



SPECIAL COUNCIL – 20TH FEBRUARY 2020

SUBJECT: CAERPHILLY COUNTY BOROUGH COUNCIL RESPONSE TO THE LOCAL GOVERNMENT AND ELECTIONS (WALES) BILL 2019

REPORT BY: INTERIM CHIEF EXECUTIVE

1. PURPOSE OF REPORT

1.1 To seek Council approval of the proposed Caerphilly County Borough Council response to the Local Government and Elections (Wales) Bill 2019.

2. SUMMARY

2.1 The Local Government and Elections (Wales) Bill 2019 is currently at Stage 1 in its progress through Welsh Government. The Bill is the culmination of several years of consultation on the structure and function of local government in Wales. Many of the provisions in the Bill have previously been consulted upon and Council has provided its views through previous responses to Welsh Government. This Bill consolidates a number of previous proposals and introduces some new provisions.

2.2 The proposed response appended to this report reflects previous views expressed by this Council and includes a view on the new provisions, most notably these concern the proposal to create mandatory Corporate Joint Committees for certain functions, and changes to the performance management regime for local government. Group Leaders have been consulted upon the proposed response and their comments are incorporated in the report. Where the views of Group Leaders diverge from the proposed response, notably in the case of the choice of voting system, this has been explained in the body of the report and in Section 12, Consultations.

2.3 The main provisions of the Bill are summarised within the report, the Bill contains changes that affect, or introduce:

- Elections
- General Power of Competence
- Local Authority Executives, Members, Officers and Committees
- Collaborative Working by Principal Councils
- Performance and Governance of Principal Councils
- Mergers and Restructuring of Principal Areas
- Local Government Finance

3. RECOMMENDATIONS

3.1 That Council endorse the proposed response to be provided to the Welsh Government Equality, Local Government and Communities Committee to inform its deliberations on the Local Government and Elections (Wales) Bill 2019.

4. REASONS FOR THE RECOMMENDATIONS

- 4.1 To ensure the views and agreement of Council are considered as part of the consultation process.

5. THE REPORT

- 5.1 Welsh Government are presently consulting upon The Local Government and Elections (Wales) Bill 2019 with a view to implementing the Bill after Royal Assent later this year. The Bill was published on the 18th of November 2019 and the Equality, Local Government and Communities Committee of Welsh Government requested submissions to the Stage 1 process by early January. A request has been made, and agreement given, that a late submission may be entered following agreement by Council on the 20th February 2020. The Bill is expected to be subject to Welsh Government Committee stages up until March this year.
- 5.2 The Bill is the culmination of several years of draft legislation and proposals for the reform of local government; responses to which have previously been brought before Council (see Background Papers). As many of the provisions are repeated from earlier proposals there is no formal consultation on the Bill in its entirety. The mechanism by which Council can make its views known is through a submission to the Welsh Government Committee. Some provisions in the Bill are new, for example, collaborative working by Principal Councils through Corporate Joint Committees and new proposals for the performance and governance of Principal Councils.
- 5.3 The proposed response from Council, appended to this report, reflects Council's previous views and proposes a response to the new provisions.
- 5.4 To refresh the memory of Council previous proposals for local government reform have included:
- The Report of the Commission on Public Service Governance and Delivery (January 2014)- The Williams Commission
 - White Paper- Reforming Local Government (July 2014)
 - White Paper- Reforming Local Government: Power to Local People (February 2015)
 - Devolution, Democracy and Delivery- Draft Local Government (Wales) Bill (November 2015)
 - White Paper- Reforming Local Government: Resilient and Renewed (January 2017)
 - Green Paper- Strengthening Local Government: Delivery for People (March 2018)
- 5.5. The current proposed Bill is hyperlinked at Background Papers, along with a link to the Welsh Government committee page. The proposed response is appended and the main provisions are summarised below. The response is intended to supplement the response provided by the Welsh Local Government Association, which is also attached as Appendix 2 to the report.
- 5.6. **Elections**
The Bill proposes extending the voting franchise to 16 and 17 year olds, a measure Council has previously supported, and extending the franchise to legally registered foreign nationals, also previously supported.

The Minister for Housing and Local Government has stated her intention to amend the Bill to include extending the franchise to prisoners serving less than 4 years. Council have previously supported a similar provision.

The Bill proposes allowing Councils to choose their voting system; either through a simple majority or single transferrable vote. This is not a new proposal and Council have previously

responded to stay that a simple majority system was preferred due to the administrative complexity that would result if different systems were in place across Council's and for different elections (e.g. general elections and town and community council elections), and that voters may be confused by different systems. Previously Council has supported the continuation of the existing system to prevent confusion among voters. It should be noted that the Group Leaders of Plaid and the Independent Group favour the option of a single transferrable vote system, the reasons given are that a single transferrable vote system may, or may not, favour any one particular party and that it would encourage more people to take part in the democratic process.

The Bill formalises the electoral cycle of Principal Councils as five-yearly, again a provision that Council has previously agreed. It also includes provisions that allow Ministers to vary the day of elections. In previous responses Council have suggested that voting and the availability of polling stations is better understood by local authorities, but that the period of voting should be extended and voting should be allowed in more premises e.g. local authority libraries.

Council have agreed that citizens of any country should be able to stand for elections but disagreed that employees should be able to stand. As it is considered that this would compromise the authority during campaigning and would it would further compromise the employee if unsuccessful. The Plaid Group would like to defend the democratic right of employees to stand for election.

New provisions would disqualify persons from standing as elected members if they were subject to requirements under the Sexual Offences Act 2003.

The Bill does not propose combining the role of Chief Executive and Returning Officer, something which was included in a previous consultation. This has been welcomed by the Welsh Local Government Association and the Society of Local Authority Chief Executives, in order to preserve the independence and impartiality of the electoral system. The proposed response supports this view.

Local Government has made the case that the costs of registering new voters to whom the franchise will be extended, and raising their awareness, should be fully funded.

5.7 **General Power of Competence**

This was included in the 2015 Bill. However, feedback at the time was that the power was severely restricted by the qualifications placed on its availability as an additional power. A similar power exists in England that has not been extensively used. The requested amendments have not been made and so, as written, it does not appear to add much to the powers that local government already has. The wording also has the potential to restrict the authority embarking on commercial activity to generate a surplus to protect services. The response has been drafted to highlight these concerns.

