



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

LOCAL GOVERNMENT (WALES) MEASURE

Explanatory Memorandum
incorporating the Regulatory Impact Assessment,
and Delegated Powers Memorandum
(as revised after Stage 2)

March 2011

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THE PROPOSED LOCAL GOVERNMENT (WALES) MEASURE

Explanatory Memorandum to the Proposed Local Government (Wales) Measure 2010

This Explanatory Memorandum has been prepared by the Public Services and Local Government Delivery Department of the Welsh Assembly Government and is laid before the National Assembly for Wales in accordance with Standing Order 23.41. It sets out the policy objectives and provisions of the Proposed Local Government (Wales) Measure as amended following Stage 2 proceedings and explains its scope

Member's Declaration

In my view the provisions of the Proposed Local Government (Wales) Measure, introduced by me on 12 July 2010, and amended following Stage 2 proceedings would be within the legislative competence of the National Assembly for Wales.

Carl Sargeant AM

Minister for Social Justice and Local Government
Assembly Member in charge of the Proposed Measure

March 2011

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Preface to the revision

This preface explains the changes made to this Explanatory Memorandum (and the accompanying Explanatory Notes) following the approval of amendments to the proposed Measure at Stage 2.

The approved amendments included ten new sections to provide for the amalgamation of two or three local authorities which were inserted at what is now Chapter 2 of Part 9 of the proposed Measure. Rather than try and weave the explanations and policy objectives into the various sections in the original memorandum, a self-standing addendum has been inserted at Annex C to cover the sections in the new Chapter. The addendum follows the structure and headings of the main memorandum itself and also includes Explanatory Notes for the new sections.

The other amendments to the proposed Measure approved at Stage 2 are incorporated (where appropriate) as revisions to the original Explanatory Memorandum and Explanatory Notes.

1. Description

1.1 The proposed Local Government Measure will make changes intended to strengthen the structures and working of local government in Wales at all levels and to ensure that local councils reach out to and engage with all sectors of the communities they serve.

1.2 The proposed Measure makes provision to:

- (i) broaden and increase participation in local government by permitting steps which will help remove barriers and disincentives to standing for election to local councils (*Parts 1 -2 of the proposed Measure*);
- (ii) enable the review and improvement of the governance structures introduced through the Local Government Act 2000 so that they better suit the circumstances of local government in Wales (*Parts 3 -4*);
- (iii) enhance the role of non-executive (“backbench”) local authority councillors in the scrutiny of local services (*Parts 5 - 6*);
- (iv) develop and strengthen the role of community councils in Wales, including enabling them to deliver a wider range of services and actions

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locally as well as to increase the effectiveness of their representational role and their ability to work in partnership with other bodies (*Part 7*);

(v) reform the system for setting allowances for councillors (*Part 8*);

(vi) allow the Welsh Ministers to issue statutory guidance on collaboration between local authorities, and between them and other bodies and provide the Welsh Ministers with an order-making power to amalgamate up to three local authorities (*Part 9*).

2. Legislative background

Competence

- 2.1 The power to make Assembly Measures is provided by Part 3 of the Government of Wales Act 2006 (“the 2006 Act”). Section 93 of that Part of the 2006 Act allows the National Assembly for Wales (“the Assembly”) to make Measures. Section 94 requires that the provisions of a Measure come within the Assembly’s legislative competence.
- 2.2 The competence relied upon under section 94(4) of the 2006 Act for the proposed Measure (as amended at Stage 2) is provided by Matters 12.1, and 12.5 to 12.17 of Part 1 of Schedule 5 to the 2006 Act.
- 2.3 Matters 12.1 and 12.5 were inserted into Schedule 5 by section 235 of, and Schedule 17 to, the Local Government and Public Involvement in Health Act 2007. Matters 12.6 and 12.7 were inserted into Schedule 5 by Section 33 of the Local Democracy, Economic Development and Construction Act 2009 (“the 2009 Act”), which came into force from 12 January 2010. Matters 12.8 to 12.17 were inserted into Schedule 5 by the National Assembly for Wales (Legislative Competence) (Local Government) Order 2010 (“the Local Government LCO”), which came into force on 13 April 2010.
- 2.4 Matters 12.1 and 12.5 to 12.17, as inserted into Schedule 5 of the 2006 Act are reproduced below:

Matter 12.1

Provision for and in connection with—

- (a) the constitution of new principal areas and the abolition or alteration of existing principal areas, and
- (b) the establishment of councils for new principal areas and the abolition of existing principal councils.

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Matter 12.5

Provision for and in connection with –

- (a) the making of arrangements by relevant Welsh authorities to secure improvement in the way their functions are exercised;
- (b) the making of arrangements by relevant Welsh authorities for the involvement in the exercise of their functions of people who are likely to be affected by, or interested in, the exercise of the functions, and
- (c) the assessment and inspection of the performance of relevant Welsh authorities in exercising their functions.

The following are “relevant Welsh authorities” –

- (a) a county council, county borough council or community council in Wales,
- (b) a National Park authority for a National Park in Wales,
- (c) a fire and rescue authority in Wales constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies,
- (d) a levying body within the meaning of section 74(1) of the Local Government Finance Act 1988 in respect of which the county council or charging authority referred to in section 74(1)(b) of that Act was a council or authority for an area in Wales,
- (e) a body to which section 75 of that Act applies (special levies) and which as regards the financial year beginning in 1989 had power to levy a rate by reference to property in Wales.”

Matter 12.6

Arrangements by principal councils with respect to the discharge of their functions, including executive arrangements.

This matter does not include—

- (a) direct elections to executives of principal councils, or
- (b) the creation of a form of executive requiring direct elections.

For the purposes of this matter—

- (a) “executive arrangements” has the same meaning as in Part 2 of the Local Government Act 2000;
- (c) “direct elections” means elections by local government electors (within the meaning of section 270(1) of the Local Government Act 1972).

Matter 12.7

Committees of principal councils with functions of—

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- (a) review or scrutiny, or
- (b) making reports or recommendations.

This matter does not include committees under section 19 of the Police and Justice Act 2006 (crime and disorder committees).

Matter 12.8

Areas of communities and constitution, structure, and procedures of local government institutions for communities.

Matter 12.9

Electoral arrangements for elected local government institutions for communities.

In this matter “electoral arrangements” does not include—

- (a) the local government franchise;
- (b) electoral registration and administration;
- (c) the voting system for the return of members in an election.

Matter 12.10

Conferral on local government institutions for communities of powers—

- (a) to which this matter applies,
- (b) that are exercisable in relation to their areas, and
- (c) that are powers exercisable by principal councils in relation to principal areas.

This matter applies to powers to do anything which the holder of the power considers likely to promote or improve the economic, social or environmental well-being of an area.

Matter 12.11

Grants from the Welsh Ministers to fund local government for communities.

Matter 12.12

Relations between different communities (and their local government institutions), or between communities (and their local government institutions) and principal councils.

Matter 12.13

Schemes for the accreditation of quality in local government for communities.

Matter 12.14

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Public participation in local government for communities (apart from elections).

Matter 12.15

The provision of information relating to local government to the public.

For the purposes of this matter “local government” means—

- (a) local government for communities;
- (b) local government for counties and county boroughs.

Matter 12.16

Salaries, allowances, pensions and other payments for members of the following—

- (a) local government institutions for communities;
- (b) county councils and county borough councils;
- (c) National Park authorities;
- (d) fire and rescue authorities constituted by schemes under section 2 of the Fire and Rescue Services Act 2004 or schemes to which section 4 of that Act apply.

Matter 12.17

Promoting and supporting membership of the following—

- (a) local government institutions for communities;
- (b) county councils and county borough councils.

Interpretation of this field

In this field—

“communities” means separate areas for the administration of local government, each of which is wholly within a principal area (but does not constitute the whole of a principal area);

“principal area” means a county borough or a county;

“principal council” means a council for a principal area.”.

Derivation of competence for Parts of the Measure

2.5 With regard to the arrangement of provisions in the proposed Local Government Measure, the competence for each Part is derived as follows:

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Parts 1 -2 (Strengthening local democracy and family absence for members of local authorities) from matters 12.15 and 12.17

Parts 3-5 (Governance arrangements, executive arrangements and discharge of functions by committee and councillors) from matter 12.6

Part 6 (Overview and Scrutiny) from matter 12.7

Part 7 (Communities and community councils) from matters 12.8 to 12.14

Part 8 (Members' payments and pensions) from matter 12.16;

Part 9 (Collaboration and amalgamation) from matters 12.1 and 12.5.

General Position

2.6 The Local Government Act 1972 ("the 1972 Act") established the current system of local government in England and Wales and makes provision with respect to the organisation and functions of local authorities, including a structure of communities in Wales. These were the areas that were formerly the boroughs, urban districts and rural parishes in Wales, and certain divided parts of former urban districts as at 1st April 1974.

2.7 The functions of the Secretary of State under the 1972 Act insofar as exercisable in Wales have been transferred, with certain exceptions, to the Assembly and are now vested in the Welsh Ministers.

2.8 Local government was further reorganised under the Local Government (Wales) Act 1994 ("the 1994 Act") which divided Wales into the existing structure of 22 principal areas. The 1994 Act (which amended the 1972 Act) designated each of the 22 principal areas as either a county or a county borough (and allowed counties to apply to become county boroughs). The counties and county boroughs in Wales are "unitary authorities" – that is to say, their councils are responsible for all, or almost all, local government functions in their area. County and county borough councils have identical powers under the 1994 Act. The only difference is that the Chair of a county borough council is called a "Mayor".

2.9 The 1972 Act also established a system of communities in Wales. These were the areas that were formerly the boroughs, urban districts and rural parishes in Wales, and certain divided parts of former urban districts as at 1st April 1974. The boundaries of the communities in Wales were not changed by the 1994 Act. Communities in Wales are formally local government areas having been confirmed as such by Section 20 (1) (b) of the 1972 Act – as amended by the 1994 Act.

2.10 The 1972 Act provided that communities in Wales may have a council but, in practice, not all communities do so. A community council in Wales may resolve that its community shall have the status of a town. This resolution does not have to be confirmed by any other authority. There is no difference in terms of the powers a town council may exercise from those available to a

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community council – but the chairman of the town council is entitled to be called “town mayor”.

2.11 Other statutes relating to the issues addressed by the proposed Measure include the Local Government and Housing Act 1989, the Local Government Acts 2000 and 2003 and the Representation of the People Acts 1983 and 1985. The Welsh Ministers have executive functions under the Local Government Acts 2000 and 2003. The functions of the Secretary of State pursuant to the Representation of the People Acts have not been transferred to the Welsh Ministers.

2.12 The relationships between these other statutes and the provisions in the proposed Measure are set out in the relevant policy explanations in the paragraphs below.

3. Purpose & intended effect of the legislation

Introduction

3.1 In its policy statement on local government, *A Shared Responsibility* (2007), the Assembly Government undertook to seek new powers to enable it to address a number of the delivery issues which affected local government in Wales.

3.2 The need for new legislation was also informed by research commissioned by the Assembly Government into widening participation in local government (culminating in the publication of *Are we being served?*, the Report of the Councillor Commission Expert Panel Wales) and a study for the Assembly Government by Aberystwyth University into the role and functions of community and town councils in Wales (*Research Study into the Role, Functions and Future Potential of Community and Town Councils in Wales* [the “Aberystwyth Report”]). The work of the Independent Remuneration Panel for Wales (on councillor remuneration) further highlighted the need for legislation. Finally, the provisions on collaboration by local authorities correct a minor deficiency in the Local Government (Wales) Measure 2009; the provisions on amalgamation strengthen the powers available to the Welsh Ministers to drive forward the collaboration agenda in the interests of effective service delivery for the benefit of Welsh citizens - see the addendum to this Memorandum at Annex C.

3.3. The broad purposes of the proposed Measure are set out in section 1 of this memorandum. The use of the powers conferred on the Assembly (as set out in section 2 above) is the only available means of achieving those purposes.

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Proposals for the Proposed Local Government Measure

3.4 A more detailed description of the provisions is set out in the Explanatory Notes which accompany the proposed Measure. By way of summary, the proposed Measure will address the issues set out in the paragraphs above by:

(a) Strengthening local democracy; and Family absence for members of local authorities (Parts 1 -2)

- Introduce a duty on principal councils to monitor the equality and diversity profile of candidates in general elections to principal and town and community councils
- Introduce a duty on principal councils to provide adequate training, developmental and appraisal systems for elected members.
- Require principal councils to make arrangements for the publication of an annual report by each councillor.
- Place a duty on local authorities to provide reasonable officer, administrative and research support to non-executive members.
- Facilitate remote attendance for council meetings
- Require principal councils to enable councillors (including executive members) to take similar maternity, newborn, adoption and parental leave to that available to their own officers

(b) Governance arrangements, executive arrangements and discharge of functions by committee and councillors (Parts 3-5)

- Simplify the procedures by which a local authority is able to change its executive model.
- Remove the alternative arrangements (Fourth Option) model.
- Abolish the elected mayor and council manager political option.
- Enable local authorities or their executives to delegate decision making functions to non-executive elected members appointed to local service boards or other partnerships.

(c) Overview and Scrutiny (Part 6)

- Enable two or more local authorities to form joint overview and scrutiny committees.
- Enable local authorities to have powers to co-opt persons who are non councillors to their scrutiny committees.
- Enable scrutiny committees to require information and responses from organisations outside the council that provide services to the public in their area, and to require representatives of such organisations to attend committee meetings if so required.
- Place a duty on local authority scrutiny committees to scrutinise services delivered by providers of public services in their area.

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- Discourage political groups from imposing whipping procedures on members of scrutiny committees.
- Provide that local authorities allocate appointments to chairs of scrutiny committees in proportion to political balance of the council.
- Require local authorities to establish an audit committee to monitor their financial affairs
- Require scrutiny committees to publish forward plans of their scrutiny work programme
- Require scrutiny committees to consult electors on major issues of policy.
- Introduce “councillor calls for action”, enabling local councillors and their electors to ensure a response from their council leadership to issues of local importance.

(d) Communities and Community Councils (Part 7)

- Make it simpler to set up a community or town council and to set a higher threshold for a community decision to dissolve an existing one.
- Require vacancies to be filled by co-option to be widely advertised locally.
- Provide a power to enable community councils to appoint non-voting youth representatives.
- Require unitary authorities to review their community areas every 10-15 years and report to the Local Government Boundary Commission for Wales (LGBCW).
- Enable unitary authorities to request the LGBCW to conduct these reviews on their behalf and for the LGBCW to be able to charge unitary authorities accordingly.
- Provide a reserve power for Welsh Ministers to introduce mandatory charters between county/county borough councils and community councils.
- Provide a reserve power for Welsh Ministers to establish an accreditation scheme for community councils in Wales.
- Extend the power of well-being to community councils.
- Enable the Assembly Government to provide direct grant funding to community councils for particular purposes.

(e) Members' payments and pensions (Councillor Allowances) (Part 8)

The proposed provisions will enable the Independent Remuneration Panel for Wales (the “IRP”):

- to alter the types of allowances and the terminology describing the allowances (i.e. what allowances are called).
- to define the duties and responsibilities which may qualify members to receive allowances.
- to determine the actual levels of allowances which principal councils must pay to their members, instead of setting maximum levels, if the IRP so desires.

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- to determine the limit on the proportion of members in a principal council which may receive certain types of payment.
- to determine allowances for members of community councils, National Park authorities and fire and rescue authorities in addition to county and county borough councils.
- The IRP will be placed under a duty to have regard to the impact its decisions may have on the finances of the authorities concerned.
- to monitor the implementation and management of the payments made by the authorities affected by its decisions.
- to set any index to which any changes to allowances should be linked.
- to set different levels of allowances for different authorities.
- to determine the publicity arrangements which apply to authorities in relation to remuneration received by their members.
- to determine which members of eligible authorities shall be enabled to join the Local Government Pension Scheme.
- to issue guidance to local authorities in relation to any of the IRP's functions.

In addition, Welsh Ministers

- will be given a power to direct that a local authority should withhold allowances from a member or members as described in the direction. Such direction could not be issued without first consulting the IRP.
- will also have a power to direct the IRP to reconsider any report produced by it, but Welsh Ministers would need to explain why. The IRP may decline to change its proposals/decisions, but would be required to provide their reasons for so doing. The Welsh Ministers could not overrule the IRP.

(f) Collaboration and Amalgamation (Part 9)

- Extend the Welsh Ministers' powers to issue guidance under the Local Government (Wales) Measure 2009 to include guidance on local authorities' powers and duties regarding collaboration in that Measure.
- Gives Welsh Ministers' powers to amalgamate up to three local authorities - see the addendum to this Memorandum at Annex C

Issues addressed by the proposed Measure

Strengthening local democracy and Family absence for members of local authorities (Parts 1 -2 of proposed Measure)

3.5 In March 2008, the Assembly Government established the Councillor Commission Expert Panel Wales ("the Expert Panel") to consider the recommendations of the report of the Councillors Commission entitled "Representing the Future" (published in 2007 and presented to the UK Government's department for Communities and Local Government) and their

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applicability to Wales and to look at wider issues connected to the recruitment and retention of councillors.

3.6 The Expert Panel submitted its report (*Are we being served?*) to the Assembly Government in August 2009. It concluded that concerted action was needed by the Assembly Government and others to encourage a more diverse range of elected members at all levels of local government in Wales.

3.7 The Expert Panel reported that the membership of councils across Wales tended to be dominated by councillors who were overwhelmingly white, male, elderly and retired. The Expert Panel estimated that female representation in principal councils in Wales stood at 24%, with black and minority ethnic membership at less than 1% (all male). The average age of members was just under 60. The Expert Panel also concluded that young people, disabled people, people in paid employment and non-professionals were also under-represented in council chambers in Wales.

3.8 Anecdotal evidence suggests a similar situation exists in community councils, quite possibly with an older profile.

3.9 Councillors are central to the health and quality of local democracy and the delivery of local services. Most councillors strive to represent their communities to the best of their ability but it is important to have locally elected representatives who can understand the needs of all members of the local community when they take decisions about how local services should be run. Councils and councillors are more effective when they are representative of the communities they serve.

3.10 The Expert Panel, amongst other recommendations, called on the Assembly to legislate for: diversity monitoring of councillors and candidates; the training and development of serving councillors; flexible working for councillors; administrative support for councillors; and public accountability of councillors.

3.11 The Assembly Government notes the concerns described by the Expert Panel. The provisions set out in Parts 1 and 2 of the proposed Measure are designed to address the concerns; the proposals are summarised in paragraph 3.4(a) above, in the section headed Proposals for the Proposed Local Government Measure.

Governance Arrangements, executive arrangements and discharge of functions by committee and councillors (Parts 3 -5 of proposed Measure)

3.12 The report of the Beecham Review into local service delivery in Wales (*Beyond Boundaries*, published in 2006) found that public service performance in Wales was too inconsistent and that transformation was needed.

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3.13 Amongst the problems which the review identified were complexity in terms of governance regimes, over-stretched leadership, a lack of strategic capability and expertise and organisations which were culturally unambitious, unchallenging and not sufficiently innovative.

3.14 The provisions in Parts 3 -5 of the proposed Measure are designed to address these issues. Several reforms are proposed, some of which draw on what is already widely accepted good practice in local government, albeit not universally applied.

3.15 Part II of the Local Government Act 2000 (the “2000 Act”) allowed councils in Wales to introduce one of three “executive models” (Mayor and Cabinet; Leader and Cabinet; or Mayor and Council Manager) or, through regulations, a “fourth option” of alternative arrangements where the council is headed by a politically balanced board. Three local authorities in Wales adopted alternative arrangements, although one of those has recently changed to an executive model (as at June 2010).

3.16 The Assembly Government considers that the alternative arrangements option has not worked well. It has forced political groups to join together in circumstances which have not always been conducive to coherent leadership and therefore not beneficial for the effectiveness and transparency of local government.

3.17 Political relations in local authorities operating alternative arrangements have sometimes been difficult because effectively there amounts to being an opposition element within the council’s leadership. These elements have been able to exploit the provisions of Regulation 4(4) of the Local Authorities (Alternative Arrangements) (Wales) Regulations 2007, which permits matters which would normally be dealt with by the Board to be referred to full council for a decision. A referral can be used both to undermine the authority of the board and to avoid making difficult decisions; this has contributed to undermining the effectiveness and transparency of local government.

3.18 The existing legislation allows local authorities to change their political model, but the process is cumbersome, requiring the authority concerned to conduct a public consultation to gain views on proposed changes. Such consultations tend to attract very low response rates probably because the level of interest in a council’s constitutional position is low.

3.19 No support has been indicated at any stage in Wales for the mayor and council manager executive model. It has already been removed from the options available in England and its continued availability for local authorities in Wales is redundant and confusing.

3.20 The Assembly Government regrets that not all local authorities in Wales have an audit committee (as has been recommended by the Chartered Institute of Public Finance and Accountancy [CIPFA] since 2005). The Assembly Government considers that audit committees are positive features

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which would help improve strategic planning and facilitate both scrutiny and challenge within the structures of a council.

3.21 The Assembly Government is also conscious that elected members from local authorities often participate in partnership arrangements with outside bodies, where an ability to make decisions on behalf of the council or its executive could be advantageous. Local authorities do not currently have the power to delegate any of their executive functions to a non-executive councillor, which slows down decision-making and places more burdens on executives.

3.22 The proposals relating to governance arrangements are summarised in paragraph 3.4(b) above, in the section headed Proposals for the Proposed Local Government Measure

Overview and Scrutiny (Part 6 of proposed Measure)

3.23 The 2000 Act set out that the executive of a principal council would be responsible for most local authority functions, working within a policy framework set by the full council. The 2000 Act also brought about the creation of overview and scrutiny committees, made up of non-executive (“backbench”) councillors, to scrutinise the work of the executive as well as reviewing policy within and without the council itself as they affected the local area.

3.24 The Beecham Review concluded that scrutiny was a strong lever for improving delivery by holding council executives and other public bodies to account and by contributing substantively to policy development. The review recommended that scrutiny at the local level should work across organisational boundaries, that it should be inclusive, forward looking, extend to all services and involve a broad spectrum of stakeholders.

3.25 The Assembly Government endorsed the rationale set out by Beecham. The Assembly Government considers that scrutiny has not been as effective as it could or should be; it has lacked teeth with other public agencies and its contribution to promoting policy development is patchy. A particular gap concerns the lack of scrutiny of public services provided across more than one local authority area.

3.26 *A Shared Responsibility* contained a commitment by the Assembly Government to strengthen local authority scrutiny committees in order to hold the executive to account more effectively, to widen its scope to public services in general, and to enhance the role and responsibility of non-executive councillors.

3.27 The Assembly Government considers that the application of the existing scrutiny arrangements has not kept pace with the changing agenda for local government since 2000. A range of public services are delivered across more than one local authority area and service delivery crosses sectors as well as local authority boundaries.

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3.28 The Assembly Government considers that new provision is needed to address these gaps and ensure there are clear and effective governance frameworks for the delivery of key services to local people and communities.

3.29 The Assembly Government considers that there are a number of problems which have arisen in some local authorities in the operation of the existing scrutiny arrangements. These issues are by no means universal and poor practice in one area may be contrasted with good practice elsewhere, but the Assembly Government believes that action is needed to ensure that all areas benefit from what is already generally accepted as good practice.

