

National Assembly for Wales
Constitutional and Legislative
Affairs Committee

**Report on the Local Government
(Democracy) (Wales) Bill**

March 2013



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

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Remit and Powers

The Constitutional and Legislative Affairs Committee was established on 15 June 2011 with a remit to carry out the functions and exercise the powers of the responsible committee set out in Standing Orders 21. This includes being able to consider and report on any legislative matter of a general nature within or relating to the competence of the Assembly or the Welsh Ministers.

Current Committee membership



David Melding (Chair)
Deputy Presiding Officer
Welsh Conservatives
South Wales Central



Suzy Davies
Welsh Conservatives
South Wales West



Julie James*
Welsh Labour
Swansea West



Eluned Parrott
Welsh Liberal Democrats
South Wales Central



Simon Thomas
Plaid Cymru
Mid and West Wales

In accordance with Standing Order 17.48, Mick Antoniw AM and Vaughan Gething AM substituted for Julie James AM.



Mick Antoniw
Welsh Labour
Pontypridd



Vaughan Gething
Welsh Labour
Cardiff South and Penarth

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The Committee's recommendations

Recommendation 1. We recommend that section 43 of the Bill is amended to ensure that there is clarity around which body can revoke or vary orders made by a particular body. (Page 15)

Recommendation 2. We recommend that the Minister clarifies the application of section 65(3) of the Bill to the order-making power contained in section 45 and considers tabling an amendment to remove the potential for legal ambiguity. (Page 17)

Recommendation 3. We recommend that the Minister considers tabling an amendment to section 50 to ensure that it delivers his policy objective of being applicable to new bodies that are in the process of being established. (Page 19)

Recommendation 4. If the Minister decides to table an amendment to permit the information listed in section 53(1) to be amended by regulations, we recommend that the negative procedure should apply. (Page 20)

Recommendation 5. We recommend that the Minister considers tabling an amendment to apply the affirmative procedure to the regulation-making power to be inserted into section 54 of the *Local Government Act 2000*, by virtue of section 63(3)(b) of the Bill. (Page 22)

Recommendation 6. We recommend that the Minister reconsiders whether section 64 of the Bill is necessary given its similarity to section 65(1)(a). (Page 22)

Recommendation 7. We recommend that the Minister tables an amendment removing section 69(4)(b) from the Bill. (Page 23)

1. Introduction

1. On 26 November 2012, the Minister for Local Government and Communities, Carl Sargeant AM (“the Minister”) introduced the Local Government (Democracy) (Wales) Bill (“the Bill”) and accompanying Explanatory Memorandum.¹
2. The National Assembly’s Business Committee referred the Bill to the Communities Equality and Local Government Committee for consideration on 26 November 2012, setting the deadline of 22 March 2013 for reporting on its general principles.
3. The Constitutional and Legislative Affairs Committee considered the Bill at its meeting on 4 February 2013, taking evidence from Carl Sargeant AM, the Minister for Local Government and Communities.

The Committee’s remit

4. The Constitutional and Legislative Affairs Committee’s (“the Committee”) remit is to carry out the functions of the responsible committee set out in Standing Order 21² and to consider any other constitutional or governmental matter within or relating to the competence of the Assembly or Welsh Ministers.
5. Within this, the Committee considers the political and legal importance and technical aspects of all statutory instruments or draft statutory instruments made by the Welsh Ministers and reports on whether the Assembly should pay special attention to the instruments on a range of grounds set out in Standing Order 21.
6. The Committee also considers and reports on the appropriateness of provisions in Assembly Bills and UK Parliament Bills that grant powers to make subordinate legislation to the Welsh Ministers, the First Minister or the Counsel General.

