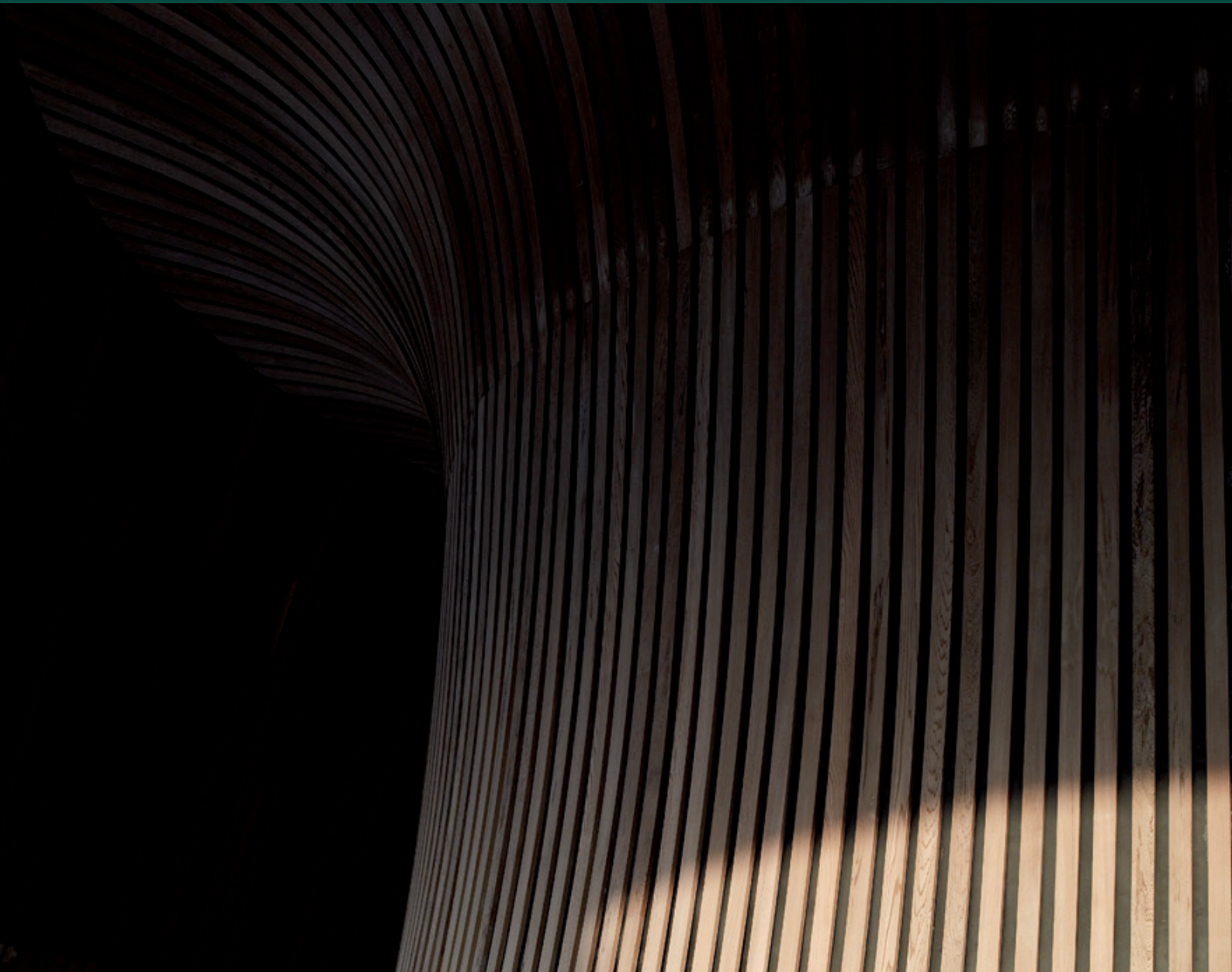


# Local Government and Elections (Wales) Bill

March 2020



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# Local Government and Elections (Wales) Bill

March 2020



# About the Committee

The Committee was established on 28 June 2016. Its remit can be found at: [www.assembly.wales/SeneddCommunities](http://www.assembly.wales/SeneddCommunities)

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## Committee Chair:



**John Griffiths AM**  
Welsh Labour

## Current Committee membership:



**Dawn Bowden AM**  
Welsh Labour



**Huw Irranca-Davies AM**  
Welsh Labour



**Mark Isherwood AM**  
Welsh Conservatives



**Delyth Jewell AM**  
Plaid Cymru



**Caroline Jones AM**  
Brexit Party

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The following Member was also a member of the Committee during this inquiry.



**Leanne Wood AM**  
Plaid Cymru

The following Member attended as a substitute during this inquiry.



**Joyce Watson AM**  
Welsh Labour

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## 1. Introduction

**1.** On 18 November 2019, Julie James AM, Minister for Housing and Local Government (“the Minister”) introduced the Local Government and Elections (Wales) Bill (“the Bill”) and accompanying Explanatory Memorandum (“EM”). The Minister made a statement on the Bill in Plenary on 19 November 2019.

**2.** At its meeting on 19 November 2019, the Assembly’s Business Committee agreed to refer the Bill to the Equality, Local Government and Communities Committee (“the Committee”) for consideration of the general principles (Stage 1), in accordance with Standing Order 26.9. The Business Committee agreed that the Committee should report by 13 March 2020.

### Terms of reference

**3.** The Committee agreed the following framework within which to scrutinise the general principles of the Bill: To consider —

- the general principles of the Local Government and Elections (Wales) Bill and the need for legislation to deliver the stated policy intention. In coming to a view on this you may wish to consider addressing the individual Parts of the Bill:
  - Part 1 - Elections
  - Part 2 – General Power of Competence
  - Part 3 – Promoting Access to Local Government
  - Part 4 – Local Authority Executives, Members, Officers and Committees
  - Part 5 – Collaborative Working by Principal Councils
  - Part 6 – Performance and Governance of Principal Councils
  - Part 7 – Mergers and Restructuring of Principal Areas
  - Part 8 – Local Government Finance

- Part 9 – Miscellaneous;
- any potential barriers to the implementation of the Bill’s provisions and whether the Bill takes account of them;
- the appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum);
- whether there are any unintended consequences arising from the Bill; and
- the financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum).

## The Committee’s approach

4. Between 22 November 2019 and 3 January 2020, we conducted a public consultation to inform our work, based on the agreed terms of reference. 61 written responses were received and published. We also heard oral evidence from a number of witnesses. The schedule of oral evidence sessions is available at Annex A.

5. In addition, we ran a public survey on the proposals in Part 3 of the Bill, “*Promoting Access to Local Government*” in order to explore the following:

- the public’s level of awareness regarding the role of local government – how it operates, how decisions are made and how people can share their views;
- whether people feel able to influence and participate in local authority decision-making processes;
- the channels through which people currently engage/ would like to engage with local government;
- barriers to engagement and how local government can be made more accessible to a wider group of people.

**6.** The survey was promoted via the Committee's and Assembly's social media channels. 511 responses were received. An analysis of the responses is available on the Committee's website.<sup>1</sup>

**7.** The timetable for us to undertake our scrutiny of the general principles of this Bill was insufficient given the breadth of its provisions. Representations were made to the Assembly's Business Committee that the 12 business weeks allocated should be extended, particularly as the timescale coincided with the UK General Election held on 12 December 2019 and the Christmas break. Stakeholders told us that this caused difficulties for many of them, either in responding to the written consultation within the timescale or in providing evidence in person. Had time permitted, we would have liked to explore some of the issues in greater depth with a wider range of witnesses. We have, however, undertaken as thorough as possible scrutiny within the specified timescale, and we are grateful to all those who engaged in the process.

**8.** Going forward, we believe that committees should be allocated more than twelve business weeks to undertake Stage 1 scrutiny of Bills of this size and nature.

## Other Committees' consideration of the Bill

**9.** The Assembly's Finance Committee took evidence from the Welsh Local Government Association ("WLGA") on 29 January 2020 and from the Minister on the financial implications of the Bill on 6 February 2020. It reported on its conclusions on 13 March 2020.

**10.** The Assembly's Legislation, Justice and Constitution Committee took evidence from the Minister on the appropriateness of the provisions in the Bill that grant powers to make subordinate legislation on 3 February 2020. It reported on its conclusions on 13 March 2020.

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<sup>1</sup> Equality, Local Government and Communities Committee, Local Government and Elections (Wales) Bill – survey analysis

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## 2. General Principles and the need for legislation

### Background to the Bill

**11.** Chapter 4 of the EM details how the Welsh Government consulted on options for local government reform in Wales following publication of the report of the Commission on Public Service Governance and Delivery (“the Williams Commission”) in January 2014.

**12.** The EM states that consultation on a draft Local Government (Wales) Bill, based on the proposals set out in the White Papers “Reforming Local Government: Power to Local People”, and “Public Services Staff Commission” was carried out between November 2015 and February 2016. The EM also notes that subsequent consultations by the Welsh Government, on the White Paper “Reforming Local Government: Resilient and Renewed” (January 2017), “Electoral Reform in Local Government in Wales” (July 2017) and the Green Paper “Strengthening Local Government: Delivering for People” (March 2018) have also informed the Bill.

### Overview of the Bill

**13.** The Bill proposes to reform electoral arrangements, by extending the voting franchise for local government elections to include 16 and 17 year-olds and foreign citizens living legally in Wales. It also makes provision to enable county and county borough councils (“principal councils”) to choose the type of voting system used in local elections in their areas.

**14.** In addition, it aims to reform and strengthen local government accountability, performance and transparency in order to “deliver modern accessible, high quality public services”.<sup>2</sup> There are also provisions that seek to increase public participation in local democracy, which the Welsh Government

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<sup>2</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 3.7

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hopes will encourage greater diversity in local government to better reflect communities served.

**15.** There are a number of provisions in the Bill which aim to facilitate greater collaboration between principal councils to ensure “more consistent and coherent regional working mechanisms”.<sup>3</sup> This includes a framework to facilitate voluntary mergers, or the restructuring of principal councils. There are also specific provisions relating to local government finance, regarding council tax and non-domestic rates.

**16.** Principal councils and eligible community councils are to be given the General Power of Competence. The provisions enable qualifying councils to “act in their communities’ best interests”<sup>4</sup> without the need to identify specific powers to undertake a particular activity.

## The Bill’s purpose and intended effect

**17.** The key purpose of the Bill, according to the EM, is to provide for the “establishment of a new and reformed legislative framework for local government elections, democracy, performance and governance”.<sup>5</sup>

**18.** The intended effect is summarised in chapter 3 of the EM. The Bill proposes to introduce changes to:

- provide local government with new ways to support and serve their communities and to reinvigorate local democracy in Wales;
- bring greater opportunities to engage, with votes for 16 and 17 year-olds and foreign citizens legally resident in Wales at local government elections;
- trial increased access to voting opportunities in a way to maximises accessibility for all;

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<sup>3</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 1.2

<sup>4</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 3.94

<sup>5</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 1.1

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- bring stronger focus on ensuring our institutions are governed effectively, with more openness and transparency;
- deliver a major package of reforms, including electoral reform, a general power of competence for principal councils and eligible community councils; more consistent and coherent collaboration and joint working; voluntary mergers and increasing public participation in local government; and
- reform and strengthen local government accountability and performance, enabling them to deliver modern, accessible, high quality public services for, and with, the communities they serve.

**19.** The general principles were broadly welcomed by stakeholders, although some areas of concern were raised. We explore these issues in depth in later chapters of this report.

**20.** The WLGA noted that whilst it supports the general principles “in terms of some particular themes around electoral reform, around governance and performance reforms”, it emphasised the need for the Welsh Government to cover the costs of implementing new policy areas:

“Welsh Government should be fully funding any new national initiatives, or the implications of any national legislation on local authorities.”<sup>6</sup>

**21.** The fire and rescue authorities raised an issue of consistency within the Bill, commenting that it is not always clear which provisions apply to them and which do not:

“for fire authorities, the legislation is quite different to for local authorities, so we have to cross-reference every single part of the local government legislation and go back to the original source to see

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<sup>6</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraphs 5-7

whether it applies to us or not, because it's not clear from the face of the Bill itself.”<sup>7</sup>

## **Our view**

**22.** Having considered the evidence presented on the wide range of provisions included in this Bill, we have concluded that we support its general principles. This report details our consideration of each of the provisions and makes recommendations where we believe improvements are needed to strengthen this legislation. We believe that the general principles should be agreed by the Assembly, and we would like to see amendments tabled during the subsequent amending stages to give effect to our recommendations.

**Recommendation 1.** We recommend that the general principles of the Local Government and Elections (Wales) Bill are agreed by the Assembly.

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<sup>7</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 9 January 2020, paragraph 576

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### 3. Part 1 – Elections

Part 1 of the Bill contains a series of provisions relating to local government elections. According to the EM, the aim of these provisions is to “reinvigorate local democracy in Wales”.

**23.** This Part introduces provisions that will change the franchise for local government elections to include votes for 16 and 17-year-olds and for foreign citizens legally resident in Wales, and the option for principal councils to choose the voting system they wish to use. Two options are provided, the first past the post system (“FPTP”) or single transferable vote (“STV”).

**24.** In addition, there are provisions in this part of the Bill that will change the electoral cycle for local government from four-year to five-year terms, provide for election pilot schemes, the registration of electors and meeting the expenditure of returning officers.

#### Sections 2-4: Right to vote in local government elections

**25.** Section 2 would extend the local government franchise to allow 16 and 17-year-olds and foreign citizens legally resident in Wales to register to vote in Welsh local government elections. This would also include any poll in Wales which uses the local government franchise, such as mayoral elections and referendums.

**26.** The Minister confirmed that, should the Bill proceed to the amending stages, she intends to table amendments at Stage 2 to allow certain prisoners to vote.<sup>8</sup> This issue is considered in further detail in chapter 9 of this report.

**27.** Whilst the Electoral Commission offered no views on the principle of extending the franchise for local government elections in Wales, it emphasised some practical implications that needed to be considered. In particular, it stated that all necessary primary and secondary legislation should be agreed six months ahead of the annual canvass activities due to begin in July 2021. It also

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<sup>8</sup> Plenary Record of Proceedings, 19 November 2019, paragraph 216

highlighted requirements to update guidance for electoral registration officers and returning officers; adequate time to ensure user testing of new registration forms; and for adequate resource to implement the changes.

**28.** The Electoral Commission also noted that the changes in the franchise would result in two separate electoral registers – one for Welsh only elections and one for UK Parliamentary elections. This, it stated, may present challenges to electoral administrators in terms of administering two separate registers, and voter confusion.<sup>9</sup>

### Votes for 16 and 17-year-olds

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**29.** The EM states that the “case for enabling 16 and 17-year-olds to vote has been well-rehearsed”, most recently in relation to the Senedd and Elections (Wales) Bill (now Act) (“the Senedd Act”). That Act, which was agreed by the Assembly on 27 November 2019 and received Royal Assent on 15 January 2020, extends the franchise for 16 and 17-year-olds in Senedd elections.

**30.** The EM refers to turnout figures for the Scottish Independence Referendum in 2014, which showed that an estimated 75 per cent of 16 and 17-year-olds voted compared to 54 per cent of 18 to 24 year olds, and notes that:

“an early experience of voting could well lead to a maintained engagement, which would hopefully lead on to a greater interest in democratic politics more generally, including standing as a candidate.”<sup>10</sup>

**31.** The Legislation, Justice and Constitution Committee noted in its report on the Senedd Bill that the majority of the evidence it received, where consultees had expressed a view on this issue, was in favour of reducing the voting age to 16 for Senedd elections.<sup>11</sup> However, it also noted reservations expressed by Professor Philp Cowley of Queen Mary University of London who suggested that reducing the voting age to 16 goes against the “direction of travel in recent years”. He

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<sup>9</sup> Written evidence, LG 42, The Electoral Commission

<sup>10</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 3.22

<sup>11</sup> Senedd and Elections (Wales) Bill, Constitutional and Legislative Affairs Committee Stage 1 report, paragraph 279

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noted that many age restrictions have changed in recent years, almost all of which “resulted in raising the age at which we allow people to do things”. Smoking, tanning booths and fireworks were cited as examples, and he noted:

“the variability in the ages at which people acquire rights and responsibilities has been diminishing over time, and is increasingly converging at 18.”<sup>12</sup>

**32.** We generally heard evidence in support of extending the franchise for 16 and 17-year-olds, with the Future Generations Commissioner for Wales describing it as “the most exciting provision” in the Bill.<sup>13</sup>

**33.** The Electoral Reform Society Cymru (“ERS Cymru”) notes that it has campaigned for the extension of the franchise to 16 and 17-year-olds for some time, and is pleased at its inclusion in the Bill. It refers to research undertaken in Scotland which shows that “engagement has extended beyond the referendum” for 16 and 17-year-olds.<sup>14</sup>

**34.** This provision was also supported by a range of other stakeholders, including trades unions, the Children’s Commissioner for Wales, Estyn, Wales Council for Voluntary Action (“the WCVA”), representatives of town and community councils in Wales, the WLGA and most of the local authorities who responded to our consultation.

**35.** The Local Democracy and Boundary Commission for Wales (“LDBCW”) informed us of an analysis it had conducted on the impact of extending the franchise to 16 and 17-year-olds on its work. We heard that the residences of 16 and 17-year-olds are usually spread out over the whole of a principal council’s area rather than concentrated within particular electoral wards. The figures used by the LDBCW demonstrated that extending the franchise to 16 and 17-year-olds would increase the number of eligible electors by less than 3 per cent in each principal council area. The LDBCW also confirmed that, on the basis of this

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<sup>12</sup> Written evidence, SE01, Professor Philip Cowley

<sup>13</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 11 December 2019, paragraph 320

<sup>14</sup> Written evidence, LG 04, Electoral Reform Society Cymru

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analysis, extending the franchise to 16 and 17-year-olds would not have a significant impact on the outcome of its current reviews.<sup>15</sup>

**36.** The Minister told us that the Welsh Government was “very excited” with the provision to extend the franchise to 16 and 17-year-olds, noting that people of this age “play a vital role in our society”. The Minister stated:

“It seems completely wrong to me that they have no say in how their local policies, councils, deliver things that are very important to them and, actually, of course, it will be more important to them going forward than it is to people at the other end of the age spectrum.”<sup>16</sup>

**37.** The Minister did not foresee any issues with inconsistencies in voting arrangements for different elections, since 16 and 17-year-olds will not be able to vote in UK wide elections, but will have the right to vote in Wales only elections. The Minister asserted that she hopes the UK Government will “follow suit”, which would “solve that problem”. The Minister concluded that:

“electoral officials are very used to dealing with different franchises for different elections. That’s the case now, and I don’t see that this adds any level of complexity that we should be worried about.”<sup>17</sup>

**38.** The Minister also stated that the Welsh Government would be “putting specific curriculum guidance into the schools in order to make sure that the first time we do this, the first-time voters have the best possible start on that”.<sup>18</sup>

## **Our view**

**39.** The majority of Committee Members support the principle of extending the right to vote in local government elections to 16 and 17-year-olds, in line with the extension already agreed for Senedd elections. We accept that differences

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<sup>15</sup> Written evidence, LG 34, Local Democracy and Boundary Commission for Wales

<sup>16</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 27 November 2019, paragraph 7

<sup>17</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 27 November 2019, paragraph 9

<sup>18</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 27 November 2019, paragraph 11

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between the franchises for devolved and non-devolved elections will exist, but are of the view that it is important that young people in Wales can have their say on issues relating to their local areas. Caroline Jones AM did not share this view and Mark Isherwood AM remained neutral.

**40.** We note that the EM refers to the high turnout among 16 and 17-year-olds during the 2014 Scottish Independence Referendum as an indication that extending the franchise engages young voters. The EM also asserts that this may lead to “greater interest in democratic politics” and “maintained engagement” in the future. We are not aware of any other evidence in support of this, therefore it will be interesting to observe whether the impact of this change will result in greater engagement and increased turnout in years to come. We believe, nevertheless, that raising awareness along with the provision of robust education among newly enfranchised 16 and 17-year-olds will be key to ensuring engagement among this cohort.

#### Votes for foreign citizens legally resident in Wales

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**41.** Voting among non-UK citizens in local government elections is currently restricted to citizens of the Republic of Ireland, the EU and the Commonwealth. Under the provisions in the Bill, this would be extended to include eligible foreign citizens, specified in the Explanatory Notes as being a person who:

- is not a Commonwealth citizen, a citizen of the Republic of Ireland or a relevant citizen of the European Union, and
- either:
  - does not require leave under the Immigration Act 1971 to enter or remain in the UK, or
  - does require leave to enter or remain but for the time being has such leave (or is treated as having such leave by virtue of an enactment).

**42.** The EM does not specify any evidence to support the inclusion of the provision, but states that:

“The Welsh Government see no reason why a person who is resident in Wales and who is lawfully in the country should not be eligible to register to vote in Welsh local government elections, irrespective of their nationality.”<sup>19</sup>

**43.** The Minister told us that it is a matter of “political conviction”,<sup>20</sup> and that it is the Welsh Government’s belief that:

“if you contribute to our society then you should have a say in how it’s governed. And so, if you have the right to be here, then you are contributing to that society and you have the right to say how it’s governed.”<sup>21</sup>

**44.** A Welsh Government official added that a consultation on local government electoral reform conducted in 2017 included a specific question on foreign citizens being able to vote in local government elections. Almost three-quarters (73 per cent) of respondents to that consultation supported the extension of the franchise.<sup>22</sup>

**45.** Amendments to the Senedd Act agreed by the Assembly during Stage 2 proceedings enable eligible foreign citizens to vote in Senedd elections held after 5 April 2021.

**46.** Many of the stakeholders who presented evidence were supportive of extending the right to vote to eligible foreign nationals, including the trade unions, with UNISON Cymru / Wales (“UNISON”) noting that it is:

“Fully supportive of all lawful residents in Wales being given the right to vote in elections.”<sup>23</sup>

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<sup>19</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 3.26

<sup>20</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 27 November 2019, paragraph 15

<sup>21</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 27 November 2019, paragraph 14

<sup>22</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 27 November 2019, paragraph 16

<sup>23</sup> Written evidence, LG 17, UNISON Cymru / Wales



**47.** Others who voiced support for the provision include the WLGA, some local authorities who responded to our consultation, representatives of the town and community council sector in Wales and the WCVA.

**48.** Many other stakeholders did not express a view on the provisions.

**49.** The consultation response submitted on behalf of the Conservative Group of the City and County of Swansea Council stated that it strongly disagreed with extending the franchise to non-UK citizens.<sup>24</sup>

**50.** The EM refers to there being approximately 33,000 foreign citizens in Wales in 2017 who were not citizens of the Republic of Ireland, the EU or the Commonwealth, although it is unknown how many were of voting age.<sup>25</sup> The LDBCW told us that there is no specific data available on the number of foreign nationals not presently eligible to vote broken down by electoral ward within Wales.<sup>26</sup> However, it did not believe that extending the franchise to eligible foreign citizens would impact its programme of reviews.<sup>27</sup> The WLGA suggested that some local authorities could be disproportionately affected by the provision given the likelihood of a higher concentration of those citizens in the cities and larger urban areas.<sup>28</sup>

**51.** While we heard that ERS Cymru does not have a view on extending the franchise to foreign citizens living legally in Wales, it stipulated that communication of such an extension is vital so that those newly enfranchised are engaged and aware that they have the right to vote.<sup>29</sup>

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<sup>24</sup> Written evidence, LG 26, Conservative Group, City and County of Swansea Council

<sup>25</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 9.14

<sup>26</sup> Written evidence, LG 34, Local Democracy and Boundary Commission for Wales

<sup>27</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 9 January 2020, paragraphs 361-364

<sup>28</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraphs 23-24

<sup>29</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 11 December 2019, paragraph 95

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## Our view

**52.** The majority of Committee Members support the principle of extending the right to vote in local government elections to eligible foreign citizens, in line with the extension already agreed for Senedd elections. We appreciate that differences between the franchises for devolved and non-devolved elections will exist, but believe it is important that people living legally in Wales are able to have their say on issues relating to their local areas. Caroline Jones AM and Mark Isherwood AM did not share this view.

### Section 4: Duty to promote awareness and provide assistance

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**53.** Section 4 places a duty on principal councils to promote awareness among relevant young people of the arrangements to register to vote and to help those young people to register as electors. In order to do this, the Welsh Government anticipates that each council will need to allocate approximately 50 per cent of an officer at grade 43 (senior officer or above) to undertake “relevant activities”.

**54.** Despite the extension of the right to vote for foreign citizens legally resident in Wales, section 4 does not place a duty on principal councils to promote awareness among this cohort.

**55.** A Welsh Government official explained that the duty to raise awareness among young people was linked to local authorities’ duty of corporate parenting towards looked after children. She noted the Welsh Government’s intention to table amendments to expand the category of children covered by section 4(2)(b) to include “care leavers”.<sup>30</sup>

**56.** Our report on Diversity in Local Government, published in April 2019, concluded that should voting rights be extended to 16 and 17-year-olds, there should be an accompanying programme of political education for young people to ensure they are able to fully engage in the process. We recommended:

“Recommendation 17. We recommend that in the forthcoming local government bill, the Welsh Government includes provisions to roll out

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<sup>30</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 27 November 2019, paragraph 24

an adequate level of political education across schools in Wales. Young people from the ages of 14 and 15 should receive this education, particularly should proposals to extend voting rights to 16 and 17-year-olds be implemented. This programme of political awareness should be accompanied by clear lesson plans to empower teachers to deliver the lessons.”<sup>31</sup>

**57.** This recommendation was accepted in principle by the Welsh Government, its response noted:

“we are working with stakeholders and partners to introduce educational material for those who are newly enfranchised along with communication strategies to raise awareness in preparation for National Assembly elections in 2021 and the local government elections in 2022. This will include development of resources for schools to use with their learners.”<sup>32</sup>

**58.** The duty to promote awareness among young people was welcomed by the Electoral Commission, however it suggested that consideration should be given to applying the duty to electoral registration officers instead of, or as well as, the principal council. Its rationale was that the independent individual with legal responsibility for maintenance of the electoral register should also have a form of responsibility to promote registration.<sup>33</sup> The Wales Electoral Coordination Board accepted that there is a “clear link” between the responsibilities, but cautioned that there would be resource implications.<sup>34</sup>

**59.** The duty was also welcomed by ERS Cymru. However, it voiced concerns that the current framework for political education in schools is not adequate to

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<sup>31</sup> Equality, Local Government and Communities Committee, *Inquiry into Diversity in Local Government*, April 2019

<sup>32</sup> Equality, Local Government and Communities Committee, *Diversity in Local Government, Welsh Government response*

<sup>33</sup> Equality, Local Government and Communities Committee, *Record of Proceedings*, 15 January 2020, paragraph 47

<sup>34</sup> Equality, Local Government and Communities Committee, *Record of Proceedings*, 15 January 2020, paragraph 49

raise awareness among young people. Referring to its experience of working with schools, we heard from ERS Cymru that:

“There’s no consistency across political education in Wales and what we need to see is a roll-out of better political education in the new curriculum, but also additional things in place now, such as discussion in form time and debate in assembly that really sets political education in motion, ahead of the curriculum coming in.”<sup>35</sup>

**60.** It also stated that effective engagement with young people will be required to “drive” them to polling stations. ERS Cymru believes the duty to promote awareness should be extended to the Welsh Ministers, not only principal councils. It says this would provide for a co-ordinated “central campaign that reaches all attainers and those newly enfranchised”.<sup>36</sup> ERS Cymru elaborated on how political education could be strengthened to ensure greater understanding and awareness among young people:

“I think we’d like to see clearer plans from the Welsh Government. I don’t know if it necessarily needs to be legislative, but definitely some sort of guidance being issued to local authorities on what should be done—a co-ordinated, central plan from Welsh Government. We have called for a duty to be extended to Welsh Ministers here. I think that that is going to be needed if they don’t do those other things.”<sup>37</sup>

**61.** ERS Cymru also notes a research project it had undertaken with the Assembly Commission, and that the findings “highlight the need for a comprehensive pan-Wales programme of political education both within and outside of the curriculum”. ERS Cymru goes on to state that there is a “clear tension” between the extension of the franchise for 2021 and 2022 elections and the “timeline for the rollout of the curriculum in 2025”. It states further that new resource needs to be developed, with coordination between the Welsh

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<sup>35</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 11 December 2019, paragraph 101

<sup>36</sup> Written evidence, LG 04, Electoral Reform Society Cymru

<sup>37</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 11 December 2019, paragraph 109

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Government and the Assembly Commission. We heard it is important that the Welsh Government ensures it is properly engaged in plans to raise awareness ahead of the 2021 Senedd election to ensure consistency between those and the 2022 elections.<sup>38</sup>

**62.** The Electoral Commission emphasised the importance of undertaking refresher activities close to the date of any election in order to remind young people at the appropriate time.<sup>39</sup>

**63.** We heard from the Wales Electoral Coordination Board that consistency is “of paramount importance” when planning electoral events, and it suggested a national framework for public awareness would be preferable to “22 local authorities leading their own public awareness campaigns in a slightly different manner”.<sup>40</sup> The Association of Electoral Administrators agreed that any additional promotion activities should be properly resourced and follow a consistent approach.<sup>41</sup>

**64.** ERS Cymru noted that there is “a democratic deficit across the whole of the Welsh population” but that teaching young people in Wales about Wales should be prioritised.<sup>42</sup>

**65.** The Welsh Language Commissioner emphasised that, in order to comply with the requirements of the Welsh language standards, all information provided by local authorities to promote young people’s awareness should be provided in Welsh.<sup>43</sup>

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<sup>38</sup> Written evidence, LG 04, Electoral Reform Society Cymru

<sup>39</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 15 January 2020, paragraph 29

<sup>40</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 15 January 2020, paragraph 23

<sup>41</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 15 January 2020, paragraph 24

<sup>42</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 11 December 2019, paragraph 107

<sup>43</sup> Written evidence, LG 47, Welsh Language Commissioner

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**66.** The WLGA voiced its support for the Welsh Government’s intention to extend the duty to include care leavers by way of an amendment at Stage 2, saying that it “makes sense” as the duty already includes looked-after children.<sup>44</sup>

**67.** In relation to raising awareness among other groups, a Welsh Government official told us that the Welsh Government has “quite a significant programme of awareness raising planned” including a specific stream of work looking at how to engage with foreign citizens and raise their awareness of the franchise extension.<sup>45</sup> The Minister acknowledged that “there are very large sections of the voting public that could do with increased awareness”, adding that the Welsh Government would not “want to confine any awareness raising to a particular set of electors, other than the very specific circumstances of brand-new electors coming on because of their age”.<sup>46</sup>

**68.** A Welsh Government official went on to explain that the Welsh Government would be “developing a two to three-year campaign to engage the entire electorate, particularly targeting the newly enfranchised”.<sup>47</sup>

**69.** The Minister did not believe there would be merit in extending the duty to promote awareness to electoral registration officers, noting that local authority members are best placed to engage the public:

“it’s really important to make sure that the duty rests on people who can actually make a difference to it, and I really genuinely don’t think that an electoral registration officer is the right place in the authority to influence that next stage.”<sup>48</sup>

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<sup>44</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 30

<sup>45</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 27 November 2019, paragraph 24

<sup>46</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 15

<sup>47</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 17

<sup>48</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraphs, 19-24

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## Cost implications for Welsh Government and Local Government

**70.** Figures provided in the Regulatory Impact Assessment (“RIA”) demonstrate that promoting awareness among young people and providing support to register is estimated to cost a total of £1.74 million for principal councils between 2020-2022.<sup>49</sup>

**71.** The Welsh Government will incur some costs for undertaking activities to support the extension of the franchise. Much of the cost for awareness raising of the extension of the right to vote will be met by the implementation of the Senedd Act. This was confirmed by the Minister, following the Assembly’s agreement of the Senedd Act. The Minister confirmed that the Welsh Government would meet the costs of the required changes to the electoral management system software and that £800,000 had been committed for awareness raising among new and existing voters.<sup>50</sup>

**72.** In a letter to the Committee on 19 December 2019, the Minister noted that “this significant development in democratic inclusion will grant additional responsibilities to local authorities in respect of registering new electors and promoting the right to vote to the extended franchise”. The letter confirmed that:

“the Welsh Government will make available a minimum of £1m in the 2020/21 financial year to support electoral administration teams in implementing these changes.”<sup>51</sup>

**73.** In a statement issued on 3 February 2020, the Minister announced the Electoral Reform Support Grant, which will be made available to all local authority electoral services teams to support their work in implementing electoral reform. The statement specified:

“A revenue grant of £100,000 will be made available to every Electoral Services team over 2 years. The first payment of £50,000 will be made

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<sup>49</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, Table 7

<sup>50</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 8

<sup>51</sup> Letter from the Minister for Housing and Local Government, 19 December 2019

in the current financial year 2019/20. The second payment of £50,000 will be made in the 2020/2021 financial year.

The aim of the grant is to assist electoral teams with the pressures associated with the extension of the franchise, canvass reform and other Welsh electoral reforms and in particular to support local authorities with registering newly enfranchised individuals. The terms of the grant will be flexible, with electoral teams able to use it in the most appropriate way for their local authority, provided the spend relates to the electoral reform programme.”<sup>52</sup>

**74.** The Minister confirmed to us, that once there is certainty on the number of newly enfranchised people, the funding would be transferred directly into the Revenue Support Grant.<sup>53</sup>

### **Cost implications for the Electoral Commission**

**75.** While principal councils have a duty to promote awareness among young people, largely achieved through schools, there is a cohort that will not be captured via this method, such as those not in education, employment or in training.

**76.** There is no specific provision that places a duty on the Electoral Commission to promote awareness among this cohort. However, the Welsh Government, in its RIA, estimates a one-off cost of £112,000 to the Electoral Commission. This will be for awareness raising activities about the extension of the franchise for local government elections.

**77.** The Electoral Commission noted that it runs public awareness campaigns ahead of each election to encourage voter registration. It said that, should the

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<sup>52</sup> Written Statement by the Welsh Government, Launch of Electoral Reform Support Grant, 3 February 2020

<sup>53</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraphs 11-13



franchise be extended, it would undertake targeted public awareness activities aimed at new electors.<sup>54</sup>

## **Our view**

**78.** We believe that the duty on principal councils to promote awareness and provide support is key to ensuring that the newly enfranchised 16 and 17-year-olds understand their rights and are equipped with sufficient information to make their own choices. We are aware that work is currently underway to increase awareness among 16 and 17-year-olds of their right to vote in the 2021 Senedd election. Co-ordination between relevant partners, including the Assembly Commission, the Welsh Government and principal councils will be crucial for the effective implementation of the extension of the right to vote in both sets of upcoming elections.

**79.** As we recommended in our report on Diversity in Local Government, we believe that the Bill should include provisions to roll out an adequate level of education on politics and democracy in Wales across all schools. In particular, young people from the ages of 14 and 15 should receive this education to prepare them for voting at 16 years old. This programme of political awareness should be accompanied by clear lesson plans to empower teachers to deliver the lessons.

**80.** We welcome the Welsh Government's intention to extend the definition of "relevant young people" in this section to include care leavers. It is important that this group of young people is captured within the duty to ensure that they are aware of their right to vote. We urge the Welsh Government to press ahead with this change by bringing forward amendments during the amending stages.

**81.** We believe there is merit in the suggestion by the Electoral Commission that the duty should extend to electoral registration officers in addition to principal councils. We note the reservations expressed by the Minister, however we believe that placing the duty on a specific individual will assist in driving this forward and in co-ordinating actions on behalf of a principal council. We are aware of examples of good practice, where individual local authorities have

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<sup>54</sup> Written evidence, LG 42, The Electoral Commission

proactively engaged with young people, and would like to see electoral registration officers come together to share such examples.

**82.** We understand the Welsh Government's rationale of focussing on newly enfranchised young people in this duty, however we are conscious that there is a general need to raise engagement and awareness levels across society. We therefore welcome the commitment by the Welsh Government to undertake a wider public awareness campaign over the next two to three years.

**Recommendation 2.** We recommend that the Bill should be amended to include specific provision to roll out an adequate level of education on politics and democracy in Wales across all schools. In particular, young people from the ages of 14 and 15 should receive this education to prepare them for voting at 16 years old. This programme of political awareness should be accompanied by clear lesson plans to empower teachers to deliver the lessons.

**Recommendation 3.** We recommend that the duty in section 4 is extended to include a specific duty on electoral registration officers to promote awareness and provide assistance to relevant young people.

## Voting systems for elections to principal councils

### Sections 5-10: Two voting systems

**83.** Sections 5 to 10 make provisions to introduce two options for voting systems for local government elections, and the processes involved in changing the voting system. The options are First Past the Post (“FPTP”) and Single Transferable Vote (“STV”). Provisions in these sections give principal councils the power to choose and change the voting system used.

**84.** The EM notes that the FPTP system has been the only voting system used to elect local councils in Wales since the introduction of elected local government in the late 19th Century. It also states that supporters of FPTP take the view that voting and counting procedures are “simple, familiar and relatively cheap”. STV on the other hand is considered to produce “results which generally reflect the proportions of votes cast for the different political parties, groups and independents in an individual electoral area and across the election as a whole”.<sup>55</sup>

**85.** The Welsh Government’s White Paper Consultation – Reforming Local Government: Resilient and Renewed sought views on providing councils with the option to choose which voting system is used. The summary of responses notes:

“On the subject of choice, 33 out of 35 respondents who made comments about this proposal disagreed and would prefer to keep one voting system for the whole of Wales. The main reason for this was that it may lead to confusion in the public if neighbouring authorities had different voting systems.”

**86.** The provisions in the Bill do not place a duty on principal councils to change or seek views to change the voting system, but enables a council to decide for itself on the system to use. Any proposal to change the voting system would require the support of two thirds of all council seats in the relevant council. Following a change, the provision in section 9(5) prevents principal councils from

<sup>55</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraphs 3.28–3.31

reverting back to its previous voting system until at least two ordinary elections have been held under the new voting system.