3.30 The other issues which the Assembly Government seeks to address in the proposed Measure in terms of improving the scrutiny arrangements in local government are:

- i. the need to address concerns that the quality of scrutiny by scrutiny committees is not always as good as it should be and that it lacks legitimacy in the eyes of the wider community and public sector because of a lack of expertise in the ranks of the committee members;
- ii. the concern that scrutiny committees are not as effective as they should be in holding the executive to account or contributing to policy development because, in some authorities, all the scrutiny chairs are allocated to members of the same political group(s) as the executive or because committee members (or at least some of them) vote in accordance with instructions from their political groups (whipping). The continued existence of these practices is widely perceived to undermine the principles of effective scrutiny;
- iii. many local authorities publish forward plans of the activities of their scrutiny committees, but there is no legal requirement to do so, and some do not. Scrutiny is seen as working best in those authorities which publish well in advance details of the issues that are expected to come up for discussion;
- iv. the need for mechanisms which would enable local people and non-executive councillors to engage with and raise matters of concern with a scrutiny committee.

3.31 The proposals relating to scrutiny arrangements are summarised in paragraph 3.4(c) above, in the section headed Proposals for the Proposed Local Government Measure.

Communities and community councils (Part 7 of the proposed Measure)

3.32 The Assembly Government wants to give effect to commitments to develop and strengthen the role of community councils in Wales, enabling them to deliver a wider range of services and actions locally as well as to

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increase the effectiveness of their representational role and their ability to work in partnership with other bodies.

3.33 The provisions in Part 7 of the proposed Measure flow from the study commissioned by the Assembly Government and undertaken in 2003 by the University of Wales, Aberystwyth: Institute of Geography and Earth Sciences into community councils in Wales, 'Research Study into the Role, Functions and Future Potential of Community and Town Councils in Wales' ("the Aberystwyth Report").

3.34 The Aberystwyth Report presented a comprehensive review of the activities undertaken by community councils across Wales. The report concluded that there were growing pressures for reform to the structure and working practices of community councils. The report noted that some community councils found themselves limited and frustrated by a combination of legislative, financial and administrative constraints.

3.35 Concerns were also expressed in the report about the inclusiveness of some councils, the low level of contested elections, the procedures for consulting and communicating with local people and the training and expertise of clerks and community councillors.

3.36 The Aberystwyth Report identified that there was much good practice among community councils with respect to all these areas of concerns, but the pattern of practice across Wales was variable. The report set out a number of proposals for enhancing the role of community councils, should a council wish to take on additional responsibilities. The report also concluded that the existing procedures for establishing a community council were too restrictive and those for dissolving a community council were too lax.

3.37 The Assembly Government published its formal response to the Aberystwyth Report in 2004 and gave a commitment to address issues identified in the review. Many of the provisions in this Part of the proposed Measure are derived from the commitments given by the Assembly Government in its response to the Aberystwyth Report.

3.38 The Assembly Government made a commitment to help develop a new policy framework for community councils which would promote:

- Working in partnership with other levels of government, with other public sector bodies and with other organisations to further the wellbeing of their areas;
- Consulting and engaging with local people to ensure that the type and quality of services and actions proposed reflect local needs;
- Ensuring that those services and actions are delivered effectively;
- Reviewing the procedures by which community councils can be established or abolished to make sure that the procedures are transparent and fully representative;

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- Encouraging community groups and other local organisations to work for the benefit of their areas;
- Improving local representation by encouraging people to vote and stand for election.

3.39 The Assembly Government has brought forward the provisions contained in Part 7 of the proposed Measure with a view to achieving the long-term policy aspirations set out above. The proposals are summarised in paragraph 3.4(d) above, in the section headed Proposals for the Proposed Local Government Measure.

Members' payments and pensions (Councillor allowances) (Part 8 of the proposed Measure)

3.40 The proposals for strengthening local democracy need to be considered in parallel with those in Part 8 for reforming the system for determining the remuneration for councillors across Wales.

3.41 The Assembly Government recognises that the role of a modern councillor has developed enormously in the last decade or so as a result of the changes made by the 2000 Act and outlined above in the sections above on governance and scrutiny arrangements (Parts 3 -6 of the proposed Measure).

3.42 Local government in modern times has left far behind the era when being a councillor could be viewed as, at best, a type of voluntary work which filled the spare time of otherwise retired gentlemen of wealth and leisure.

3.43 It is a long-accepted principle that councillors are entitled to receive remuneration in return for their key role in representing their communities and overseeing the delivery of local services. Local government service is not time-free to those who serve as councillors and maintaining the democratic values of local government is also not cost-free. The cost of councillors' remuneration is less than 0.5% of a principal council's budget.

3.44 The Assembly Government is concerned that the current system of remuneration for councillors – covering allowances of various types, pensions and other payments – may not have kept pace with the many developments in recent years in terms of the roles and responsibilities of councillors.

3.45 Such concerns have already been expressed by the Independent Remuneration Panel for Wales (the "IRP"), the independent and permanent body set up in 2008 by Welsh Ministers to prescribe the framework for councils to set the allowances schemes for their elected members. The remit of the IRP is limited to making recommendations to county and county borough councils in respect of the maximum amount or maximum aggregate amount of allowances payable to members of those authorities.

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3.46 The IRP is also able to make recommendations about pensions for councillors of county and county borough councils, but has no remit for setting allowances for members of community councils; that responsibility continues to rest with the Welsh Ministers.

3.47 The IRP does not have the power to set levels for councillor- or co-opted members of Fire and Rescue Authorities and National Park Authorities in Wales, but those authorities must not set levels above the average set by their constituent local authority councils.

3.48 The Assembly Government wants to ensure that the remuneration system adequately rewards all councillors for the responsibilities they carry and duties they undertake. In light of the Expert Panel conclusions, it is also important that financial barriers do not stand in the way of attracting more people to consider serving in local government, especially those who are currently under-represented – women, young people, minority ethnic people and those with disabilities, for instance, as well as those who are in employment.

3.49 Accordingly, the Assembly Government considers that the existing system needs to be reviewed and possibly reformed; it also needs to be kept under regular review to ensure that the remuneration system keeps pace with developments across local government and society at large.

3.50 The Assembly Government considers that the IRP would be the appropriate body to take on these responsibilities and be given authority to take decisions on all aspects of the remuneration of councillors. This would enable a more comprehensive, coherent and accountable system to be put in place. The IRP's current remit is constrained by the existing legislation which limits what the IRP can do and fragments responsibility for setting allowances between the IRP and the Welsh Ministers.

3.51 The provisions set out in Part 8 of the proposed Measure are designed to address these circumstances; the proposals are summarised in paragraph 3.4(e) above, in the section headed Proposals for the Proposed Local Government Measure.

Collaboration and Amalgamation (Part 9 of the Measure)

3.52 Part 1 of the Local Government (Wales) Measure 2009 (the “2009 Measure”) created a number of powers and duties for local authorities, fire and rescue authorities and National Park authorities as regards the improvement of their functions. These included a general power for authorities to collaborate with any person where that would facilitate improvement, and a duty to consider using that power from time to time.

3.53 The 2009 Measure also empowered the Welsh Ministers to issue statutory guidance on most of the powers and duties which Part 1 creates, and obliges authorities to have regard to it. However, the provisions as

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regards collaboration were inadvertently omitted from the scope of the guidance-issuing power.

3.54 The Welsh Assembly Government consulted on draft guidance in late 2009 and will shortly publish the final text. This included guidance on collaboration, explicitly noting that this element was non-statutory. Local authorities and other consultees warmly welcomed the guidance, including the section covering collaboration.

3.55 However, this situation is needlessly confusing. Furthermore, it is widely acknowledged by local authorities and the Welsh Local Government Association that collaboration is fundamental to improving service quality and efficiency, especially in the current financial climate. The Welsh Assembly Government strongly supports that view, and wishes to assist authorities as far as possible in this area.

3.56 Chapter 1 of Part 9 of the Measure corrects this position by providing that the Welsh Ministers may also issue statutory guidance on collaboration.

For Chapter 2 of Part 9 (Amalgamation) - see the addendum to this Memorandum at Annex C.

Bodies subject to the proposed Measure

3.57 Bodies subject to the proposed Measure are:

- **Principal councils** – a county council or a county borough council in Wales; there are in total 22 such authorities
- **Community councils** - there are some 735 community councils in Wales (July 2010). There are some 115 communities in Wales which do not have a community council. The 735 community councils collectively cover 96% of the land area of Wales and some 70% of its population.
- **National Park Authorities** – there are three National Park Authorities in Wales – Brecon Beacons National Park Authority, the Pembrokeshire Coast National Park Authority and Snowdonia Park Authority
- **Fire and Rescue Authorities** – there are three Fire and Rescue Authorities in Wales – North Wales Fire and Rescue Authority, Mid and West Wales Fire and Rescue Authority and South Wales Fire and Rescue Authority
- **The Independent Remuneration Panel for Wales** - a permanent, independent body established in January 2008 by Welsh Ministers. The IRP sets the national framework for councils' allowances schemes for their elected members.

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Territorial Application

3.58 The Measure applies in relation to Wales

Commencement

3.59 With some exceptions, different parts of the Measure should come into force on dates specified by order made by Welsh Ministers. Such orders should be capable of appointing different dates for different purposes.

4. Consultation

4.1 The proposed Measure itself has not been subject to consultation, as the Assembly Government has consulted widely on the proposals which give rise to the proposed legislation. The overarching policy statement, *A Shared Responsibility*, was the product of an extensive consultation and engagement exercise co-ordinated by the Assembly Government and involving local government, public bodies and the third sector. In developing the detailed proposals, a series of consultations have been staged, each focussing on different aspects of the proposals.

Parts 1 -2 – Strengthening local democracy and Family absence for members of local authorities

4.2 The provisions in Parts 1 -2 of the proposed Measure are informed by the conclusions and recommendations of the report “*Are we being served?*” published in August 2009 by the Councillor Commission Expert Panel Wales (the “Expert Panel”).

4.3 The Assembly Government consulted on the conclusions and recommendations of *Are we being served?* between August and November 2009. Copies of the report were sent to the leaders and chief executives of local authorities, the four main political parties, political groupings on local authorities, representative organisations in the public sector and the Human Rights and Equalities Commission. The report was also published on the Assembly Government consultation website.

4.4 A total of 41 responses were received, including 7 from county / county borough councils, 20 from community councils, 4 national campaigning groups and 2 groups of leaders in their local authorities. The summary of the responses is published on the Assembly Government’s consultation website.

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<http://wales.gov.uk/consultations/localgovernment/beingserved/?lang=en&status=closed>

4.5 The Expert Panel recommendations which informed the development of policy proposals for the proposed Measure were recommendations 1, 2, 10, 11, 13, 14, 23, 26 and 28. The rest of the recommendations invited other kinds of action.

4.6 The responses on the recommendations which informed the development of the proposed Measure were generally positive, albeit with occasional caution on account of possible cost implications. Many respondents pointed out that what was proposed in several of these recommendations was already accepted good practice across local government.

4.7 The one recommendation among those related to the proposed Measure provisions which generated a generally negative response was recommendation 2, which proposed a full legal separation of the executive and non-executive functions in principal councils. The Assembly Government concluded that a legal separation was not appropriate, but the support needs of non-executive members should be addressed. The provisions in the proposed Measure require councils to ensure adequate officer support is provided to non-executive members, but there will be no legal separation creating new legal entities.

4.8 The Assembly Government's response to the consultation on the Expert Panel report was published in an Assembly Government Written Statement on 12 May 2010, which is available on the Cabinet pages on the Assembly Government website:

<http://wales.gov.uk/about/cabinet/cabinetstatements/2010/100512ccep/?lang=en>

Parts 3 - 6) – Governance and Scrutiny Arrangements (i.e. Parts covering governance arrangements, executive arrangements, discharge of functions by committee and councillors and overview and scrutiny)

4.9 The provisions in Part 3 -6 of the proposed Measure are informed by the consultation on the proposals for scrutiny and political structures (as they are referred to in the consultation document) staged between December 2009 and March 2010.

4.10 The consultation document invited views on the proposals which would be included in a forthcoming Assembly Measure.

4.11 Copies of the consultation document were sent to the leaders and chief executives of local authorities, the four main political parties, the leaders of political groupings on local authorities, public bodies representing the public sector including the health and voluntary sector, representative organisations and others. The document was also published on the Assembly Government consultation website.

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4.12 A total of 42 responses were received to the consultation, including 17 from county / county borough councils, 7 from other public bodies, 5 from political groupings in local authorities, 2 from organisations representing the third sector and 2 from national campaigning groups. The summary of the responses is published on the Assembly Government's consultation website.

<http://wales.gov.uk/consultations/localgovernment/scrutiny/?lang=en&status=closed>

4.13 Almost all the proposals received degrees of support, although there were sometimes differences between categories of respondents; for example "other" respondents were more enthusiastic about certain proposals than local authorities were and vice versa. The summary of responses sets out such differences where appropriate.

4.14 Two proposals received particularly negative responses; that for the proposed audit committees to be chaired by a lay person (i.e. a co-opted non-councillor) (ref. *proposal 14* in consultation document) and the proposed new power for Welsh Ministers to intervene in the operation of a local authority when there is an actual or perceived threat to the effective discharge of functions (ref. *proposal 15*).

4.15 The Assembly Government noted the views on these issues and made changes to the proposals. The proposed provisions for audit committees leave it to the committees themselves to choose the chair, subject to the proviso that the chair must not be a member of a political group which forms part of the executive of the authority. There are no new powers of intervention regarding the discharge of local authority functions.

4.16 The Assembly Government's response to the consultation on scrutiny and political structures (i.e. governance arrangements) will be published in due course.

Part 7 – Communities and community councils

4.17 The provisions in Part 7 of the proposed Measure flow from the study commissioned by the Assembly Government and undertaken in 2003 by the University of Wales, Aberystwyth: Institute of Geography and Earth Sciences into community councils in Wales, '*Research Study into the Role, Functions and Future Potential of Community and Town Councils in Wales*' ("the Aberystwyth study"). This was the first comprehensive review of the work of community and town councils in Wales.

4.18 The Assembly Government consulted on the Aberystwyth study from November 2003 to February 2004. County/county borough councils, community councils, the Welsh Local Government Association, One Voice Wales (then in shadow form) and other local councils' associations as well as other interested organisations were invited to comment. The aim was to

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ensure that Assembly Government proposals for community and town council policy were based on observations and contributions from stakeholders.

4.19 As part of the consultation, the Assembly Government organised a series of four regional seminars in January 2004 in conjunction with One Voice Wales and the Welsh Local Government Association. These gave consultees an opportunity to discuss the report's recommendations

4.20 A total of 186 responses were received to the consultation, with 156 from community and town councils, 14 from county and county borough councils and 16 from other organisations and individuals. The consultation informed the Assembly Government's formal response (published in August 2004) to the Aberystwyth Report. The response is published on the Assembly Government website at:

<http://wales.gov.uk/topics/localgovernment/research/wagresponse/?lang=en>.

4.21 A significant number of the Assembly Government's stated policy aspirations for community councils depended on securing changes in primary legislation. *The National Assembly for Wales (Legislative Competence) (Local Government) Order 2010* ("the LCO") provided the competence for the changes the Assembly Government wanted to make. Those who responded to the scrutiny committees' consultations on the LCO generally indicated support for the Assembly Government's intentions for legislating on community councils.

4.22 Ministers have taken account of the concerns reflected in the National Assembly Legislation Committee No. 2's report on the LCO, in particular so that smaller community councils are not disadvantaged by unrealistic expectations or over-burdened with new responsibilities.

Part 8 - Members' payments and pensions (Councillor allowances)

4.23 The Independent Remuneration Panel for Wales ("the IRP") was established on a permanent basis in January 2008 by Welsh Ministers. The IRP sets the framework for councils' allowances schemes for their elected members.

4.24 The IRP is required to produce an Annual Report each year and may produce supplementary reports at any time. The initial report of the IRP (July 2008) and its supplementary report (December 2008) made various recommendations for future reform of the allowances system, notably the seeking of legislative competence for the National Assembly over councillors' remuneration.

4.25 The above-mentioned Local Government LCO (approved in April 2010) conferred competence on the National Assembly over the remuneration of councillors. The discussions during the LCO scrutiny stages highlighted the desirability of widening the remit of the IRP to ensure and enable greater consistency across Wales.

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4.26 In its report on the LCO, the National Assembly's Legislation Committee No. 2 recognised the broad support for the transfer of competence over the allowances system and noted the importance of providing Welsh Ministers with the flexibility to respond to recommendations of the Independent Remuneration Panel. The proposed provisions on allowances will enable such flexibility.

Part 9 – Collaboration and Amalgamation

4.27 Chapter 1 of Part 9 (Collaboration) in the proposed Measure corrects a technical anomaly in the Local Government (Wales) Measure 2009 and has not been the subject of separate consultation. However, the Welsh Assembly Government has already consulted on non-statutory guidance on collaboration; the responses from local authorities and national partners were overwhelmingly positive.

For Chapter 2 of Part 9 (Amalgamation) see the addendum to this Memorandum at Annex C.

5. Power to make subordinate legislation

5.1 The proposed Measure contains provisions to make subordinate legislation. *Table 1* below sets out in relation to each provision:

- the person upon whom, or the body upon which, the power is conferred;
- the form in which the power is to be exercised;
- the appropriateness of the delegated power;
- the applied procedure (affirmative, negative, no procedure) if any.

5.2 To assist in understanding the intentions for using the proposed subordinate legislation a separate memorandum has been prepared at *Annex A* of this document. *Annex A* also sets out the appropriateness of adopting the different Assembly procedures for the legislation.

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Table 1 - Summary of Powers to make Subordinate Legislation

Summary of Powers to make Subordinate Legislation – Strengthening Local Democracy

Section	Power conferred on	Form	Appropriateness	Procedure
Section 1 (duty to conduct a survey)	Welsh Ministers	Regulations	Suitable for regulations as will provide detail for administrative detail which follows the intent of the Measure and will allow future amendments if needed	Negative Resolution
Section 2 (duty to collate and publish data)	Welsh Ministers	Regulations	Suitable for regulations as will provide detail for administrative detail which follows the intent of the Measure and will allow future amendments if needed	Negative Resolution
Section 9 (1)(i) (democratic services functions)	Welsh Ministers	Regulations	Suitable for regulations as will add to the list of prescribed functions which is liable to change.	Affirmative Resolution
Section 10 (standing orders)	Welsh Ministers	Regulations	Suitable for regulation as will add prescribed provision and modification, and may make different provision for different cases or classes of case.	Negative Resolution

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Section	Power conferred on	Form	Appropriateness	Procedure
Section 24 (family absence)	Welsh Ministers	Regulations	Suitable for regulations as will provide detail for administrative detail associated with the operation of arrangements made under the Measure which follows the intent of the Measure and will allow future amendments if needed	Affirmative Resolution
Section 25 (maternity absence)	Welsh Ministers	Regulations	Suitable for regulations as will provide detail for administrative detail associated with the operation of arrangements made under the Measure which follows the intent of the Measure and will allow future amendments if needed	Affirmative Resolution
Section 26 (newborn absence)	Welsh Ministers	Regulations	Suitable for regulations as will provide detail for administrative detail associated with the operation of arrangements made under the Measure which follows the intent of the Measure and will allow future amendments if needed	Affirmative Resolution

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Section	Power conferred on	Form	Appropriateness	Procedure
Section 27 (adoption absence)	Welsh Ministers	Regulations	Suitable for regulations as will provide detail for administrative detail associated with the operation of arrangements made under the Measure which follows the intent of the Measure and will allow future amendments if needed.	Affirmative Resolution
Section 28 (new adoptors' absence)	Welsh Ministers	Regulations	Suitable for regulations as will provide detail for administrative detail associated with the operation of arrangements made under the Measure which follows the intent of the Measure and will allow future amendments if needed.	Affirmative Resolution
Section 29 (parental absence)	Welsh Ministers	Regulations	Suitable for regulations as will provide detail for administrative detail associated with the operation of arrangements made under the Measure which follows the intent of the Measure and will allow future amendments if needed.	Affirmative Resolution

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Section	Power conferred on	Form	Appropriateness	Procedure
Section 30 (supplemental)	Welsh Ministers	Regulations	Suitable for regulations as will provide detail for administrative detail associated with the operation of arrangements made under the Measure which follows the intent of the Measure and will allow future amendments if needed.	Affirmative Resolution

Summary of Powers to make subordinate legislation – Governance

Section	Power conferred on	Form	Appropriateness	Procedure
Section 34 gives effect to paragraph 13(2) of Part 3 of Schedule 1 (failure to cease operating alternative arrangements)	Welsh Ministers	Order	Currently no reason to think that authorities will not make the necessary changes, but nevertheless a default power is prudent. If power is used, detailed provision will be required and so it is appropriate to make the necessary provision by order.	Negative resolution
Section 55 (exercise of functions by councillors)	Welsh Ministers	Order	Suitable for order as provisions relates to detail of arrangements enabled by the Measure	Negative resolution

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Summary of Powers to make subordinate legislation – Overview and Scrutiny

Section	Power conferred on	Form	Appropriateness	Procedure
Section 57 (joint overview and scrutiny committees)	Welsh Ministers	Regulations	Suitable for regulations as provide detail for scheme which follows on from the intent of the Measure itself	Negative resolution
Section 21G(1) LGA 2000 inserted by section 60 (designated persons)	Welsh Ministers	Order	Suitable for order as provision relates to administrative detail which is needed to give effect to the intent of the measure	Affirmative resolution
Section 21A(13(b) of LGA 2000 inserted by section 62 (reference of matters to overview and scrutiny committee - excluded matters)	Welsh Ministers	Order	It is not possible at this stage to identify all cases where it may be appropriate for the Welsh Ministers to exercise the power to specify which matters will be excluded, and therefore order provides necessary flexibility	Negative resolution
Section 74 (supplementary provision and interpretation)	Welsh Ministers	Regulations	Suitable for regulations as provision relates to appointment scheme which flows from the intent of the Measure and may require periodic review	Negative resolution

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Section	Power conferred on	Form	Appropriateness	Procedure
Section 80 (forward plans)	Welsh Ministers	Regulations	Suitable for regulations as provision relates to administrative detail which may require regular review	Negative resolution

Summary of Powers to make Subordinate Legislation - Community Councils

Section	Power conferred on	Form	Appropriateness	Procedure
Section 97 (notice to be given by returning officer following taking of a poll consequent on a community meeting)	Welsh Ministers	Regulations	Suitable for regulations as the subject matter is the amplification of details as to type of questions (being the subject of a poll) that may negate the notice provision set out in section 97.	Negative Resolution (substantive provision will be in the 1972 Act as amended by the Measure)
Section 116 (power to alter voting threshold)	Welsh Ministers	Order	Suitable for order as is the vehicle for amending the thresholds which appear on the face of the 1972 Act, as amended by the Measure.	Affirmative Resolution (consultation pre-condition contained at subsection (3)).
Section 119 (5)(c) (notice requirements)	Welsh Ministers	Regulations	Suitable for regulations as additional information to be added to notice requirements if proves necessary	Negative Resolution

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Section	Power conferred on	Form	Appropriateness	Procedure
Section 122 (notice requirements)	Welsh Ministers	Regulations	Suitable for regulations as additional information to be added to notice requirement if proves necessary	Negative Resolution
Section 124 (effect of appointment)	Welsh Ministers	Regulations	Suitable for regulations as specifies purpose/s for which a youth representative is to be treated as a member of the council; liable to review and change over time.	Negative Resolution
Section 130 (amendment or repeal of enactments preventing or obstructing a community council from exercising their well-being power)	Welsh Ministers	Order	Order making power appropriate as establishing a new rule of law, by virtue of amendment or repeal of other enactments.	Super affirmative Resolution
Section 133 (power to set out charter agreement)	Welsh Ministers	Order	Suitable for order as is, in effect, establishing the content of the model charter agreement, the adoption of which may be the subsequent subject of a direction.	Negative Resolution (consultation pre-condition contained at section 136).