¹ National Assembly for Wales, Local Government (Democracy) (Wales) Bill, November 2012

² National Assembly for Wales, *Standing Orders of the National Assembly for Wales*, December 2012

2. Background

Purpose of the Bill

7. The Explanatory Memorandum accompanying the Bill explains that:

“The overarching objective of the Bill is to ensure local democracy operates as efficiently as possible to improve the democratic process in local government.”³

8. The Explanatory Memorandum adds that:

“It is intended to ensure local authorities are democratically representative of their communities, are organised in the most effective way and communicate well with the public. Robust local scrutiny will be a strong driver for the improvement of public services and allow the public to have greater confidence in the democratic process.”⁴

Legislative Competence

9. In terms of the National Assembly’s legislative competence to make the Bill, the Explanatory Memorandum explains that the National Assembly for Wales has the competence to make provision for and in connection with Local Government by virtue of paragraph 12 of Schedule 7 to the *Government of Wales Act 2006*.⁵

Summary of provisions in the Bill

10. The Bill contains 70 sections, split into six Parts and three Schedules.

11. Part 1 (Introduction) provides an overview of the Bill’s key provisions and what it seeks to achieve.

12. Part 2 (Local Democracy and Boundary Commission for Wales) changes the name of the Local Government Boundary Commission for Wales to the Local Democracy and Boundary Commission for Wales,

³ Explanatory Memorandum, paragraph 10

⁴ Explanatory Memorandum, paragraph 10

⁵ Explanatory Memorandum, paragraph 12

and deals with its status, membership, proceedings, and with the appointment of its chief executive, staff, experts and assistant commissioners. It also makes provision for its powers and functions, its funding, and its audit and accounting arrangements.

13. Part 3 (Arrangements for local government) makes up the bulk of the Bill, being split into seven Chapters. This Part describes the types of review of local government areas and arrangements that may be conducted, and it details the procedure to be followed in conducting any such review. It also deals with the manner in which any recommendations made as a result of a review are to be implemented.

14. Part 4 (Reviews of public body membership) deals with reviews of 'qualifying public bodies' by the commission. Section 50(5) states that a body is a 'qualifying public body' if it is not a local authority, if its membership is required under any enactment to include a member of a local authority or a person appointed by a local authority, and if it exercises functions that have been conferred by an Act or Measure of the National Assembly for Wales, or could be conferred by an Act of the National Assembly for Wales.

15. Part 5 (Other changes to local government) deals with other changes to local government, such as allowing principal councils to appoint a presiding member, preventing local authorities from promoting local Bills, making provision for access to information, broadening the scope of democratic services committees, and making provisions regarding audit committees, the Independent Remuneration Panel for Wales, and joint standards committees.

16. Part 6 (Miscellaneous and general provision) sets out any ancillary provisions, the detail of Orders and regulations to be made under the Bill, the interpretation of certain terms, minor and consequential amendments and repeals, and commencement provisions. Sections 66 and 67 in this Part insert the three Schedules: the minor and consequential amendments (Schedule 1) and repeals (Schedule 2) arising from the Bill; and an index of relevant defined expressions (Schedule 3).

3. Legislative Competence

Evidence from the Minister

17. When asked whether he had had any discussions with the UK Government, in particular regarding competence in relation to the Bill, the Minister referred to provisions under section 45:

“There is only one element of the Bill that relates to the UK Government, which is around police boundaries. I have had correspondence with the Home Secretary.”⁶

18. He added that he was “not pursuing any issues as difficulties”.⁷ He also felt that if the UK Government had an issue, he would expect them to raise it with him,⁸ noting:

“I have corresponded with the Home Secretary and it was indicated to us that the UK Government would be in touch with us subject to the progression of the Bill; we have heard nothing since from the Home Secretary.”⁹

19. When questioned on the specific provisions under section 45 he said:

“We have given the Home Secretary the opportunity to make observations known, and this certainly comes as no surprise to the Home Secretary in any way. We can only assume that, by not having had any observation from her, she is content with the process, although it would be easy to argue the reverse, in that she may have lots of problems but has just not told us yet.”¹⁰

Our view

20. We note that the Secretary of State has not confirmed whether the UK Government has any concerns or issues regarding the competence of the National Assembly to make this legislation under Schedule 7 to the Government of Wales Act 2006.