**87.** Most of the stakeholders who provided evidence did not support the provisions to enable principal councils to choose which voting system to use. The WLGA stated its preference is:

“a clear and consistent voting system across all local authorities to avoid complexity and risk of voter confusion.”<sup>56</sup>

**88.** It added that the complexity of allowing principal councils to choose their own voting system could be “quite horrendous” with the potential for chaos a real concern.<sup>57</sup>

**89.** Similar concerns and opposition to the provision were expressed by all of the principal councils and representatives of town and community councils who responded to the consultation.

**90.** SOLACE acknowledged that there may be “perceived benefits” of allowing principal councils a choice<sup>58</sup>, but suggested that the risk of complexity and confusion around having two voting systems:

“could have the potential to disenfranchise voters with the worst-case scenario being an impact on turnout.”<sup>59</sup>

**91.** The Electoral Commission, whilst noting the electoral system to be used for local government elections is a matter for the Welsh Government and the Assembly to determine, concurred that there are risks and challenges associated with the provision. This includes an increased risk of voter confusion and administrative challenges. The Commission noted that it would be required to publish two sets of guidance - one on each voting system, for electoral

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<sup>56</sup> Written evidence, LG 54, WLGA

<sup>57</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 38

<sup>58</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 372

<sup>59</sup> Written evidence, LG 51, SOLACE Wales

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administrators, for political parties, candidates and agents, and run separate public awareness campaigns. It commented that managing an effective public awareness campaign would be a major challenge as ensuring that voters only saw or heard advice relevant to their voting system would be “problematic”, leading to a high risk of voter confusion. The Commission concluded that such issues are not insurmountable, but that it would be simpler if one methodology is used.<sup>60</sup>

**92.** The Electoral Commission also referred to the ethos of consistency in electoral planning that has developed in Wales over recent years, and said it would be disappointed if that co-ordinating activity was to be undermined by different systems operating in different counties.<sup>61</sup> It emphasised that different voting systems would make national planning and consistency very challenging, whereas there has been strong support in Wales for consistency and co-operation in order to deliver “efficient and trusted electoral processes”.<sup>62</sup>

**93.** The Wales Electoral Coordination Board concurred, highlighting the potential increased risk for administrative procedures due to confusion arising from dealing with two separate systems.<sup>63</sup>

**94.** Representatives from the town and community council sector voiced concern at the prospect of an STV election for a principal council taking place on the same day as a FPTP election for a town or community council. The WLGA agreed, stating that it could “cause total confusion”.<sup>64</sup>

**95.** Other stakeholders who raised concern at the proposals for two voting systems include:

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<sup>60</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 15 January 2020, paragraph 59

<sup>61</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 15 January 2020, paragraph 59

<sup>62</sup> Written evidence, LG 42, The Electoral Commission

<sup>63</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 15 January 2020, paragraph 64

<sup>64</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 36

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- Cytûn Churches Together in Wales;
- the Children's Commissioner for Wales;
- the Gwent Police and Crime Commissioner;
- UNISON Cymru / Wales;
- Professor Ailsa Henderson;
- Individual 2; and
- the WCVA.

**96.** UNISON told us that whilst it does not have a firm position at a Wales or UK level on the type of voting system that should be used for local government elections, it believes that a variety of electoral systems across Wales would not be in anyone's best interests. However, it stated that it was in favour of reviewing the current system as it does not believe that "the status quo is sustainable going into the future".<sup>65</sup>

**97.** The LDBCW told us that it did not foresee any difficulties in terms of the impact on its reviews should different voting systems be operated by different principal councils, as each electoral review is done for a specific council.<sup>66</sup>

**98.** The Minister told us that two voting systems had been provided for in the Bill in order to devolve power to local government, noting that it is important for local authorities to decide as to the voting system that works best for them, rather than the Welsh Government mandating which system to use. The Minister did not envisage that different local authorities implementing different voting systems would cause undue problems for the public.<sup>67</sup>

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<sup>65</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 9 January 2020, paragraphs 492-493

<sup>66</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 9 January 2020, paragraph 370

<sup>67</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 27 November 2019, paragraph 32; Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraphs 27-29

**99.** The Minister referred to Assembly elections as an example of a system which elects members using both FPTP and proportionality arrangements, which voters have been able to understand, adding that the concerns around confusion demonstrated:

“a very pessimistic view of the capabilities of the various politicians involved in the process, and the electoral registration officers themselves, and actually just the way that the various local authorities are able to run things.”<sup>68</sup>

**100.** The Minister acknowledged, however, that the “right guidance” would be needed if different voting systems are being used by different principal councils.<sup>69</sup>

**101.** The provisions for electoral reform were welcomed by ERS Cymru. Despite this, it states its preferred option would be the “full rollout of STV for all council elections at the same time”. We heard of its “major concerns” that it is “not a big enough step forward” and the likelihood that “very few councils” would take the opportunity to change their system. It stated:

“What we would say is that we think the Welsh Government should reword the Bill to roll out STV wholesale.”<sup>70</sup>

**102.** To support this, it referred to evidence from Scotland, noting a reduction in uncontested seats to 0 in the two local government elections following introduction of STV (2007 and 2012) and 3 uncontested seats in 2017.<sup>71</sup> In New Zealand, where local authorities are able to choose their own system, 11 of 67 local

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<sup>68</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 32

<sup>69</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 40

<sup>70</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 11 December 2019, paragraph 117

<sup>71</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 11 December 2019, paragraph 121

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authorities intended to use STV in the 2019 elections.<sup>72</sup> It recognised that it could be a risk to have “a patchwork of electoral systems”.<sup>73</sup>

**103.** ERS Cymru also said that a further benefit of STV is that it can promote diversity among candidates as it can be linked to integrated quotas, although it did voice caution about “any electoral system being seen as a panacea for diversity”.<sup>74</sup> Women’s Equality Network (“WEN”) Wales concurred that STV should be rolled-out across Wales, combined with integrated gender and diversity quotas, rather than allowing councils to choose which voting system they use; it stated:

“By allowing each local authority to choose whether to move to a proportional representation model, the Bill creates a postcode lottery, confusion amongst voters, and allows LAs to ‘opt-out’ of an important shift that could bring about much needed change regarding diversity and equal representation of women and men across Welsh councils.”<sup>75</sup>

**104.** Other respondents to the consultation who supported the roll-out of STV for all local government elections in Wales included Professor Ailsa Henderson, Individual 3, and the Opposition Group on the City and County of Swansea Council.

**105.** Local government representatives were not supportive of introducing STV for local government elections. The WLGA stated:

“I think there will be quite a strong view against an STV system as well at local government level.”<sup>76</sup>

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<sup>72</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 11 December 2019, paragraph 119

<sup>73</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 11 December 2019, paragraph 149

<sup>74</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 11 December 2019, paragraph 122

<sup>75</sup> Written evidence, LG 08, Women’s Equality Network Wales

<sup>76</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 37

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**106.** The WLGA were of the view that the STV system could disadvantage independent candidates who would not have the support of political parties behind them,<sup>77</sup> and members representing rural constituencies who would likely be covering larger geographical areas.<sup>78</sup> Counter arguments were provided by ERS Cymru, who referred to the evidence from election results in Scotland to demonstrate that independent candidates had benefited from STV, and asserted that whilst constituencies may be larger, voters feel more effectively represented if they can see a link between their vote and who represents them.<sup>79</sup>

**107.** SOLACE referred to the practical implications of introducing STV, including learning lessons from Scotland. We heard that implementing STV across all local authority areas was advantageous in terms of bringing consistency and enabling officers to assist others when problems arose. In particular, SOLACE emphasised that STV would need electronic counting to be in place:

“To run STV without electronic counting would be extremely difficult and would significantly lengthen the counting process over days.”<sup>80</sup>

**108.** Chris Highcock provided evidence on the experience of Scottish local authorities in implementing STV, his observations include:

- “Manual STV elections are possible – some councils do count by-elections manually - but for multiple vacancies across several wards such an approach would be time consuming and introduce potential for human error;
- The transparency of elections is in some ways enhanced by electronic counting as the data generated allows a deeper understanding of voting patterns than is available manually;

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<sup>77</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 48

<sup>78</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 54

<sup>79</sup> LG 4a, Additional information from ERS Cymru

<sup>80</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 374

- The procurement of an eCounting system is a major procurement exercise that takes around two years from tender to deployment.”<sup>81</sup>

**109.** The RIA notes that additional costs would be incurred should a principal council opt to change its voting system, but that these costs are currently unknown.<sup>82</sup> The Minister confirmed in her letter of 19 December 2019 that it is not the Welsh Government’s intention to provide financial incentives for principal councils who wish to change their voting system, adding that if a council decided to make such a change, she would:

“explore whether funding could be made available, for example to pay for electronic counting programmes and machines if the Welsh Government were to impose electronic counting.”<sup>83</sup>

**110.** The Minister did not believe that the Bill should mandate the roll-out of STV across all local authorities, emphasising her belief that authorities should be able to decide their own electoral system. The Minister added that current arrangements would prevent the immediate roll-out of STV, where most local authority wards are a mix of single-member and multi-member wards. Only two authorities currently have multi-member wards across the whole council area, which are necessary for STV.<sup>84</sup>

**111.** The Minister acknowledged that having an electronic counting system in place for STV would be “optimal”, but did not believe that the absence of a system should be a barrier for a local authority wishing to change its system:

“It’s perfectly possible to do it manually. It’s not optimal, because it takes much longer. [ ] There are several manual systems that work perfectly adequately. What they are is slow, and so the politicians are obviously in a state of anxiety, because they have to wait a lot longer

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<sup>81</sup> Written evidence, LG 53, Chris Highcock

<sup>82</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 9.67

<sup>83</sup> ~~Letter from the Minister for Housing and Local Government~~, 19 December 2019

<sup>84</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 51

for the count to come, but it's accurate—it's just slow. So, I wouldn't want to stop it because we haven't got a tested electronic voting system.

Optimally, you'd have an electronic voting system in place as well, but it's not the end of the world if you haven't got one.”<sup>85</sup>

## Section 11: Initial review by the Local Democracy and Boundary Commission for Wales

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**112.** The LDBCW has a responsibility to monitor and review the areas and electoral arrangements relevant to the local government structure in Wales. Section 11 of the Bill provides that the Welsh Ministers, on being notified that a principal council has made a resolution to change its voting system, may direct the LDBCW to conduct an initial review of the principal area of the council.

**113.** The summary of powers to make directions within the EM notes that:

“The Direction will be triggered by notice of a successful resolution from the council in question. The Direction will instruct the Local Democracy and Boundary Commission as to when to submit final recommendations. The procedure for the review is set out in Schedule 1 to this Bill. As such an Assembly procedure is not considered appropriate.”

**114.** The procedures in Schedule 1 specify the powers to instruct a review and enable the Welsh Ministers to give “general directions about the conduct of initial reviews”. It also provides powers for the Welsh Ministers to direct the LDBCW to stop conducting an initial review or to conduct another initial review following publication of an interim report.

**115.** The LDBCW confirmed that, should a new voting system be introduced by a principal council, it “would be comfortable” to carry out the initial review required, although it noted that additional resources may be required should the

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<sup>85</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraphs 48-49

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requirement have a significant impact on its existing work programme. It explained:

“from an operational perspective, this current review programme we’re currently delivering is actually quite important, because there are some local authorities who haven’t been reviewed for a number of years. So, this review programme gives everyone the same starting point. So, if you ask for an initial review, we know that we’re starting from the point of a local authority that has been reviewed, they’ve got new electoral wards in place. It would be possibly less complicated than if you asked us to do it 10 years ago, because now everyone’s got better electoral parity, there are clear electoral ward lines. Colleagues in local government can provide us with the correct electorate figures, so we could do a preliminary light-touch look at it first to see whether it’s realistic or not for STV to take place in that particular local authority.”<sup>86</sup>

### Section 13: Rules about the conduct of local elections in Wales

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**116.** Section 13 amends the Representation of the People Act 1983 by inserting a new section 36A which would apply rules for local elections in Wales.

**117.** The Electoral Commission called for the Welsh Ministers to be required to consult the Commission on the rules to be made under the new section 36A to match the requirement under the existing section 36. It explained that such a provision would enable the Commission to provide the “Assembly / Senedd with independent, expert advice on the workability of the legislation”.<sup>87</sup> Whilst noting that the Welsh Government understands that situation, the Commission emphasised that a requirement on the face of the Bill would provide clarity.<sup>88</sup>

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<sup>86</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 9 January 2020, paragraphs 431-432

<sup>87</sup> Written evidence, LG 42, The Electoral Commission

<sup>88</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 15 January 2020, paragraphs 76-78

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## Our view

**118.** We acknowledge that the majority of the evidence received oppose the provisions that allow principal councils to choose their own voting system. We sympathise with the concerns about the potential for voter confusion and administrative challenges associated with having different arrangements across Wales.

**119.** Despite our reservations, we also recognise the potential benefits of proportional electoral systems such as STV, particularly as a means of increasing diversity among candidates standing for election. As such, we welcome its inclusion as an option, but also appreciate the limited appetite among principal councils at present to change their voting systems. We also accept the Minister's stance that she is not in a position to mandate a change in voting arrangements across all principal councils in Wales.

**120.** We believe that it is appropriate for STV to remain as an option for principal councils as some may wish to make the change in future. However, we are concerned that the current lack of appetite for change may result in limited progress in the years to come. We would therefore like to see the Welsh Government actively engaging with the WLGA, principal councils and communities across Wales to continue the dialogue and debate around reforming electoral arrangements.

**121.** Caroline Jones AM advocates the immediate mandating of the STV system for elections to all principal councils across Wales.

**122.** We sympathise with the request made by the Electoral Commission that the Welsh Ministers should be required to consult it on rules made for local elections in Wales. The Electoral Commission is recognised as an independent body with responsibility for overseeing elections, therefore we believe it is appropriate that it be consulted.

**Recommendation 4.** We recommend that the Welsh Government undertakes an engagement programme with the WLGA, principal councils and communities across Wales around reforming voting arrangements for local government elections. This work should include giving consideration to the impact that STV could have on increasing diversity among candidates and

exploring mechanisms for citizens to express their views to principal councils on the voting system used.

**Recommendation 5.** We recommend that the provision in section 13 is amended to include a duty on the Welsh Ministers to consult with the Electoral Commission before it makes rules about the conduct of local elections in Wales.

## Electoral cycles

### Sections 14-16: Change of electoral cycle from four to five year terms for principal councils and community councils

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**123.** Sections 14, 15 and 16 include provisions to change the electoral cycle from four to five year terms, which would bring local government elections into line with other parliamentary bodies, such as the UK parliament and the National Assembly for Wales.

**124.** There was broad support for this provision among the majority of respondents who offered a view on this issue, including among local authority and town and community council representatives. One differing view was provided by Beaumaris Town Council, which stated:

“Councillors believed four years rather than five years should be the agreed time of elected service.”<sup>89</sup>

**125.** The LDBCW commented that the main impact of this provision on its work is that:

“more reviews could potentially be completed between each electoral cycle.”<sup>90</sup>

**126.** The LDBCW told us that the ideal situation in it undertaking reviews of all 22 local authorities in Wales, would be to undertake 11 during the first electoral cycle and the remaining 11 during the subsequent cycle. However, because of the way

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<sup>89</sup> Written evidence, LG 40, Beaumaris Town Council

<sup>90</sup> Written evidence, LG 34, Local Democracy and Boundary Commission for Wales

the legislation is framed it would not have a full five year period to conduct 11 reviews during the first cycle. It said that it may need additional resources should it be required to conduct the work within a shorter timescale, but that the situation was resolvable.<sup>91</sup>

### Section 17: Extension of power to change ordinary day of local elections in Wales

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**127.** Section 17 provides the Welsh Ministers with powers to vary, by order, the day of ordinary local government elections. The rationale for such a provision has not been included in the EM, however, Table 5.1 states that:

“The power to change the ordinary day of local government elections has implications for the administration of, and preparations for, those elections. It would amend existing legislation in relation to local government elections therefore the affirmative procedure is appropriate.”

**128.** The Electoral Commission commented that current provisions, contained in section 37ZA of the Representation of the People Act 1983, restrict powers to change the date of an ordinary election by requiring that the Order to change the date is made no later than 1 February in the year before the year it is due to take effect. It notes there is no similar provision in this Bill and calls for its inclusion in order to prevent the date of an election being changed at short notice, which it believes could have a negative impact on voters, campaigners and electoral administrators.<sup>92</sup> The Commission stressed that it would like to see:

“a measure that is common sense to ensure that that type, or any type of electoral event in Wales isn’t able to be called at short notice, which disadvantages, I think, voters in Wales.”<sup>93</sup>

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<sup>91</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 9 January 2020, paragraphs 384-389

<sup>92</sup> Written evidence, LG 42, The Electoral Commission

<sup>93</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 15 January 2020, paragraph 93

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**129.** The Wales Electoral Coordination Board, the Association of Electoral Administrators and the WLGA<sup>94</sup> concurred, with the former commenting:

“the more time available to plan, the fewer the risks are associated with any aspect of the delivery.”<sup>95</sup>

**130.** The Commission also noted that the consultation requirements in section 17 do not include a statutory duty for it to be specifically consulted prior to an Order being made so that it is able to provide “independent, accurate advice at that time”. It said that such a procedure had been in place over recent years in the other Parliaments and Assemblies in the UK, and called for the Bill to be amended to include the Electoral Commission as a body that is consulted.<sup>96</sup>

**131.** The Minister stated that the purpose of the provision is to plan for a system in which there are “as few clashes of elections” as possible. The Minister added that the difficulty in imposing a deadline, such as 1 February, is that it’s “just completely inflexible” should it become known after that date that a change is needed. The Minister felt that, should it be necessary to change an election date, a common sense approach of having a conversation “with all of the people involved in running the election” about the feasibility of moving it, would be preferable.<sup>97</sup>

**132.** In relation to the suggestion of the Welsh Government consulting the Electoral Commission before making rules under section 13 or an Order under section 17, the Minister did not believe it necessary to include a provision on the face of the Bill. The Minister referred to the consultation requirements in section 17 including a duty to consult “such other persons as the Welsh Ministers consider appropriate”, adding that anybody who did not consult the Electoral

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<sup>94</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 121

<sup>95</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 15 January 2020, paragraph 94

<sup>96</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 15 January 2020, paragraphs 97-99

<sup>97</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraphs 69-71

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Commission on such an issue “would clearly be in breach of that”. The Minister expressed the view that the difficulty in making the Commission a statutory consultee is that it could result in “a long list of prescribed people who have to be consulted”. Additionally, the Minister noted “the problem of having to add to the list or detract from the list on the face of a Bill” should the name or remit of those organisations change.<sup>98</sup>

## **Our view**

**133.** We understand the rationale for the provision to change the electoral cycle for principal councils, community councils and elected mayors from four to five years, and acknowledge the broad support from various sectors for this.

**134.** We have some sympathy with the request from the Electoral Commission and others that a restriction is included in section 17 to prevent an election being called at short notice. We appreciate that much preparatory work is required in advance of electoral events and that electoral teams should be given as much time as possible to ensure such work is undertaken effectively. However, we accept the Minister’s rationale that such a restriction does not provide the flexibility needed should it be necessary to announce an election after the specified date.

**135.** We believe there is merit in the request from the Electoral Commission that it be listed as a body the Welsh Ministers must consult before making an Order to change the ordinary day of local elections. We understand the Minister’s concerns around naming specific bodies on the face of the legislation, however the importance of the Electoral Commission in the running of elections leads us to conclude that it should be listed as a statutory consultee. We appreciate there is an existing duty to consult appropriate persons, and whilst it is unlikely that the Welsh Ministers would not consult the Electoral Commission in such circumstances, we believe that naming it in the legislation would remove any possibility of doubt.

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<sup>98</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraphs 76-83

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**Recommendation 6.** We recommend that the requirements on the Welsh Ministers to consult before making an Order to change the ordinary day of local elections are extended to include the Electoral Commission as a statutory consultee.

## Registration

### Section 18-21: Database of electoral registration, payments and breach of duty

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**136.** Provisions in these sections enable the Welsh Ministers to establish and maintain an all-Wales database of electoral registration information. The purposes of the all-Wales database are set out in section 18(3) as:

- to facilitate the piloting of new arrangements;
- to improve accuracy of information contained in connection with local government elections or elections for membership of Senedd Cymru; and
- to improve the efficiency of information sharing with returning officers for elections for membership of Senedd Cymru for the purposes of such elections.

**137.** The RIA does not define any costs for developing an all-Wales database. It states that the provision in the Bill is an enabling power to allow the Welsh Ministers to make regulations to create a database, but that it is not possible to define the scope of any such regulations, therefore the costs are unknown.<sup>99</sup> The benefits stated in the EM include ensuring the accuracy of the register and to support further reforms of electoral arrangements. The EM also notes:

“Wales is sufficiently compact and the number of different registers few enough to make an exercise to devise a common electronic register realistic.”<sup>100</sup>

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<sup>99</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraphs 9.79 – 9.80

<sup>100</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 3.55

**138.** A single host, either a principal council, electoral registration officer acting for a region of Wales, or the LDBCW would be responsible for its management. The all-Wales register would not replace the 22 existing registers.

**139.** The RIA notes that an all-Wales database will enable further reforms to electoral arrangements, including “enabling voters to vote in polling stations outside of their local authority areas”.<sup>101</sup>

**140.** The reforms relating to registering electors were welcomed by ERS Cymru. It states that the “move to a single electronic register is long overdue”, as it would “enable wider modernisation of the registration process”.<sup>102</sup> ERS Cymru referred to such a register being used in other countries, and having worked “very effectively there”, adding that:

“it provides us with massive opportunities to do things like pilots, enable people to vote in different places, look at even the days and places that people are voting at.”

**141.** However, it acknowledged that there are risks around privacy of data, stating that the Welsh Government should work very closely with the Information Commissioner and other experts and to learn from other countries.<sup>103</sup>

**142.** The Electoral Commission welcomed this as “a modernisation of the electoral system” that could deliver considerable benefits in terms of greater centralisation and simplifying the infrastructure needed to support reform. The Commission also felt that it could assist in identifying how many people are registered at more than one address and reduce the risk of individuals voting more than once. It also referred to the benefit of being able to check the

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<sup>101</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 9.85

<sup>102</sup> Written evidence, LG 04, Electoral Reform Society Cymru

<sup>103</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 11 December 2019, 128

permissibility of donations and loans by identifying whether the donor is registered in an election and has the right to donate.<sup>104</sup>

**143.** We also heard from the Commission that a form of a national database or register would need to be in place to enable the running of some electoral pilots.<sup>105</sup> However it added that the benefits should be considered alongside potential downsides such as the loss of local knowledge about under-registered groups, and the security risks around the management of personal data. The Commission said it expected to be consulted prior to any regulations being made.<sup>106</sup>

**144.** The WLGA echoed the benefits that could be brought by an all-Wales database, in particular reducing the potential for an individual to be registered at more than one address and enabling election pilots to take place.<sup>107</sup> It did not foresee any issues should an individual local authority be given responsibility for the administration of such a database.<sup>108</sup>

**145.** The LDBCW referred to an all-Wales database as “a great benefit” and noted that it would be the “more sensible body” to take on responsibility of being the keeper of the database.<sup>109</sup> It noted that there would be efficiency benefits as it would have direct access to complete and accurate electorate figures required to conduct reviews, rather than having to rely on registration officers to provide the data.<sup>110</sup> However, it added that a significant amount of pre-planning and resources would be required:

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<sup>104</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 15 January 2020, paragraphs 103-104

<sup>105</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 15 January 2020, paragraph 105

<sup>106</sup> Written evidence, LG 42, The Electoral Commission

<sup>107</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraphs 128 and 130

<sup>108</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraphs 129-133

<sup>109</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 9 January 2020, paragraph 391

<sup>110</sup> Written evidence, LG 34, Local Democracy and Boundary Commission for Wales

“it would require a lot of planning, particularly around the information and communications technology element and security, because you will be holding very, very sensitive information. It would require, possibly, even a move of premises for us and building up our ICT capacity to be able to do that, and that would require quite intensive initial capital investment and then the ongoing cost of maintaining the register.”<sup>111</sup>

**146.** The Electoral Commission acknowledged the scale of the task to create a database, referring to it as “a massive infrastructure project”, particularly in terms of alleviating risks around the security of the data.<sup>112</sup> Whilst it also welcomed the provision, the Association of Electoral Administrators concurred that the project would be resource intensive and referred to its previous request to the Cabinet Office for such a database being “back-burnered” due to it being too expensive an infrastructure project for them to progress with. The Association emphasised:

“it’s not to underestimate the cost of undertaking these types of exercises, but if there’s enough will, and the technology is there, the Government’s got to be willing to progress it and to put the funding into it.”<sup>113</sup>

**147.** The Minister told us that she was not in a position to provide an estimate of costings, but that the Regulatory Impact Assessment which will accompany regulations to establish a database would provide details of the funding requirements.<sup>114</sup>

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<sup>111</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 9 January 2020, paragraph 393

<sup>112</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 15 January 2020, paragraph 106

<sup>113</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 15 January 2020, paragraph 117

<sup>114</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 88

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## **Our view**

**148.** We welcome the provision to enable the creation of an all-Wales database and the benefits it could bring in terms of improving the accuracy of information held and preventing individuals from registering to vote at more than one address. We acknowledge the concerns raised around the security of individuals' personal data; it will therefore be crucial that, when the Welsh Government brings forward regulations to establish the database, it can provide assurances to the Assembly that the database will comply with all data protection legislation.

**149.** We recognise that the creation of such a database will be a significant infrastructure project, and will have resource implications. Whilst the power in this Bill is an enabling power to establish a database at a later date, it would have been helpful if an indication of the costs could have been provided in the RIA.

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## Section 22: Registration of local government electors without application

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**150.** Section 22 amends the Representation of the People Act 1983, enabling electoral registration officers to register local government electors without an application. The EM explains that the policy intention is to make it easier for individuals to be included on the electoral register by promoting data sharing, and removing the requirement for individuals to verify their data by Individual Electoral Registration (“IER”) where automatic registration and data matching has taken place. It goes on to say that electoral registration officers would be encouraged to obtain information / data of individuals not included on the electoral register from sources such as council tax records.<sup>115</sup> This could be of particular significance in the context of registering 14 and 15 year-olds. The analysis of the costs and benefits suggests that data for this cohort could be provided to electoral registration officers by “schools and educational services”.<sup>116</sup>

**151.** Before adding a voter to the register without application, the electoral registration officer must notify the individual in writing, along with their rights to be excluded or apply for anonymous registration.

**152.** The Minister told us that the current registration system is very complex, which people find very difficult to navigate, adding that the proposed changes would be a better use of existing data systems. Whilst only devolved data could currently be used, the Minister and a Welsh Government official told us that discussions were ongoing with the UK Government to be able to use wider data.<sup>117</sup>

**153.** The Electoral Commission said that it welcomed the provisions included in the Bill, noting that it could help improve levels of completeness among some of the specific under-registered groups, for example young people. The Commission said that it would work with the Welsh Government and electoral

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<sup>115</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 3.50

<sup>116</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 9.84

<sup>117</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 27 November 2019, paragraphs 44-48

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registration officers to ensure that proposals to be set out in secondary legislation are workable and help to improve accuracy and completeness.<sup>118</sup>

**154.** Toby James and Paul Bernal, academics from the University of East Anglia stated that there is “a major problem with levels of electoral registration in Wales (and the whole of the UK) with millions of eligible citizens incorrectly registered or missing from the electoral register entirely”. They said that this leads to many citizens being unable to vote because they think that they are registered, but find on polling day that they are unable to vote and believe that automatic registration provides:

“an important opportunity to improve the accuracy and completeness of the register.”<sup>119</sup>

**155.** However, the Electoral Commission also referred to some practical implications and challenges, in particular “the divergence between local government registers and parliamentary registers”, adding:

“There are challenges in ensuring that these changes just relate to the local government register and that any information and data that are received only result in updates to the local government register because, obviously, the parliamentary register is slightly different. There are challenges relating to when someone is already on the register, knowing that someone is already registered to vote, and also what type of data set can be used.”<sup>120</sup>

**156.** The WLGA felt that more research in this area is required, however it recognised that using alternative data sources could generate a richer electoral database.<sup>121</sup>

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<sup>118</sup> Written evidence, LG 42, The Electoral Commission

<sup>119</sup> Written evidence, LG 61, Toby James and Paul Bernal, University of East Anglia

<sup>120</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 15 January 2020, paragraphs 126-127

<sup>121</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 143

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**157.** ERS Cymru stated that the changes being proposed, particularly automatic registration, will “go a huge way to simplifying the registration process”. It noted that the proposals, could:

“increase the completeness of the register and ensure the groups less likely to be registered (the young, the private rented sector, BAME groups) can be directly targeted.”<sup>122</sup>

**158.** The Electoral Commission noted the importance of ensuring individuals added in this way are only included in the local government register rather than the register for UK Parliamentary elections.<sup>123</sup>

**159.** A specific concern raised by Cytûn Churches Together in Wales is that the provision, by placing people on the open register, may impact on some individuals who have purposely chosen not to register for fear of being identified by violent former partners or others who may wish them harm. Cytûn believes that the requirement of writing to notify the individual of automatic registration is not sufficient as many people in such circumstances do not respond to official correspondence. It suggests that the Bill should be amended so that individuals who are automatically registered are placed only on the closed register.<sup>124</sup>

**160.** This view was supported by the academics from the University of East Anglia, who commented:

“The edited register is made freely available for purchase to companies and third parties with no restrictions on its use. It serves no purpose for the running of the election.

It is likely that citizens will know little about how their data is used in this way. Information about the Welsh electorate would therefore be for sale without their active consent. We would therefore propose that

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<sup>122</sup> Written evidence, LG 04, Electoral Reform Society Cymru

<sup>123</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 15 January 2020, paragraph 126

<sup>124</sup> Written evidence, LG 05, Cytûn Churches Together in Wales

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the Bill is amended so that automatically registered citizens are not added to the edited register by default.”<sup>125</sup>

**161.** The Minister was confident that the provisions in the Bill would ease the registration process without infringing on individuals’ personal data.<sup>126</sup>

### **Our view**

**162.** Whilst we welcome the principle of enabling electoral registration officers to register individuals without application, we are concerned at the possibility that individuals will be left unaware that their details are being placed on the open register. There may be individuals who have intentionally opted not to be included on the electoral register for personal safety. We appreciate that the electoral registration officer will be required to notify the individual in writing, however it may be possible that such communication is not received or understood by the individual concerned. Although we are generally supportive of initiatives to ease the registration process, we are concerned that there may be unintended consequences from this approach.

**163.** We would like to see this provision amended so that the details of individuals who are registered without an application are not placed on the open register.

**Recommendation 7.** We recommend that the provisions relating to registration without application are amended to ensure that individuals registered in this way are placed on the closed electoral register rather than the open register.

## **Qualification and disqualification for election or holding office – Candidacy**

**164.** The Bill contains a number of provisions relation to the qualification and disqualification for election or holding office.

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<sup>125</sup> Written evidence, LG 61, Toby James and Paul Bernal, University of East Anglia

<sup>126</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 27 November 2019, paragraph 54

## Qualifying foreign citizens

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**165.** Section 23 amends the Local Government Act 1972 to change the criteria for qualification to be elected as a member of a local authority in Wales. The current criteria includes being a British citizen, an eligible Commonwealth citizen or a citizen of any member state of the EU. The provision in section 23 extends the qualification to include a qualifying foreign citizen who does not require leave to remain in the UK under the Immigration Act 1971 or someone who has been granted indefinite leave to remain under that Act. The EM notes that all disqualification criteria will continue to apply.

**166.** This provision was supported by the WLGA, representatives of the town and community council sector in Wales and the WCVA. Wrexham County Borough Council noted that there were mixed views about the provision among its members,<sup>127</sup> whilst members of Powys County Council were unable to reach a consensus view.<sup>128</sup> The Isle of Anglesey County Council stated that it was generally supportive, but called for guidance from the Welsh Government on eligibility criteria.<sup>129</sup>

## Our view

**167.** The majority of Committee Members support the principle of extending the right to stand in local government elections to eligible foreign citizens, in line with the extension of the right to vote. Caroline Jones AM and Mark Isherwood AM did not share this view.

## Council employees

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**168.** Currently there are restrictions on council employees and officers, including teachers, from standing for election in the council area where they are employed. In order to do so, they would need to resign from their paid employment. The Welsh Government notes in the EM that while it “recognises the need for checks and balances to ensure the integrity and impartiality of advice”, the “restrictions

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<sup>127</sup> Written evidence, LG 20, Wrexham County Borough Council

<sup>128</sup> Written evidence. LG 48, Powys County Council

<sup>129</sup> Written evidence, LG 55, Isle of Anglesey County Council

may be preventing a wide range of suitable candidates from diverse backgrounds from coming forward”.<sup>130</sup>

**169.** Section 24 makes provision to allow council employees (other than those holding politically restricted posts) to stand for election. Employees would only be required to resign their paid employment with the council if elected. Section 2 of the Local Government and Housing Act 1989 sets out the persons who are regarded as holding politically restricted posts:

- the person designated as the head of the authority’s paid service;
- the statutory chief officers;
- a non-statutory chief officer;
- a deputy chief officer;
- the monitoring officer; and
- the head of democratic services designated under section 8 of the Local Government (Wales) Measure 2011.

**170.** Local Government representatives were generally opposed to the provisions allowing local authority employees to stand for election to the authority in which they are employed. The WLGA commented that lifting the restriction is unlikely to have a significant impact in encouraging more candidates to stand, but “would disproportionately impact on good governance and employment relations”, adding:

“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

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<sup>130</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 3.60

council policies during campaigning, which may affect their ability to continue in their employed role following the elections.”<sup>131</sup>

**171.** This view was supported by most of the local authorities who responded to our consultation, representatives of the town and community council sector, the Wales Electoral Coordination Board, SOLACE and the Association of Local Authority Chief Executives and Senior Managers (“ALACE”).

**172.** Lawyers in Local Government also highlighted its concerns as the code of conduct for all local government employees requires them to remain politically impartial and politically neutral, which could be compromised by campaigning for election.<sup>132</sup> It stated that the provision could potentially have “grave practical implications”, noting:

“Were an employee to stand as a candidate and lose then this could rightly call into question

- his/her impartiality in the eyes of their manager, all councillors and the successful candidate in particular; and
- his/her commitment to Council policies that s/he opposed whilst campaigning.”<sup>133</sup>

**173.** The WLGA did not believe that the provision would result in many local government employees standing for election, referring to anecdotal evidence from Scotland of it being very rare for staff to stand despite the policy having been in place there for some time. It suggested the lower salary offered and the insecurity of being a councillor compared to a member of staff would be reasons against standing for election.<sup>134</sup>

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<sup>131</sup> Written evidence, LG 54, WLGA

<sup>132</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 496

<sup>133</sup> Written evidence, LG 50, Lawyers in Local Government

<sup>134</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraphs 151-152

**174.** There was some support for the provision, notably from UNISON and GMB,<sup>135</sup> UNISON commented:

“There are many local government workers who would make excellent councillors, who have great local knowledge and understanding. They are currently an untapped resource and we are keen for this to change.”<sup>136</sup>

**175.** UNISON told us that it would be important to have guidance in place to manage situations where employees put themselves up for election:

“We believe that there is a process that needs to be put in place, a HR process, for any council that has people in that situation, so that there is clear advice going out to managers within the authority to manage that process. But also advice to candidates who are in that position, so if they are successful how that transfers their relationship to an employer; and that they shouldn’t carry any baggage that they’ve retained from their employee days into their new role.”<sup>137</sup>

**176.** The Electoral Commission also welcomed the provision, noting that it reflects the approach it recommended in its 2015 report “*Standing for Election*”, that the law in England, Wales and Northern Ireland be changed to make a clear distinction between offices or employment which would prevent someone from standing for election, and those which would prevent someone from holding office if elected.<sup>138</sup> The Commission acknowledged that some issues would need further consideration, particularly deciding which posts would require a holder to stand down on nomination, and suggested that a framework of questions could be used as a tool for determining that.<sup>139</sup>

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<sup>135</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 502-507

<sup>136</sup> Written evidence, LG 17, UNISON Cymru / Wales

<sup>137</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 9 January 2020, paragraph 500

<sup>138</sup> Written evidence, LG 42, The Electoral Commission

<sup>139</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 15 January 2020, paragraph 141

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**177.** The Minister did not share the concerns raised by some stakeholders, stating that preventing people working in local government from “expressing an interest in the democratic process that they’re involved in makes no sense at all”.<sup>140</sup>

**178.** The Minister acknowledged that some employees would be conflicted if they stood for election, but felt that having a restriction for those in politically restricted roles offered sufficient protection.<sup>141</sup>

### **Our view**

**179.** Principal councils are among the largest employers in Wales, and a large proportion of those employees will live within the area of the council which employs them. Many of these employees will have deep knowledge and understanding of their communities and the skills and experiences needed to represent them. We believe that the wholesale approach of preventing all council employees from standing for election is detrimental to expanding the breadth and diversity of representatives at principal council level. We therefore welcome this provision in the Bill.

**180.** However, we do acknowledge the real concerns voiced by the local government sector in terms of managing relationships between candidates who are employees and other candidates who may be serving members, and between candidates and their colleagues. We are particularly concerned at the possibility that an unsuccessful candidate could be subjected to harassment from the successful candidate, and potentially from colleagues if there was a perception of criticism during the campaign. We therefore believe that, in light of this significant policy change, arrangements will need to be made to protect any unsuccessful candidates from harassment when continuing their role within the principal council to which they stood.

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<sup>140</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 110

<sup>141</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 111

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**181.** We also appreciate the concerns raised in relation to employee impartiality or conflict of interest whilst standing as a candidate. We recognise that a vast number of council employees will have little contact with elected members, however it is appropriate that the restriction on those undertaking politically restricted roles remains in place. We believe this safeguard should ensure sufficient protection to prevent any impartiality issues or conflicts of interest.

**Recommendation 8.** We recommend that, in light of the significant policy change to allow employees of principal councils, bar those in politically restricted posts, to stand for election to the council which employs them, the Welsh Government should work with the WLGA and trade unions to develop guidance to staff and managers on dealing with the implications, particularly where unsuccessful staff continue their employment.

