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Dear Mick,

Local Government and Elections (Wales) Bill

Thank you for your letter of 23 January in advance of my attendance at Committee to give evidence on the Local Government and Elections (Wales) Bill.

Your letter raised a number of questions to which I have responded in Annex 1.

I look forward to attending on 3 February to give further evidence.

Yours sincerely,

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Annex A

Local Government and Elections (Wales) Bill

Delegated powers

1. Why is it appropriate to include 98 powers for the Welsh Ministers to make regulations, orders and directions, and to issue guidance?

This is a large Bill covering a significant range of provisions which are often technical in nature. I consider the Bill to contain a proportionate number of regulation/order making powers which will be mainly used to prescribe technical matters or enable the making of detailed provision within the framework set out on the face of the Bill.

Where there is a power to make provisions of a more fundamental nature, these require the provisions to be subject to the affirmative resolution procedure.

In many instances, the subordinate legislation making powers allow the Welsh Ministers to respond to future circumstances, the precise nature of which cannot be foreseen at the time of making the primary provision. The Welsh Government has sought, as far as possible and appropriate to set out matters of detail on the face of the Bill, albeit with scope to tailor the application of such matters to take account of local circumstances and future developments. It also allows for matters of detail, particularly around operational matters, to be prescribed.

2. Do you believe that the correct balance has been achieved between what provisions contained on the face of the Bill and what has been left for secondary legislation?

Our aim has been to set out as much detail on the face of the Bill as possible.

I consider the amount of detail on the face of the Bill to be balanced and appropriate for primary legislation. When dealing with matters as complex and as detailed as elections and local government, it would not be helpful to try to put everything on the face of the Bill. You simply cannot, on the face of a Bill, account for every option or circumstance which might arise in a situation provided for in the primary legislation. Trying to do so would lead to unmanageably lengthy, complex and prescriptive primary provision. The secondary powers sought by Ministers will enable them to take necessary and proportionate action as the need arises - within a clear framework provided in the primary legislation.

Powers have been taken to allow us to provide for the technical requirements.

In developing the subordinate legislation, the Welsh Government will work closely with stakeholders in order to ensure the provisions are relevant, valid and proportionate.

Voting systems for elections to principal councils

3. Section 13(3) provides the Welsh Ministers with a wide power to make "any other provision for the conduct of elections of councillors for local government areas in Wales". Although it is subject to the affirmative procedure, can the Minister explain why this wide power is needed and what purpose it is intended to be used for?

Section 13 of the Bill amends the Representation of the People Act 1983 to enable the Welsh Ministers to prescribe rules for local government elections. Currently local elections in England and Wales apply the Parliamentary rules subject to adaptations – thereby limiting the rules the Welsh Ministers may prescribe. The new power will allow Welsh Ministers to set the rules for local government elections in Wales that deviate from Parliamentary rules allowing for the reflection of Welsh specific circumstances.

Such circumstances will include rules around:

- How an STV count is to be conducted as well the format of the ballot paper at an STV election etc.;
- The removal of the requirement for candidates in local government elections to provide a home address to be published.
- Potentially, the requirement that a principle council must publish, on its website, a statement for each candidate standing in a local government election; and
- Potentially, the requirement for candidates standing as "independent" in local government elections to provide, at the point of nomination, to declare whether or not they have been a member of a political party.

The powers under this section will also be used to support any additional changes needed as a result of the extension of the franchise to 16 and 17 year-olds and foreign citizens legally resident in Wales such as electoral forms.

Database of electoral information system

4. Section 18(1) provides the Welsh Ministers with the power to establish a database of electoral registration information. Such a register will retain personal information regarding the electorate without their explicit consent and therefore impacts on their private lives. The regulations made under this power may also permit the transfer of the information to prescribed third parties. Can the Minister confirm why this database is needed and why she considers it appropriate to use executive powers to create such a database rather than include details on the face of the Bill?

