

# Appendix 1 - Newport City Council Consultation response draft

## Welsh Government Consultation Document - Regulations to establish Corporate Joint Committees (CJCs)

*Date of issue: 12 October 2020*

*Responses by 4 January 2021*

Full consultation paper can be found [here](#) and is also available in Welsh.

### Consultation Question One:

#### **a) What are your views on CJCs being subject to broadly the same powers and duties as principal councils?**

We are concerned that the creation of another tier of 'local government' in Wales moves decision-making further away from local communities. Establishing CJCs which act in the same way as local government, with appropriate and necessary governance and oversight will mean replicating structures that already exist at a local level. This will further reduce current capacity in terms of both expertise and skills but also democratic oversight to the regional level or by re-creating the same structures but taking resources from local authorities to do so.

Our previous responses to local government reform indicated that we believe that local government should determine in which areas it wishes to collaborate. There are excellent examples of regional collaboration led by local government.

However, for CJCs to function effectively, openly and transparently we agree that CJCs should be subject to broadly the same powers and duties as principal Councils. If CJCs are to be treated as "a member of the local government family" then they have to be subject to the same rules and requirements as local authorities in relation to the way that they operate and discharge statutory functions. The challenge will be to adequately address the requirements that will be placed on them to act regionally while remaining engaged with local communities.

#### **b) Do you agree that CJCs should have broadly the same governance and administrative framework as a principal council provided that this is proportionate? Please give your reasons.**

Yes, we agree. The functions to be delivered by CJCs will need to be supported by robust and proven governance at a regional level. As a minimum requirement, the governance and administrative framework for the CJCs should provide the same level of democratic accountability as for local authorities. It is accepted that there has to be a degree of flexibility and proportionality, to enable CJCs to regulate their own business, but there has to be a basic requirement for openness and transparency. In order not to reduce capacity and skills for local government, this must be properly set up and resourced.

We would hope that, for South East Wales, we will be able to build upon the governance and structures already in place for the City Deal to meet the CJC Regulation.

Given that CJCs will have the ability to set a budget, incur expenditure, charge fees, acquire and dispose of property, employ staff etc. then a sufficient administrative framework should be developed to support them.

**c) Do you agree that members of CJsCs should have appropriate discretion on the detail of constitutional and operational arrangements? Please give your reasons.**

Yes we agree within defined parameters. In principle, each CJC should have an element of discretion to determine what governance and operational arrangements best suit their particular needs and objectives, but there needs to be a prescribed framework which sets out minimum requirements for democratic decision-making and open and transparent governance. We would need to see the guidance for these to be able to respond further.

**Consultation Question Two:**

**These CJC areas have been agreed by local government Leaders as the most appropriate to reflect the functions being given to CJsCs by these Establishment Regulations. Do you have any comments or observations on these CJC areas in relation to these functions or the future development of CJsCs?**

We agree that the Cardiff Capital Region City Deal area is the right fit for the strategic planning, economic development and regional transport functions of the current proposed South East Wales CJC. These functions are already being delivered collaboratively across this geographical footprint, so the proposal will facilitate the transition from the current City Deal Joint Cabinet arrangements and enable the CJC to develop from the current working model. However, the governance capacity of the City Deal will have to be significantly increased to meet the requirements.

Applying the same regional footprint to the school improvement service will be more problematic. The current regional consortia for school improvement cover different geographical areas and adopt different methods of service delivery. For example the Gwent Education Advisory Service is a company limited by guarantee formed by the constituent authorities, with their own staff and resources, which delivers school improvement services to the member authorities under service level agreements and subject to both internal and external scrutiny arrangements. Other consortia adopt more traditional joint committee and lead authority arrangements. Changing these disparate arrangements into a single CJC covering a combined geographical area will be extremely complex.

