

DLG 09

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol
Communities, Equality and Local Government Committee
Local Government Draft (Wales) Bill / Bil Llywodraeth Leol (Cymru)
Drafft

Ymateb gan: Cymdeithas Llywodraeth Leol Cymru
Response from: Welsh Local Government Association

Consultation on the Draft Local Government (Wales) Bill

Consultation response form

The Welsh Government intends to publish a summary of the responses to this consultation. Normally, the name and address (or part of the address) of its author are published along with the response, as this gives credibility to the consultation exercise.

Name*: Welsh Local Government Association

Organisation:

Email*: daniel.hurford@wlga.gov.uk

Telephone: 029 20468615

Address: Local Government House
Drake Walk
Cardiff
Cf15 9JR

* required information

Consultation questions

These questions should be read in conjunction with the Draft Bill, draft Explanatory Notes and draft Explanatory Memorandum

Introduction

The Draft Local Government (Wales) Bill is potentially one of the most significant and far-reaching pieces of public service reform legislation since devolution.

A number of the Draft Bill's proposals are supported and welcomed by local government. In terms of the wider policy proposals in the Draft Bill, the Welsh Government has responded to many of the concerns and views expressed by councils during the 'Power to Local People' White Paper consultation. There are therefore a number of proposals that would be welcomed by councils including:

- Rejection of some of the more controversial White Paper proposals such as term limits for councillors, review of members' remuneration and elections by thirds;
- Proposed introduction of a power of general competence (Part 2);
- Flexible and proportionate approach to community asset transfers;
- Proposed clarification and simplification of authorities' executive and full council functions;
- Relaxation of Remote Attendance regulations and reform of community polls; and
- A reformed improvement regime based on self-improvement and proportionate external regulation.

There are other proposals where the underlying principles and aims are supported but the proposed detail is impractical or prescriptive and would benefit from redrafting with input from local government; the WLGA would therefore welcome further dialogue with Welsh Government regarding the refinement of certain proposals.

There are a number of other proposals however that impact on or undermine local democracy, accountability or local flexibility which are not supported by the WLGA.

Furthermore, many of the Draft Bill's proposals would place additional administrative and bureaucratic burdens and resource implications for authorities. This additional bureaucratic burden contradicts the wider assumptions that underpin Part 1 of the Draft Bill that the anticipated savings of reorganisation would be realised through reductions in 'back-office' bureaucracy and capacity.

A wider concern relates to the proposed reforms being applied only to local government; it is not clear why proposed reforms regarding good governance, public engagement and transparency and elected member performance should be applied solely to local government when they could and should equally and consistently apply across all public services and all levels of government in Wales.

PART 1

Question 1.1: Do you have any comments on any of the provisions in Part 1 of the Draft Bill?

Local authorities and the WLGA have long recognised need for public service reform. There however remain different views within local government, within political parties and across the Assembly itself, whether a compelling case has been made for reorganisation at all, whether reorganisation should occur during a period of austerity or what the future shape of local government should be if reorganisation does occur.

The WLGA does not currently have a formal view from all of the 22 authorities on the proposed merger maps. However, it should be noted that six local authorities submitted an Expression of Interest (EOI) and a further eight were prepared to merge in response to the Welsh Government's original 'preferred' map of 12 in November 2014. Powys is continuing to explore integration with the Local Health Board. The WLGA also explored the concept of combined authorities as alternative option to realise local government reform.

Local government has repeatedly stated that clarity and consistency is a pre-requisite for a successful public service reform programme. The Welsh Government has outlined 3 different 'preferred' options for local government reform in the past 18 months (the current proposed maps of 8 and 9 and the map of 12 put forward in the autumn of 2014). The consultation document accompanying the Draft Bill itself describes the 8 or 9 maps only as the Welsh Government's '...current preferred options'. It is widely anticipated therefore that the Assembly elections will have a significant bearing on the final direction of travel in terms of local government reorganisation.

The Draft Bill's accompanying documentation outlines some rationale for the determination of the proposed map of 8 or 9 authorities. However, the rationale has not been consistently applied across all of the proposed new county councils, notably with regards scale and coterminosity with Local Health Boards.

It is not clear how the proposed map of 8 or 9 address the issue of scale of local authorities in Wales. There appears to be no underpinning rationale regarding optimum size of a local authority in terms of economies of scale, corporate and service capacities, geographical and population coverage and local democratic links to communities.

The variation in population between the proposed 'Anglesey-Gwynedd' and 'Gwent' councils sees units of local government ranging in population from 190,000 to 575,000 (Powys County Council would be smaller at 133,000 however will be a more complex organisation following integration with the Local Health Board).

Furthermore, merging Anglesey and Gwynedd would create an authority with a population of 190,000 and an area of 3,262 sq km; the current Carmarthenshire has similar rural characteristics, a population of 181,000 people and a land area of 2,371 sq km but will merge with Pembrokeshire and Ceredigion to create an authority of 374,000 people and a land mass of 6,158 sq km.

Given these issues, it is unclear why the Minister states that '...the case in North Wales is finely balanced between two and three Local Authorities'¹ whereas the proposals appear to be clear-cut for the rest of Wales.

¹ Ministerial Foreword - P1 Consultation Document - <http://gov.wales/docs/dsjlg/consultation/151124-lg-bill-consultation-en.pdf>

Similarly, the Welsh Government was previously clear (as was the Williams Commission) that coterminosity with Local Health Board boundaries was a key consideration to ensure consistency, clarity and avoid complexity. It is therefore unclear why coterminosity is being relaxed for one proposed council configuration, but not in others, particularly where it might result in different and more appropriate council areas being proposed. Since the establishment of the Williams Commission, the WLGA's position has been that all public services should be subject to reform and a more holistic approach to structural alignment might lead not only to better consistency and contiguity, but also a more appropriate geographical scale of other public services.

The Regulatory Impact Assessment provides a cost-benefit analysis that was largely absent from the Williams Commission and previous Welsh Government proposals. The cost-benefit analysis is consistent (in parts) with the WLGA commissioned CIPFA analysis, but the financial analysis focuses in places on the more optimistic, lower-end cost estimates, underestimates the likely redundancy costs and implications of pay and terms and conditions harmonisation (see Q1.12 below).

Most significantly, the Regulatory Impact Assessment has not adequately consider the options for or the financial impact of council tax harmonisation. The cost-benefit analysis is also inevitably based on historical employment and expenditure in a climate of austerity; by 2019-20 when reforms are scheduled to take place, a substantial proportion of the proposed savings (largely senior-management and back-office rationalisation) will have already been realised, so the proposed return on investment of reorganisation is likely to be lower and over a longer period.

