

Report



Cabinet

Part 1

Date: 16 December 2020

Subject Local Government and Elections (Wales) Bill Consultation

Purpose To present to Cabinet an overview of the Local Government and Elections (Wales) Bill and determine a response to the consultation regarding the establishment of Corporate Joint Committees.

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Ward All

Summary The Local Government and Elections (Wales) Bill proposes to reform the legislative framework for local government electoral arrangements, democracy, performance and governance. This is an extensive piece of legislation covering the powers of local government, elections, performance and governance of Principal Councils, and collaborative working by Principal Councils – the establishment of Corporate Joint Committees (CJCs).

The Minister for Housing and Local Government is seeking views on the draft regulations which will establish four regional CJCs across Wales. This report includes the Council's draft response for Cabinet consideration.

Proposal Cabinet is asked to consider the contents of the report and agree the consultation response for submission by the closing date of 4th January 2021.

Action by Chief Executive

Timetable Immediate

This report was prepared after consultation with:

Councillors
Heads of Service

Signed

Background

The current local government structure in Wales, consisting of 22 county and county borough councils (“principal councils”) was established in 1996 by the Local Government (Wales) Act 1994. There have been a number of reports, commissions and white paper consultations, with the aim of reforming the local government structure, strengthening democratic accountability and increasing diversity of representation.

Following publication of the ‘Williams Commission’ [recommendations](#), the Welsh Government attempted to move the change agenda forward. A draft Bill was introduced that would pave the way for local authority mergers, provide councils with the general power of competence, and change the functions of councils and their Members. However, the anticipated introduction of a final Bill did not materialise.

During 2018, the Welsh Government looked to restart the debate on local government reform with a [Green Paper consultation - Strengthening Local Government: Delivering for people](#). It had also launched a consultation a year earlier on [Electoral Reform in Local Government](#) as part of a review into democratic arrangements and functions in Wales.

On 18 November 2019, the Welsh Government introduced the [Local Government and Elections \(Wales\) Bill](#) (“the Bill”) along with the [Explanatory Memorandum](#) (EM). The EM also incorporates the Regulatory Impact Assessment (RIA) and Explanatory Notes (EN). The Minister for Housing and Local Government, Julie James AM, on introducing the Bill in Plenary on 19 November 2019, stated that the Welsh Government is “changing the governance framework for local government to better enable innovation, transparency and local ownership for driving up service delivery outcomes and standards across Wales.”

The Local Government and Elections (Wales) Bill proposes to reform the legislative framework for local government electoral arrangements, democracy, performance and governance. The EM states that it seeks to provide local government with “new ways to support and serve their communities”, and to “reinvigorate local democracy in Wales.”

The Bill

The Bill covers:

- Elections;
- General Power of Competence;
- Promoting Access to Local Government;
- Local Authority Executives, Members, Officers and Committees;
- Collaborative Working by Principal Councils - Corporate Joint Committees (CJCs);
- Performance and Governance of Principal Councils;
- Merges and Restructuring of Principal Areas;
- Local Government Finance; and
- Other matters relating to Local Government and Fire and Rescue Authorities.

Welsh Government has reprioritised its legislative programme due to COVID-19. The Bill remains a priority for the remainder of this Senedd term, given the need to introduce planned electoral reforms in time for the 2022 local elections. The Bill’s passage through the Senedd has therefore been delayed but the Stage 3 Plenary debate on amendments took place on 18th November 2020 and the Bill was passed by the Senedd by 39 votes to 16. It is anticipated that the Bill will receive Royal Assent early in the New Year.

The Minister for Housing and Local Government and Welsh Government officials have engaged with stakeholders on the development of proposals to establish Corporate Joint Committees (CJCs) to exercise certain local authority functions on a collaborative basis. The Minister for Housing and Local Government is now seeking views on the draft regulations which will establish four regional CJCs across Wales. This report includes the Council’s draft response for Cabinet consideration.