A database of electoral registration information would allow us to trial innovations in the way we vote and where we vote. It could also assist Registration Officers with administration, combining the electoral information held by each county, with a common format, making the management of the registers more efficient and accurate, facilitating piloting and making easier the process of splitting registers at elections which cross county boundaries

Changes are currently being made to electoral management software to allow the extension of the franchise in Wales and the reform of the annual canvass. The

database would need to work with this software and we would want these changes to bed in before we began any work on developing the proposals for the database. Any proposals to establish a database would likely be extensive and complex, and would need to be developed in close collaboration with stakeholders to ensure the database worked in the way we intended and in a way which would be of most use.

The available technology in this field moves forward at pace and we will want to be able to take on board any new innovations if the database was developed and establishing the data via regulations rather than through the Bill would enable these developments to be taken into account.

The provisions in the Bill around the creation of a database of electoral registration information are designed to be entirely compatible with existing data protection laws and with electoral law. If the database were to exist concurrently with electoral registers held by local authorities, those registering would be made entirely aware that their data would be held in two places. While the provisions allow for data to be shared with third parties, this would be strictly in line with the rules set out across the statue book on the collection, holding and sharing of electoral data.

Election pilot schemes

5. Section 26(1) provides for an order to be made by the Welsh Ministers, without any Assembly scrutiny, for an election pilot scheme to be undertaken. Why is this power subject to no procedure?

Any Order made under this power will be only be applied in circumstances where Welsh Ministers feel an electoral pilot would be of specific benefit to electors but no principal council is forthcoming. It is likely to be local in nature applying to a small number of principal councils at most. It will be followed by a statutory evaluation undertaken by the Electoral Commission, any long term changes resulting from such a pilot would be subject to full Assembly scrutiny.

General power of competence

6. For what purposes do you intend to use the powers under section 35 of the Bill (in relation to amending/removing existing legislative restrictions on the use of the general power of competence or further restricting the general power of competence)?

Regulations under section 35 would be used to remove limitations where it was considered that those limitations unduly or inappropriately limit the use of the general power. Regulations may also be made to subject the general power to additional limitations if situations were to arise where the power were being used in an inappropriate manner. Any regulations would be subject to consultation prior to being made.

It is difficult to precisely identify, in advance, particular circumstances which would require the power to be used however, examples where the equivalent powers in the Localism Act 2011 have been used include:

- amending primary legislation to temporarily dis-apply provisions of an Act so as to allow Harrogate BC to host the Tour de France and Tour de Yorkshire events.
- prohibiting local authorities from charging local residents to enter recycling centres to deposit household waste. Local authorities sought to argue that certain of these centres were additional to (and therefore discretionary) to the centres they were required to provide under provision in the Environmental Protection Act 1990. THE UK Government disagreed and considered such action amounted to backdoor charges.

I intend to make use the powers in section 35 to make regulations prescribing conditions with which principal councils and eligible community council must comply prior to using the general power of competence for a commercial purpose.

It is my intention then when a council is contemplating exercising the general power for a commercial purpose, with the associated financial implications, they must do so with full understanding of the risks and consequences of doing so. It is proposed these regulations will require the preparation of a business case – this is a comprehensive statement of the financial and other implications of the intended activity, this business case will also require formal approval by the council. It is not intended that the business case would submitted to, or approved, by the Welsh Government. These regulations would be subject to consultation and the affirmative procedure before being made.

7. How does this sit with section 32 of the Bill (that the use of the general power of competence is subject to existing legislative restrictions)?

Section 32 subjects the general power to limitations, namely pre-commencement and post-commencement limitations. Commencement in this context is the date on which this Bill is passed, which is published on the face of the legislation so is clear to see for anyone reading it.

The general power cannot be used to overturn any limitation or restrictions in existing legislation. For example, legislation in relation to statutory services, fees and charging, financial prudence or the form of a council executive constrains local authorities in various ways and it will not be possible for the general power to be used to circumvent these constraints. Any legislation passed after this Bill will limit the general power where the legislation makes specific references to the general power.

