in terms of potential income forgone and financial volatility, but in terms of political and public acceptability of the reforms”.¹¹ The WLGA was keen to engage in debate with the Welsh Government on this issue.

15. In the documentation accompanying the draft Bill, the Minister acknowledges that the setting of council tax for reformed authorities “may require a process of harmonisation to move to the same level of council tax across an authority’s area”. He placed a clear expectation on transition committees and shadow authorities “to safeguard against any divergence in council tax levels in the period running up to mergers”.¹²

16. Despite this, the Minister reported that the Welsh Government “considers it too early in the reform process to draw up firm plans for harmonisation”¹³ and does not include an estimate of the potential impact of harmonisation on the council tax revenue stream in the RIA.

⁸ RoP, para 235, 10 February 2016

⁹ RoP, para 240-242, 10 February 2016

¹⁰ Written evidence, DLG 09

¹¹ *ibid.*

¹² Welsh Government’s Consultation Document, *Devolution, Democracy and Delivery*, November 2016

¹³ *ibid.*

17. While we acknowledge the Minister’s commitment to “consulting fully on any proposed future approach to council tax when the time is right”,¹⁴ we are concerned that the current level of uncertainty about the impact of harmonisation, both on reformed authorities and council tax payers, is unhelpful. **We believe that, as a matter of urgency, the Minister should fully explore the impact of council tax harmonisation with a view to providing robust cost estimates alongside the Bill on introduction.**

Pay harmonisation

18. Both UNISON and the WLGA raised concern about pay harmonisation, in terms of the impact on pay structures and the cost to authorities. UNISON reported a fear among its members that, given the financial pressures facing local government, pay would be harmonised “in the middle at best, and at the bottom at worst”.¹⁵ UNISON made clear that it would want to see an upwards harmonisation of pay resulting from any mergers.

19. The WLGA expressed the view that the approach eventually taken on pay harmonisation “will have significant implications on the costs and future financial planning” of local authorities.¹⁶

20. We note that there are a range of estimates of the costs involved in pay harmonisation. Again, we believe that this level of uncertainty for both staff and authorities is unhelpful. We acknowledge the Minister’s intention to undertake further work in this area, in relation to local authority pay distributions, in order to inform the final RIA. **We expect the final RIA to include definitive and robust estimates of the costs involved in pay harmonisation.**

¹⁴ Welsh Government’s Consultation Document, *Devolution, Democracy and Delivery*, November 2016

¹⁵ RoP, para 375, 4 February 2016

¹⁶ Written evidence, DLG 09

3. Part 1 – Local government areas and county councils

21. While the provisions that give effect to the restructuring of county councils do not themselves appear to be contentious, the two proposals for new counties set out in Schedule 1 remain the subject of intense debate. This was reflected in the evidence received from both Society of Local Authority Chief Executives (SOLACE) and the WLGA who reported that there was no settled view within their organisations about the future configuration of local government or the specific proposals provided for in Schedule 1.

22. According to the WLGA, while there was a general acceptance within local government that change was needed, the approach taken by the Welsh Government to restructuring through merger of existing authorities remained “a very contested issue”.¹⁷ The WLGA maintained that local government restructuring should be considered within the wider context of public services reform. It called for a move away from the “narrow debate” about the proposed configurations towards discussion about the “best delivery model for services”, which would, in itself, inform the shape and number of new counties.¹⁸

23. Similarly, SOLACE “recognised the Welsh Government’s wish to undertake reform of local government (...), particularly given the pressures on capacity in the smaller authorities as a result of austerity”.¹⁹ It reported “many different shades of opinion” across the organisation in respect of the new structure.²⁰

24. UNISON reported that the continuing uncertainty around restructuring was impacting on staff morale. Similarly, SOLACE asserted that “maintaining the morale and energy of the outgoing organisations will (...) be a key task”.²¹ It also raised concern about the potential loss of experienced staff as “[they] take decisions to leave or retire” in the lead up to mergers.²²

25. We are concerned about the lack of progress made in reaching a consensus, both within local government and between local and national government, since the publication of the Welsh Government’s preferred configuration in July 2015.

¹⁷ RoP, para 21, 10 February 2016

¹⁸ RoP, para 24 & 44, 10 February 2016

¹⁹ Written evidence, DLG 05

²⁰ *ibid.*

²¹ *ibid.*

²² *ibid.*

26. The Minister told us that the Welsh Government had “given every opportunity to local government to agree on a map”²³ and that, irrespective of any agreement, he intends to continue to progress the restructuring and reform programme. We note that this will be dependent on the outcome of the Fifth Assembly elections and reliant on an appropriate level of political support, which the Minister suggested would need to be beyond a single political party.