Overview of sections

Part 1 – Elections

Part 1 of the Bill, according to the Explanatory Memorandum (EM), aims to “reinvigorate local democracy in Wales”. It introduces provisions that will extend the franchise to **include votes for 16 and 17-year-olds and for foreign citizens legally resident in Wales**. It also introduces the **option for principal councils to choose the voting system it wishes to use – first past the post system (FPTP) or single transferable vote (STV)**. There are also a number of provisions within Part 1 of the Bill that relate to the **registration of electors, electoral cycles** (changing to five year terms), proposals for election pilot schemes, meeting the expenditure of returning officers and **employees and officers (including teachers) who are not politically-restricted post-holders being able to stand as candidates** (would only need to resign paid employment if elected – currently serving officers have to resign before they can stand in an election). There are additional costs for Councils due to administering an election for an expanded electorate, register foreign citizens and promoting awareness. The costs of running local elections falls on the Council.

Part 2 – General Power of Competence

As local authorities are statutory bodies, they derive their powers and functions from legislation and they cannot act outside of their specific statutory powers. These restrictions have been relaxed over a number of years by the introduction of general well-being and incidental powers. The EM notes that there is a “perception that the wellbeing power is too limited”, and has not “empowered authorities to innovate or take more transformative action” which may be for fear of acting outside of scope of powers. The Bill therefore **provides principal councils (and eligible community councils) with a general power of competence**. It has the “aim of bringing about more effective, capable and innovative local government”. It means that **qualifying councils will no longer be required to identify a specific power in order to undertake a particular activity**. Instead, they will be in a position in which it is “assumed they can do something unless there is a statutory restriction preventing it”. However, it should be noted that, if there is already a specific statutory power which is subject to restrictions, then the general power of competence cannot be used to override the requirements of the specific legislation.

Part 3 – Promoting Access to Local Government

The purpose and intended effect of Part 3 of the Bill is to encourage **greater engagement and participation in local democracy** among a more diverse range of the public. The provision in the Bill will require principal councils to “**encourage public participation in their decision-making and scrutiny procedures**”. Principal councils will need to publish a strategy specifying how it proposes to comply with its duties including:

- Promoting awareness of the council’s functions;
- Promoting how to become a member of the council (or a related authority);
- Facilitating greater access to information for members of the public; and
- Providing ways for members of the public to make representations to principal councils and speak at meetings.

Other key aspects of this part of the Bill:

- Broadcast of all public meetings - and to make them available for a “reasonable period of time after the meeting”;
- Remote attendance of Council members;
- Duty to make a petition scheme – how we respond to petitions;
- Allows for electronic petition schemes (although not required);
- Council members not required to publish home addresses; and
- Requirement for the constitution to be available in ‘ordinary language’

Part 4 – Local Authority Executives, Members, Officers and Committees

Part 4 of the Bill makes provision for a broad range of matters, including the **appointment and performance management of chief executives of principal councils**. There is also a focus on **consistency in the Chief Executive role**. There are also provisions for **expanding job-sharing for executive leaders and members of the executive**, and for the appointment of assistants to the executive.

The aim of the provisions is to **strengthen and improve equality and diversity**. There is an emphasis in this part of the Bill on improving standards, **placing greater responsibility on political leaders to promote high standards of conduct**.

Part 5 – Collaborative Working by Principal Councils

Local authorities already work collaboratively across a number of services. This Bill, according to the Welsh Government, provides a new mechanism for a more simplified, coherent and consistent approach to collaboration. The EM notes that the new mechanism will “support the drive within principal councils for more economic, effective and efficient delivery of services”.

The provisions will enable the creation of **corporate joint committees (CJCs) (for two or more principal councils) to deliver specified functions**. The Welsh Government considers that corporate joint committees offer an “opportunity to align a number of collaborative approaches already in statute, reducing the need (and therefore the costs associated with servicing) multiple separate boards”.

The current consultation relates to the establishment of four regional CJCs across Wales.

