



COUNCIL – 26TH JANUARY 2016

SUBJECT: CAERPHILLY COUNTY BOROUGH COUNCIL RESPONSE TO THE DRAFT LOCAL GOVERNMENT (WALES) BILL

REPORT BY: INTERIM CHIEF EXECUTIVE

1. PURPOSE OF REPORT

- 1.1 For Council to endorse the proposed Caerphilly County Borough Council's response to the Welsh Government consultation on the Draft Local Government (Wales) Bill.

2. SUMMARY

- 2.1 This report sets out a proposed Caerphilly County Borough Council response to the Welsh Government consultation on the Draft Local Government (Wales) Bill, which is strongly based on the premise that the best outcome for our communities is that Caerphilly County Borough Council remains as a stand-alone Authority.

3. LINKS TO STRATEGY

- 3.1 The Draft Local Government (Wales) Bill is the Minister for Public Services' vision for Local Government in Wales and is *based on activist Councils, engaged in delivering modern, accessible, high quality public services with their local communities*. The Bill closely aligns with the Well-being of Future Generations (Wales) Act 2015, the Social Services and Well-being (Wales) Act 2014 and the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011, and the performance management framework for Local Government in Wales.

4. THE REPORT

- 4.1 The objective of the Draft Bill is to complete the programme of Local Authority mergers and set out a new and reformed legislative framework for Local Authority democracy, accountability, performance, some elements of finance, and establish a statutory Public Services Staff Commission. A round table discussion was held with the political leaders on drafting the Caerphilly County Borough Council response to the consultation. It was emphasised that the starting basis of the response is that Caerphilly County Borough Council wishes to retain its position as a stand-alone Authority. Political Groups and individual Members are able to respond separately to the consultation which closes on 15th February 2016.
- 4.2 The consultation document sets out the key aspects of the draft Bill under eight parts and the following responses are proposed to the consultation questions under the various parts.

4.3 **PART 1: Local Government Areas and County Councils**

Part 1 of the Draft Bill contains the provisions which will establish new Counties and their Councils, specifying the Local Government areas, the constitution and election of the new Councils and providing for establishment of the new Councils. The following response is made to this section:

Caerphilly County Borough Council wishes to retain its position as a stand-alone Authority as the best outcome for our communities, although the close collaborative work as documented in the consultation being undertaken across the Gwent region is noted and valued by the Council. The Council would also like to keep its *County Borough* status, if *mechanisms to preserve historic ceremonial rights, including city and borough status* could be made as referred to under Part 1 of the consultation document.

On 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? It is commented that it is inappropriate for a South East Wales Council to respond to this question on reconfiguration of Local Authorities in North Wales.

On what are your views on the proposed configuration of Local Government areas in Wales? It is recognised that it is appropriate to review the configuration of Local Government in Wales. However, whilst Local Government is well placed to offer a view on the appropriate configuration going forward, we find little evidence of those views being taken into account.

The proposed Gwent Unitary Authority would be the largest in Wales in terms of population, cover a large geographical area, and, more importantly, encompass communities with a diverse socio-economic profile and different needs and priorities. These multiple challenges present a risk which we believe can be mitigated if Welsh Government were to move away from the proposal of a single Authority in Gwent.

This consultation does not clearly demonstrate how local government re-organisation will be a cheaper option than retaining the current system, while encouraging greater collaboration. It is surprising that the consultation is stating - *Ministers have agreed that there "should be a moratorium on the establishment of any new collaborations and partnerships prior to finalising the map"* given the drive by Welsh Government for greater and better collaboration over the years. Appropriate collaboration can lead to greater efficiency of public services, and without the extensive costs of wholesale local government re-organisation.

On what are your views on the procedure for naming the new Counties? It is reiterated that Caerphilly County Borough Council wishes to remain as a stand-alone Authority.

On do you have any general comments on the provisions of the Draft Bill relating to Local Government finance? It is recognised with growing devolution that - *the Welsh Government has to consult on proposals including separate legislation dedicated to the mechanisms for distributing, raising, managing and accounting for the funding of Local Government...to design a system which takes account of wider changes to the powers and fiscal responsibilities of the Assembly, and devolves greater financial independence and responsibility to Local Authorities*. However, the issue of considerable variation of council tax levels across the Gwent region remains a key issue for Caerphilly County Borough Council residents, particularly as Blaenau Gwent County Borough Council's council tax is more than 30% higher than Caerphilly's.