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Section	Power conferred on	Form	Appropriateness	Procedure
Section 137 (schemes for the accreditation of quality)	Welsh Ministers	Regulations	Suitable for regulations as provisions set out the details of the accreditation scheme, eg setting of criteria which may be liable to change.	Negative Resolution
Section 143 (accreditation of quality - consequences)	Welsh Minister	Regulations	Suitable for regulations as provisions modifying the operation of any enactment in relation to specific community councils arising from such councils having an accreditation of quality or otherwise.	Affirmative Resolution

Summary of Powers to make Subordinate Legislation - Councillors Allowances

Section	Power conferred on	Form	Appropriateness	Procedure
Section 161 (power to amend)	Welsh Ministers	Order	Suitable for order as part of the scheme of appointment which flows from the intent of the Measure and may require periodic review	Affirmative resolution

Summary of Powers to make Subordinate Legislation – Collaboration and Amalgamation – see the addendum to this Memorandum at Annex C

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Summary of Powers to make subordinate legislation – General

Section	Power conferred on	Form	Appropriateness	Procedure
Section 170 (power to make supplementary provision)	Welsh Ministers	Order	Suitable for order as provision relates to technical details of amendments to legislation that may become necessary in future	Negative resolution Affirmative resolution if order modifies an enactment
Section 171 (commencement)	Welsh Ministers	Order	Suitable for order as provision relates to coming into force date to be decided by the Welsh Ministers	No procedure

6. Regulatory Impact Assessment (RIA)

6.1 A Regulatory Impact Assessment has been completed in accordance with Standing Order 23.18 (vi) for the proposed Measure and follows at Section 7.

6.2 Many of the provisions in the proposed Measure do not give rise to any new or additional administrative, compliance or other costs since they deal with existing structures of governance, business, remuneration and engagement in principal councils. Where new and additional costs do arise these are set out in section 8 in relation to each part of the proposed Measure, as are the timescales over which such costs would be expected to arise.

Part 2: Regulatory Impact Assessment

7. Options

7.1 The following options are considered in respect of the proposals set out in the proposed Measure:

Option 1: Do nothing.

Option 2: Introduce minimal changes using existing legislation and promoting other changes through guidance and the dissemination of good practice.

Option 3: Introduce an Assembly Measure.

Option 1 – Do nothing

7.2 Doing nothing would restrict the ability of the Assembly Government and other stakeholders to address the range of issues identified by the various reviews and reports described in section 3 above. The reviews concluded that in many cases, the issues identified could only be addressed through legislation, either new provision or changes to existing provision.

7.3 Doing nothing would thus risk perpetuating a range of circumstances in local government which have been identified as being inconsistent, unrepresentative, out-of-date and detrimental to good governance. Doing nothing would also perpetuate an unhelpful anomaly in the Local Government (Wales) Measure 2009.

Option 2 – Introduce minimal changes using existing legislation and promoting other changes through guidance and the dissemination of good practice

7.4 This option would mean working within the existing legislative and procedural frameworks. The Assembly Government has some existing powers, for example in relation to setting up the Independent Remuneration Panel for Wales (the “IRP”) and to issue guidance relating to the conduct of scrutiny and overview committees.

7.5 These existing powers are limited in scope, however, and enable the Assembly Government to address only some of the issues which have been identified or to do so only in part. The existing legislative provision is fragmentary and incomplete (for example in relation to the remuneration of councillors), which inhibits the ability of the Assembly Government and other stakeholders to address the range of issues in a comprehensive way.

7.6 The Assembly Government could also attempt to bring about improvements by recourse to guidance and the dissemination of good practice. The Assembly Government already works closely with partners such as the WLGA and One Voice Wales (the umbrella bodies for principal and community councils respectively) to identify and share good practice.

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7.7 There are limits on what improvements can be achieved by relying on guidance and dissemination of good practice. Some local authorities respond positively, review their practices and make changes; others do not.

7.8 The various reviews already referred to have concluded that the existing frameworks will not bring about the changes they recommended. The Assembly Government considers that relying on existing statutory frameworks, guidance and disseminating good practice would mean that progress across local government in Wales would continue to be inconsistent in addressing the several key issues which were highlighted by the aforementioned reviews.

Option 3 – Introduce an Assembly Measure

7.9 This option would most effectively meet the policy objectives set out in statements such as *A Shared Responsibility* and the Assembly Government's response to the Aberystwyth Report.

7.10 The provisions in the proposed Measure will remove barriers which have restricted participation, engagement and accountability in local government across Wales; the Assembly Government considers that the removal of these barriers is most effectively and efficiently achieved by legislation. A large number of the barriers can only be removed by legislation.

7.11 The provisions in the proposed Measure would allow the Assembly Government, its partners and other stakeholders to address the related issues which confront local government in a coherent and comprehensive way.

7.12 Introducing a Measure will establish a clear framework to enable the various partners to make improvements to achieve the desired policy goals. The principles set out in the provisions in the proposed Measure will help ensure consistent standards and principles are applied across local government.

8. Costs and benefits

8.1 This section examines the costs and benefits of the options described in the previous section, arranged under each Part as in the proposed Measure

(a) Strengthening local democracy and Family absence for members of local authorities (Parts 1 -2)

Option 1 – Do nothing

8.2 Doing nothing would inhibit the ability of the Assembly Government and other stakeholders to respond to many of the issues set out in the report of the Expert Panel.

8.3 The Expert Panel found that women, ethnic minorities, young people, disabled people, people in paid employment and non-professionals were under-represented in council chambers across Wales. The Panel commented that there had been little change in the profile of councillors, despite concerns raised and recommendations made in a number of reports dating back decades (such as in the report of the Commission on Local Government Electoral Arrangements in Wales compiled in 2002).

8.4 The Expert Panel's 35 recommendations sought to remove perceived barriers which discourage people from diverse backgrounds from standing for election and then being able to stay on as councillors. Several of the recommendations stated that legislation would be needed to take certain matters forward.

8.5 There would be no financial costs to the Assembly Government or local government as a result of inaction in response to the recommendations from the Expert Panel. However, doing nothing would mean that councils would be under no duty to ensure that the support services and working conditions they provided to their elected members were structured to accommodate the needs of members from diverse backgrounds. The effectiveness of elected councillors would be restricted by the absence of guaranteed training and support. There would be no requirement on councils to take action to address a range of issues which were identified by the Expert Panel as posing real problems for people who would like to consider becoming a councillor or remaining as one.

8.6 Doing nothing would also mean that the Assembly Government and other stakeholders would have no reliable data on the diversity of candidates at local government elections. It would be impossible to tell whether the policies being implemented to encourage a wider range of people to stand as candidates were having any impact.

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Option 2 – Minimal changes

8.7 There is nothing in existing legislation which could be called upon to help achieve the aspirations addressed by the provisions in this Part of the proposed Measure.

8.8 Guidance, exhortation and the dissemination of good practice could produce some positive results, but experience has shown that relying exclusively on such tools to address these issues means that progress is slow and patchy. The Expert Panel reported on and welcomed various initiatives undertaken in the last decade to encourage broader participation, but noted that at the current rate of progress, it would take until 2060 to achieve a gender balance in councils across Wales.

8.9 The Assembly Government welcomes initiatives undertaken by the WLGA to improve the training, support and performance of councillors, notably through its *Wales Charter for Member Support and Development* but there is no compulsion to adopt the principles or good practice set out in the Charter. Take-up by local authorities and participation by councillors are inconsistent. The Charter was launched in 2005, but to date only 8 of the 22 principal councils have achieved level 1 of the Charter.

8.10 There might be scope to strengthen the existing councillors' survey, last undertaken by the WLGA after the elections in 2004 (but not held in 2008). Doing so might give better data on councillors but would provide no information on candidates and, therefore, no means of measuring the impact of policies to encourage more diversity on the pool of people standing for election.

Option 3 – Introduce a Measure

8.11 The Assembly Government will continue to work with partners to develop guidance and share good practice, but believes that the proposed legislation is needed to remove several key barriers which hinder progress.

Costs and benefits

8.12 Legislation is considered to be the only means of ensuring that monitoring of candidates and councillors takes place regularly. Despite the precedent of 2004, no survey was undertaken in 2008, which would in any event have been of councillors (and so of *successful* candidates) only. The proposal provided for by the proposed Measure will deliver wider and more regular data which will enable policy-makers to assess the effectiveness of initiatives designed to improve diversity in council chambers.

8.13 The proposed Measure will place duties on principal councils to provide adequate training and developmental systems for their elected members and to make arrangements for the publication of an annual report by each

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member. These are already widely accepted as good practice throughout local government and many local authorities already provide such services but some do not. The Assembly Government considers that the same standards of good practice should be available to members of all principal councils. The proposed legislation will ensure that such standards are applied across all principal councils.

8.14 The existing legislation does not provide for councils to enable remote attendance facilities for elected members; the current legislation is silent on whether councils can allow members to take absence relating to family matters such as maternity, newborn, adoption and parental responsibilities. The provisions in the proposed Measure are designed to enable councils to introduce these features and so respond to the needs of members (or would-be members) whose personal circumstances may make it difficult to attend meetings at certain times.

8.15 Introducing a regular survey is estimated to cost £35,000 per survey, funded by the Assembly Government and distributed among the 22 principal councils (about £1,750 each) to undertake the survey of candidates at community and principal council elections. This cost would occur every fourth year, starting from the 2012-13 financial year. The Assembly Government's Social Justice and Local Government Department would also absorb within existing projected resources an administrative cost of some £2,500 in analysing and distributing the survey data.

8.16 Most of what is proposed for training, development and performance appraisal is already accepted as good practice and has been adopted by local authorities pursuing the WLGA Charter. The cost implications will depend on the existing level of training provision; some authorities might need to provide pump-priming expenditure from 2012-13 (£5,000 per authority where there is limited provision at present) to review existing provision and identify gaps. Some authorities might also incur small set-up costs of up to £2,500 (per authority) to introduce annual performance appraisals and enable the publication of councillor annual reports on council web-sites.

8.17 The local government settlement already includes provision (which is not ring-fenced, so it is not possible to estimate existing costs) for training and development of councillors, in addition to which the Assembly Government's Social Justice and Local Government Department also provides funding of £110,000 per annum to the WLGA (in 2010–11) to fund training of councillors. It is not envisaged that the training and development provisions in the Measure should lead to any increase in funding from the Assembly Government to local authorities or the WLGA. No additional staff or technology costs are envisaged.

8.18 The cost of introducing remote attendance facilities would depend very much on the circumstances of the local authority and, possibly, the distribution of elected members around its area. Many authorities already have video-conferencing / webcam equipment installed in regional offices. The cost

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where no such provision currently exists is estimated to be £2,000 per authority for one-off set up costs.

8.19 The provisions to place a duty on principal councils to ensure adequate officer support for non-executive members of the council recognises the impact of the changes introduced by the Local Government Act 2000 and are designed to ensure councils consider and provide for the needs of “backbench” councillors. The new requirements will require some re-arranging of services into a new department, Democratic Services, and the designation of an existing officer to a new post, that of Head of Democratic Services. This should not require any additions to the total number of officer posts in a local authority; the functions covered by the proposed new department are already provided by councils, but some internal re-organisation should be expected.

8.20 It is possible, in councils where inadequate provision is made for support services at present, that additional resources will be needed, but that will be a decision for the full council. The council will be advised by a new committee set up to monitor the work of the new department, as required by the proposed Measure. It is envisaged that the cost of the new Democratic Services arrangements will be about £12,500 per annum for each authority, from 2012-13. The total would be about £270,000 across Wales. It is anticipated that these additional demands will be proportionate to the size of each local authority and can be accommodated without additional resources from the Assembly Government through more efficient ways of working.

(b) Governance arrangements, executive arrangements and discharge of functions by committee and councillors (Parts 3 -5)

Option 1 – Do nothing

8.21 Doing nothing would represent a failure to address a range of issues which have developed since the reforms introduced by the 2000 Act.

8.22 The governance models available to principal councils in Wales since the 2000 Act include one unwanted model (elected mayor and council manager) and the problematic alternative arrangements model (the “Fourth Option”) which is considered not to have worked well because it is perceived to militate against coherent and stable leadership. The practical cost of allowing the alternative arrangements model to remain in place would be the retention of a political structure which has proven to produce less effective decision-making bodies. The existing legislation is also inflexible in requiring local authorities to undertake public consultations if they propose to change their governance model. Such consultations are time-consuming and involve costs such as administrators’ time and fees for publishing notices in newspapers, which generally cost from £500 an advert. Such consultations are likely to produce very small response rates (ten written responses only in a recent case in Wales), probably because few residents are interested in such constitutional detail.

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8.23 Doing nothing would also inhibit the ability of principal councils to respond to the development of more partnership working across local government and the wider public sector. Local authorities and their executives are unable to delegate decision-making to non-executive councillors representing them on other bodies, such as Local Service Boards, etc. This is frustrating for the partnership body, places unnecessary burdens on the local authority's executive decision-making process and inhibits the role of non-executive councillors.

Option 2 – Minimal changes

8.24 Minimal changes are not a practical proposition, as the issues being addressed in this Part of the Measure are governed by procedures laid down in legislation (or the lack of legislation sanctioning the delegation of decision-making). We wish to do away with the two models. Given the scale of the changes, and in order to provide certainty and clarity for local authorities, we wish to enshrine the changes in primary legislation.

Option 3 – Introduce a Measure

8.25 The proposals remove the redundant and ineffective elements of the existing options.

8.26 Removing the elected mayor and council manager has no cost implications as no local authority in Wales has adopted this model. Removing the alternative arrangements model has no cost implications for the twenty local authorities which do not operate that model. Where alternative arrangements do currently apply, there will be some costs in making the change-over, which will depend on the new model the authority proposes to adopt (see below). There should be no cost implications once the change is made, as there are no reasons why operating and supporting a different model under executive arrangements should be any different from those associated with operating and supporting the existing alternative arrangements model.

8.27 In respect of change-over costs, there are currently (as at 1 June 2010) two local authorities operating alternative arrangements. The authorities will have to draw up a proposal for changing to one of the new suite of executive model options. Unless proposing to change to the elected mayor and cabinet model (when a referendum will be required – as would be the case at present), the only cost would be that of drawing up and submitting the required proposal to Welsh Ministers. That cost would be so small as to be absorbed in the normal running costs of the local authority.

8.28 If the proposed change were to the elected mayor and cabinet model, then a referendum would be required (as it is in the existing legislation) and the cost would fall to the local authority (as would be the case now if an authority proposed changing to this model). The cost of the referendum would

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depend on the size of the electorate in the authority concerned, but would be in the range of £80,000 for a small authority to £400,000 for the largest.

8.29 The provision for ending the requirement to consult on a proposal to change from one executive model to another is a potential cost saving, albeit very small.

8.30 The proposed provisions for delegating decision-making are likely to be cost neutral. The very small administrative cost (so small as to be incalculable) of introducing a procedure for delegating decision-making is likely to be offset by equally very small savings arising from the speeding-up of decision-making on the partnership bodies in question, with no need for referral of decisions back to a council's executive. The proposal will have the additional benefit of enhancing the role of non-executive members.

(c) Overview and Scrutiny (Part 6)

Option 1 – Do nothing

8.31 There are no tangible costs associated with a failure to act, but doing nothing would inhibit the ability of local authorities and local partners to address concerns about the exercise of the scrutiny function which have developed since the reforms in the 2000 Act.

8.32 The legislation on scrutiny has not kept pace with the development of partnership working between public bodies and across local authority boundaries. The existing legislation does not allow scrutiny committees to examine the delivery of public services by other public bodies in their areas nor does it allow local authorities to form joint overview and scrutiny committees. This means that services or issues which cross county or sectoral boundaries cannot be subject to effective scrutiny at a time when local authorities and public bodies are increasingly working together to deliver certain services and address common issues.

8.33 The existing legislation does not allow scrutiny committees to co-opt non-councillors with voting rights, and so denies the scrutiny process access to external expertise and experience other than in a voluntary, detached manner; as a result, scrutiny committees have sometimes struggled to gain legitimacy in the eyes of other sectors.

8.34 Doing nothing would mean disregarding weaknesses which have come to light elsewhere in the exercise of the scrutiny function: notably, the concern that whipping can sometimes be used to control decisions of scrutiny committees; the practice in some councils of allocating all the chairs of scrutiny committees to members of the controlling political group(s); and the failure of some committees to publish forward plans. The existence of these circumstances (although not prevalent) can undermine the scrutiny process and public confidence in it.

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8.35 The existing legislation is also restrictive in that it does not enable members of the public to contribute their views to scrutiny committees, nor does it allow councillors who are not members of the committee to place matters on scrutiny committee agendas. This means that local people have no obvious vehicle to contribute their experiences to a process which is designed to improve the quality of service delivered to them.

8.36 The existing legislation does not require councils to establish audit committees despite the benefit (and potential savings) such committees bring in terms of monitoring an authority's financial affairs. Several councils in Wales have complied with the advice of the Chartered Institute of Public Finance and Accountancy (CIPFA) (issued in 2005) and established audit committees, but some have not. Failure to institute effective audit committees has potential costs as the central function of audit committees will be to ensure that local authorities' resources are used to best effect.

Option 2 - Minimal changes

8.37 These issues cannot be adequately addressed through voluntary arrangements, guidance and dissemination of good practice alone. To be effective, scrutiny needs legislative backing to give committees teeth, especially in terms of being able to call witnesses and request information.

8.38 There is already extant guidance which recommends the establishment of audit committees, discouraging whipping, allocating scrutiny chairs in accordance with political balance and publishing forward plans for committees. Whilst many authorities comply with the guidance some do not, to the detriment of the scrutiny function and the interests of local people.

Option 3 - Introduce a Measure

8.39 The aims of the proposed changes are to strengthen the exercise of scrutiny of public services in local areas and to ensure that the process is independent and seen to be so. Furthermore, the improvements to scrutiny proposed by the Measure should lead to the more effective review of local services and thereby, identify potential efficiencies.

Costs and benefits

8.40 The relevance of the scrutiny function will be enforced by extending it to joint working and to the wider public service; the quality of scrutiny will be enhanced by allowing co-opted members to vote, creating vehicles for members of the public and councillors who are not members of the committee to contribute and the publication of forward plans. The problem of undue influence being brought to bear will be addressed by provisions to allocate chairs of scrutiny committees in accordance with political balance and prohibiting whipping.

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8.41 The cost implications of the provisions in this Part depend on the extent to which individual local authorities have already complied with guidance and whether they take the opportunity offered by what, for the most part, are enabling powers. The costs set out below are based on the cost of introducing each new requirement in full in those circumstances where there is currently no provision whatsoever. The costs will be less where some provision already exists and no cost will arise if the provision already achieves a satisfactory standard (for example if an authority already has a committee performing all the functions anticipated of an audit committee).

8.42 The power to set up a joint overview and scrutiny committee would be an enabling one, so there will be no compulsion on local authorities to set one up. The cost of doing so and maintaining a joint committee would be approximately £5,000 per annum, which would be shared among the constituent authorities.

8.43 The cost of setting up a new audit committee (in authorities where none exists already) and servicing it is also estimated to be £5,000 per authority in the first year (from 2012-13). The annual costs thereafter would be slightly less than that initial year's cost, since the set-up costs would disappear. There is no compulsion in the provisions for authorities to pay co-optees' allowance; doing so would be at the authority's own discretion.

8.44 Enabling scrutiny committees to give voting rights to co-opted members does not in itself impose additional costs; the existing legislation already allows co-opted members on scrutiny committees. There is no compulsion to pay co-optees' allowance.

8.45 The provisions regarding the proportional allocation of scrutiny chairs and the prohibition of whipping have no cost implications; nor do the provisions requiring the publication of work plans since all principal councils have web-sites which are already used to publicise dates and details of council and committee business.

8.46 The provisions to enhance engagement between scrutiny committees and members of the public and non-committee member councillors would entail minimal set-up costs of no more than £3,000 for each principal council to allow the public to submit views and information electronically to a scrutiny committee web-site. No new structures or facilities are considered necessary to enable councillors to place their concerns on scrutiny committee agendas.

8.47 The provisions relating to the scrutiny of services delivered by the wider public sector by scrutiny committees is considered to have some cost implications for the public bodies concerned. These would arise from having to provide information requested by the scrutiny committee and from their personnel having to appear before a committee. The total costs arising from such duties is estimated to be between £10,000 and £30,000 annually across Wales (i.e. the sum of the costs falling to all public bodies appearing before scrutiny committees across the whole of Wales in any one year). The cost

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falling to individual public bodies is considered to be so low that additional funding is not needed.

(d) Communities and community councils (Part 7)

Option 1 - Do nothing

8.48 Doing nothing would generate no tangible costs, but would mean that many of the circumstances set out in the Aberystwyth Report in 2003 and considered to be detrimental to good governance at the local level would persist. The role of community councils would not be developed or strengthened; their ability to deliver a wider range of services and actions locally would be inhibited.

8.49 Retaining the existing arrangements would mean community councils remain vulnerable to campaigns for their dissolution from well-organised groups of local residents. Conversely, the existing thresholds for establishing a community council where none exists are considered to be unnecessarily high and a barrier to the establishment of councils in those areas. No new community councils have been set up in the last five years, leaving some 115 community areas without a council.

8.50 The thresholds for staging a community meeting and then triggering a community poll are relatively low. This can lead to an unrepresentative group of well-organised local people triggering a poll of voters on an issue which may not generate widespread interest – with all the expense which a poll entails. Where a poll has been staged and the proposition approved, the current legislation does not require a principal council to respond in any way to the poll even if the council itself is responsible for the issue which was the subject of the poll.

8.51 The Assembly Government does not keep records of co-option figures in the 735 community councils across Wales, but the Aberystwyth Report commented upon the perception of community councils being “closed-shops”, which can promote a suspicion which can undermine a council’s standing locally. Doing nothing would retain the potential for some community councils to avoid making efforts to find candidates for a by-election and instead make use of co-option procedures to recruit new council members who were friends or from the same limited social background and networks as the existing councillors. Community councils need not feel under any obligation to try to broaden participation or engage with under-represented groups such as young people.

8.52 Doing nothing would mean that the perceived gap in the existing legislation which enables principal councils to avoid their existing duty to review their community areas would continue. Eight councils in Wales have sought a direction from Welsh Ministers for the LGBCW to do their community reviews. The legislation places responsibility for the reviews on principal councils, but omits to include a timeframe for undertaking the reviews. When

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councils fail to carry out reviews the LGBCW has had to step in, but may do so only after being directed by Welsh Ministers. In this circumstance the cost of the review falls on the LGBCW (which ranges from £8,000 to £25,000 per review – see Option 3 below) as there is no power to charge the principal council concerned.

8.53 The Assembly Government considers that charters should continue to develop on a voluntary basis between principal councils with their community councils. There is, however, no power currently available to the Assembly Government to require reluctant councils to come together, address the issues and agree a charter for the benefit of their areas.

8.54 The Assembly Government believes that the proposed national accreditation scheme is needed to provide assurance to principal councils and electors as to the capability of community councils both in the community planning context and the delegation of services.

8.55 Not extending the power of well-being to community councils would inhibit the ability of community councils to respond to the Assembly Government's aim of strengthening the role of community councils, including enabling them to deliver a wider range of services and actions locally. Another constraint is the existing legislation which prevents the Assembly Government from providing direct grant funding to community councils for any purpose.