**Consultation Question Three:**

**a) Do you agree with the approach to the development of the regulations for CJsCs as outlined in this consultation? Please give your reasons.**

Yes, we agree with the approach and that local government Leaders and WLGA have been involved in the development of the Regulations. It is disappointing that the COVID pandemic has interrupted this and we would ask that the draft regulations are developed as soon as possible to ensure that local government is able to meet the already tight timescale.

The separation of the Establishment Regulations and the Regulations of General Application is also supported. The Establishment Regulations will need to set out the specific provisions relating to the governance, funding, staffing and functions of each CJC. However, there will need to be a general legislative framework within which each of the CJsCs will be required to

operate, and these common requirements should, more appropriately, be set out in separate regulation of general application.

- b) We have indicated throughout this document what may be included in the Regulations of General Application, subject to the outcome of this consultation. Whilst the Regulations of General Application are not the subject of this consultation, in order to inform their development we would welcome your views on anything else which should be covered?**

The Regulations will need to clearly set out what general legislation is applicable to CJsCs and any regulatory inspection regimes, for example Well-being of Future Generations Act, Welsh Language Standards, social-economic duties and any performance management and external inspection requirements. We would like early clarification on matters such as finance, what set-up costs might be available, the role of Audit Wales, dates for key plans to be developed by, codes of conduct, member training, member support, links back into local authority accountability structures including reports to Cabinet, Council etc.

#### **Consultation Question Four:**

- a) Do you agree with the proposed approach to membership of CJsCs including co-opting of additional members? Please give your reasons.**

We agree that the model should follow the City Deal Regional Cabinet with the Executive Leader being the senior representative and should follow the one member one vote arrangement currently in place. We note that non executive members are likely to become members of CJC Scrutiny Committees and this may reduce local democratic capacity. Attracting the right talent to CJC democratic structures will be important.

We would consider co-opted membership to be helpful but would question whether co-opted members should have voting rights. CJsCs are responsible to constituent councils and so the voting power of co-opted persons must not override the ordinary members who have been elected by the communities we serve.

It should not be necessary to co-opt additional members from constituent authorities, as Council Leaders will be able to represent their local areas. However, the Regulations may wish to make provision for Deputy Leaders to be able to deputise or substitute for Leaders at CJC meetings, where they are unavailable.

Co-option should be based on some specific expertise that the co-opted members can bring to particular matters and could be limited to consideration of specific issues. If they are drawn from outside of the constituent authorities, then they should not have any voting rights as this would affect the democratic decision-making process. Although the proposed Regulations would effectively prevent co-opted members from out-voting constituent authorities, the co-opted votes could still have a material impact on the outcome of a vote and decisions being take, without any direct democratic accountability.

- b) What are your views on the role proposed for National Park Authorities on CJsCs, as described above?**

The National Park Authorities will clearly have a role to play in the determination of the Strategic Development Plan for their particular region and, therefore, it is appropriate that they should be given a right of representation and voting rights on the CJC when this is being determined. However, these rights should be limited to the Strategic Development

Plan. CJs should be able to co-opt members of the National Park Authorities if they have particular expertise in other strategic development matters, but on a non-voting basis.

### **Consultation Question Five:**

#### **a) What are your views on the proposed approach of ‘one member one vote’ and the flexibility for CJs to adopt alternative voting procedures?**

This appears to work relatively well in the City Deal Regional Cabinet arrangements where members are considering the whole of the region in terms of economic development. However, we note that funding is often a contentious issue and the proportionate split based on population can be problematic. With Strategic Planning Boards, there has been no general consensus about weighted voting, either based on population numbers or other factors such as developable land areas. Therefore, anything other than “one member one vote” can be politically contentious and can be difficult to resolve. Traditionally, joint committees have operated on the basis of each constituent authority having an equal vote and it may be more consistent to continue with this approach.

Alternatively, if CJs want discretion and flexibility to change to a different system of voting, after they have been established, then perhaps the Regulations should consider imposing a “special majority” requirement, where a minimum number of councils would need to agree before voting rights could be changed.

#### **b) What are your views on the proposed quorum for CJs?**

We agree that this is important and should be set at the suggested high level for any decisions of the CJC. A 70% quorum requirement would ensure that the majority of local authorities would need to be represented at any meeting of the CJC before any decisions could be taken. It would not be appropriate for binding regional decisions to be taken by a smaller number of members, as this would be undemocratic. However, it is important that Leaders attend CJC meetings on a regular basis to ensure that meetings are quorate and business can be transacted. Therefore, enabling deputies or substitute members to attend in the absence of the Council Leaders would assist in ensuring that meetings are regularly quorate.

#### **c) What are your views on the proposed approach to voting rights for co-opted members to a CJC?**

We do not believe that co-opted members should have voting rights for the reasons set out above. Our view would be that the CJC should restrict the number of co-opted members on each committee and should properly consider the skills and knowledge gaps it may have to fill a limited number of roles.

### **Consultation Question Six:**

#### **What are your views on CJs being able to co-opt other members and/or appoint people to sit on sub-committees?**

We agree that CJs should have the power to establish sub-committees should they wish to do so. However, most sub-committees are comprised of a smaller number of voting

members of the main committee (which in this case would be the CJC). It is unusual for sub-committees, particularly those exercising devolved or delegated power, to be comprised of members who are not on the main CJC. If sub-committees are to be given delegated power to exercise functions and take decisions in relation to specific areas, then the same considerations should apply as with the main CJC in terms of the democratic process, representation and voting rights. Therefore, if other executive members of the constituent principal authorities are to serve on these sub-committees, then consideration should be given to the same rules applying to the sub-committees regarding representation, voting rights and quorum requirements. If the sub-committees are to be advisory groups and not have any decision-making power, then these considerations would not apply. However, if they exercise any delegated functions, then they should be subject to the same democratic processes as the main CJC.

The range of business that is to be devolved to CJsCs may not be able to be dealt with by the Executive Member plus a deputy. These are senior members who will also hold a significant role within the local authority. Therefore, there may be a need for other executive members to participate in the decision-making process of the CJC, provided that this does not subvert or undermine the democratic process. However we have concerns regarding the co-opting other non-elected members and would not want to see such committees weighted toward co-opted members simply because of the capacity of elected representative to service them alongside their other duties as elected members. Any co-opted stakeholders or non-elected members should not have voting rights on sub-committees exercising delegated functions.

### Consultation Question Seven:

**a) Do you agree that the approach to co-option of members would enable wider engagement of stakeholders in the work of a CJC?**

Yes we agree. However, co-opted stakeholders should not have any voting rights or decision-making powers for the reasons set out above,

**b) What might be needed to support CJC members in the involvement and engagement of appropriate stakeholders in their work?**

Member development will be an important aspect of the role of the CJC. We would like the guidance to offer assistance and clarity on this. This would need to include the requirements of acting in a regional multi-authority role. However, elected members will already be familiar with the ways of working under the Well-Being of Future Generations Act, particularly in relation to collaboration, involvement and taking an integrated approach.

### Consultation Question Eight:

**a) Do you agree that members and staff of a CJC should be subject to a Code of Conduct and that the code should be similar to that of Principal Councils? Please give your reasons.**

We agree. If the CJsCs are to be part of the "local government family", then the same rules regarding ethical behaviour and standards of conduct should apply to both staff and elected members who serve on the CJC or any sub-committees. In order to achieve this consistency of approach, the CJsCs should be designated as relevant authorities for the purposes of Part 3 of the Local Government Act 2000. That would ensure that elected

members serving on the CJC would be subject to the same Model Code of Conduct as when they are acting as local Councillors and the CJC would be responsible for maintaining separate registers and declarations of interests. The CJC members would then be subject to the same jurisdiction of the Ombudsman and the Adjudication Panel for Wales. CJCs will already be required to appoint their own Monitoring Officers for the purposes of the ethical standards framework. However, they would also have to establish their own internal Standards Committee in order to comply with Part 3, with the requisite independent membership, although the Standards Committee Regulations would need to be amended to reflect the regional nature of the CJC.

**b) What are your views on the adoption of a Code of Conduct for co-opted members?**

Co-opted members of local authorities, with voting rights, are subject to the same Code of Conduct as elected members. Therefore, the same requirement should apply to co-opted members of CJCs.

**c) Should all co-opted members be covered by a code i.e. those with and without voting rights?**

No. Only co-opted members with voting rights should be subject to the Members Code of Conduct, for example members of National Park Authorities dealing with the Strategic Development Plan. Co-opted members with no voting rights are not exercising any democratic decision-making power and, given the restricted nature of their role, should not be subject to the general standards of behaviour set out in the Members Code of Conduct. This is consistent with the current position with non-voting co-opted members of local authority committees.

**Consultation Question Nine:**

**a) What are your views on the proposed approach for determining the budget requirements of a CJC?**

The timeline to produce a budget within two months of the first meeting will be a challenging one as the CJC will not have established its plans or staffing complement. As the cost associated with the CJC will be mainly administrative initially we would suggest that budgetary plans are made for the five year term to support medium term planning.

There is likely to be significant expertise required from the local authority to ensure that such arrangements are in place. Local government is currently dealing with an unprecedented set of complex issues and we will need to consider the capacity at leadership level to ensure these needs are met.

Funding a new tier of local government inevitably reduces funding from the direct provision of services and while set up costs will be provided there needs to be consideration to an increase in local government funding. Working with our partner local authorities we will endeavour to keep the costs of the CJC to a minimum and will look to use the proportionate financial contribution models that were used to create the City Deal. Multi-year funding agreements will be needed for stability and to provide clarity local financial planning. We suggest that this is included in the Regulations, however this is a difficult issue when single year settlements are provided by Welsh Government.

**b) What are your views on the timescales proposed (including for the first year) for determining budget requirements payable by the constituent principal councils?**

As above. Local government is currently dealing with an unprecedented set of complex issues and we will need to consider the capacity at leadership level to ensure these needs are met.

**Consultation Question Ten:**

**a) Do you agree that CJsCs should be subject to the same requirements as principal councils in terms of accounting practices? Please give your reasons.**

Yes.

**b) Do you agree that the detail of how a CJC is to manage its accounting practices should be included in the Regulations of General Application? If not what more would be needed in the Establishment Regulations?**

Yes, we agree and would request early guidance on this.

**Consultation Question Eleven:**

**What are your views on the proposed approach to staffing and workforce matters?**

We note the staffing structure proposed and the likely costs. This is shown to be cheaper than working in collaboration within current local structures which is not necessarily the case.

As mentioned above funding a new tier of local government inevitably reduces funding from the direct provision of services and while set up costs will be provided there needs to be consideration to an increase in local government funding and longer term settlements.

Given the footprint that the CJC is likely to cover it is not possible to have a common set of terms of conditions of employment for a similar or comparable role. Each Principal Council will have its own set of terms and conditions of employment, job evaluation scheme and associated pay scales and this will need to be taken into consideration. It is likely, therefore, that if resource is gathered from a number of Principal Councils to support a CJC function that they will be subject to different terms and conditions of employment, either as secondees remaining employed by each Principal Council, or as a directly employed workforce via a TUPE process into the CJC. In order to overcome this CJC will need to devise its own pay and policy structures or there will be an inherent unfairness. Staff that are seconded would retain their host organisation's terms and conditions, as would those on loan for specific, time-bound activities.

It is essential that any transfer of staff from constituent local authorities to the CJsCs is subject to TUPE principles and the Code of Conduct on Workforce Matters, to protect their terms and conditions of employment and to safeguard pension rights. In addition, CJsCs should be designated a public bodies for the purposes of the Redundancy Modifications Order, to ensure that periods of employment with the CJC should count for the purposes of continuous public sector employment and redundancy entitlement.