⁶ Constitutional and Legislative Affairs (“CLA”) Committee, *RoP [paragraph 217]*, 4 February 2013

⁷ CLA Committee, *RoP [paragraph 219]*, 4 February 2013

⁸ CLA Committee, *RoP [paragraph 221]*, 4 February 2013

⁹ CLA Committee, *RoP [paragraph 219]*, 4 February 2013

¹⁰ CLA Committee, *RoP [paragraph 271]*, 4 February 2013

4. Powers to make subordinate legislation – general observations

Evidence from the Minister

21. The Minister told us that he had “struck the balance appropriately”¹¹ between the powers on the face of the Bill and those that will be left to Welsh Ministers through subordinate legislation.

Our view

22. We are content with the balance between what is on the face of the Bill and what is left for subordinate legislation. However, we make some recommendations as to the procedures to be used for making some of this subordinate legislation. These are detailed in Chapter 5.

¹¹ CLA Committee, *RoP [paragraph 215]*, 4 February 2013

5. Powers to make subordinate legislation – observations on specific powers

Delegated powers to make subordinate legislation

24. The Bill delegates powers to make subordinate legislation to the Welsh Ministers, the Secretary of State, the Local Democracy and Boundary Commission for Wales (“the Commission”) and local authorities. The provisions are outlined in Chapter 5 of the Explanatory Memorandum.

25. The Bill contains a total of 12 delegated powers to make orders and regulations (as well as powers to issue guidance and directions). Section 65 of the Bill identifies the procedures to be applied to each delegated power, except in cases where the power is being inserted into an existing enactment, in which cases the relevant provisions of the parent Measure or Act apply.

Section 14 – Directions

26. Section 14 provides the Welsh Ministers with a general power of direction over the Commission (subject to no procedure). It must comply with the direction, which may be varied or revoked by Welsh Ministers, by issuing a subsequent direction.

27. When questioned about the open-ended nature of the power, the Minister responded by referring to “some of the technical problems ... with organisational issues around the commission”, adding

“Within this Bill, we have ensured that, subject to any changes to the commission, we have the ability to make a general direction as to the broad principle of the commission, as opposed to some of the directions within the commission. That is why we have left that very open-ended.”¹²

Our view

28. We are content that the power under section 14 is one of direction and therefore subject to no Assembly procedure.

¹² CLA Committee, *RoP [paragraph 223]*, 4 February 2013

Section 34 – Pre-review procedure

29. Prior to starting a local government review, the Commission or the principal council conducting the review must notify the mandatory consultees listed in section 34(3) that a review is about to take place. Section 34(3)(d) empowers the Welsh Ministers to specify by Order persons as “mandatory consultees” for the purposes of such a review (subject to the negative procedure).

30. The Minister explained why this order-making power was being sought:

“The issue around creating lists is that you always leave someone off the list. That is why we have the process in terms of a fall-back position: if we miss someone out, we can add them at a later date. This gives the opportunity, should a Minister so wish, if a new body was established at any point, to add that body to the list of consultees via that process. So, not having a list is not unique to this Bill, and, once you are prescriptive on the face of the Bill, it is very difficult to change that in terms of going beyond that scope.”¹³

Our view

31. We note the comments of the Minister and consider the negative procedure, in accordance with section 65(2), to be appropriate for making an order under this section.

Section 37 – Implementation by the Welsh Ministers

32. Section 37(1) empowers the Welsh Ministers to implement by Order the recommendations, with or without modification, of a report of the Commission following a review under sections 23 or 26 to 29. The negative procedure applies when the change relates to a principal county or preserved county area, otherwise no procedure is specified.