The merger of local authorities as outlined in the Draft Bill will have consequential impacts on other authorities, such as Fire and Rescue Authorities. The Draft Bill establishes new councils and abolishes the old councils on 1st April 2020, however, this will have consequential impacts on Fire and Rescue Authorities Combination Orders, where the statutory composition, membership, operation and funding, amongst other things, is prescribed in secondary legislation by reference to the current local authority structure. Section 17 will not adequately cover the changes required to the Combination Order as it specifically relates to transfer of functions exercisable by and in relation to local authorities. As a separate legal entity, functions in relation to the provision of a Fire and Rescue Service are conferred on the Fire and Rescue Authority through separate primary and secondary legislation and are not conferred on the local authority.

Similarly, Section 18 of Chapter 3 of Part 1 makes reference to transitional provisions in Schedule 4; Schedule 4 paragraph 3 removes the requirement of the Minister to hold a public inquiry under the Fire and Rescue Services Act 2004 as a consequence of changes made to local government boundaries. It is not clear whether this proposed revision adequately meets the specified situations as outlined in Section 4 of the Fire and Rescue Services Act 2004 (sections 4(6) and (7)) why specify when a public inquiry need not be held.

Question 1.2: What are your views on the options for 2 or 3 Counties in North Wales, as set out in Schedule 1 to the Draft Bill?

WLGA member authorities in North Wales will provide their respective positions with regards this proposal. As noted above however, it is not clear whether the Welsh Government has applied consistent criteria across the whole of Wales in determining proposed new council boundaries. It is unclear why 'the case in north Wales is finely balanced' whereas the proposals appear firmer for Mid Wales, South West Wales and South East Wales. It is not clear from these proposals what is deemed to be the optimum size for a unit of local government or why different solutions are available in different parts of Wales. Indeed, WLGA would fully support the case for further debate in North Wales but also urge that this extended across Wales.

Question 1.3: What are your views on the proposed configuration of Local Government areas in Wales?

See above.

Question 1.4: Do the Welsh Ministers need to seek any further powers to support the integration of Powys Teaching Health Board and Powys County Council?

The Welsh Government will need to consider a number of specific issues regarding the integration of Powys County Council and Powys Teaching Health Board; these issues may require further legislative or policy reform. Issues that need to be considered are:

- Power to create an arms-length organisation or a community interest company which could either be controlled or influenced by a local authority and local health board jointly. Powys County Council's Cabinet are keen to explore the options and opportunities and risks of creating a health and social care community interest for Powys, which is a model that is common in England and is used by, for example, Plymouth City Council. The Council is currently seeking legal advice because whilst the power exists for a council or local health board to establish such a vehicle, it is not clear whether the power to jointly run such an enterprise exists in Wales.
- Corporate planning and regulation - Both health and local government have very different improvement and corporate planning and regulatory regimes. The Draft Bill outlines a complex approach for councils (see Q5.1 below) and the highly prescriptive nature of the health board's Integrated Medium Term Plan (IMTP) drives the health board in a unitary direction rather than jointly with the council. In addition to a different regulatory framework, there are two separate performance regimes with different standards and targets.
- Human resources – the two organisations have two distinct workforces operating on different terms and conditions, with different HR policies and strategies.

Although the Staff Commission will consider these matters, it is a hugely complex and potentially controversial aspect of the reform programme.

- Elected member roles – at this stage, it remains unclear what role and responsibilities elected members will have with regards health in an integrated model. There would need to be specific consideration to allow democratic engagement in the scrutiny of the health functions, as the Scrutiny of Designated Persons regulations (through the Local Government (Wales) Measure 2011) which would allow scrutiny of health boards have not yet been introduced. The relationship with and future role and membership of the Community Health Council will also need to be reviewed.

Question 1.5: What are your views on the procedure for naming the new Counties?

The proposals outlined in the Draft Bill appear appropriate.

Question 1.6: What are your views on the proposed changes to the Local Government election timetable?

The proposals outlined in the Draft Bill appear appropriate, though it should be noted that there is scope for electoral congestion should timetables slip and significant burdens will be placed on local elections staff.

Question 1.7: Do you have any general comments on the provisions in section 16 and Schedule 3 of the Draft Bill relating to Local Government finance?

The WLGA recognises that local government finance requires reform, and has commissioned an Independent Commission on Local Government Finance in Wales. The Commission is due to report in the Spring of 2016. The WLGA notes a number of fundamental financial considerations that have not been adequately considered within the Regulatory Impact Assessment for the Draft Bill; the consideration of the impact of council tax harmonisation in particular is a significant omission (see 1.12 below).

Question 1.8: How could the Welsh Government measure the current level of avoidance of Non-Domestic Rates?

This is difficult to measure and information needed would require definition across the various types of avoidance practices. Information is not currently collated pan Wales and it would probably be best to progress this through a working group including Welsh Government, WLGA and lead practitioners.

Question 1.9: Do you have any comments or suggestions on how future legislation could help to reduce instances of avoidance of Non-Domestic Rates?

A fundamental review of NNDR legislation could help provide clarity over which types of property are eligible for reliefs or exemptions.

Regulation that would require ratepayers to notify billing authorities of any changes in circumstances would be welcomed and this could perhaps stipulate a timeframe for this and potentially a penalty regime. The review could consider prescription around qualifying usage rates and extending the “6 week rule”. The use of charities by commercial property owners to gain empty property relief is also worth reviewing.

Question 1.10: In what other ways could the Welsh Government enable Local Government to reduce the level of avoidance and fraud within the Non-Domestic Rates system?

Welsh Government targeted funding looking at specific abuses could encourage compliance and send a message to those seeking to avoid payment.

Question 1.11: Do you agree that the preserved counties be abolished and that consequential amendments are made so that the appointments of Lord-Lieutenants and High Sheriffs are made in respect of the counties in existence after 1 April 2020?

Lord-Lieutenants and High Sheriffs are currently appointed to the 8 preserved counties. Should mergers take place, it would be appropriate for purposes of consistency and clarity that the new counties should be used for the appointment of Lord-Lieutenants and High Sheriffs from 1st April 2020.

Question 1.12: Are there other matters of a technical nature which should be considered?

Options Appraisal - The Draft Bill’s Options Appraisal presents each of the options as if they are mutually exclusive and achievable after almost a decade of austerity. Option 1 seems to be predicated on the assumption that no savings will be made in the future despite the fact that continuing austerity means that cost is being taken out of budgets especially in the areas of corporate support identified in the KPMG review and the work commissioned on the costs and benefits or reorganisation (for example, the KPMG study identified that £33m of savings for 14-15 and 15-16 were already planned).

Redundancy Costs - The Regulatory Impact Assessment (RIA) bases redundancy cost

estimates on work undertaken by KPMG during the Administrative Services Review. Under the current proposals the cost of redundancy is estimated between £16k and £21k for 'administrative staff'. It is not clear what assumptions are made for pension strain and the RIA (p46) acknowledges that further actuarial work is required and we would support this. However the assumption that each employee has 10 years' service understates length of service that most in corporate support roles have. The CIPFA work showed this to be 15-20 years.