5.8 **Promoting Access to Local Government**

This is a new duty to encourage participation in democracy and that, additionally, the local authority must encourage participation in other public sector bodies e.g. National Park Authorities. The proposed response suggests that this is not a role for local authorities and that the new duty to prepare a public participation strategy is not required as the 'involvement' duty in the Well-being of Future Generations (Wales) Act 2015 already legislates for the greater involvement of services users in decision-making.

Council has previously supported provisions to create a petition scheme i.e. how they are acknowledged, responded to and how decisions about no further action are made. The Minister has also indicated that she would like to consider allowing e –petitions.

The addresses of elected members must be published but the Bill allows for the use of a generic Council address.

A new provision is included to provide a guide to The Constitution.

Electronic broadcasting of all meetings open to the public is a new proposal. The Welsh Local Government Association have responded to advise that the software and mechanisms to undertake this properly (i.e. broadcasts tracked through agendas, camera control etc) would be burdensome and too costly, given the low public engagement associated with broadcast meetings, and that this provision needs further examination. The Plaid Group believe that Scrutiny and Planning meetings should be broadcast.

New provisions are included to allow remote attendance of members at meetings. This is supported, however, the electronic voting mechanisms to allow that would need to be robust.

5.9 **Local Authority Executives, Members, Officers and Committees**

The Bill contains provisions to impose new performance management arrangements on Chief Executives. This includes a requirement upon the Senior Executive to publish those arrangements, review performance, and publish a report on Chief Executive performance. The proposed response points out that the personal performance of employees should be a matter between that employee and their manager/executive. The response further adds that the overall measure of success is the success of the Council as a whole, and as such these matters are already well publicised through performance reports, regulator reports etc.

New provisions are included to allow job-sharing among Cabinet Members and the appointment of assistants to Cabinet along with changes to maternity, parental and adoption leave for elected members. The proposed response supports these provisions.

A duty is placed on Political Group Leaders to maintain standards within the Group. Council have previously supported these proposals but requested additional training to be able to support this requirement. The Plaid Group have commented that this provision does not cover elected members with no political attachment.

5.10 **Collaborative Working by Principal Councils**

These are new provisions not previously subject to consideration by Council. This proposes the implementation of 'Corporate Joint Committees' (CJC's), with Ministerial Powers to mandate CJC's for:

- Schools Improvement
- Economic Development
- Strategic Planning
- Transport
- Strategic Development Planning

The proposed response agrees in general with the principle but counters that mandation by Ministers should be avoided and local discretion and democratic choice should be the deciding factor.

Further Regulations are expected to set out the detail of CJC's. For some of the areas (e.g. transport, economic development etc.) the Cardiff Capitol Region City Deal is supporting the move to managing these functions on a wider footprint. However, for the Gwent area the Education Achievement Service operates differently to other regional school improvement services, as it has been set up as a company limited by guarantee, and so the proposed response states that a CJC would not be a suitable governance vehicle.

5.11 **Performance and Governance of Principal Councils**

The Bill includes new provisions for local authority performance with a new 'performance requirement' to review:

- Effectiveness
- Use of resources economically, efficiently and effectively

- Governance of these areas

through an annual self-assessment and an external panel assessment.

These provisions replace the 2009 Local Government Measure, which is outdated and has become superseded by the Well-being of Future Generations (Wales) Act 2015. The new proposals will be subject to statutory guidance, yet to be consulted upon.

The proposed response agrees with self-assessment on an annual basis but makes the point that an external panel assessment would not add value to the scrutiny of the performance of the local authority where political oversight, openness and transparency already provide assurance. The response states that peer assessment and challenge is a more constructive mechanism to provide learning and ongoing support.

The new performance regime has enhanced roles for Audit Committee, to become the 'Governance and Audit Committee'. The Bill proposes a mandatory 1/3 lay membership. The response states that this undermines the value of elected members and their role on scrutiny committees.

5.12 **Mergers and Restructuring of Principal Areas**

The restructure of Local Government is no longer a part of the Bill. However, voluntary mergers can still take place and can be mandated after a Special Inspection by the Wales Audit Office. The Bill does not replace provisions in the 2011 Local Government Measure to offer support and assistance first. The response has therefore been drafted to state that these interventions should happen before mandated merger.

5.2 **Conclusion**

There are some differences in the content of the proposed response and the views of the Plaid and Independent Group. Addressing these in turn:

In the response to the 2017 consultation on Electoral Reform, Council stated that the existing voting system should be retained.

In the response to the 2017 consultation on Electoral Reform, Council stated that staff below senior level should not be able to stand for election.

In relation to the broadcasting of meetings open to the public, the proposed response at Appendix 1 agrees in principle with a comment that the mechanisms to achieve this need to be understood.

In response to the consultation on the Draft Local Government Bill 2015, Council stated that it supported the role of Group Leaders to maintain standards but that this would be difficult to monitor.

The response appended to this report reflects the previous views given by Council to the consultations listed at 5.4 and offers further responses to the new provisions.

6. **ASSUMPTIONS**

- 6.1 It is assumed that the Council's consultation response will be fully considered by Welsh Government.

7. **LINKS TO RELEVANT COUNCIL POLICIES**

- 7.1 The Local Government and Elections (Wales) Bill 2019 impacts upon the operation of the Council and therefore links to all Council priorities.

8. WELL-BEING OF FUTURE GENERATIONS

- 8.1 The Well-being of Future Generations (Wales) Act was introduced in 2015 and included the requirement to set objectives to secure environmental, social, economic and cultural well-being. It has superseded the 2009 Local Government Measure and so parts of the Bill that consider the performance of the authority provide clarity to the new arrangement, thereby addressing previously identified anomalies.

The “involvement” principle is one of the five ways of working identified in the Act, and is contained within the sustainable development principle and therefore has a bearing on the requirements of the Local Government Bill to encourage and promote participation in local democracy. This is a duty already placed upon the local authority.

9. EQUALITIES IMPLICATIONS

- 9.1 There are no equalities implications in this report as it is a response to a Welsh Government consultation.