## 16 and 17-year-olds

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**182.** Whilst the Bill includes provision for 16 and 17-year-olds to vote in local government elections, it does not enable anyone under the age of 18 to stand for election. It was suggested by UNISON that the Bill should go further than just allowing people in this age group to vote, that it should also allow them to stand for election.<sup>142</sup>

**183.** The Minister acknowledged the argument that anyone who is allowed to vote, should be able to stand as a candidate, but felt that changes should be made incrementally, starting with the right to vote:

“It’s quite momentous, and so I think we need to bed that in before we start making other changes to the system. So, whilst I’m absolutely in favour of anybody who can vote being able to stand also, I think this is just such a momentous change to the way that we’ve always done things that it should just be small steps first.”<sup>143</sup>

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<sup>142</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 9 January 2020, paragraph 462

<sup>143</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraphs 91-92

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## Our view

**184.** Whilst we sympathise with the principle that everyone who is able to vote in an election should also be able to stand in that election, we believe there should be an exception for 16 and 17-year-olds. We are convinced by the Minister's rationale that extending both the right to vote and the right to stand would be too substantial a change to make at this time. We will be interested to note whether the franchise extension will result in a call from 16 and 17-year-olds that they would also like the right to stand.

**185.** We are also aware that there are other significant issues which would need to be given further consideration before such a move, including that a person is classed as being "of school age" until the last Friday in June in the year in which they have their 16<sup>th</sup> birthday; safeguarding issues should a person be canvassing before turning 16; and employment restrictions on persons of school age.

### Disqualification for election and being a member of a local authority

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**186.** Sections 24 and 25 include provisions relating to the disqualification of individuals from standing for election in any local government election. The Bill extends the disqualification provisions in Wales to anyone who is subject to the notification requirements of, or an order under, the Sexual Offence Act 2003. The disqualification criteria do not extend to offences resulting in civil injunction or Criminal Behaviour Orders, which the UK Government intends to legislate for in England.<sup>144</sup>

**187.** There was universal support for this provision among stakeholders who offered a view, including the Children's Commissioner for Wales.

**188.** Section 24 also makes provision to disqualify anyone who is: the subject of a bankruptcy or debt relief restrictions order; guilty of a corrupt or illegal practice in accordance with Part 3 of the Representation of the People Act 1983; or is convicted, during a period of five years before the election, of an offence for which they have been sentenced to a term of imprisonment of three months or more without the option of a fine.

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<sup>144</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraphs 3.65–3.67

## Our view

**189.** We welcome this provision and note the overwhelming evidence in support of its inclusion.

## Election pilot schemes

**190.** Powers relating to electoral pilots for devolved elections were transferred to Welsh Ministers by the Welsh Ministers (Transfer of Functions) Order 2018. The EM notes that, with several electoral reforms proposed:

“electoral pilots are required in order to inform these reforms. Pilots would provide the evidence on which type of electoral reforms would have a positive impact on voter turnout and improve accessibility to voting in Wales if used more widely.”<sup>145</sup>

**191.** Section 26 proposes to give the Welsh Ministers discretionary powers to “direct a Returning Officer, electoral registration officer or local authority (where appropriate) to conduct a specific electoral pilot at a local government election”.<sup>146</sup> Previously the onus was on the returning officer, electoral registration officer or local authority to apply to conduct an electoral pilot. The RIA notes that a benefit of the provision to the Welsh Government and local government is:

“The ability to require a local authority or electoral registration officer to undertake a pilot will ensure that new methods can be tested in the event of no volunteer coming forward.”<sup>147</sup>

**192.** The RIA explains that this could include pilots within a particular area or across the whole authority, and that options that could be piloted include:

- changes to the annual canvass;
- all postal voting;

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<sup>145</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 3.72

<sup>146</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 3.73

<sup>147</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 9.103

- electronic counting;
- mobile polling stations;
- voting at places other than polling stations;
- voting on days other than a Thursday and on more than one day;
- including photographs on ballot papers.<sup>148</sup>

**193.** The provision was broadly supported by those stakeholders who commented on this aspect of the Bill. The Electoral Commission welcomed its inclusion, but stated that the Bill should also include a duty for the Electoral Commission to evaluate any pilot scheme run at a local government election in Wales, in line with the equivalent duty for pilot schemes at local elections in England or Scotland. The Commission believes this would:

“enable an independent and evidence based assessment of the success or otherwise of the scheme in facilitating and encouraging voting.”<sup>149</sup>

**194.** It stated:

“We have expertise in doing that and we’d want to see it continue.”<sup>150</sup>

**195.** The Commission also stated that the Welsh Government should ensure that any pilot schemes are rigorously designed to ensure they are capable of providing robust evidence to support any future changes to the current electoral system in Wales, adding that the Welsh Ministers should be required to consult the Commission about the design of any pilot scheme and the framework for evaluation.<sup>151</sup> The Commission added that, given the expertise within the

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<sup>148</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 9.92

<sup>149</sup> Written evidence, LG 42, The Electoral Commission

<sup>150</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 15 January 2020, paragraph 144

<sup>151</sup> Written evidence, LG 42, The Electoral Commission

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organisation, it would “expect to really be able to give some form of independent answer on any aspect relating to pilots”.<sup>152</sup>

**196.** The WLGA voiced its support in principle for the provision, but added that pilots should “lead somewhere”. It also referred to cost implications as inevitable, and that these should be covered by the Welsh Government.<sup>153</sup>

**197.** ERS Cymru notes that this is an “exciting development”, and that it is not known whether the way elections are held is the best way, therefore it is right that pilots are used to experiment.<sup>154</sup> It noted that if used to its full potential:

“we could see a real move towards testing out ideas that may boost participation.”<sup>155</sup>

**198.** Monmouthshire County Council commented that it:

“would be keen to see Wales consider piloting the use of digital technology within its voting systems under the powers referred to in sections 26 and 27.”<sup>156</sup>

**199.** A Welsh Government official clarified that, as the provisions relating to election pilot schemes do not replace any of the current provisions within section 10 of the Representation of the People Act 2000, the existing requirement for the Electoral Commission to evaluate any pilot schemes would continue.<sup>157</sup>

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<sup>152</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 15 January 2020, paragraph 145

<sup>153</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraphs 162 and 164

<sup>154</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 11 December 2019, paragraph 146

<sup>155</sup> Written evidence, LG 04, Electoral Reform Society Cymru

<sup>156</sup> Written evidence, LG 46, Monmouthshire County Council

<sup>157</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 116

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**200.** Concern was raised by some stakeholders that a direction from the Welsh Government to undertake a pilot would be in the form of an Order, with no Assembly procedure for its agreement. The WCVA commented:

“Giving Welsh Ministers the power to impose a specific electoral pilot at a local government election without consent from the Assembly risks accusations of bias, depending on the circumstances, and could further entrench the lack of trust in democratic processes. Ministers should be required to take such proposals to the Assembly, which should then be enabled to give or deny permission for such pilots.”<sup>158</sup>

**201.** Cytûn Churches Together in Wales also raised this as a concern:

“We are concerned at the provision in Section 26(1) allowing Welsh Ministers to direct that an electoral pilot happen in a specified area, and that no Assembly procedure whatsoever is required to affirm this (p. 61 of EM). We are concerned that this might be open to (the perception of) partisan bias, and would suggest that this power be given to the Assembly (by secondary legislation requiring a super-majority, as in other changes to electoral arrangements) rather than to Welsh Ministers.”<sup>159</sup>

**202.** The Legislation, Justice and Constitution Committee raised this issue in a letter to the Minister, who in response noted:

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

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<sup>158</sup> Written evidence, LG 39, Wales Council for Voluntary Action

<sup>159</sup> Written evidence, LG 05, Cytûn Churches Together in Wales

resulting from such a pilot would be subject to full Assembly scrutiny.”<sup>160</sup>

**203.** Section 27 specifies that where the Welsh Ministers issue guidance about election pilots, that guidance must be published.

**204.** The Electoral Commission commented:

“It is not clear what kind of guidance Ministers might consider issuing, and how it would relate to the Commission’s existing statutory role to provide guidance to EROs and ROs. There are no equivalent powers for UK Government Ministers in relation to pilot schemes at local government elections in England.”<sup>161</sup>

**205.** It elaborated on the importance of voters having confidence in the integrity of an election, and that even “a perception of political involvement in the guidance to independent returning officers”, poses “a big risk”.<sup>162</sup>

**206.** The Commission stated that it would like to discuss this further with the Welsh Government “to ensure that this proposed government guidance provision would meet a need that it is appropriate for government to lead on”. It concluded:

“we have substantive concern if guidance on the running of a poll were to be issued to EROs or ROs by Ministers, rather than by an independent body such as the Commission.”<sup>163</sup>

**207.** It accepted that it would not be appropriate for it to provide the guidance should it have a role in evaluating the pilots, however it suggested that a solution

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<sup>160</sup> CLA(5)-05-20 Paper 1, Letter from the Minister for Housing and Local Government, 30 January 2020

<sup>161</sup> Written evidence, LG 42, The Electoral Commission

<sup>162</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 15 January 2020, paragraph 149

<sup>163</sup> Written evidence, LG 42, The Electoral Commission

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could be for the guidance to be produced by the Wales Electoral Coordination Board.<sup>164</sup>

**208.** A Welsh Government official confirmed that the Welsh Government would be happy to explore how the issue could be addressed, noting that it would work with the Electoral Commission to find a solution it would be comfortable with.<sup>165</sup>

### **Cost implications**

**209.** The RIA states that “all costs for pilots will need to be met by Welsh Government”. It continues by noting that a “detailed analysis of the likely costs will be produced prior to Welsh Ministers making a direction” to undertake a pilot into alternative systems for voting or counting votes.<sup>166</sup>

### **Our view**

**210.** We welcome the provisions relating to election pilots. They are an important tool in assessing the effectiveness of using different approaches to increase participation in electoral events. Electoral arrangements have remained stagnant at a time when technological advances have made many changes to the ways people live their lives.

**211.** Proper evaluation is crucial to measure the success of pilot schemes, therefore we welcome the Minister’s assurance that these new provisions do not impact on the requirement for schemes to be evaluated by the Electoral Commission.

**212.** We note the concerns raised by the Electoral Commission about the importance of ensuring the independence of guidance issued on election pilots. We welcome the Minister’s recognition of this and of the Welsh Government’s intention to discuss this further with the Commission.

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<sup>164</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 15 January 2020, paragraph 149

<sup>165</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 122

<sup>166</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraphs 9.98-9.100

## Expenditure by returning officers

**213.** The EM explains that returning officers are appointed under the Representation of the People Act 1983 and are responsible for the conduct of elections. Every principal council is required to appoint an officer of the council to be the returning officer for the election of councillors to their principal council. These duties are separate from their duties as a local government officer. The returning officer of a principal council is usually, although not always, the principal council's chief executive. Current practice means that they often reclaim an amount for their services and expenses incurred in the running of an election from the body responsible for the funding of the elections. (For Welsh elections, this means the Welsh Government for Assembly elections and individual principal councils for principal and community council elections).<sup>167</sup>

**214.** The EM explains that provisions in section 28 seek to clarify that returning officers can only claim expenses properly incurred in the running of a local government election, but not the “personal fees in respect of services rendered”. The EM states that it is proposed that the personal fee will also be removed for Assembly elections when an Order is next made.<sup>168</sup> This is a result of what the Welsh Government notes as the “significant public attention” that has been paid to “the level of salaries payable to senior public servants”, and that returning officers are included within this.<sup>169</sup>

**215.** The Minister elaborated on the rationale for the provision:

“because the returning officer is almost always the chief executive or another highly paid official, and it seems extraordinary to me that something that’s part of their everyday job should be paid for by some other arrangement. So, the current practice is that they claim an amount for services in the context of a council election. It’s not in the legislation, and I just think that the public are baffled as to why that

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<sup>167</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraphs 3.74–3.75

<sup>168</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 3.78

<sup>169</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 3.76

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happens with highly paid officials and we're just correcting that situation.”<sup>170</sup>

**216.** The Electoral Commission emphasised the importance of maintaining independence in a returning officer's role when an individual is undertaking that function, separate to their substantive role as an officer of a principal authority:

“This is necessary to avoid any perception of bias and to promote public confidence and trust in the process. A payment to ROs of some description denotes the different role.

Any changes to the current management framework for the delivery of local government elections in Wales, including to the current arrangements for funding elections and payments to ROs for their services, must not weaken the independence and accountability of those responsible for delivering polls.”<sup>171</sup>

**217.** The Commission raised concerns that removing personal fees for returning officers may risk reducing their independence and that their impartiality could potentially be damaged if their only payment for carrying out election duties is through their contract of employment for their substantive role with a principal council. It was also concerned that removing any personal fee may discourage experienced and capable senior officers from agreeing to undertake such an “important but sensitive role”.<sup>172</sup>

**218.** SOLACE and ALACE raised particular concern at the provisions relating to the remuneration of returning officers, with SOLACE noting that the role “carries significant personal responsibilities and liabilities”. It states that “separation of remuneration is an important aspect of establishing the independence of the role” and concurred with the Electoral Commission's view that impartiality could be questioned.<sup>173</sup>

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<sup>170</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 27 November 2019, paragraph 72

<sup>171</sup> Written evidence, LG 42, The Electoral Commission

<sup>172</sup> Written evidence, LG 42, The Electoral Commission

<sup>173</sup> Written evidence, LG 51, SOLACE Wales

**219.** SOLACE suggests that, should separate fees for local elections be removed, a re-evaluation of salaries should follow, which could result in additional financial implications. ALACE concurred:

“This provision could therefore have additional financial implications because, following the re-evaluation of salaries, any increase in base salary could also attract employer’s national insurance and pension contributions.”<sup>174</sup>

**220.** SOLACE also felt that the Bill suggests there would be no recovery of costs for local authorities in relation to Assembly elections, to which it notes its “grave objections”. It stated that it would effectively require local authorities to “provide a free returning officer service to a third party, without having recourse to cover its costs”.<sup>175</sup> It added that proper arrangements to recompense local authorities for running an election for another organisation would be more appropriate.<sup>176</sup>

**221.** The WLGA also referred to the additional demands, responsibilities and personal risks of being a returning officer, which it states “are significant and should not be dismissed”. It suggested that an alternative option for reforming the existing arrangement would be for any remuneration for the oversight of local elections to be included within a single consolidated salary for the position (whether that is the chief executive or whichever senior officer fulfilled the returning officer role). The WLGA notes that such an approach, and the removal of a specific fee, would require a proper re-evaluation of the post which had incorporated the substantial returning officer role. It added that a form of such an 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.<sup>177</sup>

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<sup>174</sup> Written evidence, LG 36, ALACE

<sup>175</sup> Written evidence, LG 51, SOLACE Wales

<sup>176</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 407

<sup>177</sup> Written evidence, LG 54, WLGA

**222.** The Minister disputed that the employment of a returning officer was separate to the senior officer's substantive employment since a "local authority has to appoint one of its officers as the returning officer", adding:

"This has to be a person who has to be employed by the local authority. So, it's not separate employment. You have to be a senior officer of that local authority. So, it just becomes part of your duties, it seems to me, as that senior officer."<sup>178</sup>

**223.** The Minister also disputed that returning officers were personally liable for the running of an election or required additional indemnity in undertaking the role:

"because you are an employee of that local authority, and because you are acting in the course of your employment, you are obviously indemnified for doing so. So, unless you act maliciously or fraudulently, you are indemnified for anything that occurs during the course of that. [ ] you wouldn't be any more personally liable for carrying out that part of your employment than you would be for any other part of your employment."<sup>179</sup>

**224.** A Welsh Government official confirmed that for Assembly elections, the Welsh Government provides an indemnity for returning officers.<sup>180</sup>

**225.** The provision relating to returning officers only extends as far as to deal with personal fees and how returning officers should be remunerated. However, evidence from the Welsh Language Commissioner expressed concerns that returning officers are not subject to statutory language duties. The Commissioner noted in his evidence that since there are no statutory Welsh Language obligations on electoral officers:

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<sup>178</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 127

<sup>179</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 128

<sup>180</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 139

“the way in which those officers deal with the Welsh language is therefore mixed, and therefore the experience of Welsh speakers is not equal to the experience of non-Welsh speakers.

[...]The Local Government and Elections (Wales) Bill amends a number of other laws relating to electoral arrangements. Consideration should be given to how the Bill could be used to ensure that the above officers are subject to Welsh language standards.”<sup>181</sup>

**226.** The Minister asserted in her evidence on this matter that there are already arrangements in place for making election result announcements bilingually, and that it is important that the “elections are conducted bilingually”. She went on to state:

“I’ve seen lots of different arrangements for that, and sometimes two different people make the announcements—somebody makes the Welsh announcement, somebody makes the English announcement, and sometimes it’s the same person. And those seem perfectly sensible arrangements to me. So, at the risk of being overly flippant, if it ain’t broke, I don’t see why we need to fix it.”<sup>182</sup>

## Our view

**227.** The role of returning officer is particularly important in the context of the effective and efficient running of local government elections and other electoral events. Retaining the independence and impartiality of the position is of utmost importance, therefore careful consideration is required in any proposal to change how that role is understood and remunerated.

**228.** Despite some strong arguments against the provision to incorporate the role of the returning officer into that of a senior officer of a principal council, at present, it is our view that the change should be considered proportionate. We heard evidence that there is already a precedent for remunerating returning officers within the existing role of a chief executive or senior officer, as is the case

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<sup>181</sup> Written evidence, LG 47, Welsh Language Commissioner

<sup>182</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 140

in some principal councils in Wales. We did not receive evidence that this has diminished the independence or impartiality of the position.

**229.** We note the concerns raised by some witnesses about the need for the re-evaluation of the base salary of senior officers in relation to their role as returning officer as a result of the provision. In particular, we note the potential unintended consequences to principal councils in relation to possible increases in national insurance and pension contributions.

**230.** In general, we remain open-minded however, particularly if additional evidence was received that showed that the proposals could be to the detriment of the integrity of the electoral process as a whole. If the Bill is enacted as it is, we would consider it appropriate that the Welsh Government commission an independent evaluation of the impact of the provision following the first electoral-cycle where all returning officers are remunerated via their salaries.

**231.** It is also our view that robust and consistent arrangements should be in place to ensure that elections, including announcements of election results by returning officers, are provided bilingually in Wales. Returning officers, along with electoral registration officers, are not currently subject to statutory Welsh language duties provided for under the Welsh Language (Wales) Measure 2011. This will still be the case following passage of this Bill. While we are reassured by the Minister's comments that local arrangements are in place, it would seem appropriate for the Welsh Government to take this opportunity to ensure consistency in the bilingual delivery of elections across Wales.

**Recommendation 9.** We recommend that the Welsh Government commissions an independent evaluation of the impact of the provisions relating to expenditure by returning officers following the first electoral-cycle where they are remunerated via their salaries.

**Recommendation 10.** We recommend that the Welsh Government takes this opportunity to ensure consistency in the bilingual delivery of elections across Wales, in line with the principles established by the Welsh Language (Wales) Measure 2011.

## 4. Part 2 – General Power of Competence

The Bill provides principal councils and eligible community councils with a general power of competence. It has the “aim of bringing about more effective, capable and innovative local government”.<sup>183</sup>

**232.** The EM explains that no principal, town or community council can act without legal authority. Local government powers and duties have been conferred upon them over time and, as such, are not set out in any single piece of legislation.

**233.** Legislative provisions, such as the well-being powers introduced by the Local Government Act 2000, have gone some way to providing some flexibility for principal councils. They enable principal councils to act in a way which they consider would improve the economic, social, environmental well-being of their area. These powers were extended to community councils in Wales via the Local Government (Wales) Measure 2011. However, councils are only able to use this provision if they are “not otherwise prohibited or restricted from doing so by other legislation”.<sup>184</sup>

**234.** The EM notes that there is a “perception that the well-being power is too limited”, and has not “empowered authorities to innovate or take more transformative action”. This may be for fear of acting outside the scope of the power.

**235.** The provision in the Bill of a general power of competence means that qualifying councils (principal councils and eligible community councils) will no longer be required to identify a specific power in order to undertake a particular

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<sup>183</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 3.93

<sup>184</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 3.87

activity. Instead, they will be in a position in which it is “assumed they can do something unless there is a statutory restriction preventing it”.<sup>185</sup>

**236.** The RIA provides examples of what authorities might be able to do with the general power of competence.<sup>186</sup>

## Sections 31 – 36: The General Power

**237.** Section 31 provides qualifying local authorities with the power to “do anything that individuals generally may do”. The Explanatory Notes states this will enable authorities to:

“act in innovative ways, i.e. to do things that are unlike anything they, or any other public body, have done before.”

**238.** The provision in section 32 ensures that qualifying authorities do not bypass existing prohibitions, limitations or restrictions. The RIA states that local authorities’ decision-making processes would have to be “rational and comply with public law principles”.

**239.** The RIA also notes that the risk to core services (i.e. schools and social services) is “limited due to prohibitions in pre-existing legislation”, which limits activities in these areas. However, the EM does not state unequivocally that the general power could not be used in such a way that it may put certain core services at risk in the future.

**240.** Section 33 provides a qualifying authority with the ability to charge for providing a service, but only if certain conditions are met. An authority cannot charge for a service if it is under a statutory duty to provide it. Subsection (4) limits the ability of a qualifying authority to make a profit in any financial year when using the general power to charge for a service, other than in “respect of services provided for a commercial purpose”.

**241.** In engaging in a commercial activity under the general power, the qualifying authority must establish a company as defined in section 1(1) of the

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<sup>185</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 3.95

<sup>186</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 10.13

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Companies Act 2006. However, as explained in the Explanatory Notes, it cannot engage in commercial activity “unless the activity is one the authority could also carry out for a non-commercial purpose”. The example provided in the Explanatory Notes is a local authority recycling centre run for non-commercial purposes. However, if there is additional capacity at the recycling centre, the authority could use the general power to “sell recycling services to neighbouring authorities or organisations”.

**242.** Section 35 will enable the Welsh Ministers to make regulations to remove or change statutory provisions that may “prevent or restrict the ability of qualifying local authorities to use the general power”. Subsections (3) and (4) provide the Welsh Ministers with powers to make regulations that restrict what a qualifying local authority can do under the same powers.

**243.** The Minister told us that local authorities have been calling for a general power of competence for some time. She explained that the power would not remove legal restrictions that currently exist, but gives local authorities the power to do something that is not specifically restricted by legislation, without searching for the relevant power. The Minister added that local authorities would be required to demonstrate a robust decision-making process and the community benefits of what they would be doing.<sup>187</sup>

**244.** The provision was broadly welcomed by stakeholders, in particular the WLGA, SOLACE, Lawyers in Local Government, individual local authorities and the town and community council sector. However, Lawyers in Local Government stated its disappointment that the provision mirrors that of the existing legislative power in England, which it says means that the general power may only be used where no pre-commencement limitation (a prohibition or restriction already in statute) exists. It indicated there are 42 pieces of UK legislation with Local Government in the title, and a further three that apply only in Wales. Each piece of legislation may contain a pre-commencement limitation,

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<sup>187</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 27 November 2019, paragraphs 106-17



resulting in what it believes to be a “complex interplay” between the general power and the other Acts, creating “multiple possible risks”.<sup>188</sup>

**245.** Lawyers in Local Government referred to the experience of private practice solicitors in advising local authorities in England on the use of powers in the Localism Act 2011, who found that clients had not used the general power as a first resort.<sup>189</sup> In fact, it noted that it was often cited as a “belt and braces addition or [power of] last resort”. This viewpoint was supported by the WLGA<sup>190</sup> and SOLACE, with the latter commenting that it would have liked to “improve on the English system rather than just mirror it”.<sup>191</sup>

**246.** Lawyers in Local Government added that, due to the potential difficulties in identifying the various pre-existing limitations in other legislation, it would have preferred the Bill, or at the least statutory guidance, to specify which legislation restricts the use of the general power.<sup>192</sup>

**247.** Evidence from the Local Government Association (“LGA”) referred to a review it conducted two years after the implementation of the general power in England, which found that a number of councils were using the power as a legal foundation for doing things differently. However, it also stated that a subsequent, more limited, review demonstrated that the power has “not made a radical change for councils to date”. This was despite the LGA noting that the general power has assisted in providing councils with 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). The LGA explained that part of the issue is due to the specific constraints within the legislation, and the reductions in local government’s core funding in England. It said that the constraints are significant as where there are relevant restrictions in other pieces of legislation, they also

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<sup>188</sup> Written evidence, LG 50, Lawyers in Local Government

<sup>189</sup> Written evidence, LG 50, Lawyers in Local Government

<sup>190</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraphs 170-180

<sup>191</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 412

<sup>192</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraphs 506-514

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restrict the general power, meaning therefore that it cannot be used to override any existing restriction or limitation on the use of another power.<sup>193</sup>

**248.** The Auditor General for Wales (“AGW”) stated that the provisions are, in principle, “appropriate” for local authorities, noting that the power does provide some additional freedom for them. However, he also noted the limitations, and cautioned that local authorities will “need to spend expert time on checking limitations”.<sup>194</sup>

**249.** The Minister disagreed with the view that the provisions were complicated to administer, and emphasised that the general power was something consistently requested by local government over a considerable period of time:

“it has a very simple application. Instead of having your team of lawyers having to look for powers to allow you to do something, you can assume that you can do something, unless there is a restriction on that power.”<sup>195</sup>

**250.** The Minister added that restrictions on the power are necessary to avoid irresponsible use, but did not think it necessary to include the restrictions on the face of the Bill. The Minister stated that guidance would seek to clarify use of the power.<sup>196</sup>

## **Our view**

**251.** We welcome the provision to enable qualifying authorities to exercise the general power of competence and note that many in the sector have been calling for such a power for some time. We acknowledge that concerns have been raised around the provisions mirroring those that currently exist for authorities in England, and that limited use has been made of that power. Despite these concerns, we believe that the ability to use the general power has

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<sup>193</sup> Written evidence, LG 43, Local Government Association

<sup>194</sup> Written evidence, LG 01, Auditor General for Wales

<sup>195</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 148

<sup>196</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraphs 148-154

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the potential to be a valuable tool for authorities. It will be interesting to understand the extent of whether authorities use the general power, therefore we believe that the Welsh Government should review the effectiveness of its use.

**252.** We welcome the Minister's intention to issue guidance to authorities to provide clarity on the use of the general power. In producing the guidance, we believe the Welsh Government should seek input from Lawyers in Local Government as they will be advising principal councils on their use of the power.

**Recommendation 11.** We recommend that the Welsh Government reviews the use of the general power of competence by principal councils and eligible community councils, by the end of the next local government electoral cycle, to understand its effectiveness.

## Sections 37 - 44: Eligible Community Councils

**253.** The RIA specifies that for a community council to be eligible to exercise the general power, it would “need to achieve higher standards of governance and financial management, professional capability, and greater democratic accountability”. It states that the provisions in sections 37-44 ensure that community councils are “suitably equipped to handle current and future challenges”. It will also strengthen local democracy, transparency and accountability, which the Welsh Government hopes will have the potential to encourage more people to “become involved in determining the priorities for their local area”.<sup>197</sup>

**254.** Section 37 makes provision for the conditions that must be met before a community council can be considered eligible for the general power. The conditions are set out in subsections (2) to (4):

- at least two thirds of the community council must be elected;
- that the clerk to the council holds qualifications as specified by Welsh Ministers by regulations;

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<sup>197</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraphs 10.46, 10.62 and 10.66

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- the council must also have received an “unqualified” opinion from the AGW on the council’s most recent accounts, as well as on the accounts which immediately preceded it.

**255.** Only after the conditions have been met can a community council pass a resolution that it is an eligible council. Community councils not able satisfy the requirements immediately would be able to “strive to meet the conditions in the future”.<sup>198</sup> There is no requirement on community councils to meet the conditions in the Bill, unless they wish to qualify to exercise the general power.

**256.** Section 38 specifies that an eligible community council will need to pass a resolution annually confirming it meets the eligibility criteria. If it fails to pass a resolution, it will cease to be eligible. Section 39 enables a community council, at any meeting, to pass a resolution to cease being eligible. Section 40 provides that any activity that an eligible community council enters into which relies on the general power can continue, even if it is no longer an eligible council.

**257.** Section 41 deals with common community councils formed after the passing of the Act. A new common community council may meet the eligibility criteria relating to elected members and a qualified clerk immediately. It is also possible that some of its constituent parts were eligible councils before the new common community council formed. However, it would not meet the condition of requiring unqualified audit for the two most recent opinions of the AGW.

**258.** In order not to disincentivise the forming of common community councils, the Bill makes provision to disapply the eligibility criteria set out in 37(4) in some cases. If at least half of the communities grouped had a community council which met the audit requirements immediately before they were grouped, it would not be required to meet this condition.

**259.** Schedule 3, which is introduced by sections 36 and 44, repeals the well-being power in section 2 of the Local Government Act 2000 in full. It also amends section 93 (the power to trade) and section 95 (the power to charge for

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<sup>198</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 10.45

discretionary services) within this Act. These powers are no longer required as qualifying authorities will have the general power of competence.

**260.** In repealing the well-being power in full, community councils which have not resolved themselves eligible for the general power, will not be able to exercise either. The Welsh Government's rationale is that having more than one general power in law "could add to existing confusion" within the sector about the powers available to them. The Explanatory Notes also state that retaining the well-being power could limit the "incentive for community and town councils to meet the eligibility criteria" for the general power of competence.

**261.** Representatives of the town and community council sector welcomed the ability of community councils to qualify for eligibility to exercise the general power, with One Voice Wales commenting that "it will provide clarity and reduce the likelihood of community and town councils acting unlawfully".<sup>199</sup> This view was shared by the Society of Local Council Clerks, who also referred to the general power as bringing about "more effective, capable and local innovative ways of working".<sup>200</sup>

**262.** However, representatives of the Wales Audit Office ("WAO") highlighted a potential disadvantage, in that by providing town and community councils with "greater latitude to do things", the general power would not remove the risk of them "doing things that aren't well thought through, particularly in financial terms" and that the probability of cases such as those covered in recent WAO public interest reports happening again may increase. A representative commented that community councils:

"need to carefully think about the business element of what they're trying to do, as well as identifying that they've got this power to do it, so not doing things for the sake of exercising the power, but doing things that are really useful and beneficial."<sup>201</sup>

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<sup>199</sup> Written evidence, LG 28, One Voice Wales

<sup>200</sup> Written evidence, LG 13, Society of Local Council Clerks

<sup>201</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 11 December 2019, paragraphs 211-212

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**263.** A specific concern raised by the AGW is the ability of community councils to access specialist legal advice in relation to the general power. The AGW suggested there would be merit in them being signposted to suitable sources of advice. The AGW also warned that there may be an “increase in inappropriate projects” being commissioned.<sup>202</sup>

**264.** One Voice Wales did not agree that accessing specialist legal advice would be problematic for community councils:

“There is very good legal support provided, certainly through our organisation, and through the Society of Local Council Clerks. Indeed, we have recourse to five or six solicitors in London, who are specialists in community and town council, and parish council law.”<sup>203</sup>

**265.** Representatives of the town and community council sector were also supportive of the criteria for eligibility. One Voice Wales and the Society of Local Council Clerks advocated the professionalisation of the “clerk” role, in particular by undertaking sector specific training such as the Certificate in Local Council Administration (‘CiLCA’) (Wales). Both emphasised the importance of having a qualified clerk to advise town and community councils, particularly in light of the increasing demands and expectations on some councils to deliver services.<sup>204</sup> They recommended that the Welsh Government receives input from the National Training and Advisory Group when preparing the regulations that will specify the type of qualification clerks will be required to hold.<sup>205</sup>

**266.** The AGW noted a concern in relation to the unqualified accounts criteria specified in the Bill, in that while audit reports are relevant to the financial management and governance of a public body, audit work is “not designed to provide assurance as to whether a council meets competency requirements”. A

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<sup>202</sup> Written evidence, LG 01, Auditor General for Wales

<sup>203</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 15 January 2020, paragraph 264

<sup>204</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 15 January 2020, paragraphs 282-283

<sup>205</sup> Written evidence, LG 13, Society of Local Council Clerks and Written evidence, LG 28, One Voice Wales

representative from the WAO explained that the audit is designed to meet the requirements of the Public Audit (Wales) Act 2004, it does not consider “the fitness of a council to make decisions in terms of the exercise of its powers”.<sup>206</sup> The representative acknowledged that an audit is not “wholly irrelevant” in that a qualified account “may identify problems in the council that are relevant to its ability to exercise the General Power of Competence”, but added that it is not “the whole story”.<sup>207</sup>

**267.** The AGW notes that amending the scope of audit work could increase audit fees, and recommended having a separate process where councils could request a report on “fitness for competence”.<sup>208</sup> A WAO representative expressed the view that a criterion for exercising the general power should be something that is “matched to the ability to do it, rather than whether you can just prepare accounts”.<sup>209</sup>

**268.** The Minister stated that through the specified criteria, the Welsh Government is aiming to put a system in place to enable community councils who wish to use the general power to “walk along the right path without an undue burden placed on them”.<sup>210</sup>

**269.** The Minister acknowledged the AGW’s concerns about the unqualified accounts criteria, however she emphasised that this would not be the sole indicator, but “one of the pieces of evidence” used to determine whether a council is in a position to exercise the general power.<sup>211</sup>

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<sup>206</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 11 December 2019, paragraph 237

<sup>207</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 11 December 2019, paragraph 232

<sup>208</sup> Written evidence, LG 01, Auditor General for Wales

<sup>209</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 11 December 2019, paragraph 242

<sup>210</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 173

<sup>211</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 177

## Cost implications

**270.** The RIA sets out the main cost implication as the cost of qualification for clerks. The Welsh Government has provided funding to the Society of Local Council Clerks for “some years to promote, administer and deliver training in CiLCA for clerks in Wales”. The RIA estimates the total cost for each qualification is £700. The Welsh Government envisage that a minimum of 350 clerks, and a maximum of 550 existing clerks would seek the qualification.

**271.** The projected minimum cost for local government during the first three years would be £245,000, with a maximum cost of £385,000 during that time. This would be for local government to meet, and is in addition to the existing funding provided by the Welsh Government.

**272.** A Welsh Government official confirmed that it has historically provided funding to support clerks in undertaking the sector specific qualification, and that the amount had risen this year due to early additional demand, and that it had agreed to “significantly increase it going forward”.<sup>212</sup>

**273.** In a statement published on 12 February 2020, the Minister confirmed that the Welsh Government will be making available up to £500,000 in 2020-21 “to strengthen the financial management and governance” across the town and community council sector. The statement confirmed that this investment will be in addition to the annual general support provided to the sector.<sup>213</sup>

## Our view

**274.** We welcome the provisions enabling eligible community councils to exercise the general power of competence. Many provide varied services for their local communities; it is important that they are able to become eligible to make use of the general power in the same way that principal councils can and that those who wish to do so, are able to demonstrate sufficient competence.

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<sup>212</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 181

<sup>213</sup> Written Statement by the Welsh Government, Support for Financial Management and Governance in the Community and Town Council Sector in Wales in 2020-21, 12 February 2020



**275.** We believe that the eligibility criteria which community councils will be required to meet are generally considered appropriate. However, we do have reservations whether two consecutive unqualified opinions by the AGW, as the only substantive piece of evidence to be used as a condition for eligibility, is sufficiently robust to ensure competent governance arrangements.

**276.** We acknowledge the AGW's concerns therefore that the ability to "compile accounts" does not, in itself, demonstrate competence to administer the general power. It might be considered prudent to include other conditions for eligibility in the future, or a form of review of the provisions. The various public interest reports published by the AGW in 2019 regarding unlawful expenditure on projects by community councils demonstrate the need for sufficient checks and balances to be in place. In addition, the AGW's report, *Financial management and governance – Community and town councils 2018-19*, reported that only 66% of community councils met the statutory deadline for submitting their 2018–2019 accounts.<sup>214</sup>

**277.** We welcome the criteria that a clerk to an eligible community council will need to hold a relevant qualification. This criteria is important not only to assist in professionalising the role, but to ensure that clerks to all eligible councils have the required skills and knowledge to use the general power. The regulations which will specify the required qualification should be developed with input from representatives of the community council sector to ensure the qualification is tailored to meet the relevant training needs.

**278.** The training of clerks to community councils to achieve the relevant qualification will be a key component to the effectiveness of the general power; sufficient resources will be required to deliver the training, particularly if there is a high volume of demand in the early stages. We therefore welcome the increased funds for these purposes provided by the Welsh Government this year in expectation of increased demand.

**279.** We were re-assured by One Voice Wales that its members have access to specialist legal advice from lawyers with expertise in community council law.

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<sup>214</sup> Auditor General for Wales, *Financial Management and Governance – Community and Town Councils 2018-19*, February 2020

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Such advice will be crucial for councils to ensure that they are adhering to the law when exercising the general power of competence.

## 5. Part 3 – Promoting Access to Local Government

The purpose and intended effect of this part of the Bill is to encourage greater public engagement in local democracy. The provisions include requiring principal councils to encourage public participation in their decision-making and scrutiny procedures and matters relating to the broadcast of council meetings, remote attendance of council members and opportunities for the public to speak at meetings.

### Chapter 2 – Public Participation in Local Government

**280.** On balance, stakeholders welcomed the principles of the provisions in this part, but some suggested that improvements could be made. The Children’s Commissioner for Wales criticised the lack of reference to children in her written submission, stating that:

“it will be extremely important that the communication needs of children are actively considered when developing proposals and resources aimed at increasing transparency as this shouldn’t just be about the adult population.”<sup>215</sup>

**281.** This sentiment is echoed by Estyn with regards to the entirety of Part 3. It points to the participation of children as key, and that many local authorities “already have children’s participation strategies in place”.<sup>216</sup>

### Sections 46-48: Duty to encourage participation

**282.** The provisions in sections 46 to 48 place a duty on principal councils to encourage local people to participate in the council’s decision-making process. It

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<sup>215</sup> Written evidence, LG 09, Children’s Commissioner for Wales

<sup>216</sup> Written evidence, LG 36, Estyn

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includes encouraging public participation in the decision making of “connected bodies”, which include community councils and national park authorities. Each principal council will also be required to prepare and publish a strategy specifying how it proposes to comply with its duties, including:

- how it intends to promote awareness of the council's functions with the public;
- promoting how to become a member of the council or a related authority;
- facilitating greater access to information for members of the public; and
- providing ways for members of the public to make representations to principal councils.