33. An official accompanying the Minister said that:

“In the main, this replicates provision that is currently in the Local Government Act 1972 whereby, if an Order is made following a review by the boundary commission, it is normally a

¹³ CLA Committee, *RoP [paragraph 227]*, 4 February 2013

local Order, which only affects one county or part of one county. Traditionally, or, rather, since the Assembly has been in being, these have not been subject to a procedure. The exception to that is if the order is to make any change to boundaries between counties that necessarily affect more than one county, in which case they go through the negative procedure.”¹⁴

Our view

34. We note that in accordance with section 37(1), it is proposed that for orders that are local statutory instruments, no procedure will apply but that the negative procedure will apply, in accordance with section 65(2), when an order makes a change to a principal county area or preserved county area.

35. We also note that, by virtue of section 40(4), orders made by Welsh Ministers may apply or modify any enactment (or charter) and that such orders will be subject to the affirmative procedure in accordance with section 65(3).

36. We are content with the differing procedures to be applied to the various types of orders that can be made under section 37 of the Bill.

Sections 38 to 43 – Implementation following review

37. Section 38 provides that when the Commission receives a report of a community boundary review from a principal council, it must make an order implementing the recommendations as they stand, or with modifications agreed with a principal council (subject to no procedure).

38. Section 39 concerns changes to community electoral arrangements. Subsection (1) empowers a principal council to implement by order (subject to no procedure) changes described in a report prepared by the council under section 36(4). Subsection (3) empowers a principal council to implement by order (subject to no procedure) the recommendations for change, with or without modification, contained in a report prepared by the Commission under section 32.

¹⁴ CLA Committee, *RoP [paragraph 230]*, 4 February 2013

39. Section 40 concerns consequential provision for implementation orders made under sections 37, 38, 39 or 43. Section 40(1) empowers the Welsh Ministers, the Commission or a principal council, following a review, to make by order (subject to no procedure) such other consequential provisions on the changes being introduced as they feel necessary. Under section 40(2), this could include changing the name of an area, the assignment of existing councillors to new or altered areas, and the number and distribution of councillors in a new or altered area

40. Section 41(1) empowers the Welsh Ministers to make regulations providing for incidental, consequential, supplemental or transitional matters to give full effect to orders made under section sections 37, 38, 39 or 43. Such orders are subject to the negative procedure in accordance with section 65(2)(c), unless adding to, replacing or omitting any enactment, in which case the affirmative procedure applies, in accordance with section 65(3).

41. Section 43(2) provides a procedure for the Welsh Ministers, the commission or a principal council by order (subject to no procedure) to vary or revoke orders made under section 40(2) in respect of sections 37, 38 and 39. Similarly, orders (subject to no procedure) can be made by Welsh Ministers, the Commission or a principal council to correct mistakes in respect of orders made under sections 37, 38, 39 and 43.

42. In respect of sections 38, 39, and 40, the Minister felt that he had the right control mechanisms in place.¹⁵

43. As regards section 41, the Minister explained why regulation-making powers were being taken:

“The complexities of boundary changes are unknown, because we do not know what they might or might not be in the future. ... a boundary change may be of just ward significance, or it may be a proposal that the Vale of Glamorgan, after a boundary review—hypothetically—should take over half of Cardiff. That is hypothetical, but the consequences of that would be significant, and therefore we believe that there are things like dealing with community assets, council assets et cetera that

¹⁵ CLA Committee, *RoP [paragraph 238]*, 4 February 2013

would be better informed by regulation. That is why regulations will deal with individual aspects of change more successfully in that process—because it is unknown.”¹⁶

44. In explaining why Regulations might need to be made to amend primary legislation, an official accompanying the Minister said:

“A boundary change could result in a need to change the boundaries of another organisation whose boundaries had been defined in primary legislation; it would be a consequential boundary change. I suppose an example could be a local health board—that is just an example. That could require the primary legislation to be amended. There is also the possibility of local Acts; if, for some odd reason, you had a boundary change that went halfway through Abergavenny, you might need a local Act to be amended to cater for that.”¹⁷

45. The Minister indicated that no procedure was required for orders made under section 43 that varied or revoked existing orders because they dealt with local issues.¹⁸ He added that:

“... the body that makes the order is the one that can revoke it. If that is not clear in the Bill, I would be happy to offer clarification.”¹⁹

Our view

46. We have noted the comments of the Minister and his officials regarding the powers to make subordinate legislation in sections 37, 38, 39, 41 and 43. We are content with the procedures allocated to all these provisions.