10. FINANCIAL IMPLICATIONS

- 10.1 There is likely to be associated financial implications for the authority in implementing the changes proposed in the Bill, however it has not been possible to quantify these at this time. However, the Welsh Local Government Association continues to lobby that any additional costs are reflected in the local government financial settlement.

11. PERSONNEL IMPLICATIONS

- 11.1 There are no personnel implications in this report.

12. CONSULTATIONS

- 12.1 The views of the consultees detailed below have been reflected in this report

13. STATUTORY POWER

- 13.1 No relevant statutory power.

Author: Kathryn Peters, Corporate Policy Manager, peterk@caerphilly.gov.uk

Consultees: Christina Harrhy, Interim Chief Executive
Cllr Philippa Marsden, Leader of Council
Cllr Colin Mann, Leader of Plaid Group
Cllr Kevin Etheridge, Leader of Independent Group
Richard Edmunds, Corporate Director Education and Corporate Services
Stephen Harries, Head of Business Improvement and Interim Head of Finance/
Section 151 Officer

Robert Tranter, Head of Legal Services and Monitoring Officer

Background Papers:

<https://www.assembly.wales/laid%20documents/pri-ld12877/pri-ld12877-e.pdf>

<http://senedd.assembly.wales/mglIssueHistoryHome.aspx?Ild=26688>

Report to Full Council on the 26th January 2016 'Caerphilly County Borough Council Response to the Draft Local Government (Wales) Bill'

Report to Full Council 7th March 2017 'Caerphilly County Borough Council Response to Reforming Local Government: Resilient and Renewed White Paper'

Report to Full Council 10th October 2017 'Electoral Reform in Local Government'

Report to Full Council 5th June 2018 'Caerphilly County Borough Council Response to the Strengthening Local Government Green Paper'

Appendices:

Appendix 1 Response to be provided to the Equality, Local Government and Communities Committee

Appendix 2 Welsh Local Government Association Response

Response be provided to the Equality, Local Government and Communities Committee

Part 1 Elections

- We agree with the proposal to extend the franchise to 16 and 17 year olds but are concerned that such a large scale change should be given enough time and support to plan registration and canvassing activities. Any awareness activity will need to explain the difference between UK elections and Welsh elections.
- We agree that legally resident foreign nationals should be able to vote in Welsh elections but that the principle of parliamentary domain should be upheld for UK elections.
- We agree that prisoners serving a custodial sentence of less than four years should be eligible to vote. Understanding the duration of sentences and the ability to vote will need coordination between the local authority and HMPPS.
- We disagree that there should be a voting system choice as this introduces confusion for voters with potentially different systems in play across Wales and a different approach in Town and Community Council elections and UK elections. Voter confusion leads to voter apathy and encouraging participation in democracy would be better served by a single, less complex system.
- We agree that 5-year terms should be codified in legislation.
- We disagree that Ministers should be able to vary the day of election. Availability of polling stations is better understood by local authorities.
- We agree that citizens of any country should be able to stand for election.
- We disagree that employees should be able to stand for election; this compromises staff remaining in work if unsuccessful, and compromises the authority during campaigning.
- We are pleased that the previous proposal to combine the Chief Executive role with that of Returning Officer is not replicated in this latest Bill. The independence and impartiality of Returning Officers is a cornerstone of the electoral system, in the case of local government elections this is brought into sharp focus. Remuneration should be entirely separate from local authority budgets. There are significant duties associated with the role of Returning Officer, including the responsibility for employing staff. The independence should be maintained.
- The costs of new voter registration and awareness activity will place a significant burden on local authority budgets. In the run up to the 2022 elections we would wish to see this reflected in the settlement, for each year when additional work will be required.

Part 2 General Power of Competence

- On the face of this would seem to provide much needed additional powers to local government. We are, however, extremely concerned about the restrictions, limits and boundaries placed in the subsequent qualification sections of the Bill. The proposed GPOC exactly follows the original drafting into English law. Therefore GPOC may only be used where no pre-commencement limitation exists. Numerous pieces of legislation will need to be trawled to ensure that no limitation exists. The experience from English councils is that GPOC is not used as a power of first resort, but rather as a 'belt and braces' addition or last resort. Lawyers in Local Government made representations to WG in 2017 about how the

power might be remodelled to be of greater benefit to local authorities. It represents a missed opportunity to create a genuinely useful GPOC.

- We are in the process of delivering a transformation strategy with commercialisation as a key factor in maintaining resilient services in the future. Generating a surplus to reinvest in services is part of our Social Heart: Commercial Head ethos and the way in which we are aiming to innovatively retain the discretionary services of value to our communities. The Bill does not provide us with the flexibility to do this, by setting conditions for commercialisation does not allow an entrepreneurial approach and will fetter us in our ambitions to provide for sustainable communities. Only allowing commercialisation through a trading arm and, only for discretionary services already provided by the authority, does not allow us to fully explore new markets to deliver a surplus to sustain services. Developing a growth mind-set cannot be achieved with a 'feet of clay' traditional public sector response. We would urge that these sections of the Bill are looked at again working with local government lawyers, the WLGA and learning from across the border.

Part 3 Promoting Access to Local Government

- We agree with the new duty to encourage public participation in democracy but disagree that the local authority should be responsible for promoting this for connected authorities.
- We disagree that there is a need for the local authority to prepare a public participation strategy. Our existing mechanisms to encourage involvement are sufficient.
- We agree with the duty to prepare a petition scheme.
- Electronic broadcasting of all meetings need to be balanced against the low level of public engagement with full council meetings, which we already broadcast, and the cost of increasing the contract with the software provider to broadcast all meetings. We agree in principle but need to understand more about the mechanisms to achieve this.
- We agree that remote attendance of members at meetings should be facilitated.

Part 4 Local Authority Executives, Members, Officers and Communities

- There are already performance management arrangements in place for the Chief Executive, there needs to be local flexibility to continue with this. Prescribing an approach could, potentially, have a number of unintended consequences. A single individual having oversight of Chief Executive performance risks loss of objectivity and a reliance on an interpersonal relationship.
- Publishing performance reviews would place Chief Executives under an unprecedented regime. A performance review should be a private record of a discussion between an employee and their manager/executive. It should not be for public consumption. The performance of the local authority, already well-publicised should be the public measure of success. Any such reporting should be exempt from publication.
- We agree that Cabinet should be able to benefit from job-sharing and enhanced personal leave arrangements. We agree that there should be an option to appoint assistants to Cabinet, however our political aim over the past few years has been to minimise the costs of the executive.
- We agree that Group Leaders should have a duty to maintain standards within their group but would like there to be additional training to allow them to understand the role.