Change Management: the RIA underestimates the change management capacity required for a reorganisation and suggests that the (reducing) current management of the existing councils can manage the exercise with some small additional administrative support. There is no reference in the analysis to the evidence and learning from comparable exercises of this type or scale elsewhere, or indeed other local government reorganisations of recent times in the UK.

Pay Harmonisation - The approach eventually taken on pay harmonisation, like council tax harmonisation, will have significant implications on the costs and future financial planning. The WLGA notes that the Minister is '...committed to ensuring the terms and conditions of Local Authority staff are protected so no-one will be disadvantaged by transfer to a new Authority'². The RIA (p49) however states that it is possible to be cost neutral if newly formed authorities 'converged to a weighted average' but uses the pay harmonisation estimate from the CIPFA study of £27m. We now think this to be a low estimate.

Council Tax Harmonisation - Council tax harmonisation has not been adequately considered as part of the Draft Bill nor the RIA. Council tax harmonisation is 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 proposed reforms. It is therefore essential that the Welsh Government urgently considers the implications and plans for transition an early stage. Council Tax payers will need some assurance about the future direction of Council Tax Bills in merged authorities and practitioners will need to take account of any future constraints on Council Tax to make reasonable estimates of income forgone for financial planning purposes.

The limiting cases are for Council Tax levels to 'level up' or 'level down' or convergence to a weighted average. The 'levelling up' scenario where the highest Council Tax is held constant and the others catch up was described by CIPFA as the 'most prudent' in terms of ensuring local financial stability and minimising income forgone. The WLGA is currently modelling the potential income forgone under this method for the Welsh Government's preferred maps of 8 or 9 authorities, as it could take up to 7 years in the Dyfed area and up to 9 years in the Gwent area to harmonise. The CIPFA study conservatively estimated the income forgone annually

² Ministerial Foreword - P1 Consultation Document - <http://gov.wales/docs/dsjlg/consultation/151124-lg-bill-consultation-en.pdf>

at £56.9m for 12 authorities (option 3a) over a shorter period of harmonisation. The council tax damping scheme from the last reorganisation (to manage these council tax changes) was £140m; this figure would be much greater now given the passage of 15 years of inflationary pressures and differential council tax rises across Wales. Whichever approach is taken there needs to be a balance in terms of impact on the council tax payer and income forgone.

PART 2

Question 2.1: Do you have any comments on any of the provisions in Part 2 of the Draft Bill?

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

Whilst this new power is welcomed, as drafted, it is constrained by legal provisions which local authority lawyers would have to carefully consider before the power could be used, as has been the case in England where a power of general competence was introduced under the Localism Act 2013.

Despite legal constraints, the Local Government Association has said that it has given authorities the confidence to work in new ways and develop new services and partnerships. Use of the power has been limited, a survey by the magazine Local Government Lawyer and Freeth Cartwright (December 2013) found only 6% of councils said GPC had made 'a significant positive difference'. 45% said it made a 'slight' positive difference, and the remaining 49% said it made no difference.

APSE have argued that "the power must be seen to be in line with ordinary principles of public law. The doctrine of 'ultra vires' remains and local authorities still have a fiduciary duty to local taxpayers not to act in an irresponsible or risky way and therefore, how the new general power is exercised, will be potentially subject to challenge through judicial review. As with previous restrictions on commercial trading through a company APSE would point out that the formation of a company for these specific purposes can be time consuming and cumbersome to set up. Companies should only be considered after a full market assessment, taxation and market analysis. However local authorities could put to great effect better use of charging powers to realise additional income (in a sensible and sensitive way) for example through selling services to the public or private sector to help balance budgets, improve productivity and maximise the use of assets and human resources. The new general power should help to alleviate, for English local authorities, any previous uncertainties about the powers to charge for certain non-statutory services."

Bearing in mind these caveats it is vital that Welsh councils are given renewed confidence in their powers to continue this work to improve efficiency, for example through joint arrangements, in particular to provide back office and support services which may be defined as 'incidental' in law to their primary functions.

Question 2.2: Do you have any comments on our proposals relating to Community Councils with competence?

The WLGA does not have strong views on the proposal relating to community councils with competence, although notes that given the legal constraints around use of the power as outlined above, likely use of the power by community council will be limited given the limited legal capacity of community councils.

It would be appropriate that should a community council consider exercising this power, it should consult with the county council to assess any consequential impact on the county council's planned discharge of its own duties or powers.

With regards the criteria for 'community councils with competence', guidance will need to clarify the definition of a clerk's 'relevant professional qualification'. Should such requirements be too onerous, this could affect recruitment and disadvantage smaller community councils.

PART 3

Question 3.1: Do you have any comments on any of the provisions in Part 3 of the Draft Bill?

Part 3 of the Draft Bill seeks to promote access to local government by placing duties on councils to promote access to, and public participation in, local government

The WLGA is supportive of the underlying principles and ambitions of the Welsh Government; councils active seeking to engage with communities and promote democratic and participative engagement. Many authorities have adopted the nationally developed principles of public engagement, the majority broadcast council meetings, hold youth forums or councils and undertake extensive consultation and engagement over budget and service planning proposals. Many are engaging with communities over local priorities around the delivery of services or provision of assets, some of which may lead to alternative delivery models or community asset transfers.

Although the WLGA is supportive of the underlying principles and ambition, many of the proposed new duties however will create additional burdens on authorities which will require additional investment in administrative and 'back-office' capacity

during a period where resources are being focused on front-line services. Some proposals are impractical and their likely effectiveness and impact are therefore questioned.

The WLGA also notes that some provisions in Part 3 and elsewhere in the Draft Bill apply only to local government. The WLGA notes for example that expectations and duties to broadcast do not apply to meetings of the Local Health Board or Welsh Government Sponsored Bodies. Local authority leaders believe that there should be consistency of expectations and processes of good governance across all public services and levels of government; the Welsh Government and National Assembly should show leadership and lead by example, particularly when they are seeking to legislate for others to follow.

Question 3.2: Do you have any comments on the proposed public participation duty and the requirement to consult on the annual budget?

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

Councils already consult and engage with communities on budget proposals, so it is unclear what value a new statutory duty to undertake such activity would achieve.

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

Question 3.3: How should community representatives to sit on community area committees be sought and selected?

In response to the White Paper, the WLGA supported the concept of community based models of governance particularly should county councils merge and become more remote from local communities. There were however some concerns from consultees regarding the clarity and complexity of the original proposed models and, critically, the relationship with community councils and Public Service Boards.

The WLGA remains unconvinced of the specific proposals for Community Area Committees (CACs) as drafted and would welcome further dialogue with Welsh Government to allow councils flexibility to establish appropriate local community

governance structures and approaches to community engagement in an era of larger county councils.