Any Regulations made under section 35 would remove limitation on the use of the general power or subject its use to additional limitations, these would be addition to the limitation set out in section 32.

Conduct of members

8. Section 67(2) provides the Welsh Ministers with the power to make regulations about the circumstances in which members of a principal council in Wales are to be treated as constituting a political group and in which a member of a political group is to be treated as a leader of the group. The Welsh Ministers are obliged to "consult such persons as they think appropriate" before making these regulations.

(i) Who do you propose to consult?

Appropriate consultees would include local authorities, WLGA, monitoring officers and political parties. It is my intention to establish a small group of representatives from these interested parties to work with us on the development of these regulations and their practical implementation in local authorities.

(ii) Why is the regulation-making power subject to the negative procedure, rather than the affirmative, given that the content of such regulations could be politically sensitive and affect individual rights?

I consider negative procedure to be appropriate for these regulations and in line with standard agreed practice. The substance of the duties placed on leaders of political groups in relation to standards of conduct is set out in full on the face on the Bill. These Regulations provide for detailed definitions of the circumstances in which a political group is defined and when a member is to be treated as the leader, this could change over time and require amendment.

Joint committee regulations

9. Section 82(1) gives the Welsh Ministers the power to amend by regulations, any regulations which establish a joint corporate committee. This power can be used to confer, modify or remove a function of a corporate joint committee, or "for any other purpose". Can the Minister explain what she envisages "any other purpose" will be and why this catch-all provision is necessary?

Section 82 makes provision for the amendment and revocation of CJC regulations already made under section 77 (requested) or section 79 (not requested). Section 82(1)(a)-(c) is concerned with adding, modifying or removing functions. Section 82(1)(d) relates to the other aspects of the joint committee regulations, i.e. those matters listed in section 81 and which are the constitutional, governance and operational arrangements of that CJC. The power in section 82(1)(d) is necessary to ensure that joint committee regulations can be amended to respond to any changes that are necessary to ensure that the CJC continues to operate correctly, efficiently and effectively.

The section will provide that Welsh Ministers may not confer a function on, or modify or remove a function of, a corporate joint committee (under 82(1)) without the consent of the principal councils unless it is a function mentioned in 79(3).

10. Section 84(1) permits joint committee regulations and any regulations made under sections 82 or 83 to amend, modify, apply, disapply, repeal or revoke any enactment (which includes primary legislation). Why is this provision subject to the negative procedure when it contains a Henry VIII power to amend, modify, apply, disapply, repeal or revoke primary legislation?

The power under section 84(1) relates to the scope of joint committee regulations (sections 77 and 79) and amending or supplementary regulations (sections 82 and 83 respectively), with each of these powers being subject to the affirmative procedure.

Section 84(1) sets out the scope of the above regulations but is parasitic on them, i.e. the affirmative procedure applies. It appears that the entry in the table of regulation making powers is incorrect it is my intention that the powers under section 84(1) will be subject to the affirmative procedure.

11. Can the Minister also explain how section 84 will work when used in conjunction with sections 82 or 83, when regulations made under those sections are subject to the affirmative procedure?

Regulations made under sections 77 and 79 are “joint committee regulations”. Section 81 makes provision for the content of those regulations.

Section 82 provides a power to amend joint committee regulations once made to ensure that the Welsh Ministers and local government can respond to any changes that are necessary to ensure that CJC’s continue to operate correctly, efficiently and effectively both in terms of their governance and the exercise of their functions.

Section 83 makes provision for supplementary etc. provisions which may be necessary as a consequence of or to give effect to (initial) joint committee regulations OR amending regulations under section 82.

There is also a power to make standalone regulations of general application (see 83(3)).

Section 84 clarifies the scope of the above regulations and provides a further power to deal with potentially redundant provision on the statute book as they relate to Joint Transport Authorities and Strategic Planning Panels (see 22 below).