Part 5 Collaborative Working by Principal Councils

- We agree in general with the proposals for CJC's and that they offer an option to collaborate more effectively around the areas listed. This approach aligns with the Cardiff Capital Region City Deal and its objectives. The footprint is likely to follow the City Deal footprint.
- We disagree that the functions to come under the control of CJC's should be mandated by Ministers. It should be a matter for local government to determine which functions could be delivered by CJC's. Local discretion and democratic choice should be the overriding factors.
- We disagree that a CJC is appropriate for school improvement. The Gwent area Education Achievement Service is set up as a company limited by guarantee and has a Joint Executive Group comprising Cabinet Members and senior officers. Its governance is therefore different to other schools improvement services in Wales; in 2016 the WAO recognised that the EAS governance arrangements were the 'most established and comprehensive'.

Part 6 Performance and Governance of Principal Councils

- We agree with the provisions for self-assessment on an annual basis.
- We disagree with the requirement to conduct a Panel Assessment once every municipal term. We do not believe that this will add value and that it comes from a mistrust of local government. We do not believe that an external view of the 'performance requirements' would add anything to assurance as self-assessment and that political oversight of this, along with publication of reports will provide for openness, transparency and democratic accountability. The requirement to commission an independent panel is an overly bureaucratic and an unnecessary burden. It will not provide any assurance in the fast paced environment in which we work. A once every 5-year's assessment is likely to detract from a culture of ongoing continuous improvement. It seems to hark back to a local government of several decades ago. We question what value Welsh Government and the public we serve will gain from this. Mandating a panel assessment is not part of a mature beneficially supportive relationship between national and local government, we fail to see what benefit it could have.
- We are encouraged that Welsh Government are exploring enhancing sector lead improvement with the WLGA. Peer assessment on ongoing support will add far more value than an arbitrary inspection by an external panel.
- We disagree that the new Governance and Audit Committee should be comprised of 1/3 lay membership. Lay members have an important role to sit in scrutiny alongside our elected members and we actively support co-option. However stipulating a quota undermines the valuable role of our own elected members.
- We agree that Regulators should coordinate their inspection activity but consider that the AGW should maintain independence.

Part 7 Mergers and Restructuring of Principal Areas

- We disagree that a merger could be mandated after Special Inspection without any subsequent support and assistance arrangements being put in place to mitigate any concerns. Merger should be a last resort.

LG 54

Bil Llywodraeth Leol ac Etholiadau (Cymru)

Local Government and Elections (Wales) Bill

Ymateb gan: Cymdeithas Llywodraeth Leol Cymru (WLGA)

Response from: Welsh Local Government Association (WLGA)

Introduction

1. The Welsh Local Government Association (WLGA) represents the 22 local authorities in Wales. The three national park authorities and the three fire and rescue authorities are associate members.
2. The WLGA is a politically led cross-party organisation, with the leaders from all local authorities determining policy through the Executive Board and the wider WLGA Council. The WLGA works closely with and is often advised by professional advisors and professional associations from local government, however, the WLGA is the representative body for local government and provides the collective, political voice of local government in Wales.
3. It seeks to provide representation to local authorities within an emerging policy framework that satisfies priorities of our members and delivers a broad range of services that add value to Welsh Local Government and the communities they serve.
4. The Local Government and Elections (Wales) Bill [the Bill] is a significant and substantial piece of legislation covering a broad range of democratic, governance, organisational and structural reforms and is the culmination of several years of policy consultation, including a Draft Bill and successive Green and White Papers.
5. The WLGA welcomes the opportunity to provide evidence to the Equality, Local Government and Communities Committee National Assembly for Wales's Stage 1 consideration of the Bill.
6. The WLGA has particularly welcomed the constructive dialogue and engagement with the Minister for Housing and Local Government. Local government reform has been discussed with leaders during the past 18 months initially through the Local Government Working Group chaired by Derek Vaughan and subsequently via the Local Government Sub-Group of Partnership Council.
7. Under the auspices of these groups, there has also been constructive engagement between officials from Welsh Government and local government to consider the implications of some of the anticipated reforms and what future statutory guidance or regulations might need to include.
8. The Regulatory Impact Assessment [RIA] estimates that the total cost of the Bill to local government over 10 years would be £16.3m (including transitional costs of £2.95m and recurrent costs of £13.35m). The WLGA considers some of the estimated costs in more detail in the response below. The WLGA's core stance is that the Welsh Government should fully fund any new national initiatives or the implications of any legislation on local authorities.

Part 1: Elections

9. The proposals for electoral reform include several that were included in the Welsh Government's Consultation on Electoral Reform in 2017 and align with many of the wider electoral reforms to be introduced through the Senedd and Elections (Wales) Bill.
10. These are some of the most fundamental reforms included in the Bill, and will have a significant impact on local democracy, local authorities and, in particular, electoral services administration.

Extending the franchise to 16-17 year olds (Section 2)

11. The WLGA supports this proposal as a key part of widening democratic engagement and participation.

Extending the local government franchise to citizens from any country (Section 2)

12. The WLGA agrees that citizens from any country citizens who have moved and settled in Wales should have the right to vote in local elections.
13. The Welsh Government recognises that the extension of the franchise to 16-17 year olds and foreign citizens will have an impact on local electoral administration. The WLGA welcomes the Minister for Housing and Local Government's commitment (in her letter to the Committee on 19th December) to provide an £1m additional funding for 2020-21 and will 'consider the need for financial support'.
14. The Regulatory Impact Assessment (RIA) however estimates an additional cost of extending/promoting the franchise of £912,000 in both 2020-21 and 2021-22, as well as an extra £267,000 in any election year. The RIA also notes that the Welsh Government had estimated that the Senedd and Elections (Wales) Bill would incur £636,000 cost to local government for the changes to the EMS software.