The same political restrictions, codes of conduct, statutory duties and indemnities that apply to local authority staff should also apply to employees and officers of the CJC.

It is probable that there may be a mixed pattern of employment within the CJC with some direct appointments but other roles seconded on a task and finish basis. This may be difficult to manage while still ensuring that the statutory requirements are fulfilled. Allowing our statutory officers, and other staff to assist will place a burden on local authority capacity.

### **Consultation Question Twelve:**

#### **What are your views in relation to CJs being required to have or have access to statutory “executive officers”?**

The size and scope of the transfer of functions to the CJC will require this level of knowledge and expertise. It is possible that these would not be full time positions, as recognised in the Regulatory Impact Assessment. There may be some cross benefits in these roles supporting across all CJC functions. It is possible that CJs could share executive officers between themselves or with constituent authorities, but these arrangements would need to have safeguards against any conflict of interest.

The detail on ‘access’ to these staff will be important. If CJs are to employ these officers that will require significant financial resources to be allocated to this area of staffing. If the expectation is that the officers who fulfil these roles will be those currently employed in these positions within Principal Councils, then this will create pressures back within those Councils. There should not be an expectation that removing certain functions and making a CJC responsible for them will reduce the resource burden on Principal Councils to any great extent. Newport City Council is not in a position where it could operate sustainably with reduced Chief Officer capacity.

### **Consultation Question Thirteen:**

#### **Do you have any other views on provision for staffing or workforce matters within the establishment regulations?**

We would welcome the Social Partnership approach described between the CJC and recognised Trade Unions. We feel that this would be best achieved through guidance. Given that staff of all levels are likely to be working for and within CJC in various capacities (loaned, seconded or employed), guidance will need to knit together these arrangements and how they apply to those various scenarios. A single set of terms and conditions will not be applicable across the range of employment arrangements.

### **Consultation Question Fourteen:**

#### **a) Is it clear what functions the CJs will exercise as a result of these establishment regulations? If not, why?**

Yes, subject to the detail to follow.



The economic well-being function needs clarification especially around the role of the local authority versus the CJC.

**b) Do the establishment regulations need to say more on concurrence, if so what else is needed, or should that be left to local determination?**

There needs to be clarity about the exercise of concurrent functions, particularly in relation to economic well-being. However, there also has to be some level of flexibility for individual CJsCs to agree with constituent authorities about how these concurrent functions should be discharged within their particular region. Therefore, it may be advisable for this to be covered in statutory guidance rather than prescribed within the Establishment Regulations. Individual local authorities should not be precluded from exercising concurrent economic well-being powers for specific regeneration projects within their local areas.

**c) In your view are there any functions which might be appropriate to add to these CJsCs in the future? If yes, what?**

No.

**Consultation Question Fifteen:**

**Do you think the regulations should provide for anything to be a decision reserved to the CJC rather than delegated to a sub-committee? If so what?**

We agree with the suggestions in the consultation document ie. agreement of budgets; the adoption or approval of plans or strategies (including the Regional Transport Plan and Strategic Development Plan); and consideration of any reports required by statute. This is consistent with the Functions and Responsibilities Regulations for local authorities operating executive arrangements, where policy framework decisions are reserved to full Council rather than discharged by Cabinet, for example the budget and key strategic policies.

**Consultation Question Sixteen:**

**What are your views on the approach to transfer of the exercise of functions to these CJsCs?**

The CJC will need development time before it is able to effectively and efficiently able to transfer functions in. Set up implications over the first part of 2021 will be a drain on capacity and will mostly likely have to be largely undertaken within existing structures acting in collaboration.

The transition from existing arrangements to the new CJC model will be more complex where there are existing arrangements in place, such as in relation to strategic transport planning and economic well-being, and there will be a need to transfer staff and resources to enable the CJsCs to take over the delivery of these functions. The transfer approach should endeavour to simplify and expedite this process, so far as is practicable, and this needs to be reflected in both the Establishment Regulations and the flexibility given to each region to manage the process.

### Consultation Question Seventeen:

#### **What are your views on CJCs being subject to wider public body duties as described above?**

We agree that the CJC should be subject to the same public body duties as the constituent councils e.g. Well-being of Future Generations, Equality Act (the new socio-economic duty is particularly relevant), Welsh Language Standards etc.

### Consultation Question Eighteen:

- a) The Welsh Government is keen to continue working closely with local government and others on the establishment and implementation of CJCs. Do you have any views on how best we can achieve this?**

We would consider it important to continue the dialogue of coproduction into the medium and long term, not just at the set up stage.

- b) In your view, what core requirements / components need to be in place to ensure a CJC is operational, and exercising its functions effectively?**

It would assist if the Establishment Regulations and Regulations of General Application, together with the associated statutory guidance, could be finalised and made available to councils as soon as possible, to enable the preparatory work to commence. In addition, it would be helpful if a specific budget could be identified for the start-up costs and the preparatory and transitioning work, as councils will be unable to deal with these additional burdens within existing resources, to meet the September 2021 deadline.

The early meetings of the CJC will need to establish governance and financial structures and there will inevitably be a delay before the CJC is fully operational and effectively discharging its functions. Therefore, during the transition period, particularly for existing services, there may need to be agreed arrangements for the concurrent discharge of functions and the phased transfer of staff and resources.

- c) In particular, what do you think needs to be in place prior to a CJC meeting for the first time, on the day of its first meeting and thereafter?**

The Regulations and guidance should provide the legal framework for the first meetings of the CJCs. Thereafter, the CJCs will need to determine their own governance arrangements, within that framework. The CJCs will then have to agree a programme and process for the transfer of existing functions and the discharge of new strategic duties, together with any agreed arrangements for the migration from existing collaborative arrangements.

### Consultation Question Nineteen:

- a) Do you think it would be helpful for the Welsh Government to provide guidance on the establishment and operation of CJCs?**

Yes.

- b) Are there any particular areas which should be covered by the guidance?**

As outlined in the consultation document - constitution, governance, finance and staffing. Consideration also needs to be given to helping communities understand the growing changes in how services are delivered (national, regional, local, shared and through arms length models). Clear, simple, explanatory information is needed so that local authorities can consistently explain to their electorate why CJsCs exist.

Clarity is needed in the economic well-being function and how CJsCs complement the local function.

### Consultation Question Twenty:

- a) How can the Welsh Government best support principal councils to establish CJsCs?**

As outlined above, and a commitment to ongoing costs reflected in annual settlements.

- b) Are there areas the Welsh Government should prioritise for support?**

Governance and finance should be a priority for guidance, alongside staffing conditions and clear engagement.

- c) Is there anything that CJsCs should/should not be doing that these Establishment Regulations do not currently provide for?**

No.

### Consultation Question Twenty One:

- a) Do you agree with our approach to, and assessment of, the likely impacts of the regulations? Please explain your response.**

We do not agree that the cost of setting up CJsCs is less than the do nothing option. Costs are set at a minimum level without overheads etc.

- b) Do you have any additional/alternative data to help inform the final assessment of costs and benefits contained within the Regulatory Impact Assessment? If yes, please provide details.**

No, this is not possible in the timeframe.

### Consultation Question Twenty Two:

- a) We would like to know your views on the effects that establishment of CJsCs would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.**

CJsCs welsh language approach and requirements should be set by the Welsh Language

Commissioner, and translation costs will need to be considered.

**b) What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?**

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### **Consultation Question Twenty Three:**

**Please also explain how you believe the proposed policy for the establishment of CJsCs could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.**

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### **Consultation Question Twenty Four:**

**We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:**

None. We note the consultation on performance and governance which will be the subject of a separate response.

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