Each of these forms of regulations is subject to the affirmative procedure.

In terms of the procedure which applies to section 82 we intend to table stage 2 amendments to clarify the process by which an application to amend joint committee regulations may be made.

12. Section 84(2) gives the Welsh Ministers the power to amend, modify, apply, disapply, repeal or revoke any enactment (which includes primary legislation) in relation to any enactment for the purposes of, or otherwise in connection with, Part 5 of the Bill which deals with corporate joint committees. This is a very wide power, so can the Minister explain why this is required and what she envisages that this power will be used for?

The power under section 84(2) is intended to deal with the need to revoke specific enactments as a consequence of the creation of CJC's but which do not necessarily relate to CJC's, i.e. revoking provisions that relate to joint transport authorities and strategic planning panels. The power to amend enactments in section 82(1) is tied in to the various *vires* in the Part to: establish a CJC; amend Regulations which establish a CJC; make supplementary etc. provision in relation to a particular CJC or more generally for the purposes of or in consequence of regulations establishing CJCs.

It is not clear that these *vires* would, beyond doubt, allow the Welsh Ministers to make Regulations which amend the law to, for example, abolish the powers to create JTAs generally or Strategic Planning Panels generally (which will of course also involve consideration of the abolition of any existing such bodies).

Section 84(2) is a wide power which will allow the Welsh Ministers to do these things but, because such regulations must relate to the part, it still has a sufficient level of constraint to ensure that it is proportionate and constitutional.

13. Section 86 obliges principal councils and corporate joint committees to have regard to any guidance issued by the Welsh Ministers in relation to Chapters 3-5 of Part 5 of the Bill.

(i) Can the Minister explain what this wide power to issue guidance is intended to cover and why specific reference to what the guidance will cover is not made on the face of the Bill?

The guidance is intended to facilitate the application of this part to CJC's established by the Welsh Ministers and at the request of principal councils. It will need to address a host of circumstances which may well differ. It would be impracticable and completely unhelpful for all concerned to try to translate the level of detail and the degree of flexibility afforded by guidance into provision on the face of a Bill – which could easily then become too prescriptive.

(ii) Given the wide remit of the power, does the Minister agree that an Assembly procedure should be applied to any guidance issued under it?

The power to issue guidance is intended to facilitate the application of the part and the implementation of the legislation or regulations, it is largely concerned with process and, as such, it is not considered appropriate for it to be subject to Senedd procedure.

Panel assessments of performance

14. Section 93(1) enables the Welsh Ministers to make regulations using the negative procedure for, amongst other things, the appointment of members of panels to carry out performance assessments of principal councils, and fees to be paid to such members.

(i) Can the Minister explain what steps will be taken in these regulations to ensure the independence of the members of the performance assessment panels and why such independence is not enshrined on the face of the Bill?

The performance and governance provisions in the Local Government and Elections (Wales) Bill are aiming to secure cultural change, and central to this will be supporting and enabling local government to take greater ownership of their own performance.

The provisions in the Local Government and Elections Bill under section 93 give the Welsh Ministers powers to make regulations for and in connection with the appointment of panels if necessary. Our intention however, in line with the overall approach to part 6, is to issue statutory guidance initially on the panels, supporting each principal council to take ownership of its approach to performance and governance.

The statutory guidance will set out more detail on appointing a panel, and local government will be required to have regard to this. The statutory guidance will emphasise the need to ensure independence. For example, it will be expected that a panel member should have sufficient detachment from the council to reach impartial, objective conclusions about how the council is meeting the performance requirements. We think that to be most effective, the panel should have a mix of experienced senior officers, councillors and others who work with local government to ensure councils get the most appropriate challenge, support and constructive recommendations.

My intention is that the guidance will set out that any panel should include as a minimum:-

- An independent chair who is not currently serving in an official or political capacity within local government;
- A peer from the wider public, private or voluntary sectors;
- A serving local government senior officer, likely to be equivalent to chief executive or director; and
- An elected member.