Corporate Joint Committees (CJCs)

CJCs will be **‘bodies corporate’ formed from the membership of principal councils, able to employ staff, hold assets and manage funding. They will be a new form of governance body, comprised of the democratic leadership of local authorities in its area, rather than traditional committees**. The CJCs will be separate, autonomous legal bodies, entirely separate from the local authorities, and with statutory powers to exercise specific functions on a regional basis. The model is designed to offer maximum flexibility with detail being co-produced with local government, however it is not the default model for all collaborative local services, as arrangements are proportionate to scale or complexity.

The proposals give the Welsh Ministers powers to make regulations to establish corporate joint committees for specific mandated functions and a power for local authorities to initiate the establishment of other CJC’s on a voluntary basis for the purposes of discharging their functions on a collaborative basis. The Welsh Ministers can only mandate certain functions for the joint committees under such circumstances. These functions relate to - improving education; strategic planning for the development and use of land; transport; and economic development. There are already voluntary arrangements currently in place for Economic Development and Improving Education. **The aim of creating CJCs is to provide a single consistent vehicle for collaboration and to enable the transition of existing regional arrangements into the CJC’s.**

The proposals for the creation of CJCs have been among the more contentious elements of the Bill and the Minister is seeking views in order to ‘co-produce’ CJC regulations and guidance.

CJCs can be seen as an **evolution from existing regional arrangements such as Growth of City Deal, school improvement consortia and regional planning and transport arrangements**. Although supportive of CJCs as a voluntary model for collaboration, there is concern within local government about the ‘mandation’ of regional structures or services and questions about what outcomes will be achieved. This is reflected in the proposed consultation response at an Appendix to this report.

Amendments to the Bill that have been agreed include clarifying ‘economic development’ as a broad ‘economic well-being’ power; inclusion of national park members in the strategic planning role of CJCs; and clarification that CJCs replace Strategic Development Panels and that all CJCs must produce Strategic Development Plans.

Part 6 - Performance and Governance of Principal Councils

The Local Government (Wales) Measure 2009 places a general 'improvement' duty on principal councils, and requires them to produce an improvement plan. The plans, which are reviewed by the Auditor General for Wales (AGW), have become "process orientated" according to the Welsh Government, focussing on activity or outputs which can be easily measured.

It is currently for the AGW to determine whether local authorities have "achieved continuous improvement each year, whether they have the capacity to improve further and whether either the principal council or the Welsh Ministers should take action".

Under the proposals in the Bill, **principal councils will be required to conduct an annual self-assessment of performance** and a "periodic review to provide an external, expert perspective" on performance. The Bill also **gives the Welsh Ministers powers to intervene where principal councils face significant problems**, and include powers for the AGW to "carry out a special inspection".

Part 7 – Merges and Restructuring of Principal Areas

The debate over the structure of principal councils in Wales has been ongoing for several years. In 2013, the Welsh Government established the Williams Commission, which recommended that the twenty-two local authorities should "merge into larger units. In 2015, the Welsh Government at the time made the case for the compulsory mergers of principal councils by consulting on a draft Local Government (Wales) Bill, however this was not introduced.

The Local Government and Elections (Wales) Bill **does not make provision for compulsory mergers**, but does provide principal councils with the **opportunity to merge voluntarily**. The Bill also makes provision for restructuring principal councils where a council is "facing serious difficulties", but cannot find a "willing partner" to merge voluntarily.

Part 8 – Local Government Finance

Part 8 of the Bill amends existing legislation regarding non-domestic rates, otherwise known as business rates, and council tax. The Bill introduces **new tax avoidance measures in relation to non-domestic rates**. It will also amend the way that the non-domestic rates multiplier is calculated. The Bill will also remove the power to enable imprisonment as a sanction for non-payment of council tax.

Part 9 – Miscellaneous

Part 9 of the Bill covers a number of different areas in relation to local government and the fire and rescue authorities. Among the areas included are:

- Information sharing between regulators;
- Head of Democratic Services in a local authority is treated as a chief officer and afforded appropriate statutory protection;
- The merging and demerging of Public Services Boards; and
- Provisions relating to combined fire and rescue authorities.