47. We note the Minister’s comment, in respect of the order-making power in section 43, that the body that makes the order is the one that can revoke it. However, we do not believe this point is clear in the Bill.

Recommendation 1: We recommend that section 43 of the Bill is amended to ensure that there is clarity around which body can revoke or vary orders made by a particular body.

¹⁶ CLA Committee, *RoP* [paragraph 240], 4 February 2013

¹⁷ CLA Committee, *RoP* [paragraph 248], 4 February 2013

¹⁸ CLA Committee, *RoP* [paragraphs 256-7], 4 February 2013

¹⁹ CLA Committee, *RoP* [paragraphs 263], 4 February 2013

Section 45 – Police area change

48. Section 45(3)(a) empowers the Secretary of State to make changes by order (subject to no procedure) to police area boundaries, as recommended by the Commission as part of a boundary review in accordance with section 23 of the Bill. According to the Explanatory Memorandum:

“This circumstance would arise if a change to a county boundary resulted in part of a county being partly inside or outside a police area.

“The Secretary of State’s order can change the police area so that a new area falls within the area of a particular Police and Crime Commissioner. It would also enable the holding of a fresh election for a Commissioner if the Secretary of State so decided.”²⁰

49. The Minister indicated that section 45 of the Bill is “continuing with the current provision”²¹ and added that:

“We believe that devolved and non-devolved functions apply here in terms of responsibility. We clearly have a fully devolved responsibility over local authority boundaries, and the Home Office currently has responsibility over the policing aspect and police boundaries within that.”²²

50. The Minister was questioned about concerns raised by the the Local Government Boundary Commission for Wales (in its written evidence to the Communities, Equality and Local Government Committee),²³ namely that the requirements of the Secretary of State in respect of police areas may be different from the requirements for effective and convenient local government that he would require. In response the Minister indicated that he did not share these concerns.²⁴

²⁰ Explanatory Memorandum, Annex A – Explanatory Notes, paragraphs 62-63.

²¹ CLA Committee, *RoP [paragraph 266]*, 4 February 2013

²² CLA Committee, *RoP [paragraph 266]*, 4 February 2013

²³ Communities, Equality and Local Government Committee, Written Evidence, LGD 6

²⁴ CLA Committee, *RoP [paragraphs 273 and 275]*, 4 February 2013

Our view

51. We are generally content with section 45 and the order-making power provided to the Secretary of State.

52. However, we note that section 65(3) of the Bill would appear to apply an Assembly procedure to an order made under section 45(7). This would be inappropriate. Orders made by the Secretary of State should be scrutinised at Westminster.

Recommendation 2: We recommend that the Minister clarifies the application of section 65(3) of the Bill to the order-making power contained in section 45 and considers tabling an amendment to remove the potential for legal ambiguity.

Section 47 - Boundary change following the alteration of water-course

53. Section 47(3) provides that Welsh Ministers may also make an order to change a boundary as a result of a change in water-course, following consultation with the Commission (subject to no procedure).

54. The Minister told us:

“On watercourses, this is not a new procedure in that we currently use them as boundary markers. Furthermore, there is provision for undertaking a consultation process on such changes—they are not made on the whim of someone who wants to move a stream somewhere else. They do not do so without consultation or without having an impact on how the boundaries may change in the future ... I do not think that there is a high risk in this and it is concurrent with what happens now.”²⁵

Our view

55. We note the Minister’s comments and are content for the order-making power under section 47 to be subject to no procedure.