4.4 **PART 2: General Power of Competence**

The provisions of Part 2 relate to County Councils' general power of competence and set out the conditions which Community Councils must meet in order to be Community Councils with competence. The following response is made to Part 2:

While the call for a general power of competence is welcomed, the Council notes that as drafted, it is severely constrained by legal provisions which local authority lawyers would have to carefully consider before the power could be used.

On do you have any comments on our proposals relating to Community Councils with competence? It is responded that we do not oppose Community Councils determining for themselves if they wish to have the *general power of competence*. We note, however, that there is no power of withdrawal until a subsequent election.

4.5 **PART 3: Promoting Access to Local Government**

This Part contains provisions relating to promoting access to Local Government. It gives an overview of the provisions in requiring Local Authorities to encourage public participation in Local Government. It establishes community area committees for ensuring that community interests and priorities are taken into account by the Council. It deals with improvement requests by which a Council enters into discussions with community bodies for the purpose of improving local outcomes. It extends public access to Local Authority meetings and requires Local Authorities to publish a guide to their constitution and publish the official addresses of their members. The following response is made:

The proposal to strengthen Community Councils and introduce Area Committees is, in part at least, a response to the scale of the proposed new unitary authorities. However, the need to strengthen and introduce these additional tiers of local government supports our view that in areas, such as Gwent, for example, the proposed Authorities are too large, and it would be better for Caerphilly County Borough Council to remain as a stand-alone Authority.

Promoting access and public participation in Local Government is welcomed. Caerphilly County Borough Council through its community planning processes has in the past established community area forums for ensuring that community interests and priorities are taken into account by the Council. These area forums were actively used as a means of engagement by the Council. The potential is there to develop this aspect further in the light of the Bill and the requirements of the Future Generations legislation.

We note the suggestion within the Draft Bill that Area Committees may be based on Upper Super Output Areas which may not be sufficiently representative particularly for less populous areas. Clearly, if they are smaller, they become more numerous and therefore more costly.

On do you have any comments on the proposed public participation duty and the requirement to consult on the annual budget. The proposed public participation duty and the requirement to consult on the annual budget are supported. The Council is currently actively engaged with local people and the Voluntary and Community Sector on its budget setting. However, we question the need for local authorities to produce a strategy and suggest that a duty to encourage and promote participation would be sufficient.

It is not clear to us why councils should have such duties and responsibilities over other autonomous *connected authorities* i.e. Community Councils, Fire and Rescue Authorities and National Park Authorities - in producing a *statutory public participation strategy*. This not only has resource implications on councils but also clouds accountability and responsibility for delivering on public participation duties.

On how should community representatives to sit on community area committees be sought and selected? Caerphilly Council would do this through open consultation and engagement with the Voluntary Sector Liaison Committee in the borough, and through the Gwent Association of Voluntary Organisations our local County Voluntary Council.

On do you agree County Councils should be able to delegate functions to a community area committee? Notwithstanding our earlier comments in a scenario where the substantive elements of the Draft Bill are introduced the principle of Councils delegating functions to a community area committee is supported. However, we have the following concerns:

- The proposals as drafted remain complex and could be construed as creating another tier of governance.
- Should council functions be devolved, there are issues in terms of clouding executive/scrutiny roles and accountability.

- Would community/public body *co-optees* be subject to the member code of conduct and proposed new *performance duties* on councillors?
- There is a risk that strengthening the role of unelected *co-optees* will undermine the electoral process and with it the role of elected members; we would be interested to learn how this risk will be mitigated.
- Community Area Committees will place an additional burden on authorities in terms of administration as well as in translation and electronic broadcasting requirements.

On 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? It is noted what appears to be additionally required through the Draft Bill in setting up Area Committees is onerous and would require transitional arrangements.