The Assembly's Consideration of the Bill

The Business Committee agreed to refer the Bill to the Equality, Local Government and Communities Committee (ELGC) for Stage 1 scrutiny to consider and report on the general principles. The Committee undertook 15 evidence sessions with stakeholders, which included two scrutiny sessions with the Minister for Housing and Local Government, Julie James AM. The Committee also undertook a public consultation and a survey with members of the public regarding Part 3 of the Bill which makes provisions for promoting access to local government.

The [Committee's Stage 1 Report](#) on the Bill was published on 13 March 2020, and makes 32 recommendations for the Welsh Government on a wide range of matters in relation to the Bill.

The Committee recommended that the general principles of the Bill are **agreed by the Assembly**. While the COVID pandemic has impacted on the Welsh Government legislative programme, the Bill remains a priority for the remainder of this Senedd term, given the need to introduce planned electoral reforms in time for the 2022 local elections.

Impact on Newport City Council and Consultation response

Newport City Council welcomes the intention to extend the voting franchise to include 16 and 17 year olds and foreign nationals which reflects the principle of involvement. However it is recognised that the proposals to allow changes to the voting system could be confusing for the electorate.

It is important to note that Newport City Council already has a proven track record in working collaboratively on a local and regional footprint. We have formed formal and informal partnerships with neighbouring Authorities and third sector partners, including the Public Services Board and Regional Skills Partnership. We are part of the Cardiff Capital Region and the Western Gateway Partnership and Newport has an important role to play in delivering economic and sustainable growth in these areas. Scoping work in respect of a Strategic Development Plan has already commenced and it therefore feels unnecessary to put into place powers which would mandate the Council to be part of another regional body. Important work in the key areas identified is already being undertaken on a collaborative and regional basis.

Changes to performance and governance will be the subject of a separate report although the principles are sound. The intention to provide a general power of competence to local government is helpful, although its use may be limited in practice. Members of NCC are concerned however that the move to more regional bodies will not represent the views of local communities, and that is reflected in the attached response.

The consultation paper can be found here: <https://gov.wales/sites/default/files/consultations/2020-10/consultation.pdf>

Attached at **Appendix 1** is NCC's draft response to the consultation.

Consultation for Regulations to establish Corporate Joint Committees (CJCs) ends 4th January 2021. Consultation for Draft statutory guidance - Performance and governance of principal councils ends 3rd February 2021 and will be the subject of a separate report and draft response.

Financial Summary

There are no direct financial implications as a result of replying to the consultation. There would be significant financial implications as a result of the changes proposed in the Bill.

Risks

Risk	Impact of Risk if it occurs* (H/M/L)	Probability of risk occurring (H/M/L)	What is the Council doing or what has it done to avoid the risk or reduce its effect	Who is responsible for dealing with the risk?
Not properly preparing for the implications of the Local Government and Elections (Wales) Bill	High	Low	Cabinet will receive update reports as the consultation and programme progresses and respond to consultations accordingly.	Chief Executive

The needs of Newport residents are not best served by the Bill.	High	Medium	Response to the consultation as outlined in this report	Chief Executive
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* Taking account of proposed mitigation measures

Links to Council Policies and Priorities

The Bill sets out the vision for the future of local government, reference is made to the Well-being of Future Generations Act (Wales) 2015 and the work of Public Services Boards and the Well-being Plan.

The proposed changes being considered will require changes to Council policies and priorities as outlined in the report and proposed response.

Options Available and considered

1. To note the proposals as outlined in the Bill and endorse the proposed response to the consultation (Appendix 1).
2. To amend the response to the consultation and respond to Welsh Government by the consultation deadline.

Preferred Option and Why

To endorse the proposed response to the consultation.