**283.** Although the areas a council must cover are predominantly related to facilitating and promoting awareness among the public, section 47(2)(f) places a duty on them to promote awareness of the benefits of using social media by members of the council and members of authorities connected with the council. In our recently published report on Diversity in Local Government, we recommended that:

“the Welsh Government, in partnership with the Welsh Local Government Association and the Electoral Commission, urgently addresses deficiencies in guidance for elected representatives, candidates and prospective candidates on what does and does not constitute acceptable behaviour on social media.”<sup>217</sup>

**284.** The Minister told us she believes the duty on councils to encourage local people to participate would act as a “focal point”<sup>218</sup> for the various strands of engagement work they do.

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<sup>217</sup> Equality, Local Government and Communities Committee, Diversity in Local Government, recommendation 9

<sup>218</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 27 November 2019, paragraph 138

**285.** Our own survey found that 70 per cent of respondents either “disagreed” or “strongly disagreed” with the statement that they “feel able to influence decisions made by the council”. Further, an additional 56 per cent of respondents stated that a main barrier to engaging with the council was that they did not think their “views will make any difference”.<sup>219</sup>

**286.** Generally, the evidence shows broad support for the principle and ambition in the Bill to promote access and increase democratic engagement in local government. ERS Cymru welcomed the principle of trying to improve engagement with local authorities as being a positive step.

**287.** However, despite this broad support for the general principle, some concerns were raised by witnesses. ERS Cymru believed that participation strategies by themselves will not lead to the desired results of better engagement. Its key concern is that the duty may be “papering over some of the fundamental reasons many people don’t engage with local government”<sup>220</sup> as the provision does not demonstrate the type of engagement the Welsh Government expects to see from local authorities. It also noted that there is no specific role for the Welsh Government in imparting information and guidance to local authorities to support them in achieving improved participation. ERS Cymru questioned why there is no definition of a successful strategy and warn that:

“there’s no idea of how strategies will actually be held accountable, whether they’ll be measured up against each other, whether Ministers will intervene if they’re not sufficient enough.”<sup>221</sup>

**288.** ERS Cymru also noted that the Bill, as drafted, may lead to a “patchwork of effectiveness at local authority level”. Some councils, it notes, are “better than others at engaging and using deliberative processes”.<sup>222</sup> It elaborated, stating that what “we are likely to see with the strategies is basically a replication of what

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<sup>219</sup> Local Government and Elections (Wales) Bill – survey analysis

<sup>220</sup> Written evidence, LG 04, ERS Cymru

<sup>221</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 11 December 2019, paragraph 163

<sup>222</sup> Written evidence, LG 04, ERS Cymru

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we have now, so some local authorities being better at engaging citizens than others”.<sup>223</sup>

**289.** The WLGA told us that many councils already have engagement strategies in place and involve the public through a variety of consultation and engagement processes. It highlighted the existing requirement on local authorities to involve the public through the Wellbeing of Future Generations (Wales) Act 2015, adding that it is “not clear what additional value a new ‘public participation duty’ on local authorities would achieve”.<sup>224</sup> Our own survey found that 60 per cent of respondents had shared their views with their council or contributed to a council consultation in the past, showing that some involvement does already take place. The WLGA did, however, acknowledge that it should “always strive to do better and find new ways to engage people to participate”.<sup>225</sup>

**290.** Monmouthshire County Council specifically stated that they “do not agree with the need for further legislation in this area”<sup>226</sup>, whilst Wrexham County Borough Council felt that the duty would “place a further regulatory burden upon the authority” without achieving its goal. It noted that “public participation cannot be forced onto the community”.<sup>227</sup>

**291.** The Minister accepted that local authorities “already do a lot of this”, adding that “this is about pulling it together in a proper and focused sort of way”.<sup>228</sup>

**292.** The Minister also argued:

“We feel very strongly that many of them are not doing enough. So, I’m not arguing at all that there isn’t some good practice out there

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<sup>223</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 11 December 2019, paragraph 156

<sup>224</sup> Written evidence, LG 54, WLGA

<sup>225</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 189

<sup>226</sup> Written evidence, LG 46, Monmouthshire County Council

<sup>227</sup> Written evidence, LG 20, Wrexham County Borough Council,

<sup>228</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 27 November 2019, paragraph 141

and that some authorities have gone a long way down this road, but it's absolutely the case that not all of them have. It's a very frustrating thing in Wales that good practice does not travel well."<sup>229</sup>

**293.** The Minister elaborated, clarifying that another purpose of the provision is to get local authorities to look at good practice and then implement it.

**294.** There is also considerable opposition to the provisions from other parts of the sector. SOLACE believed that any duty that applies to local authorities should also apply to other public authorities so as to not “single out local government and create the perception that there are problems that need addressing within local government, which is not the case”.<sup>230</sup>

**295.** The Co-production Network for Wales noted its criticism. Despite applauding the intention, it believed that the provision “will not be vastly different from what already exists” and that the strategies will not improve “the relationship and interactions between the council and its people”. The Network also criticises section 48 specifically, saying that the need for councils to publish the strategy “as soon as reasonably practicable” puts unnecessary pressure on the council who should instead “take the time that it takes to do involvement properly”.<sup>231</sup>

**296.** Pembrokeshire County Council also expressed some reservations, as the duty could “divert resources away from undertaking engagement work and into process activities”.<sup>232</sup>

**297.** FSB Wales called for “a duty to stakeholder mapping of affected communities of place and interest, including SMEs on key decisions”.<sup>233</sup>

Addressing this, the Minister explained that section 48 states that a principal

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<sup>229</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 197

<sup>230</sup> Written evidence, LG 51, SOLACE Wales

<sup>231</sup> Written evidence, LG 25, Co-production Network for Wales

<sup>232</sup> Written evidence, LG 59, Pembrokeshire County Council

<sup>233</sup> Written evidence, LG 06, FSB Wales

council must consult “such other persons as it considers appropriate”<sup>234</sup> and that this could include the business sector.

**298.** National Parks Wales, the North and Mid Wales Association of Local Councils and the Society of Local Council Clerks agreed with the provisions, including the duty on encouraging participation with authorities connected with the principal council. The Society of Local Council Clerks believe that it is a positive measure that will enhance “levels of accountability and transparency”.<sup>235</sup>

**299.** However, One Voice Wales voiced concern that section 46(2) could create a hierarchical relationship with other tiers of local government. It remarked that “a local authority cannot be responsible for the participation in other levels of government”<sup>236</sup> because they are a separate “legal entity”.<sup>237</sup> Isle of Anglesey County Council echoed this view and believe that this could lead to “blurred accountability”,<sup>238</sup> a view repeated by the WLGA who stated that “such a proposed ‘hierarchical’ relationship undermines their own status, accountability and sovereignty”.<sup>239</sup>

**300.** Lawyers in Local Government agree with the principle, but suggested an alternative approach could be to insert a specific provision to place a duty on connected authorities and the principal council to co-operate and work together to produce the strategy.<sup>240</sup> The WLGA added that this could be a potentially “onerous”<sup>241</sup> task if applied separately on smaller community councils.

**301.** The Minister appeared agreeable to the views expressed. She reiterated that the intention is to “make sure there’s a public participation duty in all of the

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<sup>234</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 206

<sup>235</sup> Written evidence, LG 13, Society of Local Council Clerks

<sup>236</sup> Written evidence, LG 28, One Voice Wales

<sup>237</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 15 January 2020, paragraph 290

<sup>238</sup> Written evidence, LG 55, Isle of Anglesey County Council

<sup>239</sup> Written evidence, LG 54, WLGA

<sup>240</sup> Written evidence, LG 50, Lawyers in Local Government

<sup>241</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 196

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decisions that local authorities and their connected bodies make” but declared that she was “open-minded about how we do this”.<sup>242</sup>

**302.** In a letter to the Committee on 2 March 2020, the Minister stated that she had re-considered these provisions and agrees that the duty on principal councils to encourage participation in decision making “should not extend to connected bodies” as these are “independent and should remain responsible for their own matters”. The Minister added that it is her intention to bring forward an amendment to remove the references to connected bodies. Having considered whether to the subject the connected bodies to this duty individually, her conclusion was that it “would be disproportionate”.<sup>243</sup>

### Cost implications

**303.** The RIA estimates that each principal council will incur an annual cost of £11,544 to pro-actively promote democracy. The total estimated cost for all councils will be £254,000 per annum. This recurrent cost will only be for a period of four years, between 2022 and 2026. An evaluation of its impact will be conducted in 2026-27.

**304.** In addition to the cost of pro-actively promoting democracy, principal councils will need to prepare and produce a strategy, estimated to cost £13,104 per council. This equates to £288,000 across all 22 principal councils for 2022-23.

**305.** Summary cost tables are provided on page 157 of the RIA.

### Our view

**306.** We welcome the spirit of the duty to encourage local people to participate in principal councils’ decision-making process. We agree that this additional duty does have added merit and will aid achieving the intended goal of promoting greater access to local government. We were pleased to hear that the Minister intends to develop guidance on the requirement to publish a participation strategy “in co-production with the WLGA”, and that this process should be seen

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<sup>242</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 187

<sup>243</sup> Letter from the Minister for Housing and Local Government, 2 March 2020

as “top-down”.<sup>244</sup> The Minister continued by noting that “too many times in the past we’ve layered on well-intentioned regulations and guidance and they haven’t had the effect that we wanted them to have”. As a Committee, we welcome such an approach, but also believe that a bottom up approach to engagement is most effective. Ensuring input from the communities themselves in the development of such strategies will be key to their success.

**307.** In light of the concerns we heard from the local government sector, we do not believe that the duty on principal councils should include encouraging participation in the decision-making of “connected authorities”. These authorities are independent, sovereign bodies. Additionally, we recognise that creating an additional duty for town and community councils may be an unnecessary burden, especially for the smaller ones.

**308.** Consequently, we believe that the duty should be amended so that principal councils should instead work collaboratively with connected authorities in order to encourage participation in the making of decisions at all levels of local government. This would also include working together to prepare and publish a participation strategy.

**309.** As such, section 47 should also be amended so that the public participation strategies reflect this collaborative approach. We also see no reason to exclude the fire and rescue authorities from the list of connected authorities in 46(3).

**310.** We note the Minister’s intention to bring forward amendments to remove the reference to connected bodies and her belief that subjecting those bodies to the duty individually is disproportionate. However, we believe that collaboration between the principal councils and their connected bodies is key in increasing participation in all aspects of local democracy, and would wish to see that reflected in the participation strategies.

**Recommendation 12.** We recommend that the duty in section 46(2) be amended to include a requirement on principal councils to collaborate with connected authorities to encourage participation in the making of decisions.

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<sup>244</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 27 November 2019, paragraph 146

Consequently, section 47 should also be amended so that participation strategies reflect this collaboration.

**Recommendation 13.** We recommend that section 46(3) is amended so that fire and rescue authorities are named as a connected authority with a principal council.

## Section 49: Duty to make a petition scheme

**311.** Section 49 will require principal councils to establish a petition scheme to “actively manage and respond to petitions”.<sup>245</sup> A principal council must set out how a petition may be submitted, the steps the council will take in response, and what action, if any, it will take. The provision also allows principal councils to establish an electronic petitions scheme, however, there are no obligations on them to do so.

**312.** Connected to this reform, there is provision (in section 158 and Schedule 12) to abolish community polls. The RIA states abolition of community-polls would “make public access to petitions quicker and easier which in turn could have a more timely impact on principal council decision-making”.<sup>246</sup>

**313.** The Minister explained the rationale for abolishing community polls in favour of a petitions scheme:

“we just think it’s easier for people to engage with. Community polls are expensive and quite off-putting, which, I think, is our evidence. And so, I just think the petitions system is something that everybody understands—it’s the way the Assembly does stuff as well. It’s just a much simpler framework.”<sup>247</sup>

**314.** Some principal councils have already implemented their own petition schemes and our survey found that 16 per cent of respondents selected the petition option when asked how they shared their views with the council.

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<sup>245</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 11.19

<sup>246</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 11.42

<sup>247</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 27 November 2019, paragraph 152

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However, when asked about the preferred method of sharing views with the council, only 2 per cent chose that method, raising some concerns about the effectiveness of the provision in the wider goal of promoting access.

**315.** Notwithstanding this, we heard that there is broad support for replacing community polls with a petition scheme. ERS Cymru noted that “petitions are also a good way to engage the public”, but that it is “fundamental that transparent mechanisms are put in place within the process”.<sup>248</sup>

**316.** However, ERS Cymru highlighted concerns that the Bill does not require local authorities to promote the petitions scheme once it has been established, asking:

“who’s going to inform voters that this scheme is up and running, and who’s going to measure its success and hold the local authority to account?”<sup>249</sup>

**317.** FSB Wales highlighted that it is important the scheme shows “efficacy” and that it is “clear and transparent” why a petition may not have succeeded.<sup>250</sup>

**318.** The provisions were also supported by representatives of the town and community council sector. The Society of Local Council Clerks described community polls as “outdated”<sup>251</sup>, and One Voice Wales noted that the polls “can be misinterpreted by the community as binding local referendums”<sup>252</sup>, causing potential issues between local authorities and their communities.

**319.** Monmouthshire County Council supported the proposal, but called for the Bill to be explicit in stating that the petitions “are not referenda and are only advisory rather than binding”.<sup>253</sup>

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<sup>248</sup> Written evidence, LG 04, ERS Cymru

<sup>249</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 11 December 2019, paragraph 166

<sup>250</sup> Written evidence, LG 06, FSB Wales

<sup>251</sup> Written evidence, LG 13, Society of Local Council Clerks

<sup>252</sup> Written evidence, LG 28, One Voice Wales

<sup>253</sup> Written evidence, LG 46, Monmouthshire County Council

**320.** The WLGA backed the provisions, affirming that the petitions scheme will:

“reduce burden and costs for local authorities, as well as encouraging a more accessible and immediate mechanism for communities to express their views.”<sup>254</sup>

**321.** Powys County Council stated that it does not support the repealing of community polls and called for further consideration to be given to petition schemes and their implications for GDPR.<sup>255</sup>

### **Cost implications**

**322.** The costs associated with this section relate to the preparation, management and review of the petition schemes. It is anticipated there will be a one-off cost of £3,029 per council (£67,000 across all 22 councils) for preparing a petition scheme. The cost of managing and monitoring the petition scheme would amount to approximately £8,000 per year for each council (£176,000 across all 22 councils).

**323.** While there is no requirement on principal councils to establish an e-petition facility, the Welsh Government anticipates that the majority will do so. If councils were to establish a standalone e-petitions system, the Welsh Government has estimated a cost in the region of £12,500, and an ongoing annual maintenance cost of £4,000 per authority (see summary cost tables on page 163 for further details).

### **Our view**

**324.** We recognise that the ways people choose to engage with local democracy are changing, and believe that local authorities should adapt to ensure they can meet those requirements. We are aware of several examples of successful petitions systems used to enable the public to present their views, including the Assembly’s scheme.

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<sup>254</sup> Written evidence, LG 54, WLGA

<sup>255</sup> Written evidence, LG 48, Powys County Council

**325.** We therefore welcome the duty to establish a petitions scheme in recognition of this being a popular method of engagement. We also agree with the provision that abolishes community polls.

## Section 50: Duty on principal councils to publish official addresses

**326.** This section specifies that principal councils must publish an electronic and postal address for each member of the council. Although not stated on the face of the Bill, the EM clarifies that this may be an official address, should they wish to “protect the privacy of their home address”.<sup>256</sup>

**327.** We heard during our inquiry into Diversity in Local Government about the increasing levels of abuse and harassment aimed at elected councillors, and these concerns were again highlighted by witnesses, with the WLGA stating that the situation “has led to all sorts of situations where people have been intimidated at home and have suffered not only abuse, but damage to property as well”.<sup>257</sup> Consequently, the provision received wide-spread support as a means of curtailing such incidents.

**328.** The WLGA noted that it has previously called for such a provision, so naturally supports it now. It stated that several councils have already adopted the practice as there is “anecdotal evidence” that the practice of publishing addresses “is an impediment”<sup>258</sup> to people standing for election. Lawyers in Local Government also welcome the provision, believing that the current system is outdated in the digital age.<sup>259</sup>

**329.** However, both Lawyers in Local Government and the WLGA highlighted an inconsistency between the provision and the requirement on members to publish, as part of their register of interests, details of any interest in land, which typically includes their home address. Lawyers in Local Government stated that

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<sup>256</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 3.104

<sup>257</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 209

<sup>258</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 224

<sup>259</sup> Written evidence, LG 50, Lawyers in Local Government

this could be rectified by amending the members' code of conduct to remove the requirement to publish the full address on the register.<sup>260</sup> The WLGA agreed with this approach, commenting that “there’s no point closing a potential avenue of threat if you’re leaving it open with the register of interest”.<sup>261</sup>

**330.** In response, the Minister acknowledged the inconsistency, stating that it:

“comes out of the way that the code of conduct is currently written, and the way that the register of interests work. And we don't need this Bill to change the guidance for that, so we can just change it.”<sup>262</sup>

**331.** Both One Voice Wales and the Society of Local Council Clerks agreed with the provision, and requested that to ensure consistency, the provision should be extended so that it also applies to community and town councils, ensuring there is a “level playing field”.<sup>263</sup> In response, the Minister acknowledged this point, adding that her understanding is that community councillors can already publish official addresses, but she will “make sure that that [provision] is included”.<sup>264</sup>

## **Our view**

**332.** We explored the impact of harassment and bullying in our report on Diversity in Local Government and in recognition of the detrimental impact on councillors and their families if their home address is targeted, recommended that the Welsh Government “makes it clear to local authorities that members

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<sup>260</sup> Written evidence, LG 50, Lawyers in Local Government

<sup>261</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 221

<sup>262</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 211

<sup>263</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 15 January 2020, paragraph 294

<sup>264</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 219

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should not be required to publish their home addresses on the authority's website"<sup>265</sup>. We therefore welcome this provision.

**333.** Valid concerns were raised in relation to the requirement for local authority members to register their interests in land and we concur with stakeholders that this should be addressed alongside the provision in the Bill. We are pleased that the Minister acknowledged these concerns and has committed to making the necessary changes to the member code of conduct.

**334.** We welcome the Minister's confirmation that the statutory requirement within the Local Authorities (Model Code of Conduct) (Wales) Order<sup>266</sup> (to include in the register of interests details of any land the member owns within the local authority area) will be amended in order to address the anomaly.

**335.** We believe that the same rules regarding publication of addresses should also apply to town and community councils and therefore we welcome the Minister's commitment to clarifying the situation and extending the provision to that sector if necessary.

**Recommendation 14.** We recommend that the Welsh Government amends the Local Authorities (Model Code of Conduct) (Wales) Order so that councillors are not required to publish their home address in full within the register of interests.

**Recommendation 15.** We recommend that the Welsh Government clarifies the position regarding the publication of community councillors' home addresses and amends the Bill to extend the provision to them in section 50 if necessary.

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<sup>265</sup> Equality, Local Government and Communities Committee, Diversity in Local Government, page 34

<sup>266</sup> The Local Authorities (Model Code of Conduct) (Wales) Order 2008

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## Section 52: Constitution guides

**336.** Section 52 amends Section 37 of the Local Government Act 2000, meaning that principal councils will be required to prepare and publish, “in ordinary language the content of their constitution”.<sup>267</sup>

**337.** The EM states that:

“while council constitutions may need to be lengthy to fulfil the requirements of the legislation, it is questionable whether documents of this length help an ordinary member of the public to understand local government decision making, or help communicate the values of a council to the people it serves.”<sup>268</sup>

**338.** The Minister explained:

“what we want to do is publish a guide so that people understand much more plainly how this decision is made—the sorts of issues that people care about—and then understand how they can engage with that.”<sup>269</sup>

**339.** Our own survey found that just 42 per cent of respondents agreed with the statement: “I understand how my council makes and scrutinises decisions”. This demonstrates the need to make it easier for local people to understand how their council functions.

**340.** The general consensus is that the local government sector welcomed the provision. The WLGA accepted that the documents as they stand are often not “particularly accessible” and admitted that “sometimes councillors struggle to follow and adhere to them”.<sup>270</sup> However, we heard that some councils already produce summaries at the front of their current constitutions. Lawyers in Local

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<sup>267</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 3.108

<sup>268</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 3.106

<sup>269</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 27 November 2019, paragraph 139

<sup>270</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 229

Government, who drafted the original model constitution adopted by a high proportion of councils, did not believe that the provision would be “a difficult thing for us to do”.<sup>271</sup> Both they and the WLGA agreed that the constitutions would need to be updated if the Bill becomes law, and offered to “to help prepare a national bi-lingual plain language guide to the Constitution should clause 52 be enacted”.<sup>272</sup>

**341.** Contrasting views were expressed as to whether the constitution could be produced on an “all Wales” level. Monmouthshire and Denbighshire councils felt that the work could be undertaken at a national level “in order to reduce the administrative and financial burden of its production and translation”<sup>273</sup>, however we also heard that “it’s not a once-in-Wales job”<sup>274</sup>. Monmouthshire County Council also raised concern that the guide “could result in misinterpretation of a complex system of rules and procedures”.<sup>275</sup>

## **Our view**

**342.** We realise that information produced by local government can be complex and difficult to understand. We therefore recognise the importance of producing guides that are accessible and transparent, and therefore we support this provision.

## **Access to Meetings of Local Authorities**

### **Section 53: Electronic broadcast of meetings of certain local authorities**

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**343.** Section 53 places a requirement on principal councils to broadcast all public meetings (including sub-committee meetings) and to make them available for a “reasonable period after the meeting”.<sup>276</sup> The EM states that “people should be

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<sup>271</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 534

<sup>272</sup> Written evidence, LG 50, Lawyers in Local Government

<sup>273</sup> Written evidence, LG 56, Denbighshire County Council

<sup>274</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 229

<sup>275</sup> Written evidence, LG 46, Monmouthshire County Council

<sup>276</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 3.110

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able to watch council meetings at any time”.<sup>277</sup> Currently, there is no statutory requirement on principal councils to broadcast their meetings and it is thought that 18 of the 22 principal councils in Wales are currently broadcasting some or all of their meetings via a webcast.<sup>278</sup> In 2012-13, the Welsh Government established a £40,000 grant to encourage principal councils to broadcast council meetings and improve public participation.

**344.** This section also gives the Welsh Ministers the power to make regulations to enable the broadcast of meetings of a committee or sub-committee of fire and rescue authorities and national park authorities in Wales.

**345.** These provisions on broadcasting meetings have proven somewhat controversial; while many local authorities agreed with the principle, significant practical issues were also highlighted. Whilst Pembrokeshire County Council felt it already meets “the requirements of this duty and welcome its introduction”,<sup>279</sup> Conwy County Borough Council stated that there is “no evidence to suggest that all public meetings required webcasting”.<sup>280</sup>

**346.** The WLGA noted that many councils already webcast many of their meetings and are committed to openness and transparency. However, it expressed significant concerns about the implications of the requirement to broadcast “all” public meetings. It questioned the public appetite for watching all types of meetings, believing that many of those that are broadcast receive low viewing figures. This view was endorsed by SOLACE, who called for:

“some more flexibility so that we’re able to broadcast those meetings that we know have got a particular interest to the local public. We can monitor the figures of the people who watch meetings and respond to that

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<sup>277</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 3.110

<sup>278</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 11.72

<sup>279</sup> Written evidence, LG 59, Pembrokeshire County Council

<sup>280</sup> Written evidence, LG 58, Conwy County Borough Council

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accordingly, rather than just having to do all of them. And that will then enable us to control the costs better going forward as well.”<sup>281</sup>

**347.** Despite believing that broadcasting all meetings was “best practice”, Lawyers in Local Government felt that low viewing figures for many meetings, demonstrates that councils could “spend a lot of money on webcasting things that, perhaps, wouldn’t need to be webcast”.<sup>282</sup>

**348.** Lawyers in Local Government suggested a possible solution would be to prescribe specific categories. It recommended the Bill could include a minimum requirement to broadcast where “reasonably practical” for meetings such as Full Council, Cabinet/Executive meetings and planning meetings.<sup>283</sup>

**349.** In response, the Minister stated that she had sympathy with the practical issues and cost implications, but was “really reluctant to restrict it to main meetings”<sup>284</sup> in order to uphold the principle of transparency. A Welsh Government official confirmed that there is a regulation-making power to potentially exclude some meetings, adding that the Welsh Government would work with the sector in order to agree which meetings should be broadcast.<sup>285</sup>

**350.** The prospect of technical issues was also raised as a barrier by various witnesses. Lawyers in Local Government gave examples of meetings in Cardiff where the signal “dropped”, coverage was prevented, and meetings were unable to be broadcast. They also anticipated that rural councils in particular “would have really significant problems”.<sup>286</sup>

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<sup>281</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 441

<sup>282</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 544

<sup>283</sup> Written evidence, LG 50, Lawyers in Local Government

<sup>284</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 223

<sup>285</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 230

<sup>286</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 545

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**351.** The WCVA supported the provision but stressed that meetings should be left online after the meeting and not archived so that the public can refer to them and “hold authorities to account”.<sup>287</sup>

**352.** Regarding potential technological issues, the Minister highlighted the changing nature of technology and that “there will be solutions available that we aren’t currently able to think about” so flexibility was needed in order to make “public participation and transparency as maximised as possible”.<sup>288</sup>

**353.** Witnesses also suggested that the requirement may have the unintended consequence of restricting the ability to hold meetings at different locations and thus, limiting public access. The WLGA argued the requirement would mean that “everything now is happening in County Hall, whereas in the past it wouldn’t have been”.<sup>289</sup> This point was also raised by Powys County Council,<sup>290</sup> Rhondda Cynon Taf County Borough Council<sup>291</sup> and Lawyers in Local Government.<sup>292</sup>

**354.** In response, the Minister said that the intention was not to stop meetings being held in the community and that the Welsh Government would “be looking at some pragmatic solutions”<sup>293</sup> to address the issues raised.

**355.** Concerns were also raised by South Wales Fire and Rescue Authority around the provision for the Welsh Ministers to make regulations requiring the broadcasting of its meetings. If enacted, it believes that it could create a “financial burden on fire and rescue authorities”.<sup>294</sup> It referred to low levels of public interest in its meetings stating “I think we’ve only had public attendance

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<sup>287</sup> Written evidence, LG 39, Wales Council for Voluntary Action

<sup>288</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 232

<sup>289</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 240

<sup>290</sup> Written evidence, LG 48, Powys County Council

<sup>291</sup> Written evidence, LG 52, Rhondda Cynon Taf County Borough Council

<sup>292</sup> Written evidence, LG 50, Lawyers in Local Government

<sup>293</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 223

<sup>294</sup> Written evidence, LG 31, South Wales Fire and Rescue Authority

at our meetings on three occasions”.<sup>295</sup> This concern was echoed by witnesses from the other fire and rescue authorities. South Wales Fire and Rescue Authority also noted that the RIA does not provide a cost estimate for extending this provision as it is an “enabling provision”.

**356.** The Minister commented that funding for extending the provision to fire and rescue authorities and national parks would “be included in the costs in the normal way”<sup>296</sup> if regulations are brought forward.

### **Cost implications**

**357.** Discussions held between the Welsh Government, principal councils, the WLGA and the company providing the broadcasting service have identified the potential for a single contract for Wales. The cost for an “average broadcasting package” has been estimated at £12,000 per year for each council in Wales.

**358.** This would equate to a yearly cost of £264,000 for local government in Wales. The summary of costs in table 36 in the RIA does not take account of any potential price increases or inflation.

**359.** The cost implications were questioned by numerous witnesses, with Denbighshire County Council describing the RIA as “woefully inadequate”.<sup>297</sup> It was noted that broadcasting meetings can be done in a cost-effective manner, using services like YouTube, as done by Monmouthshire County Council, but with limited functionality. The Co-production Network for Wales supported this as they believe that “it would be a waste of resources” to invest in the equipment but not “work towards people making full use of it”.<sup>298</sup>

**360.** SOLACE backed this view, highlighting the need for technical staff to be employed to manage the systems. As such, many witnesses felt that the RIA “is

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<sup>295</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 9 January 2020, paragraph 608

<sup>296</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 234

<sup>297</sup> Written evidence, LG 56, Denbighshire County Council

<sup>298</sup> Written evidence, LG 25, Co-production Network for Wales

likely therefore to be a significant underestimate”.<sup>299</sup> Lawyers in Local Government raised the issue of costs for both equipment and staffing. It highlighted the example of Flintshire County Council, who expect a cost increase of “£44,000 a year, so, going up from £16,000 to £60,000”<sup>300</sup> without the added cost of staff applied to the figure. Requests were made by individual councils for the Welsh Government to cover the costs if they are going to mandate councils to broadcast all meetings.

**361.** Lawyers in Local Government also raised other practical issues, including the difficulties that councils could face such as wiring in listed buildings, believing that a “one size” provision “would not fit all”. It concluded that it supported the provision, but central funding would be needed to implement it.<sup>301</sup>

**362.** We explored the potential of an “all Wales” contract as a way to overcome the cost implications. Lawyers in Local Government raised concerns that there may be difficulties in creating a “monopoly” for one company, and for re-negotiating contracts currently in place. The WLGA, while noting concerns about the risk of creating a monopoly, and the complexities of such a national procurement exercise, believed that it is achievable.<sup>302</sup> SOLACE welcomed the potential for an all-Wales contract, believing it to be more efficient than replicating a similar contract across 22 local authorities, but highlighted that some authorities may not want to be “forced into a new arrangement”<sup>303</sup>.

**363.** The Minister declared that she is “very happy to work with local government to try and make sure that we get the best options in place” and that she had “no

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<sup>299</sup> Written evidence, LG 54, WLGA

<sup>300</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 550

<sup>301</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 557

<sup>302</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 252

<sup>303</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 444

fixed view” regarding national procurement, regional procurement or individual authorities securing contracts for themselves.<sup>304</sup>

**364.** A Welsh Government official stated that the Welsh Government had established a working group with local authorities and the WLGA to “look at the very practical implications of this provision and the remote attendance provision as well”, which will hopefully find pragmatic solutions to the issues raised.<sup>305</sup>

### **Our view**

**365.** We share the concerns of witnesses who highlighted the potential for unintended consequences if the provision requires “all” council meetings to be broadcast electronically. The requirement as it stands could lead to a potential reduction in external engagement with residents and communities, particularly if the broadcast equipment is fixed within council buildings.

**366.** We also note the concerns raised regarding the possible technical issues associated with Wi-Fi accessibility, particularly in rural areas, and its potential impact on proceedings. We therefore welcome section 53(6) of the Bill which states that the validity of a meeting would not be affected by the availability of a broadcast, which should allay the concerns of some stakeholders.

**367.** We would welcome greater certainty and clarity from the Welsh Government that additional funding will be provided to fire and rescue authorities and national park authorities should regulations be introduced that extend the provision to them.

**368.** We recognise the cost and resource implications for local authorities if it is necessary to broadcast all meetings. We welcome the provision in section 53(4) which enables the Welsh Ministers to make regulations that would specify that certain proceedings at council meetings would not need to be broadcast. Consequently, we believe that the Welsh Government should continue to work

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<sup>304</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 224

<sup>305</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 229



further with the local government sector in order to find a positive, practical solution to the issues raised by stakeholders.

**369.** One Member raised the need to clarify rules around the use of private recording equipment to record local authority meetings. We acknowledge that the provision requiring the electronic broadcast of “all” council meetings would negate the need to use any private recording equipment in future as it will be publicly available online. We note that the Code of Recommended Practice on Local Authority Publicity in Wales currently states that local authorities are urged to “look favourably” on private recordings, “provided those attending the meeting are aware this is taking place and other members of the public are not distracted or disturbed unduly by the process”.<sup>306</sup> We believe that this should not be weakened by the provisions in this Bill.

**370.** However, members of the public may wish to continue using recording devices in public meetings in the future. We would therefore welcome updated guidance from the Welsh Government regarding the use of private cameras to record at local authority meetings. We recommend that the Welsh Government continues to work with the local government sector to find a positive, practical solution to the issues raised by stakeholders relating to the cost and resource implications of broadcasting meetings.

**Recommendation 16.** We recommend that the Welsh Government provides updated guidance on the use of private recording equipment at council meetings in light of the provisions in this Bill relating to the electronic broadcasting of council meetings.

#### Section 54: Conditions for remote attendance of members of local authorities

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**371.** The Local Government (Wales) Measure 2011 allows principal councils to facilitate the use of remote attendance for members. However, as noted in the EM and as we heard as part of our inquiry into Diversity in Local Government, the current provision is too restrictive in its nature. Section 54 therefore modifies the 2011 Measure with the intention of making it easier.

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<sup>306</sup> Code of Recommended Practice on Local Authority Publicity in Wales, consultation paper, page 9

**372.** The EM states that, despite some potential issues, remote attendance is seen as a:

“potentially important reform, particularly in the encouragement of diversity.”<sup>307</sup>

**373.** We recommended in our report on Diversity in Local Government, that the Welsh Government, in this Bill, “includes provisions to relax the restrictions on members’ remote attendance and voting at formal council meetings set out in the Local Government (Wales) Measure 2011 to enable local authorities to trial the use of video communication methods”.<sup>308</sup>

**374.** The WLGA supported the proposals to streamline attendance arrangements in order to allow flexibility for members to attend meetings remotely. This follows criticism of the 2011 Measure for being too prescriptive and difficult to implement.

**375.** However, issues were raised by witnesses, specifically regarding the validity of meetings in situations where technology failed. Lawyers in Local Government called for the inclusion of a saving provision that ensures the validity of meetings if the technology was to fail. It explained that most councils have rules in place that do not allow councillors to vote on decisions when they have not heard all of the evidence and suggested that a provision be included to clarify that meetings would not be invalid if the technology failed.

**376.** The WLGA also raised concerns around technical issues stating that “we have to go a lot further down into the digital or technological revolution before that can be an effective way of conducting meetings”, especially in rural areas. The WLGA also noted that consideration would need to be given to situations where a high number of members are attending remotely and voting is required.<sup>309</sup>

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<sup>307</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 3.112

<sup>308</sup> Equality, Local Government and Communities Committee, Diversity in Local Government, page 15

<sup>309</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 258

**377.** Differing views were expressed by different councils. Whilst Monmouthshire County Council stated that it has already amended its constitution to enable remote attendance,<sup>310</sup> Ceredigion County Council did not agree with the provision. The latter called for arrangements to be made locally and raised concerns about how exempt reports could be considered whilst attending remotely.<sup>311</sup> The Isle of Anglesey County Council stated that any provision should first be “properly piloted” and also flagged data protection and confidentiality issues.<sup>312</sup>

**378.** Mid and West Wales Fire and Rescue Authority welcomed the provision as it would help to address issues of attendance at meetings by those who are geographically remote from the venue of the meetings in question.<sup>313</sup>

**379.** In response to concerns regarding technology, the Minister clarified that the “saving” provision included for the broadcasting of meetings could not be replicated for remote attendance. The Minister indicated that a saving provision may be required if the meeting is “suddenly inquorate” or a voting member isn’t able to participate due to technology failure, but that this was different to a situation where the broadcasting equipment fails. She stated her intention to “work through what the implications of the two scenarios” are and find “pragmatic ways of dealing” with both provisions.<sup>314</sup>

**380.** The Minister told us that the Welsh Government is currently working with the WLGA in order to “trial remote attendance and update the guidance” which would hopefully allay the concerns of the sector.<sup>315</sup>

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<sup>310</sup> Written evidence, LG 46, Monmouthshire County Council

<sup>311</sup> Written evidence, LG 15, Ceredigion County Council

<sup>312</sup> Written evidence, LG 55, Isle of Anglesey County Council

<sup>313</sup> Written evidence, LG 33, Mid and West Wales Fire Authority

<sup>314</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 224

<sup>315</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 27 November 2019, paragraph 161

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## Cost implications

**381.** The RIA states that the cost for principal councils will vary, depending on arrangements that are put in place. The Welsh Government note however that an “overall annual cost to each principal council of £10,000 might be realistic”. Some of the cost of facilitating remote attendance may be off-set by savings made in reducing the need for members to travel to meetings.

## Our view

**382.** We welcome the provision to relax restrictions on remote attendance, in line with the recommendation we made in our report on Diversity in Local Government. However, we believe that further consideration is needed to resolve the question of the validity of proceedings and quorum should the remote attendance equipment fail. We welcome the Minister’s commitment to work with local government to agree a solution.

**383.** We welcome that the provision allows councils to specify in their standing orders the conditions that must be satisfied for a member of the authority to attend remotely, as this will allow for local flexibility. The standing orders should include rules around quorum and the validity of meetings in the event of technology failure.

## Section 55: Participation at meetings of community councils

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**384.** Currently, community councils are not under any statutory obligation to allow public participation in meetings, although many will provide time for members of the public to speak.

**385.** Section 55 amends Part 4 of Schedule 12 of the Local Government Act 1972 to provide that members of the public attending a community council meeting “must be given reasonable opportunity to make representations about any item of business due to be discussed at the meeting”.<sup>316</sup> The Explanatory Notes do not seek to define “reasonable opportunity” in this context. They do however state that the person chairing the meeting will have “wide discretion to decide what

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<sup>316</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 231

amounts to a ‘reasonable opportunity’, having regard to any guidance on this matter issued by the Welsh Ministers”.<sup>317</sup>

**386.** Some opposition to the provision was noted by Beaumaris Town Council, who argued that any public participation needed to be considered and more specific detail may need to be required.<sup>318</sup>

**387.** Denbighshire County Council intimated that the provision may be unnecessary as “many” community councils facilitated participation in their standing orders already. It highlighted that there may be difficulties “in the orderly conduct of their meetings if members of the public can take part in every item of business”.<sup>319</sup>

**388.** North and Mid Wales Association of Local Councils, whilst welcoming the provision, stated that there has been disruption at meetings and that the circumstances would require management by council clerks.<sup>320</sup>

**389.** Despite this, there was strong support for the provision from the town and community council sector. The Society of Local Council Clerks backed the proposal saying that the practice of allowing the public to participate in public meetings is common already. It stated that the proposal will:

“facilitate greater public interest in the business of local councils which can only strengthen local democracy.”<sup>321</sup>

**390.** When questioned if the word “reasonable” gave enough clarity, it stated that the drafting is:

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<sup>317</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 235

<sup>318</sup> Written evidence, LG 40, Beaumaris Town Council

<sup>319</sup> Written evidence, LG 56, Denbighshire County Council

<sup>320</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 15 January 2020, paragraph 313

<sup>321</sup> Written evidence, LG 13, Society of Local Council Clerks

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“strong enough and really provides the necessary checks and balances to make sure that electors have the opportunity to ask any question that they feel is appropriate.”<sup>322</sup>

**391.** This view was reiterated by One Voice Wales who acknowledged that the provision will:

“ensure consistency of approach, greater opportunity for electoral input and better understanding of the roles and purpose of community and town councils.”<sup>323</sup>

## **Our view**

**392.** We welcome this provision as an additional opportunity for the public to engage with the work of their local community councils. We acknowledge there will be a need to manage expectations, however the provision allows for local flexibility to develop the necessary policies to achieve this.