It is intended the statutory guidance will support principal councils to ensure the panel has a range of practical experience, knowledge and perspectives, has integrity, provides independent external challenge and that the assessment can help support a council's improvement journey. My officials are working with local government officers and other stakeholders to develop the detail of how the new system will operate, well in advance of implementation. We want to

ensure that this is something which is valuable for local government and provides a meaningful opportunity to continually strengthen councils.

I have also committed to fund a WLGA led improvement and support programme which will support local authorities to implement the new regime and help to identify appropriate panel members.

(ii) Can the Minister also explain why she considers that regulations setting the fees to be paid to panel members will not be subject to the affirmative procedure?

The details in respect of the duty on principal council to arrange a panel performance assessment are set out clearly in section 91 of the Bill. Any regulations made under section 93 are intended to set out the necessary technical and procedure detail including the payment of fees.

Therefore, we do not believe that the affirmative procedure is necessary for these regulations.

Powers of the Welsh Ministers to amend enactments and confer new powers

15. Section 109(2) enables the Welsh Ministers to make provision in regulations conferring on any or all principal councils any power which the Welsh Ministers consider to be necessary or expedient to permit or facilitate compliance with Chapter 1 of Part 6 of the Bill (performance, performance assessments and intervention for principal councils). Can the Minister explain why it is necessary to use the word "expedient" here and why "necessary" is not sufficient?

Section 109(2) will enable Welsh Ministers to confer new powers on one or more principal councils, if they consider those powers to be either necessary or expedient. Some new powers for principal councils may not be absolutely "necessary" to enable compliance with Chapter 1 of Part 6, but may still be desirable to facilitate compliance, and this is why the term "or expedient" is needed in this section.

The nature of support provided, and the circumstances in which an inspection or an intervention takes place will be different in each case. In order to respond to the individual and particular issues faced by a principal council, the power has to be sufficiently broad to accommodate each individual circumstance as it may arise.

A power to make regulations to confer new powers on principal councils but only if they are deemed "necessary" would be too narrow. This power replicates the power under section 31 of the 2009 Measure which enabled Ministers to do the same things in relation to securing continuous improvement. We have never used these powers but when the new approach was being developed it was felt appropriate to replicate them to future proof the new approach.

Voluntary mergers of principal areas / Restructuring of principal areas

16. Section 122 obliges principal councils to have regard to any guidance issued by the Welsh Ministers about the making of a merger application between two or more principal councils. This provision has retrospective effect, so principal councils may satisfy this obligation by having regard to any guidance which is issued before section 122 comes into force, where such guidance has been expressly issued for the purposes of section 122. The Explanatory Note sets out what should be covered by this guidance, but this is not included on the face of the Bill.

(i) Can the Minister explain why the detail from the Explanatory Note is not included on the face of the Bill?

The guidance will need to address a host of circumstances which may well differ from council to council. It would be impracticable to try to translate the level of detail and the degree of flexibility afforded by guidance into provision on the face of a Bill – which could easily then become too prescriptive. The examples given in the Explanatory Notes are for explanatory purposes.

(ii) Can the Minister also confirm when she expects to issue guidance for the purposes of section 122 and why such guidance is not to be laid before the Assembly, given that it can be issued before the statutory power to do so comes into force?

I expect to issue guidance shortly. It is standard practice for there to be no procedure for the issue of guidance; this guidance is intended to support councils in implementing the legislation so will highlight good practice and be technical and procedural in nature. To lay guidance in the Assembly would be time consuming and serve little to no benefit.

17. Section 123(1) provides the Welsh Ministers with the power to make regulations which merge two or more principal councils. There is no requirement on the face of the Bill for the Welsh Ministers to undertake any public consultation prior to making such regulations. Although section 121(1)(a) requires a principal council to consult local people prior to making a merger application, there is nothing on the face of the Bill to require confirmation that this has been done fully and properly before merger regulations are made. Can the Minister explain how she proposes to ensure that members of the public are fully and properly consulted before any merger regulations are made?

Section 121(1)(a) states that before making a merger application, the principal councils involved in the potential merger must consult local people in their areas. That is an unambiguous requirement. If applicants are unable to demonstrate that they have consulted local people, Ministers will not proceed with the application

18. Why is the restriction set out in the Explanatory Memorandum in relation to section 126(4), that the Welsh Ministers may only use the power to direct a principal council as to the appointment of a returning officer if merging councils have themselves failed to appoint a returning officer for the first elections to the new council, not reflected on the face of the Bill?

19. Why is the restriction set out in the Explanatory Memorandum in relation to section 127(2), that the Welsh Ministers may only use the power to direct a principal council to take action to facilitate the effective transfer of staff, property etc. in a merger where merging councils are themselves failing to take such effective action, not reflected on the face of the Bill?

21. Why is the restriction set out in the Explanatory Memorandum in relation to section 134(4), that the Welsh Ministers may only use the power to direct a principal council to take action to facilitate the effective transfer of staff, property etc in a restructuring where restructuring councils are themselves failing to take such effective action, not reflected on the face of the Bill?

23. Why is the restriction set out in the Explanatory Memorandum in relation to section 139(1), that the Welsh Ministers may only use the power to direct a principal council to provide them with information relating to a transfer of functions between councils where a principal council does not voluntarily provide the specified information, not reflected on the face of the Bill?

24. Why is the restriction set out in the Explanatory Memorandum in relation to section 140(1), that the Welsh Ministers may only use the power to direct a principal council to provide bodies specified by the Welsh Ministers with information relating to a transfer of functions between councils where a principal council does not voluntarily provide the specified information, not reflected on the face of the Bill?

32. Can the Minister explain why the power to direct a transition committee for merging or restructuring councils to exercise its functions in accordance with the direction, as set out in paragraph 7(1) of Schedule 10, is not expressly subject to the limitation, as set out in the Explanatory Memorandum, that the power will be used when it is considered that a transition committee has been negligent or tardy in its responsibility?

Each direction power needs to be able to respond to a range of relevant circumstances. The Explanatory Memorandum provides some illustrative – not detailed - examples of when each power of direction might be used, within the framework set out in the relevant provisions on the face of the Bill. Given the circumstances where these directions might be used, it would require provisions of significant length and detail and even then it would be impossible to foresee all eventualities which might need to be covered.

20. Section 130 gives the Welsh Ministers the power to make restructuring regulations, following receipt of a special report from the Auditor General for Wales or an abolition request from a principal council. There is no requirement on the face of the Bill for any public consultation or notification (other than the publishing of an abolition request or a notice of receipt of a special report or abolition request by the Welsh Ministers) prior to any restructuring regulations being made. Can the Minister explain what public involvement is envisaged in relation to any restructuring of a principal councils and why this is not set out on the face of the Bill?

Section 128(4) states that, as one of the conditions which must be satisfied before they may make restructuring regulations under section 130, the Welsh Ministers must consult the council under consideration, every other principal councils whose area may be affected by a restructuring and "such other persons as the Welsh Ministers consider appropriate". The last element covers everyone who might be affected or have an interest, including members of the public.

The requirement is reinforced by the requirement in section 146(2)(b)(i) that Ministers, when laying a proposed draft of restructuring regulations in the Senedd, must also lay a statement "giving details of the consultation" undertaken under section 128(4). If Ministers do not undertake a comprehensive consultation under section 128(4) or the statement under section 146(2) suggests the consultation was inadequate, Ministers will be leaving themselves open to judicial review.

22. Section 137(6) provides a power to the Welsh Ministers to reset the start date for the Local Democracy and Boundary Commission's next 10-year electoral arrangements review period and allows them to change the length of the review period. Given the potential effect of either resetting the start date of a review period or extending such a period, why are these regulations not subject to the affirmative procedure?

The power merely enables the Welsh Ministers to re-set the start date for the Local Democracy and Boundary Commission's 10-year period for reviewing the electoral arrangements of all principal councils, something the Commission sought in their evidence to the Equality, Local Government and Communities Committee. The 10-year period is a requirement under section 29 of the Local Government (Democracy) Act 2013. If the Commission has had to do initial reviews for a new council or one changing its voting system, it may make sense for the start of the 10-year period to be re-set so the Commission doesn't do nugatory work or have to rush a review through.

This is an entirely technical detail which has absolutely no effect on the scope, purpose or the application of the provision in section 29 of the 2013 Act. I consider that the negative procedure is entirely appropriate for the circumstances in which this power would be used.

25. Section 145(3) enables the Welsh Ministers to make regulations of general application to deal with consequences which may have an impact beyond the merger or restructuring provided for in specific merger or restructuring regulations. Such regulations may make supplementary, incidental, consequential, transitional, transitory or saving provision. This is a broad power – why is it necessary and could it be used more broadly than she intends?

Principal councils are large, multi-functional institutions, governed by a vast range of statutory constitutional provision, exercising a significant range of statutory functions and with a host of statutory responsibilities for their staff, property, local people and historic rights and privileges. You could not hope to cover all the statutory provision needed to merge or restructure a principal council in one piece of legislation. Hence the need for powers to make supplementary, incidental, consequential etc. provision.

The scope for using such powers is confined by subsections 3(a) and (b); they can only be used for the purposes or in consequence of merger or restructuring regulations or to give full effect to merger or restructuring regulations. Section 145(5) lists some of the types of provision which might be included in regulations made under section 145(3) – although it is not and could not be, exhaustive.

Any regulations made under section 145(3) are subject to affirmative resolution.

Local Democracy and Boundary Commission

26. Can the Minister explain whether she intends to issue statutory guidance to the Local Democracy and Boundary Commission regarding the appointment of its Chief Executive of the Local Democracy and Boundary Commission, and, if so, whether this will be prescriptive guidance which may negate the removal of the requirement upon the Welsh Ministers to make such appointment? Why does the Minister feel that no Assembly procedure is appropriate for this guidance?

It is intended to issue statutory guidance in this area, which will be developed in conjunction with the Local Democracy and Boundary Commission for Wales. We will want to address any areas for which the Commission feel they might find guidance helpful. In particular it will be important for there to be clarity about the circumstances in which Welsh Ministers might seek to assist the Commission by recruiting to the post of Chief Executive due to a prolonged vacancy at that level.

It is standard practice for there to be no procedure for the issue of guidance. As the guidance is intended to provide support about the process to be adopted when appointing a chief executive, an Assembly procedure is not considered appropriate. To lay guidance in the Assembly would be time consuming and serve little to no benefit.

Commencement

27. Section 171(6) enables the Welsh Ministers to make orders providing for commencement of the remaining provisions in the Bill. This committee's previous recommendations on this matter on other Bills have been that commencement orders that include 'transitory, transitional or saving provision' should be subject to the negative procedure. What assessment was undertaken before the 'no procedure' Assembly procedure was specified for the Order making power under section 171(6)?

The inclusion of a power to make transitional, transitory and saving provision in a commencement order is in line with standard Welsh Government practice, as set out in the published Legislation Handbook. In recent years every Assembly Act with a commencement order provision (including the Assembly Commission's Senedd and Elections (Wales) Act) has included such a power, because it will generally be useful or even essential. The nature of the issue means that it is not always possible to predict the circumstances in which the power may need to be exercised.

In respect of the Assembly procedure, it is normal practice, again as set out in the legislation handbook that commencement orders are not subject to any Assembly procedure

Schedules

28. Paragraphs 9 and 10 of Schedule 1 provide the Welsh Ministers with regulation making powers to make provision for the electoral arrangements for an area that is under review. Given the significance of amending electoral arrangements, why does the Minister believe that it is appropriate to specify no Assembly procedure?

These are local regulations for the making of electoral arrangements; it is a long established practice that electoral arrangements regulations are not subject to any procedure. The powers and procedures set out in the Bill are based on the existing powers to change electoral arrangements under the Local Government Act 1972 and the Local Democracy (Wales) Act 2013. Orders and regulations made under those Acts have never been subject to a procedure.

29. Paragraph 2(4) of Schedule 2 provide the Welsh Ministers with regulation making powers to combine elections of councillors of a Welsh principal council and elections of councillors of a community council if they are held on the same day. This includes the power to modify any relevant provision in the Representation of the People Acts which relates to such elections. Why does the Minister think that this is an appropriate use of a Henry VIII power?

The Bill inserts new sections 36A and 36B into the Representation of the People Act 1983. These sections broadly replicate section 36 of the 1983 Act (with additional powers for the Welsh Ministers). These enable the Welsh Ministers to make rules in relation to the conduct of local government elections in Wales. Paragraph 2(4) of Schedule 2 to the Bill inserts new section 36B into the 1983 Act. This requires county and community council elections to be combined if they are held on the same day. It also enables the Welsh Ministers to make provision in connection with such combination of elections including modifying provisions in the Representation of the

People Acts. This is identical to the power that the Welsh Ministers already have in section 36(3C) of the 1983 Act which we are proposing to replicate.

There are existing Regulations that have made minor modifications to the Representation of the Peoples Acts where such polls are combined. As electoral law evolves and amendments are made to the Representation of the Peoples Acts, further modifications may also be required. At this stage, we have no plans to modify the Acts in relation to combinations. However, if such modifications were required they would be specific and may need to be in place within a tight time frame and within the perimeters set out in sections 36A and 36B.

30. Paragraphs 6, 10(3) and 10(4) of Schedule 4 provide the Welsh Ministers with regulation making powers to amend primary legislation. The powers allow the Welsh Ministers to amend or repeal provisions which currently provide that National Park Authorities and Fire and Rescue Authorities are exempt from the requirement to publish notices electronically on their website. Can the Minister explain why Henry VIII powers are being used, rather than putting the exemption on the face of the Bill?

Paragraph 2 of Schedule 4 amends the Local Government Act 1972 so that new provision is made with regard to notices of meetings of principal and community councils. Paragraph 4 amends section 100J to maintain the status quo for National Park Authorities and Fire and Rescue Authorities by exempting these organisations from the new requirements. The power in Paragraph 6 is required in order to omit this exemption should it be decided to subject these organisations to these requirements in the future.

Paragraph 10 amends section 232(1ZA) of the 1972 Act so that local authorities must publish public notices electronically. Again National Parks and Fire and Rescue Authorities are not subject to this requirement, with the Welsh Ministers provided with the power to subject these organisations to this requirement at a future date if necessary.

We accept these are Henry VIII powers but they are very narrow powers for a discrete and specific topic impacting a narrow category of bodies.

31. Paragraph 3 of Schedule 8 provides the Welsh Ministers with regulation making powers to make provision about the exercise of functions of the Public Services Ombudsman for Wales under section 69 of the Local Government Act 2000. Given that such regulations could seriously affect the way in which the Ombudsman conducts investigations under section 69 of the 2000 Act, did the Minister consider applying a super-affirmative procedure?

The power may only be used to amend Chapter 3 of the Local Government Act 2000 to make different provision about how investigations under section 69 are conducted. The power is therefore limited to local government conduct matters only.

It is intended to be used where the Ombudsman alerts the Government of operational issues when conducting such matters or where there have been developments in Ombudsman legislation (as we have seen recently) which requires amendments to be made to retain consistency.

The Governments handbook on legislation outlines that the ‘super affirmative’ procedure should only be used in “exceptional cases”. We do not consider this case to be “exceptional”.

32. This question is answered alongside question 18 – 19 etc. earlier on in this document