Two voting systems (Section 5)

15. The WLGA does not support the proposal to allow authorities to choose their own voting system as it believes there should be a clear and consistent voting system across all local authorities to avoid complexity and risk of voter confusion.
16. When this was previously considered as part of the Consultation on Electoral Reform, the WLGA was supportive of the Electoral Commission's response in 2017 stated:

"...we would note that allowing councils to decide which electoral system to use in their own area could create significant risks and challenges, particularly in relation to voter understanding of how to cast their vote...The question of public awareness around two different electoral systems for one set of elections is likely to be a major challenge and one where there is a very real risk of confusion to electors if this type of change is implemented."

17. Furthermore, it would be administratively complex and confusing if an STV election was held on the same day as 'first past the post' community and town council elections and that larger electoral wards would need to be created which may undermine the local links between a councillor and his/her community.

Change of electoral cycle for principal councils from four years to five years (Section 14)

18. The WLGA supports the proposed extension from 4 year terms to 5 years.

Qualification and Disqualification for election and being a member of a local authority (Sections 24-26)

19. The WLGA supports approaches to make it easier for people to stand for election and encourage a broader cross-section of the community to consider standing.

20. The WLGA therefore supports proposed changes to the eligibility criteria allow a citizen of any country to stand for election.

21. The WLGA however does not support the proposal to allow council staff to stand for election in their own authority. Lifting such a restriction is unlikely to have a significant impact in encouraging more candidates to stand but would disproportionately impact on good governance and employment relations. There would be a risk of increased employer-employee tensions, potential conflicts of interest and team and managerial relationships being undermined. Staff at all levels have to demonstrate impartiality and a responsibility to serve the council as a whole; this risks being compromised should an employee stand or serve as a councillor. There is a risk that where an individual is unsuccessful, he or she may have implicitly or explicitly publicly criticised colleagues, councillors or council policies during campaigning, which may affect their ability to continue in their employed role following the elections.

22. The WLGA supports proposed amendments to disqualify individuals, from standing for election, or holding office as a member of a principal council or community council in Wales, if they are subject to a the notification requirements of, or an order under, the Sexual Offences Act 2003.

Meeting expenditure of returning officers (Section 28)

23. The Bill clarifies that Returning Officers can only claim expenses properly incurred in the running of a local government elections. Personal fees in respect of services rendered during the conduct of a local government elections could not in future be claimed as they would not be deemed as "expenses".

24. The Welsh Government has opted not to proceed with the previously consulted upon proposal to incorporate the Returning Officer role within that of the Chief Executive. The WLGA did not support this proposal on grounds of local discretion, as not all Chief Executives acted as Returning Officers; the Welsh Government's position is therefore welcome.

25. When the Welsh Government previously consulted on the removal of Returning Officer fees, the WLGA's view was that an option would be for any remuneration for the oversight of local elections to be included within a single consolidated salary for the position (of whichever senior officer fulfilled the Returning Officer role).
26. Such an approach, and the removal of a specific Returning Officer fee, would require a proper re-evaluation of the post which had incorporated the substantial Returning Officer role, as noted in ALACE's submission to the Committee. The additional demands, responsibilities and personal risks of being a Returning Officer are significant and should not be dismissed. A form of this arrangement is already operated by several employing councils in Wales, where the Chief Executive is also contracted to be the Returning Officer but for no additional fee beyond their evaluated salary.

Part 2: General Power of Competence

27. The WLGA welcomes the proposed introduction of the power of general competence in Wales and has long called for the introduction of the power.
28. Whilst this new power is welcomed as it provides confidence and reinforces local government's core community leadership role. The LGA's submission notes that the power's introduction in England

 '...has assisted in providing councils greater confidence in some areas of activity and led to less legal resource being spent on considering whether an action is vires (within their authority), it has not made a radical change for councils to date.
29. The power, as drafted, is however constrained by pre-commencement limitations. As noted in the Lawyers in Local Government Wales (LLG) submission to the Committee, there are 42 UK wide and 3 Wales-only Measures/Acts with 'Local Government' in the title and wider local government-related legislation may have pre-commencement limitations on Welsh authorities. The interplay between the power and a range of other legislation creates complexity and multiple possible risks. These limitations are likely to constrain creative use of the power, which may instead be used as a power of last resort rather than first resort.
30. This is further expanded in the LGA and LLG submissions to the Committee and the LLG Wales submission outlines some potential improvements to the proposed power.

Part 3: Promoting Access to Local Government

- Duty to encourage local people to participate in local government (Section 46)**
- Strategy on encouraging participation (Section 47)**

31. The WLGA is supportive of the spirit of the Welsh Government's ambitions as councils are committed to promoting democratic engagement, public participation and openness and transparency.
32. There is already a requirement on local authorities to 'involve' the public through the Wellbeing of Future Generations (Wales) Act 2015 and it is therefore not clear what additional value a new 'public participation duty' on local authorities would achieve.
33. The Bill proposes a duty on local authorities to encourage 'local people to participate in the making of decisions by the council' and lists several areas to be covered in a participation strategy (S47 (2) a-f). Authorities promote and publish much of this information currently, have engagement strategies and involve the public, through various consultation and engagement processes around budget-setting, service design and development of strategies.
34. Councils are also increasingly involving the public in service delivery through through alternative delivery models or asset transfers to community and town councils and community groups. Many councils already provide for public involvement in formal council decision-making processes, for example, through questions to cabinet, committees or councils and some already provide for submission of public petitions.
35. The WLGA however recognises that there is always potential for improvement, innovation and sharing of good practice; the latest National Survey for Wales show that only 19% of people agreed that they could influence local area decisions. There are some paradoxes in terms of public perception and public engagement in decision-making and public services generally¹, however, councils are committed to improve their approaches to public participation. This will be a core theme within the WLGA's future improvement support programme for local government, which the Minister for Housing and Local Government has agreed to resource.
36. The WLGA does not support that the proposed participation duty or strategy duty (to be placed on councils) should extend to cover other 'connected authorities' such as community and town councils and national park authorities (S46 (2&3)). Although local authorities work in partnership with those bodies, such a proposed 'hierarchical' relationship undermines their own status, accountability and sovereignty as separate bodies. Furthermore, this will inevitably have resource implications for councils and, critically, clouds accountability and responsibility for delivering on any public participation duties. A local authority cannot be responsible for the participation in other levels of government as the responsibility (and risk of non-compliance) should rest with them as separately accountable bodies.

¹For example Hansard's annual Audit of Political Engagement typically reveals mixed levels of public involvement in participative activity (such as consultations or petitions) and a Welsh Government survey of public engagement in 2015 showed that 59% of those surveyed said they would not participate in local consultation (33% were too busy and 26% were not interested) and only 45% were interested in having a say in local government activity or how local government is run in Wales
<https://gov.wales/docs/caecd/research/2015/150612-public-views-opinions-community-engagement-local-government-final-en.pdf>

37. If such participation duties are to be introduced, they should apply separately to each of the specified bodies. As noted by the South Wales Fire and Rescue Authority's response, this duty was to apply to Fire and Rescue Authorities when first proposed in the 2016 Draft Bill, however, these bodies have not been included in this Bill.

Duty to make petition scheme (Section 49)

38. The WLGA supports the replacement of community polls with a duty to make a petition scheme; this reform will reduce burden and costs for local authorities, as well as encouraging a more accessible and immediate mechanism for communities to express their views.

Duty on principal councils to publish official addresses (Section 50)

39. The proposed duty is supported as permits councils to provide a general council contact address for councillors, rather than councillors' personal addresses. This is an approach several councils have already adopted and is a reform which the WLGA has called for, given some members' concerns about privacy in the current environment where intimidation and harassment is a risk.

Electronic broadcasts of meetings of certain local authorities (Section 53)

40. Most councils already webcast many of their meetings and are committed to openness and transparency. Most authorities are concerned about the potential increase in cost, and the balance of this additional cost with public interest, particularly for some committee meetings.

41. Public viewing figures and engagement with council webcasts however varies and tends to be limited. Viewing figures vary from authority to authority and from meeting to meeting, with full council meetings and planning meetings tend to be most popular, but only receiving between 100-350 views (depending on the size of the council). Other committees tend to have low viewing figures and local authorities therefore question the added value of additional costs and administrative burdens of broadcasting all meetings.

42. Webcasting can be costly, in terms of broadcast equipment, server and/or streaming costs and additional staff for administration and technical support. A duty to broadcast all public meetings is likely to require (based on a typical council experience) an increase from broadcasting 7 committees (Full Council, Cabinet, 4 Scrutiny committees and 1 planning committee) to an additional 13 committees, although some of these may meet less frequently, plus any joint meetings that the authority hosts.

43. Webcasting all public meetings may reduce councils' ability to hold formal meetings in communities, as mobile equipment is more expensive, requires additional technical support and broadband/data availability may be problematic. This would particularly impact scrutiny meetings where good practice for community engagement includes holding meetings in community venues. There is also a risk that a requirement to broadcast all public meetings could result in a reduction in the quality, navigability and retention of broadcasts for the viewer if this is to be met within available funding.

44. The Regulatory Impact Assessment indicates that the additional costs of broadcasting all council meetings would be in the region of £12,000 per authority per annum, based on a single contract for Wales. It remains unclear whether such a single, all Wales contract is feasible or whether an all-Wales solution could be developed by local government in the future.
45. The RIA is likely therefore to be a significant underestimate, although it is difficult to provide an accurate estimate. Most councils' broadcasting services are provided by one company, although other suppliers are used and one council uses YouTube to broadcast meetings. The navigability of the webcasts and access to meeting documents and archives varies depending on supplier. Councils also broadcast a different number of meetings and different hours of broadcast per year and have different arrangements for archiving broadcasts so that they can be viewed retrospectively.
46. Some councils do not anticipate a significant additional cost (depending on their current coverage or provision), but the average increase of those authorities who have provided estimates is an additional c£24,000 annual costs (with one projecting up to £70,000).
47. Some councils also estimate significant investment in additional equipment with one estimating an initial investment of £250,000 to equip all committee rooms with necessary equipment (should all public meetings are to be broadcast, authorities report the need to equip additional rooms as meetings some meetings will inevitably run simultaneously.) The RIA does not take account of the additional administrative burdens and implications of broadcasting all council meetings; generally broadcasting meetings requires additional staffing resources, including committee and technical staff.
48. LLG Wales' submission notes that there may be implications between this duty and other existing legislative responsibilities such as the Public Sector Equality Duty. When webcasting meetings councils will need to consider possible detriment to those with audio/visual impairments (see S51(1)(a) as well as providing translation via the webcast even where this is not provided within the meeting itself.

Conditions for remote attendance of members of local authorities (Section 54)

49. The WLGA supports the proposed amendments.
50. The WLGA supported the concept of remote attendance when first proposed as it supported access and flexibility for members, but expressed concern during the passage of the Local Government (Wales) Measure 2011 as the legislation made the provisions restrictive and effectively unworkable.
51. The WLGA therefore supports proposals to streamline the remote attendance arrangements in order to promote accessibility and support flexibility for members to attend meetings remotely, reflecting advancements and availability of modern technology.

52. As noted by LLG Wales, a saving provision was not included within the 2011 Measure's proposals for remote attendance but one has been included to ensure the validity of proceedings in the event of broadcasting failing during a meeting (S53(6)). Modern technology is not infallible and data and WIFI services can be variable and remote attendance could be subject to disruption, therefore an equivalent provision ensuring the validity of proceedings where remote attendance is not available should also be included in the Bill.

Part 4: Local Authority Executives, Members, Officers and Committees

53. This WLGA supports most reforms outlined in Part 4 of the Bill, including:

- Appointment of Chief executives (rather than a head of paid service);
- appointment of assistants to cabinets and allowing job-sharing leaders or cabinet members;
- updating family absence provisions in line with those available to employees; and
- requiring leaders of political groups to take steps to promote and maintain high standards of conduct by members of their groups.

54. The WLGA particularly welcomes the proposals to extend family absence provisions, which is in response to a WLGA request.

55. The WLGA also supports the focus on promoting high standards of members' conduct; although standards are generally good and formal complaints to the Public Services Ombudsman are low, the WLGA has committed to championing high standards and challenging poor political discourse through the recently launched Civility in Public Life campaign, working with the LGA, COSLA and NILGA².

56. The WLGA agrees that chief executives should be subject to robust and effective performance management and local authorities already implement a range of performance management arrangements for their chief executives and senior officers.

57. The WLGA shares a number of ALACE's concerns about some of the provisions of S60 regarding the process for performance management:

- the Bill should be less prescriptive and allow local flexibility for authorities to determine who should conduct a performance review (the Bill suggests the 'senior executive member', however, councils may also wish to involve other members or external peers as appropriate);
- Clause 60(3), which provides for the possibility of publication of performance reviews of chief executives, should be removed. No public employee should have their performance review published. The review should be confidential to members of the council and the chief executive;
- In order to protect personal information, the Bill needs to reference that a report about the review (shared with members) shall be exempt from publication under

² <https://www.local.gov.uk/civility-public-life>

paragraph 12 of Schedule 12A to the Local Government Act 1972 as such a report contains “information relating to a particular individual”; and

- The WLGA has previously expressed concern regarding Ministerial Guidance making powers with regards the performance management of Chief Executives as there are potential risks of Welsh Ministerial intervention in local relations and arrangements between a local authority or leader and a chief executive.

Part 5 Collaborative Working by Principal Councils

58. Local authorities are committed to working collaboratively with each other and other public services to deliver improved outcomes and has a track record of collaboration and of sharing services.
59. Councils are already delivering radical responses to the challenges faced. The city deals and growth bids, for example, are some of the most ambitious, strategic regional regeneration programmes in a generation - these have come from local leadership, collective investment, risk and reward.
60. Such a commitment to collaboration is underpinned by the fundamental principle that collaboration is a ‘means to an end not an end to itself’. The WLGA has therefore set out a framework of guiding principles to ensure that any collaborative reforms are rooted in clear and viable business cases and subject to local democratic decision-making.

Collaboration Principles

Collaboration, shared services or voluntary mergers should:

- *Be locally-driven and subject to local democratic direction.*
- *Be underpinned by a locally agreed business case that:*
 - *Outlines mutual benefit and a clear understanding of shared costs*
 - *focuses on outcomes and whether, on balance, it is likely to lead to better public service outcomes - a service collaboration or shared services is not an outcome, but a means to an end. be centred on the delivery of clear outcomes/benefits for the citizens and communities. and ensuring accessible and seamless delivery of services to stakeholders and customers.*
- *Where appropriate, take account of existing collaborative arrangements e.g. City deals, Growth Deals and or shared services.*
- *Be shaped by appropriate engagement with service users and stakeholders*
- *Seek to strengthen strategic and operational collaboration and improve the integration of front line services across public service providers.*
- *Maintain transparent and flexible governance with clear local democratic accountability and appropriate scrutiny arrangements established from the start*
- *Be developed with due consideration of “Prosperity for All” and the Wellbeing of Future Generations Act and, in particular, the ‘5 ways of working’.*

In addition, collaborative arrangements or shared services:

- *Will be treated like all services and will be subject to scrutiny and will be reviewed periodically; if an established collaborative arrangement or shared service is underperforming or is not providing value for money for one or more local authorities, it may be appropriate to review, reform or even withdraw from such arrangements. Such decisions will not be made lightly and withdrawal from an established collaborative arrangement should not be viewed as a rejection of the concept of collaboration or a lack of a commitment to reform, but a business decision based on performance, delivery of outcomes or value for money.*

61. The WLGA has also produced a Collaboration Compendium³ which lists over 300 local, regional or national collaborative arrangements or shared services ranging from coordination or delivery of technical services to large-scale, strategic services. The WLGA Council has agreed that the Compendium will be updated and reported annually to encourage a review of existing and consider new potential new collaborations.

62. Authorities already work together collaboratively through various governance mechanisms, including joint appointments, lead local authority models, shared services, local authority owned companies or joint committees (established under the Local Government Act 1972).

63. The WLGA and authorities are therefore supportive of the introduction of *voluntary* Corporate Joint Committees (described in S75 ‘Application by principal councils to establish a corporate joint committee’) as it would provide an additional collaborative model for authorities to choose where appropriate.

64. Several leaders have expressed concern about a Ministerial power to ‘mandate’ regional structures or services, as this would undermine local democracy and accountability. Furthermore, some authorities are concerned about risks to local accountability, increased complexity and administrative burden of alternative regional governance arrangements.

65. Some leaders however regard Corporate Joint Committees as an evolution from existing regional arrangements such as City Deal, school improvement consortia and regional planning and transport arrangements.

66. The WLGA Council has therefore passed a resolution noting that it:

‘...has fundamental concerns over the principle of mandation which is seen as undermining local democracy but will continue to engage and seek to co-produce the Corporate Joint Committee proposals.’

67. Much of the detail around how Corporate Joint Committees will be established and how they will operate will be determined through Regulations. This detail includes which specific areas of the listed functions would be delivered through Corporate Joint

³ <https://www.wlga.wales/SharedFiles/Download.aspx?pageid=62&fileid=2408&mid=665>

Committees, which services would be delivered locally or concurrently as well as the governance arrangements of the committees themselves.

68. The proposed Corporate Joint Committees have been the subject of extensive dialogue between the Minister for Housing and Local Government and leaders and has been considered at several WLGA meetings.
69. The Minister has been keen to involve local government in the co-production of any guidance or regulations that might be required following the Bill and the WLGA has committed to engaging with the Minister and officials in developing the concept further. WLGA officials and Monitoring Officers are therefore involved in ongoing discussions to consider the governance arrangements and implications of other relevant statutory requirements should Corporate Joint Committees be introduced in the future.

Part 6: Performance and Governance of Principal Councils

70. The Bill proposes a new performance framework for local government, repealing the Wales Programme for Improvement and performance provisions of the Local Government (Wales) Measure 2009.
71. It is widely recognised that the Wales Programme for Improvement as introduced by the 2009 Measure is no longer fit for purpose; it imposed a range of duties and features that were administratively bureaucratic which has promoted a regulatory burdensome output-oriented rather than outcome-oriented performance framework.
72. Furthermore, many of the objective-setting, planning and reporting aspects of the 2009 Measure have been superseded by the Wellbeing of Future Generations (Wales) Act 2015, which has caused additional complexity (see joint WLGA, WAO and Future Generations Commissioner guidance note⁴).
73. The Bill outlines a new performance duty based on self assessment and peer (or panel) assessment. Both concepts are well-established and are existing features of the Wales Programme for Improvement currently, but the streamlined performance duties will allow councils to better shape the assessments for organisational self-awareness and self-improvement rather than to meet external regulatory expectations.
74. The WLGA has previously provided extensive support around developing and strengthening self assessment approaches (through the Improvement Grant until 2015), which included guidance, local support and challenge and the development of a set of core characteristics⁵ to ensure that a self assessment was robust. Further self assessment guidance and frameworks have been developed since, for example, the Future Generations Commissioner's Self Reflection Tool⁶.

⁴ <https://www.wlga.wales/future-generations-and-improvement>

⁵ <https://www.wlga.wales/self-assessment>

⁶ https://futuregenerations.wales/resources_posts/self-reflection-tool-2019/

75. Self assessment is an established and core feature of both the English and Scottish local government improvement regimes, for example, the Scottish Improvement Service promotes and supports the roll-out of self-assessment through the Public Service Improvement Framework⁷.
76. Councils are committed to improving services and delivering better outcomes for their communities; the WLGA is confident therefore that councils' self assessments will be rounded, robust and used to drive improvements in governance and service provision.
77. There will remain several 'checks and balances' in the system to ensure self assessments are robust; scrutiny and the new governance and audit committees will play a key role, as will informal and formal peer challenge as well as the proposed statutory Panel Assessments. It should also be noted that the Wales Audit Office will retain an audit role through the Public Audit (Wales) Act 2004 and can undertake 'sustainable development' examinations through the Wellbeing of Future Generations (Wales) Act 2015.
78. The Minister for Housing and Local Government has confirmed that she intends to provide improvement grant funding to the WLGA to re-establish a sector-led improvement support resource for Welsh local government. This development is very welcome and will allow the WLGA to provide guidance, promote good practice as well as coordinate peer support and challenge to authorities. The WLGA is currently discussing the scope of the funding and remit with the Welsh Government and intends to work closely with the LGA in developing and coordinating peer challenge arrangements in Wales.
79. The WLGA has previously not supported the introduction of statutory Panel Assessments. The WLGA does not believe these corporate peer assessments should be made statutory as councils would undertake them on a voluntary basis. Making them statutory could turn an existing effective self-improvement process into a quasi-regulatory arrangement, which could stifle engagement, openness and ownership and undermine their value. The WLGA and local government professionals are however engaged in constructive discussions with Welsh Government officials to explore how Panel Assessments may be coordinated and delivered as effectively as possible and the WLGA's view is that any guidance should allow local flexibility in terms of panel make-up and focus, to ensure an authority can tailor it to its own needs and priorities.
80. Corporate peer challenges are credible, effective and well regarded. Peer challenges are independent and can provide some challenging messages to an authority, therefore concerns about any future Panel Assessment's objectivity are unfounded. The effectiveness and value of corporate peer reviews has been endorsed by an independent evaluation by Cardiff Business School in 2017⁸.
81. Prior to changes in the WLGA's previous improvement role, the WLGA Council had agreed that every council would receive a corporate peer review once during a rolling

⁷ <http://www.improvementservice.org.uk/psif.html>

⁸ <https://www.local.gov.uk/sites/default/files/documents/Rising%20to%20the%20Challenge%20February%202017%20-%20FINAL.PDF>

four year period (as is the case in England) and the WLGA had coordinated 8 peer reviews between 2013-15. Pembrokeshire County Council has commissioned the LGA (supported by the WLGA) to deliver a Corporate Peer Review in February 2020.

82. The proposed Ministerial powers to provide support and assistance and direction (as a last resort) are broadly supported as they largely reflect existing powers. The WLGA however does not support S102 which proposes a Ministerial power to direct a council to provide support and assistance to another council. This should be amended to a Ministerial power to 'request' support from another authority. Councils are committed to providing mutual improvement support and already share expertise and peer support where appropriate; such powers to direct are therefore unnecessary and undermine local democracy. Should an authority decide that it was unable to provide particular support to another authority, such a decision would not be taken lightly and is likely to be due to capacity or resource constraints which may have negative consequences on the performance of the authority itself.

Governance and Audit Committees

83. 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.
84. 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 proposal to increase the 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.

Part 7 Mergers and Restructuring of Principle Areas

85. The WLGA and local government are supportive of the concept of voluntary mergers as such reforms are a matter for local discretion and if individual councils jointly develop a business case and agree a merger locally, then they should be supported in their local reforms.
86. A draft 'Prospectus for Voluntary Mergers' outlining guidance and support for authorities has been co-developed through the Local Government Working Group, which was chaired by Derek Vaughan.

Parts 8 and 9: Finance and Miscellaneous Reforms

87. The WLGA supports the provisions to allow PSBs to demerge.

88. The proposed changes to the performance arrangements of Fire and Rescue Authorities have been generally welcomed by Fire and Rescue Authorities. The move away from the current performance management arrangements under the 2009 Measure are supported, as the arrangements are no longer suitable. Whilst there is support for a new performance management system grounded in the National Framework for Fire and Rescue Services, the Bill does not include significant detail and the new performance management system should reflect the differences in risk within communities and across the authority areas, as noted in the submissions from the Mid and West Wales and South Wales Fire Authorities.
89. The WLGA shares the concerns outlined by the Fire Authority submissions regarding the proposal to amend the public inquiry criteria where changes are proposed to any of the elements of the Combination Scheme Order that establishes the Fire and Rescue Authority and Fire and Rescue Service. The public inquiry provisions were introduced in 2004 to ensure due regard was given to the safety of firefighters or the community before significant reforms could be introduced. The proposed amendment would mean that a public inquiry would no longer be held for several areas of significant reform of Fire and Rescue Authorities including changes to the funding mechanisms, governance structures and systems and appointment of officers.
90. There is general support for the proposals which relate to supply of information and power to inspect. The power to give Billing Authorities the right to inspect properties will potentially incur additional costs and the recognition of this is welcomed. The proposal linking the NDR multiplier increase to the Consumer Price Index in line with England is also welcomed.
91. The Bill also modifies the Local Government Finance Act 1992 to abolish the power for local authorities to apply to consign an individual to imprisonment for non-payment of council tax. This power has already been taken away by regulation and this further change is to place it in primary legislation. Although there may be a slight deterioration in the collection rate as a result, we will continue to work with Welsh Government to consider whether any future amendments to legislation are needed to prevent loss of income through falling collection rates.