## Section 56: Notices etc. of local authority meetings

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**393.** Section 56 amends the Local Government Act 1972 and other acts to modernise provision about notices and other documents relating to meetings of principal councils and community and town councils. The provision includes facilitating electronic publication and summonses, removing the prohibition of holding meetings in licensed premises and permitting the calling of urgent meetings provided 24 hours’ notice is given.

**394.** This provision has proven to be largely non-controversial with both the Society of Local Council Clerks and One Voice Wales supporting it. The Society of Local Council Clerks noted that they have previously called for its inclusion in the Bill and felt that the ability to hold community council meetings in licensed premises offers “more flexibility over the choice of meeting venues going forward”.<sup>324</sup> It also welcomed the ability to call urgent meetings provided 24

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<sup>322</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 15 January 2020, paragraph 305

<sup>323</sup> Written evidence, LG 28, One Voice Wales

<sup>324</sup> Written evidence, LG 13, Society of Local Council Clerks

hours' notice is given, but would like to see it extended to cover the calling of urgent committee and sub-committee meetings too.

**395.** South Wales Fire and Rescue Authority noted an inconsistency as neither the provision to publish notice of meetings electronically, nor the electronic service of summonses, applies to the fire and rescue authorities. It noted that it would be “beneficial” to have the same working practices as local authorities with regards to this and claimed that it would be “a detrimental step not to fully embrace the digital age for Fire and Rescue Authorities at the same time as local authorities”.<sup>325</sup> It would like to see this issue addressed in the Bill. Mid and West Wales Fire Authority echoed these sentiments and asked for “parity” with local authorities when it comes to section 56.<sup>326</sup>

**396.** The Minister confirmed that she was “very happy to consider adding them back in” when referring to this anomaly.

### **Our view**

**397.** We welcome the provisions in section 56, but would like to see these extended to include fire and rescue authorities. We cannot see any reason why they should not be included in the provision.

**Recommendation 17.** We recommend that the Welsh Government extends the provisions in section 56 to include fire and rescue authorities.

## **Annual Reports by Community Councils**

### **Section 57: Annual Reports by Community Councils**

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**398.** Currently, there is no statutory provision that states that a community council is required to prepare and publish an annual report. The Independent Review Panel on Community and Town Councils (“the Independent Review Panel”) in its report in 2018 recommended that:

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<sup>325</sup> Written evidence, LG 31, South Wales Fire and Rescue Authority

<sup>326</sup> Written evidence, LG 33, Mid and West Wales Fire Authority

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“all Community and Town Councils should prepare an annual report setting out their progress to date and priorities for the forthcoming year.”<sup>327</sup>

**399.** Section 57 places a duty on all community councils to prepare and publish an annual report. It specifies that the document should set out its priorities, activities and achievements during the year, to be published as soon as reasonably practicable after the end of each financial year.

**400.** The RIA states that the benefit of publishing annual reports is that they will “generate a greater interest and understanding of the benefits of improved engagement and accountability”. This, it notes, “may result in an increase in participation by local communities”.<sup>328</sup>

**401.** A Welsh Government official stated that the duty would be proportionate, meaning that smaller councils are able to produce a “newsletter-type annual report” whilst the large councils could produce more formal documents.<sup>329</sup>

**402.** The official also stated that many councils currently produce similar reports already, which is borne out by the fact that the sector largely welcomes the provision, with some caveats. The Society of Local Council Clerks believed that it is right that bodies that spend public money “should be accountable” for that money.<sup>330</sup>

**403.** The Society of Local Council Clerks and One Voice Wales both noted that community councils, under the provision, would now be subject to three reporting requirements – an annual report; a report under section 40 of the Well-Being of Future Generations (Wales) Act 2015; and a report under section 6 of the

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<sup>327</sup> Independent Review Panel on Community and Town Councils in Wales, Final Report, page 27.

<sup>328</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 11.126

<sup>329</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 27 November 2019, paragraph 178

<sup>330</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 15 January 2020, paragraph 322



Environment (Wales) Act 2016. The Society of Local Council Clerks suggested that producing one composite report would:

“help cut down on the amount of administration and would be viewed as a positive measure to efficiently support the working time of clerks, most of whom work part time.”<sup>331</sup>

**404.** One Voice Wales also supported the provision in principle, believing that the reports will help to “encourage engagement” and improve transparency. It called for the Welsh Government to produce “clear guidance” on how the report should be delivered.<sup>332</sup>

**405.** One Voice Wales also noted that annual reporting will “represent a new resource implication for councils and to enable their implementation in the short-term the provision of a grant would be welcomed”.<sup>333</sup> This was also raised by Denbighshire County Council who indicated some concerns that for small councils, this provision, “may be an additional burden on already scarce resources in terms of clerks”.<sup>334</sup> The Society of Local Council Clerks concurred that additional funding may be required during the transitional period.<sup>335</sup>

**406.** The Minister was open to the suggestion of community councils amalgamating their reporting requirements, stating that it is “entirely up to them” whether they produce single documents or a composite report as a means of reducing the burden. The Minister also confirmed the Welsh Government’s intention to introduce “good-practice guidance” for the sector.<sup>336</sup>

**407.** The Minister was “not at all convinced” that extra funding would be needed to produce the reports. A Welsh Government official clarified that it estimated “it could cost about sixty pound for their clerk’s time to produce one, up to a couple

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<sup>331</sup> Written evidence, LG 13, Society of Local Council Clerks

<sup>332</sup> Written evidence, LG 28, One Voice Wales

<sup>333</sup> Written evidence, LG 28, One Voice Wales

<sup>334</sup> Written evidence, LG 56, Denbighshire County Council

<sup>335</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 15 January 2020, paragraph 323

<sup>336</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 242

of hundred for the very large councils”. Therefore, the Welsh Government official indicated that “grant money may not be the best way forward” and that instead the Welsh Government would organise practical support through workshops and guidance.<sup>337</sup>

### **Cost implications**

**408.** There is a small cost implication for the Welsh Government of £9,000 to prepare guidance for community councils. However, the cost to community councils will vary.

**409.** The RIA explains that there are a “range of factors” that could impact on costs for community councils in preparing an annual report. This includes the range of functions and responsibilities each community council has and the size of the council. However, the core cost relates to clerk resource.

**410.** The Welsh Government provides some broad estimated costs for producing annual reports based on the size of the population within the community council area. Details are provided in Table 41 (page 184 of the EM).

**411.** The total cost for the community council sector could amount to £175,000 in Year 1 (2020-21). It is estimated that subsequent reports will take up to 60% less time after the initial year.

### **Our view**

**412.** We support this provision, although it would be beneficial if the Welsh Government could clarify, in guidance, that town and community councils are able to produce composite reports covering all of their reporting obligations, should they wish to do so.

**Recommendation 18.** We recommend that the Welsh Government clarifies in guidance that town and community councils are able to produce composite reports covering all of their reporting obligations.

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<sup>337</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 245



## 6. Part 4 – Local Authority Executives, Members, Officers and Committees

Provisions in this Part of the Bill cover a broad range of issues relating to local authority executives, members, officers and committees.

**413.** There are provisions in this Part of the Bill relating to the appointment of chief executives of principal councils, their performance management and remuneration; expanding job-sharing for executive leaders and members of the executive with the aim of strengthening equality and diversity; and improving standards of conduct. This Part also amends existing legislation regarding the investigation of member conduct by the Public Services Ombudsman for Wales (“PSOW”), and imposes a duty on community councils to consider the training needs of councillors and staff.

**414.** There is also a provision that gives the Welsh Ministers enabling powers to require that principal councils appoint joint overview and scrutiny committees.

### Chief executives

Sections 59-62: Appointment of a chief executive, performance management and remuneration

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**415.** The Local Government and Housing Act 1989 requires principal councils to designate an officer as its “head of paid service”. This officer is often described as the chief executive or managing director. Section 59 seeks to ensure consistency in definition and clarity around the duties of a chief executive and places a requirement on principal councils to appoint one.

**416.** The EM notes that the duties and responsibilities of the “head of paid service” are “not consistently, or clearly, defined”, which can sometimes be

problematic, in particular, for the “relationship between the head of paid service and elected members”.<sup>338</sup>

**417.** This provision was widely supported by local government representatives, including the WLGA, SOLACE, ALACE and individual local authorities who responded to our consultation. The representatives from SOLACE noted that, whilst they were both were serving managing directors rather than chief executives, the title of the role was “far from controversial” and brings consistency.<sup>339</sup>

**418.** The Independent Remuneration Panel for Wales (“IRPW”) commented that the provisions represent an appropriate direction of travel. It noted that in its experience, there is “huge variation and inconsistency in the role of a chief executive”, adding that:

“it is much better for local government to have a consistency in the approach, and this sets down what is expected of a chief executive, of the head of paid service, somebody who actually is responsible for everything, administratively, that goes on within the authority. So, we actually think that that would be beneficial in the longer term.”<sup>340</sup>

**419.** The Society of Local Council Clerks noted that a similar claim could be made regarding the appointment of clerks to town and community councils. It suggested that legislating to require the appointment of a “Clerk to the Council” would give the position a firm legal footing which would help to professionalise the role. It called upon the Welsh Government to address this in the Bill. This view was supported by One Voice Wales and the North and Mid Wales Association of Local Councils.<sup>341</sup>

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<sup>338</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 12.14

<sup>339</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 451

<sup>340</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 11 December 2019, paragraph 23

<sup>341</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 15 January 2020, paragraphs 330-332

**420.** The Minister did not believe it necessary to denote the role of a community council clerk on the face of the Bill as the functions are “really different”, adding that the role and formal functions of the chief executive of a principal council is:

“a big job, controlling a very large number of local services, and even the biggest of our town and community councils don’t have anything even remotely approaching such a thing.”<sup>342</sup>

**421.** However, there was an acknowledgement from the Minister and a Welsh Government official of the aim to professionalise the clerk role, with the official noting that there are “other ways of recognising” its status and that more thought will need to be given to the issue.<sup>343</sup>

**422.** Section 60 makes provision in relation to performance of chief executives. It places a duty on the “senior executive member” (leader or mayor) to prepare and publish arrangements for “managing the performance of the chief executive”. The senior executive member will be required to write a report, consult with the chief executive and send the report to the chief executive and all other members of the council. It will be a matter for the council if it publishes the report, part of the report or a summary. However, the council must consult the chief executive before publishing.

**423.** The Minister told us that this provision will put performance management processes on a statutory basis and give clarity to the role of the chief executive:

“these arrangements also make it clear that the chief executive serves the council as the whole as well as the executive.”<sup>344</sup>

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<sup>342</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 249

<sup>343</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 255

<sup>344</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 27 November 2019, paragraph 187

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**424.** The Minister explained that guidance would be produced in collaboration with SOLACE and the WLGA<sup>345</sup> on how the arrangements should work, including publishing the report or part of it, as referred to in section 60(3), in order to reach:

“the balance between the personal appraisal that is necessary and the system and politics appraisal that is necessary.”<sup>346</sup>

**425.** SOLACE and ALACE would like to see the Bill amended to enable flexibility for authorities to decide their own arrangements for the performance management of chief executives. They raised several concerns about these provisions, with ALACE noting that it has “significant concerns”.<sup>347</sup> A key concern raised by both organisations is that the requirement for the performance review to be undertaken solely by the senior executive member is too prescriptive and does not allow for flexibility in performance arrangements operated by different authorities. We heard that chief executives’ current performance appraisals often involve a range of individuals, such as opposition leaders or independent external peers, and that the ability to maintain such an arrangement is crucial. Representatives from SOLACE told us about their own appraisal as managing directors:

“In my own case, my appraisal is not conducted simply by the leader; it’s conducted with the leader, the deputy leader and the opposition group leader. I think that’s a pretty robust system. It allows individuals who work alongside you regularly to be involved in that appraisal, as well as others.

In my organisation, my performance review is done with the leader and deputy leader of both the administration group and the opposition group. And that’s important because, as chief executive, I

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<sup>345</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 27 November 2019, paragraph 203

<sup>346</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 27 November 2019, paragraph 199

<sup>347</sup> Written evidence, LG 36, ALACE

work for all members on the council; I have that political impartiality.”<sup>348</sup>

**426.** SOLACE representatives argued that authorities should be able to choose whether to involve an independent person in overseeing the appraisal process, which would not be possible under the current requirements of the Bill.<sup>349</sup> They emphasised that involving a wider range of people could increase the robustness of the process, reducing the risk of an appraisal process involving just two individuals who may have been working together for some time.<sup>350</sup>

**427.** Strong opposition was also voiced by SOLACE and ALACE to the publication of the appraisal report or specific parts of it. ALACE noted that it was not aware of any other provision that requires the performance review of a public sector employee in Wales to be published. It emphasised:

“No case has been made to single out chief executives of councils in this way, when performance reviews of chief executives of Assembly Sponsored Public Bodies and Health Boards, the Permanent Secretary of the Welsh Government or the Chief Executive and Clerk of the National Assembly for Wales are not also subject to a statutory provision that allows their publication. The solution is simple: subsection (3) should be removed, so that councils and their senior officers are not singled out for differential treatment. It would constitute an invasion of privacy between employer and employee if this provision remains on the face of the Bill.”<sup>351</sup>

**428.** SOLACE supported this view:

“No individual, in our opinion, should have something that’s personal to them and personal to their performance published to the wider

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<sup>348</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraphs 454-455

<sup>349</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraphs 457-459

<sup>350</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 463

<sup>351</sup> Written evidence, LG 36, ALACE



public. This is something that goes to the heart of our submission. If there are concerns, then those concerns need to be dealt with through the performance management system.”<sup>352</sup>

**429.** Both organisations also raised concern about the provision for the Welsh Ministers to issue guidance relating to this section, with ALACE commenting:

“The concern arises from the statement on page 13 of the statement of policy intent that “The guidance may cover more detailed information about the standards of performance required, the monitoring process and areas where councils consider further clarity is required”. ”<sup>353</sup>

**430.** ALACE asserts this would “interpose Ministers for the first time in the performance management arrangements for an individual member of a council’s staff”. It believes that such a power to issue guidance “undermines the independence of local government in managing its staff and setting performance standards for them”. It repeats its assertion that the provisions treat chief executives of local authorities differently to other equivalent roles within the public sector.<sup>354</sup>

**431.** ALACE also commented on the lack of engagement from the Welsh Government on these provisions and the sense that chief executives are being “singled out in this Bill”:

“There has never been any proactive and meaningful discussion with ALACE by Welsh Government officials at any stage on these or other proposals which affect the contracts and remuneration arrangements for chief executives and other senior officers. For example, no contact was made with ALACE following publication of the Bill even though it directly (and, we would suggest, adversely) affects our members. We do not feel that this treatment conforms with the espoused Welsh Government position on trade union recognition and engagement.

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<sup>352</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 452

<sup>353</sup> Written evidence, LG 36, ALACE

<sup>354</sup> Written evidence, LG 36, ALACE

Chief executives are the core of the ALACE membership and our members feel that they are not being given equal treatment to other public sector employees.”<sup>355</sup>

**432.** The views expressed by SOLACE and ALACE were supported by the WLGA.<sup>356</sup>

**433.** The Minister expressed the view that a chief executive to a local authority, an elected institution, is a different role to the heads of other public service organisations:

“this is a democratically elected body with an official at its head that is carrying out the wishes of a democratically elected set of people. And that person has a major impact on whether the democratically elected people get their manifesto commitments through or not. I think that there is, therefore, a role for some public transparency in that, in a way that a health board, which isn’t elected in that way, and doesn’t have that kind of association with its local community, doesn’t have. I think that’s the difference.”<sup>357</sup>

**434.** The Minister sought to clarify that the arrangements are not “expected to be a HR process” but to demonstrate “the chief executive’s main public objectives for the year”:

“I just want to be really clear this is not about any kind of personal performance-type issues or not being able to say that you need training in how the health and social services Act works or something, because we do not want that; that is very counter-productive. This is about the public facing, overarching objectives of the person who leads a democratic institution.”<sup>358</sup>

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<sup>355</sup> Written evidence, LG 36, ALACE

<sup>356</sup> Written evidence, LG 54, WLGA

<sup>357</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 265

<sup>358</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraphs 266-267

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**435.** The Minister added that the guidance from the Welsh Ministers would clarify how the performance management would work.<sup>359</sup>

**436.** We also heard from the Minister that further consideration is being given to this section, possibly by amending it to remove the requirements in subsection (2) (arrangements for the review) and potentially subsection (3) (publishing the report of the review).<sup>360</sup>

**437.** Section 62 inserts a provision for the reconsideration of remuneration following direction by the Welsh Ministers. If the Welsh Ministers consider the remuneration of a council chief executive is “inconsistent” with the recommendation of the IRPW, the responsibility cannot be delegated to the executive. It must be undertaken by the full council.

## **Our view**

**438.** We welcome the provision in section 59 to bring consistency to the duties of a chief executive of a principal council. We listened carefully to the comments made by the representatives of the community council sector around including a similar provision for clerks to community councils, and whilst we support measures to professionalise that role, we agree with the Minister that the role of a chief executive to a principal council is different. We believe that the other measures in this Bill which relate to the training of community council clerks will raise the profile and bring consistency to that role.

**439.** We acknowledge the serious concerns raised by SOLACE and ALACE about the provisions relating to the performance management of chief executives to principal councils. We concur that the provision which specifies that the performance review should be undertaken by the council’s senior executive member is too prescriptive, and does not allow for local flexibility.

**440.** Our principal concern is that, instead of improving the process, this could lead to the diminishing of openness and transparency. We believe that the

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<sup>359</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 277

<sup>360</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraphs 269-275

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provisions should take account of the fact that chief executives work with all members of a principal council, not just the executive; it is therefore crucial that other members such as opposition leaders or group leaders are involved in the review process. We are also concerned that the current provision would not permit an independent external peer to be involved in the process, which we heard that some chief executives value. We therefore welcome the Minister's intention to re-consider the provision in 60(2) and urge her to amend this section during the amending stages.

**441.** We also heard concerns around the provision relating to the publication of the chief executive's performance review (as distinct from an internal performance appraisal), and understand why such a provision could cause concern. We therefore welcome the Minister's assurances that the provisions are not intended to be a "HR process", but to measure progress in meeting the public objectives of an authority. We believe that this should be made clear in guidance, and that the process includes a focus on future public objectives within a performance management system, which incorporates, but is not limited to annual appraisals. It is imperative, in our view, that the concerns voiced by chief executives are considered as part of any amendments being considered by the Minister.<sup>361</sup>

**442.** It is disappointing that representatives felt they had not been consulted on the provisions relating to the performance management of chief executives. Concerns outlined to us could have been allayed much earlier had such consultation taken place. We welcome the Minister's intention to make amendments to section 60, and believe the Welsh Government should consult with and take into account the views of ALACE and SOLACE before amendments are introduced.

**Recommendation 19.** We recommend that the Welsh Government consults ALACE and SOLACE on changes relating to the performance management of chief executives prior to amendments to section 60 being tabled during the amending stages.

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<sup>361</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 266

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## Executives of principal councils: Appointment of assistants and job-sharing

**443.** Section 63 would formalise a local authority executive's ability to appoint assistants who would not be members of the executive but would, in some circumstances, be able to act on the executive's behalf. The Explanatory Notes explain that the rationale for the provision is that it could increase the diversity of decision-making within councils.<sup>362</sup> The role would be "less onerous" than that of a full-time executive member, providing opportunities for "less experienced councillors and potentially those with caring or employment commitments".<sup>363</sup>

**444.** The Minister further explained the intended benefits of the provisions:

"It allows people with less experience of local government to work with those who have more experience and it allows for succession planning. So, I think it has a whole range of benefits that allow people to get experience they would not otherwise get in circumstances where you could, for example, easily appoint somebody with a lot of experience and somebody with much less experience to job-share a role, in which case they could mentor each other. So, I think there are lots of opportunities here to increase diversity and to get people more likely to come forward."<sup>364</sup>

**445.** The IRPW referred to enthusiasm within local government to take-up such opportunities, but commented that authorities could currently do so within the existing framework by applying for additional paid posts, but that none had done so. Regardless, the Panel believed there would be interest in appointing assistants if the provision in the Bill is put in place.<sup>365</sup>

<sup>362</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 271

<sup>363</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 12.27

<sup>364</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 27 November 2019, paragraph 207

<sup>365</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 11 December 2019, paragraphs 58-62

**446.** The IRPW also explained that, if taken up, it could potentially cause difficulties for smaller local authorities as the number of paid posts should not exceed half of the total number of elected members, and they would then need to apply to the Welsh Ministers to seek to increase the number of paid posts. It suggested that it may be appropriate for the responsibility of authorising such requests to be delegated to the IRPW.<sup>366</sup>

**447.** Whilst noting that, in theory, assistant roles could promote diversity, ERS Cymru cautioned that the Bill does not specifically link the provisions to that objective, and raised concern that, consequently, appointing assistants does not guarantee progress, but could replicate situations of all-male executives.<sup>367</sup> WEN Wales welcomed the provision but emphasised the importance of the Welsh Government doing more to ensure that all-male executives are not permitted going forward.<sup>368</sup>

**448.** Job-sharing among members of the executive has been possible, to some extent, for some time. However, the Local Government Act 2000 placed restrictions on the number of members that can be appointed to the executive, which has limited the opportunities for executive leaders to appoint on the basis of a job-share.

**449.** Section 64 introduces Schedule 7 to the Bill, which amends the 2000 Act. This provides for an increase in the maximum number of members of an executive from 10 to 12 (when at least two are elected to share office) or 13 (when at least three have been elected to share office). Paragraph (5) of Schedule 7 also makes provision for executive leaders to share the role.

**450.** The RIA notes the benefits of the provision as:

“enhancing the size of the executive in order to accommodate members who are unable to devote themselves full-time to such a

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<sup>366</sup> Written evidence, LG 02, Independent Review Panel for Wales and Equality, Local Government and Communities Committee, Record of Proceedings, 11 December 2019, paragraphs 64-66

<sup>367</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 11 December 2019, paragraph 172

<sup>368</sup> Written evidence, LG 08, WEN Wales

role is likely to lead to a council leadership more reflective of the community they represent.”<sup>369</sup>

**451.** We considered job-sharing among elected members in our report on Diversity in Local Government and recommended that the Welsh Government explores options for expanding job-sharing opportunities for executive members, and additionally, the feasibility of enabling this among non-executive members. As part of that inquiry, we received written evidence from Councillors Mary Sherwood and June Burtonshaw, former “job-share” Cabinet members at Swansea Council. They raised some practical considerations around job-sharing including the legal status, individual responsibility, workload and remuneration.<sup>370</sup>

**452.** The IRPW told us that it did not envisage any barriers to putting in place a remuneration process for job-sharing between executive members, but commented that it would be important to ensure clarity:

“you need to be very clear amongst job sharers that, however it’s handled, there is only one vote and then there’s only one person exercising it.”<sup>371</sup>

**453.** ERS Cymru, whilst acknowledging the provisions as “definitely a start”, questioned whether they were sufficient to achieving greater diversity:

“there’s nothing in the Bill to really guarantee that the job sharing is for diversity purposes, and we would obviously warn against it being seen as just something for women or just something for people from diverse backgrounds.”<sup>372</sup>

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<sup>369</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 12.48

<sup>370</sup> Equality, Local Government and Communities Committee, Inquiry into Diversity in Local Government, Additional information from Councillors Mary Sherwood and June Burtonshaw on job-sharing

<sup>371</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 11 December 2019, paragraph 68

<sup>372</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 11 December 2019, paragraph 176

**454.** WEN Wales welcomed the changes that will allow for job-sharing, but believes such opportunities should be available for all local authority members, including backbenchers. It recommended that the Bill be amended to include this. It also commented that the Bill does not specify how it will achieve greater diversity, labelling it a “missed opportunity”. It emphasised its belief that:

“Unchanged, the Bill will not sufficiently enable progress towards a more gender equal and representative local political landscape with a diversity of representatives. More radical and direct intervention is needed.”<sup>373</sup>

**455.** The WLGA noted that the sector supports the proposed reforms around appointing assistants and job-sharing as they will provide “greater flexibility for members to undertake such roles”. They added that the appointment of assistants is welcomed, as it will provide additional support for executives, but also provide scope to provide development and an opportunity for senior members to “succession plan”.

**456.** The WLGA also commented that, although job-sharing may allow some members with wider family or professional commitments to undertake an executive role, “there are mixed views about whether it will have a significant improvement on diversity”:

“There is not widespread demand for such roles currently and where it has been implemented, notably in Swansea, there have been challenges in applying the role both in terms of how the role is ‘shared’ (such as impact on remuneration, voting and day-to-day responsibilities) but also in terms of managing workload and expectations. It may therefore be necessary for wider revisions to the remuneration framework and guidance to encourage rather than just enable job-sharing of senior roles.”<sup>374</sup>

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<sup>373</sup> Written evidence, LG 08, WEN Wales

<sup>374</sup> LG 54a, Additional information from the WLGA

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**457.** The Minister told us that the Welsh Government would wish to evaluate the broad range of provisions relating to increasing diversity and participation and to ensure that good practice is spread across Wales:

“I want to get into a position where we can ensure that good practice spreads in Wales. [ ] we will be evaluating the entirety of the diversity and increased engagement provisions, of course. And where we have got individual data on individual bits, of course we’ll evaluate that.”<sup>375</sup>

## Cost implications

**458.** The IRPW Report for 2020 allows for job-sharing where it does not breach the current limit. The job-sharer, the report notes, should be “paid an appropriate proportion” of the executive member salary. The Welsh Government notes in the RIA that the IRPW would “need to make a determination on the remuneration for job-sharers in the future, which takes account of these new legislative provisions”.<sup>376</sup>

## Our view

**459.** We welcome the provision to enable local authorities to appoint assistants to the executive. We have real concerns about the current lack of diversity among councils and their executives, therefore we are supportive of any measure that aims to encourage involvement by a broader range of people. We believe that this could provide an opportunity for members who may not be inclined to pursue an executive role to gain some valuable experience. We would like to see the Welsh Government actively promoting this opportunity within principal councils and among members.

**460.** We explored the option of job-sharing in our report on Diversity in Local Government and concluded that increased opportunities could be beneficial in encouraging a wider range of individuals to stand for election and take on specific roles. We therefore support the provision to enable increasing the size of council executives to allow for greater opportunities for job-sharing among

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<sup>375</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 27 November 2019, paragraph 211

<sup>376</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 12.47

executive members. However, as we stated in our previous report, we believe it should not be limited to executive positions; we would like to see this Bill enable job-sharing for other positions, such as chairs of committees. We also believe that more work should be undertaken to explore options for enabling two candidates standing for election to jointly put themselves forward on a job-share basis.

**461.** Whilst we welcome the opportunity for greater job-sharing, we believe that the Welsh Government should actively promote the provision as a means of increasing diversity among council executives. We are concerned at the lack of progress made to date, and fear that this provision may not be used to its full potential.

**462.** Caroline Jones AM abstained from the views we have expressed on the provisions for job-sharing.

**Recommendation 20.** We recommend that the Welsh Government bring forward amendments to the Bill that would enable job-sharing for a wider range of specific roles.

**Recommendation 21.** We recommend that the Welsh Government undertakes further work to explore the feasibility of enabling two individuals to jointly put themselves forward for election on a job-share basis.

**Recommendation 22.** We recommend that the Welsh Government actively promotes the provisions relating to assistants to executives and job-sharing as a means of increasing diversity among council executives.

## Family absence for members of local authorities

**463.** Section 66 amends the Local Government (Wales) Measure 2011, by removing the limit on the number of weeks of family absence (currently 26) that members of local authorities may take, and replacing it with a power to set the maximum period of absence by regulations.

**464.** This provision was broadly supported by those stakeholders who provided a view, including the WLGA and some individual local authorities.

**465.** The fire and rescue authorities queried whether the provisions extended to those members of local authorities who are also members of fire and rescue authorities when functioning in that capacity; South Wales Fire and Rescue Authority commented that the drafting of section 66 was unclear on this:

“the 2011 Measure that it’s referring to defines local authorities in section 175 as a county or county borough in Wales. So, the provisions in relation to family absence in the Measure therefore only apply to local authorities and the local authority member role and not the fire authority member role, which is obviously a separate legal entity.”

**466.** The Authority representative added:

“as meetings of the fire and rescue authority aren’t a local authority meeting, they would have to be specifically included, which we think is wholly appropriate.”<sup>377</sup>

**467.** This view was shared by Mid and West Wales Fire and Rescue Authority.<sup>378</sup>

**468.** The Future Generations Commissioner suggested that it would be useful to extend the provisions to enable a member to receive support from elsewhere to undertake their casework during a period of family leave. Speaking from her personal experience, the Commissioner questioned the benefits of responsibilities being covered by another member, and suggested that being able to pay someone to undertake their casework would be preferable.<sup>379</sup>

**469.** WEN Wales supported this suggestion as a means of encouraging a more diverse range of councillors, particularly younger people, who may otherwise see dealing with casework during a period of family absence as a barrier.<sup>380</sup>

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<sup>377</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 9 January 2020, paragraph 620

<sup>378</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 9 January 2020, paragraph 625

<sup>379</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 11 December 2019, paragraph 325

<sup>380</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 15 January 2020, paragraph 416

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**470.** On the suggestion of paid support to cover casework, Lawyers in Local Government commented that there could be issues in relation to information governance:

“elected members in many circumstances have implied consent for information to be shared with them. If someone goes to an elected member and asks for help with an issue, it’s therefore implied that they are given information relating to that, and that wouldn’t be in place for a paid caseworker. You would be able to get around it by probably having a consent form or something like that, but there would be those added issues to work through.”<sup>381</sup>

**471.** The Minister confirmed that the provisions relating to family absence do extend to members of principal councils when they are undertaking their role as a member of a fire and rescue authority or a national park authority:

“If you’re a member of a principal council and you take family absence, you’d be taking family absence from all of your jobs, one of which might be on the fire authority. [ ] That’s also the case for national parks.”<sup>382</sup>

## Our view

**472.** We welcome the provisions relating to family absence and note that these also cover members of fire and rescue authorities and members of national park authorities (where they are also members of principal councils). Such members are representing their principal council when they are undertaking those functions.

## Conduct of members

Section 67: Duties of leaders of political groups in relation to standards of conduct

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<sup>381</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 567

<sup>382</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraphs 282-283

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**473.** Section 67 places a duty on leaders of political groups within principal councils to promote and maintain high standards of conduct among the members within their group.

**474.** During our inquiry into Diversity in Local Government, we heard that a high proportion of elected representatives have experienced bullying, discrimination and harassment as part of their public lives, and that the fear of such experience is a barrier to many potential candidates. Some of the abuse received by elected members had been directed at them from within the council or within their own political party or group.<sup>383</sup>

**475.** The EM notes that an overly “macho” culture in some authorities could act as a “deterrent to women in particular, standing for office”. It notes that a benefit of this provision will be that it will lead to the “avoidance of reputational damage” and potentially attract and retain a “more diverse and representative membership”.<sup>384</sup>

**476.** The Minister explained the rationale for the provision:

“What we’re trying to do is make sure that political group leaders understand their role in setting the tone and content of what happens, and also, where an individual member of a group is perhaps behaving in a way that isn’t optimal, that the group leader takes some responsibility about doing something about that.”

**477.** The Minister acknowledged, however, that the provision would not cover the many independent councillors across Wales who are not affiliated to a group.<sup>385</sup>

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<sup>383</sup> Equality, Local Government and Communities Committee, Inquiry into Diversity in Local Government, April 2019

<sup>384</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 12.68

<sup>385</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 27 November 2019, paragraph 213

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**478.** The provision was widely supported by stakeholders, including the PSOW,<sup>386</sup> the WLGA,<sup>387</sup> individual local authorities, and the WCVA.<sup>388</sup>

**479.** The WLGA asserted that the guidance-making powers will be important in clarifying expectations and what actions group leaders may take in exercising this duty. It noted that it will work with authorities and the Welsh Government in developing this guidance, commenting that:

“it may include recommendations around how group leaders manage personal development reviews, encourage group members’ commitment to development and training opportunities, promoting an inclusive and supportive group culture, how to manage and support individual members whose conduct may be a concern, through to publicly championing high standards and challenging poor standards of conduct where it occurs.”<sup>389</sup>

**480.** The WLGA also noted that it is not clear whether the Welsh Government intends that this duty will be incorporated into the statutory Members’ Code of Conduct and whether, for example, group leaders could be subject to complaints if they are perceived not to be undertaking this duty appropriately. It emphasised that this will require careful consideration.<sup>390</sup>

**481.** The issue of enforcement was raised by some stakeholders. Lawyers in Local Government welcomed the duty, commenting that it “reflects current good practice” and “the majority of group leaders do naturally take this role”, but added that not having a means of enforcement could impact its effectiveness. It suggested:

“consideration should be given to making compliance with this duty a requirement of the council code of conduct. So, then, if a group leader were to wilfully or repeatedly breach it, there would be a way of

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<sup>386</sup> Written evidence, LG 18, Public Services Ombudsman for Wales

<sup>387</sup> Written evidence, LG 54, WLGA

<sup>388</sup> Written evidence, LG 39, Wales Council for Voluntary Action

<sup>389</sup> LG 54a, Additional information from the WLGA

<sup>390</sup> LG 54a, Additional information from the WLGA

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dealing with it, and you could bring a complaint against them in relation to the code of conduct.”<sup>391</sup>

**482.** ERS Cymru also noted that the Bill is unclear in terms of which steps group leaders are expected to take to promote and maintain high standards. It would like further clarity “with an idea of what penalties could be expected if group leaders fail to comply”.<sup>392</sup>

**483.** In relation to independent councillors who are not affiliated to any group, the WLGA commented that they remain subject to the statutory code of conduct and “are reminded of their expectations and obligations around conduct and standards and are supported in undertaking their role through guidance and training”. It added that standards committees are also responsible for promoting good behaviour and high standards of conduct.<sup>393</sup>

**484.** Representatives from the fire and rescue authorities supported the provision but commented that the duty, as drafted in the Bill, does not extend to group leaders of fire and rescue authorities. The representative from South Wales Fire and Rescue Authority suggested that this should be rectified, a view supported by Mid and West Wales Fire and Rescue Authority.<sup>394</sup>

“I think that needs an amendment as well, for those responsibilities to apply, because the fire and rescue authority members sign up to identical codes of conduct as local authority members.”<sup>395</sup>

**485.** Representatives of the town and community council sector, whilst acknowledging that those councils are mostly apolitical bodies, believed there to

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<sup>391</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 571

<sup>392</sup> Written evidence, LG 04, Electoral Reform Society Cymru

<sup>393</sup> LG 54a, Additional information from the WLGA

<sup>394</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 9 January 2020, paragraph 625

<sup>395</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 9 January 2020, paragraph 620

be merit in also extending the duty to include group leaders within those settings:

“the sector is evolving, it’s changing; it has become more political. We see, as an advisory body, political groups within town councils, within larger community councils, and we have to advise accordingly. So, I think this is a good measure.”<sup>396</sup>

**486.** Whilst noting that she was unaware of any political groupings within fire and rescue authorities or town and community councils, the Minister told us that it may be possible to include a provision in the Bill which would enable the duty on group leaders to be extended to those settings should groups be established.<sup>397</sup> The Minister confirmed in her letter of 2 March 2020 that the Welsh Government does not intend to bring forward amendments to extend the duty in this way.<sup>398</sup>

### **Our view**

**487.** We are aware that some members of principal councils have been subjected to bullying and harassment by other members, and such behaviour needs to be eliminated. We therefore support this provision which puts a duty on political group leaders to promote and maintain high standards of conduct. We are concerned, however, that the provision does not include the high number of independent members within councils, and would like to see a way of implementing a similar duty in respect of those members.

**488.** We are supportive of the requests that the provision should be extended to group leaders in other settings, such as town and community councils and fire and rescue authorities. We appreciate that such bodies are largely apolitical, however, having a provision in place would be beneficial should political groups form in the future.

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<sup>396</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 15 January 2020, paragraph 334

<sup>397</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraphs 290-291

<sup>398</sup> [Letter from the Minister for Housing and Local Government, 2 March 2020](#)

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**Recommendation 23.** We recommend that the Welsh Government explores how a duty, similar to the duty on political group leaders to maintain standards of conduct, could be placed on independent members currently not sitting within any political group.

**Recommendation 24.** We recommend that the Bill be amended to enable the duty on leaders of political groups in relation to standards of conduct be extended to include leaders of groups within town and community councils, fire and rescue authorities and national park authorities.

### Section 68: Duty of standards committee to make annual report

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**489.** This section amends the Local Government Act 2000 to require the standards committees of relevant authorities (county and county borough councils, national park authorities and fire and rescue authorities) to report at the end of each financial year setting out an overview of conduct matters within the council. This section also extends the functions of standards committees to include their assessment of how political group leaders have complied with the duty to promote standards. The relevant authority must consider the report within three months of its receipt.