²⁵ CLA Committee, RoP [paragraph 277], 4 February 2013

Section 48 – Directions and guidance relating to Part 3

56. Section 48 enables Welsh Ministers to give the Commission directions relating to the exercise of its functions (subject to no procedure).

57. The Minister explained that the Welsh Government “was mirroring the provision that is already in place”²⁶ and added that:

“I am certainly in favour of more intense scrutiny; that is absolutely right. However, that should be done only where that is appropriate and at appropriate levels. I think that we have got that balance right in taking that forward. I do not see the need to increase the delegation around that in this instance.”²⁷

Our view

58. We note that this provision reflects current practice. We are content that being a power of direction, the power under section 48 is subject to no procedure.

Section 50 – Reviews of qualifying public bodies

59. Section 50 empowers Welsh Ministers to direct the Commission to review the membership of one or more specified qualifying public bodies (subject to no procedure). Such bodies are not local authorities, but one or more of their members must be members of, or appointed by, local authorities and they must exercise functions that have been or could be conferred by an Act or Measure of the National Assembly.

60. When asked whether the negative procedure should apply to such directions, the Minister said:

“The issue for me on this is whether procedurally we should change the direction that we have applied up until now. I do not believe that we should do so because it has been appropriate until now, and it is appropriate for the future, too.”²⁸

²⁶ CLA Committee, *RoP [paragraph 283]*, 4 February 2013

²⁷ CLA Committee, *RoP [paragraph 285]*, 4 February 2013

²⁸ CLA Committee, *RoP [paragraph 289]*, 4 February 2013

61. When questioned further about the circumstances in which he would ask for reviews of membership, the Minister said:

“I am not suggesting this for a minute, but it could be an opportunity to look at the membership of health boards, fire authorities or any other body within the public domain, or at new bodies that may be in the future. This provides the opportunity to do that and to scrutinise and outline the correct procedures to take it forward.”²⁹

Our view

62. We are content that being a power of direction, the power under section 50 is subject to no procedure.

63. We note that section 50(5)(c) refers to “exercises” functions. If the power to issue directions is, as the Minister suggests, to apply to new bodies [prior to the date on which any such body is legally in place], we believe that section 50(5)(c), would need to be amended for example to say “exercises or is intended to exercise”.

Recommendation 3: We recommend that the Minister considers tabling an amendment to section 50 to ensure that it delivers his policy objective of being applicable to new bodies that are in the process of being established.

Section 53 – Community council websites

64. Section 53(1) requires community councils to publish certain information electronically and subsection (3) requires them, in carrying out these duties, to have regard to guidance issued by Welsh Ministers (subject to no procedure).

65. The Minister explained that:

“Guidance is not subject to Assembly procedures; that would be a new procedure. The Welsh Government, more often than not, has a consultation period of at least 12 weeks. We believe that consultation on a draft would be appropriate.”³⁰

²⁹ CLA Committee, RoP [paragraph 293], 4 February 2013

³⁰ CLA Committee, RoP [paragraph 302], 4 February 2013

66. During consideration of the Bill in the Communities, Equality and Local Government Committee, the Minister indicated that he would consider the inclusion of a regulation-making power to permit the information listed in subsection (1) to be amended.³¹

Our view

67. We are content that guidance under this section should be subject to no procedure.

Recommendation 4: If the Minister decides to table an amendment to permit the information listed in section 53(1) to be amended by regulations, we recommend that the negative procedure should apply.

Section 59 – Relevant authorities

68. Section 59 amends the provisions of section 144 of the *Local Government (Wales) Measure 2011* and provides that the Welsh Ministers may by order add to the public bodies whose remuneration should be considered by the Independent Remuneration Panel for Wales (subject to the negative procedure by virtue of section 172 of the 2011 Act).

Our view

69. We are content that the negative procedure, in accordance with section 172(4) of the 2011 Measure, should apply to an order made as a consequence of section 59 of the Bill.