Option 2 – Minimal changes

8.56 There is only limited scope to use existing powers available to Welsh Ministers, guidance or the dissemination of good practice to address the issues identified for action in this Part of the proposed Measure.

8.57 The procedures for dissolving and establishing a community council are set down in legislation (the 1972 Act), as are the thresholds for convening community meetings and staging community polls. The policy aims (more difficult to abolish community councils; easier to establish them) can only be achieved by amending the existing primary legislation.

8.58 The same applies with several of the other policy aims covered by this Part. The legislative gap concerning community reviews and the LGBCW cannot be addressed other than by primary legislation. The Assembly Government encourages community councils to increase the effectiveness of their representational role and their ability to work in partnership with other bodies. This aspiration is constrained by the lack of clarity about the extent of community councils' powers and their not being able to access direct grant funding for specific purposes from the Assembly Government.

8.59 Community councils could be guided as to advertising vacancies to be filled by co-option and to engage with young people in their area, but there would be no obligation on them to follow such guidance and guidance by itself

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would be unlikely to bring about substantial change in the short to medium term.

8.60 The Assembly Government believes that charters should be developed, in the first instance, on a voluntary basis. The Welsh Ministers wish to have a reserve power to require the adoption of charters in the kind of circumstances described above in paragraph 8.53 but are hopeful (on the basis of evidence of collaboration so far) that exercise of the power will not be necessary.

8.61 Welsh Ministers do not envisage that the proposed national accreditation scheme would be mandatory but believe a reserve power is needed to allow them to give the scheme statutory backing should it be found that this would be beneficial.

Option 3 – Introduce an Assembly Measure

8.62 The proposed Measure will enable Welsh Ministers to achieve their policy objectives with regard to community councils.

8.63 The combined effect of the provisions in this Part of the proposed Measure will be to develop and strengthen the role of community councils in Wales, including enabling them to deliver a wider range of services and actions locally as well as to increase the effectiveness of their representational role and their ability to work in partnership with other bodies.

Costs and benefits

8.64 The changes to the rules for community meetings, community polls and the dissolution and establishment of community councils are all designed to ensure that the expression of local views is as representative as possible. The proposed changes amend the various thresholds needed to trigger certain follow-up action. The processes for dissolving and establishing community councils are in place already, as are the procedures for community meetings and polls, and these will remain essentially the same. There will be no new or additional costs arising from the changes.

8.65 Lowering thresholds for establishing community councils may encourage more campaigns for their establishment in those areas where they do not exist, but the cost of establishing and maintaining a community council would be a key issue for local people to consider, since the cost would fall to them by way of the local precept. Raising the threshold for dissolving a community council has no cost implications.

8.66 The changes to rules for community meetings and triggering community polls are likely to make such meetings and polls less likely, but these are such comparatively rare events that any cost savings (the hire of a venue, the cost of notices) are negligible. The duty placed on the principal council to respond to a community poll has no necessary costs; the duty extends, in the first

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instance, no further than requiring a response and then only if the principal council is responsible for the issue concerned.

8.67 The provisions requiring the advertising of vacancies to be filled by co-option will entail potential additional costs to community councils as they will be required to give public notice of vacancies and to invite expressions of interest. The cost would be about £5 per notice.

8.68 The provisions about community reviews and the LGBCW will involve no additional costs if a principal council has been carrying out its existing duty and undertaken the community review at regular intervals. In this circumstance, the cost is already being met by the council (and provision is made for this in the local government revenue settlement provided by the Assembly Government). If a council has been avoiding its legal duty and has relied on the LGBCW to undertake the review, doing that in future would mean that the council will be faced with reimbursing the costs incurred by the LGBCW. The cost of a review ranges from about £8,000 to £25,000 depending on the size of authority, the number of communities and the complexity of issues presented. There would be an equivalent saving to the LGBCW since it could now be reimbursed for costs incurred.

8.69 There are no costs associated with the “reserve” powers in respect of charters and a national accreditation scheme. The administrative cost of developing charters currently is negligible as they generally develop as part of the regular interaction between a principal council and its community councils. It may well not prove necessary to exercise the “reserve” powers if councils continue the encouraging trends in working together and the Assembly Government and partners are successful in developing a voluntary accreditation scheme. If it is considered that either “reserve” power needs to be used, the costs would be assessed in light of the circumstances at the time.

8.70 No additional costs are envisaged from the provisions for the appointment of youth representatives, extending the power of well-being or enabling direct grant funding of community councils. These are enabling powers and there are no costs associated with the powers themselves. It will be for community councils themselves to weigh up whether there were any cost implications if they decide to appoint youth representatives or use the power of well-being. The Assembly Government would need to assess the cost implications if it were considering proposals for direct grant funding for specific purposes.

(e) *Members' payments and pensions (Councillor Allowances) (Part 8)*

Option 1 – Do Nothing

8.71 This option would mean leaving the existing structure for determining the remuneration of councillors as it is. The administrative cost of supporting the

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IRP with its current restricted remit is £30,000 per annum, funding which is provided by the Assembly Government (see Option 3 below).

8.72 Responsibility would continue to be fragmented between the IRP, the Welsh Ministers and councils themselves. The fragmentation inhibits the development of consistent and informed policy-making in relation to the range of issues for all the different types of authority affected. Responsibility for decisions is not always clear and the councils themselves are left to vote annually on their schemes of allowances, a situation the vast majority would prefer not to have responsibility for.

8.73 The current system of remuneration for councillors, covering allowances of various types, pensions and other payments, has not kept pace with the many developments in recent years in local government, especially in terms of the leadership, governance, scrutiny and regulatory duties incumbent upon a councillor.

8.74 The Assembly Government considers that the remuneration system needs to be kept under regular review to ensure that councillors receive appropriate recompense for the responsibilities they carry.

8.75 The Assembly Government considers that the IRP would be the appropriate body to take on these responsibilities. That view has also been expressed by local authorities, the WLGA and the IRP itself, but the existing legislation restricts what the IRP can do.

Option 2 – Minimal changes

8.76 An alternative option might involve enabling the IRP, via regulations made by the Welsh Ministers, to make recommendations to councils about certain allowances whilst giving the Welsh Ministers the responsibility for setting other allowances. Further, the Welsh Ministers could make regulations which make provision for a council to establish and maintain a panel which has functions specified in the regulations in relation to allowances and pensions. Such arrangements would exacerbate the fragmentation of responsibility for the remuneration system and further inhibit the ability to develop consistent and informed policy- and decision-making across the range of remuneration issues.

Option 3 – Introduce a Measure

8.77 Responsibility would be vested in a single body, the IRP, which is already in existence and has built up expertise and experience in the issues concerned. The IRP is independent of Welsh Ministers and local government, and extending its remit would enable decisions on remuneration to be taken in a detached and informed way. A single body would be able to consider all the issues consistently and, if they so wished, undertake a comprehensive review of the remuneration system across local government in Wales.

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8.78 It would also be appropriate for the IRP to have its responsibility extended to include setting allowances etc. for members of community councils, National Park authorities and fire and rescue authorities in Wales. Most of these organisations have expressed a desire to have the powers of the IRP extended to cover their areas.

Costs and benefits

8.79 The provisions in this Part of the proposed Measure would not in themselves lead to any increase in the remuneration paid to councillors. The remuneration of councillors currently accounts for about 0.5% of a principal council's budget. There is no reason why the proposed changes should alter that proportion. The proposed Measure introduces a new requirement on the IRP, which, in taking its decisions, will be required to take into account the financial implications of their decisions for the council in question. The changes also rationalise the process by which decisions are taken on remuneration and make it more transparent.

8.80 The IRP is already in existence so there will be no new set-up costs; the IRP's administrative costs may increase in line with its extended remit. Its current budget is £30,000 per annum (provided from the budget of the Social Justice and Local Government department of the Assembly Government). These may have to rise to about £50,000 per annum, to be provided from the same budget as at present. No other costs are foreseen as a result of the provisions in this part of the proposed Measure.

(f) Collaboration and Amalgamation

i. Collaboration (Chapter 1 of Part 9)

Option 1 – Do nothing

8.81 Doing nothing would leave the anomaly in the Local Government (Wales) Measure 2009 (the "2009 Measure") uncorrected.

8.82 It would not, however, yield any saving of costs. The only direct costs here are those associated with producing and publishing guidance, and they are not altered by the statutory status and coverage of that guidance. The Welsh Assembly Government has already consulted on draft guidance, including a currently non-statutory chapter on collaboration, and will publish it shortly.

Option 2 – Minimal changes

8.83 This option is not relevant. The Welsh Assembly Government wishes to proceed in this area by means of guidance, but is currently precluded from doing so effectively under existing powers. Correcting that is the purpose of this section.

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Option 3 – Introduce an Assembly Measure

8.84 The proposed Measure will correct the anomaly in the 2009 Measure and allow Ministers to issue comprehensive statutory guidance on all aspects of authorities' powers and duties under that Measure.

Costs and benefits

8.85 This provision has no cost implications. The Welsh Assembly Government is committed to issuing guidance on the 2009 Measure, and incurring the related costs, regardless. The statutory status of part of that guidance does not change the costs in any way.

8.86 Nor would these provisions impose any meaningful costs on authorities. Statutory guidance cannot compel anyone to do anything: the duty is only to 'have regard' to it. Furthermore, the guidance would deal largely with authorities' powers in the 2009 Measure to collaborate where that would facilitate improvement. While authorities must consider from time to time whether to exercise that power, they have full discretion over when and how to do so.

8.87 Local authorities and other organisations often collaborate to secure cost or efficiency savings, for instance by sharing support services, realising scale economies or improving buying power. It is quite likely that they may use their powers in the 2009 Measure to this end: efficiency is specified as an element of improvement in ss2-4 of that Measure. In future, such collaborations would be informed and supported by statutory guidance. However, the extent of any savings would depend wholly on the detailed content and success of local collaborative projects, and not on the legal status of the guidance.

ii. Amalgamation (Chapter 2 of Part 9) - see the addendum to this Memorandum at Annex C

Table of potential costs arising from the proposed Measure

8.88 Many of the provisions in the proposed Measure are cost neutral. Where costs have been identified, they are compliance and administrative costs for local authorities. For principal councils the potential compliance costs are judged to be marginal. The Measure establishes duties which are often already established good practice amongst some (but not all) authorities. Where new costs arise they will be a mixture of one-off costs and ongoing administrative costs. The costs set out below are based on the cost of introducing each new requirement in full in those circumstances where there is currently no provision whatsoever. The costs will be less where some provision already exists and no cost will arise if the provision already achieves a satisfactory standard. It is anticipated that these additional demands will be proportionate to the size of the organisation and can be accommodated

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through more efficient ways of workings and should deliver efficiencies in the longer term through better governance and more effective scrutiny.

Table 2 – Potential costs arising from the proposed Measure

<i>Policy (relevant Part of Measure)</i>	<i>Implication</i>	<i>Potential Cost</i>	<i>Comment (if appropriate)</i>
Abolition of alternative arrangements (“fourth option”) (Available Governance arrangements)	If authority wants to change to elected mayor / cabinet model – a referendum is required	(If referendum required) £80,000 - £400,000 depending on size of authority. Cost to be absorbed by authority – as now	Affects two authorities only - which currently operate alternative arrangements. No cost involved if change to executive leader / cabinet model
Establish joint overview and scrutiny committee (overview and scrutiny)	Empowers local authorities – does not require them	£5,000 per joint committee (set up and first year running costs) Costs to be absorbed by authorities	Costs shared between authorities
Establish audit committee (overview and scrutiny)		£5,000 per committee (set up and first year running costs) Cost to be absorbed by authority	May exist already informally – in which case set-up cost will be lower
Taking account of views of public (overview and scrutiny)		£3,000 per authority Cost to be absorbed by authority	Set up costs
Scrutiny of wider public sector (overview and scrutiny)		Up to total of £30,000 annually across all public sector Costs to be absorbed by public	Total annual cost for all public sector bodies

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		bodies	
Survey of candidates and councillors (strengthening local democracy)		£35,000 for survey across Wales (£1,750 per authority) Costs to be absorbed by Social Justice and Local Government Dept of WAG.	To be held every four years.
Assessment of survey (strengthening local democracy)		£2,500 – Costs to be absorbed by Social Justice and Local Government Dept of WAG	
Training and development (strengthening local democracy)	Already undertaken in local authorities	Possible pump-priming - £5,000 per authority – to review existing provision Costs to be absorbed by authorities	Depends on existing level of provision – costs will be lower if good existing provision
Annual reports for councillors (strengthening local democracy)	Already undertaken in some local authorities	Set-up costs – £2,500 per authority Costs to be absorbed by authority	Where not already undertaken
Remote attendance (strengthening local democracy)	Appropriate equipment may already be in place for informal and officer meetings	£2,000 per authority (set-up) Costs to be absorbed by authority	Where facilities not already in place
Democratic Services (strengthening local democracy)		£12,500 annually per authority Costs to be absorbed by authority	

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Running costs of IRP (members' payments & pensions)	Increased remit of IRP	£50,000 annually Costs to be absorbed by Social Justice and Local Government Dept of WAG	Annual running costs of IRP currently £30,000
Advertising co-option vacancies (community councils)	Enabling power not a duty	From £5 per notice Cost to be absorbed by community council	
Cost of community review (community councils)		£8,000 - £25,000 depending on size of authority Cost to be absorbed by authority	Currently responsibility of local authority; some have avoided it and passed cost to LGBCW

9. Competition Assessment

9.1 A Competition Assessment is not needed for this measure; it concerns local government in Wales and has no effect on business, charities or the third sector.

10. Post implementation review

10.1 The Assembly Government's Social Justice and Local Government Department will liaise with local authorities and the representative bodies (including the Welsh Local Government Association and One Voice Wales) to monitor the effectiveness of the provisions in the Measure.

10.2 The proposed survey of councillors and candidates will deliver regular data which will enable policy-makers to assess the effectiveness of the initiatives designed to improve diversity in council chambers and the provisions regarding the Independent Remuneration Panel include provision to enable it to monitor the effects of its decisions.

10.3 The preparatory work undertaken to make regulations and to issue guidance under delegated powers in the Measure will provide invaluable feedback on the practical implementation of the Measure.

ANNEX A - DELEGATED POWERS MEMORANDUM

This memorandum sets out the provisions in the proposed Local Government (Wales) Measure that confer powers to make subordinate legislation on Welsh Ministers. It identifies the purpose of the power, the reason it takes the form it does and any Assembly procedures that apply to the exercise of the power.

In drawing up the proposed Measure, the aim has been to clearly signal in the Measure the substantive policy objectives. Provisions to confer delegated powers are drawn only when administrative procedures or requirements follow from what is on the face of the Measure and are required to give legal effect to the arrangements or operations described.

Where there is likely to be significant interest in the detail of the regulation or order we have proposed the affirmative resolution to allow members of the Assembly to debate the issues and approve the exercise of the delegated power.

Parts 1 and 2– Strengthening Local Democracy and Family Absence for Members of Local Authorities

Provisions within this part of the Measure are concerned with promoting and supporting membership of local authorities.

Section 1 provides delegated power to Welsh Ministers to prescribe the survey questions a local authority must ask when discharging the duty to conduct a survey of unsuccessful candidates and councillors.

Section 2 provides delegated power to Welsh Ministers to specify the format in which the local authorities must provide the information they have collated to the Welsh Ministers.

Section 9 (1) (i) provides delegated powers to Welsh Ministers to add to the list of prescribed democratic services functions

Section 10 provides delegated power to Welsh Ministers to require a local authority to incorporate provision on the management of staff into its standing orders and to make other modifications to their standing orders which relate to the management of staff.

Section 24 provides delegated power to Welsh Ministers to set out the determining detail of a period of family absence for a member of a local authority.

Section 25 provides delegated power to Welsh Ministers to set out the determining detail to calculate a period of maternity absence.

Section 26 provides delegated power to Welsh Ministers to prescribe the nature and periods of newborn absence.

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Section 27 provides delegated power to Welsh Ministers to set out the determining detail to calculate a period of adoption absence.

Section 28 provides delegated power to Welsh Ministers to prescribe the nature and periods of new adopters' absence.

Section 29 provides delegated power to Welsh Ministers to prescribe the nature and periods of parental absence.

Section 30 provides delegated powers to Welsh Ministers to prescribe the administrative procedures to be followed by local authorities and the scope of the absence including continuation of benefits arising from membership of the council or the executive available to members entitled to absence under this part.

Contribution of the delegated powers to the policy intention

The regulation making powers in sections 1 and 2 will enable Welsh Ministers to specify the format of the questions that must be asked by a local authority and how the collated data is sent to Welsh Ministers. The resulting information will provide Welsh Ministers and other stakeholders and policy makers over time with a snapshot of the characteristics of those standing for election and those who get elected. Public authorities are under a general duty to promote equality but there is no requirement to conduct equality monitoring exercises. The equality monitoring can be used to ascertain how the profile of candidates differs from the profile of councillors with a view to developing a reliable measure of the types of people prepared to consider entering local government and how this can be encouraged.

The Measure introduces the new post of the Head of Democratic Service and specifies the function of that office. The regulation making powers in sections 9 (1)(i) and 10 will enable Welsh Ministers to add functions to that list and to require local authorities to incorporate into their standing orders provisions relating to the management of staff assigned to the Head of Democratic Services.

The regulation making powers in sections 24 - 30 will enable Welsh Ministers to introduce a scheme of family absence for members of local authorities, the purpose of which is to address some of the barriers for councillors who have or may have family responsibilities.

Form of the Delegated Power

Regulations are considered suitable to frame the questions and the presentation of the data in sections 1 and 2. It will ensure consistency across local authorities in collecting this information. A non-exhaustive list of the type of information that the prescribed questions may capture regarding

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unsuccessful candidates and councillors is on the face of the Measure. The prescribed questions and the administrative aspects may require revisiting with the passing of time and in reaction to the efficacy and width of the provisions.

For sections 9 (1) (i) and section 10 regulations are considered suitable. The regulations will add to the list of prescribed functions of the head of democratic services and require a local authority to incorporate provision in their standing orders flowing from this new service. These regulations will amplify the details of this service and may change from time to time.

For sections 24 – 30 regulations are considered suitable as they will provide the detail for the administration of the scheme and entitlement to family absence and will allow future amendments if needed to ensure the scheme and entitlement continues to be compatible with prevailing rights under employment legislation.

Form of Assembly Procedure

Regulations made under sections 1, 2 and 10 are subject to the negative resolution procedure. This is considered appropriate as the technical and administrative details of the proposed regulations may require a number of updates in the future.

Regulations made under section 9 (1) (i) are subject to the affirmative resolution procedure. This is considered suitable as it can add to the functions of the Head of Democratic Services which are specified in the Measure itself and any additional functions should be subject to the same level of scrutiny as the Measure.

Regulations made under sections 24 – 30 are subject to the affirmative resolution procedure. This is considered suitable as the regulations will introduce a new scheme of leave of absence for members of local authorities. Assembly members should have the opportunity to approve the scheme and debate the issues.

Part 3 4 and 5 – Governance

Section 34 gives effect to Schedule 1, paragraph 13(2) in Part 3 of which provides a delegated power for the Welsh Ministers to ensure that local authorities cease to operate alternative arrangements and start to operate executive arrangements of a form specified by the Welsh Ministers.

Section 55 provides delegated powers for the Welsh Ministers to exclude any functions or to place limitations on the extent to which a function may be exercised by a non-executive member of the council.

Contribution of delegated power to policy intention

Section 34 gives effect to Schedule 1 which supplements section 34 and provides that alternative arrangements are no longer an option for local

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authorities. There is currently no reason to think that an authority will not comply with the provision but a default power is prudent. If the power is used, detailed provision will be required and so it more appropriate to make the necessary provision by order rather than on the face of the Measure.

Section 55 provides that an authority may make arrangements for individual members to exercise functions of the executive or other functions of the authority in relation to the electoral division for which the member is elected or in relation to the member's membership of a body other than the local authority. This will enable partnership working as non-executive members representing local authorities on outside bodies will be able to made decisions in relation to functions which are the responsibility of the authority's executive through having delegated power to exercise functions.

Form of delegated powers

The delegated power in Schedule 1 to which section 34 gives effect is an order making power. It is intended as a default power for the Welsh Ministers to ensure compliance with the intent of the Measure that the "alternative arrangements" model for local authorities ceases to be an option, by requiring by order that a local authority cease operating alternative arrangements and to start to operate executive arrangements.

The delegated power in section 55 is an order making power. This is considered appropriate as the provisions relate to the detail of arrangements enabled by the Measure.

Form of the Assembly Procedure

The order making power in section 34 is subject to the negative resolution procedure. This is considered appropriate given the procedural nature of the power. The order making power in section 55 is subject to the negative resolution procedure. This is considered appropriate given the procedural nature of the power and given that the equivalent power in relation to the functions not to be discharged by the executive (section 13 of the Local Government Act 2000) is also subject to a negative resolution procedure.

Part 6 Overview and Scrutiny

Provisions within this part relate to Overview and Scrutiny committees of local authorities.

Section 57 provides the Welsh Ministers with delegated powers to specify how two or more local authorities may appoint a joint overview and scrutiny committee and the arrangements under which the committee may exercise its functions.

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Section 60 provides the Welsh Ministers with delegated powers to designate a person for the purposes of section 21 of the Local Government Act 2000.

Section 62 provides the Welsh Ministers with delegated powers to exclude matters which may be referred to overview and scrutiny committees.

Section 74 provides the Welsh Ministers with delegated powers to specify how local authorities must carry out the appointment of chairs of scrutiny and overview committees.

Section 80 provides the Welsh Ministers with delegated powers to require local authorities to publish information which may be prescribed in regulations about the future intended activities of overview and scrutiny committees.

Contribution of delegated power to policy intention

Joint Scrutiny Committees

Section 57 is an enabling power for local authorities and the delegated power within it will enable the operational details of a joint committee to be made by Welsh Ministers who would wish to undertake consultation with local authorities. Not all local authorities will choose or need to have a joint committee. Those that do will be able to scrutinise the delivery of local authority services where that delivery covers more than one county area.

Amending the Local Government 2000 Act

The system of overview and scrutiny introduced by the Local Government Act 2000 (“the 2000 Act”) needs to be amended to reflect the intention of the Measure to allow for the scrutiny of all public services in an area. Section 60 inserts a new section (section 21G) into the 2000 Act. This allows the Welsh Ministers to designate a person for the purposes of section 21 of the Local Government Act relating to any matter which affects the county area. This will have the effect of those designated person or bodies being under an obligation to respond to requests to attend or supply information to scrutiny committees.

Section 62 amends section 21A of the Local Government Act 2000 which provides a delegated power for the Welsh Ministers to specify matters that can be excluded from consideration by overview and scrutiny committees.

Chair of Scrutiny Committees

The 2000 Act and other legislation is silent on the process for appointing chairs of scrutiny and there exist a number of different processes including all chairs being allocated to members of the same political grouping. The intent of the Measure is to improve the allocation of scrutiny chairs by requiring local authorities to have regard to political balance on allocation. Section 74 permits the Welsh Ministers to make provision to ensure a uniform appointment process.

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Forward Plans

The purpose of the delegated powers under section 80 is to give substance to the policy intention of requiring the publication of forward plans for scrutiny committees allowing the public and other sectors to be better informed, better able to plan their own contributions and to better monitor the scrutiny process.