**490.** The EM states that the provisions “should contribute to higher standards of ethical conduct”.<sup>399</sup>

**491.** National Parks Wales stated that it would be helpful to clarify whether national park authorities are included in the duty:

“We consider on balance that the duty set out in Section 68 that Standard Committees to make an annual report does extend to National Park Authorities. However this is not entirely clear and it would be helpful if the heading could make clear that this applies to both principal councils, National Park Authorities and Fire and Rescue Authorities, or not, as the case may be.”<sup>400</sup>

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<sup>399</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 12.87

<sup>400</sup> Written evidence, LG 14, National Parks Wales

**492.** The PSOW welcomed the provision to extend the role of scrutiny committees as:

“Practice in respect of local government standards differs across Wales, and the requirement for standards committees to report annually will help, in my view, to embed a culture of high standards within principal councils. It will also provide a means of standards committees across Wales being able to reflect on their performance annual and learn from best practice.”

**493.** The PSOW added that:

“It would be beneficial for the annual reports of standards committees to include as a matter of course information on the Code of Conduct complaints received by my office and the outcome of these complaints.”<sup>401</sup>

## **Our view**

**494.** We support the provision to put a duty on standards committees to publish an annual report; this is an important provision to emphasise the crucial role of these committees in investigating complaints and raising standards. We welcome that this provision applies to all “relevant authorities” under the Local Government Act 2000, including county and county borough councils, national park authorities and fire and rescue authorities, so that all will be required to comply with this duty.

## Section 69: Certain investigations by the Public Services Ombudsman for Wales

**495.** Section 69 and Schedule 8 of the Bill seek to provide clarity following the repeal of sections 60-63 of the Local Government Act 2000 (by the Localism Act 2011). The RIA states that these sections dealt with “practical matters such as conflicts of interest, powers to obtain and disclose information and protection from defamation proceedings”.<sup>402</sup> Provisions have been aligned with the

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<sup>401</sup> Written evidence, LG 18, Public Services Ombudsman for Wales

<sup>402</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 19.25

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Ombudsman's powers relating to the investigation of maladministration and service failure in the Public Services Ombudsman (Wales) Act 2019.

**496.** This is welcomed by the PSOW, who commented that the provisions in Schedule 8 ensure:

“that the provisions applicable to my investigations of breaches of the Code of Conduct by elected members, as far as possible, mirror the provisions applicable to my investigations of maladministration or service failure in the PSOW Act 2019.”<sup>403</sup>

## Power to require authorities to appoint joint overview and scrutiny committees

**497.** Section 71 provides regulation-making powers to require local authorities to establish joint overview and scrutiny committees where services are being provided across council areas. Provision for the formation of such committees was included in the Local Government (Wales) Measure 2011 with the intention of making it easier to scrutinise the delivery of services by providers who cover more than one county, or to examine issues which cut across geographical boundaries. However, the EM states that these powers have rarely been used. Where it has been utilised, it has often been established in addition to individual council scrutiny, as opposed to instead of it.

**498.** The WLGA told us:

“scrutiny done on a regional basis is challenging, both in terms of the complexity of the issues that members are asked to engage with, the additional time commitments placed on individual members to form part of a further scrutiny committee, and then being able to commit sufficient time and resource in interrogating regional projects.”<sup>404</sup>

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<sup>403</sup> Written evidence, LG 18, Public Services Ombudsman for Wales

<sup>404</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 268

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**499.** We heard from the Minister that it would not be her intention to use such a power “very often”, however she needed to ensure that scrutiny arrangements are in place in every area, in particular as authorities use the corporate joint committees:

“It’s not something that we would look to have to do very often, but because, in this Bill, we’re establishing the corporate joint committees, and they are mandatory regional arrangements for the four areas that are mandatory, and I think local authorities will rapidly start to use them for other things, then what we want to be able to do is ensure that every area that’s delegated to a regional arrangement receives the right amount of scrutiny.”<sup>405</sup>

## **Our view**

**500.** Whilst we are cautious about enabling the Welsh Ministers to require local authorities to appoint joint overview and scrutiny committees, we accept the Minister’s contention that sufficient scrutiny arrangements will be needed as councils make use of corporate joint committees. We are re-assured by the Minister’s expectation that it will not be necessary for the power to be used very often.

## **Section 72: Community council training plans**

**501.** This section specifies that each community council must make and publish a training plan for its councillors and staff to ensure that both members and staff of community councils are suitably trained. The Welsh Government envisages a “handful of core areas, common to the good governance of all community councils, would be prescribed as compulsory for consideration”.<sup>406</sup> The core areas identified in the RIA include basic induction, code of conduct, finance and planning.<sup>407</sup> The provision does not extend to a requirement on community

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<sup>405</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 27 November 2019, paragraph 216

<sup>406</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 12.114

<sup>407</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 12.105

councillors or staff to undertake training itself, only for community councils to consider the training needs of councillors and staff.

**502.** One Voice Wales told us that it welcomes the provision and believes it to be necessary:

“We think the sector needs to improve its capacity and its capability. We’ve worked with Welsh Government. We’ve produced, recently, seven e-learning modules, which actually could be the core training modules that councillors have to undertake, in terms of providing some sort of assurance around their competencies to carry out their role.”<sup>408</sup>

**503.** The Society of Local Council Clerks was also supportive and confirmed that it can address all the professional learning needs for staff and that One Voice Wales has a suite of training modules for councillors. The Society suggested that through the provision in section 72(7) for the Welsh Ministers to issue guidance, the Welsh Government should “address and support the recommendations of the Independent Review Panel with the mandatory training topics it suggests being included in that guidance”. It asserted:

“The inclusion of these topics will help focus and orientate minds on what needs to be put in place otherwise there is a danger that local councils will only cover the basics with them choosing not to cover key governance areas.”<sup>409</sup>

**504.** The provision was also welcomed by the PSOW, who commented:

“Many of the cases considered by my office involving town and community councils have demonstrated a lack of awareness and understanding about the effects of the Code, e.g. in relation to the duties to declare interests.”<sup>410</sup>

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<sup>408</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 15 January 2020, paragraph 341

<sup>409</sup> Written evidence, LG 13, Society of Local Council Clerks

<sup>410</sup> Written evidence, LG 18, Public Services Ombudsman for Wales

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**505.** We heard from the Minister that the requirement is part of an attempt “to move community councils along a professionalisation route”.<sup>411</sup>

### **Cost implications**

**506.** The cost implications for community councils will depend on a range of factors. Broad estimates have been provided based on the size of the population the council serves. The total estimated cost for the community council sector for preparing and publishing training plans is £135,000.<sup>412</sup> Most of the cost would need to be met by councils themselves.

**507.** One Voice Wales emphasised the importance of the sector receiving transitional financial support to deliver training packages as a consequence of the provision:

“if we’re talking six courses, if we’re talking 735 councils, if we’re talking 7,954 community councillors doing six courses, that’s a lot of courses, and we would be advocating that they should do that within a two-year period. So you’re looking at somewhere around about 24,000 courses. We are running, presently, 2,500 units of training a year. So this is a seismic change, so there is support needed.”<sup>413</sup>

### **Our view**

**508.** We support the provision for community council training plans as an initiative aimed at professionalising the sector. We are pleased that the provision is welcomed by the sector and we are encouraged by its continued commitment to develop and implement training. The Welsh Government should work with the sector to ensure sufficient and appropriate training is available for all who need to undertake it. We concur with the view expressed by the sector that the issuing of guidance by the Welsh Ministers will provide an opportunity to

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<sup>411</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 296

<sup>412</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, Table 52

<sup>413</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 15 January 2020, paragraph 343

address and support the recommendations made by the Independent Review Panel on mandatory training topics.

**Recommendation 25.** We recommend that the Welsh Government, in developing guidance on community council training plans, addresses and supports the recommendations by the Independent Review Panel on mandatory training topics.

## 7. Part 5 – Collaborative Working by Principal Councils

The provisions will enable the creation of corporate joint committees (for two or more principal councils) to deliver specified functions. The functions could relate to a single service area, or a number of service areas.

**509.** The Bill provides for a new mechanism that will, according to the RIA, ensure a “simplified, coherent and consistent approach to collaboration”. It will also “support the drive within principal councils for more economic, effective and efficient delivery of services”.<sup>414</sup>

**510.** The evidence we heard and received suggested broad support for greater collaborative working across local authorities in Wales. This was true of local government itself.

**511.** The WLGA told us that there was broad consensus within local government for the need to increase collaborative and regional working, and that authorities are already actively working on a cross-boundary basis. It took the view that corporate joint committees (“CJCs”) “could be a very useful tool”,<sup>415</sup> adding that there is “agreement that, as an additional mechanism, there could be some value in this mechanism”.<sup>416</sup>

**512.** Despite general support for CJCs, some of the evidence received expressed concern around the scrutiny arrangements and accountability of the new committees.

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<sup>414</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 13.32

<sup>415</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 278

<sup>416</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 274

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**513.** The Society of Local Council Clerks noted that in developing arrangements for regional working, it is:

“important to retain strong democratic governance and oversight, including that of scrutiny of the work of these corporate joint committees at a local level.”<sup>417</sup>

**514.** UNISON highlighted the need for “proper, robust scrutiny” to ensure decisions taken are “open, transparent, and fair”,<sup>418</sup> while the PSOW similarly noted how important it was that CJC do not:

“blur the lines of accountability for councils’ functions, nor have an adverse impact on access to justice for the public.”<sup>419</sup>

**515.** Community Housing Cymru also shared its concerns about the “limited provision for CJC accountability arrangements”, which it states is:

“at odds with the Bill’s commitment to enhance access to and participation in local decision making.”<sup>420</sup>

**516.** This view was also shared by One Voice Wales. While it recognised the purpose of CJC, One Voice Wales noted that with their establishment:

“services are going to become more regionalised, and further and more remote from local electorates.”<sup>421</sup>

**517.** The Chartered Institute for Housing welcomed the proposals for CJC, but sought reassurance that they would not “duplicate or complicate the current collaborative arrangements”, particularly in terms of the work of Public Services Boards (“PSBs”) and Regional Partnership Boards (“RPBs”).<sup>422</sup>

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<sup>417</sup> Written evidence, LG 13, Society of Local Council Clerks

<sup>418</sup> Written evidence, LG 17, UNISON Cymru / Wales

<sup>419</sup> Written evidence, LG 18, Public Services Ombudsman for Wales

<sup>420</sup> Written evidence, LG 41, Community Housing Cymru

<sup>421</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 15 January 2020, paragraph 349

<sup>422</sup> Written evidence, LG21, Chartered Institute of Housing Cymru

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**518.** A similar position was taken by the WCVA who called for clarity in the Bill to ensure that there is no “overlap in the remits of CJsCs and RPBs”.<sup>423</sup>

**519.** In a similar vein, Lawyers in Local Government (“LLG”) expressed its support for the provisions for greater collaborative working, but noted that specific issues needed to be resolved. This included the extent the CJsCs will “work alongside or supplant existing regional bodies”,<sup>424</sup> or the extent those bodies become sub-committees of a CJC. Such bodies that could be considered within this context include regional school improvement bodies and regional economic growth partnerships, although there are likely to be others.

### Section 75-76: Application by principal councils to establish a corporate joint committee and consultation before making an application

**520.** Section 75 enables two or more councils to make an application to the Welsh Ministers to establish a CJC. The application must specify the activities the councils propose to carry out. The Welsh Government considers that CJsCs offer an:

“opportunity to align a number of collaborative approaches already in statute, reducing the need for (and therefore the costs associated with servicing) multiple separate boards.”<sup>425</sup>

**521.** The CJC would consist of elected members of the constituent authorities, and would be, according to the RIA, “capable of employing staff and holding assets and funding”. These would need to be transferred from the principal council to the new CJC.

**522.** The Welsh Ministers must notify the principal councils if they decide to reject any proposals to establish a joint committee.

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<sup>423</sup> Written evidence, LG 39, Wales Council for Voluntary Action

<sup>424</sup> Written evidence, LG 50, Lawyers in Local Government

<sup>425</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 13.11

**523.** Section 76 makes provision for consultation before an application is made. Local authorities considering forming CJsCs are required to consult local people and community councils within their areas, the PSBs or other Boards of the councils' areas, along with every trade union recognised under the Trade Union and Labour Relations (Consolidation) Act 1992.

**524.** The WLGA noted that it is supportive of the introduction of “voluntary” CJsCs, which will provide for an “additional collaborative model for authorities to choose”. The WLGA already have an existing framework of “guiding principles” to ensure that partnership working is:

“rooted in clear and viable business cases and subject to local democratic decision-making.”<sup>426</sup>

**525.** UNISON, while generally in favour of building on existing joint working shared some concerns around the potential for CJsCs to “sit above very significant pieces of service”<sup>427</sup>, which could impact on local government staff and trade union members. UNISON called for early engagement of the trade unions in the process of establishing these committees, noting resistance in the past to trade union observers sitting on specific joint committees.

**526.** UNISON told us that the Welsh Government’s commitment to social partnership ensures “early engagement prior to decisions being taken”. However, while welcomed by unions, it noted that under the consultation provisions in section 76, the process is instigated “after the decision has been taken”. UNISON stated that unions would wish to “input into the discussion prior to the decision being taken”.<sup>428</sup>

**527.** The AGW raised that CJsCs fall within the definition of “joint committees” under section 12 of the Public Audit (Wales) Act 2004. That would mean they

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<sup>426</sup> Written evidence, LG 54, WLGA

<sup>427</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 9 January 2020, paragraph 551

<sup>428</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 9 January 2020, paragraph 556

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would be required to conform to audit provisions within that Act, but that the requirements were not explicit in the Bill.<sup>429</sup>

**528.** The Minister in responding to this, noted she had “sympathy” with the AGW’s concerns, and that it was the Welsh Government’s intention for CJs to be:

“Part of the local government family in Wales and it will be subject to all of the rules that the local government family in Wales are subject to. So, yes, the corporate joint committee will be subject to audit provisions—the Public Audit (Wales) Act, for example. It will also be subject to the financial regulations, the Chartered Institute of Public Finance and Accountancy stuff and prudential borrowing requirements.”<sup>430</sup>

## Sections 77-78: Regulations for establishing a joint committee and conditions to be met

**529.** These provisions give the Welsh Ministers regulation-making powers to establish CJs and to specify the functions to be transferred. The conditions to be met are:

- the Welsh Ministers have received an application;
- the Welsh Ministers have consulted with those named in subsection (3) of section 78 on the draft regulations; and
- that each council making the application has given their consent to regulations being made.

**530.** National Parks Wales, providing evidence on behalf of the national park authorities noted concerns about the drafting of section 77, stating that the:

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<sup>429</sup> Written evidence, LG 01, Auditor General for Wales

<sup>430</sup> Equality, Local Government and Communities Committee, Record of Proceedings, January 29 2020, paragraph 303

“Corporate Joint Committees (CJCs) appear to be limited in membership to principal councils.”

this, it notes, could strengthen a perception that:

“it is not intended for National Park Authorities to be part of any CJCs.”<sup>431</sup>

**531.** In addition, National Parks Wales had concerns around the functions bestowed on CJCs, particularly in relation to strategic planning for the development of land use, economic development and transport. National park authorities are the local planning authorities for their areas, and therefore the evidence states that there is potential for “uncertainty, ambiguity and unintended consequences” which could impact on the management of national parks and the “effective delivery” of the CJCs functions.<sup>432</sup>

**532.** Two potential amendments to the provision were included in NPW’s evidence. Firstly, it suggested the possibility of designating national park authorities as “principal councils” for the purposes of this section of the Bill alone. Alternatively, it suggested that:

“clarification could be provided in the Bill that if a CJC is established which includes an area designated as a National Park, this is not to impact on the statutory functions of the National Park Authority. This would be our preferred option.”<sup>433</sup>

**533.** The sense that CJCs could be exclusive to principal councils was also apparent in other evidence received. Community Housing Cymru noted a need to include a requirement on the face of the Bill to ensure “collaboration with external bodies beyond local authorities when CJCs are exercising their functions”.<sup>434</sup>

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<sup>431</sup> Written evidence, LG 14, National Parks Wales

<sup>432</sup> Written evidence, LG 14, National Parks Wales

<sup>433</sup> Written evidence, LG 14, National Parks Wales

<sup>434</sup> Written evidence, LG41, Community Housing Cymru

**534.** FSB Cymru also called for CJC to have “meaningful engagement with SMEs built in to their governance arrangements”.<sup>435</sup>

**535.** The Minister told us that, while she envisages the overarching CJC to include the voices of council leaders, sub-committees will have the ability to co-opt voting and non-voting members:

“What we’re saying is that each constituent principal authority has to have a voice on that committee, and that voice must be the leader of that authority. And then, they can do anything else they want to do. So, they can establish sub-committees, which a lot of them are already talking about. So, a sub-committee might be established, for example, to do regional strategic planning. We are intending to put regulations in place that say that such a sub-committee must be gender balanced, and must have representatives from local communities on it, and must have health board representatives and so on...I think if they want to do that and they want to co-opt other people onto it and so on, they can do that. The Bill will have a power to co-opt voting or non-voting members if they want to.”<sup>436</sup>

**536.** Estyn also noted the need for clarity on aspects of functions, particularly the role of a CJC in improving education. It states that:

“It would be helpful to define what is meant by services that improve education. Our evidence from inspections of both schools and local authorities demonstrate the complex interplay of factors that contribute to the success of a school and its pupils. A wide range of services can contribute towards education improvement, not all of which are defined as being part of the current regional consortia for school improvement. For example, would behaviour support services, educational welfare services or services to support special educational

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<sup>435</sup> Written evidence, LG 6, FSB Wales

<sup>436</sup> Equality, Local Government and Communities Committee, Record of Proceedings, January 29 2020, paragraphs 323-324

needs be functions that could be delivered through a corporate joint committee for education improvement?"<sup>437</sup>

## Sections 79-80: Establishing corporate joint committees where no request has been made and conditions to be met

**537.** The provisions in sections 79-80 give the Welsh Ministers powers to make regulations to establish CJsCs, even if an application from the relevant authorities has not been made. The Welsh Ministers can only specify certain functions for the joint committees under such circumstances. The functions are:

- Improving education;
- Strategic planning for the development and use of land;
- Transport; and
- Economic development.

**538.** Section 80 specifies the conditions that must be met before the Welsh Ministers can move ahead to draft regulations, which are that they must have undertaken the required consultation and given notice to the principal councils for the principal areas.

**539.** The EM notes:

“It is important to note that whilst there is an intention for Welsh Ministers to create corporate joint committees in the areas specified on the face of the Bill, the intention is to work with local government to co-design corporate joint committees.”

**540.** Whilst the WLGA support the provisions for establishing voluntary CJCss, similar enthusiasm is not shared wholesale by all council leaders for mandated CJsCs. The WLGA council resolved to note that it:

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<sup>437</sup> Written evidence, LG 35, Estyn

“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.”<sup>438</sup>

**541.** In evidence to us, the WLGA’s Chief Executive noted that:

“Where there’s a bit of contention on this issue is whether or not the proposals for corporate joint committees genuinely add value or not. And I think there’s agreement that, as an additional mechanism, there could be some value in this mechanism, but where there’s some disagreement is over the level of prescription and, in particular, in the areas that are prescribed. So, within the association, there are those who are comfortable with what’s contained in the Bill and there are others who agree with the principle but believe that it should be a voluntary option.”<sup>439</sup>

**542.** Councillor Huw Thomas stated that:

“I think the point you need to come back to is collaboration—what is the purpose of collaboration? It can’t be an end in itself, it’s got to be a means to a particular end. I think CJC’s can provide for that, but I think, across the board in WLGA, we would have concerns about the principle of mandation, where we would be forced to enter into these arrangements on specific issues or of us being forced to collaborate for collaboration’s sake.”<sup>440</sup>

**543.** Councillor Peter Fox noted that:

“I know it’s been contentious at times because of that initial rhetoric around mandation that really upset some of us because we’d very successfully put arrangements in Cardiff capital region city deal—arrangements of our own. We weren’t forced to put those in, we put

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<sup>438</sup> Written evidence, LG 54, WLGA

<sup>439</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 274

<sup>440</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 279

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them in—very, very positive arrangements to take forward the Cardiff capital region that is overseeing a lot of areas and an area that has half the Welsh population in it. And we’ve successfully managed that without being told to do it. So, it’s something about that thing about the legitimacy we have as governments in our own right to do these things.”<sup>441</sup>

**544.** SOLACE, noted its support for greater collaborative working, particularly in order to seek efficiencies, savings and resilience in the future. However, SOLACE also questioned whether a “mandated footprint” was required to ensure efficiencies, and argued that mandation could be “counter-productive”.<sup>442</sup>

**545.** FSB Wales on the other hand challenged whether the “voluntarist” approach to collaborative working would provide for a “meaningful regional governance model, with a strong coordinating centre”. It highlighted what it sees as a “failed process with previous collaboration agendas and the subsequent failed reorganisation process”.<sup>443</sup>

**546.** National Parks Wales did not share the concerns highlighted above about mandating CJs, but it did have concerns relating to section 80 of the Bill. It notes that the provision to consult in 80(2) should be extended to include national park authorities as statutory consultees. The reason, it notes, is that of the four functions for which a CJC may be established by the Welsh Ministers where no request has been made, “National Park Authorities have a role or a significant input in three of the areas”<sup>444</sup>.

**547.** Cymdeithas Eryri<sup>445</sup> and the Campaign for National Parks<sup>446</sup> echoed the views of National Parks Wales, with both consultees noting that:

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<sup>441</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 281

<sup>442</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 475

<sup>443</sup> Written evidence, LG 6, FSB Wales

<sup>444</sup> Written evidence, LG 14, National Parks Wales

<sup>445</sup> Written evidence, LG 19, Cymdeithas Eryri

<sup>446</sup> Written evidence, LG 16, Campaign for National Parks

“if the Bill is not amended to address this issue, there is a risk that the particular needs and interests of National Parks will not be taken into account in the plans for collaborative working between Councils.”<sup>447</sup>

**548.** In addition, the Campaign for National Parks also takes the view that national park authorities should also be included in the list of statutory consultees in section 76 and 78 of the Bill.<sup>448</sup>

## Sections 81-87: Further provisions relating to corporate joint committees and regulations

**549.** These sections make specific provisions relating to the making of regulations and what may or must be included, amendments and revocation of regulations and supplementary provisions. The supplementary provisions include such matters as requirements on CJs to share information with the Welsh Ministers if directed to do so and the transfer of staff from principal councils to a CJC.

**550.** Local Government welcomes the Welsh Government’s “offer” to co-produce the regulations and guidance around the establishment of CJs. Much of the work is already being conducted via the sub-group of the Partnership Council for Wales, and what the Minister noted as an “official task and finish group”.<sup>449</sup> The Minister also noted that in co-producing guidance and regulations with local government, the Welsh Government “will be informed by the best practice of some of the councils that are already doing it, which is kind of the point of the co-production”.<sup>450</sup>

**551.** The Minister stated:

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<sup>447</sup> Written evidence, LG 16, Campaign for National Parks and Written evidence, LG 19, Cymdeithas Eryri

<sup>448</sup> Written evidence, LG 16, Campaign for National Parks

<sup>449</sup> Equality, Local Government and Communities Committee, Record of Proceedings, January 29 2020, paragraph 305

<sup>450</sup> Equality, Local Government and Communities Committee, Record of Proceedings, January 29 2020, paragraph 406

“So, we’ve asked local authorities to respond to us about how they would like to work with us as the Bill goes through, because I’m very keen to co-produce as much of this with local government as humanly possible.”<sup>451</sup>

**552.** The WLGA noted that it is “committed to engaging with the Minister and officials in developing the concept further”. It goes on to note that:

“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.”<sup>452</sup>

**553.** This sentiment was re-affirmed by Councillor Emlyn Dole noting that the WLGA “welcome that offer that’s there about co-production around the regulations”.<sup>453</sup>

**554.** The Minister again noted that a sub-group of the Partnership Council for Wales had been established, which has been “working on this for some considerable time”.<sup>454</sup>

## Our view

**555.** We support the principle of establishing CJsCs which could provide for better, more consistent and robust collaborative working in Wales. However, it is important, in our view, that such new collaborative structures do not further complicate the partnership landscape in Wales, and seek to simplify existing structures and mechanisms. They should therefore only be established where

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<sup>451</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 27 November 2019, paragraph 223

<sup>452</sup> Written evidence, LG 54, WLGA

<sup>453</sup> Equality, Local Government and Communities Committee, Record of Proceedings, January 23 2020, paragraph 283

<sup>454</sup> Equality, Local Government and Communities Committee, Record of Proceedings, January 29 2020, paragraph 305

there is a clear need for cross-boundary partnerships to deliver effective public services and positive outcomes to service users.

**556.** We are pleased that the Welsh Government and local government are working closely to develop the framework for CJsCs. We endorse the Minister's approach to involve local government in the drafting of regulations and guidance for the new structures, and welcome the establishment of a sub-group of the Partnership Council for Wales to facilitate some of this work. It is imperative, in our view, that the involvement of local government and relevant partners occur at the beginning of the process.

**557.** We note that the Minister has formally requested that the WLGA bring forward proposals for the development of CJsCs and possible footprints. We also note the Minister accepts there is no "one-size fits all" approach to governance arrangements.<sup>455</sup> This is to be welcomed, particularly as it is the local authorities themselves, in our view, that are best placed to determine those governance arrangements.

**558.** We note some concerns with the provisions in section 79, which give the Welsh Ministers powers to mandate authorities to establish CJsCs on specific functions. We heard from the WLGA that there is some contention within local government as to whether the proposals "genuinely add value or not", and that some local authorities, while agreeing with the principle, believe that this should be a "voluntary option".

**559.** Collaborative working is not a new concept for local government. A plethora of partnerships established via voluntary and statutory means already exist. It is our view that the best examples of collaborative working happen organically, where natural alliances are formed to remedy common issues across boundaries. The "voluntary route" should therefore be encouraged and facilitated by the Welsh Government first and foremost. However, we also agree with the Minister that the power to mandate collaborative working may be required at times, and therefore consider the provisions to be, as noted by the Minister, "a sensible and

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<sup>455</sup> Equality, Local Government and Communities Committee, Record of Proceedings, January 29 2020, paragraph 308

pragmatic approach”.<sup>456</sup> Nevertheless, this power, in our view, should only be used sparingly by the Welsh Ministers. A decision to establish a corporate joint committee where no request has been made should be supported by robust evidence and a comprehensive consultation process.

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<sup>456</sup> Equality, Local Government and Communities Committee, Record of Proceedings, January 29 2020, paragraph 318

## 8. Part 6 – Performance and Governance of Principal Councils

Under provisions in this Part, principal councils will be required to conduct an annual self-assessment of performance and a “periodic review to provide an external, expert perspective” on performance.

**560.** At present, provisions for improving performance and governance of principal councils are set out in the Local Government (Wales) Measure 2009. There is a requirement to produce an improvement plan setting out how the council will make improvements to service delivery and performance.

**561.** The provisions in this Bill would repeal the legislative framework, as currently set out in the 2009 Measure, with new duties placed on principal councils to conduct self-assessment of performance. They also provide new powers for the AGW to conduct “special inspections” of principal councils, and powers for the Welsh Ministers to intervene where there are significant problems.

**562.** The EM states:

“The Bill also makes provision for the Welsh Ministers to provide support and, where necessary, to intervene in principal councils facing significant problems. The Welsh Ministers will be able to provide support to principal councils to address difficulties they are facing. In more serious cases, the Welsh Ministers will be able to intervene to enable improvement.

The support and intervention provisions draw upon, but further develop, the existing legislative framework set out in the 2009 Measure (which will be repealed). The new provisions include a power

for the Auditor General for Wales to carry out a special inspection that is similar to his existing power.”<sup>457</sup>

## Sections 88-90: Duty of principal council to keep its performance under review and report on its performance

**563.** Sections 88 and 90 place a duty on principal councils to keep their performance under review. Section 88 specifies that the review should look at the effectiveness of the council in the exercise of its functions, efficient use of resources and governance. Section 89 specifies that, in drafting the self-assessment report, each council will have a duty to consult at least once in each financial year, to seek views on whether it is meeting the performance requirements. Consultees include local people, those running businesses in the area, council staff and every trade union recognised by the council.

**564.** Under section 90, following the review of its performance, a council is required to report on its conclusions. This is referred to as a “self-assessment report”.

**565.** Each council will be required to share a draft of the document with its governance and audit committee, which will do a review and may recommend changes. The committee, in reviewing the draft report, may recommend changes to it. Where a council decides against making the changes, it must give reasons for its decision in the report.

**566.** The council must publish and send the report to the AGW, Estyn and the Welsh Ministers.

**567.** The provisions on self-assessment were broadly welcomed by local government representatives, with the WLGA noting that it supports and welcomes these:

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<sup>457</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraphs 3.173-3.174

“it’s a much better direction of travel for authorities, because it allows authorities to focus on what they need to improve, rather than what they think other people think they need to improve.”<sup>458</sup>

**568.** The WLGA added that “all authorities are used to a process of self-assessment” and that these provisions will give “authorities more scope to self-assess for their own benefit”.<sup>459</sup> It commented that as “councils are committed to improving services and delivering better outcomes for their communities”, it is confident “that councils’ self-assessments will be rounded, robust and used to drive improvements in governance and service provision”.<sup>460</sup>

**569.** Estyn commented that it “recognises the contribution of the proposals” to the accountability of the principal council and its performance and that its own role as an inspectorate is clear “through the requirement for the local authority to copy to it any reports, recommendations, and action plans”.<sup>461</sup>

**570.** However, the AGW noted that he is “somewhat sceptical” as to whether the requirements “will improve the quality of self-assessment”. He commented:

“The experience of the ‘Best Value Reviews’, which authorities were required to do under the Local Government Act 1999, and more recently of the 2009 Measure, demonstrates the potential weaknesses in the approach. These were a lack of consistent objectivity and rigour; a reluctance to be critical and a tendency to be superficial in gathering and assessing evidence of performance; and shortages of the necessary skills and capacity to undertake comprehensive assessments. I have no reason to believe that the appetite and capacity for objective self-appraisal have increased in the past decade, and I am also not convinced that new requirements in themselves will lead to an improved situation.”

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<sup>458</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraphs 286-287

<sup>459</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 290

<sup>460</sup> Written evidence, LG 54, WLGA

<sup>461</sup> Written evidence, LG 35, Estyn



**571.** The AGW also commented that it would be beneficial if the Bill specified a deadline for producing self-assessments each financial year, suggesting four months after the end of the financial year. He noted:

“Without a deadline, it would seem that a self-assessment for a financial year could be undertaken at some indefinite time in the future.”<sup>462</sup>

**572.** The Minister noted in her letter of 2 March that she intends to bring forward an amendment to clarify the timing of a self-assessment report, so that principal councils will be required to make a report as soon as reasonably practicable following the end of the financial year to which the report relates.<sup>463</sup>

### **Our view**

**573.** We support the provisions to place a duty on principal councils to keep their performance under review. We note that self-assessment regimes have proven successful in other sectors and in other countries (including England and Scotland), and we welcome the move to such an approach in Wales.

**574.** We welcome the requirement to consult at least once every financial year about whether they are meeting their performance requirements. We believe that consulting with local people and business, staff and trades unions will help councils to understand whether their actions are meeting the needs of the people they serve.

**575.** We recognise that representatives from local government were supportive of the self-assessment arrangements and we welcome their commitment to making this a successful approach.

**576.** We note with interest the suggestion of the AGW that a deadline should be specified for the completion of the self-assessments each year; this seems appropriate and we would like to see this reflected in the Bill.

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<sup>462</sup> Written evidence, LG 01, Auditor General for Wales

<sup>463</sup> [Letter from the Minister for Housing and Local Government, 2 March 2020](#)

**Recommendation 26.** We recommend that the Welsh Government amends the provisions relating to the duty on a principal council to report on its performance to include a deadline for the completion of the self-assessments every year.

### Section 91-93: Duty of principal council to arrange for panel performance assessment, respond to a panel report, and supplementary regulations

**577.** Each principal council will be required to appoint a panel at least once during each electoral cycle to assess its performance. The EM states that the provision to establish a panel process provides an:

“opportunity to seek external insights (other than from auditors, regulators or inspectors) on how the council is meeting the performance requirements.”<sup>464</sup>

**578.** The panel will conduct a performance assessment, and will be required under section 91 to consult with local people, business owners, council staff and trade unions. This is the same list of consultees specified in section 89, which a principal council must consult with on its performance at least once a year.

**579.** The panel must report on its conclusions and any recommendations for actions to be taken by the council, sending a copy to the council, the AGW, Estyn, and the Welsh Ministers.

**580.** The council must make the report of the panel available to its governance and audit committee to seek its views. The committee may recommend changes.

**581.** Section 93 makes provision for the Welsh Ministers to prepare regulations in connection with the appointment of panels, which could include the number of members to be appointed and conditions of appointment. They may also specify payment of fees to or in relation to panel members.

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<sup>464</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 14.18

**582.** The EM states that the “Welsh Ministers could issue guidance on undertaking self-assessments and panel assessments”.<sup>465</sup>

**583.** Estyn commented that the requirements relating to a panel performance assessment should:

“further strengthen the scrutiny of the local authority’s performance.”

**584.** However, Estyn also noted that the requirement on itself arising from receipt of principal council’s self-assessment reports “is not clearly stated”.<sup>466</sup>

**585.** The AGW raised his reservations as to whether panel assessments “will achieve Welsh Ministers’ intended objectives”:

“As panel members are to be appointed by the councils that they are to assess, there is a risk of self- interest undermining the objectivity of the panel members. I am also concerned that the supply and availability of appropriately skilled panel members may be rather limited given the number and timing of panel assessments required in any given year.”<sup>467</sup>

**586.** In relation to the power for the Welsh Ministers to make regulations concerning the appointment of panels, the AGW suggested:

“Such regulations could be used to set appropriate requirements in terms of skills, knowledge and experience.”

**587.** However, the AGW commented that he is:

“nonetheless sceptical that a sufficient pool of suitably qualified and capable potential panel members will be available.”<sup>468</sup>

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<sup>465</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 14.26

<sup>466</sup> Written evidence, LG 35, Estyn

<sup>467</sup> Written evidence, LG 01, Auditor General for Wales

<sup>468</sup> Written evidence, LG 01, Auditor General for Wales

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**588.** WAO representatives added that it would be useful to have greater clarity around conflict resolution should councils disagree with panel assessments.<sup>469</sup>

**589.** The WLGA noted its disappointment at the AGW's comments on the objectivity of panel members, adding that it was not aware of any evidence to support the claim.<sup>470</sup> It asserted:

“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.”<sup>471</sup>

**590.** However, the WLGA stated its objection to the statutory nature of the panel assessments, preferring a system that enables councils to 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.”<sup>472</sup>

**591.** The WLGA referred to previous examples of voluntary peer assessments as “very, very effective”, and suggested that if similar funding is made available, local authorities would undertake the exercises on a voluntary basis.<sup>473</sup> The Chief Executive went on to say:

“Local government operates within an incredibly complex regulatory and accountability framework. We know that voluntary peer assessment works well, and there is something about having a system

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<sup>469</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 11 December 2019, paragraph 256

<sup>470</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 306

<sup>471</sup> Written evidence, LG 54, WLGA

<sup>472</sup> Written evidence, LG 54, WLGA

<sup>473</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 293

that is proportionate, and in this instance, we just think that it goes too far. There's evidence that a voluntary system works well, and, as I say, we have to keep an eye on the system as a whole being proportionate.”<sup>474</sup>

**592.** The WLGA also expressed the view 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.”<sup>475</sup>

**593.** One Voice Wales commented that it would welcome further discussions with the Welsh Government on the role that community and town councillors could play regarding membership of the panel assessment process. It added that it advocates the potential for community and town councils to support the scrutiny endeavours of principal councils.<sup>476</sup>

**594.** The Minister expressed her view that the panel assessment requirements are “very un-prescriptive”, adding that, as a minimum, local authorities will “have to do one full peer-panel assessment every electoral cycle”, which she did not believe was onerous. The Minister explained the arrangements were “a proportionate response to poor performance” and “not sitting on your laurels if you think you’re really good at something, but actually constantly looking for ways to improve”. The Minister went on to say that the purpose is to “identify actions that the local authority will take to improve the extent to which they are able to meet performance requirements”.<sup>477</sup>

**595.** The Minister confirmed that the purpose of including Estyn within the list of recipients for self-assessment reports is to inform its wider work.<sup>478</sup>

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<sup>474</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 295

<sup>475</sup> Written evidence, LG 54, WLGA

<sup>476</sup> Written evidence, LG 28, One Voice Wales

<sup>477</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraphs 328-334

<sup>478</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraphs 336-339

## Cost implications

**596.** The RIA notes there will be cost implications in the region of £26,000 for “producing guidance to support self-assessments and panel assessments”. The intention of the Welsh Government is to work with local government to produce the guidance. This, it notes, will “ensure it is fit for purpose and delivers the policy intention”.<sup>479</sup>

**597.** The Welsh Government does not think the requirements to review performance will “impose any significant new costs on principal councils, but rather codifies what all councils should already be doing”. However, there would likely be cost implications in the region of £26,500 per authority for the panel assessment.<sup>480</sup>

**598.** The cost is based on the Welsh Government’s experience of supporting councils to “undertake similar assessments”.

## Our view

**599.** While we welcome the requirements in the Bill for principal councils to appoint a panel to assess the council’s performance, we believe that the composition of such panels will be critical to their success. We are therefore concerned at the lack of detail provided within the Bill and EM in relation to membership. We appreciate there is a provision to enable the Welsh Ministers to make regulations on the appointment of members, and believe that these regulations could be key in ensuring a consistent approach across Wales. The panels should demonstrate a breadth of skills and perspectives, which we believe should be reflected in regulations when they are brought forward by the Welsh Government.

**600.** We recognise the concerns from the local government sector around the prescriptiveness of this approach, and a preference for voluntary panels instead. However, we believe that consistency of approach is key to ensuring a robust

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<sup>479</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 14.29

<sup>480</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 14.32

system for panel assessments, which can be implemented uniformly across all principal councils.

**601.** We welcome the requirement in the Bill for panels to gather views from local people, businesses, council staff and trades unions as part of their role in measuring councils' performance. We believe that this process will be an integral part of understanding the impact of councils' decisions and actions on the communities they serve. It is right that this is reflected in the performance assessment. We were not convinced by the argument that the consultation requirements are too onerous on either the panel, or those from whom the council will be seeking views.

**Recommendation 27.** We recommend that the Welsh Government uses the opportunity, in the making of regulations, to specify minimum levels of skills, experience and representation from different professional sectors and communities required among members of panel performance assessments.