Section 63 – Joint standards committees

70. Section 63 amends *the Local Government Act 2000*.

71. Section 63(2)(a) amends section 53 (standards committees) of the 2000 Act so that one or more local authorities (i.e. a county or county borough council, national park authority or a fire and rescue authority) may establish a joint standards committee.

72. Section 63(2)(d) also amends section 53 of the 2000 Act to provide that a relevant authority must have regard to guidance issued

³¹ Communities, Local Government and Equality Committee, *RoP* [paragraphs 135-136], 6 February 2013

by Welsh Ministers (subject to no procedure) when considering the establishment of joint standards committees.

73. Section 63(3)(b) amends section 54 (functions of standards committees) of the 2000 Act to permit regulations to be made in relation to cases where a function of a standards committee is exercisable by a joint standards committee (subject to the negative procedure by virtue of section 105 of the 2000 Act).

74. Section 63(3)(c) provides that a standards committee or joint standards committee must, in exercising any of its functions, have regard to guidance issues by Welsh Ministers (subject to no procedure).

75. The Minister was asked whether he would consider changing the procedure for the regulation-making power from negative to affirmative, a question that had also been posed by the Communities, Equality and Local Government Committee.³² The Minister replied by saying:

“I have considered that position, but ... I am content with the negative procedure. It is appropriate, and it falls into the same procedure as a mirror procedure, building on the issue of creating joint standards committees. So, I did not fully agree with the argument that was presented...”³³

Our view

76. We consider it appropriate for guidance issued by Welsh Ministers under section 63 to be subject to no procedure.

77. We note that the regulation-making power to be inserted into section 54 of the 2011 Act by section 63(3)(b) of this Bill “may modify any provision of this Part or any other enactment”. It is good practice for regulations that would amend primary legislation to be subject to the affirmative procedure, a position we note the Minister has adopted in section 65(3) of this Bill.

³² Communities, Equality and Local Government, *RoP [paragraphs 159 -160]*, 6 February 2013

³³CLA Committee, *RoP [paragraph 312]*, 4 February 2013

Recommendation 5: We recommend that the Minister considers tabling an amendment to apply the affirmative procedure to the regulation-making power to be inserted into section 54 of the *Local Government Act 2000*, by virtue of section 63(3)(b) of the Bill.

Section 64 – Ancillary provision

78. Section 64 empowers Welsh Ministers by order to make any incidental, consequential, supplemental, transitional, transitory or savings provision to give full effect to the Bill. Such orders are subject to the negative procedure in accordance with section 65(2)(a), unless adding to, replacing or omitting any enactment, in which case the affirmative procedure applies, in accordance with section 65(3).

79. The Minister considered these provisions to be a “tidying mechanism”.³⁴

Our view

80. While we are content with the procedures that apply to section 64, we are not clear why it is necessary given that it seems to repeat the provision in section 65(1)(a).

Recommendation 6: We recommend that the Minister reconsiders whether section 64 of the Bill is necessary given its similarity to section 65(1)(a).

Section 69 – Commencement

81. Section 69 deals with commencement of the provisions of the Bill and subsection (4) enables this to be achieved by order for certain sections (subject to no procedure).

Our view

82. It is standard practice that no procedure is prescribed for commencement orders and we are content with this approach.

³⁴ CLA Committee, *RoP [paragraph 316]*, 4 February 2013

83. However, it is a consistent theme of our scrutiny of delegated powers to make subordinate legislation that such legislation should be subject to an appropriate degree of scrutiny by the Assembly.

84. Section 69(4)(b) allows commencement orders to be used for the purpose of making substantive provision. We do not consider this to be appropriate given that commencement orders are correctly subject to no procedure and as such are not scrutinised by the Assembly. We therefore consider that incidental, supplementary, consequential, transitory or transitional provisions, permitted by virtue of section 69(4)(b), should be made (and therefore scrutinised) under the many substantive regulation-making powers contained in the Bill [and in accordance with section 65(1)(a)].

Recommendation 7: We recommend that the Minister tables an amendment removing section 69(4)(b) from the Bill.