Form of the Delegated Power

For Section 57 the delegated power is a regulation making power. It is considered suitable for regulations as they will contain all the operational and administrative details in connection with joint committees. The setting up of a joint committee requires the initiative to come from two or more local authorities and follows on from the intent of the Measure

Section 60 provides for an order making power in new section 21G (1) of the 2000 Act. It is considered suitable for an order making power as the provisions relate to designating persons or categories of person i.e. a list and an order is the appropriate method for doing this.

Section 62 contains an order-making power as it is not possible in advance to identify what matters may be appropriate to exclude. An order making power provides the flexibility to respond to circumstances as they arise.

Section 74 contains a regulation making power. It is considered suitable for regulations as the provisions relate to the administrative detail of the appointment scheme following from the intent of the Measure which may require periodic review.

Section 80 contains a regulation making power. It is considered suitable for regulations as the provisions relate to the administrative detail for the publication of forward plans flowing from the intent of the Measure which may require periodic review.

Form of the Assembly Procedure

The regulation making power in section 57 is subject to the negative resolution procedure. This is considered suitable as the provisions relate to the administrative details of the scheme which follows on from the intent of the Measure.

The order making power in section 60 is subject to the affirmative resolution procedure. This is considered suitable to allow the members of the National Assembly to debate and approve those persons and bodies which will be subject to scrutiny in a local government area.

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The order making power in section 62 is subject to the negative resolution procedure. This is considered suitable as the provision relates to the administrative detail needed to give effect to the intent of the Measure.

The regulation making power in section 74 is subject to the negative resolution procedure. This is considered suitable as the provision relates to details of an appointment scheme needed to give effect to the intent of the Measure.

The regulation making power in section 80 is subject to the negative resolution procedure. This is considered suitable as the provision relates to the administrative details needed to give effect to the intent of the Measure.

Part 7- Communities and Community Councils

Provisions within this section are concerned with community meetings, community polls and community councils.

Section 97 provides for the Welsh Ministers to, in effect, dis-apply the notice provisions contained within the section to community polls where the question is of a type specified in regulations by them.

Section 116 provides the Welsh Ministers with an order making power to amend various thresholds in relation to the existence of a community council or the grouping of a community with other communities.

Section 119 (5) (c) provides for Welsh Ministers to have delegated power to add to the information that must be contained in a public notice giving details of intended co-option by a community council.

Section 122 provides for Welsh Ministers to have delegated power to add to the information that must be contained in a public notice giving details of an intention by a community council to appoint a youth representative.

Section 124 provides for Welsh Ministers to have delegated power to provide that a youth representative is to be treated as a member of the council which appointed the representative, for the purposes specified in the regulations.

Section 130 provides the Welsh Ministers with an order-making power to amend, repeal, revoke or dis-apply any enactment which they think prevents or obstructs community councils from exercising their well-being power. This power may be exercised in relation to all or particular community councils, or particular descriptions of community councils, and for a particular period.

Section 133 provides for the Welsh Ministers to have an order making power setting out a model charter agreement between a principal council and a community council.

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Section 137 provides for Welsh Ministers to have delegated power to make a scheme for the accreditation of a community council.

Section 143 provides for Welsh Ministers to have delegated power to make modifications to the operation of any enactment in relation to specific community councils arising from such councils being accredited or otherwise.

Contribution of the delegated power to policy intention

Section 97 enables Welsh Ministers to exclude certain questions from the requirement on the returning officer to inform the relevant principal council of the poll and the results of the poll.

Section 116 inserts a new section into the Local Government Act 1972 enabling the Welsh Ministers to amend the various thresholds in relation to the existence of a community council or the grouping of a community with other communities.

Sections 119 (5) (c) and 122 relate to making co-option and the appointment of youth representatives more effective. These will enable Welsh Ministers to specify further information that they wish for the mandatory public notices to contain.

Section 124 enables Welsh Ministers, in the light of experience of community councils appointing youth representatives, to provide for youth representatives to be treated as members of the councils for certain purposes specified in regulations.

Section 130 enables Welsh Ministers to remove any legal barrier which would prevent community councils from being able to exercise their power to promote well-being.

Section 133 provides a power for Welsh Ministers to provide for a model charter scheme as a means for promoting good relations between a principal council and a community council.

Section 137 enables Welsh Ministers to provide for a quality accreditation scheme for community councils in Wales. To take account of future developments in local government and any future legislation which may have to be accommodated by community councils, section 143 allows for modification to be made by Welsh Ministers to any future Measures or Acts. It allows any future obligation on community councils judged to be unnecessary by virtue of the community council having accreditation to be set aside or to be made easier to comply with.

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Form of the delegated power

For Section 97 the delegated power is a regulation making power. This is considered suitable as the provisions relate to notice requirements to polls and these may require amendment in future.

For section 116 the delegated power is an order making power. No order can be made before consultation with principal councils or their representative body and community councils or their representative body. This is considered suitable for an order making power as it is the vehicle for amending the thresholds which appear on the face of the Local Government Act 1972 as amended by the Measure.

For sections 119 (5) (c), 122, and 124 the delegated power is a regulation making power. This is appropriate as the regulations will be susceptible to change to be reactive to the practical needs and effects of the appointments.

For section 130 the delegated power is an order making power. This is considered appropriate as the most suitable method to use as the provision relates to the Welsh Ministers' power to amend, repeal, revoke or disapply any enactment.

For section 133 the delegated power is an order making power. This is appropriate as the section relates to setting out the provisions of a model charter agreement. No order can be made under this section without consulting such bodies representative of principals and community councils, and other persons as the Welsh Ministers consider appropriate.

For sections 137 and 143 the delegated power is a regulation making power. This is considered suitable as the provisions relate to the details of an accreditation scheme which may be liable to change.

Form of the Assembly procedure

Sections 97, 119 (5) (c), 122, 124, 133 and 137 are subject to the negative resolution procedure. This is considered appropriate; the provisions all relate to administrative and technical details which may require updating in future.

Sections 116 and 143 are subject to the affirmative procedure. This is considered appropriate; it will allow the Assembly to debate and approve the changes.

Section 130 is subject to the super affirmative procedure. This is considered appropriate as the analogous power of the Secretary of State can only be exercised by the equivalent procedure in the Houses of Parliament.

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Part 8 – Members’ payments and pensions (Councillors Allowances)

Provisions within this part relate to the Independent Remuneration Panel for Wales and the operation of the system for determining remuneration for councillors in Wales.

Section 161 provides delegated powers for Welsh Ministers to amend the provisions relating to the membership of the Independent Remuneration Panel and the provisions relating to the functions of the Panel.

Contribution of the delegated power to policy intention

The reform of the system of councillors’ allowances is the intention behind extending the remit of the Independent Remuneration Panel. The Local Authorities (Allowances for Members) (Wales) Regulations 2007 governs the functions of the Panel at present. This has the effect of splitting the responsibility for deciding the types and amounts of allowances between the Panel and Welsh Ministers. It also limits what the Panel can do. The Assembly Government wishes to establish a remuneration system which adequately rewards all councillors for the responsibility they carry in serving their communities and in contributing to the governance duties of their councils and considers that the Panel is the appropriate body to carry out that responsibility. The Measure sets out the terms on which the Panel is appointed in Schedule 2. The functions of the Panel are described in sections 145 and 146.

Section 161 provides for amendments to be made to provisions which relate to the appointment, tenure and proceedings of the Panel as well as the functions of the Panel under Part 8 of the Measure. The need for amendment may arise due to future developments in local government and any future legislation which may impact on the appointment, tenure and proceedings of the Panel as well as its functions.

Form of the Delegated Power

For section 161, the delegated power is an order making power. This is considered the most suitable mechanism as the power relates to operational matters of how the Panel is appointed, or its functions.

Form of Assembly Procedure

The order making power for section 161 is subject to the affirmative resolution procedure. This is considered appropriate as it would allow the Assembly an opportunity to debate and approve any proposed changes to how the Panel is appointed Panel or to its functions.

Part 9 Collaboration and amalgamation – see the addendum to this Memorandum

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Part 9A General

Section 170 provides the Welsh Ministers with powers to make supplementary, incidental consequential, transitional, transitory and saving provisions in connection with this Measure.

Section 171 provides the Welsh Ministers with powers to specify the coming into force date of any provisions in the Measure.

Contribution of delegated power to policy intention

To take account of future developments in local government and any future legislation which may have to be accommodated by local authorities, section 170 allows for supplementary, consequential, incidental, transitional, transitory and saving provision to be made by Welsh Ministers to the respective parts of the Measure. It allows the necessary updating of technical details in the provisions which arise as a result of the passing of other Measures or Acts to be undertaken. This power is needed to enable provision to be made which gives full effect to such an order in secondary legislation rather than on the face of the Measure as it is likely to be very detailed

Form of Delegated Power

The delegated power in section 170 is an order making power. This is considered appropriate as the provision relates to technical detail of amendments to legislation

The delegated power in section 171 is an order-making power.

Form of the Assembly Procedure

The order making power in section 170 is subject to the negative resolution procedure unless it contains modifications on an enactment, in which case it is subject to the affirmative resolution procedure. This is appropriate as it would have the potential to amend enactments and will give an opportunity for members of the Assembly to debate and approve the amendment.

The order making power in section 171 is not subject to any Assembly procedure which is the usual practice for commencement provisions.



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

LOCAL GOVERNMENT (WALES) MEASURE

Annex B to Explanatory Memorandum
incorporating the

Explanatory Notes
(as revised after Stage 2)

March 2011

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Explanatory Notes

Introduction

1. These Explanatory Notes relate to the proposed Local Government (Wales) Measure as introduced in to the National Assembly for Wales on 12 July 2010 and revised after Stage 2 proceedings. Notes relating to the new sections inserted at Stage 2 in Chapter 2 of Part 9 (Amalgamation) are included at Annex C to this document.

2. They have been prepared by the Welsh Assembly Government's Department for Social Justice and Local Government in order to assist the reader of the proposed Measure and to help inform debate on it. They do not form part of the draft Measure and have not been endorsed by the National Assembly for Wales.

3. The Explanatory Notes should be read in conjunction with the proposed Measure. They are not, and are not meant to be, a comprehensive description of the Measure. So where a section or part of a section does not seem to require any explanation or comment, none is given.

4. There are 10 parts to the explanatory notes:

Parts 1-2 – Strengthening local democracy; Family absence for members of local authorities

Parts 3-5 - Governance arrangements, changes to executive arrangements and discharge of functions by committees and councillors;

Part 6 – Overview and Scrutiny;

Part 7 - Community councils

Part 8 – Members: Payment and Pensions;

Part 9 – Collaboration and Amalgamation

Part 9A - General

5. The powers to make such a Measure are contained in Matters 12.1 and 12.5 to 12.17 of Schedule 5 to the Government of Wales Act 2006.

6. The following terms are used in these Notes:

Principal council – to refer to a county or county borough council in Wales

Community council – to refer to a community or town council in Wales

The 1972 Act – The Local Government Act 1972

The 2000 Act – The Local Government Act 2000

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Commentary on Sections

Part 1 – Strengthening local democracy

Chapter 1 – Promoting and supporting membership of local authorities

Section 1- Duty to conduct a survey

Requires each principal council in Wales to conduct a survey of unsuccessful candidates who have stood for election as councillors at ordinary elections to principal and community councils in Wales (normally held concurrently every four years), and also of those persons who have been successfully elected as councillors at these elections.

The survey is intended to cover various issues and help inform policy makers about the success or otherwise of initiatives to encourage a wider range of persons to stand for election to councils. The survey questions, the survey form and the manner of collating the information will be prescribed in regulations to be made by the Welsh Ministers.

The local authority undertaking the survey must ensure that councillors and candidates are able to provide the information anonymously; councillors and candidates are under no obligation to respond to the survey.

Section 2 – Completion of a survey and publication of information

Requires local authorities to complete the survey and to have provided the collated information to the Welsh Ministers within six months of the date of the elections to which the survey relates. The local authorities may publish the information they have collated.

The Welsh Ministers must collate the information received and publish it within twelve months of the date of the elections to which the survey relates. The Welsh Ministers may share the information as received from the local authorities (i.e. before any further collation by the Welsh Ministers) with any representative body of local government in Wales.

In publishing or sharing any survey information, the Welsh Ministers and a local authority must ensure that no survey contributors are named or could be identified in any way.

Section 3 – Guidance about surveys

Empowers the Welsh Ministers to issue guidance about surveys and requires local authorities to have regard to that guidance.

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Section 4 – Remote attendance at meetings

Has the effect of expanding a reference in any enactment (including contained in the Measure and in subordinate legislation) to a meeting of a local authority to include members of a local authority who are in remote attendance providing all the conditions, which are set out in subsection (3) are met.

The standing orders of a local authority must ensure that, in effect, the number of members in actual attendance (i.e. who is attending the meeting at the place where the meeting is held) are greater in number than those in remote attendance. In addition, the local authority may make other standing orders about remote attendance.

The change is intended to introduce more flexibility for meeting arrangements to accommodate the needs of councillors from more diverse backgrounds.

Local authorities must have regard to guidance which the Welsh Ministers may issue on remote attendance.

Section 5 – Annual reports by members of a local authority

Requires a local authority to make arrangements to publish annual reports by its members and by members of its executive upon their activities pursuant to either or both roles in the year to which the report relates.

The arrangements made by the authority may include conditions as to the content of a report that must be satisfied by the person making it and the authority must publicise those arrangements. Local authorities must have regard to guidance which the Welsh Ministers may issue on annual reports.

Section 6 – Timing of council meetings

Empowers the Welsh Ministers to issue guidance about the timing of meetings of a local authority (including meetings of any committee or sub-committee) with a view to introducing more flexible arrangements to accommodate councillors from more diverse backgrounds. It requires local authorities to have regard to that guidance.

Section 7 – Training and development of members of a local authority

Places a duty on principal councils to secure the provision of reasonable training and development opportunities for their members. Each principal council must make available to its members an annual review of their training and development needs, including an opportunity for an interview with a person considered suitably qualified to advise upon the same. Local authorities must have regard to guidance which the Welsh Ministers may issue on these matters.

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Chapter 2 – Local authority democratic services

Section 8 – Head of democratic services

Requires each principal council to designate one of its officers to be the Head of Democratic Services (“HDS”), but its head of paid service, monitoring officer or chief finance officer cannot be designated in this respect.

The HDS may arrange for the discharge of democratic services functions by staff and the HDS must be provided with such staff, accommodation and other resources as are, in the opinion of the HDS, sufficient to allow their functions to be discharged

The purpose of the post is to ensure that councillors outside the executive are provided with sufficient support to enable them to carry out their duties effectively, with the necessary administrative and research provision.

Section 9 – Democratic services functions

Sets out the functions that the Head of Democratic Services is charged with, which include:-

- a) providing support and advice to the authority in relation to its meetings;
- b) providing support and advice to committees (including joint and sub-committees, but excluding overview and scrutiny committee and the democratic services committee.);

“Advice” in (a) and (b) above does not include advice about whether or how the authority’s function should be, or should have been, exercised.

- c) promoting the role of the authority’s overview and scrutiny committee/s;
- d) providing support and advice to the authority’s overview and scrutiny committee/s and the members of the same, and similarly to the authority’s democratic services committee;
- e) providing support and advice in relation to the functions of the authority’s overview and scrutiny committee/s to the members of authority, members of the executive and officers of the authority.;
- f) providing support and advice to members of the authority in carrying out their role as a member of the authority. This does not extend to support and advice to a member in discharging his / her functions as a member of the executive (save for those functions captured by (e) above), and/or advice about how the authority’ functions should be, or should have been, exercised in relation to a matter under consideration/to be considered at a meeting or committee of the authority (including joint or sub-committee); and

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g) making reports and recommendation in respect of staffing issues in relation to the discharge of democratic services functions.

Other functions of the HDS may be prescribed in regulation by the Welsh Ministers; such subordinate legislation to follow the affirmative procedure.

Nothing in this section affects the duty of the authority's head of paid service.

Section 10 – Duty to adopt standing orders about management of staff

Enables the Welsh Ministers to make regulations requiring local authorities to incorporate in standing orders prescribed provisions relating to the management of staff provided to the HDS and other modifications of the authority's standing orders relating to the management of staff. The regulations made by the Welsh Ministers could not cover the appointment, dismissal or disciplining of the staff referred to.

Section 11 – Local authorities to appoint democratic services committees

Requires local authorities to appoint a committee of the council to designate the Head of Democratic Services, oversee the work of Democratic Services, ensure that the work is adequately resourced and report to the full council accordingly.

Section 12 - Membership

Sets out the membership of the democratic services committee. Membership of the committee is limited to councillors (no co-opted members), only one member of the council's executive may be a member, and the leader of the council executive may not be a committee member. The chair may not be a member of the executive group (save in authorities where all political groups were represented on the authority's executive in which case the chair may not be a member of the executive). The committee membership must reflect the political balance on the full council in line with section 15 of the Local Government and Housing Act 1989.

Section 13 – Sub-committees

Allows the democratic services committee to establish sub-committees, which may discharge its functions.

Section 14 – Proceedings etc

Sets out provisions governing the proceedings of democratic services committees, including: that the chair should be appointed by the full council; the chairs of any sub-committees should be appointed by the democratic

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services committee; that there are no restrictions on voting for members of the committee or sub-committees; that the committee (and a sub-committee) may call witnesses (who will be under a duty to attend if they are members or officers of the authority, but a witness of any description will not be obliged to answer any question which they would be entitled to refuse to answer in, or in connection with, court proceedings in England and Wales); and that committee (and sub-committee) meetings, papers and minutes will be subject to the requirements regarding access, publication and inspection as are set out in Part VA of the 1972 Act.

Section 15 – Frequency of meetings

Requires that the democratic services committee must meet at least once a calendar year, but may meet more frequently than that. In addition, the democratic services committee must meet if the local authority resolves that it should, or at least one-third of its members requisition a meeting in the manner set out.

Section 16 – Discharging functions

Limits the exercise of functions by the democratic services committee to those set out in this chapter of the measure; the committee (and any sub-committees) must have regard to any guidance which the Welsh Ministers may issue on the discharge of functions.

Section 17 – Termination of membership on ceasing to be a member of authority

A councillor's membership of a democratic services committee (or sub-committee) will cease if that councillor ceases to be a member of the council, but will not be affected if the councillor's membership of the council ceased because his/her term of office as a councillor has expired and he/she is re-elected at the next elections (this is subject to the standing orders of the authority or the democratic services sub/committee).

Section 18 – Reports and recommendations by head of democratic services

Requires the head of democratic services to send a copy of any report or recommendations he or she has prepared on the staffing issues in relation to the discharge of democratic services functions to all members of the democratic services committee. A meeting of the committee must be held to consider such reports or recommendations within three months of their being sent to committee members.

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Section 19 – Reports and recommendations by democratic services committees

If a democratic services committee prepares any report or makes recommendations about the provision of staff, accommodation and other resources provided by the local authority for the discharge of democratic service functions, a copy must be sent to each member of the authority who is not a member of the committee, as soon as practicable. A meeting of the full council must be held to consider such reports or recommendations within three months of their being sent to authority members.

Section 20 – Local authority functions not to be delegated

This section ensures that the full council is not permitted to delegate the duties and functions bestowed on it by this Measure in respect of: designating the head of democratic services; providing him / her with staff, accommodation and other resources; appointment of a democratic services committee, its members (in compliance with the provisions) and its chair; resolving that a democratic services committee should meet; and considering a report or recommendations prepared by the democratic services committee

Section 21 – Head of democratic services to be a politically restricted post

Amends section 2(1) of the Local Government and Housing Act 1989 to include the head of democratic services as a politically restricted post. The effect is that the post-holder is prevented from having any active political role either in or outside the workplace. Politically restricted employees will automatically be disqualified from standing for or holding elected office and these restrictions must be incorporated as terms in the employee's contract of employment under section 3 of the Local Government (Political Restrictions) Regulations 1990.

Section 22 – Meaning of “member”

Provides that in this Part of the Measure, a reference to an elected member includes a member of a local authority executive but does not include an elected mayor.

Part 2 - Family Absence for members of local authorities

The provisions in this Part of the Measure make available to members of principal councils (including members of the executive) entitlement to maternity, newborn, adoption and parental absence (“family absence”) to support councillors and those wanting to stand for election who may have family responsibilities.

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Section 23 – Right to family absence

Establishes an entitlement to councillors of a principal council to family absence and sets out the different types of family absence.

Section 24 – Maternity absence

Entitles a councillor to a period of up to 26 weeks maternity absence if the councillor has given birth to a child and satisfies prescribed conditions. The section provides for the details relating to maternity absence to be set out in regulations, thereby allowing the Welsh Ministers to respond to and reflect any changes made in the wider employment regime.

Section 25 – Newborn absence

Entitles a councillor to up to two weeks absence for a councillor who satisfies conditions in relation to “newborn absence”. The absence must be taken within a period of 56 days beginning with the birth of a child with which the councillor has a relationship as set down in prescribed conditions. The section provides for the details relating to newborn absence to be set out in regulations, thereby allowing the Welsh Ministers to respond to and reflect any changes made in the wider employment regime.

Section 26 – Adopter’s absence

This section entitles a councillor who satisfies prescribed conditions to a period of absence where that councillor (whether individually or jointly with another person) adopts a child. The period of absence is to be up to two weeks. The section provides for the details relating to adopter’s absence to be set out in regulations, thereby allowing the Welsh Ministers to respond to and reflect any changes made in the wider employment regime.

Section 27 – New adoption absence

This section entitles a councillor to a period of absence where that councillor is the partner of a person who is to adopt a child. New adoption absence is available to a person for the purpose of caring for a child who is adopted or supporting the person who is to adopt the child. Regulations are to set out the conditions that a person must satisfy about his or her relationship with a person who is to adopt a child and his or her relationship with the child that is to be placed for adoption in order to qualify for new adoption absence. The period of absence is to be up to two weeks. The section provides for the details relating to new adoption absence to be set out in regulations, thereby

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allowing the Welsh Ministers to respond to and reflect any changes made in the wider employment regime.

Section 28 – Parental absence

Entitles a councillor to a period of absence of up to three months if the councillor has or expects to have responsibilities for a child (“parental absence”). The section provides for the Welsh Ministers to make regulations setting out the details of parental absence.

Section 29 – Regulations: supplemental

Enables the Welsh Ministers to make regulations setting out certain administrative details and requirements for local authorities and members of local authorities in connection with the new entitlements introduced by the provisions in this Part.

Section 30 – Guidance

Empowers the Welsh Ministers to issue guidance on family absence entitlements, to which principal councils must have regard.

Section 31 – Amendment of the Local Government Act 1972

Amends section 85 of the 1972 Act so that a period of “family absence” (as provided for by this Measure) does not, in itself, leave a councillor liable to being required to vacate office by virtue of not having attended council meetings for six months.

The existing section 85 of the 1972 Act states that if a councillor fails to attend any meetings of his / her authority during a period of six consecutive months without a reason approved by the authority, he or she ceases to hold office. The new subsection (3C), inserted in section 85 of the 1972 Act, ensures that family absence will not be taken into account for calculating a six month period of absence. The new section (3D) provides that calculating the six month period of absence may take into account the periods immediately before and immediately after the period of family absence.

31A Amendment of Local Government Act 2000

Amends section 11 of the 1972 Act to allow the statutory limit on the size of a local authority executive to be increased to allow the appointment of a temporary replacement for an executive member who is taking family absence as provided for in Part 2 of this measure. This is an enabling provision so there is no obligation to appoint an additional member.

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Section 32 – Interpretation of Part 2

Provides interpretation of certain terms used in this Part of the Measure.