### Special inspections by Auditor General for Wales

**602.** Section 94 provides the AGW with powers to conduct an inspection ("special inspection") of a principal council if it is not meeting the performance requirements. The Welsh Ministers may also request that the AGW considers the performance of a council, or considers whether to conduct a special inspection.

**603.** Before determining whether to carry out a special inspection, the Auditor General must consult them, unless the request was made by the Welsh Ministers.

**604.** The AGW will be required to report on the outcomes of a special inspection, and to include any recommendations for the council or the Welsh Ministers to take action. The Auditor General commented that these provisions "appear appropriate".<sup>481</sup>

**605.** Estyn commented that it assumes the provisions for the AGW:

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<sup>481</sup> Written evidence, LG 01, Auditor General for Wales

“to carry out a special inspection should the local authority not be meeting its performance requirements to include education performance.”<sup>482</sup>

**606.** It notes that, in such an instance, the Auditor General may “cut across the duties of Estyn”, and suggests that the requirement on the AGW to copy his special inspection report to Estyn would be more effective if:

“these provisions required the Auditor General to work in partnership with Estyn with regard to any special inspection that included a local authority’s education duties and provision.”<sup>483</sup>

**607.** The PSOW commented:

“where special inspections uncover evidence of systemic maladministration or service failure, the Auditor General should be able to share with my office the relevant information and refer such matters to me, as appropriate.”<sup>484</sup>

**608.** The Minister confirmed that there would be nothing to prevent the AGW from sharing evidence with the PSOW, Estyn or any other inspectorate, and would expect him to do so.<sup>485</sup>

**609.** Sections 95-96 specify that, if the Auditor General’s report contains recommendations, the council is required to prepare a response stating what actions, if any, it intends to take. The draft response must be sent to the council’s governance and audit committee to be reviewed. The committee can recommend changes to the response, but if the council rejects any of the recommendations made, it must set out its reasons for this decision in its final response.

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<sup>482</sup> Written evidence, LG 35, Estyn

<sup>483</sup> Written evidence, LG 35, Estyn

<sup>484</sup> Written evidence, LG 18, Public Services Ombudsman for Wales

<sup>485</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraphs 341-343



**610.** The council will need to send its final response to the AGW, the Welsh Ministers and Estyn.

**611.** Similarly, if the Auditor General makes recommendations for the Welsh Ministers, a response to those recommendations must be prepared and sent to the AGW, Estyn and the council(s) in question.

**612.** Sections 97 makes provision in relation to the Auditor General's ability to undertake special inspections. As with any standard audit process, a council must provide documents it holds, provide facilities and assistance for AGW inspectors to undertake their duties.

**613.** Sections 98 and 100 relate to matters such as notice periods for entry of inspection, identification, and fees in respect of special inspections. The Explanatory Notes state that the WAO will have "discretion to charge a fee which departs from the set scale" if the cost of a special inspection is "substantially more or less than originally envisaged".<sup>486</sup>

**614.** Section 99 makes specific provisions about obstruction of an inspector exercising powers under section 97.

### **Our view**

**615.** We support the provision which allows the AGW to conduct a special inspection of a principal council if it is not meeting its performance requirements. We concur with the PSOW and the Minister that the AGW should share relevant findings with the Ombudsman and any other relevant inspectorate, and are pleased that this provision does not prevent this action.

### **Section 101-106: Power of direction, intervention and support provided by Welsh Ministers**

**616.** Provisions in these sections give the Welsh Ministers the opportunity to provide support or direct another principal council to support a council. There

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<sup>486</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 353

are powers of intervention for the Welsh Ministers, even if a principal council has not requested assistance.

**617.** Section 101 provides the framework for the Welsh Ministers to act for the “purpose of increasing the extent to which the council meets the performance requirements”.<sup>487</sup>

**618.** Section 102 provides them with power to direct a principal council to provide support and assistance to another principal council to assist it in meeting the performance requirements. The level of such support will be specified in the direction.

**619.** Section 103 makes provision for powers of intervention. Under the 2009 Measure, an authority would have to request assistance from the Welsh Ministers before they could intervene; this provision gives the Welsh Ministers the power to intervene without a request from the principal council.

**620.** Sections 104-106 give the Welsh Ministers powers to direct a principal council to take, not to take or cease taking specified steps. Section 106 also provides powers to direct that a specified function of a principal council could be “exercised by the Welsh Ministers or a person nominated by them”.

**621.** The Welsh Ministers’ power of direction was not supported by the WLGA. It commented:

“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.”<sup>488</sup>

**622.** The WLGA noted that it works with authorities to provide support to others, and if an authority was unable to provide support to another “it may be to do with capacity or resource implications”, adding that a Ministerial direction would not result in that council having the resources and capacity it needed. It also

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<sup>487</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 354

<sup>488</sup> Written evidence, LG 54, WLGA

questioned whether involving an “unwilling partner” would be an effective approach.<sup>489</sup>

**623.** It suggested that this provision should be amended so that the Welsh Ministers have a power to “request” that one authority provides support to another.<sup>490</sup>

**624.** The Minister commented that the power to direct local authorities “is very much a power of last resort” and that the Welsh Government would be very disappointed should it be in a situation where it was required to do so. The Minister explained that a range of support and improvement functions would first be provided to an authority, but that the power is needed as a “backstop” should something go significantly wrong.<sup>491</sup>

### **Our view**

**625.** We understand the concerns raised by the local government sector regarding the power for the Welsh Ministers to direct one authority to assist another. We acknowledge the principle that this could be problematic in some circumstances, particularly should the authority being directed find that it does not have the capacity or resources to comply. However, we were re-assured by the Minister that such a power would only be used where all other attempts to support a principal council had been exhausted.

**626.** We accept that the power to enable the Welsh Ministers to intervene when all other approaches have not resulted in the required improvements is necessary. However, we trust that this power is only ever used by the Welsh Government as a last resort, particularly as there is no procedure for the Assembly to intervene should it feel that the power is being misused.

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<sup>489</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraphs 309-310

<sup>490</sup> Written evidence, LG 54, WLGA

<sup>491</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraphs 346-348

## Sections 114-115: New name and function along with membership of governance and audit committee

**627.** Section 114 amends the Local Government (Wales) (Measure) 2011 in relation to the name and function of audit committees, which will be known as “governance and audit committees”. The EM states that “Audit Committees provide important checks and balances to a principal council’s governance arrangements”<sup>492</sup> and they are tasked with reviewing and scrutinising a principal council’s financial affairs, risk management and corporate governance arrangements, among other functions.

**628.** Section 115 changes the membership of the new governance and audit committee by increasing the number of lay members. Currently, under the 2011 Measure, at least two thirds of an audit committee membership must be members of the authority, and one member must be a lay member. This Bill amends that provision to specify that one-third of the membership are lay members. It also requires that the Chair must be a lay member.

**629.** The EM notes that lay members “bring a range of skills, perspectives, and experiences, which can strengthen the scrutiny an Audit Committee can provide”. It adds:

“Welsh Government considers that Audit Committees with the statutory minimum of one lay member are less likely to gain these benefits.”<sup>493</sup>

**630.** The EM notes that the response from the public in recent consultations on local government reform is supportive of such changes whilst most local authorities and the WLGA were opposed.<sup>494</sup>

**631.** The WLGA raised its objection to the provision on the basis of “democratic accountability”:

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<sup>492</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 14.45

<sup>493</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 14.47

<sup>494</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraphs 14.48–14.49

“to suddenly have more lay members, say, than elected members of that committee, and then to put them in chairmanship positions [ ] you could have the chairman directing locally elected members actually what they feel should be the steer. [ ] there’s no hang-up about having lay members on committees there, but it’s proportion to the numbers that are there and the responsibility that you will give them, particularly when it comes to the chairmanship of those committees.”<sup>495</sup>

**632.** Similar views were shared by some individual local authorities.<sup>496</sup>

**633.** A contrary view was expressed by Professor Ian Roffe, a lay member of the Audit Committee for Ceredigion County Council. Professor Roffe suggested there could potentially be “multiple benefits from this approach”, including encouraging local people to participate in council decision making, increasing professional challenge on audit and decision making matters and improving transparency.<sup>497</sup>

## Our view

**634.** We understand that the provisions relating to the membership of governance and audit committees are significantly different to the existing requirements and, as such, local government representatives are naturally anxious about the changes. We note the rationale for the changes and we are instinctively supportive of ways to increase the breadth of perspectives, experience and diversity of committees such as these.

**635.** We also believe that increasing the number and role of lay members on committees will provide additional opportunities to increase diversity, and for

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<sup>495</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 321

<sup>496</sup> Written evidence, LG 15, Ceredigion County Council; Written evidence, LG 20, Wrexham County Borough Council; Written evidence, LG 46, Monmouthshire County Council; Written evidence, LG 52, Rhondda Cynon Taf County Borough Council; Written evidence, LG 56, Denbighshire County Council; Written evidence, LG58, Conwy County Borough Council

<sup>497</sup> Written evidence, LG 49, Professor Ian Roffe

people to get more involved in local democracy, including some who may be considering standing for election.

**636.** We therefore support the provisions relating to the membership of governance and audit committees.

## Section 118-119: Coordination between regulators

**637.** The provisions in these sections require the AGW and other “relevant regulators” to have regard to the need for coordination in the exercise of each of their functions. The other “relevant regulators” are listed in Table 1 of section 119, and include Estyn and the Welsh Ministers in relation to the exercise of social services functions.

**638.** Section 118 also requires the AGW to draw up a timetable for each principal council to show when each regulator will be exercising their functions. The regulators must take all reasonable steps to ensure they adhere to the timetable.

**639.** The Auditor General acknowledged that “having regard for the need for co-ordination is clearly desirable”, however, he commented that “the extensive requirements” in section 118, particularly the requirement to produce timetables for each council for the exercise of functions, “are over-prescriptive, largely impractical and unnecessary”.

**640.** The AGW noted that many inspections by Care Inspectorate Wales (“CIW”) and Estyn are undertaken on short notice in order to be effective, and it is therefore “not appropriate to explicitly timetable these”. The Auditor General added that he has a strategic agreement in place with CIW, Estyn and Healthcare Inspectorate Wales in pursuit of cooperation and coordination through “Inspection Wales”:

“This operates well at both a strategic and operational level, and I therefore view prescription of section 118 as unnecessary.”<sup>498</sup>

**641.** Estyn notes that it “welcomes the sections [ ] with regard to co-ordination between regulators”, adding that these sections set out clearly the rationale for

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<sup>498</sup> Written evidence, LG 01, Auditor General for Wales

such co-ordination. However, it commented that the provisions as set out refer to regulators, and “Estyn as such does not fulfil a regulatory role, instead its duties are that of an inspectorate”. It believes that the difference between regulatory bodies and inspectorates could be better recognised in this chapter.<sup>499</sup>

**642.** The Minister commented that there is an existing requirement on regulators to prepare a timetable and that the provisions replicate existing ones. The Minister confirmed that the provisions would not prevent inspectorates from undertaking “spot inspections”. The Minister undertook to discuss the issues further with the AGW.<sup>500</sup>

**643.** The AGW also raised a concern as to whether section 118 may be outside the Assembly’s legislative competence:

“This is because the section requires the Auditor General to have regard to the need for co-ordination in the exercise of functions, which amounts to a modification by way of an implied amendment to section 8(1) of the Public Audit (Wales) Act 2013. Section 8(1) of the 2013 Act says that the Auditor General has complete discretion in the exercise of his functions and is not subject to direction by the Welsh Ministers. Section 118 therefore seems to fall foul of the prohibition found in section 108(6)(a) and para 5 of Part 1 of Schedule 7B to GOWA 2006, which protects section 8(1) of the 2013 Act from amendment. I recognise that section 118 of the Bill is in part a restatement of section 23 of the 2009 Measure. However, the 2013 Act is subsequent to the 2009 Measure, so its provisions prevail— section 23 of the 2009 Measure was no longer valid following the commencement of the 2013 Act, so cannot be restated.”<sup>501</sup>

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<sup>499</sup> Written evidence, LG 35, Estyn

<sup>500</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraphs 351-358

<sup>501</sup> Written evidence, LG 01, Auditor General for Wales

## Our view

**644.** We acknowledge the concerns raised by the AGW in relation to co-ordinating inspection timetables with other inspectorates. However, we understand that, since the provisions replicate arrangements from the Local Government (Wales) Measure 2009, they should not result in any significant changes. We welcome the Minister's commitment to further engagement with the AGW, and trust this provides the clarity needed.

**645.** We note the Auditor General's concerns about the Assembly's legislative competence around the provisions in section 118. We have given this further consideration. Whilst paragraph 5 of Part 1 of Schedule 7B to the Government of Wales Act 2006, places specific restrictions on the Assembly in relation to amending the Public Audit Wales Act 2013, paragraph 5 contains exceptions to this rule and the Assembly may amend the Act if such provisions are "oversight provisions" and "non-governmental committee provisions".

**646.** An "oversight provision" is defined as a provision that relates to the oversight or supervision of the Auditor General or the exercise of the Auditor General's functions". Section 118 is clearly an oversight provision.

**647.** Secondly, a "non-governmental committee provision" is a provision conferring functions on a committee of the Assembly that "a) does not consist of or include members of the Welsh Government, and b) is not chaired by an Assembly Member who is a member of a political group with an executive role. The oversight and scrutiny of the Auditor General for Wales is undertaken by the Assembly's Finance Committee. Standing Order 18.13 prohibits the Finance Committee from being chaired by a member of a political group with an executive role. The Committee does not consist of any members of the Welsh Government.

**648.** We are therefore content that section 118 of the Bill is within the legislative competence of the Assembly because the relevant exceptions to the rule that prohibit the Assembly from amending specific provisions of the Public Audit Wales Act 2013 apply.



**Recommendation 28.** We recommend that the Welsh Government engages with the Auditor General for Wales to provide clarification on the arrangements for coordination between regulators in sections 118 and 119.

## 9. Part 7 – Mergers and Restructuring of Principal Areas

The provisions in this Part of the Bill include making arrangements for voluntary mergers of principal areas, restructuring of principal areas, functions relating to mergers and restructuring and remuneration arrangements for new principal councils.

### Chapter 1: Voluntary mergers of principal areas

**649.** The debate over the structure of principal councils in Wales has been ongoing for several years. A Welsh Government Green Paper in 2018 proposed three options – voluntary mergers, a phased comprehensive merger programme by the next local government elections, or a comprehensive programme of mergers at the earliest opportunity. The provisions in this chapter of the Bill are to enable voluntary mergers.

**650.** Councils would be able to propose to merge at any time, and not be bound to any specified map. Mergers, according to the Welsh Government, will form part of a “wider shared agenda for reform such as greater collaboration and service transformation”. It should be seen as a “tool to strengthen resilience and sustainability”.<sup>502</sup>

**651.** The Bill gives the Welsh Ministers power to make regulations to give effect to a voluntary merger. The EM notes that this regulation-making power is required, otherwise the only way Welsh Ministers could comply with a request would be by the “lengthy procedure involved in introducing a Bill specifically for the purpose”.<sup>503</sup> The regulations would be subject to the affirmative procedure for agreement by the Assembly.

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<sup>502</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 15.4

<sup>503</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 15.7

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## Section 120: Merger applications

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**652.** Section 120 would enable principal councils to make a joint application to the Welsh Ministers to ask them to make regulations allowing them to merge. Applications can only be made with the authority of the full council of each principal council making the application. The Welsh Ministers would be required to notify the principal councils if they decide not to make merger regulations.

**653.** Section 121 places a duty on principal councils to consult on a merger application before submitting the application to the Welsh Ministers. There is a list of consultees in this section, which includes every other principal council for a principal area which is likely to be affected.

**654.** The Explanatory Notes state that councils wishing to undertake a consultation on merging voluntarily can do so “before this section comes into force” and that this “may satisfy the requirements to consult”.<sup>504</sup>

**655.** Section 122 specifies that principal councils must have regard to any guidance issued by the Welsh Ministers. The Explanatory Notes specify that guidance should “cover matters the principal councils will need to consider in formulating an application”. The considerations include the benefits of a merger, any costs and savings and impact assessments.<sup>505</sup>

**656.** Section 124 specifies that merger regulations must provide for a shadow council for the new principal area. The Explanatory Notes state that in almost all voluntary mergers, shadow councils will be elected by local government electors in the areas of the merging councils, normally in May the year before the transfer date.<sup>506</sup> The regulations must also make provision for a shadow executive leader and cabinet together with arrangements for the funding and functions of a shadow council.<sup>507</sup>

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<sup>504</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 385

<sup>505</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 386

<sup>506</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 389

<sup>507</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraphs 391 and 393

**657.** Section 125 specifies that the merger regulations would need to specify which voting system is to be used (STV or FPTP). This would be a decision for the merging councils to determine in their application. In the absence of agreement, the Welsh Ministers will decide based on the voting system used in both councils, or in the majority of merging councils, immediately before the application. However, if there was no majority, for example, if four councils were involved, and two used STV and two used FPTP, the Welsh Ministers would have to exercise their discretion.

**658.** Section 126 makes provision for electoral arrangements for the new principal council area. The regulations must cover the term of office of councillors returned, the appointment of a returning officer and meeting of expenditure incurred.

**659.** The WLGA noted that it 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.”<sup>508</sup>

**660.** We heard that the WLGA was not aware of any current interest among principal councils to put forward a request to voluntary merge, but it was supportive of the principle of enabling local accountability and local decision making on the matter:

“So, if two authorities form the view that merging is in the best interest of the people they serve, they would have the ability to do so, and the decision would be taken locally.”<sup>509</sup>

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<sup>508</sup> Written evidence, LG 54, WLGA

<sup>509</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 327

**661.** The WLGA referred to 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.<sup>510</sup>

**662.** The LDBCW noted that voluntary mergers of principal councils may impact on its review programme if “halfway through this programme, a local authority, towards the end of the cycle, decide to go through that route”, adding that “early discussions” would be needed to consider whether the programme should be re-ordered. The LDBCW added that the impact would be greater should several authorities opt to merge at the same time:

“it would be also how many decide to do it at the same time. If one or two decide to do it, we could add it to our review programme. An additional one or two reviews is not going to significantly impact a five-year programme, but if you’ve got six or seven deciding to do it, then we would have to call in for extra resources from Welsh Government [ ] So, it can be done with resources.”<sup>511</sup>

**663.** The Minister stated that the Welsh Government would work with any principal councils who express an interest in merging, adding that it would be “very keen to support them”. The Minister clarified that the Welsh Government would need to understand the circumstances around the interest in merging, including the improvements expected as an outcome:

“if local authorities want to approach us and say that they think they would be better off as a merged, one single authority, then we’d be very happy to work with them to develop the case for that, understand where they’re coming from and assist them through the process.”<sup>512</sup>

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<sup>510</sup> Written evidence, LG 54, WLGA

<sup>511</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 9 January 2020, paragraphs 403-405

<sup>512</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 27 November 2019, paragraphs 287-288

**664.** The Minister went on to say that, whilst she did not have a “map” of potential mergers,<sup>513</sup> it would be difficult to understand “how geographically separated authorities could efficiently run a service”.<sup>514</sup>

### **Our view**

**665.** The merging of principal councils is an issue that has been debated for several years, and has been the subject of numerous consultations. We believe that this Bill offers an appropriate solution, by providing the means for principal councils to merge should they wish to do so. We acknowledge that principal councils are themselves supportive of these provisions, particularly as it provides for local accountability and decision-making.

## **Chapter 2 - Restructuring of Principal Areas**

**666.** The Welsh Ministers currently have powers, by order, to amalgamate two or three principal councils to create new authorities. These powers are contained within the 2011 Measure. The EM states:

“The Welsh Ministers consider that the existing powers should be revisited to take better account of the circumstances in which struggling local authorities might find themselves. In particular, Ministers are concerned that the power in the 2011 Measure is not conducive to a timely resolution of the problems.

Accordingly, the Welsh Ministers propose to replace the powers in the 2011 Measure and the 2013 Act with a power which enables a principal council to submit a request for it to be abolished.”<sup>515</sup>

**667.** Should the Welsh Ministers conclude that abolition is the most appropriate course of action, they would need to make regulations for the restructuring of the area of the council in question. This could mean merging the council with

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<sup>513</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 27 November 2019, paragraph 298

<sup>514</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 27 November 2019, paragraph 292

<sup>515</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraphs 3.191–3.192

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one or more of its neighbouring councils, or, splitting its area among two or more of its neighbours.

**668.** The Bill also empowers the Welsh Ministers to make regulations to restructure a council without receiving a request for abolition. According to the EM, this power could be used should the available evidence suggest that the council “is struggling and various support mechanisms and interventions have been tried to no avail”.<sup>516</sup>

**669.** Section 125 sets out five conditions that must be met before the Welsh Ministers can make restructuring regulations, these are:

- A special inspection report has been issued by the AGW, or that the Welsh Ministers have received an abolition request from a principal council;
- That the Welsh Ministers have given notice to the affected councils that a special inspection report or abolition request has been received;
- That the Welsh Ministers have consulted with the councils that will be affected by the restructuring regulations, and any other persons considered appropriate;
- After consulting, the Welsh Ministers must be satisfied that without restructuring regulations, effective and convenient local government is not likely to be achieved in the area of the council under consideration; and
- To give notice to the councils that regulations are to be made.

**670.** The provision for a principal council to request that the Welsh Ministers consider abolishing the council and its principal area is set out in section 129, which specifies that the request must be made by the full council, not the executive.

**671.** Section 130 deals with the powers for making restructuring regulations. They will specify the local government structures that will replace the principal

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<sup>516</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 3.194

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council or councils affected. Regulations would be subject to an enhanced procedure for agreement by the Assembly, which is detailed in section 146.

**672.** Sections 131 to 133 set out what must be included, or considered for inclusion, in the restructuring regulations. Section 131 makes provision for restructuring regulations where part of a principal council area is to become part of another existing principal council. Regulations must or may include such matters as voting systems, executive arrangements, terms of office and remuneration to be included in regulations. The regulations may also specify the need to postpone or cancel an ordinary election, or even to extend the term of office for members.

**673.** Section 132 makes provision for restructuring regulations which create a new principal area. While some matters such as voting systems are included here, there are other matters that must be covered. These include matters relating to the boundary of the new principal area, whether it is to be a county or county borough and for an elected shadow council.

**674.** Section 133 provides some element of discretion to include provisions outside of sections 131 and 132. For example, restructuring regulations may provide for establishing a committee to provide advice and recommendations about the transfer of functions or staffing matters. It may also allow for the creation of a body corporate to take over the disposal or acquisition of property, or to borrow or lend money.

**675.** The Minister explained that, given the many other ways the Welsh Government can support principal councils who are in need of assistance, she would be “really surprised” if it ever needed to exercise the restructuring functions, adding:

“Something would have gone monumentally wrong with the system if we get to here.”<sup>517</sup>

**676.** The Auditor General raised concerns that one of the first conditions for making restructuring regulations is the Welsh Ministers being in receipt of an

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<sup>517</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 27 November 2019, paragraph 305



AGW special inspection report. It was acknowledged that it is not “a simple trigger”, but suggested that the link between a report and restructuring regulations could compromise the office’s independence and undermine wider audit effectiveness and public trust.<sup>518</sup>

**677.** A representative from the WAO added:

“if there is that automatic meeting of the conditions for restructuring, the authority is going to be very concerned about having a special inspection and may not be co-operative, and may be quite resistant to the process.”<sup>519</sup>

**678.** The AGW also voiced concerns with the other criteria for making restructuring regulations:

“Aside from special inspection reports (or abolition requests), there is only consultation, notice and the Welsh Ministers’ judgement. Focus on these conditions seems likely to lead to neglect of consideration of broader relevant matters, such as the views of the population of the area.”<sup>520</sup>

**679.** The WLGA concurred with the concerns raised by the AGW around the special inspection reports and the need for increased consultation:

“I think on the auditor general’s concerns around the role of a special inspection being a trigger, there would be a risk—it would be a difficult role for the auditor general and his team to go into an authority knowing that on the basis of that report, it may lead to a restructure of an authority. But crucially, in addition to a Minister discharging the improvement and support powers, which are elsewhere in the Bill, restructuring an authority is a significant issue, so there needs to be appropriate consultation, not just with neighbouring authorities and those that may have to effectively

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<sup>518</sup> Written evidence, LG 01, Auditor General for Wales

<sup>519</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 11 December 2019, paragraph 268

<sup>520</sup> Written evidence, LG 01, Auditor General for Wales

merge with that authority, but also with the public as well, in both the authority that is to be restructured out of existence and then the neighbouring authorities with which it may be merged, so the public should be involved in that process as well.”<sup>521</sup>

**680.** UNISON emphasised another matter of concern, that of the cost of restructuring. It believed this should be provided for centrally, and not taken from council’s existing budgets. UNISON also called for trades unions to be involved in the process at the earliest possible opportunity. It also stated that its preference would be for any mergers or restructuring to sit within existing health board structures.<sup>522</sup> ALACE also called for a requirement to consult with trades unions representing staff employed by the relevant councils and for stronger provisions relating to the transfer of staff.<sup>523</sup>

**681.** In response to the concerns raised by the AGW, the Minister clarified that a special inspection report in itself was not intended to be “a sound basis on which to make such a recommendation”, adding:

“It’s simply a piece of evidence in a wider set of evidential pieces that would be needed in order to trigger such a restructuring; and nor do we expect that every special inspection report would give rise to sufficient concern for there to be a restructuring; and nor is the auditor general required to make any such recommendation, either for or against.”<sup>524</sup>

**682.** The Minister also stated that the consultation requirements for restructuring were intentionally different to those for voluntary mergers, as the

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<sup>521</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 333

<sup>522</sup> Written evidence, LG 17, UNISON Cymru / Wales

<sup>523</sup> Written evidence, LG 36, ALACE

<sup>524</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 361

circumstances would be different and “very obviously need a completely different type of consultation”.<sup>525</sup>

## **Our view**

**683.** We acknowledge that the provisions relating to the restructuring of principal councils grant significant enabling powers to the Welsh Ministers, however we are re-assured by the Minister’s comments that these powers will not be exercised unless all other methods of supporting councils have been explored and exhausted.

**684.** We recognise the AGW’s concern in terms of the provision that specifies a special inspection report as being one of the first conditions to be met before restructuring regulations can be made. We were encouraged by the Minister’s comments however that such a report is only one piece of evidence in a wider set that would be needed in order to trigger such a restructuring. This is not reflected in the Bill at present however, and we would urge the Minister to ensure such assurances are established in guidance, if not in the Bill.

**Recommendation 29.** We recommend that guidance issued by the Welsh Government clarifies that a special inspection report by the Auditor General for Wales can only be considered as evidence for making restructuring regulations under Chapter 2 of Part 7 if there is a wider range of evidence available.

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<sup>525</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraph 365

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## 10. Part 8 – Local Government Finance

This Part amends legislation regarding non-domestic rates and council tax. The provisions relating to non-domestic rates will introduce tax avoidance measures, and amend the way that the non-domestic rates multiplier is calculated.

There is also provision to remove the power to enable imprisonment as a sanction for non-payment of council tax.

### Sections 149-151: Non-domestic rates avoidance

**685.** Section 149 provides billing authorities with powers to request information from ratepayers and third parties for the purposes of exercising their functions in relation to non-domestic rates billing and collection. It introduces fines for convictions for making a false statement relating to a notice, and for failing to provide information. The Welsh Ministers are given a regulation-making power to enable billing authorities to request or obtain information, subject to the Assembly's approval of regulations made.

**686.** Section 150 provides the Welsh Ministers with a power to make regulations requiring persons to notify billing authorities of a change in circumstance that would affect rates liability. It introduces fines for convictions for making a false statement relating to a notice, and for failing to provide information. The regulations must also provide an appeal mechanism regarding any fine imposed.

**687.** Section 151 gives billing authorities powers to inspect and survey a hereditament, provided that the Valuation Tribunal of Wales has approved this, and that the billing authority has given 24 hours' written notice of the proposed use of the power. This section also introduces fines for people who are convicted of wilfully delaying or obstructing a person in exercising this power.

**688.** The EM notes that the Welsh Government consulted on these measures in both the Draft Bill consultation and Tackling Avoidance of Non-Domestic Rates in Wales consultation:

“Respondents generally agreed there was a need to address the issue of avoidance and there was support for creating new legislation alongside a range of other Welsh Government proposals that are non-legislative or require amendments to subordinate legislation.”<sup>526</sup>

**689.** The summary of responses to the consultation held by the Welsh Government states:

“Respondents were generally supportive of the proposed safeguards, with 29 in favour of the measures. There was some concern however that having only 24 hours’ notice was not long enough. In particular, the Federation of Small Businesses preferred at least a week’s notice.”

**690.** The Minister explained that the provision relating to 24 hours’ notice for an inspection is required as:

“we have evidence, I’m afraid, that ratepayers trying to avoid rates will modify the contents and arrangements in a property pretty rapidly if they know that an inspection’s coming, so it’s with a view to preventing them from doing so.”<sup>527</sup>

## Cost implications

**691.** Costs relating to these provisions are set out on pages 245 to 249 of the EM. Under the preferred option, the Welsh Government would incur one-off costs of £13,000 in 2020-21 associated with making regulations requiring people to notify billing authorities of changes in circumstance that would affect rates liability. These costs cover staff time associated with producing the regulations.

**692.** From 2021-22, local authorities would incur annual costs of £257,000, or £11,769 per authority. These costs cover 25% of a billing officer in each local authority’s time spent keeping information up to date and investigating avoidance activity.

<sup>526</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 3.202

<sup>527</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 27 November 2019, paragraph 311

## Section 152: Non-domestic rates multiplier

**693.** Section 152 of the Bill amends schedule 7 to the Local Government Finance Act 1988, to make a permanent change to the way that the non-domestic rates multiplier is calculated from 2021-22. It sets out how the multiplier will be set for a financial year, using the annual increase in Consumer Price Index (“CPI”) as at September of the preceding calendar year.

**694.** The rateable value of a property is an estimate of how much it could rent for per year on the open market at a given point in time. This is then multiplied by the “pence in the pound” paid in non-domestic rates, known as the multiplier, to calculate the liability for the property.

**695.** Prior to 2018-19, the non-domestic rates multiplier was increased at the start of each financial year by the RPI (“Retail Price Index”) measure of inflation. From 2018-19 the CPI measure of inflation has been used instead of RPI, to adopt the same approach introduced by the UK Government in relation to England.

**696.** Subsection (2f) gives the Welsh Ministers regulation making powers to change the mechanism by which the multiplier is calculated from CPI to an alternative, subject to approval from the Assembly.

### Cost implications

**697.** Costs relating to section 152 are set out on pages 250 to 254 of the EM. These indicate that the Welsh Government will see savings of £8,000 per financial year from 2021-22 due to time savings from not preparing annual subordinate legislation to adjust the calculation used to determine the multiplier.

## Section 154: Removal of power to provide for imprisonment of council tax debtors

**698.** Provisions in the Local Government Finance Act 1992 allow the Welsh Government to make regulations providing for imprisonment as a result of non-payment of council tax. Section 154 of the Bill removes this enabling power so that it can only be made in relation to billing authorities in England. The EM states that the rationale for this approach is that:

“The Welsh Government believes imprisonment is an outdated and disproportionate response to a civil debt issue and that the financial costs and the impact on households outweigh the benefits.”<sup>528</sup>

**699.** In 2018 the Welsh Government consulted on removing imprisonment as a sanction for failing to pay council tax. The consultation summary report states that, of the 185 respondents to the relevant question in the consultation, 156 considered that the sanction of imprisonment should be removed. However, 22 felt the removal should be supported by the introduction of alternate methods of recovery. The summary report also states that a number of those who called for the introduction of alternate methods of recovery were local authorities.

**700.** On 1 November 2018, the then Cabinet Secretary for Finance announced that from 1 April 2019 it would no longer be possible to start proceedings to commit an individual to prison for council tax debt. He also stated that:

“In response to the consultation, local authorities asked for additional measures to help them to maintain collection rates. We are committed to working with local authorities to monitor the implementation of the change to the legislation and will consider the introduction of new measures if necessary.”<sup>529</sup>

**701.** On 12 February 2019, the Minister for Finance and Trefnydd laid The Council Tax (Administration and Enforcement) (Amendment) (Wales) Regulations 2019 to amend regulations 47 and 48 in the Council Tax (Administration and Enforcement) Regulations 1992 to remove the power of enforcement by committal to prison from 1 April 2019.<sup>530</sup>

**702.** This Bill removes the enabling power in relation to Wales so that any re-instatement of the power to commit to prison must be done by way of primary legislation.<sup>531</sup>

<sup>528</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 3.208

<sup>529</sup> Welsh Government Written Statement – Removal of the Sanction of Imprisonment for the Non-Payment of Council Tax, 1 November 2018

<sup>530</sup> The Council Tax (Administration and Enforcement) (Amendment) (Wales) Regulations 2019

<sup>531</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 3.209

**703.** The WLGA supported the principle of the provision, but added that it could result in a decrease in collection rates:

“whilst we welcome this reform, if there is going to be an impact on council budgets, if it’s Welsh Government changing the law, there should be sufficient compensation coming from Welsh Government to compensate councils.”<sup>532</sup>

### **Our view**

**704.** Whilst we welcome the provision which prevents the reinstatement of imprisonment for council tax debtors, we are aware that no alternative form of debt recovery for principal councils has been provided. Council tax revenue is an important element of local government funding, with local authorities becoming increasingly dependent on this income stream. We would urge the Welsh Government to work with the WLGA to consider alternative measures for recouping debt accrued through non-payment of council tax.

**Recommendation 30.** We recommend that the Welsh Government works with the WLGA to consider alternative measures for recouping debt accrued through non-payment of council tax, in light of the removal of imprisonment as a sanction.

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<sup>532</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraph 336

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## 11. Part 9 - Miscellaneous

Part 9 of the Bill covers a number of different areas in relation to local government and the fire and rescue services.

### Section 156: Information sharing between regulators, the Auditor General for Wales and the Welsh Ministers

**705.** Provisions in section 156 build on existing provisions in the Local Government (Wales) Measure 2009. According to the EM, these aim to facilitate the sharing of information between members of the “information sharing group”. The AGW, Estyn and the Welsh Ministers are the members of the group. The Bill places a duty on members to share information “for the purpose of exercising their specified functions in relation to a principal council”.<sup>533</sup> The specified functions are listed in Table 2 of the Bill.<sup>534</sup> The Welsh Ministers will be able to amend Table 2 through regulations.

**706.** Estyn welcomes the provisions for information sharing between inspectors and regulators, noting that it should “further strengthen the joint working between these bodies”.<sup>535</sup>

**707.** The Welsh Language Commissioner suggested that consideration be given to including the Commissioner among the members of the information sharing group.<sup>536</sup>

**708.** No further evidence, in favour or against this provision was received.

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<sup>533</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 3.212

<sup>534</sup> Local Government and Elections (Wales) Bill, page 96, Table 2

<sup>535</sup> Written evidence, LG 35, Estyn

<sup>536</sup> Written evidence, LG 47, Welsh Language Commissioner

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## Our view

**709.** We welcome the provision that strengthens duties on the Welsh Ministers, Estyn and the AGW to share information between them on specified function relating to principal councils.

### Section 157: Local authorities' head of democratic services

**710.** Section 157 amends section 8 of the Local Government (Wales) Measure 2011, so that the head of democratic services in a local authority is treated as a chief officer and afforded appropriate statutory protection. It removes the restriction on a local authority's monitoring officer from being its head of democratic services, but provides that the role cannot be undertaken by the chief executive.

**711.** Monmouthshire County Council notes that it welcomes the deletion of the section within the 2011 measure which prevents the monitoring officer also being the head of democratic services which can "lead to unhelpful fragmentation of some key responsibilities".<sup>537</sup>

**712.** ALACE supports the designation of the head of democratic services as a chief officer in subsection (2), and the separation of duties that generally exists between the statutory officers under the 1989 Act and the 2011 Measure. However, it does not support the removal of the restriction that the head of democratic services should not be the monitoring officer as it "potentially undermines and weakens the purpose of the head of democratic services that was created by the 2011 Measure".<sup>538</sup>

**713.** The Minister explained the rationale for the provision:

"I think that the provision in the Measure that prevents the monitoring officer from being the head of democratic services is a fundamental misunderstanding of how most local authorities function. So all it's doing is correcting that. So, I don't think it's a big deal but, actually,

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<sup>537</sup> Written evidence, LG 46, Monmouthshire County Council

<sup>538</sup> Written evidence, LG 36, ALACE

most local authorities already function in that way. The head of democratic services almost always reports to the monitoring officer, for example. And we think that the head of democratic services has to be a very senior officer in order to have the clout necessary, and it seems completely ludicrous to me. I just think it's a misunderstanding of how local government works.

It's just regularising a situation that I think was unintended and has had unforeseen consequences, which we're just putting right.”<sup>539</sup>

## **Our view**

**714.** We welcome the provision to treat a principal council's head of democratic services as a chief officer. We believe this approach is appropriate in order to strengthen that role. We also recognise the merits of combining the role with that of the monitoring officer.

## **Section 158: Abolition of polls consequent on a community meeting**

**715.** Section 158 introduces Schedule 12, which provides for the abolition of community polls, except in the case of community governance polls, which enable a community to hold a poll in relation to the creation or dissolution of a community council.

**716.** The EM acknowledges that “community polls generally relate to a matter of importance to the community”, however it notes that a principal council is not bound by the results of the polls and that “addressing or resolving that matter is often outside the control, or indeed influence, of the council”.<sup>540</sup>

**717.** It adds that they are costly, turnout is usually relatively low, and that the Welsh Government:

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<sup>539</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 27 November 2019, paragraphs 325-327

<sup>540</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraphs 218-219

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“considers the process related to community polls to be outdated and at odds with the ever increasing use of social media and digital resources such as electronic petitions etc.”<sup>541</sup>

**718.** The Minister explained that the provision in section 49 to require local authorities to put a petitions scheme in place would be a simpler process for people to raise concerns:

“There’s no difference in the outcome. The community poll isn’t binding now. The Bill requires that councils need to set out a petitions scheme, the steps the council will take in response to a petition, as well as how it will make that available, and all the rest of it. So, it’s just swapping it to the system we use here in the Assembly, actually.”<sup>542</sup>

**719.** The provision was supported by many stakeholders, including the WLGA<sup>543</sup>, the Society of Local Council Clerks<sup>544</sup> and One Voice Wales<sup>545</sup>.