Comments of Chief Financial Officer

As noted in the report, the consultation itself has no financial impact but the Bill will have wide ranging and significant financial impact. Much of the detail will be developed over the next few months but the most significant area of impact will be the establishment of 'Corporate Joint Committees'. Essentially, they will be able to 'levy' a revenue budget requirement from Councils within its area, in a similar way the Fire Services are able to do now. Therefore, establishing practical and good working arrangements will be essential as well as ensuring the financial context of Principle Councils who pay it are understood. The use of existing democratic leaders of the principle Councils in its area on its governance structure will be helpful in that respect. As noted in the report, there are many example so regional working and Local Government has therefore extensive experience of working collaboratively and ensuring these practical issues are dealt with.

There will be a potential small financial impact from these in the 2021/22 financial year and will need to be considered as part of budget setting. As the function develops, the impact will become greater over time. A key issue is the extent to which any new 'levy' is mitigated by corresponding saved costs in principle councils as functions/projects, and therefore costs, are transferred.

Comments of Monitoring Officer

Any specific legal issues have been addressed in the main body of the report and the proposed consultation response. The Bill will introduce significant changes to the Council's electoral arrangements, democracy, performance and governance. Therefore, it will have significant implications, which will need to be addressed in more detail once we have a clear time-table for the implementation of the different elements of the legislation and further statutory guidance. The general power of competence has been in force in England for over 8 years, following the introduction of the Localism Act 2011 and, in practice, it has not made a significant difference to the way in which councils operate. This is because the general power is still subordinate to specific legislative powers which are subject to restrictions, for example the

need to form arm's length companies to undertaking any "trading" or commercial work. Therefore, although this general power of competence is welcome, it may not have the impact envisaged. The introduction of Corporate Joint Committees is a significant change to the way in which joint committees and collaborative arrangements currently exist. The new CJC's are separate statutory bodies and legal entities in their own right, with the power to sue and be sued, employ staff and own property. They are fully autonomous bodies that will discharge functions at a regional level and operate entirely separate from the local authorities. They will set their own budgets and strategic priorities. Welsh Government has only "mandated" four functions where CJC's have to be established – strategic planning, economic development, regional transport and education improvement. The Welsh Ministers' intention is to produce general regulations about how all CJC's will operate and a series of specific regulations governing how each individual regional CJC will operate. It is recommended that the Council should take this opportunity to respond to the consultation on the CJC's and the proposed regulations, as this is an opportunity to help shape the framework in which these bodies will operate.

Comments of Head of People and Business Change

From an HR perspective, there are no staffing implications to this report.

The Well-being of Future Generations (Wales) Act 2015 and the sustainable development principle has been fully considered when developing this consultation response.

As noted by the report writer the importance of local people being involved in decisions moving forward is key and we must not allow their voices to be lost if priorities change.

Comments of Cabinet Member

The Leader of the Council is engaged in the consultation on the development of the LG Bill.

Local issues

None.

Scrutiny Committees

NA

Equalities Impact Assessment

Not applicable.

Children and Families (Wales) Measure

Although no targeted consultation has taken place specifically aimed at children and young people, previous consultation responses would show that children and young people are concerned about sustaining local government services in the future.

Well-being of Future Generations (Wales) Act 2015

The Council has considered the Act and the sustainable development principle in the response to this proposal as outlined in the report. The importance of local people being involved in decisions moving forward is key and we must not allow their voices to be lost if priorities change.

Crime and Disorder Act 1998

Not applicable.

Consultation

Comments received from wider consultation, including the Senior Leadership team and comments from elected members, are included in the proposed response.

Background Papers

[Local Government and Elections \(Wales\) Bill: Bill Summary \(March 2020\)](#)

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

[Local Government and Elections \(Wales\) Bill: Explanatory Memorandum \(November 2019\)](#)

[Local Government Act 1994](#)

[Commission on Public Service Governance and Delivery Full Report \(January 2014\)](#)

[Equality, Local Government and Communities Committee – Stage 1 Report \(March 2020\)](#)

Dated: 27th November 2020