Part 3 – Available Governance Arrangements

Section 33 - Abolition of mayor and council manager executive

Amends the 2000 Act to remove the elected mayor and council manager option from the executive arrangements available in Wales.

Section 34 – Authorities to replace alternative arrangements with executive arrangements

Requires a local authority in Wales which operates alternative arrangements (also referred to as “the Fourth Option”) to cease doing so and start to operate a permitted form of executive arrangements instead. The procedure for the transition from alternative to executive arrangements is set out in Schedule 1 to this Measure to which this section gives effect. In complying with this section and the Schedule, any local authority needing to make the change will have to comply with any directions issued by the Welsh Ministers. Paragraph 13(2) of Part 2 of the Schedule allows the Welsh Ministers by order to provide for the local authority to cease to operate alternative arrangements and start operating executive arrangements in accordance with section 34.

Section 35 - Consequential provision etc

Makes consequential amendments to provisions in the 2000 Act to reflect the removal of the existing alternative arrangements in Wales. The existing section 29(3) of the 2000 Act which allows local authorities in Wales to change from executive arrangements to alternative arrangements is no longer required; the other changes remove references to procedures in relation to operating alternative arrangements which will be obsolete with the removal of that option.

Subsections (5) – (8) permit a local authority currently operating alternative arrangements to continue to do so after the provisions in the Measure come into force. The effect is to allow a transition period for an authority operating alternative arrangements; they link with the requirement in paragraph 2(4) of Schedule 1 to this Measure which requires a local authority to have changed from alternative to executive arrangements within six months of section 34 in this Measure coming into force.

Schedule 1 – Change from alternative to executive arrangements

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Section 34 gives effect to this Schedule which sets out in detail the procedure which a local authority which currently operates alternative arrangements will have to follow when it makes the change to executive arrangements as required in section 34 of this Measure. Paragraph 13(2) of Part 3 of the Schedule gives the Welsh Ministers a default power to require a local authority by order to cease operating alternative arrangements and to start to operate a specified form of executive arrangements where an authority fails to make the change in accordance with section 34.

Part 4 – Changes to Executive Arrangements

Chapter 1 – Adopting a different form of executive

Section 36 – Power to adopt a different form of executive

Makes new provision to simplify the procedure for a local authority already operating one form of permitted executive arrangements to change to another form of executive arrangements, but enable them to make such a change only once between ordinary elections. The new procedures mean that an authority will no longer need to formally consult local electors or prepare “fall-back” proposals.

Section 37 – Proposals for adopting a different form of executive

Section 38 – Contents of proposals

Section 39 - Referendums

Section 40 – Timetable for implementation of proposals: no referendum

Section 41 – Timetable for implementation of proposals: referendum

Section 42 – Publicity for proposals

Section 43 - Implementing proposals

Section 44 – Action if referendum rejects a change

These sections make provision for and set out the procedures required of a local authority wanting to change from one form of executive arrangements to another and the contents of the proposals for the change which it must prepare and send to the Welsh Ministers (see section 37).

If the proposed change is to a form of executive arrangements which involves an elected mayor, the proposals must include provision for a referendum of local government electors in the authority concerned to approve the proposed change, but a referendum must not be held if the change is to any other form of executive arrangements (section 39). A requirement to hold a referendum

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is subject to the constraint in section 45 of the 2000 Act that a referendum on executive arrangements may not be held more than once in any five years. The timetables for implementing an agreed change are set out in sections 40 and 41. If an authority approves a change which does not require approval in a referendum it must publicise the proposed change as set out in section 42.

If a referendum must be held and the change is rejected by voters, the authority may not implement the change (section 43). It must follow the procedure in section 44 and continue to operate its existing executive arrangements.

Section 45 – Changes of executive arrangements requiring approval in a referendum

This section provides that a change of executive arrangements requires approval in a referendum if either the existing model or the proposed model is a mayor and cabinet executive.

Section 46 – Interpretation

This section defines certain terms used in this Chapter of the Measure.

Chapter 2 – Other variations of existing executive arrangements

Chapter 3 - Supplementary

Section 47 – Power to vary the existing form of executive

Section 48 – Proposals for varying the form of executive

Section 49 – Contents of proposals

Section 50 – Implementing proposals

Section 51 – Powers under which executive arrangements may be varied

These sections introduce new provision to enable a local authority which is operating executive arrangements to vary the arrangements (so that these differ from the existing arrangements) but still operate with the same model.

Section 52 – Forms of executive

Clarifies that for the purposes of this Part there are two forms of executive in Wales.

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Section 53 – Consequential provision etc

This section contains consequential amendments of sections of the 2000 Act relating to this Part of the Measure. Section 30 of the 2000 Act sets out the existing procedures for changing executive arrangements, which are superseded by the provisions in this Part about changing executive arrangements and varying them. The insertion of the new section 33ZA serves to direct readers to the provisions for changing governance arrangements in Wales to this part of the Measure. The amendment to section 45 of the 2000 Act acknowledges the definition of referendum to accommodate the provisions inserted by this Measure.

Part 5 - Local Authority functions: Discharge by Committees and Councillors

Section 54 – Area covered and membership

Section 55 – Exercise of functions by councillors

Section 56 – Consequential provision

These sections enable local authorities in Wales to have more flexibility in the way that functions of the executive of that authority may be discharged. Section 15 of the 2000 Act makes provision for the discharge of functions for a leader and cabinet executive in Wales. Section 15(2) of the 2000 Act provides that any functions which are the responsibility of the executive may be discharged by (a) the executive, (b) any member of the executive, (c) any committee of the executive and (d) any officers of the authority.

Section 54 of the Measure amends the existing provision in section 18 of the 2000 Act to give authorities more flexibility about the membership of an area committee which discharges specified functions in its part of the area of the authority. Currently, an area committee satisfies the conditions if the members of the committee who are councillors are elected for electoral divisions which fall wholly or partly within that part. The existing area conditions are that the area covered by the area committee does not exceed two-fifths of the total area of the authority and the population of that part likewise.

Section 55 makes new provision to enable a member of a local authority who represents the executive or the authority on an outside body to be able to make decisions in relation to functions which are the responsibility of the authority's executive, provided that the executive or the authority has formally discharged those functions to the member. There is no power to provide for this at present.

Section 56 makes consequential changes to the 1972 Act and the 2000 Act. The amendments to the 1972 Act provide for members exercising functions to make written records of decisions and to provide them to the authority. The changes to the 2000 Act allow for the discharge of executive functions in

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accordance with the new provisions regarding members and for those members to be called before an overview and scrutiny committee to answer questions about those functions

Part 6– Overview and Scrutiny

Chapter 1 – Overview and Scrutiny Committees

Section 57 – Joint overview and scrutiny committees

This section empowers the Welsh Ministers to provide by regulation that two or more principal councils may set up one or more joint overview and scrutiny committees (JOSC), and arrange for the committee or committees to make reports or recommendations to any of the principal councils setting up the committee, and to the executives of those councils.

The JOSCs may make reports and recommendations about any matter, but not about crime and disorder matters, about which a crime and disorder committee could make a report or recommendations by virtue of section 19(1)(b) or (3)(a) of the Police and Justice Act 2006.

The regulations may make provision for JOSCs to have equivalent powers to non-joint overview and scrutiny committees, as set out in existing legislation and as provided for in this Measure.

Section 58 – Scrutinising designated persons

Section 59 – Notifying designated persons of report or recommendations

These sections strengthen the position of overview and scrutiny committees (and by extension, JOSCs) by building on the existing power to make reports and recommendations in section 21(2)(e) of the 2000 Act, so that committees are required to scrutinise and report on matters which relate to a “designated person” (see section 60). The other main changes are new powers for a committee: to require information to be given (a requirement that must be complied with); to send a copy of a report or recommendations to a designated person; and to request such a person to have regard to the report or recommendations.

Section 60 – Designated persons

Allows the Welsh Ministers to designate by order those persons or categories of persons (a “designated person”) whose responsibilities or functions may be scrutinised by an overview and scrutiny committee of a local authority. The conditions in subsections (3) to (5) have the effect of limiting the power of

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designation to persons providing the public with services, goods or facilities, even if not carried out directly by those persons.

Section 61 – Taking into account the views of the public

Introduces provision to require local authorities to make arrangements to enable the public to express their views in relation to any matter being considered by the committee.

Section 62 – Reference of matters to overview and scrutiny committee etc

Amends section 21A of the 2000 Act to enable a councillor of a principal council in Wales to refer a matter to an overview and scrutiny committee which relates to the discharge of any of the functions of the council or which affects all or part of the electoral area which the councillor represents. The committee must consider the matter and report back to the member.

Section 63 – Duty to respond to overview and scrutiny committee

Applies in relation to Wales the provision in section 21 B of the 2000 Act setting out the steps an overview and scrutiny committee must take to inform the authority or executive of a report it has produced and the steps the authority or executive must take to respond

Section 64 – Provision consequential on sections 62 and 63

Extends the definition of information which is exempt from publication in reports etc of overview and scrutiny committee to include that exempted under section 186 of the National Health Service Act 2006.

Section 65 – Provision in standing orders about appointment of persons to chair committees

Section 66 – When appointments to be made by committee

Section 67 – When appointments to be made by non-executive group

Section 68 – How appointments to be made in other cases

These sections require a local authority to make provision in its standing orders for the appointment of chairs for the authority's overview and scrutiny committees (the "appointment procedure"). The sections also set out who will appoint the chairs, a decision which depends on the number of political groups represented on that authority and the composition of the authority's executive. The committees themselves will appoint their chairs in the circumstances described in section 66; the non-executive political group will

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do so if the circumstances are those in section 67. Section 68 introduces the arrangements to apply in other cases.

Section 69 – Appointments to be made by political groups

Section 70 – Failure to make appointments in accordance with section 69

Section 71 – Changes in composition of executive

Section 72 – Occasional vacancies in committee chairs

Section 73 – Appointment provision determined by authority

These sections set out the procedures for authorities where sections 66 or 67 do not apply, which in general will be those authorities where the membership is divided among several political groups.

The broad aim of these sections is the requirement for local authorities to make provision for the allocation of scrutiny committee chairs on a proportionate basis, with the additional proviso that the political group (or groups) which comprises the executive of the council cannot allocate a greater number of scrutiny chairs to its group(s) than is proportionate to its (combined) representation on the full council (i.e. all members, whether or not they are members of political groups). If the entitlement to chairs of the group(s) in the executive is not a whole number, the entitlement is to be rounded down to the nearest whole number. The principles for allocating scrutiny chairs to political groups comprising the executive are in the new subsection (3) of section 69.

The remaining scrutiny chairs are then to be allocated to opposition political groups, each opposition group's allocation being in proportion to that group's numerical strength within the combined total of opposition groups (subsection (4) of section 69). The calculation of scrutiny chairs for opposition groups should not take any account of councillors who are not members of political groups on the authority.

Section 70 sets out what is to happen if any committee chairs are not appointed in accordance with section 69. The executive group(s) cannot get more appointments. The opposition groups that have fully used their initial appointment allocation get additional appointments in proportion to their initial appointments. If all of the opposition groups have failed to fully use their initial appointment allocation or if an opposition group is entitled to an additional appointment, but does not use it, the power of appointment in these cases falls to the committees.

If the composition of the executive changes, the allocation of the scrutiny chairs must be re-visited and changes may need to be made to the

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allocations, as set out in section 71. The procedure if a scrutiny chair falls vacant is set out in section 72.

Section 73 permits a local authority to waive the requirement to follow the procedures above if an alternative appointment procedure is agreed by all political groups, with the proviso that the alternative procedure does not result in the majority party allocating a greater number of scrutiny chairs from its party than the section 69 procedure would permit

Section 74 – Supplementary provision and interpretation

Enables the Welsh Ministers to make regulations about the appointment procedure for allocating scrutiny committee chairs and to issue guidance or directions. The section also defines certain terms used in sections 65 to 74 and inserts new subsection (10A) in section 21 of the 2000 Act to refer readers to sections 65 to 74 of the Measure.

Section 75 – Committees: limit on number of co-opted members

Section 76 – Sub-committees: limit on number of co-opted members

Section 77 – Voting by co-opted members

Section 78 – Sub-committees: political balance

Section 79 – Guidance and directions about co-option

These sections: set the maximum permitted number of co-opted members on an overview and scrutiny committees at one-third of the total membership of the committee (section 75); require that a sub-committee of an overview and scrutiny committee may not be fully constituted of co-opted members (section 76); allow a local authority to give co-opted members of overview and scrutiny committees and sub-committees voting rights (section 77); remove the requirement for overview and scrutiny sub-committees to be subject to the rules on political balance, provided there are co-opted members and at least one of them has voting rights (section 78); and require a local authority to have regard to any guidance or direction on co-option issued by the Welsh Ministers (section 79).

Section 80 – Forward plans and other information

Enables the Welsh Ministers by regulations to make provision to require the publication of forward plans of overview and scrutiny committees and sub-committees.

Section 81 – Prohibition of whipped votes & declaration of party whips

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Prohibits the application of whipping at meetings of overview and scrutiny committees. The section sets out a procedure for declaring, determining and recording a prohibited party whip at scrutiny committee meetings and the consequences of a prohibited party whip being given.

Section 82 - Guidance and directions

Enables the Welsh Ministers to issue guidance or give directions about overview and scrutiny committees.

Section 83 – Interpretation of this Chapter

This section defines certain terms used in this Chapter.

Chapter 2 – Audit Committees

Section 84 – Local authorities to appoint audit committees

Section 85 – Membership

Section 86 – Proceedings etc

Section 87 – Frequency of meetings

Section 88 – Discharging functions

Section 89 – Termination of membership on ceasing to be member of authority

Section 90 – Interpretation etc

These sections require a local authority to appoint an audit committee to review and scrutinise the authority's financial affairs and to make reports and recommendations in relation to these. There is currently no statutory requirement upon local authorities in Wales to have such a committee.

The sections make provision for the audit committee's functions, membership, chair, proceedings, frequency of meetings, discharge of functions and termination of membership. Section 90 defines certain terms used in this Chapter.

Part 7 – Communities and Community councils

The sections in Chapters 1 and 2 of Part 7 of the Measure revise the arrangements set out in the 1972 Act for the calling and organisation of community meetings and community polls in Wales to make them more representative of local opinion.

Chapter 1 – Community meetings and community polls

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Section 91 - Convening of community meetings by local government electors

Section 91 amends the existing provision in paragraph 30 of Schedule 12 to the 1972 Act for convening community meetings.

Subsection (1) of the new section 91 re-enacts the existing provisions in paragraph 30(1) of Schedule 12 insofar that in communities which have a community council, a community meeting may be convened by the chair of the council or by two councillors representing the community on the council. These triggers for convening a community meeting are unchanged. The effect of subsections 1(b) – (e) is that where community meetings are convened in this way, the existing requirements for giving public notice are re-applied. Accordingly, if the business of the community meeting is a general issue, at least seven days notice must be given; if the business concerns the existence of a community council or the grouping of a community with other communities (i.e. pursuant to sections 27A-27L of the 1972 Act as inserted by the Measure) at least thirty days notice must be given.

The amendment to paragraph 30(1) of Schedule 12 also removes the existing provisions whereby a community meeting may be convened by six local government electors (whether or not the community in question has a community council). Subsection (2) of the new section 91 introduces new thresholds, namely 10% of the local government electors for that community or 50 of the electors, whichever is the lower.

Section 92 – Notice of community meeting convened by local government electors

Inserts a new paragraph 30B in Schedule 12 to the 1972 Act which sets out the information required to be provided to enable the relevant local council to decide whether a community meeting has been duly convened when the convenors of the meeting are local government electors. The relevant local council, to which the notice of a community meeting must be given, is a community council in communities where one exists and the principal council where one does not.

The information required to support a notice is set out in subsections (2) – (7). The provisions allow for the notice to be given in electronic form to a principal council (provided it meets technical requirements set by the principal council under section 93) and for the supporting electors to retain anonymity if they are registered anonymously in the register of local government electors.

Section 93 – Facility for the provision of electronic notices of the convening of community meetings

Requires a principal council to make available facilities so that notices for community meetings may be delivered electronically. The council is also

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required to set, and appropriately publicise, the requirements for electronic notices scheme, such as the authentication of an electronic signature.

Section 94 – Action following receipt of notice of a community meeting

Requires the recipient council of the notice detailed in section 92 to consider whether the stipulated requirements and initial trigger threshold have been met. If the council considers they have, then the council must give public notice in accordance with the new section 95. If the council considers that the requirements have not been met, it must give notice to the convenors and state why it is of that opinion.

Section 95 – Public notice of community meeting

Requires that within thirty days of deciding that the requirements for convening a community meeting have been met, the relevant council must give public notice that the community meeting will be held.

If the business of the community meeting is a general issue, at least seven days notice of the meeting must be given; if the business concerns the existence of a community council or the grouping of a community with other communities at least thirty days notice of the meeting must be given (i.e. pursuant to sections 27A-27L of the 1972 Act as inserted by the Measure). The section also specifies details which are required to be included in the notice and how the notice should be published.

Section 96 – Demands for community polls

This section substitutes paragraph 34(4) of Schedule 12 to the 1972 Act with a provision which raises the thresholds required for a community meeting to demand a community poll. The existing thresholds require a demand for a poll to be supported by no less than ten or one-third of the local government electors present at the community meeting, whichever is the lower. This is replaced with a majority of the local government electors present, the said majority constituting 10% of the local government electorate for that community or 150 of the electors, whichever is the less.

Section 97- Notice to be given by returning officer following taking of a poll consequent on a community meeting

Introduces a new provision which sets out the notice procedure following a community poll which was triggered by a community meeting and where a majority of electors voting were in favour of the question posed. The notice requirements need not be applied if the poll were on a question of a type which would be inappropriate for the council to respond to and that type had been specified in regulations by the Welsh Ministers (the new sub-paragraph 38A(2) of Schedule 12 to the 1972 Act).

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Section 98 - Determination of monitoring officer as to the council to whose functions a poll relates

Requires the monitoring officer to whom the notice of the result of the community poll has been delivered to determine, within 14 days of receiving notice, the council to whose functions the poll question relates. The monitoring officer must then give notice, as set out in the new paragraph 38B, to the relevant council as soon as reasonably practicable.

Section 99 – Consideration of result of community poll by community council

Requires a community council to consider the results of a poll, following notification under the new paragraph 38B of Schedule 12 to the 1972 Act, in a meeting of the council.

Section 100 – Action to be taken following community council’s consideration of results of certain community polls

Requires the community council to inform the convenors of the community meeting which triggered the poll of what action (if any) the council intends to take in response to the poll. Sub-paragraph 1(a) of the new paragraph 29A of Schedule 12 to the 1972 Act makes clear that there is no legal expectation that the community council will take any action in response to the poll. This action need be taken only where the community poll was triggered at a community meeting of local government electors.

Section 101 – Consideration of result of community poll by principal council

Introduces a new section 33B to the 1972 Act which requires a principal council, which has received notice under the new paragraph 38B, to consider the result of the community poll and decide what actions it will take. The council is required, within two months of receiving notice, to perform at least one of the actions set out in the new subsection (4), but may perform more than one.

Section 102 – Principal council’s explanation of its response to a community poll

Requires a principal council to give notice, as soon as is reasonably practicable, of the action which it has taken and, possibly intends to take, in response to the community poll. The section sets out the possible recipients of such a notice, to be determined by the circumstances.

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Chapter 2 – Organisation of Communities and their Councils

Section 103 – Repeal of existing provisions about establishment and dissolution of community councils etc.

Repeals the existing provisions in sections 28 to 29B of the 1972 Act governing the procedures for establishing and dissolving community councils (including for groups of communities), to make way for the new provisions set out in this Measure. The Welsh Assembly Government considers that the existing provisions are unnecessarily complex and the development of community councils is hindered by the existing thresholds which apply to some of the procedures for the establishment or dissolution of a community council. The Welsh Assembly Government considers that the existing thresholds for establishing a community council are too high and those for dissolving a community council are too low.

Section 104 – Power of community meeting to apply for an order establishing a community council

Introduces a new section 27A in the 1972 Act to set out the conditions which must be met before a community meeting may apply to the principal council for its area for an order to establish a community council for the area. The new subsections (4) – (6) re-enact conditions which apply under the existing provisions. The new subsections (2) and (3) lower the threshold for a community meeting voting to establish a community council to require 10% of the local government electors for the community or 150 of the electors (whichever is the lower) to be present and voting at the meeting. The existing threshold is 30% of the local government electors for the community or 300 of the electors (whichever is the lower).

Section 105 – Orders establishing separate community councils for communities

Introduces a new section 27B in the 1972 Act to set out the action a principal council must take when it has received an application from a community meeting for an order to establish a separate community council for the area of the community.

Section 106 – Power of community meeting to apply for an order dissolving its separate community council

Introduces a new section 27C in the 1972 Act to set out the conditions which must be met before a community meeting may apply to the principal council for its area for an order to dissolve an existing separate community council for the area. The new subsections (2) - (5) re-enact conditions which apply under the existing provisions. The threshold for a community meeting voting to dissolve a community council remains 30% of the local government electors for the community or 300 of the electors (whichever is the lower) to be present

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and voting at the meeting. A new threshold is introduced by the new subsection (6) which requires that at least two-thirds of those voting in the community poll support the proposal to dissolve a community council. A bare majority is required at present.

Section 107 – Orders dissolving separate community councils for communities

Introduces a new section 27D in the 1972 Act to set out the action a principal council must take when it has received an application from a community meeting for an order to dissolve a separate community council for the area of the community.

Section 108 – Power of community meeting to apply for an order grouping its community with other communities under a common community council

Introduces a new section 27E in the 1972 Act to set out the conditions which must be met before a community meeting may apply to the principal council for its area for an order grouping its community with other communities under a common community council. The provisions are essentially the same as those for establishing a community council under the new section 27A, with the additional condition at subsection (7) requiring applications to be made jointly with the other communities involved in the prospective grouping.

Section 109 – Orders grouping a community with other communities under a common community council

Introduces a new section 27F in the 1972 Act to set out the action a principal council must take when it has received an application from a community meeting for an order to group a community with other communities under a common community council.

Section 110 – Power of community meeting to apply for an order adding its community to a group of communities with a common council

Introduces a new section 27G in the 1972 Act to set out the conditions which must be met before a community meeting may apply to the principal council for its area for an order adding its community to a group of communities under a common community council. The provisions require the consent of all the communities involved in the prospective new grouping with the same thresholds applying as are introduced for establishing a community council under the new section 27A.

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Section 111 – Orders adding a community to a group of communities with a common council

Introduces a new section 27H in the 1972 Act to set out the action a principal council must take when it has received an application from a community meeting for an order to add a community to a group of communities with a common community council.

Section 112 – Power of council for a group of communities to apply for an order dissolving the group

Introduces a new section 27I in the 1972 Act to set out the conditions which must be met before a council for a group of communities may apply to the principal council for its area for an order dissolving the group. The provisions are essentially the same as those for dissolving a separate community council under the new section 27C, with each community in the group being required to consider and vote on the proposal separately.

Section 113 – Orders dissolving a group of communities

Introduces a new section 27J in the 1972 Act to set out the action a principal council must take when it has received an application from a council for a group of communities for an order dissolving the group.

Section 114 – Power of community meeting to apply for order separating community from a group of communities

Introduces a new section 27K in the 1972 Act to set out the conditions which must be met before a community meeting may apply to the principal council for its area for an order separating the community from a group of communities. The provisions are essentially the same as those for dissolving a separate community council under the new section 27C.

Section 115 – Orders separating a community from a group of communities

Introduces a new section 27L in the 1972 Act to set out the action a principal council must take when it has received an application from a community meeting for an order separating the community from an existing group of communities.