The Draft Bill proposes that the areas covered by CACs would be established by Public Service Boards under S37(5) of the Wellbeing of Future Generations (Wales) Act 2015. The WLGA does not support this and argues that community governance arrangements should be more flexible and at the local democratic discretion of the county council. It is not appropriate that a statutory partnership (the PSB), should determine the area coverage and the basis for local democratic and community governance mechanisms (which would form the basis of statutory council committees). The provisions of the Wellbeing of Future Generations (Wales) Act 2015 regarding community areas were set out for very different purposes (e.g. the undertaking of wellbeing assessments and planning) and not necessarily for determining identifiable communities for community governance or representative purposes.

CACs will also have a duty to annually 'prepare a statement of priorities and objectives' (S52) and must consult on these priorities and objectives. This will require considerable resources in terms of policy and support staff given there will be numerous CACs in a council area, and that there needs to be consultation and engagement around these priorities and objectives. It remains unclear, as yet, how many CACs there would be in each council area, the size of membership and number/regularity of meetings – however, CACs will further present an additional burden on authorities in terms of administration as well as committee administration, translation and electronic broadcasting requirements.

Furthermore, 'community' statements of priorities and objectives add to a wider annual community and corporate planning regime as outlined elsewhere in the Draft Bill and under the Wellbeing of Future Generations (Wales) Act 2015 which will become complex and burdensome (see Q5.1 below). Although there is no duty on the Committee or the Council to produce annual reports on the achievement or otherwise of the CACs' statements of priorities and objectives, it is inevitable that such committees will request or require the council to report annually on progress and whether or what priorities have been achieved, and if not, the rationale for either not accepting the objective corporately or the reason for not achieving the objective within the year.

It is not clear how the committee roles relate to the proposed roles or geographical areas of reviewed (and larger) community councils. Furthermore, not all council areas would have community councils and so geographical spread of community representation could be imbalanced as could the balance of democratically elected members with community and public body 'co-optees'. It is critical that the areas of any 'community area committee' should be undertaken after the Local Democracy and Boundary Commission has prepared its reviews of community council arrangements in each county area (from 2019 as per Part 6 of the Draft Bill) to ensure adequate alignment.

Although the Draft Bill allows councils to delegate functions to CACs, there are implications around delegations of powers and functions given the broad membership of the committee which could include executive and scrutiny members, and, potentially, members of the community with particular interests; this therefore could affect good governance and cause confusion around the separation of executive and scrutiny functions.

Depending on the membership of public bodies on CACs, there could be implications in terms of burden of representation on multiple bodies which the current PSB reforms are seeking to address. Larger public bodies such as fire and rescue authorities, local health boards and police representatives have found it challenging to sit on numerous LSBs within their area, whilst there will be fewer PSBs (8 or 9) with the proposed local government reforms, these bodies could be invited to attend numerous CACs, for example, South Wales Fire and Rescue Service currently sits on 10 LSBs and would sit on 3 PSBs under the new reforms, but could feasibly be invited to attend at least 30 CACs (assuming 10 per authority as noted in the Draft Bill documentation). Should community safety planning functions be devolved to CAC areas, fire and rescue authorities would be required to attend as statutory members.

It should be noted that CACs may be affected by political balance requirements, given it is feasible in some areas that the majority of members of a CAC would be from one political group.

Question 3.4: Do you agree County Councils should be able to delegate functions to a community area committee? If yes, are there any functions that should or should not be capable of being delegated?

Notwithstanding the above concerns with the committee model as outlined, the WLGA would support flexibility to allow councils to delegate functions to more localised community governance models. It should be noted however, that the political balance implications as outlined above may have an impact and levels of delegation need to be carefully considered in order to avoid any confusion of roles and responsibilities around quasi-judicial, executive or scrutiny functions.

Question 3.5: Do you have any views on whether transitional arrangements need to be put in place for existing area committees, or is a good lead-in time sufficient?

There are no significant implications in terms of transition from existing areas committee arrangements.

Question 3.6: Do you have any comments on the revised provisions for 'improvement requests' or on the interaction between these provisions and those

relating to the public participation duty (Part 3, Chapter 2) and community area committees (Part 3, Chapter 3)?

The proposal for 'improvement requests' builds on the Welsh Government's 'activist council' ambitions as outlined in the Power to Local People White Paper. Councils and the WLGA were broadly supportive of the 'activist' concept as councils are pro-actively (and increasingly) engaging with communities and partners in the design and delivery of services. Many councils have led the way in terms of developing alternative delivery models for services.

Councils already initiate and respond to informal 'improvement requests' on an ongoing deliberative basis in terms of service design and delivery, both through formal community consultation and engagement and ongoing user and service feedback or complaints. Councils are increasingly devolving services or transferring assets to community councils and to community groups through alternative delivery models.

This proposed 'improvement request' power is similar to that of 'participation requests' introduced in Scotland through the Community Participation and Renewal Act 2015. It is not clear whether any analysis or evaluation of the Scottish experience has been completed since enactment, however, during the passage of the Bill, COSLA expressed the following concerns:

"The financial impact of the Bill in this area is two-fold. Firstly, the resource required to enable communities, on an equal basis, to have the ability and capacity to take a proactive role in how services are planned and delivered. Secondly, the staff resource required to set up and manage a new process for participation requests within Local Authorities. However, the main concern from COSLA centres around the difficulty of anticipating the demand for this legislation and, in turn, quantifying the costs that will be incurred by Local Authorities. It has been suggested that the impact could be similar to the current Freedom of Information process and COSLA is therefore concerned by the potential administrative burden that these new duties could create."

The WLGA would echo those concerns. As noted above, councils already initiate and respond to 'improvement requests' on an ongoing basis through formal consultation or service user and community feedback. The 'improvement requests' proposal as drafted over-formalises such an approach and will create a significant amount of bureaucracy which would add burden and could impact on the speed of decision-making; it is likely that councils will have to formally consider and report (either through executive or scrutiny or both) any such requests from the community received. Concerns have been expressed regarding 'counter' improvement requests where a different community group or body submits an alternative request in response to a request from another body. There should therefore be proportionate criteria to indicate levels of wider community support for any proposal and proportionate accountability and governance arrangements should be built into any alternative delivery model that may arise as a result.

The Welsh Government is currently consulting on a draft Action Plan to support the development of Alternative Delivery Models in Welsh public services. It should be noted that community groups will require adequate business and project planning capacity and capacity-building support for community groups may be necessary.

Question 3.7: Do you have any comments on any of our further proposals relating to access to meetings?

The WLGA has been supportive of the roll-out of webcasting across authorities and most councils are already webcasting some council meetings.

It should be noted however that a duty to broadcast all public council meetings (including proposed new CACs) will create an additional administrative burden on councils and require additional resources that have not been adequately factored into the RIA. The Draft Bill's accompanying documentation assumes that the combined cost of current councils' expenditure on webcasting would cover the likely future costs of webcasting in 8 or 9 councils. The costs are likely to be higher as there would be a duty to broadcast all council meetings which would see around a 50% increase in the number of meetings being broadcast compared to present (most currently broadcast only council and planning meetings and some broadcast cabinet, scrutiny and other meetings of interest to the public). This increase would mean more meetings being broadcast in a wider number of committee rooms or other community venues – there would be additional cost implications in terms of investment in hardware, maintenance costs (due to likely degradation due to transportation and regular set up/break-down) as well as ongoing administrative support to manage the broadcasting of meetings.