On 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)? In relation to improvement requests the consultation notes that - *The Draft Bill includes provisions which oblige Local Authorities to enter into a dialogue with community bodies about how an outcome can be improved on receiving a request from a community body... The definition of community bodies is widely drawn. The procedure sets out that at the end of a period of dialogue, the Local Authority will publish on its website a summary of the discussions and the actions that have been agreed. We will expect both Local Authorities and community bodies to hold to the matters they have agreed publicly* – while the thrust of this is supported we have the following concerns:

- Councils already initiate and respond to *improvement requests* thus the *improvement requests* proposal as drafted risks over-formalising the process and creating a significant amount of bureaucracy which could impact on the speed of decision-making.
- With the definition of community bodies being widely drawn there is a risk of multiple requests, perhaps regarding the same issue, adding to potential bureaucracy particularly where conflicting requests are made.

On do you have any comments on any of our further proposals relating to access to meetings? It is responded Caerphilly County Borough Council already has in place two of these proposals:

- Electronic publication of notices of meetings.
- Keep and maintain minutes of meetings of the Executive.

There is no objection to:

- Electronic summons
- Removal of the restriction for Community Councils on having meetings in licensed premises on the assumption that alcohol is not available during the meeting.

However, a duty to broadcast *all* public council meetings (including the proposed Community Area Committees) will create an additional administrative burden on councils and require additional resources.

On do you have any comments on our proposals to enhance participation by children and young people through the public participation duty? It is commented that the proposal to enhance participation by children and young people through the public participation duty is both welcomed and fully supported.

4.6 **PART 4: Functions of County Councils and their Members**

Provisions in Part 4 of the Draft Bill deal with the functions of the new Councils and their members. It sets out the duties all Councillors must discharge and how breaches of the duties on Councillors are to be dealt with and makes further provision in relation to these duties. It provides that the Elected Mayor or the Leader must set objectives for the Cabinet and that candidates for Elected Mayor or the Leader must prepare a written manifesto. It also enables Councillors to be appointed as assistants to the Executive. It makes provision about

the appointment of the Chief Executive, setting his or her objectives, as well as making the post of Head of Democratic Services a chief officer. It makes various provisions relating to Overview and Scrutiny Committees and Standards Committees. The following response is made:

The provisions for setting out *performance duties* for councillors are rejected. The proposals are inconsistent with expectations on Assembly Members where no such *performance duties*, standards, or right to recall are in place. For example whilst councillors would have 14 days to respond to correspondence, according to the Welsh Government website, Ministers have 17 working days to respond to correspondence. Unlike councillors Welsh Government Ministers will also have access to substantially more resources at their disposal in making responses.

It is also not clear why any failure to adhere to the proposed performance duties could be deemed as a breach of the code of conduct with sanctions to be imposed by the Standards Committee. The proposals as drafted risks the generation of vexatious complaints, which will affect the reputation of councillors and councils and create additional workload for Monitoring Officers and Standards Committees.

On do you have any comments on the proposed duty on leaders of political groups or the monitoring and reporting roles of the Standards Committee? It is difficult to see how this would be monitored in practice.

On 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 proposal to give Welsh Government Ministers a power to direct the IRPW is not supported as it would undermine the independence of the Review Panel.

On do you agree the provisions relating to remote attendance in the 2011 Measure should be made more flexible? This is only supported under exceptional circumstances.

On do you have any comments on our proposal that Shadow Authorities should be required to appoint interim Returning Officers? It is noted that *The Welsh Government is seeking further legislative opportunity to provide - that the Returning Officer role in each Principal Authority should form an intrinsic duty of the Chief Executive, for which no additional personal fee would be payable... Whilst there is no provision in the Draft Bill, we propose that the Shadow Authorities be given powers in the Bill for introduction to appoint Returning Officers to serve until such time as it was convenient* – and this is supported.

On 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? 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 by Full Council is supported, as long as safeguards around counter claims against unfair dismissal can be built in.

On 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? It is agreed that the functions of Local Government provided for in regulations made under the Local Government Act 2000 are prescriptive and liable to becoming out dated. Thus the Welsh Government proposal to simplify the system and give greater flexibility to new Authorities following mergers with the repeal of section 13 of the 2000 Act *by a more liberal provision* welcome.

On do you have any comments on our proposals in relation to the disposal and transfer of Local Authority assets? The disposal and transfer of Local Authority assets is supported where appropriate.

4.7 **PART 5: County Councils: Improvement of Governance**

Part 5 of the Draft Bill sets out arrangements for a new improvement regime. It puts a general duty on Local Authorities to make and comply with governance arrangements. Local Authorities are required to have a corporate plan, to consult on it, to keep it under review and report on progress made. Local Authorities are to assess the quality of their governance through self assessment, peer assessment and combined assessment. Welsh Ministers will be able to arrange a review of a Local Authority's governance arrangements and have a power to intervene when these arrangements are inadequate. Provision is made for better co-ordination between the regulators. New functions and revised membership of Corporate Governance and Audit Committees are set out (previously called Audit Committees). It is the Welsh Government's intention to commence the majority of these provisions when the Bill is enacted, in order that the transition to the new regime can start immediately and support the process of mergers. The following response is made:

In broad terms we support the proposed changes to Local Authority performance and planning framework and the Amendment of the Local Government (Wales) Measure 2009. However, there are similar, but not identical requirements in other legislation, most notably the Well-being of Future Generations Act. There is an opportunity to streamline local government planning and performance reporting as well as reinforcing our Well-being Duty as our organising principal by making it clear that Local Authorities can bring these together into a single planning and reporting framework. The importance of different departments across the Welsh Government having a common understanding of the requirements spanning legislation needs to be stressed. Further guidance will be required regarding the criteria for selecting and appointing lay members to the proposed corporate governance and audit committee, particularly the role of Chair.

On do you have any comments on the model approach to peer assessment? It is commented that the model approach to peer assessment is a helpful guide but is rather detailed which could hinder a flexible approach. Turning the current successful voluntary models of peer assessment into a prescriptive statutory assessment and regulatory regime is opposed.

4.8 **PART 6: Community Councils**

The provisions in Part 6 of the Draft Bill relate to Community and Town Councils requiring the Local Democracy and Boundary Commission for Wales to undertake a review of Community Council arrangements. Community Councillors are required to complete training on matters specified by the Principal Council. The terms of Community Councillors elected in 2017 are extended to six years with Community Council terms becoming fixed at five years from 2023. The following response is made:

The provisions relating to Community and Town Councils requiring the Local Democracy and Boundary Commission for Wales to undertake a review of Community Council arrangements are supported. The requirement for Community Councillors to complete training on matters specified by the Principal Council is also welcome, especially in the light of Community Councils being given on choosing the power of competency. We stress the need to make the training of specific relevance to Community and Town Councils.

On do you have any comments on our proposals relating to compulsory training for Community Councillors? Compulsory training for Community Councillors is welcomed in ensuring the highest possible standards in meeting the needs of their local communities, but it is stressed that training needs to be relevant to Community Councillors.

On 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? It is agreed that this proposal would - *enable communities (of place or interest) to express their views on matters which concern them, without the restrictions and costs which currently apply to community polls* - and is fully supported.

4.9 **PART 7 of the Draft Bill workforce matters**

Part 7 deals with workforce matters enabling Welsh Ministers to publish guidance to public bodies on workforce matters. It provides for the establishment of a Public Services Staff Commission. The non-statutory Public Services Staff Commission has been operating since September 2015 using the Workforce Partnership Council as its primary reference point. The following response is made:

The powers for Ministers to issue guidance which councils must have regard to over such matters of management and staffing is unacceptable, as it effectively gives Ministers more influence over a council's staffing structure.

5. EQUALITIES IMPLICATIONS

- 5.1 A thorough consideration to equality issues is contained within the Draft Bill. There is an accompanying Equality Impact Assessment to the consultation document, and Welsh Language Impact Assessment. The Draft Bill closely relates to the Well-being of Future Generations (Wales) Act 2015, which has A More Equal Wales as one of its 7 national well-being goals.

6. FINANCIAL IMPLICATIONS

- 6.1 If the Draft Bill is implemented there will be significant financial implications. Appendix B to the Bill contains a Regulatory Impact Assessment: Costs and Benefits Calculations.

7. PERSONNEL IMPLICATIONS

- 7.1 If the Draft Bill is implemented there will be significant personnel implications with the move to mergers with other Local Authorities in Gwent.

8. CONSULTATIONS

- 8.1 This report has been sent to the consultees listed below and all comments received are reflected in this report.

9. RECOMMENDATIONS

- 9.1 For Council to endorse the proposed draft consultation response.

10. REASONS FOR THE RECOMMENDATIONS

- 10.1 To enable officers to submit a response to the Welsh Government's consultation to the Draft Local Government (Wales) Bill.

11. STATUTORY POWER

- 11.1 Local Government Act 2000.

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