Section 116 – Power of Welsh Ministers to alter voting threshold in connection with organisation of community councils

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Introduces a new section 27M in the 1972 Act to enable the Welsh Ministers by order to alter the thresholds for the various establishment and dissolution procedures introduced by this Measure, thereby enabling them to make changes in the light of experience of applying the new thresholds.

Section 117 – Organisation of communities and their councils: consequential amendments

Amends other existing provision to reflect the substitution of various sections in the 1972 Act by the appropriate new provisions introduced in this Part of the Measure.

Section 118 – Transitional provision

Clarifies that the new procedures set out in Chapter 2 of this Measure will not apply if certain existing procedures, as set out in subsections (a) and (b) of this section, were undertaken before the provisions in this Chapter have been brought into force.

Chapter 3- Co-option of members of community councils

Section 119 – Requirement of public notice where vacancies in community council membership are to be filled by co-option

Introduces a requirement that where a community council intends filling a vacancy by co-option, the council must give public notice of the co-option opportunity. It is accepted good practice that opportunities for co-option are advertised openly, but there is no requirement at present. This will avoid the perception of community councils being ‘closed shops’ and raise awareness of opportunities for greater participation by under-represented groups. The requirements of the public notice are set out in subsection (5), which includes provision for Welsh Ministers to set other requirements for the notice in the light of experience.

Section 120 – Guidance about giving public notice of co-option

Empowers the Welsh Ministers to issue guidance about giving public notice about co-option, to which community councils and councillors must have regard.

Chapter 4- Appointment of Community youth representatives

Section 121 – Appointment of community youth representatives by community councils

Enables a community council to appoint up to two community youth representatives to the community council. The appointments will give a platform for a youth voice, encourage communication between different

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sectors of society and incite a greater interest in politics and local government by young people.

The criteria for a community youth representative are set out in subsection (2). Subsection (3) enables the community council to determine the terms of appointment, including those relating to the vacation of office.

Section 122 – Notice requirements in connection with youth representative appointments

Requires that where a community council intends appointing a community youth representative, it must first give public notice of its intention to do so and specifically to the persons and in the manner set out at subsections (4 - 5). The requirements of the public notice are set out in subsection (6). The Welsh Ministers may set other requirements for the notice in the light of experience.

Section 123 – Guidance about appointment of community youth representatives

Empowers the Welsh Ministers to issue guidance about the appointment of community youth representatives, to which community councils must have regard.

Section 124 – Effect of appointment as a community youth representative

The community youth representatives will not have any of the statutory rights, privileges and obligations of a community council extended to them at this time; but this section enables the Welsh Ministers, by regulations, to provide for a community youth representative to be treated as a member of the council for purposes specified in the regulations.

Chapter 5- Reviews of community areas and electoral arrangements

Section 125 – Reports about discharge of a principal council's function of keeping community areas under review

Introduces new subsections (2A)-(2D) in section 55 of the 1972 Act to require a principal council to publish every 15 years (and send to the Local Government Boundary Commission for Wales – the “Welsh Commission”) a report of how it has discharged its existing function of keeping community areas under review. The existing legislation has no such timeframe for publishing reports and some councils have not published reports.

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Section 126 – Reports about discharge of a principal council’s function of keeping electoral arrangements for communities under review

Introduces new subsections (4A)-(4D) in section 57 of the 1972 Act to require a principal council to publish every 15 years (and send to the Welsh Commission) a report of how it has discharged its existing function of keeping electoral arrangements for community areas under review. The existing legislation has no such timeframe for publishing reports and some councils have not published reports.

Section 127 – Exercise of functions by the Local Government Boundary Commission for Wales on behalf of principal councils

Introduces a new section 57A in the 1972 Act to enable the Welsh Commission and a principal council to agree arrangements by which the Welsh Commission may exercise the principal council’s functions of reviewing the community areas or electoral arrangements for communities and considering requests received from community meetings and councils in this respect.

The existing legislation enables the Welsh Commission to undertake these functions at present, but the Welsh Commission must first be directed to do so by Welsh Ministers. The cost of undertaking reviews currently falls to the Welsh Commission as the existing legislation does not allow it to charge any fee to the principal council concerned. The new provision alleviates the need for a direction from the Welsh Ministers where a principal council and the Welsh Commission have reached agreement about the arrangements for the review.

Section 128 – Sums payable in respect of reviews carried out by the Local Government Boundary Commission for Wales

Introduces new subsections (4A)-(4C) in section 56 of the 1972 Act for circumstances where the Welsh Ministers have had to direct the Welsh Commission to undertake a review on behalf of a principal council (perhaps because the Welsh Commission and the council have failed to reach agreement about the arrangements for the review). The direction may include a requirement on the principal council concerned to pay the Welsh Commission a sum specified or to be calculated.

Chapter 6- Community councils’ powers to promote well-being

Section 129 – Community councils’ powers to promote well-being

Amends section 1(b) of the 2000 Act to include community councils in the list of local authorities on which the power of well-being is conferred by section 2(1) of that Act.

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Part I of the 2000 Act provides a power for local authorities to do anything that they consider is likely to achieve the promotion or improvement of the economic, social or environmental well-being of their area. In relation to Wales, this power is currently conferred on county councils and county borough councils only. The Assembly Government considers that extending the power of well-being to community councils will enhance the opportunities for them to develop their role in promoting and improving the well-being of their areas.

Section 130 – Modifications of enactments preventing or obstructing a community council from exercising their well-being power

Enables the Welsh Ministers by order to make modifications to any enactment which they think prevents or obstructs community councils from exercising their power under section 2(1) of the 2000 Act.

Section 131- Transitional provision

This transitional provision is to deal with the situation where a community strategy pursuant to section 39(4) of the Local Government (Wales) Measure 2009 has not yet being published.

Chapter 7- Grants to community councils

Section 132 – Welsh Ministers’ power to pay grant to community councils

Enables the Welsh Ministers to pay grants to community councils. The developing role of community councils may create new demands on their finances but the current legislation does not enable the Welsh Ministers to make grant payments to community councils for any purposes.

Chapter 8 - Model charter agreements between local authorities and community councils.

Section 133 - Power to set out model charter agreement

Enables the Welsh Ministers to set out a model charter agreement in an order. The Assembly Government already encourages collaborative arrangements between principal and community councils, usually set out in an agreed “charter”, through which the two tiers of government would work together in a mutually supportive and co-operative way for the benefit of their communities. The Welsh Ministers consider that, in the first instance, the development and adoption of collaboration arrangements / charters is best achieved on a voluntary basis at the local level. There is, however, no power

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currently available to the Assembly Government to require reluctant councils to come together, address the issues and agree a charter for the benefit of their areas

Section 134- Directions requiring the adoption of model charter agreements

Enables the Welsh Ministers to issue directions requiring the adoption of a model charter.

Section 135- Guidance about model charter agreements

Empowers the Welsh Ministers to issue guidance about charter agreements, to which principal and community councils acting under a direction of the Welsh Ministers must have regard.

Section 136- Consultation

Requires the Welsh Ministers to consult the bodies, persons or local government institutions stipulated before making an order or issuing a direction about model charter agreements.

Chapter 9- Schemes for the accreditation of quality in community government

Section 137 – Schemes for the accreditation of quality in community government

Enables the Welsh Ministers to make regulations to provide for an accreditation of quality scheme for community councils.

There is currently no national accreditation of quality scheme to assess the competence of community councils in Wales. The Welsh Ministers consider that there is value in developing such a scheme to help raise standards of local government by community councils.

The intention of the Welsh Ministers is that, in the first instance, a national accreditation of quality scheme in Wales should be developed and operated on a non-statutory basis. However, the Welsh Ministers consider that it would be beneficial to have a “reserve” power to introduce a statutory accreditation scheme should this be considered appropriate at some future point. This section provides this power.

Section 138 – Accreditation of quality in community government: criteria

Section 139 – Accreditation of quality in community government: applications

Section 140 – Accreditation of quality in community government: fees

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Section 141 – Accreditation of quality in community government: removal of accreditation

Section 142 – Applications for accreditation of quality in community government: delegation of functions

Section 143 – Accreditation of quality in community government consequences

These provisions support section 137. If the Welsh Ministers make regulations for an accreditation scheme, the regulations:

- must set criteria to be met on an application for accreditation. These may cover the matters listed in section 138(2), but would not be limited to these;
- must set out the requirements for a valid application for accreditation (section 139);
- may set fees for an application for accreditation (section 140);
- must set out the grounds for the removal of accreditation status awarded and for the review of accreditation status awarded (section 141).

Section 142 would allow the Welsh Ministers to arrange for another person (which need not be a public authority) to operate the accreditation scheme.

Section 143 enables the Welsh Ministers, by regulations, to remove or alter statutory impediments from accredited community councils (for example, because they have achieved a certain standard of performance) and to place impediments in the way of unaccredited community councils (for example, because they are unable to show that they have achieved a certain standard).

Part 8 – Members: Payment and Pensions

This Part of the Measure makes provision in respect of the remuneration of councillors so that an independent panel has responsibility for determining adequate recompense for councillors in respect of the responsibilities they carry and for maintaining a remuneration system which keeps pace with the many developments in recent years in terms of the leadership, governance, scrutiny and regulatory duties incumbent upon a councillor.

Section 144 – The Panel

Provides for the continued existence of the Independent Remuneration Panel for Wales (the “IRP”).

The IRP was established under regulation 26 of the Local Authorities (Allowances for Members) (Wales) Regulations 2007 (S.I. 2007 / 1086) (the “2007 Regulations”) to prescribe, amongst other things, the maximum levels

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of allowances payable by county and county borough councils. The IRP's current remit only extends to county and county borough councils and does not encompass community councils, National Park authorities or fire and rescue authorities.

The new provision maintains the statutory basis of the IRP and introduces Schedule 2 which sets out the detail for membership, tenure and organisation of the IRP.

Section 145 – Functions relating to payments to members

Sets out the functions of the IRP, in particular giving it a greater degree of flexibility in respect of defining the duties and responsibilities which may qualify councillors to receive payments, to describe the types of payments and to set levels of payments for those authorities described in section 147. The Assembly Government considers that this flexibility is necessary to allow the IRP to respond to different circumstances of councillors and of authorities.

The provisions in this section will enable the IRP to stipulate the actual amount of payment an authority may make to a member, set the maximum level of payment to a member of the authority or limit the proportion of members of the authority who can receive a certain type of payment. The IRP could, in relation to one or more or all authorities of different descriptions or different authorities of the same description decide to set payments which could include maxima and actual rates.

The provision in subsection (2) defines the relevant matters which the IRP may decide under subsection (1). Relevant matters are those that relate to the official business of councillors as defined in subsection (8) and includes payments to councillors who are exercising an entitlement to family absence (as provided for in Part 2 of this Measure).

Under subsection (4) the IRP can set indices and maximum rates of adjustment which authorities may apply or refer to in adjusting their payment rates from year to year. The IRP can also determine the proportion of members who can receive a certain type of payment although the consent of the Welsh Ministers is needed if the IRP wish to fix the proportion at more than fifty per cent.

Subsection (6) requires the IRP, when setting an amount or maximum rate of adjustment or index, to take into account the likely financial impact of its decisions on the authority in question.

Section 146 – Functions relating to members' pensions

Enables the IRP to determine which elected members (not co-opted members) of such authorities as are or become eligible members of the Local Government Pension Scheme (LGPS) shall be entitled to pensions. The

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current remit of the IRP is limited to recommending which elected members of a county or county borough council should be entitled to pensions under section 18 of the Local Government and Housing Act 1989.

Section 147 – Relevant authorities, members etc

Provides definitions of certain terms used in this Part of the Measure. The definition of “relevant authority” in subsection (2) has the effect of extending the remit of the IRP to cover community councils, National Park Authorities and fire and rescue authorities in Wales, in addition to county and county borough councils.

Section 148 – Annual reports

Section 149 – First annual report

Section 150 – Subsequent annual reports

Section 151 – Consultation on draft reports

These sections require the IRP to publish an annual report about the exercise of its functions for each forthcoming financial year.

Section 149 stipulates: that the first financial year for which the IRP must publish an annual report is the year beginning 1 April 2012; that the report must be published by 31 December 2011; and the requirements of the report. The provisions also allow for the IRP to produce supplementary reports to the first annual report. The requirements of subsequent annual reports (and supplementary reports) are similar to those for the first annual report (and any supplementary reports to the first report)(section 150).

The IRP must allow a minimum period of eight weeks for consultation on a draft report and place a copy of the draft report on its web-site at the same time as it is circulated to the Welsh Ministers etc.

Section 152 – Directions to vary reports

Enables the Welsh Ministers to direct the IRP to reconsider a provision of a draft report. The Welsh Ministers must specify their reasons for issuing the direction and give a date for a response. The IRP is not obliged to vary the draft, but must respond and explain if it decides not to vary.

Section 153 – Administrative requirements in reports

Section 154 – Publicity requirements in reports

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Enable the IRP to require local authorities to put in place administrative systems to avoid the duplication of claims for payments and to keep records in relation to payments made to their members, and to stipulate in an annual report the publicity arrangements that should be put in place by authorities in relation to the payments made by an authority.

Section 155 – Publicising reports

Sets out steps the IRP must take to publicise its reports, including draft reports.

Section 156 – Compliance with panel’s requirements

Requires authorities to comply with decisions of the IRP set out in an annual report and empowers the IRP to monitor the implementation and management of the payments made by the authorities affected by its decisions. The IRP is empowered to require authorities to provide it with details of their payments and actual rates in payment. The authority must comply with such a request.

Section 157 – Members wishing to forgo payments

Enables a member of an authority to waive his or her entitlement to such payments as that member determines. Since authorities will be required to make certain payments to members, it is considered necessary to make provision to permit authorities not to pay allowances in circumstances where a member has elected to forgo payment.

Section 158 – Withholding payments

Requires an authority to withhold payments to persons who have been suspended from being a councillor (or partially suspended) by virtue of Part 3 of the Local Government Act 2000 as a result of an adjudication by a local standards committee or by a case tribunal or interim case tribunal on whether the councillor had complied with the local authority’s code of conduct.

Subsection (2) also empowers the Welsh Ministers to issue directions, following consultation with the IRP, to an authority requiring it to withhold payments as determined by the Welsh Ministers, to a member of an authority for reasons specified in the direction.

The Welsh Ministers may apply to the Court for an order enforcing the direction.

Section 159 – Directions to comply with requirements

If the Welsh Ministers are satisfied that an authority has failed to discharge any duty imposed on it by the IRP for the purposes of the Measure, the Welsh Ministers may issue a direction requiring the authority to comply. Any such direction must explain the reason for its issue and set out the steps that need

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to be taken by the authority, including a timetable by which the authority should respond.

The Welsh Ministers may apply to the Court for an order enforcing the direction.

Section 160 - Guidance

Empowers the IRP to issue, vary and revoke guidance on complying with its requirements set out in annual and supplementary reports.

Section 161 – Power to modify provision about Panel

Empowers the Welsh Ministers to modify, by order, the provisions in this Part of the Measure relating to the appointment of members of the IRP or its functions and to make any consequential modifications to other enactments as a result.

Section 162 – Interpretation of Part 8

Sets out the interpretation of certain terms used in this Part.

Section 163 - Consequential amendments.

Introduces Schedule 3 (Payments and pensions: minor and consequential amendments).

Schedule 2 – The Panel

Introduced by section 144. Sets out the appointment, administrative and support procedures for the IRP (including disqualification from membership). Paragraphs 18-20 set out the obligations of the Welsh Ministers in terms of providing support to the IRP.

Schedule 3 – Payments and Pensions: Minor and consequential amendments

Makes amendments of a technical nature to existing legislation to reflect the provision introduced in Part 8 of the Measure. For example, in relation to the Local Government Act 1972, School Standards and Framework Act 1998, Education Act 2002 and Education and Skills Act 2008, for those references that relate to allowances payable under the current legislation, there is a need to substitute references to payments to members under the provisions of the Measure.

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Whilst the majority of subsections in section 18 of the Local Government and Housing Act 1989 are to be repealed, an amendment is required to section 18 (3A) to retain the power of the Welsh Ministers to make regulations enabling local authorities, i.e., county and county borough councils, to determine gratuities in relation to members.

Part 9 – Collaboration and Amalgamation

Section 164 - Guidance about collaboration between Welsh improvement authorities

Amends Part 1 of the Local Government (Wales) Measure 2009 to allow the Welsh Ministers to issue comprehensive statutory guidance on all aspects of local authorities' powers and duties under that Measure.

Section 164A – Amalgamation – see addendum to this Memorandum at Annex C

Part 9A - General

Section 165 – Orders and regulations

This section provides for orders and regulations under the Measure to be made by statutory instrument and sets out the Assembly procedures in respect of these instruments.

Section 166 - Procedure applicable to certain orders under section 130

Sets out the procedure the Welsh Ministers must follow if they make an order under section 130 to make modifications to any enactment which they think prevents or obstructs community councils from exercising their power (of well-being) under section 2(1) of the 2000 Act.

Section 167 – Guidance and directions

Clarifies the powers of the Welsh Ministers to give guidance and to give directions under this Measure

Section 168 – Interpretation

Provides interpretation of certain terms used in this Measure

Section 169 – Consequential amendments and repeals

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This section inserts new subsections (5) to (7) to section 106 of the 2000 Act to make provision for orders and regulations under the new sections of that Act inserted by the Measure to be made by statutory instrument and sets out the Assembly procedures in respect of these instruments.

Also introduces Schedule 4 (repeals and revocations) and makes provision for the IRP to prescribe a scheme for a local authority using the current regulations for a transitional period for the financial year from 1 April 2011 until 31 March 2012. The IRP is to publish its first annual report under the Measure by 31 December 2011 and the report is to relate to the financial year 1 April 2012 to 31 March 2013

Section 170 - Power to make supplementary provision

Empowers the Welsh Ministers to make supplementary, consequential, incidental, transitional, transitory and saving provision to the parts of the Measure to take account of future developments in local government and any future legislation which may have to be accommodated by local authorities.

Section 171 – Commencement

This section makes provision about the commencement of the provisions in the Measure.

Section 172 – Short Title

Schedule 4 – Repeals and revocations

Repeals and revokes existing provision to accommodate the new provision made in the Measure.



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

PROPOSED LOCAL GOVERNMENT (WALES) MEASURE

Annex C

Addendum to the Explanatory Memorandum

concerning the insertion of new sections to grant powers
to the Welsh Ministers to amalgamate two or three local
authorities

March 2011

4. Description

4.1 The proposed Local Government (Wales) Measure was amended at Stage 2 of its consideration by the National Assembly for Wales to include new provision in Part 9 which will:

(vii) allow the Welsh Ministers, by order, to amalgamate two or three local authorities to create a single new local authority.

5. Legislative background

Competence

5.1 The competence relied upon under section 94(4) of the Government of Wales Act 2006 (the “2006 Act”) for the new provision is provided by Matter 12.1 of Part 1 of Schedule 5 to the 2006 Act.

5.2 Matter 12.5 is also relevant in terms of the exercise of the powers conferred on the Welsh Ministers by the new provision.

5.3 Matters 12.1 and 12.5 were inserted into Schedule 5 by section 235 of, and Schedule 17 to, the Local Government and Public Involvement in Health Act 2007. Matter 12.5 is reproduced at paragraph 2.4 in the main part of this Explanatory Memorandum; matter 12.1 is reproduced below:

Matter 12.1

Provision for and in connection with—

- (a) the constitution of new principal areas and the abolition or alteration of existing principal areas, and
- (b) the establishment of councils for new principal areas and the abolition of existing principal councils.

6. Purpose & intended effect of the legislation

Introduction

- 6.1 Collaboration between local authorities is a central tenet of the Assembly Government's strategy for delivering better and more efficient services to citizens in Wales. The Assembly Government's policy and legislative approach to local government has reflected this principle and a range of levers and incentives have been put in place to drive collaboration.
- 6.2 The Assembly Government is already working in partnership with the public sector through the Efficiency and Innovation Programme to ensure that new and innovative practice in service delivery is identified and adopted.
- 6.3 Part 1 of the Local Government (Wales) Measure 2009 (the "2009 Measure") included a general power for local authorities to collaborate with any person where that would facilitate improvement and a duty to consider using that power from time to time.
- 6.4 The proposed local government Measure includes a provision (see section 164 in the version as introduced) which corrects an omission from the 2009 Measure by enabling the Welsh Ministers to issue statutory guidance on collaboration between local authorities, and between them and other bodies. Such guidance will set out models for collaboration and describe how and in what circumstances local authorities might adopt them. However, like all guidance it cannot compel anyone to do anything.
- 6.5 The Assembly Government considers, however, that in view of the prevailing financial conditions, the pace and scale of change needs to accelerate. It is vital that the Assembly Government continues to develop and shape policy in this direction and is able to facilitate progress by using every opportunity that the legislative process offers.

Proposals for the new sections

3.6 A more detailed description of the provisions is set out in the expanded Explanatory Notes (covering the new sections) which accompany this addendum. By way of summary, the proposed new sections will enable the Welsh Ministers:

- to abolish, by order, two or three principal areas and their respective county/county borough councils and establish a new area and council in their place;
- name the new area and authority in English and Welsh;

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- decide on the new authority's status as either a county or a county borough;
- make arrangements for the transfer of staff and connected issues;
- make arrangements for the establishment of a shadow council;
- make electoral arrangements for the new authority;
- arrange for the transfer of functions, property and liabilities to the new authority;
- make arrangements for commercial contracts;
- arrange for the responsibility of dealing with any legal actions in process at the time of abolition;
- make arrangements for any statutory partnerships or joint companies involving the old authorities;
- require the Local Government Boundary Commission for Wales to conduct a review of electoral arrangements for the new authority;
- introduce transitional arrangements; and
- make provision, in accordance with certain specified circumstances, for the holding of a referendum on the question of an elected mayor in the area of the new authority.

3.7 The new sections require that an order to amalgamate local authorities will be subject to the Assembly's "super affirmative" resolution procedure. The procedure requires that a proposal for amalgamation will be subject to public consultation, scrutiny by the Assembly and that the final amalgamation order must be approved by the Assembly itself.

Issues addressed by the new sections

3.8 The Assembly Government has long been committed to promoting and supporting greater collaboration between local authorities. In their policy statement *Better Outcomes for Tougher Times: The Next Phase of Public Service Improvement* (published December 2009), the Welsh Ministers set local authorities (and other public service providers) a clear challenge to collaborate much more than previously.

3.9 The drive towards more collaboration was recognised in the Local Government (Wales) Measure 2009 (the "2009 Measure") which included a general power for local authorities (and other service providers) to collaborate with any person where that would facilitate improvement, and a duty to consider using that power from time to time.

3.10 The 2009 Measure also enabled the Welsh Ministers to direct an authority to enter into specified collaboration arrangements with another authority if it was failing to make arrangements to secure improvement.

3.11 In the period since the proposed Measure was introduced the financial climate for public sector organisations has become more challenging. The Assembly Government is very clear that collaboration between local authorities can be a key element in the drive to save money and protect frontline services. It follows that they need to work together and collaborate

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ever more closely as part of the public sector response to maintaining services for the vulnerable and needy against a tightening financial climate.

3.12 There is evidence of more collaboration between local authorities. However in some areas progress has been patchy and the rate of progress is slower than it needs to be. It has also become clear that some local authorities are more willing to work together than others. In light of the lack of any strategic response to developing wide scale and coordinated progress, the Assembly Government has concluded that it needs stronger tools to make collaboration happen.