Any legislative duty to broadcast all meetings would need appropriate caveats to allow for instances where the public broadcast is either interrupted or not possible due to technological issues, for example.

Question 3.8: Do you have any comments on our proposals to enhance participation by children and young people through the public participation duty?

Councils already actively engage with children and young people, and promote the concept of democracy, and the role of council and councillors through school councils, youth councils or forums and engagement and participation initiatives during Local Democracy Week. There is already a statutory duty on local authorities through the Children Act 2004 to have a lead elected member for Children and Young People, and a specified part of that role is to engage with children and young people to gain their views on policies that impact on them. It is therefore unclear what benefits a new statutory duty would achieve.

PART 4

Question 4.1: Do you have any comments on any of the provisions in Part 4 of the Draft Bill?

Part 4 of the Draft Bill outlines proposed new Functions of County Councils and their Members, including 'Performance Duties' for councillors.

In its response to the White Paper consultation, the WLGA argued that any new proposals affecting councillors' remuneration and standards of conduct should be applied consistently across all levels of representative government. Furthermore in response to the recent Welsh Government consultation on Draft Directions to the Local Democracy and Boundary Commission, leaders called for consistency across all levels of government in Wales and a wider review of all levels of governance. This stems from a wider frustration that the Welsh Government response to the Williams Commission, which proposed wholesale public service reform, has focused on local government structural reform and new duties and standards applying only to local government rather than all public services.

As noted previously, local authority leaders believe that there should be consistency of expectations and processes of good governance across all public services and levels of government; the Welsh Government and National Assembly should lead by example, particularly when they are seeking to legislate for others to follow.

The proposed 'Performance Duties' on councillors are therefore not supported by the WLGA as they are not only inconsistent with expectations placed on Assembly Members for example, but also appear to be based on an outdated understanding of the role of a local councillor which is at odds with the community activist concept outlined elsewhere in the Draft Bill.

Similarly, the implicitly critical undertone 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. The prescriptive and burdensome implications of the proposed 'performance duties' are excessive in that there is not a wide-spread problem with regards councillor attendance or 'performance'.

The list of performance duties in the Draft Bill, including compulsory meeting attendance and the holding of surgeries, presents a simplistic interpretation of the 'formal' council role of councillors, whereas many see the most significant and valued role of councillors being their outward facing community leadership role in their communities, facilitating community engagement with public services and providing an advocacy and support role to members of the community with particular needs.

Similarly, the above list does not adequately equate to assessing a councillor's 'performance', for example, a councillor may attend every council meeting and

therefore be deemed to be performing well by the above criteria, but he or she may not contribute effectively or at all to those meetings. Similarly, a member may decide only to be appointed to council and attend all 8 meetings in the year, but a more committed, ambitious councillor sitting on various committees may miss a few of his or her 50 meetings a year and be deemed underperforming in comparison.

Likewise, the proposal that councillors must reply to correspondence within 14 calendar days is inconsistent with the Welsh Minister's 'aim to reply within 17 working days'.³

Notwithstanding the above, the conflation of 'performance duties' with the current standards regime is problematic, as the comparable seriousness of breaches is questionable. Indeed, the Assembly's Standards Commissioner whilst recognising perceptions of Assembly Member 'performance' are increasingly important is "...clear that "performance" issues were not matters for standards [and] I am clear that it would be very difficult to set down prescriptive time scales for letter answering or phone call replies – even if it were desirable, which I do not accept"⁴.

The proposals as drafted risk the generation of a significant number of vexatious complaints which will affect the reputation of councillors and councils and create additional workload for Monitoring Officers and Standards Committees.

The prescriptive and far-reaching implications of the proposed 'performance duties' are excessive in that there is not a wide-spread problem with regards councillor attendance or 'performance'. Whilst there are some individual councillors whose attendance, whilst lawful (under the terms of the '6 month rule' (Section 85 of the Local Government Act 1972), is not satisfactory given the current expectations placed on councillors, they are in the minority and wholesale reform with the consequent burdens of bureaucracy is not a proportionate response. Many councils already operate local 'customer service' standards or council-agreed expectations of attendance and conduct, for example where councillors' attendance at training and meetings is published and considered by Standards Committees or Group Leaders if particular members' attendance rates are a concern.

In order to address its concerns about councillor 'performance', the Welsh Government should instead therefore consider the effectiveness of the current '6 month rule' and empower councils to set and 'enforce' their own attendance and/or performance standard regimes, as is the case in the Assembly.

The WLGA notes from the consultation document that the Welsh Government is continuing to explore options for the recall of councillors. In response to the White Paper when this was originally proposed, the WLGA stated that it does not support

³ <http://gov.wales/about/cabinet/writingtoministers/?lang=en>

⁴ P1 Standards Commissioner: Annual Report 2014-15
<http://standardscommissionerwales.org/wp-content/uploads/2015/07/Annual-Report-Final-2014-15-English.pdf>

the concept of the right to recall. While WLGA members are fully prepared to engage in a national debate on the right to recall this must be on the condition that it covers all levels of political representation across Wales.

The Draft Bill proposes that leaders should produce a manifesto before seeking election as leader. It is however not clear why a leader of a majority group elected on an electoral manifesto should also need to set out a further manifesto prior to their election as leader, a process which is not replicated in the National Assembly or Parliament.

The WLGA agrees that councils need clear political leadership and accountability and notes that the Draft Bill proposes that leaders publish and report annually on 'political' objectives for the executive. The Draft Bill however also proposes that leaders separately set and report on objectives for the Chief Executive on an annual basis, and the council in turn sets and reports on a corporate strategy and annual corporate objectives annually, as well as wellbeing objectives and joint PSB wellbeing objectives. This duplication will create bureaucratic and regulatory burdens and will be of little value to the authority or in terms of contributing to enhanced public accountability, engagement or understanding. These proposals therefore need further consideration. See response to question 5.1 below.

S104(8), concerning the leader setting of objectives for a chief executive, states that Welsh Ministers may issue guidance, to which the Council must have regard. The WLGA and SOLACE has concerns about the potential risks of Welsh Ministerial intervention in local relations and arrangements between a leader and a chief executive. This risks considerable incursion into the running of a local authority without any parameters around the Minister's reason for issuing such guidance.

Question 4.2: Do you have any comments on the proposed duty on leaders of political groups or the monitoring and reporting roles of the Standards Committee?

The WLGA supports the proposals to strengthen arrangements which promote and support good standards.

