

**Appendix 1 Caerphilly County Borough Council Response  
to the Draft Local Government (Wales) Bill Welsh Government Consultation**

Following endorsement by Full Council (26<sup>th</sup> January 2016) this is the Caerphilly County Borough Council response to the Draft Local Government (Wales) Bill, which is strongly based on the premise that the best outcome for our local communities is that Caerphilly County Borough Council remains as a stand-alone Authority.

**Consultation questions**

**PART 1**

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

Caerphilly County Borough Council retains its position that a stand-alone Authority is the best outcome for our communities, although the close collaborative work as documented in the Welsh Government consultation paper being undertaken across the Gwent region is noted and valued by the Council.

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?

It is felt inappropriate for a South East Wales Council to respond to this question on reconfiguration of Local Authorities in North Wales.

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

We recognise 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 can see 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"* (p12) 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.

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?

No specific comment to make.

Question 1.5: 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.

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

It is reiterated that Caerphilly County Borough Council wishes to remain as a stand-alone Authority.

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?

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* (p14). 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.

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

No specific comment to make.

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?

No specific comment to make.

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?

No specific comment to make.

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?

No specific comment to make.

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

Caerphilly County Borough Council would like to keep its *County Borough* status, if *mechanisms to preserve historic ceremonial rights, including city and borough status* (p19) could be made.

## **PART 2**

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

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.

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

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.

## **PART 3**

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

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.

Question 3.2: 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's not clear to us why councils should have such duties and responsibilities over other autonomous *connected 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.

Question 3.3: 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 (GAVO) our local County Voluntary Council.

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 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.
- There is a concern about the apparent lack of scrutiny in relation to the proposed Community Area Committees and how functions would be exercised and call in etc.
- There is potential overlap of role with Town and Community Councils and the proposed Community Area Committees.

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?

What appears to be additionally required through the Draft Bill in setting up Area

Committees is onerous and would require transitional 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)?

On 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* (pp23-24) – 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 widely drawn there is a risk of multiple requests, perhaps regarding the same issue, adding to potential bureaucracy particularly where conflicting requests are made.

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

Caerphilly County Borough Council already has in place two of these proposals:

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

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. We would question whether viewing figures of council meetings actually justify the extra expense.

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

The proposal to enhance participation by children and young people through the public participation duty is both welcomed and fully supported.

#### **PART 4**

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

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 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 consistent as a breach of the 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.

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 duty placed on leaders of political groups to promote and maintain high standards of conduct by the members of the group is supported. However, it is difficult to see how this would be monitored by leaders of political groups, and how training could be made appropriate to this proposed duty. There are also concerns that what is expected from the Standards Committee is becoming more and more onerous.

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

No specific comment to make.

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 proposal to give Welsh Government Ministers a power to direct the Independent Remuneration Panel for Wales (IRPW) is not supported as it would undermine the independence of the Review Panel.

Question 4.5: 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.

Question 4.6: 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* (p30) – and this is supported.

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?

The power 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 by Full Council is supported, as long as safeguards around claims against unfair dismissal can be built in.

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?

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* is welcome.

Question 4.9: 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.

## PART 5

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

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.

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

No specific comment to make.

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

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.

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?

No specific comment to make.

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

No specific comment to make.

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

No specific comment to make.

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

No specific comment to make.

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

No specific comment to make.

## **PART 6**

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

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. Although stress must be made in making the training of specific relevance to Community and Town Councils.

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

No specific comment to make.

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?

No specific comment to make.

Question 6.4: 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.

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

No specific comment to make.

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?

No specific comment to make.

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

No specific comment to make.

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?

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 (p45) - and is fully supported.

## **PART 7**

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

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.

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?

No specific comment to make.

## **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?

No specific comment to make.

## **ADDITIONAL QUESTIONS**

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

No specific comment to make.

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.

No specific comment to make.

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.

An overall key concern with implementing the Draft Bill is about the resource implications in terms of staff and finance given that the timetable requires shadow authorities.