## **Our view**

**720.** We welcome the provision to abolish community polls, alongside the new duty on principal councils to establish a petitions scheme. This issue is explored in greater detail in chapter 5 of this report.

## **Sections 159-160: The Local Democracy and Boundary Commission of Wales**

**721.** Section 159 removes the requirement for the chief executive of the LDBCW to be appointed by the Welsh Ministers, and gives the Commission the responsibility of making this appointment. However, there is provision for the

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<sup>541</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 3.222

<sup>542</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 27 November 2019, paragraph 154

<sup>543</sup> Written evidence, LG 54, WLGA

<sup>544</sup> Written evidence, LG 13, Society of Local Council Clerks

<sup>545</sup> Written evidence, LG 28, One Voice Wales

Welsh Ministers to appoint a chief executive where the position has been vacant for more than six months.

**722.** Section 160 provides a power for the Welsh Ministers to direct the LDBCW not to conduct or to stop a review under the Local Government (Democracy) (Wales) 2013 Act.

**723.** Both provisions were welcomed by the Commission, who noted, in relation to appointing its own chief executive, that it will bring it in-line with other Welsh Government Sponsored Bodies.<sup>546</sup>

**724.** The LDBCW commented that the power for the Welsh Ministers to direct it not to conduct or stop a review is “probably going to be a power that’s required” should changes such as voluntary mergers occur, which would render a review of relevant authorities not practical at that time. It added that, whilst it could decide itself not to carry out a review of a particular authority, it could leave itself open to challenge, therefore:

“having the Minister’s power to tell us to officially stop would, I suppose, be beneficial for us, and reduce the risk that we could be challenged for not continuing with that particular review.”<sup>547</sup>

**725.** The Commission concluded that, should such a provision not have been included in the Bill, it probably “would have suggested having something similar”.<sup>548</sup>

## Section 161: Merging and demerging Public Services Boards under the Well-being of Future Generations (Wales) Act 2015

**726.** The Well-being of Future Generations (Wales) Act 2015 Act (“the WFG Act”) enables PSBs to merge, or be directed by the Welsh Ministers to merge, to assist

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<sup>546</sup> Written evidence, LG 34, Local Democracy and Boundary Commission for Wales

<sup>547</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 9 January 2020, paragraph 421

<sup>548</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 9 January 2020, paragraph 423

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them in contributing to the achievement of the well-being goals, however it does not give powers to demerge or partially demerge.

**727.** Section 161 amends section 47 of the WFG Act, by specifying that a merged PSB can demerge, or partially demerge if it is considered that it would assist in contributing to the achievement of the well-being goals. It also provides the Welsh Ministers with a power to direct a PSB to demerge or partially demerge in circumstances where this would assist in contributing to the achievement of the goals.

**728.** This section also sets out what steps need to be taken regarding the preparation of local well-being plans following the merger, demerger or partial demerger. Before publishing a plan, a PSB must consult the Future Generations Commissioner, the Welsh Ministers, and other persons it considers appropriate.

**729.** The Future Generations Commissioner noted she would have “liked” to see the provision giving more functions to PSBs and promoting mergers since there are:

“too many different committees and groupings...it’s very difficult for the national bodies and the bigger regional bodies.”<sup>549</sup>

**730.** The Minister expressed sympathy with this view, but disagreed with any mandatory mergers of PSBs. The Minister referred to a report being undertaken by the Partnership Council for Wales on regional working, and that the Welsh Government will be guided by that report.<sup>550</sup>

**731.** One Voice Wales<sup>551</sup> and the Society of Local Council Clerks suggested that the Bill would be an opportune vehicle for including a representative of town and community councils to be invited representatives on PSBs, with the Society of Local Council Clerks commenting:

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<sup>549</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 11 December 2019, paragraph 379

<sup>550</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraphs 372-373

<sup>551</sup> Written evidence, LG 28, One Voice Wales

“formalising this through the Bill will harmonise arrangements across Wales and will be viewed as a very positive collaborative measure.”<sup>552</sup>

## Our view

**732.** We welcome the provision to enable Public Services Boards to demerge.

## Sections 162-164: Fire and rescue authorities

### Section 162: Combined fire and rescue authorities: inquiries

**733.** Section 162 covers inquiries into finance and governance arrangements of fire and rescue authorities. These are established by “combination orders” under the Fire and Rescue Services Act 2004. Section 162 amends the 2004 Act to remove the requirement for the Welsh Ministers to hold an inquiry when varying an authority’s combination order, except where the variation alters the area served by a fire and rescue authority, or would revoke the combination order with a view to creating a wholly different configuration of fire and rescue authorities in Wales.

**734.** The EM expands on the rationale for this provision:

“The requirement to hold a public inquiry into any changes to the combination orders is time consuming and obstructive. In addition this requirement does not apply in relation to any other local government bodies. The Bill therefore includes provisions which would restrict the current requirement for a local inquiry into proposed amendments to combination orders, so that it applied only to changes which would alter the area served by the fire and rescue authority concerned.”<sup>553</sup>

**735.** We heard unanimous opposition from the three Welsh fire and rescue authorities and Mid and West Wales Fire and Rescue Service to this provision,

<sup>552</sup> Written evidence, LG 13, Society of Local Council Clerks

<sup>553</sup> Local Government and Elections (Wales) Bill, Explanatory Memorandum, paragraph 3.235

with South Wales Fire and Rescue Authority noting its “grave concerns”. It explained that the provision was put in place “for a reason”, which was:

“to ensure due regard was given to the safety of firefighters or the community before changes were implemented that could detrimentally impact on these.”<sup>554</sup>

**736.** South Wales Fire and Rescue Authority emphasised:

“This change is an extremely concerning step as it could result in unsuitable or ill thought through changes being made to some of the key areas noted above without sufficient inquiry, debate, scrutiny or challenge.”<sup>555</sup>

**737.** North Wales Fire and Rescue Authority also strongly voiced its concerns, noting:

“The notion that changing, for example, governance or funding arrangements of fire and rescue authorities (which are currently being considered) would have no direct impact on public or firefighter safety is flawed. We would suggest that placing convenience over the protections afforded by the need to hold an inquiry in Wales would seem a retrograde step, not without some risk to public and firefighter safety.”<sup>556</sup>

**738.** Mid and West Wales Fire and Rescue Authority stated that there are “clear flaws in the proposals” and that such inquiries “presumably enhance and facilitate good decision making”, adding:

“If proposals are impractical or ill thought out, or unreasonable, an inquiry would act as an open and efficient brake or filter on any such proposals, and are consequently very much in the public interest.”<sup>557</sup>

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<sup>554</sup> Written evidence, LG 31, South Wales Fire and Rescue Authority

<sup>555</sup> Written evidence, LG 31, South Wales Fire and Rescue Authority

<sup>556</sup> Written evidence, LG 45, North Wales Fire and Rescue Authority

<sup>557</sup> Written evidence, LG 33, Mid and West Wales Fire and Rescue Authority

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**739.** The three fire and rescue authorities and Mid and West Wales Fire and Rescue Service disagreed with the rationale stated in the EM. North Wales Fire and Rescue Authority commented:

“We consider this rationale to be excessively narrow in its thinking. The fact that something is time consuming does not necessarily make it obstructive. Also, under the current arrangements, one basis for not holding an inquiry is if the combined fire and rescue authority and the county councils in its area agree to the proposed change. To imply, therefore, that this requirement is somehow limited to fire and rescue authorities is clearly incorrect.”<sup>558</sup>

**740.** Mid and West Wales Fire and Rescue Service also shared its concerns that the rationale expressed in the EM was not based on evidence:

“It is difficult to see how this will lead to clearer or more accountable leadership or more sustainable funding for FRAs as claimed within the accompanying Explanatory Memorandum. It appears that these statements are neither accurate nor evidence-based and thus do little to further the debate that the proposed changes will result in improvements to FRA governance or funding arrangements and thus benefit the communities they serve.”<sup>559</sup>

**741.** South Wales Fire and Rescue Authority argued that public inquiries do not need to be time-consuming, referring to one held in England in 2018, for which the Home Office:

“set out some parameters for the inquiry, and they included that the inquiry was to be, obviously, comprehensive, robust, transparent, impartial and timely, and provide a swift report at the end, and that it was to take no more than 10 days.”<sup>560</sup>

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<sup>558</sup> Written evidence, LG 45, North Wales Fire and Rescue Authority

<sup>559</sup> Written evidence, LG 32, Mid and West Wales Fire and Rescue Service

<sup>560</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 9 January 2020, paragraph 647

**742.** We heard that this specific inquiry, which involved multiple parties, complied with the set parameters and produced a report of no more than approximately 20 pages. South Wales Fire and Rescue Authority argued that a public inquiry:

“gives a greater opportunity for there to be more detailed debate and inquiry into some of the concerns that a consultation doesn’t always offer, where it’s just, obviously, a written response and the body only has to have regard to it. Certainly at an inquiry, there’s an opportunity to hear different arguments, to have detailed probing on the issues involved and for there to be a thorough investigation and hopefully it will promote more transparent and robust decision making at the end of it that is less susceptible to challenge.”<sup>561</sup>

**743.** South Wales and Mid and West Wales Fire and Rescue Authorities were clear in requesting that the provision in section 162 be removed from the Bill.<sup>562</sup>

**744.** The concerns raised by the fire and rescue authorities and Mid and West Wales Fire and Rescue Service in relation to public inquiries were also shared by the WLGA.<sup>563</sup>

**745.** The Minister however did not share the concerns of the fire and rescue authorities:

“Nobody else has to have a public inquiry if they want to merge or demerge or whatever. It’s very hard to see what that adds, to be honest. It’s impossible to imagine why anybody would want to put a Combination Order in place that would endanger firefighters’ safety or cause people not to be covered by a fire service. I just think it’s an

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<sup>561</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 9 January 2020, paragraphs 647-648

<sup>562</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 9 January 2020, paragraphs 655-661

<sup>563</sup> Written evidence, LG 54, WLGA

enormously complex piece of legislation that involves delay, expense—a massive process—to something that is pretty straightforward.”<sup>564</sup>

**746.** However, the Minister added that the Welsh Government would discuss the issue further with the fire and rescue authorities and provide an update.<sup>565</sup> In a letter of 24 February 2020, the Minister set out the Welsh Government’s reasoning in relation to the provision in section 162.<sup>566</sup>

**747.** We asked the fire and rescue services for their response to the rationale set out in the Minister’s letter. Both South Wales<sup>567</sup> and Mid and West Wales Fire and Rescue Authorities re-iterated their original position that they wish to see the provisions in section 162 removed from the Bill. Mid and West Wales Fire and Rescue Authority emphasised:

“Fire Services have always been, and will always remain unique, particularly in terms of guarding public safety and wellbeing, and any attempt to thwart or dilute public input into changes into a well performing service should only be undertaken for very good reasons. None have been put forward, and therefore, the Fire Authority remains resolute in its view that there should be no changes to the current safeguards embodied in the requirement for holding a public inquiry into any proposed changes to the Combination Order.”<sup>568</sup>

## Our view

**748.** We heard robust evidence from the three fire and rescue authorities of the importance of maintaining the provision to hold an inquiry when varying an fire and rescue authority’s combination order. We heard that public inquiries were

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<sup>564</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraphs 379

<sup>565</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraphs 381-387

<sup>566</sup> Letter from the Minister for Housing and Local Government, 24 February 2020

<sup>567</sup> LG 31a, Additional information from South Wales Fire and Rescue Authority

<sup>568</sup> LG 33a, Additional information from Mid and West Wales Fire and Rescue Authority

established for a reason, and the three authorities were unanimous in their objection to the removal of this provision.

**749.** We found the authorities' assertions that there is no evidence to warrant a change of approach persuasive. We were not convinced by the Minister's rationale that public inquiries are complex and expensive, particularly as the authorities told us that they need not be.

**750.** We are concerned by the implications of this provision as a result, and the lack of supporting evidence provided by the Minister for its inclusion in the Bill.

**751.** We note that the Minister's letter of 24 February 2020 sets out the Welsh Government's reasoning for the provisions in section 162, however we are disappointed that the Welsh Government did not engage in any further discussions with the fire and rescue authorities on this issue.

**Recommendation 31.** We recommend that the Welsh Government engages in urgent discussions with the three fire and rescue authorities in Wales on their concerns around the provisions in section 162. Such discussions should begin immediately to enable any necessary amendments to be tabled to the Bill during its amending stages.

#### Sections 163 and 164: Performance and governance of fire and rescue authorities

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**752.** Section 163 introduces a new performance management system for fire and rescue authorities following the repeal of part 1 of the Local Government (Wales) Measure 2009. Section 164 removes "fire and rescue authorities" from the definition of "Welsh improvement authority" in section 1 of the 2009 Measure and makes other amendments so that the improvement regime set out in Part 1 of the 2009 Measure ceases to apply to fire and rescue authorities.

**753.** Section 163 also amends the Fire and Rescue Services Act 2004 to provide powers for the Welsh Ministers to make regulations requiring fire and rescue authorities in Wales to develop strategic plans, and to impose requirements relating to a plan. These requirements could cover a plan's content; its preparation and revision; when it is to be made; the period it relates to; and its publication.

**754.** The Welsh Ministers would also have powers to make regulations in relation to assessing or reporting on the performance of an authority, including imposing requirements. Prior to making regulations, the Welsh Ministers must consult fire and rescue authorities, employee representatives and anyone else they deem appropriate.

**755.** We heard that the three Welsh fire and rescue authorities and Mid and West Wales Fire and Rescue Service supported moving to a different performance regime to that specified in the 2009 Measure. As stated by South Wales Fire and Rescue Authority, it was felt within the fire and rescue sector that the current regime “was not designed for an emergency response and prevention style organisation”. South Wales Fire and Rescue Authority also commented:

“Our current system doesn’t link to the national framework for fire that Welsh Government issues as its policy guidance document to fire and rescue authorities. We have long been arguing with Welsh Government that we should have a different performance regime that links more closely with the national framework for fire, so that we focus our performance on our core statutory functions rather than detracting away from those under the performance regime.”<sup>569</sup>

**756.** This view was supported by Mid and West Wales Fire and Rescue Authority.<sup>570</sup>

**757.** However, whilst supporting changing the performance arrangements, both South Wales and North Wales Fire and Rescue Authorities voiced concern that the provisions as drafted are overly prescriptive, South Wales Fire and Rescue Authority commented:

“to have a plan that sets out priorities, objectives and hundreds and hundreds of actions that we have to report on is probably going just a

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<sup>569</sup> Written evidence, LG 31, South Wales Fire and Rescue Authority

<sup>570</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 9 January 2020, paragraphs 665-670

bit too far into the detail. We think it just needs to perhaps have the actions removed and the focus on the priorities and objectives.”<sup>571</sup>

**758.** We heard from South Wales Fire and Rescue Authority that some of the priorities for each of the fire and rescue authorities will be different, to take account of geographical variances and infrastructure in the areas covered, and that consequently, “the priorities under a performance regime are likely to be different”. Mid and West Wales Fire and Rescue Authority concurred that “it’s not one size fits all”,<sup>572</sup> whilst North Wales Fire and Rescue Authority suggested that the provisions be reviewed to ensure:

“what is contained is sufficiently strategic to accommodate and withstand differences and changes that will inevitably occur over time.”<sup>573</sup>

**759.** The Minister commented that her understanding is that the fire and rescue authorities “universally welcomed” the replacement of the performance system in the Local Government (Wales) Measure 2009, and confirmed that it is the Welsh Government’s “full intention” to develop the new system “in co-operation with the fire and rescue authorities” to:

“to develop a proportionate performance management system that’s bespoke for them, rather than something that’s just layered on to them because it’s what local government does.”<sup>574</sup>

## Our view

**760.** We welcome the provisions to reform the performance and governance arrangements for the fire and rescue authorities with the aim of creating a system that is bespoke to their needs. However, we believe that it is important to

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<sup>571</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 9 January 2020, paragraphs 672

<sup>572</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 9 January 2020, paragraphs 674-682

<sup>573</sup> Written evidence, LG 45, North Wales Fire and Rescue Authority

<sup>574</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraphs 389-391

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listen to fire and rescue authorities concerns around the prescriptiveness of the system. It will be important that the new system recognises the varying priorities of the three authorities, allowing for flexibility where required.

**761.** We acknowledge the Minister’s intention to develop the new system in co-operation with the fire and rescue authorities and we welcome this commitment.

## Sections 165-166: Repeal of the Local Government (Wales) Measure 2009, and disapplication of the Measure to national park authorities

**762.** Section 165 removes “a National Park authority for a National Park in Wales” from the definition of “Welsh improvement authority” in section 1 of the 2009 Measure and makes other amendments so that the improvement regime set out in Part 1 of the 2009 Measure ceases to apply to national park authorities.

**763.** Section 166 repeals the 2009 Measure and amends other enactments to remove references to the provisions of the 2009 Measure.

**764.** National Parks Wales “wholeheartedly welcome the removal of the 2009 Measure in relation to national park authorities”. However, it raised a matter of clarity as section 165 disapplies part of the Measure in relation to national park authorities, whilst the provisions in section 166 repeals the 2009 Measure, it queried:

“Could the Act be simplified by simply stating that the 2009 Measure is repealed in its entirety with the consequences that then follow as set out in Section 166 (2)?”<sup>575</sup>

### Our view

**765.** We are supportive of the provision in section 165 to remove national park authorities from the definition in section 1 of the Local Government (Wales) Measure 2009.

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<sup>575</sup> Written evidence, LG 14, National Parks Wales

**766.** We note the point raised by National Parks Wales that section 165 disapplies Part 1 of that Measure whilst section 166 seemingly repeals the Measure in its entirety. Whilst we recognise that this may have been done for reasons over timing and commencement, the Welsh Government should have clarified this in the EM, thereby avoiding confusion amongst stakeholders.



## 12. Issues not included in the Bill on introduction

During the course of our consideration of the general principles of the Bill, we have become aware of several issues which the Welsh Government has stated its intention of addressing through amendments.

**767.** This chapter considers the issues which the Welsh Government has stated its intention of addressing through amendments to this Bill during the amending stages. It has not been possible for us to consider these issues in depth or to gather views from stakeholders.

### Extending the right to vote to certain prisoners

**768.** In September 2018, the Llywydd wrote to us asking if we would consider undertaking an inquiry into this matter. This followed a consultation by the Assembly Commission on changes to the Assembly's arrangements, including the electoral franchise.

**769.** In June 2019 we published the report of our inquiry into voting rights for prisoners, in which we explored this issue in detail.

**770.** In undertaking this inquiry, we were acutely aware that prisoner voting is an emotive issue, on which people hold strong opinions and we strived to consider all perspectives. After detailed consideration, the majority view of the Committee (at the time) was that the franchise should be extended to some Welsh prisoners in Welsh local and Senedd elections. Two Members (Mohammad Asghar AM and Mark Isherwood AM) disagreed. In that report, we recommended:

“that the Welsh Government and National Assembly for Wales Commission introduce legislation to give all those Welsh prisoners who are serving custodial sentences of less than four years the right to

vote in devolved Welsh elections. Mohammad Asghar and Mark Isherwood do not agree with this recommendation.”<sup>576</sup>

**771.** This recommendation was accepted by the Welsh Government, who, in responding to our report confirmed that it would:

“work to introduce legislation in this Assembly to enable prisoners from Wales serving a custodial sentence of less than four years to vote in devolved local government elections. We shall work closely with the UK Government and partners to implement such legislation.”

**772.** The response estimated that some 1,900 prisoners out of a total of about 4,800 prisoners from Wales would be enfranchised.<sup>577</sup>

**773.** In a subsequent letter to the Committee, the Minister stated:

“The Welsh Government will seek an appropriate legislative vehicle to introduce provision at the earliest opportunity to enable prisoners and young people in custody from Wales to vote in Assembly elections on the same terms as will apply for local government elections.”<sup>578</sup>

**774.** In a statement following the introduction of this Bill, the Minister confirmed the Welsh Government’s aim “that eligible prisoners and young people in custody will be able to vote at the next ordinary local government elections, due in 2022” and that amendments would be tabled to the Bill during the amending stages to enable this.<sup>579</sup> These amendments would not change the franchise for Senedd elections.

**775.** The Minister explained to the Legislation, Justice and Constitution Committee why the provisions will be introduced to the Bill through amendment rather than included in the Bill on introduction:

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<sup>576</sup> Equality, Local Government and Communities Committee, [Inquiry into voting rights for prisoners](#), June 2019

<sup>577</sup> Equality, Local Government and Communities Committee, [Inquiry into voting rights for prisoners, Welsh Government response](#)

<sup>578</sup> [Letter from the Minister for Housing and Local Government](#), 18 September 2019

<sup>579</sup> [Plenary Record of Proceedings, 19 November 2019](#), paragraphs 187 and 216

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“the prisoner voting is specifically this timing because of what the Llywydd did in asking for a committee to look at prisoner voting in terms of the Senedd and elections Bill. And the timing of that meant that that report came out too late for us to be able to introduce it in Stage 1, and I gave an undertaking to that committee to take their findings and the scrutiny of the provisions that they were undertaking into account in framing this.”<sup>580</sup>

**776.** Draft amendments were provided by the Minister for the Committee’s consideration on 29 January 2020. Supporting information to aid our understanding of these was provided on 21 February 2020.

### **Our view**

**777.** Although we have previously undertaken an inquiry into voting rights for prisoners, our focus was on the principles around whether prisoners should be allowed to vote; this is different to considering specific legislative proposals set out in a Bill. Our report was published in June 2019, therefore it is disappointing that the Welsh Government was unable to include the provisions in this Bill on introduction.

**778.** Whilst it was helpful to receive an early indication from the Minister of her intention to table amendments at Stage 2 to give effect to our recommendation that prisoners serving sentences of less than four years be given the right to vote, we did not receive details of the specific provisions until the latter part of our scrutiny period and were unable to gather views on these.

**779.** We note that the draft amendments provide for prisoners serving sentences of less than four years to be granted the right to vote as recommended in our report on prisoner voting. However, there are some differences, notably that the right to vote does not include prisoners who have been convicted of offences under section 173 of the Representation of the People Act 1983 which cover corrupt and illegal practices in relation to elections. Whilst we did not recommend such an approach, we understand the rationale for this restriction.

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<sup>580</sup> Legislation, Justice and Constitution Committee, Record of Proceedings, 3 February 2020, paragraph 52

**780.** A more significant divergence to our recommendation, is that the draft amendments would enable prisoners to vote in local government elections but not in Senedd elections. We are aware, from the Minister's letter of 18 September 2019, that it is the Welsh Government's intention to legislate to implement such a change for Senedd elections in due course. We note that legislation to extend the franchise to Senedd elections would need to be agreed by a super majority of Assembly Members, in accordance with section 111A of the Government of Wales Act 2006.

**781.** We note that to implement this change for local government elections, the draft amendments would create different franchises for Senedd and local government elections. Due to the intended approach of dealing with this through amendments, we have been unable to gather the views of key stakeholders such as the Electoral Commission, the Association of Electoral Administrators or the Wales Electoral Coordination Board on the implications of what appears to be a potentially significant change.

**782.** Should the Welsh Government bring forward amendments at Stage 2 to enable prisoners to vote in local government elections, we expect these to be accompanied by a full range of supporting information, including explanatory notes, a policy statement explaining the outcome of the consultation and a realistic estimate of the financial implications of the new provisions.

### Proposals to amend primary legislation which provides for changes to executive governance arrangements in principal councils

**783.** In a Welsh Government written statement issued on 5 December 2019, the Minister announced a consultation which proposes amendments to provisions in the Local Government Act 2000 and the Local Government (Wales) Measure 2011 which enable changes to the executive governance arrangements of principal councils.

**784.** These arrangements can be changed to a model with an elected mayor taking responsibility for the executive functions. The mayor would have the right to appoint a new cabinet and might choose to replace the cabinet which was in place before they were elected.

**785.** The written statement states:

“As a result of current time limitations set out in legislation, if a principal council changes its executive arrangements, mayoral elections may not be able to take place at the same time as an ordinary election of councillors. Holding mayoral elections shortly after (or before) an ordinary election could be disruptive and potentially destabilising within the principal council.

We propose that petitions should be able to be presented, proposals for resolutions to be drawn up by principal councils and directions and orders be made by the Welsh Ministers from the day following an ordinary election and the deadline should be eighteen months before the date of the next ordinary election. The intention is that, following a successful petition or a resolution, a direction or order, there would be sufficient time for any referendum to take place and enable any mayoral elections to be held at the same time as the next set of ordinary elections.

Our intention is also to limit the disruptive impact of repeated changes of executive arrangements within a relatively short period.

Currently, principal councils can only hold a referendum once in any five year period. However, the current situation still has the potential to create considerable political instability with what could amount to a change of executive arrangements during each electoral cycle.

In order to minimise the risk of instability, we propose that where the executive arrangements of a principal council have been changed, no further changes can be made to them until two complete electoral cycles have passed. This is in line with provisions set out in the Local Government and Elections (Wales) Bill for principal councils to change their voting systems.”<sup>581</sup>

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<sup>581</sup> Written statement by the Welsh Government, Proposals to amend primary legislation which provides for changes to executive governance arrangements in principal councils, 5 December 2019

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**786.** In a letter to us, the Minister confirmed her intention to bring forward these provisions by means of Stage 2 amendments to this Bill.<sup>582</sup>

**787.** We sought the views of the WLGA in relation to the proposals being consulted upon, however it had not considered the matter at that time.<sup>583</sup>

**788.** The Minister told us that should the outcome of the consultation demonstrate that there is no appetite for change or that the proposal is controversial, amendments would not be brought forward at Stage 2.<sup>584</sup>

### **Our view**

**789.** Although we became aware of the Welsh Government's consultation during the course of our scrutiny of this Bill, we were unable to explore the issue with stakeholders as these timings overlapped. We note that the Minister has stated that she will not bring forward amendments at Stage 2 should the outcome of the consultation demonstrate that it is a controversial issue.

**790.** It is our role as a Committee to gather views on the specific provisions in the Bill on introduction and consider what improvements should be made during the amending stages. It is therefore unhelpful when new areas of policy, which we have been unable to collect evidence on, are introduced in the later stages.

**791.** Should the Welsh Government consider it necessary to bring forward amendments at Stage 2 as a result of its consultation on changes to the executive governance arrangements of principal councils, we expect these to be accompanied by a full range of supporting information, including explanatory notes, a policy statement explaining the outcome of the consultation and a realistic estimate of the financial implications of the new provisions.

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<sup>582</sup> [Letter from the Minister for Housing and Local Government](#), 5 December 2019

<sup>583</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 23 January 2020, paragraphs 342-343

<sup>584</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraphs 396-397

## Due regard to the right to housing

**792.** The Minister told us on 17 October 2019, as part of our work on rough sleeping, that this Bill will result in a change “in the way that we monitor local authorities”, and that the Welsh Government is “looking to put what we call a ‘due regard’ to the right to adequate housing in the same way as we’ve done with children’s rights, which has shifted some of the conversation around that”.<sup>585</sup>

**793.** Following the Bill’s introduction, the Minister commented that she would look to see whether this could be included in the statutory guidance around the performance framework for the local authorities:

“this Bill sets out the way in which that guidance would be issued, and then the guidance itself would have the various provisions in it. So that sort of provision, and a number of things around the way various services are performed, would be in the statutory guidance.”<sup>586</sup>

**794.** Although they welcome the Minister’s intention, CIH Cymru, Shelter Cymru and Tai Pawb state their preference:

“for the duty to be incorporated into the face of the Bill itself, in order to give it statutory effect.”<sup>587</sup>

**795.** CIH Cymru, Shelter Cymru and Tai Pawb shared the response they received from Dr Simon Hoffman of Swansea University, author of the independent feasibility report they commissioned on the right to adequate housing in Wales, on the proposal to incorporate the duty into statutory guidance; he stated:

“Any duty referring to due regard under the proposed s.88(3) is likely to be very confusing and therefore difficult to envisage in operation. Confusing because the requirement would in effect be ‘to have regard to any guidance’ and the guidance itself would require ‘due regard’. A duty therefore to have regard to due regard. I would suggest that the

<sup>585</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 17 October 2019, paragraph 81

<sup>586</sup> ~~Plenary, Record of Proceedings, 19 November 2019, 2019~~, paragraph 217

<sup>587</sup> Written evidence, LG 11, CIH Cymru, Shelter Cymru and Tai Pawb

duty needs to go on the face of the Bill. This would be best inserted as a new free-standing provision. Any alternative would not impose a duty to have due regard and would constitute a considerable weakening of the commitment to introduce such a duty as well as representing a regressive step. Regressive because merely having regard to guidance does not meet the international obligation to give effect to the right to housing.”<sup>588</sup>

**796.** The Minister clarified her rationale for incorporating the right into statutory guidance, rather than placing it on the face of the Bill:

“the Bill is a good vehicle to do that, but just to be really clear about how we envisage doing that, and then that makes it obvious why we don’t think it should be on the face of the Bill. So, this is a Bill about the performance of local authorities. And the guidance will refer to having regard to the provision of housing when local authorities are exercising their functions as part of an example where a council is striving to do better and isn’t just meeting the minimum requirements of the Act.

So, housing is an example that’s current in conversation amongst people, but housing won’t be the only example. There will be a number of other functions where a local authority needs to exercise its functions with regard to how that service should be delivered at all times and not just to a statutory minimum, and the guidance will allow us to do that. So, I think it’s a good start. But obviously, putting one thing on the face of a Bill about the general performance of a council has all kinds of problems. What would I then do? List out every function in which we might want to—. I mean, let’s not overcomplicate it.

The guidance will be statutory guidance, so they will have to do it. [ ] And we’ll develop that guidance in co-production with the WLGA, as we are doing with all of it, and therefore, it will be informed by the best

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<sup>588</sup> Written evidence, LG 11, CIH Cymru, Shelter Cymru and Tai Pawb



practice of some of the councils that are already doing it, which is kind of the point of the co-production as well.”<sup>589</sup>

## Our view

**797.** We note the compelling evidence from the housing sector and Dr Simon Hoffman that a duty incorporated into guidance may cause confusion. We therefore believe that placing a duty on local authorities to have a due regard to adequate housing would have a greater impact if placed on the face of this legislation. However, if it is deemed that this Bill is not the appropriate vehicle for achieving that, we would like the Welsh Government to consider an alternative mechanism to implement this duty.

**Recommendation 32.** We recommend that the Welsh Government explores options, within legislation, to place a statutory duty on local authorities to have a due regard to the right to adequate housing.

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<sup>589</sup> Equality, Local Government and Communities Committee, Record of Proceedings, 29 January 2020, paragraphs 403-406

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## Annex A: List of oral evidence sessions

The following witnesses provided oral evidence to the committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed on the Committee's website.

Date	Name and Organisation
<b>27 November 2019</b>	<b>Julie James AM,</b> Minister for Housing and Local Government <b>Claire Germain,</b> Welsh Government <b>Lisa James,</b> Welsh Government <b>Angharad Thomas Richards,</b> Welsh Government <b>Cath Wyatt,</b> Welsh Government
<b>11 December 2019</b>	<b>John Bader,</b> Independent Remuneration Panel for Wales <b>Greg Owens,</b> Independent Remuneration Panel for Wales <b>Jess Blair,</b> Electoral Reform Society Cymru <b>Huw Rees,</b> Wales Audit Office <b>Martin Peters,</b> Wales Audit Office <b>Sophie Howe,</b> Future Generations Commissioner for Wales <b>Heledd Morgan,</b> Office of the Future Generations Commissioner for Wales
<b>9 January 2020</b>	<b>Ceri Stradling,</b> Local Democracy and Boundary Commission for Wales <b>Shereen Williams,</b> Local Democracy and Boundary Commission for Wales

	<p><b>Dominic MacAskill,</b> UNISON Cymru / Wales</p> <p><b>Amber Courtney,</b> UNISON Cymru / Wales</p> <p><b>Mike Payne,</b> GMB</p> <p><b>Sally Chapman,</b> South Wales Fire and Rescue Authority</p> <p><b>Cllr Jan Curtice,</b> Mid and West Wales Fire and Rescue Authority</p> <p><b>Dave Daycock,</b> Mid and West Wales Fire and Rescue Authority</p>
<b>15 January 2020</b>	<p><b>Elan Closs Stephens CBE,</b> Electoral Commission in Wales</p> <p><b>Rhydian Thomas,</b> Electoral Commission in Wales</p> <p><b>Rhys George,</b> Association of Electoral Administrators Wales</p> <p><b>Ian Westley,</b> Wales Electoral Coordination Board</p> <p><b>Lyn Cadwallader,</b> One Voice Wales</p> <p><b>Robert Robinson,</b> North and Mid Wales Association of Local Councils</p> <p><b>Rob Smith,</b> Society of Local Council Clerks</p> <p><b>Mark Galbraith,</b> Society of Local Council Clerks</p> <p><b>Catherine Fookes,</b> Women's Equality Network Wales</p>
<b>23 January 2020</b>	<p><b>Cllr Huw Thomas,</b> Welsh Local Government Association</p> <p><b>Cllr Emlyn Dole,</b> Welsh Local Government Association</p> <p><b>Cllr Peter Fox,</b> Welsh Local Government Association</p> <p><b>Cllr Ray Quant,</b> Welsh Local Government Association</p> <p><b>Chris Llewelyn,</b> Welsh Local Government Association</p>

	<p><b>Daniel Hurford,</b> Welsh Local Government Association</p> <p><b>Rob Thomas,</b> SOLACE Wales</p> <p><b>Michelle Morris,</b> SOLACE Wales</p> <p><b>Davina Fiore,</b> Lawyers in Local Government</p>
<b>29 January 2020</b>	<p><b>Julie James AM,</b> Minister for Housing and Local Government</p> <p><b>Claire Germain,</b> Welsh Government</p> <p><b>Lisa James,</b> Welsh Government</p> <p><b>Angharad Thomas Richards,</b> Welsh Government</p> <p><b>Cath Wyatt,</b> Welsh Government</p>

## Annex B: List of written evidence

The following people and organisations provided written evidence to the Committee. All Consultation responses and additional written information can be viewed on the Committee's website.

Reference	Organisation
<b>LG 01</b>	Wales Audit Office
<b>LG 02</b>	Independent Remuneration Panel for Wales
<b>LG 03</b>	Individual 1
<b>LG 04</b>	Electoral Reform Society Cymru
<b>LG 05</b>	Cytûn Churches Together in Wales
<b>LG 06</b>	FSB Wales
<b>LG 07</b>	North and Mid Wales Association of Local Councils
<b>LG 08</b>	Women's Equality Network Wales
<b>LG 09</b>	Children's Commissioner for Wales
<b>LG 10</b>	Gwent Police and Crime Commissioner
<b>LG 11</b>	CIH Cymru, Shelter Cymru and Tai Pawb
<b>LG 12</b>	Undeb Cenedlaethol Athrawon Cymru
<b>LG 13</b>	Society of Local Council Clerks
<b>LG 14</b>	National Parks Wales
<b>LG 15</b>	Ceredigion County Council
<b>LG 16</b>	Campaign for National Parks
<b>LG 17</b>	UNISON Cymru / Wales
<b>LG 18</b>	Public Services Ombudsman for Wales
<b>LG 19</b>	Cymdeithas Eryri Snowdonia Society
<b>LG 20</b>	Wrexham County Borough Council
<b>LG 21</b>	CIH Cymru
<b>LG 22</b>	RSPCA Cymru

<b>LG 23</b>	Professor Ailsa Henderson
<b>LG 24</b>	Individual 2
<b>LG 25</b>	Co-production Network for Wales
<b>LG 26</b>	Conservative Group on the City and County of Swansea Council
<b>LG 27</b>	Individual 3
<b>LG 28</b>	One Voice Wales
<b>LG 29</b>	Cllr Mark Adams, Chair Overview and Scrutiny Committee, Rhondda Cynon Taf County Borough Council
<b>LG 30</b>	Gwynedd Council
<b>LG 31</b>	South Wales Fire and Rescue Authority
<b>LG 32</b>	Mid and West Wales Fire and Rescue Service
<b>LG 33</b>	Mid and West Wales Fire and Rescue Authority
<b>LG 34</b>	Local Democracy and Boundary Commission for Wales
<b>LG 35</b>	Estyn
<b>LG 36</b>	Association of Local Authority Chief Executives and Senior Managers
<b>LG 37</b>	Opposition Group, City and County of Swansea Council
<b>LG 38</b>	Cymdeithas yr Iaith
<b>LG 39</b>	Wales Council for Voluntary Action
<b>LG 40</b>	Beaumaris Town Council
<b>LG 41</b>	Community Housing Cymru
<b>LG 42</b>	The Electoral Commission
<b>LG 43</b>	Local Government Association
<b>LG 44</b>	The City and County of Swansea Council
<b>LG 45</b>	North Wales Fire and Rescue Authority
<b>LG 46</b>	Monmouthshire County Council
<b>LG 47</b>	Welsh Language Commissioner
<b>LG 48</b>	Powys County Council
<b>LG 49</b>	Professor Ian Roffe
<b>LG 50</b>	Lawyers in Local Government
<b>LG 51</b>	SOLACE

<b>LG 52</b>	Rhondda Cynon Taf County Borough Council
<b>LG 53</b>	Chris Highcock
<b>LG 54</b>	Welsh Local Government Association
<b>LG 55</b>	Isle of Anglesey County Council
<b>LG 56</b>	Denbighshire County Council
<b>LG 57</b>	Wales Electoral Coordination Board
<b>LG 58</b>	Conwy County Borough Council
<b>LG 59</b>	Pembrokeshire County Council
<b>LG 60</b>	Caerphilly County Borough Council
<b>LG 61</b>	Toby James and Paul Bernal, University of East Anglia

## Additional Information

Title	Date
LG 04a Electoral Reform Society Wales	11 February 2020
LG 31a South Wales Fire and Rescue Authority	2 March 2020
LG 33a Mid and West Wales Fire and Rescue Authority	26 February 2020
LG 54a Welsh Local Government Association	11 February 2020