Question 4.3: Do you have any comments on our proposals in relation to the delegation of functions by Local Authorities?

The WLGA is supportive of proposals to reform regulations around delegation of functions and looks forward to future consultation on proposals as they are developed.

Question 4.4: Do you have any comments on our proposal to give the Welsh Ministers a power to direct the IRPW to have regard to guidance when reviewing the remuneration framework for Councillors?

The WLGA would strongly object to the proposal to give Welsh Ministers the power to effectively direct the Independent Remuneration Panel for Wales (IRPW).

There have been widespread concerns in the recent period over the influence, actual or perceived, that the first ever Ministerial remit letter has had on the IRPW's determinations in its Draft Annual Report 2016. The IRPW has provided assurances to the WLGA that it remains independent and its determinations are based on evidence and engagement with stakeholders. A Ministerial power of this nature would fundamentally undermine the credibility of the independence of the IRPW and it would be little more than an advisor group for a Ministerially set remuneration framework for councillors.

Question 4.5: Do you agree the provisions relating to remote attendance in the 2011 Measure should be made more flexible?

The WLGA would support proposals to make remote attendance more flexible.

The WLGA was supportive of the original policy intentions behind remote attendance as introduced in the 2011 Measure, however, both the WLGA and the (then) Association of County Clerks and Solicitors (now Lawyers in Local Government) advised the Welsh Government (and Assembly during pre-legislative scrutiny) that the provisions as drafted were too restrictive and impractical.

Question 4.6: Do you have any comments on our proposal that Shadow Authorities should be required to appoint interim Returning Officers?

This proposal seems appropriate.

Question 4.7: Do you have any comments on the desirability of giving Councils the power to dismiss the Chief Executive, the Chief Finance Officer, the Monitoring Officer and the Head of Democratic Services through a vote?

In its response to the Welsh Government consultation on the Local Authorities (Standing Orders) (Wales) Regulations 2006 (Amendment) Regulations 2013, the WLGA expressed support for a reformed Designated Independent Person (DIP) process.

Regulations have created a process which is often overly bureaucratic, time consuming and costly, depending on the type of issue under investigation. The LGA's view at the time of the UK Government's removal of the DIP process was:
"...while we welcome the removal of the requirement to follow the rather bureaucratic statutory process we believe that a streamlined alternative that still incorporates a role for an independent third party is necessary to ensure the process

is legally robust, fair and protect the interests of both sides.”

The WLGA would therefore welcome a decision by the Welsh Government to review the existing statutory process with a view to replacing it with a streamlined alternative that still incorporates a role for an independent third party to ensure the process is legally robust, fair and protect the interests of both sides.

Question 4.8: Do you have any comments on our proposal to change the framework within which Councils and their Executive determine how their functions are to be allocated?

The WLGA welcomes the proposal to reform the framework of council functions; successive local government legislation, particularly since the Local Government Act 2000 which introduced executive arrangements, has created a complex framework relating to the responsibilities for the discharge of certain council functions, duties or powers.

Question 4.9: Do you have any comments on our proposals in relation to the disposal and transfer of Local Authority assets?

The WLGA was broadly supportive of the principles around community asset transfer as outlined in the White Paper, and many authorities already work closely with communities regarding the transfer or management of community assets. The WLGA welcomes the proposal in the consultation document to make the community asset transfer process more proportionate and looks forward to considering the detail when published in due course. A more strategic and coordinated programme of community asset transfers however will create resource implications for authorities

PART 5

Question 5.1: Do you have any comments on any of the provisions in Part 5 of the Draft Bill?

The WLGA welcomed the White Paper proposals regarding the reduction of regulation and promoting self-assessment and peer assessment. The WLGA, with local government, had developed a programme of self-assessment and peer assessment which has largely been translated onto the face of the Draft Bill.

The underpinning principles around self-improvement, self-assessment and good governance are therefore generally welcomed and shared by local government. Although the detail and likely burdens around external regulation needs to be explored further, it appears on the face of the Draft Bill that external regulation is likely to be more timely and proportionate than the current regime (under the Local

Government (Wales) Measure 2009).

The proposals around corporate planning (S112) largely build on the processes that councils already follow, albeit prescribe a list of specified documents or policies (or links to such documents) that should be included in a council corporate strategy.

The good governance, corporate planning and reporting proposals, as outlined in the Draft Bill should be better aligned with the new duties of the Wellbeing of Future Generations (Wales) Act 2015. The specific corporate planning proposals (and other objective setting proposals elsewhere in the Draft Bill) duplicate new Wellbeing duties and therefore will increase internal bureaucracy and do little to aid public understanding or accountability.

The Wellbeing of Future Generations (Wales) Act 2015 already sets out duties that local authorities must:

- Set and publish well-being objectives (s.3(2)(a))
- Take all reasonable steps to meet those objectives (s.3(2)(b))
- Publish a statement about well-being objectives (s.7(1))
- Publish an annual report of progress (s.13(1) and Sch.1)

In ‘taking all reasonable steps’, councils must comply with the sustainable development duty, which includes taking into account the statutory sustainable development principle (S5) which broadly refers to governance arrangements in the form of: long term decision-making, integration, involving other persons with an interest, collaboration with other persons and prevention.

Furthermore, governance arrangements, corporate planning and objective setting is further articulated in the duty to prepare a ‘wellbeing statement’ which must explain⁵:

- Why the well-being objectives will contribute to the achievement of the well-being goals;
- Explain how and why the well-being objectives have been set in accordance with the sustainable development principle.
- The steps to be taken to meet well-being objectives in accordance with the sustainable development principle
- How the council will govern itself to meet its well-being objectives
- How council will keep the steps it takes to meet its well-being objectives under review;
- How the council will ensure that resources, including financial, are allocated annually for the purpose of taking steps to meet its objectives
- When the council expects to meet its well-being objectives;

⁵ P4-5 Welsh Government Guidance for the Well-being of Future Generations (Wales) Act 2015SPSF2 – Individual role (Public Bodies) <http://gov.wales/docs/desh/consultation/150907-spsf-2.0-individual-role-public-bodies-en.pdf>

- Any other relevant information about their well-being objectives that councils consider relevant.

Corporate objective setting, annual reporting and decision-making and governance duties for local authorities are therefore already outlined in some detail in recent legislation, so it is unclear what additional value the governance, objective setting and reporting requirements in Part 5 of the Draft Bill add. Indeed, the requirements of the Draft Bill will create complexity, administrative burdens and resource implications.