3.13 The Assembly Government considers that one appropriate option to create better services at a lower cost would be the possibility of amalgamating existing local authorities to create a single new local government area. This would provide a range of benefits including economies of scale, a more resilient front line service and the spreading of best practice across a wider service configuration.

3.14 There is currently no power available to Welsh Ministers to bring about such amalgamation between local authorities in Wales. Matter 12.1 of Schedule 5 of the Government of Wales Act 2006 provides the necessary competence for the Assembly to legislate for the creation and abolition of new local government areas.

3.15 The Assembly Government concluded that the proposed Local Government (Wales) Measure provided a timely opportunity to secure a power which, it has become obvious, is necessary.

3.16 The power sought by the Assembly Government will confer on the Welsh Ministers an order-making power which would enable them to bring forward proposals for the amalgamation of two or three local authorities to create a new local government area. The Assembly Government considered that the order-making power, subject to the super-affirmative procedure, was appropriate to achieve a localised amalgamation of local government covering no more than three existing local authorities.

3.17 The provisions set out in Chapter 2 of Part 9 of the proposed Measure are designed to address these circumstances; the proposals are summarised in paragraph 3.6 in this addendum and are described in more detail in the Explanatory Notes for the new sections.

4. Consultation

4.1 The Assembly Government has not undertaken a consultation on the proposal to introduce an order-making power to amalgamate two or three local authorities. The issues which gave rise to the proposals developed quickly in the period since the proposed Measure was introduced.

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4.2 Assembly Ministers have made clear in their discussions with local authorities and in public statements that they favour much more collaboration between local authorities and that they would take action if insufficient progress were made. Assembly Committees have also recognised the need for action.

4.3 In June 2010 the Assembly's Health Wellbeing and Local Government Committee invited the Minister for Social Justice and Local Government to consider "coming up with a model that might not be around full-scale re-organisation but looking at some neighbouring councils that could share a big element of their education services, share senior directors and chief executives and pool their resources".

4.4 In December 2010, the Assembly's Legislation Committee No3 completed its scrutiny on the proposed Local Government Measure and published its Stage 1 report. The Committee recommended that "given the drive towards collaboration across public services generally, we believe that the proposed Measure needs to be strengthened to provide a more effective tool to compel collaboration in circumstances beyond the current limited powers in the 2009 Measure."

4.5 The proposed new sections provide the Welsh Ministers with an enabling power only. The principle of consultation is integral to the exercise of the power itself. An order arising from a proposal to create a new local government area by amalgamation will be subject to the Assembly's "super affirmative resolution procedure".

4.6 The stages required under the super affirmative procedure are set out in the proposed new section 164H and will require the Assembly Government to "consult such persons as appear to them to be representative of persons or interests affected by the proposals".

4.7 Ministers would have to consult local people, the existing local authorities affected, the Welsh Local Government Association and local representative bodies.

5. Power to make subordinate legislation

5.3 The proposed new sections contain provisions to make subordinate legislation. *Table 1* below sets out in relation to each provision:

- the person upon whom, or the body upon which, the power is conferred;
- the form in which the power is to be exercised;
- the appropriateness of the delegated power;
- the applied procedure (affirmative, negative, no procedure) if any.

Summary of Powers to make Subordinate Legislation – Amalgamation

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Section	Power conferred on	Form	Appropriateness	Procedure
Section 164A (power to make amalgamation order)	Welsh Ministers	Order	Suitable for order as power will provide for the localised re-organisation of local government in a specified part of Wales. Procedure for approving order set out in section 164H	Super Affirmative Resolution
Section 164D (power to direct a referendum involving an elected mayor)	Welsh Ministers	Regulations	Suitable for regulations as will provide for the administrative detail which follows the policy intent set out in the Measure	Affirmative Resolution
Section 164E (Supplementary, incidental, consequential, transitional & saving)	Welsh Ministers	Regulations	Suitable for regulations as will allow for provision of an administrative nature to be made in consequence of an amalgamation order.	Affirmative Resolution
Section 164I (Correction of orders)	Welsh Ministers	Order	Suitable for order as will allow for correction of mistakes in an amalgamation order.	Affirmative Resolution

5.2 The following paragraphs set out the appropriateness of using the proposed subordinate legislation provided under Chapter 2 of Part 9 (Amalgamation) of the proposed Measure. The paragraphs identify the provisions in Chapter 2 that confer powers to make subordinate legislation on Welsh Ministers. Also identified are the purpose of the power, the reason it takes the form it does and any Assembly procedures that apply to the exercise of the power.

5.3 Provisions in Chapter 2 of Part 9 of the Measure are concerned with the Assembly conferring on Welsh Ministers an order-making power to

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amalgamate two or three existing local authorities to create a new local government area.

5.4 Section 164A (power to make amalgamation order) provides delegated power to enable Welsh Ministers by order to amalgamate two or three (and no more) local authorities. In proposing an amalgamation order the Welsh Ministers will have to be satisfied that it is necessary to make an order to achieve effective local government.

5.5 An order cannot be made unless the Welsh Ministers consider that effective local government could not be achieved by the exercise (in relation to the local authorities affected) of the powers conferred on those authorities under specified sections in the Local Government (Wales) Measure 2009 (2009 Measure).

5.6 Section 164D (power to direct a referendum involving an elected mayor) provides delegated power to enable the Welsh Ministers to make regulations enabling them to direct the shadow authority of a new local government area to hold a referendum on whether or not the new local authority should operate an elected mayor and cabinet executive.

5.7 Section 164E (power to make supplementary, incidental, consequential, transitional and saving provision) provides delegated power to enable the Welsh Ministers to make supplementary, incidental, consequential, transitional and saving provision in connection with an amalgamation order.

5.8 It may be impractical to try and capture every detail in the amalgamation order. This power will enable Welsh Ministers to address matters arising as a consequence of a proposed amalgamation.

5.9 Section 164I (correction orders) provides delegated power to correct an error made in an amalgamation order.

Contribution of the delegated powers to the policy intention

5.10 The order-making power in section 164A will enable Welsh Ministers to bring forward a proposal to amalgamate two or three (and no more) existing local authorities to create a new local government area. The Assembly Government considers that in the prevailing financial conditions for the public sector the pace and scale of collaboration between local authorities needs to accelerate. If local authorities are reluctant to change it is vital that the Assembly Government continues to develop and shape policy in this direction and is able to take steps to facilitate progress by using every opportunity that the legislative process offers

5.11 The Section 164D power might need to be invoked only where the residents of one of the local authorities to be amalgamated had voted in a referendum in favour of having an elected mayor but the election of the mayor had not yet been held. The power will enable the Welsh Ministers to extend

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the procedure for introducing an elected mayor over the whole of the new local government area.

5.12 The powers provided by section 164E and section 164I are safeguards. It may be impractical to try and capture every supplementary or consequential etc detail in an amalgamation order, so the power provided by section 164E will enable the Welsh Ministers to make provision to address key issues such as the transfer of staff, properties, liabilities, rights and any other matter arising out of the amalgamation. Section 164I will enable the correction of any errors in an amalgamation order.

Form of the Delegated Power

5.13 The order-making power in section 164A is considered suitable for a proposal for the localised re-organisation of local government covering two or three existing local authorities affecting only a specified part of Wales. The application of the super affirmative resolution procedure will mean that the order will be subject to high levels of public consultation and scrutiny by the Assembly.

5.14 The order-making power is also considered suitable for the correction of an order (section 164I). This will ensure that if there is a mistake in an amalgamation order it can be rectified.

5.15 For sections 164D and 164E regulations are considered suitable. The regulations will enable the Welsh Ministers to set out the administrative detail consequential upon a referendum required under section 164D and to deal with any of the matters which may be supplementary, consequential, etc upon an amalgamation order.

Form of Assembly Procedure

5.16 The orders and regulations under Chapter 2 of Part 9 are all subject to the affirmative resolution procedure. This is considered appropriate given that the matters concern the establishment of a new local government area and issues arising from that creation.

5.17 An order under section 164A (an amalgamation order) will also be subject to additional requirements as set out in section 164H, which will invoke the super affirmative resolution procedure for each proposed order. This is considered appropriate since it will impose a high level of public consultation and Assembly scrutiny on all proposed orders.

6. Regulatory Impact Assessment (RIA)

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6.1 A Regulatory Impact Assessment has been completed in accordance with Standing Order 23.18 (vi) for the provisions in Chapter 2 of Part 9 of the proposed Measure and follows at Section 7.

Regulatory Impact Assessment

7. Options

7.1 The following options are considered in respect of the proposals set out in the proposed Measure:

Option 1: Do nothing.

Option 2: Introduce minimal changes using existing legislation and promoting other changes through guidance and the dissemination of good practice.

Option 3: Introduce legislation through an Assembly Measure.

Option 1 – Do nothing

7.2 Doing nothing would risk losing momentum in the process of encouraging and promoting greater collaboration between local authorities. The Assembly Government has made clear that replicating models of service provision 22 times is unnecessary, costly and unwieldy.

7.3 There is certainly evidence of more collaboration between local authorities but it is patchy and lacking in strategic direction. In some areas the rate of progress is not sufficiently fast. It has also become clear that some local authorities are more willing to work together than others. In addition, it is vital that momentum for collaborative projects is not allowed to stall through a lack of political commitment or organisational inertia.

Option 2 – Introduce minimal changes using existing legislation and promoting other changes through guidance and the dissemination of good practice

7.4 Welsh Ministers already have certain powers under the 2009 Measure to direct collaboration between local authorities. The proposed Measure (as introduced) addressed an omission in the 2009 Measure by providing for the Welsh Ministers to be able to issue statutory guidance about collaboration.

7.5 There is only so much that can be achieved through exhortation and the issue of guidance; if the barrier to increased collaboration at a local level is the existence of separate local authorities, there is no mechanism at present whereby the Welsh Ministers can remove that barrier.

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Option 3 – Introduce legislation by way of an Assembly Measure

7.6 This option would complete the policy options available to Welsh Ministers to help them achieve the policy objective of encouraging and promoting greater collaboration between local authorities in Wales.

7.7 The provisions in Chapter 2 of Part 9 of the proposed Measure will enable the Welsh Ministers to respond to local circumstances and propose the amalgamation of two or three local authorities (and no more) to create a single new local government area.

7.8 The provisions in Chapter 2 will provide a legislative mechanism which is not currently available to Welsh Ministers. An order-making power for localised re-organisation is considered appropriate, given that its exercise will be subject to the Assembly's super affirmative resolution procedure. A full-blown Measure to achieve re-organisation across two or three local authorities is considered a disproportionately heavy mechanism for a matter which will be of primary concern to a part of Wales only.

8. Costs and benefits

8.1 This section considers the costs and benefits in general terms of the options described in section 7.

8.2 The order-making power provided by section 164A is an enabling power. The costs and savings will depend on the amalgamation proposed and in the absence of a specific proposal it is not possible to present figures.

Option 1 – Do nothing

8.3 The cost of doing nothing is that local people in certain areas of Wales may be denied the service benefits and cost efficiencies of local authorities working closer together. There are savings to be made across local government from collaborative working, but if authorities are slow or unwilling to work together local people will pay the price.

These savings can be very significant, as evidence from proposed voluntary mergers in England demonstrates. The savings from the merger of two small district councils in Derbyshire have for instance been estimated at £3 million per year. A merger of three large London boroughs has been estimated to be capable of yielding savings of up to £35 million per year.

8.4 There is a real danger of local authorities missing the opportunity to make savings; improving service delivery through the sharing of best practice, and increasing resilience of existing services in the face of fewer resources being available because of reluctance to collaborate. The current approach does not discourage the duplication of effort through the development of different solutions to the same problem across many authorities. Merging services and

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making joint appointments for senior staff are just two areas where insufficient progress has been made.

Option 2 – Minimal changes

8.5 The Assembly Government will continue to use the range of powers available to it under the 2009 Measure to facilitate and promote collaboration. There comes a point, however, where those powers will be exhausted and a failure of one or more local authorities to make arrangements to improve (including collaborative arrangements) may demand a more far-reaching solution.

8.6 Experience shows that relying on guidance, exhortation and the dissemination of good practice can produce some positive results, but also shows that progress is slow and relatively non-strategic.

Option 3 – Introduce a Measure

8.7 The Assembly Government considers that relying on Options 1 and 2 will mean that local people will be denied the potential to maximise the savings and service improvements which should be forthcoming from a proposal to amalgamate two or three local authorities. The Assembly Government will continue to work with partners to take forward the collaboration agenda, but believes that the proposed legislation is needed to remove several key barriers which could hinder progress.

Costs and benefits

8.8 It is impossible to estimate the cost and financial savings of a potential amalgamation order. The likely costs and savings depend on many factors peculiar to the circumstances of the authorities which will be the subject of the proposed amalgamation. Issues which could radically affect a cost analysis would include the number of authorities involved, their relative size (operationally, geographically and in terms of population) and the degree to which they had been collaborating already. However, estimates from England (see above) invariably point to significant annual savings once a merger is in place.

8.9 There would certainly be transition costs during an amalgamation, arising from having to remove duplication and to achieve organisational consistency across services and systems. It is reasonable to expect, however, that these costs should be more than off-set by longer-term savings and that managed properly in the medium term they should not represent a significant up front cost.

8.10 The proposed section 164H (Procedure applicable to an amalgamation order) requires the Welsh Ministers to consult on a proposal to amalgamate and to lay before the Assembly a document explaining the proposals.

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8.11 The costs and benefits (including financial savings) would be key elements in both the consultation and the explanatory document. The proposals will have to set out the costs and savings associated with each element of the proposed amalgamation and will be fully transparent.

8.12 When, in accordance with the proposed section 164H, the Welsh Ministers lay the documentation before the Assembly, they must not only explain the proposals but must also give details of the consultations they have undertaken. There will be every opportunity for examining the estimates and assumptions regarding costs and savings throughout the process of considering an amalgamation order.

9. Competition Assessment

9.1 A Competition Assessment is not needed as these provisions provide an enabling power which concerns local government in Wales.

10. Post implementation review

10.1 The Assembly Government's Social Justice and Local Government Department will liaise with the local authorities concerned in the event of an amalgamation order being brought forward.



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

PROPOSED LOCAL GOVERNMENT (WALES) MEASURE

Addendum to the Explanatory Notes
concerning the insertion of new sections to grant powers
to the Welsh Ministers to amalgamate two or three local
authorities

March 2011

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Explanatory Notes (Addendum)

Introduction

1. This Addendum to the Explanatory Notes relates to the sections in Chapter 2 of Part 9 of the proposed Local Government (Wales) Measure which were inserted into the proposed Measure at Stage 2 during February 2011.

2. They have been prepared by the Welsh Assembly Government's Department for Social Justice and Local Government in order to assist the reader of Chapter 2 and to help inform debate on it. They do not form part of the proposed Measure and have not been endorsed by the National Assembly for Wales.

3. These Explanatory Notes should be read in conjunction with the provisions in Chapter 2 of Part 9. They are not, and are not meant to be, a comprehensive description of the provisions. Where a section or part of a section does not seem to require any explanation or comment, none is given.

4. The power to make such provision is contained in Matter 12.1 of Schedule 5 to the Government of Wales Act 2006.

5. The following terms are used in these Notes:

- Local authorities – refers to the areas of a county or a county borough in Wales
- Welsh Commission – refers to the Local Government Boundary Commission for Wales
- The 2009 Measure – refers to the Local Government (Wales) Measure 2009

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Commentary on Sections

Part 9 – Collaboration and Amalgamation

Chapter 2 – Amalgamation

Section 164A – Power to make an amalgamation order

Enables Welsh Ministers by order to amalgamate two or three (and no more) local authorities to create a single new local government area.

Before making an amalgamation order, the Welsh Ministers must be satisfied that effective local government is not likely to be achieved in at least one of the local government areas to be amalgamated.

In reaching their conclusion that amalgamation is necessary, the Welsh Ministers must consider whether effective local government could be achieved in the local authorities concerned by the exercise of the powers already conferred on those authorities and on the Welsh Ministers under specified provisions in the 2009 Measure.

The Welsh Ministers must therefore be satisfied that exercise of the following powers is unlikely to achieve effective local government:

- i. Section 9 of the 2009 Measure (powers to collaborate). This section confers on Welsh improvement authorities (which includes local authorities) powers to enable them to collaborate with each other and with other bodies, for the purpose of discharging or facilitating the discharge of the duties under section 2(1) of the 2009 Measure (general duty to make arrangements to secure continuous improvement in the exercise of their functions). Section 3(2) of the 2009 Measure requires a Welsh improvement authority, for each financial year, to set itself improvement objectives. These are objectives for improving the exercise of particular functions of the authority and section 8(7) of the 2009 Measure specifies that a Welsh improvement authority must make arrangements to exercise its functions so that any performance standards are met.
- ii. Section 28 of the 2009 Measure (support for Welsh Improvement Authorities). This section empowers the Welsh Ministers to do anything they consider likely to assist a Welsh improvement authority to comply with the requirements of Part 1 of the 2009 Measure (Local Government Improvement). It also requires the Welsh Ministers to consider offering such support if requested to do so; and (unless they are requested) to consult the relevant local authorities and others before providing support. It does not allow the Welsh Ministers to compel or direct a local authority or any other organisation to do anything.

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iii. Section 29 of the 2009 Measure (powers of direction). This section contains powers for the Welsh Ministers to intervene in and direct a local authority which is failing, or is at risk of failing, to comply with its duties in Part 1 of the 2009 Measure (essentially, duties to make arrangements to secure improvement).

iv. Section 30 of the 2009 Measure (powers of direction: collaboration arrangements). This section permits the Welsh Ministers to direct a Welsh improvement authority which may not itself be failing (or be at risk of failing) to collaborate with one that is.

v. Section 31 of the 2009 Measure (power of Welsh Ministers to modify enactments and confer new powers). This section provides Welsh Ministers with a power (by order) to make provision to modify or exclude the application of enactments which apply to Welsh improvement authorities, and to confer new powers on such authorities. The Welsh Ministers may do so only if they are satisfied that such an enactment prevents or obstructs a Welsh improvement authority from complying with the provisions of Part 1 of the 2009 Measure, or that conferring a new power would facilitate such compliance.

The Welsh Ministers will have to demonstrate that they are satisfied that exercise of the above powers is unlikely to achieve effective local government, and that an amalgamation would be likely to do so. Therefore, having first been satisfied that effective local government is not likely to be achieved by the exercise of powers under the 2009 Measure, it is only then that the Welsh Ministers may, if they are satisfied that it is necessary to achieve local government, make an amalgamation order.

The Welsh Ministers will have to explain a proposal for amalgamation in the documentation required under section 164H (see below); the explanation will have to demonstrate how the Welsh Ministers reached their conclusion.

Section 164H also requires an amalgamation order to cover various issues fundamental to an amalgamation and the creation of a new authority, including abolition of the existing areas, the creation of the new area, its name, its designation as a county or county borough, the establishment of the new local authority as a county, or county borough, council and the winding up and dissolution of the councils of the existing areas.

Section 164B – Electoral matters

Enables the Welsh Ministers, when making an amalgamation order, to make provision in that order for the election of the council of the new local authority. The provision would include the power to cancel any elections scheduled for the authorities to be abolished.

If the election of the new authority had to take place on a day other than that scheduled for the ordinary local government elections and community council

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elections were also scheduled for that day in the areas concerned, the Welsh Ministers would be able to cancel the community council elections and order them to be held on another day (for example to coincide with the first elections to the new authority).

The amendment provides for a “shadow” period and the establishment of a shadow authority and shadow executive to make the necessary preparations for the new authority before it comes formally into being.

Section 164C – Requirement to hold a referendum involving an elected mayor

Requires the Welsh Ministers, when making an amalgamation order, to require the shadow authority for the new local government area to hold a referendum on whether the new authority (when it comes into being formally) should operate the elected mayor and cabinet form of executive arrangements. The requirement to hold such a referendum will apply only where at least one of the authorities to be amalgamated is already operating with an elected mayor and cabinet executive.

Section 164D – Power to direct a referendum involving an elected mayor

Enables the Welsh Ministers to make regulations by which they may direct the shadow authority of a new local government area to hold a referendum on whether or not the new local authority should operate the elected mayor and cabinet form of executive arrangements.

The circumstances where this power might be invoked would be where the residents of one of the local authorities to be amalgamated had voted in a referendum in favour of having an elected mayor, but the election of the mayor had not yet been held. The power will enable the Welsh Ministers to extend the procedure for introducing an elected mayor over the whole of the new local government area.

Section 164E – Supplementary, incidental, consequential, transitional and saving provision

Enables the Welsh Ministers to make supplementary, incidental, consequential, transitional and saving provision in connection with an amalgamation order.

This section will enable the Welsh Ministers to make provision in an amalgamation order to address other key issues such as the transfers of staff, properties, liabilities and rights and any other matter arising out of the amalgamation. It may be impractical to try and capture all of these details in

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the amalgamation order, so the section also enables the Welsh Ministers to make regulations to cover such provision.

Section 164F – Review of electoral arrangements

Enables the Welsh Ministers to direct the Welsh Commission to undertake a review of the electoral arrangements for the new local government area.

The provisions introduced by section 164B enable the Welsh Ministers to specify the initial electoral arrangements for a new authority in the amalgamation order.

In most cases the amalgamation order would be made sufficiently in advance of the scheduled date of the first elections for the electoral arrangements to have been reviewed by the Welsh Commission. A review can take between 12 and 18 months, so if an amalgamation order is close to the scheduled date of elections there may not be time for the Commission to complete the review before the first elections.

In these circumstances, section 164B enables the Welsh Ministers to determine the electoral arrangements to be used for the first elections. Ministers would seek out informed opinion in doing so; the arrangements would then be subject to review by the Welsh Commission as soon as possible after the first elections. This is what happened for the first elections to the new authorities created by the Local Government (Wales) Act 1994.

Section 164G – Amendment to the Local Government Act 1972

Amends provisions in the Local Government Act 1972 (the “1972 Act”) which govern the procedure to be followed by the Welsh Commission when undertaking a review of electoral arrangements. This will ensure that the usual procedures are followed in the event of the Commission undertaking a review of a new local government area under direction from the Welsh Ministers following an amalgamation order.

Subsection (5) also amends section 68(1) of the 1972 Act so the provisions of section 68 (which concerns transitional agreements with respect to property and finance in respect of those public bodies affected by the alteration, abolition or constitution of any area by an order under Part IV of the 1972 Act) also apply in the event of an amalgamation order.

Section 164H – Procedure applicable to an amalgamation order

Requires that an amalgamation order will be subject to the Assembly’s super-affirmative resolution procedure. The section sets out each step in the procedure.

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Once the Welsh Ministers have announced that they propose to amalgamate two or three local authorities, they must consult everyone who is representative of persons or interests affected by the proposals.

Following the consultation, if the Welsh Ministers wish to proceed with the proposals, they must lay before the Assembly a document which provides an explanation for the proposals, gives details of the consultation and presents a draft order giving effect to the proposals.

The document has to lay before the Assembly for no less than 60 days – during which time anyone with an interest in the proposals may make representations and Assembly committees may take up the opportunity to call in the proposals for consideration.

The final draft order may then be laid before the Assembly, accompanied by a statement which sets out what representations have been received since the first draft order was laid and what changes, if any, have been made in the final draft order.

The final draft order must be approved by the Assembly, by simple majority of those AMs voting.

Section 164I – Correction of orders

Enables the Welsh Ministers, by order, to correct an error made in an amalgamation order.

Section 164J – Interpretation

Provides definitions of certain terminology used in the new sections.