27. We understand that the Minister is eager to make progress, not least to end the current uncertainty faced by the sector, in particular local authority staff, and that difficult and potentially unpopular decisions will need to be made.

28. Notwithstanding this, we refer to the statement in the White Paper, that “the creation of new counties is best achieved in partnership with local government”.²⁴ **We endorse this sentiment and urge the Minister to continue to engage in open and constructive dialogue with local government to ensure that the final configuration is fit for purpose, enduring and robust.**

²³ RoP, para 200, 10 February 2016

²⁴ Welsh Government’s White Paper: Reforming Local Government, Power to Local People, February 2015

4. Part 2 – General power of competence

General power of competence

29. There was support in evidence for the proposed “general power of competence” (the general power) provided in section 23, with the WLGA and SOLACE specifically welcoming the power. Despite this, SOLACE suggested that the general power would not lead to any significant increase in the powers available to authorities and questioned whether it would make a difference in practice.

30. In contrast, the Wales Audit Office (WAO) stated that the provision of the general power was “a significant proposal”, which “would be helpful in facilitating (...) innovation and service delivery” and may encourage authorities to take “well-managed risks”.²⁵ It reported that the corresponding power in England had “been useful in providing facilitative conditions for small businesses to operate and flourish”.²⁶

31. We acknowledge that the general power has been provided in response to concern raised by local government that its existing power of well-being was too restrictive. We believe it is important to ensure that the reformed councils have the tools available to enable them to respond to future social and economic challenges and to effectively deliver local services. As such, **we support the general power of competence and hope that councils will view it as an opportunity to develop new and innovative methods of delivery.**

32. On the wider issue of powers for local government, according to the White Paper, the Welsh Government would be “prepared to consider the appropriateness of further devolution of powers”.²⁷ However, this would be conditional on the government having satisfied itself that authorities are exercising their existing powers effectively and that new authorities are operating as intended. The Minister subsequently confirmed this in his evidence to us.²⁸

33. While we understand the Minister’s desire for a measured approach to change, we believe that the forthcoming Bill provides a significant opportunity to empower local government and strengthen local, democratic

²⁵ RoP, para 305, 4 February 2016

²⁶ RoP, para 289, 4 February 2016

²⁷ Welsh Government’s White Paper: Reforming Local Government, Power to Local People, Welsh Government, February 2015

²⁸ RoP, para 322-327, 10 February 2016

decision making. We further believe that the potential wider devolution of powers could have been considered from the outset, as part of a more holistic approach to restructuring and reform, which we referred to in our Stage 1 report on the Local Government (Wales) Bill.

Community councils with competence

34. We note that the general power will be available not only to county councils, but to “community councils with competence”. While we are not opposed to this, **we believe that this power should be reserved for community councils with the capacity and capability to exercise it effectively.** We question whether the proposed “competency requirements” set out in section 31 are sufficiently robust to provide for this. **We would like the Minister to outline the rationale for the proposed “competency requirements” for community councils. Further, we would like the Minister to bring forward proposals on how the capacity of community councils will be assessed within the overall assessment of competence for these councils**

35. Following on from this, the Auditor General for Wales (AGW) has questioned the use of audit opinions in determining competence. According to the AGW, “while such opinions are of relevance to the abilities of bodies in terms of financial management and governance, audit work is not actually designed to provide assurance as to whether a council meets competency requirements”.²⁹ **We would welcome the Minister’s views on this issue.**

²⁹ Written evidence, DLG 04

5. Part 3 – Promoting access to local government

Community area committees

36. There were varying views in evidence about the proposed “community area committees” provided for in Part 3 of the draft Bill. The WLGA acknowledged that “local ‘area-based’ community governance is needed to counter the remoteness of larger post-reform councils”.³⁰ However, it raised concern that the proposals for community area committees were “problematic” and that community governance arrangements should be “left to local discretion”.³¹

37. Similarly, SOLACE acknowledged the “danger of very large new councils being out of touch with communities”. Although it was “not against the establishment of community area committees”, it highlighted the potential for increased bureaucracy, administrative burden and cost if such committees were introduced on top of the existing structures.³² SOLACE questioned whether a more appropriate alternative would be to “redesign the relationship between community councils and the new local authorities, with powers of delegation aligned with clear lines of accountability for delivery and cost effectiveness”.³³

38. Like respondents, we believe it will be important to ensure that elected members within the reformed councils remain attuned with the communities they serve. However, **we remain to be convinced that the provision of additional statutory committees is the most effective way of achieving this or that the role of these committees has been clearly defined.**

39. The White Paper envisaged that, as well as managing local responsibilities and budgets, community area committees would be given an opportunity to take on other responsibilities, such as area based initiatives. While the draft Bill provides for this, the Explanatory Memorandum suggests that the role of these committees is more as a conduit between communities and the new councils. In addition, the Minister told us that the committees “will feed directly into the decision-making process within authorities” and would “provide challenge to the cabinet (...) to demonstrate that it is taking account of differences between communities within their local authority”.³⁴

³⁰ Written evidence, DLG 09

³¹ *ibid.*

³² Written evidence, DLG 05

³³ *ibid.*

³⁴ RoP, para 330, 10 February 2016

40. We believe that a lack of clarity remains about the role of community area committees. Linked to this, we are concerned that insufficient consideration has been given to how these committees will fit in with existing governance arrangements, including community councils, and the “community councils with competence”, as provided for in the draft Bill. The draft Bill does not confer executive functions on these committees, nevertheless, it appears that they could fulfill a number of other potentially significant functions. In addition to the concerns we have already expressed about the appropriateness of additional statutory committees, we are concerned about how they will be held to account for the exercise of any delegated functions. **We would like the Minister to provide details of the reporting and accountability arrangements he expects to be in place for community area committees.**

6. Part 4 – Functions of county councils and their members

Duties on members of county councils and breaches of duties

41. The WLGA raised serious concerns about the proposed statutory duties on members of county councils in Chapters 2 and 3 of Part 4. According to the WLGA, the provision of “an excessive and prescriptive ‘performance’ and standards regime for councillors is at odds with the wider narrative of trust between devolved and local government and enhanced local accountability”.³⁵

42. The WLGA believed that the performance of elected members was a matter for political parties within local government and, ultimately, would be determined by the electorate in the course of the electoral process. It did not consider that these were matters upon which the Assembly should legislate.

43. In commenting on the proposed complaints procedure for alleged breaches of the statutory duties, the WLGA stated that “the conflation of ‘performance duties’ with the current standards regime is problematic” and that “the comparable seriousness of breaches is questionable”. As an alternative, it suggested that the Welsh Government should consider the effectiveness of existing legislative provision governing the vacation of office for failure to attend meetings and “to empower councils to agree and enforce their own attendance regime”.³⁶

44. We note that the policy intentions behind the proposed statutory duties are to provide greater clarity to the electorate about the role and responsibilities of councillors and “to set high expectations in terms of local government performance”.³⁷ While we support these intentions, we are not convinced that prescribing the duties of councillors in legislation, and to the degree provided in the draft Bill, is either reasonable or appropriate.

45. However, if the Minister chooses to proceed with this proposal, **we believe that such matters would be best dealt with either through secondary legislation or statutory guidance, subject to consultation and an appropriate level of Assembly scrutiny. Further, we believe that the forthcoming Bill should provide for this.**

³⁵ Written evidence, DLG 09

³⁶ *ibid.*

³⁷ RoP, para 365, 10 February 2016

46. In our view, it follows that the complaints procedure in respect of alleged breaches does not need to be provided for on the face of the Bill. Regardless of the final legislative arrangements, we are concerned about the potential for abuse of the complaints procedure, in particular the scope for vexatious complaints. **We question whether the provisions, as drafted, will safeguard against this and we seek assurance from the Minister on this issue.**

47. In addition, we have some concerns about the sanctions provided in section 93 and whether they are proportionate in relation to the breaches of duties. **We would like the Minister to outline the rationale for these sanctions and to clarify whether suspension or partial suspension could be applied for a single breach of duty.**

48. We share the concern raised by the WLGA that the proposed statutory duties do not adequately reflect the roles and responsibilities of councillors, in particular their role of community leaders, which the draft Bill seeks to strengthen. **We believe that the Minister should give further consideration to this issue.**

7. Part 5 – County councils: improvement of governance

49. The AGW suggested that “combined assessments” provided for in section 124 were “likely to prove unnecessarily complicated” given the distinct roles and independence of the bodies involved, namely the AGW, Estyn and the Care and Social Services Inspectorate Wales (CSSIW).³⁸

50. The AGW raised concern that “several aspects of Part 5 are not compatible with audit independence, which is a fundamental audit principle”,³⁹ in particular the powers in section 143 for the Welsh Ministers to make regulations for co-ordinating work of the Auditor General, Estyn and CSSIW and to set timetables for audit work.

51. The Minister told us that “the Wales Audit Office and the role of the auditor general are clearly laid down in statute” and, as such the AGW’s independence was “guaranteed”.⁴⁰ **While we acknowledge this view, we refer to the AGW’s detailed comments and seek assurance that the provisions will not in any way compromise this independence.**

³⁸ Written evidence, DLG 04

³⁹ *ibid.*

⁴⁰ RoP, para 399, 10 February 2016