For example, when the proposed annual objective setting and reporting duties in the Draft Bill are combined with the new duties of the Wellbeing of Future Generations (Wales) Act 2015, councils will have to set (or at least participate in the setting of) and report on six sets of similar corporate priorities:

1. **Councils must set and report annually ‘Wellbeing Objectives’** (S7 of the Wellbeing and Future Generations (Wales) Act 2015)
2. **PSBs must set and report annually ‘Wellbeing Objectives’** (S39 of the Wellbeing and Future Generations (Wales) Act 2015)
3. **Leaders must set and report annually ‘objectives to be met by the Executive’** (S99 of the Draft Bill)
4. **Leaders must set and report annually ‘objectives to be met by the chief executive’** (S104 of the Draft Bill)
5. **Councils set and report annually on corporate plan priorities** (‘council’s priorities in relation to the exercise of its functions (including its priorities in relation to its performance in the short-term, medium term and long-term) (S112 of the Draft Bill)
6. (A number of) **Community Area Committees must set an annual ‘statement of priorities and objectives’** in relation to the exercising of council functions in relation to the area of the committee (S52 of the Draft Bill). As noted previously, councils will inevitably have to annually report back to each of the many CACs on the progress or otherwise of their chosen priorities and objectives.

The Draft Guidance accompanying the Wellbeing of Future Generations (Wales) Act states that public bodies ‘...should not treat well-being objectives as separate from the objectives that guide and steer the actions and decisions of the organisation...’. It is therefore unclear why there needs to be numerous sets of separate statutory duties to produce what are, in essence, the same set of priorities.

The proposals will therefore create administrative burden and complexity and do little to aid public engagement or understanding.

Statutory Performance Indicators do not feature on the face of the Bill (unlike the predecessor 2009 Measure) but it is understood that they may feature in a final Bill. At this stage, it is not clear what the relationship of any new national local government performance indicators will have with the proposed new National

Wellbeing Indicators, nor why any local government review is being undertaken separately from the wider consultation on the national Wellbeing Indicators, many of which cover local government performance.

Whilst the Ministerial powers of intervention and support are similar to the present powers (under the Local Government (Wales) Measure 2009), there are no criteria (such as evidence which might be considered) before the triggering of an intervention.

The WLGA agrees with the Welsh Government on the need to better align the work and conclusions of 'relevant regulators'. The WLGA notes (from the evidence to the Assembly's Communities, Equality and Local Government Committee in February) that the Auditor General for Wales is not convinced of the practicability of the proposed 'combined regulators' assessments' (S123-127). The WLGA also notes that S143 seeks to ensure the 'coordination of relevant functions of relevant regulators, however, it is not too dissimilar to the existing 'Co-ordination of audit etc.' duty under S23 of the Local Government (Wales) Measure 2009, which has had mixed impact in terms of achieving a consistent approach to coordination of activities across all 22 authorities. This proposed duty to coordinate might therefore need to be further strengthened to ensure consistent collective compliance by external regulators.

The WLGA notes that the consultation paper states that a final Bill will include provisions for councils to publish key data and documents through an online portal. As noted in the WLGA's response to the White Paper, such a portal already exists in the form of My Local Council <http://mylocalcouncil.info/>. This includes comparative performance information (across authorities and across time) of statutory and national indicators, local summaries of the National Survey of Wales, links to councils' statutory improvement plans, objectives and performance reports as well as links to external inspection or regulatory reports. My Local Council also includes a contact form should members of the public wish to address any performance queries to a council.

Question 5.2: Do you have any comments on our proposal to subject Local Authorities to a governance arrangements duty?

The WLGA broadly welcomes the proposed governance arrangements duty, but better alignment is needed with the 'governance' duties of the statutory sustainable development principle of the Wellbeing of Future Generations (Wales) Act 2015 (see above).

Question 5.3: Do you have any comments on the model approach to peer assessment set out in Annex A?

The WLGA welcomes the Welsh Government's recognition of the value of peer

review and agrees that it should remain a key component of a reformed improvement regime in the future.

The WLGA stated in its White Paper response however that Peer review should remain a sector-led, sector-owned and sector-commissioned model and should not be legislated for. This is the model that applies in England and currently in Wales, which operates with some success and credibility. The WLGA therefore does not agree that there should be legislative requirement for peer reviews.

Legislating and prescribing a peer review process as drafted in the Draft Bill essentially creates a peer inspection framework, rather than a peer review framework; although the membership and process might remain largely the same, the purpose, dynamics, ownership and outcomes of a review will significantly change.

At present, peer review is an effective improvement process owned by, designed and timed to meet the needs of authorities. The suggested model turns it into a quasi-regulatory role which potentially duplicates the role of the Wales Audit Office. Formalizing the process will affect the dynamics and flexibility of the review process and the openness and ownership of the authority.

The current approach in Wales is not broken and does not require fixing and has delivered a credible, robust and respected mechanism for providing critical-friend challenge which has supported improvement in services and corporate governance arrangements.

Notwithstanding the above, the Draft Bill includes some prescription around proposed peer review processes which is excessive and has unintended consequences, for example, councils would only be allowed to choose Welsh peers from a non-neighbouring authority; given Powys County Council borders all but one of the proposed new county councils, the only Welsh peers that the council would be permitted to use would be from the new Cardiff-Vale of Glamorgan council.

Prior to changes in the WLGA's improvement role, the WLGA Council committed in 2013 that every council would receive a peer review once during a rolling four year period (as is the case in England) and seven authorities have received a peer review between 2013 and early 2015. The WLGA agrees that peer review reports should be published, but that this is a matter for local discretion and does not need legislation. To date, all WLGA peer reviews have been published by authorities.

Question 5.4: Do you have any comments on the proposed role for the Corporate Governance and Audit Committee in relation to the Local Authority's response to the self assessment, peer assessment, combined assessment and governance review?

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

Committees.

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

The WLGA does not support the proposed changes to the membership of corporate governance and audit committees. Lay members are valued members of audit committees currently, but the balance of membership should be left to local discretion. The proposed prescription regarding the increased proportion of lay membership and that the chair must be a lay member fetters local discretion and undermines local democracy, particularly as the reformed committees will have an enhanced role in terms of overseeing the governance and service performance of councils.

Question 5.5: Do you have any comments on our proposal to reject local public accounts committees?

The WLGA agrees that it is not necessary to establish local public accounts committees as the original proposal largely duplicated the role of existing scrutiny committees and the duty to scrutinise designated persons (regulations for which are yet to be introduced).

That said, the scrutiny arrangements as introduced under the Wellbeing of Future Generations (Wales) Act 2015 curtail scrutiny committees' 'public service scrutiny' powers as it only allows scrutiny of the joint functions of the 'corporate body' of the PSB (not the individual members). The public service scrutiny powers over 'designated persons' under the Local Government (Wales) Measure 2011 (if introduced through regulations) would be more flexible and allow the concept of 'local public accounts committees' through enhanced democratic oversight over public bodies and their outcomes for communities. The scrutiny of a PSB's joint functions is limited as the PSB will not undertake a significant range of joint functions (other than exercising its duties to prepare a wellbeing assessment, publish (and review) a well-being plan and publish annual reports; it will be the constituent bodies' individual and joint actions and duties under the Act where all the impact and outcomes will be achieved.

Although scrutiny committees could continue to exercise the power under S21 (2)(e) of the Local Government Act 2000 'to make reports or recommendations to the authority or the executive on matters which affect the authority's area or the inhabitants of that area', the WLGA would favour an amendment to S169 of the Wellbeing of Future Generations (Wales) Act 2015 or implementation of the scrutiny of designated persons regulations to give local authority scrutiny (and therefore local democratic representatives) greater remit over the scrutiny of public services in their areas.

Question 5.6: Are Public Services Boards the right bodies to examine the policy choices facing local public services?

Public Service Boards and their individual member organisations were established to consider and inform (through wellbeing assessments) the policy choices facing public services.

As noted above, local authority scrutiny needs to be strengthened to allow locally elected members a broader remit in examining policy choices facing all public services (either individually or collectively) in their area.

Question 5.7: If so, would they benefit from additional legal powers?

The legal powers of Public Service Boards as introduced in the Wellbeing of Future Generations (Wales) Act 2015 appear appropriate.

Question 5.8: What legislative measures could be considered to enable Local Government to take a public sector-wide shared services role?

The proposed general power of competence should provide legal 'confidence' around public sector-wide shared services, but it should be noted that other non-local government legislation may be restrictive in terms of other public service functions being discharged by a local government body. In addition, there are state aid considerations in terms of commercial trading but these can be accommodated with the appropriate legal advice.

PART 6

Question 6.1: Do you have any comments on any of the provisions in Part 6 of the Draft Bill?

The WLGA welcomes the Welsh Government decision that a review of community council arrangements will be conducted by the Local Democracy and Boundary Commission. Such a duty on newly established county councils would have been a significant burden during a period of significant organisational transition.

It is important that the process for the establishment of any area based model of county council governance (as per the Draft Bill proposals for Community Area Committees) need to be aligned with any reforms of community council arrangements (as noted above).

Question 6.2: Should the Boundary Commission be required to submit their draft reports to Shadow Authorities from May 2019?

The WLGA is supportive of this proposal as it will allow earlier and more timely consideration of any draft proposals.

Question 6.3: Should the new County Councils implement the Boundary Commission's recommendations or should this be a responsibility of the Boundary Commission itself?

The new County Councils will have a large amount of work to do following their establishment, and implementing the recommendations of the Local Democracy and Boundary Commission reviews will be one of a large number of competing priorities. Given reduced corporate capacity and other competing priorities, on balance, the WLGA would support the proposal that the Commission should implement its recommendations, following consultation and engagement with the new County Councils.

Question 6.4: Do you have any comments on our proposals relating to compulsory training for Community Councillors?

The WLGA supports and encourages all elected members to undergo appropriate development and training for their roles. Generally, the WLGA supports the concept of locally determined compulsory member development and training, as outlined in the Draft Bill.

The Draft Bill proposals around compulsory training for community councillors should be refined however, as they place a burden and responsibility on clerks as well as risking a 'strain on the good relations between the clerk and the council' (as the consultation document itself notes).

Question 6.5: Do you have any comments on our proposal to extend the term of Community Councillors elected in 2017 to six years?

A six year term would be a very long municipal term with implications in terms of local accountability, however, it is a necessary transitory arrangement during a period of significant reform which will lead to greater clarity around accountability and electoral management in the future.

Question 6.6: Do you have any comments on our proposal that Community Councils should be required to consider and plan for the training needs of their own members and employees?

The WLGA does not support the proposed duty (under S167) that county councils should consider the training needs and 'secure the provision' of training for community councillors. This would be an additional burden and will have resource implications for local authorities and should be the responsibility of community councils themselves; it is not appropriate that local authorities should have a duty to discharge over other autonomous and democratically accountable bodies.

Question 6.7: Do you have any comments in relation to the setting of objectives for a Community Council clerk?

This is a matter for community councils.

Question 6.8: Do you have any comments on our proposal to repeal the legislation relating to community polls and to require instead that Local Authorities should implement a system of e-petitions?

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

PART 7

Question 7.1: Do you have any comments on any of the provisions in Part 7 of the Draft Bill?

The Ministerial powers over workforce matters as outlined in Part 7 of the Draft Bill are far reaching and potentially allow Welsh Ministers to make regulations that can affect all of the local authority workforce (and of other public bodies) on a wide range of workforce matters as fundamental as: the planning by public bodies in relation to the size and composition of their workforce; recruitment and retention of staff; the management, organisation and remuneration of staff; and the training and development of staff of public bodies.

These powers could potentially 'cut across' and affect the legal contractual relationship between that public body as the employer and its employees, as well as undermine local democracy and local planning. This is particularly relevant in local government where there are 22 individual sovereign employers.

Democratically elected councillors are best placed to determine how to shape the workforce to deliver services most cost effectively. Different councils face different challenges and demands from their electorate. A 'one-size fits all' approach will not

enable local needs to be met and councils need the freedom and flexibility to make and implement decisions on recruiting and restructuring (including decisions on pay) that are designed locally to best meet the needs of the communities they serve.

Local authorities have demonstrated that they can successfully develop and improve services working in partnership with others, and engaging with their workforce and their representatives to improve services. A managed approach to workforce reduction has also been successful whilst maintaining as best as possible the local services the community want. However there are some areas that the WLGA could work in partnership with Welsh Government to develop and agree guidance that could help support Councils on workforce issues.

Question 7.2: Do you have any views on whether it would still be desirable to establish a statutory Public Services Staff Commission if it would be more constrained in the matters on which it could issue guidance than a non-statutory Commission?

The WLGA has previously supported the establishment of a Public Service Staff Commission (PSSC) to specifically assist with the development of guidance to help Councils manage their workforces as part of any local government re-organisation. Section 178 does repeal the role of the PSSC in 2021 to reflect that the PSSC is specifically to assist with local government reorganisation planned for 2020.

The WLGA would not wish to see a statutory PSSC set up if there is no local government re-organisation. Therefore the WLGA would wish to see that the establishment of the statutory PSSC and its role is predicated on and explicitly linked to local government re-organisation.

There would need to be clarity and a renewed agreement on the matter of any continuation of a non-statutory PSSC if no local government re-organisation should take place.

PART 8

Question 8.1: Do you have any comments on any of the provisions in Part 8 of the Draft Bill or on any of the Schedules?

The Part 8 provisions and schedules, taking into account the above comments, appear appropriate.

ADDITIONAL QUESTIONS

Question 9.1: Are you aware of any consequential amendments to legislation that will need to be made?

No

Question 9.2: Please provide feedback you think would be useful in relation to the supporting documents published alongside the Draft Bill i.e. Draft Explanatory Memorandum (including the Regulatory Impact Assessment) and specific Impact Assessments.

N/A

Question 9.3: We have asked a number of specific questions. If you have any related issues which we have not specifically addresses, please use this space to comment.

Responses to consultations may be made public – on the internet or in a report. If you would prefer your response to be kept anonymous please tick the box: