

**National Assembly for Wales**  
Legislation Committee No. 3

Proposed Local Government (Wales) Measure

Stage 1 Committee Report  
December 2010



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### **Legislation Committee No.3**

Legislation Committee No.3 was established by the National Assembly for Wales to consider and report on legislation introduced into the Assembly, particularly by the Welsh Government. The Committee is also able to consider and report on non-government legislation, as appropriate.

#### **Powers**

The Committee was established on 9 December 2008 as one of the Assembly's legislation committees. Its powers are set out in the National Assembly for Wales' Standing Orders, particularly SO 10, 22 and 23. These are available at [www.assemblywales.org](http://www.assemblywales.org)

#### **Committee membership**

<i>Committee Member</i>	<i>Party</i>	<i>Constituency or Region</i>
Dai Lloyd (Chair)	Plaid Cymru	South Wales West
Christine Chapman	Labour	Cynon Valley
Veronica German	Welsh Liberal Democrats	South Wales East
William Graham	Welsh Conservative Party	South Wales East
Helen Mary Jones	Plaid Cymru	Llanelli
Joyce Watson	Labour	Mid and West Wales

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## **The Committee's Recommendations**

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Our conclusions and recommendations are listed below, in the order that they appear in this report. Please refer to the relevant paragraphs of the report to see the supporting evidence:

### ***General principles and the need for legislation***

We strongly support the general principles of the proposed Measure. (Paragraph 41)

We agree with the Minister that there must be a consistent approach across all local authorities so that a more diverse range of individuals feel they are able to put themselves forward for election to local government. We are of the view the proposed Measure will put mechanisms in place to facilitate this, and legislation is needed to make sure it happens consistently across Wales. (Paragraph 42)

It is our view that the proposed Measure contains sufficient flexibility to allow local authorities to implement many of the provisions in ways that suit their needs and ways of working. (Paragraph 43)

It is our view that the proposed Measure will improve the way executives are held to account and will result in better governance and service delivery across all of Wales. (Paragraph 44)

We welcome the provisions in Part 7, which relate specifically to town and community councils. (Paragraph 45)

We are of the view that the Minister has dealt with town and community councils appropriately and provided sufficient flexibility within the proposed Measure to allow community councils to take on more powers, if they so wish. (Paragraph 45)

The proposed Measure is wide-ranging in its scope, and will affect working practices across different tiers of local government. We believe that, as a package, the proposed Measure will help to ensure local government is representative and diverse, and operates in ways that reflect the changing nature of local government and public service delivery. (Paragraph 46)

### ***Sections 1 – 3: Duty to conduct a survey***

We recommend that the provisions in section 1-3 should form part of a wider programme to gather information needed to understand the barriers to participation in local government. (Paragraph 71)

### ***Section 4: Remote attendance***

83. We are content with the provisions for remote attendance under section 4, and believe that they will encourage wider participation and benefit elected members by introducing more flexible ways of working. (Paragraph 83)

### ***Section 5: Annual reports***

We believe that that the provisions in section 5 should be welcomed as they will help to increase the public's awareness of their councillors' work, and benefit all members. (Paragraph 92)

We recommend that the Minister develops guidance for local authorities detailing the content of annual reports. (Paragraph 93)

### ***Section 6: Timing of council meetings***

We are content with the provisions contained in section 6. (Paragraph 102)

### ***Section 7: Training and development***

We are satisfied that the provisions relating to the training and development of elected members are necessary, and hope they will secure a consistent approach across Wales. (Paragraph 112)

The Minister agreed that the drafting of section 7 of the proposed Measure and Explanatory Memorandum could be misleading, and we are satisfied that the text of the proposed Measure is correct. We therefore recommend the Minister amends the Explanatory Memorandum following Stage 2 consideration of the proposed Measure. (Paragraph 113)

### ***Sections 8 - 9: Head of democratic services***

Overall, we are content with the provisions in sections 8 and 9, which will require local authorities to put in place a Head of Democratic Services, with supporting staff, to ensure all members, including non-



executive members, receive adequate research and administrative support to enable them to carry out their duties effectively. (Paragraph 130)

However we have reservations regarding the implementation of these provisions. (Paragraph 132)

We recommend that the Minister clarifies how sections 8 and 9 will protect the independence and integrity of scrutiny activities in local government, to ensure that the scrutiny process holds executives to account and makes a valuable contribution to the governance of local authorities. Clarification should be provided prior to Stage 2 consideration of the proposed Measure. (Paragraph 133)

### ***Sections 10 – 20: Democratic services committee***

We consider sections 11 to 20 are appropriate and in keeping with the overall aims of the proposed Measure. We therefore do not consider it sufficient for the head of paid service to report to full council, as suggested by witnesses and are content with the provisions as drafted. (Paragraph 142)

We welcome the Minister's assurance that he will address the misleading provisions in section 10, and expect appropriate amendments to be brought forward at Stage 2 of the proposed Measure's consideration. (Paragraph 143)

### ***Sections 23 - 32: Family Absence***

We welcome the provisions in Part 2 of the proposed Measure which will entitle elected members to periods of family absence for a number of reasons, and represent significant progress when compared with entitlements under existing legislation. These provisions are in keeping with the overall aim of the proposed Measure and will reassure those who need to take a period of family absence that they will be supported. (Paragraph 159)

However, we are concerned that, as drafted, the provisions do not adequately deal with the way in which members of the executive might benefit from the entitlements given the current limits of the size of local authority executives. We therefore recommend that the Minister considers this issue and addresses it at a further stage of the proposed Measure's consideration. (Paragraph 160)

***Sections 33 - 54: Available governance arrangements and changes to executive arrangements***

We recommend that the Minister provides clarity around the commencement of these provisions, so that those local authorities making the transition to a different governance arrangement will be able to plan effectively for the necessary adjustments. (Paragraph 178)

***Sections 54 - 56: local authority functions***

We are content with the provisions in relation to Part 5, which we believe will strengthen the collaboration agenda across local authorities and relevant partnerships. (Paragraph 183)

***Sections 57 - 61: Joint scrutiny and overview committees, joint scrutiny, scrutiny of designated persons, taking into account the views of the public***

Scrutiny plays an important part in policy development and service delivery. The proposed Measure puts a number of provisions in place to strengthen this function and ensure local authority overview and scrutiny committees can operate effectively in ways that reflect the operations of local authorities. We therefore consider the provisions in relation to joint scrutiny to be appropriate. (Paragraph 216)

We recommend that the Minister issues guidance to deal with any problems joint scrutiny committees might encounter that could hinder their activities and ability to operate effectively. (Paragraph 217)

We welcome the provisions in section 58(5) and (6) that will enable scrutiny committees to require designated persons to provide information and attend meetings to inform the committees' work. These provisions will help to improve the ability of scrutiny committees to undertake rigorous investigations. (Paragraph 218)

We recommend the Minister defines how the duty in section 58(3) will operate, and provides clarification regarding practical issues such as the number of times designated persons might be called before the scrutiny committee, and the reasons they would be called. We recommend that clarification be provided before the next stage of the proposed Measure's consideration. (Paragraph 220)

Local authorities actively engage with the public on a regular basis, and there are many examples of good practice. However, the Minister has explained that by including in the proposed Measure requirements for scrutiny committees to take into account the views of the public, there will be a guaranteed route for those citizens wanting to highlight areas of concern, and a requirement for this to happen across all local authorities in Wales. We are content with the provisions in section 61. (Paragraph 222)

***Sections 65 – 74: Appointing persons to chair committees***

.It is our view that the provisions in sections 65 to 74 are appropriate, in that they provide the necessary safeguards to ensure that the allocation of scrutiny chairs reflects the political balance of the local authority, and that this is necessary for good governance. (Paragraph 235)

We are reassured by the Minister’s confirmation that the provisions in section 73 of the proposed Measure will allow councils to waive these provisions under any circumstances that might not be included on the face of the Measure. (Paragraph 236)

***Sections 75 – 79: Co-opted members of overview and scrutiny committees***

We broadly welcome the provisions that will enable scrutiny committees to co-opt individuals with specific knowledge or backgrounds to participate in their activities. This will be of great benefit, providing additional expertise to support and strengthen scrutiny. (Paragraph 247)

However, we strongly object to the powers in section 77 that will enable co-opted members of overview and scrutiny committees to vote. We therefore recommend that the Minister brings forward appropriate amendments at the next stage of the proposed Measure’s consideration to reflect our view. (Paragraph 248)

***Section 81: Prohibition of whipped votes and declaration of party whips***

Whilst we note the concerns of witnesses and recognise that these provisions may be difficult to enforce, we consider that their inclusion in the proposed Measure establishes an important principle that

prohibiting the use of the party whip provides members of scrutiny committees with the necessary safeguards for them to operate independently of political influence. We are therefore content with these provisions. (Paragraph 259)

### ***Sections 84 – 90: Audit Committees***

We agree that all local authorities should have an audit committee, to ensure a consistent approach and support effective governance across all local authorities. We are therefore generally supportive of these provisions. We received assurances from the Minister that he would discuss the concerns of The Chartered Institute for Public Finance and Accountancy and the Wales Audit Office with those organisations, and consider amending the provisions accordingly. We agree with this approach, and recommend that the Minister brings forward appropriate amendments at Stage 2 of the Measure’s consideration. (Paragraph 269)

### ***Part 7: Communities and community councils***

Town and community councils in Wales are diverse, and some will be more eager to take on additional responsibilities than others. We welcome the flexibility in the proposed Measure, and agree that, as drafted, it reflects the diversity of the sector and will enable those community councils who wish to take on more powers and responsibilities to do so. (Paragraph 288)

It is our view that enhancing the work of town and community councils will help to increase awareness of their role and generate more interest in their activities. This will not only be of great benefit to local communities, it will also help to demonstrate to the public that the role of community councillor can make a positive contribution to the locality, and could encourage greater participation in this tier of local government. (Paragraph 289)

### ***Sections 91 – 102: Community meetings and community polls***

We have considered the evidence presented by witnesses and believe the provisions in sections 91 to 102 are appropriate. We therefore agree with witnesses that guidance will be needed to ensure that community polls are not overused, particularly where other ways of gathering public opinion may have previously been adopted. (Paragraph 296)

***Sections 103 – 118: Organisation of communities and their councils***

We consider the proposals to increase the thresholds for dissolving community councils to be appropriate. Furthermore, the proposed Measure as a whole aims to increase participation in local democracy, and as such we believe that it is appropriate to make it easier for communities to establish a community council by decreasing the threshold for doing so. (Paragraph 307)

***Sections 199 - 120: Co-option of members of community councils***

Many town and community councils in Wales would be unable to operate without co-opted Members. With this in mind, we are content with the provisions in the proposed Measure that aim to increase the transparency of the co-option process by requiring public notices. Furthermore, we believe that, in making the process more transparent, co-option may be an opportunity to increase interest in the work of community councillors. (Paragraph 313)

However, we strongly believe that the current co-option levels on community councils are unacceptable and are of the view that this is a matter of great concern. We recognise that it is a complex issue as many community councils would not be able to function without co-option. We are of the view that it would be inappropriate to deal with this issue in the context of this proposed Measure without careful consideration being given to the position of existing community councils who co-opt. However, we recommend that the Minister should consider addressing this issue. (Paragraph 314)

***Sections 121 – 124: Appointment of community youth representatives***

The provisions that will give town and community councils the ability to appoint a community youth representative, if they wish, are to be welcomed. We believe that including this provision will increase opportunities for young people to participate in local democracy. (Paragraph 324)

***Sections 125 – 128: Reviews of community areas and electoral arrangements***

We are content that these provisions, as drafted, are appropriate, and allow for flexibility to suit local circumstances. (Paragraph 333)

***Sections 129 – 131: Community council's powers to promote well-being***

We welcome the provisions that relate to the promotion and improvement of well-being as a means of providing town and community councils with greater powers and responsibilities. These provisions are in keeping with the spirit of the proposed Measure, and will bring this tier of local government into line with those that can already use the power. (Paragraph 344)

However, despite hearing evidence on this issue from the Minister, we are concerned at the lack of clarity as to the purpose of these provisions, and note that a number of witnesses were unsure how they will be used. We therefore recommend that the Minister addresses this by issuing guidance that highlights how the power to promote well-being may be used in practice. (Paragraph 345)

***Section 132: Grants to community councils***

We have considered these provisions in the context of the current and longer term challenges facing local government at all levels, and believe they are appropriate. However, we were not satisfied by the Minister's explanation regarding the use of this provision, and recommend that he provides greater clarity prior to the next stage of the proposed Measure's consideration. (Paragraph 356)

***Sections 133 – 136: Model charter arrangements between local authorities and community councils***

It is our view, therefore that voluntary charters are the most effective ways of achieving genuine collaboration and the Minister should continue to encourage this approach. (Paragraph 368)

We therefore agree with these provisions, but support those witnesses who believe the use of the powers in sections 134 and 135 should be a last resort. (Paragraph 369)

***Sections 137 – 143: Schemes for the accreditation of quality in community government***

Witnesses were supportive of the provisions in sections 137 to 143 that will enable Welsh Ministers to establish an accreditation scheme for town and community councils, believing they will be a useful mechanism for local communities to assess the effectiveness of their community council, and will encourage professionalism in the sector. On this basis, we are content with these provisions. (Paragraph 376)

***Sections 144 – 163: Members payments and pensions***

We welcome the extension of the Independent Remuneration Panel's remit. Requiring an independent body to advise on remuneration for councillors at all levels will continue to ensure transparency and consistency across all authorities in Wales. It is our view that it is appropriate for the panel's role to be extended to include town and community councils, national parks and fire and rescue authorities. (Paragraph 400)

We are content that the proposed Measure as drafted will enable the Panel to work in a flexible way so as to respond to future needs and challenges. (Paragraph 401)

However, we note that members of the Independent Remuneration Panel were concerned at the lack of clarity relating to certain provisions within the proposed Measure, and the disapplication of existing regulations under which the Panel operates. These issues must be addressed to ensure the work of the Panel is given sufficient credibility, and that it does not experience any difficulties in undertaking its activities once these provisions are commenced. The Minister has confirmed that he will work with the Panel to address these concerns. We recommend that this be dealt with as a matter of urgency so that appropriate amendments can be brought forward at the next stage if necessary. (Paragraph 402)

The Panel suggested that it may be appropriate, in some instances, for it to be able to set aggregate levels of Special Responsibility Allowances that would enable local authority executives to allocate differing levels of allowance according to portfolios within the executive. We are of the view that this would be inappropriate, and would not be in keeping with the overall aim of this Part of the proposed Measure. (Paragraph 403)

### ***Sections 164 – 172: Guidance on collaboration***

The provision in section 164 will enable Welsh Ministers to issue guidance on collaboration between ‘Welsh Improvement Authorities’. We strongly support this provision and believe it is appropriate and necessary. (Paragraph 411)

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. We recommend that the Minister seeks ways of addressing this issue and strengthening the proposed Measure to look at other circumstances where the Minister may want to compel local authorities to collaborate. (Paragraph 413)

### ***Subordinate legislation***

We are of the view that the subordinate legislation provisions are appropriate. (Paragraph 420)



# 1. Introduction

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1. On 12 July 2010, the Minister for Social Justice and Local Government, Carl Sargeant AM (hereafter referred to as ‘the Minister’), introduced the *Proposed Local Government (Wales) Measure*<sup>1</sup> and accompanying Explanatory Memorandum<sup>2</sup>. The Minister made a statement in plenary<sup>3</sup> the following day<sup>4</sup>.

2. At its meeting on 6 July 2010, the National Assembly for Wales’ Business Committee agreed to refer the proposed Measure to Legislation Committee No.3 for consideration of its general principles (Stage 1) in accordance with Standing Order 23.21. The Business Committee agreed that the Committee must report on the proposed Measure no later than 17 December 2010.

## *Terms of scrutiny*

3. We agreed the following framework for our scrutiny of the general principles of the proposed Measure.

To consider:

- the need for a proposed Measure to deliver the stated objectives;
- the key provisions set out in the proposed Measure and whether they are appropriate to deliver its objectives;
- potential barriers to the implementation of the key provisions and whether the proposed Measure takes account of them;
- financial implications of the proposed Measure;
- the views of stakeholders who will have to work with the new arrangements.

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<sup>1</sup> *Proposed Local Government (Wales) Measure*: <http://www.assemblywales.org/bus-home/bus-guide-docs-pub/bus-business-documents/bus-business-documents-doc-laid.htm?act=dis&id=191170&ds=7/2010>

<sup>2</sup> Welsh government, Explanatory Memorandum to the *proposed Local Government (Wales) Measure*, July 2010: <http://www.assemblywales.org/bus-home/bus-guide-docs-pub/bus-business-documents/bus-business-documents-doc-laid.htm?act=dis&id=191171&ds=7/2010>

<sup>3</sup> A full meeting of the National Assembly for Wales

<sup>4</sup> RoP, 13 July 2010, available at: <http://www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop.htm?act=dis&id=191557&ds=7/2010>

### *The Committee's approach*

4. We issued an open call for evidence through the Welsh media and the Assembly's website. We also wrote to a wide range of organisations and individuals with a subject interest, inviting them to submit written evidence to inform our work. We received a large number of responses, details of which can be found at the end of this report.

5. We also heard oral evidence from several witnesses over 6 meetings. A list of those who attended our meetings to give evidence can be found at the end of this report.

6. The Assembly's Constitutional Affairs Committee and the Finance Committee have also considered the proposed Measure. Their reports will be available on the Assembly's website.<sup>5</sup>

7. In reaching our conclusions, we have taken account of the views of witnesses and sought to reflect the key issues raised in their evidence, adopting a consensual approach. The following report represents the conclusions and recommendations we have reached based on the evidence we received during the course of our work. We would like to thank all those who have contributed to our consideration of the proposed Measure.

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<sup>5</sup> National Assembly for Wales webpages: [www.assemblywales.org](http://www.assemblywales.org)

## 2. Background

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### *The legislative competence*

8. The principal powers that enable the National Assembly for Wales to make a Measure in relation to local government are contained in Section 93 of the *Government of Wales Act 2006*. Section 93 gives the National Assembly the power to make Assembly Measures in relation to ‘matters’ listed in Field 12 (local government) of Part 1 of Schedule 5 of that Act. Specifically, these are matters 12.5 to 12.17 and are detailed at Annex A.

9. The competence to legislate in this area is conferred by section 235 and schedule 17 of the *Local Government and Public Involvement in Health Act 2007* (matter 12.5), section 33 of the *Local Democracy, Economic Development and Construction Act 2009* (matters 12.6 and 12.7 and the *National Assembly for Wales (Legislative Competence) (Local Government) Order 2010* (matters 12.8 – 12.7).<sup>6</sup>

### *The Explanatory Memorandum*

10. The Explanatory Memorandum that accompanies the proposed Measure explains that the proposed 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.”<sup>7</sup>

11. The proposed Measure aims to achieve the above by making provision to:

- 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);
- 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);

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<sup>6</sup> Explanatory Memorandum, paragraph 2.3

<sup>7</sup> Explanatory Memorandum, paragraph 1.1

- enhance the role of non-executive local authority councillors (backbench) in the scrutiny of local services (Parts 5-6);
- 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 (Part 7);
- reform the system for setting allowances for councils (Part 8);
- allow the Welsh Ministers to issue statutory guidance on collaboration between local authorities, and between them and other bodies (Part 9).<sup>8</sup>

12. The Explanatory Memorandum explains that the Welsh government undertook to seek new powers, through its policy statement *A Shared Responsibility 2007*, to address a number of the delivery issues which affected local government in Wales.<sup>9</sup>

13. The Explanatory Memorandum goes on to explain that.

“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*.”

#### *Summary of the proposed Measure*

14. The following paragraphs provide an overview of the proposed Measure. Full details of the aim and policy background to each Part of the proposed Measure can be found in its accompanying Explanatory Memorandum.

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<sup>8</sup> Explanatory Memorandum paragraph 1.2

<sup>9</sup> Explanatory Memorandum, paragraph 3.1

15. Parts 1 and 2 of the proposed Measure will introduce provisions to ‘strengthen local democracy’, and enable local councillors to take a number of different types of family absence. Specifically, the provisions in Part 1 place a number of requirements upon local authorities to introduce more flexible working arrangements. These include making arrangements for councillors to access council meetings remotely, and enabling Welsh Ministers to issue guidance regarding the timing of council meetings. Part 1 will also introduce a duty on local authorities to monitor the equality and diversity profiles of candidates in local government elections. Other provisions in Part 1 include a requirement for local authorities to provide reasonable support for non-executive members. Part 2 will require local authorities to make arrangements for elected members to take family absence.<sup>10</sup>

16. Parts 3, 4 and 5 of the proposed Measure will simplify the procedures by which local authorities will be able to change their executive models; will remove the option of adopting certain executive models; and will enable local authorities or their executives to delegate decision-making functions to non-executive elected members appointed to local service boards, or other partnerships.<sup>11</sup>

17. The provisions in Part 6 will aim to strengthen the scrutiny activities of local authorities and ensure high quality scrutiny activities take place across all local authorities in Wales, by allowing two or more authorities to undertake joint scrutiny, and by giving scrutiny committees more powers to scrutinise external organisations. This Part also includes provisions that aim to minimise practices “widely perceived to undermine the principles of effective scrutiny”, such as use of a party whip in scrutiny committees, and the allocation of scrutiny committee chairs to the same political groups as the executive.<sup>12</sup>

18. The provisions in Part 7 aim to enable community councils in Wales to deliver a wider range of services and actions locally. This Part also aims to increase levels of inclusiveness at community council

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<sup>10</sup> Explanatory Memorandum, paragraph 3.4 & 3.5 – 3.11

<sup>11</sup> Explanatory Memorandum, paragraph 3.4 & 3.12 – 3.22

<sup>12</sup> Explanatory Memorandum, paragraph 3.30

level, and ensure they have effective ways of communicating and engaging with local communities.<sup>13</sup>

19. According to the Explanatory Memorandum, 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.”<sup>14</sup> The provisions within Part 8 will establish arrangements for the Independent Remuneration Panel to make recommendations on allowances and pensions for local councillors. It will enable the Panel to regularly review these arrangements, to reflect the changing nature of local government and councillors’ work. This Part also extends the remit of the Panel so that it will be able to advise on remuneration for Community Councils, National Park and Fire and Rescue Authorities.<sup>15</sup>

20. Part 9 of the proposed Measure will enable Welsh Ministers to issue statutory guidance to local authorities on local authorities’ powers and duties regarding collaboration, under the *Local Government (Wales) Measure 2009*.<sup>16</sup> According to the Explanatory Memorandum this will rectify an anomaly in the 2009 Measure, and enable Welsh Ministers to direct local authorities at a time when collaboration is believed to be “fundamental to improving service quality and efficiency, especially in the current financial climate.”<sup>17</sup>

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<sup>13</sup> Explanatory Memorandum, paragraph 3.32

<sup>14</sup> Explanatory Memorandum, paragraph 3.40

<sup>15</sup> Explanatory Memorandum, paragraphs 3.40 – 3.51

<sup>16</sup> Explanatory Memorandum, paragraph 3.40

<sup>17</sup> Explanatory Memorandum, paragraph 3.55

### **3. General principles and the need for legislation**

21. The general principles of the proposed Measure are outlined in the earlier sections of this report.

*Evidence from witnesses*

#### ***Aims of the proposed Measure***

22. Witnesses generally agreed with the policy principles that underpin the proposed Measure and there was support for its aims. The Welsh Local Government Association, for example, supported the intent of the proposed Measure in:

“...seeking to strengthen local democracy and support and empower councils and councillors in their community leadership role.”<sup>18</sup>

23. One Voice Wales supported the principles of the proposed Measure because it:

“...addresses needs identified in a range of independent reports (e.g. Aberystwyth study, Councillors Commission Expert Panel for Wales report, Independent Remuneration Panel reports) and...offers scope to improve considerably the overall operation of local government. These improvements relate to interactions between the two tiers of local government and other bodies as well as the operation of any particular sector or body.”<sup>19</sup>

24. Respondents from town and community councils were also broadly in support of the general principles, although a number were concerned about the cost of its implementation:

“At these times of financial belt tightening there must be an issue about the cost benefit of introducing this Measure.”<sup>20</sup>

25. A number of witnesses believed that the proposed Measure would help make local government more representative by increasing the

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<sup>18</sup> Written Evidence, LG65

<sup>19</sup> Written Evidence, LG38

<sup>20</sup> Written Evidence, LG7

range of people participating in local democracy. Professor Laura McAllister told us that the proposed Measure:

“...addresses some of the structural and cultural matters that prohibit women and other under-represented groups from coming forward.”<sup>21</sup>

26. Other bodies such as RNIB Cymru, RNID Cymru,<sup>22</sup> Stonewall Cymru,<sup>23</sup> Scope Cymru<sup>24</sup> and the Equality and Human Rights Commission<sup>25</sup> agreed. The Equality and Human Rights Commission told us:

“Representation is a key issue, and the stats speak for themselves—25 per cent of councillors in Wales are women, for example. We broadly welcome the general move to identify gaps, to ease difficulties in balancing life and work, and to increase the confidence of people to stand for election.”<sup>26</sup>

### ***Prescriptive nature of the proposed Measure and the need for legislation***

27. Despite the support for the aims of the proposed Measure, we received a mixed response regarding the need to legislate for these aims, and heard criticism of the prescriptive nature of many sections in the proposed Measure.

28. The Welsh Local Government Association, for example, commented that the proposed Measure was “too restrictive and prescriptive” and would undermine the Welsh Government’s stated objectives, “effectively curtailing local autonomy and local discretion.”<sup>27</sup> The Welsh Local Government Association told us:

“There are parts of the proposed Measure that we warmly welcome, and there are other parts that we warmly oppose. We see that this proposed Measure is committed to extending local

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<sup>21</sup> RoP, paragraph 11, 4 November 2010

<sup>22</sup> Written Evidence, LG53

<sup>23</sup> Written Evidence, LG50

<sup>24</sup> Written Evidence, LG35

<sup>25</sup> Written Evidence, LG79

<sup>26</sup> RoP, paragraph 13, 4 November 2010

<sup>27</sup> Written Evidence, LG65



democracy across Wales, but the principles do not always align with the proposals.”<sup>28</sup>

29. Local authorities shared the view of the Welsh Local Government Association. Conwy County Borough Council, for example, believed that:

“Several of the proposals...will fail to achieve those objectives and may in fact be counter-productive.”<sup>29</sup>

30. In addition to questioning whether the proposed Measure would achieve its intended aims, some local authorities questioned whether there was a need for the proposed Measure at all. Pembrokeshire County Council stated:

“There are already numerous pieces of legislation and guidance in place to ensure that local government in Wales operates in a robust fashion and that communities are effectively engaged in helping to determine local objectives and strategies. The proposed legislation will not complement the approaches that have already been adopted in many parts of Wales and may even run the risk of undermining existing work.

Furthermore, we do not agree that the stated objectives are sensible or desirable. We do not consider that the “improvements” proposed in the Measure – which are almost exclusively concerned with the internal workings of local authorities – will actually result in improved outcomes for the people we serve. It is not clear how the various elements of the proposed Measure will “strengthen the structures and working of local government in Wales”. They will certainly add to our internal structures, but they will not necessarily improve them.”<sup>30</sup>

31. Bridgend County Borough Council supported this view, questioning whether the “statutory obligation” was appropriate, as many of the proposed Measure’s aims are being achieved through existing practices.<sup>31</sup>

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<sup>28</sup> RoP, paragraph 8, 21 October 2010

<sup>29</sup> Written Evidence, LG18

<sup>30</sup> Written Evidence, LG9

<sup>31</sup> Written Evidence, LG69

32. However, Gwynedd County Council confirmed that problems encountered under existing legislation meant the proposed Measure was necessary, but added a caveat to this view:

“Legislation is needed in order to remove...restrictions and for this reason we agree that there is a need for a proposed measure. The important general point, however, is that the nature of the measure should be permissive rather than prescriptive to enable the local determination of the best arrangements.”<sup>32</sup>

33. The Association of County Secretaries and Solicitors also felt that there was a need for a Measure “to strengthen the working of local government across Wales”, and was pleased to support the principle of the proposed Measure.<sup>33</sup> However, they also raised concerns regarding the balance of prescription and permission in the proposed Measure, fearing that there were too many provisions that would enable Ministers to impose duties on local authorities, rather than permitting them to do things if they wished.<sup>34</sup>

#### *Evidence from the Minister*

34. During our evidence sessions with the Minister, he highlighted the substantial body of evidence that has informed the development of the proposed Measure, and told us this provided the rationale for introducing legislation in this area.<sup>35</sup>

35. The Minister told us action was “needed to encourage a more diverse range of elected members at all levels of local government” and he wanted to address the fact that “councils are currently dominated by councillors who are generally white, male, elderly and retired.”<sup>36</sup>

36. We were also told by the Minister that there was a need for enhanced support for scrutiny and non-executive members in local government. He noted that “the Beecham review concluded that scrutiny was a powerful tool for improving good government.”<sup>37</sup>

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<sup>32</sup> Written Evidence, LG67

<sup>33</sup> Written Evidence, LG33

<sup>34</sup> Written Evidence, LG33

<sup>35</sup> RoP, paragraphs 12 – 16, 23 September 2010

<sup>36</sup> RoP, paragraph 12, 23 September 2010

<sup>37</sup> RoP, paragraph 13, 23 September 2010

37. The Minister also explained why community councils should be able to take on more powers, if they so wish, stating that “some community councils could be achieving more for the residents.”<sup>38</sup> He was also of the view that the “lack of inclusiveness of councils and low levels of contested elections” needed to be addressed.<sup>39</sup>

38. We asked the Minister whether he agreed with those witnesses who had raised concerns regarding the level of prescription in the proposed Measure. The Minister commented:

“I am not convinced that we have been over-prescriptive. I think that we have been reasonable in our approach to the proposed Measure...[it] is based on the evidence that was provided by many studies over the past few years...so we have not plucked the proposed Measure out of the air. It is based on evidence from previous reports.”<sup>40</sup>

39. The Minister also explained why he felt it necessary to legislate, despite the fact that many of the witnesses suggested that actions prescribed by the proposed Measure are already being undertaken in local government. He commented:

“This is about raising the games of local government and the public sector. There are many examples of local authorities doing this already ... but there are also authorities that are lagging significantly behind...It is about having consistency across Wales, which is what should be expected. I do not think that is unreasonable.”<sup>41</sup>

40. The Minister added:

“There has been an opportunity for change for a long time, but we have seen little of that. It is therefore time for legislation to enable authorities to consider this.”<sup>42</sup>

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<sup>38</sup> RoP, paragraph 14, 23 September 2010

<sup>39</sup> RoP, paragraph 14, 23 September 2010

<sup>40</sup> RoP, paragraph 5, 18 November 2010

<sup>41</sup> RoP, paragraph 7, 18 November 2010

<sup>42</sup> RoP, paragraph 32, 18 November 2010

*Our view*

41. **We strongly support the general principles of the proposed Measure.** It is widely recognised that local councils should be more representative of the communities they serve, and there is a need to encourage individuals from more diverse backgrounds to participate in local government at all levels. In our view, not enough practical action has taken place to date. The proposed Measure aims to put mechanisms in place to help address this issue. We support these aims.

42. Many local authorities in Wales operate in ways that enable people from more diverse groups to participate in local government, but this is not the case across Wales. **We agree with the Minister that there must be a consistent approach across all local authorities so that a more diverse range of individuals feel they are able to put themselves forward for election to local government. We are of the view the proposed Measure will put mechanisms in place to facilitate this, and legislation is needed to make sure it happens consistently across Wales.**

43. We note the concerns of a number of witnesses regarding the prescriptive nature of the proposed Measure, but consider that such prescription will be necessary to guarantee that local authorities respond accordingly. **It is our view that the proposed Measure contains sufficient flexibility to allow local authorities to implement many of the provisions in ways that suit their needs and ways of working.**

44. We believe that many of the provisions will provide greater support for non-executive members and strengthen the scrutiny functions of local authorities. **It is our view that such developments will improve the way executives are held to account and will result in better governance and service delivery across all of Wales.**

45. **We welcome the provisions in Part 7, which relate specifically to town and community councils.** A number of town and community councils in Wales want to do more in their local areas, so that they can be more responsive to their communities' needs. **We are of the view that the Minister has dealt with this appropriately and provided sufficient flexibility within the proposed Measure to allow community councils to take on more powers, if they so wish.**

**46. The proposed Measure is wide-ranging in its scope, and will affect working practices across different tiers of local government. We believe that, as a package, the proposed Measure will help to ensure local government is representative and diverse, and operates in ways that reflect the changing nature of local government and public service delivery.**

47. Overall, therefore we welcome the proposed Measure, support its general principles, and agree with the need for legislation.

## **4. Part 1: Strengthening local democracy (sections 1 – 20)**

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48. Part 1 of the proposed Measure introduces a new duty on local authorities to conduct a survey of councillors and failed candidates with a view to monitoring their equality and diversity profiles (sections 1-3). Information gathered through the survey will be collated and passed on to Welsh Ministers who may publish it and share it with anybody representing the interests of councils in Wales.

49. The provisions intended to support members include: facilitating remote attendance at meetings (section 4); powers for Ministers to issue guidance in relation to the timing of meetings (section 6); making arrangements for members to produce an annual report of their activities (section 5); and provision for the training and development of members (section 7).

50. Part 1 also requires local authorities to designate one officer as a Head of Democratic Services responsible for administrative and research support for non-executive members. The proposed Measure also makes provision for the establishment and membership of a democratic services committee (sections 8 to 21).

### **Duty to conduct a survey (sections 1 - 3)**

51. Sections 1 and 2 of the proposed Measure introduce a duty on principal councils to monitor the equality and diversity profiles of candidates standing for election to principal, town and community councils by undertaking a survey. Section 3 empowers Welsh Ministers to issue guidance in relation to the survey for which local authorities must have regard.

### *Evidence from witnesses*

52. There was general agreement from witnesses about the lack of existing data regarding the diversity of candidates standing for local election. Professor Michael Woods, from Aberystwyth University, told us:

“We have relatively little accurate and up-to-date information on the profile of councillors on principal council and community and town council level in Wales.”<sup>43</sup>

53. Professor Woods also explained the diversity profiles of those elected to local government were not necessarily representative of their communities. He said that there are:

“...significant disparities between the profile of councillors and the population profile of Wales. Collecting data in this way will help to monitor whether progress is being made in that respect.”<sup>44</sup>

54. This view was shared by the Society of Local Council Clerks who explained that “there is very little information available against which to judge the level of diversity amongst councillors.”<sup>45</sup>

55. SCOPE Cymru highlighted the lack of evidence on the numbers of disabled councillors serving in Welsh local authorities and the fact that there is:

“...no evidence around just how big the disadvantage of being a disabled person is when it comes to the ballot box...We believe that the duty to conduct a survey of successful and unsuccessful local authority candidates is therefore an appropriate way to access this and welcome this inclusion within the Measure.”<sup>46</sup>

56. However, many witnesses questioned the value of the information that the survey would collect. Whilst they agreed there was a lack of existing data, Women Making a Difference did not “think that it addresses the issues around what motivates women to stand as a councillor.”<sup>47</sup>

57. The Society of Local Authority Chief Executives Wales stated:

“We are worried about the value of a survey of existing councillors and unsuccessful candidates because its audience will be limited. So, you could not tell from that kind of survey

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<sup>43</sup> RoP, paragraph 14, 7 October 2010

<sup>44</sup> RoP, paragraph 14, 7 October 2010

<sup>45</sup> Written Evidence, LG 11

<sup>46</sup> Written Evidence, LG 35

<sup>47</sup> RoP, paragraph 26, 4 November 2010

why people have chosen not to stand or what the barriers are ...We also question the value of surveys if they are carried out on their own without a wider programme.”<sup>48</sup>

58. The Welsh Local Government Association agreed:

“It will not find those people who have come up against barriers. Crucially, in the political party set-up, you will only be able to find selected candidates, and there may well have been a number of other people who were unsuccessful.”<sup>49</sup>

59. Some witnesses were not convinced that the survey would achieve the proposed Measure’s stated aim of increasing participation in local democracy. In written evidence, Pembrokeshire County Council stated:

“We are not convinced that the proposal for local authorities to undertake a survey of successful and unsuccessful election candidates will increase participation in local government. It is information from people who did not stand for election that is pertinent to this consideration, as presumably all candidates were not deterred from standing for election.”<sup>50</sup>

60. Similarly, the Centre for Public Scrutiny told us:

“Getting them to put themselves forward as candidates is the first hurdle. Then there are issues about where people get selected, namely whether they are winnable seats or not.”<sup>51</sup>

61. Witnesses also raised concerns around the estimated costs associated with the survey. The Welsh Local Government Association questioned the cost of conducting 22 surveys, telling us it was underestimated in the Explanatory Memorandum. They were of the view that the national survey already undertaken by the Welsh Local Government Association could be expanded.<sup>52</sup>

62. Professor Laura McAllister believed the survey would be “an important first step, but no more than that”, but that the survey would provide:

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<sup>48</sup> RoP, paragraph 32, 21 October 2010

<sup>49</sup> RoP, paragraph 33, 21 October 2010

<sup>50</sup> Written Evidence, LG 9

<sup>51</sup> RoP, paragraph 85, 4 November 2010

<sup>52</sup> RoP, paragraph 35, 21 October 2010



“...some half-decent management information, certainly about the post-selection phase of candidates coming forward, and I think that that will be useful.”<sup>53</sup>

63. Professor McAllister suggested a phased approach, of which the survey would be one part:

“...my argument would be that the survey by each local authority is phase 1; phase 2 is the collation of the data by Welsh Ministers; and phase 3 might be a more qualitative look at what is out there.”<sup>54</sup>

64. Professor Michael Woods also believed that undertaking the survey would be only the first step:

“...the big question is what then happens to this data, how will it be analysed and how will it be followed through.

65. To ensure concrete actions emerged from gathering data for the survey, SCOPE Cymru suggested that the provisions could be strengthened by placing further duties on local authorities to act on the results of the survey.

#### *Evidence from the Minister*

66. Explaining the rationale for the surveys detailed in section 1 of the proposed Measure, the Minister told us that:

“There are currently no detailed data on the diversity of candidates; there is nothing to show any actions taken by political parties or by governments and so on, so we just do not know what the scale of the issue is. However, we know that there are currently many elderly, white, male, retired councillors.”<sup>55</sup>

67. The Minister went on to explain:

“The issue for us is to understand the data that are coming in... the same type of people always stand for election and there are obviously reasons for that. So this is about the whole package—understanding the problem and the scale of the

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<sup>53</sup> RoP, paragraph 22, 4 November 2010

<sup>54</sup> RoP, paragraph 22, 4 November 2010

<sup>55</sup> RoP, paragraph 21, 23 September 2010

problem, who is applying to stand and what age group is applying to stand.”<sup>56</sup>

68. Responding to the concerns of witnesses regarding the cost of conducting the survey, the Minister stated:

“We do not see this as an onerous task for local authorities...we would establish the survey by creating a standard bilingual form from the centre and distributing it to local authorities. We would just expect local authorities to post the forms and have someone collate the information returned on a pre-designed spread sheet, which we will create. I do not believe that the finances will be over burdensome for any local authority, and I would defend that view.”<sup>57</sup>

69. We asked the Minister whether he had considered strengthening the provisions by including a duty for local authorities to act on the results of the survey. He told us:

“We are open to having discussions with organisations and receiving suggestions from them. However, we will first have to understand what the survey delivers before we consider the implications of it. It is a starting point, but let us understand what the quantum is before we move on to the next level.”<sup>58</sup>

### *Our view*

70. Requiring local authorities to conduct a survey of those who have stood for election to local government will provide useful data on the equality and diversity profiles of those candidates. This information will help to provide an evidence base upon which actions and working practices for encouraging wider diversity in local government can be developed.

71. However, we remain unconvinced of the value of such a survey on its own, and do not feel the Minister has provided a sufficiently clear explanation of the outcomes that will follow the survey. Witnesses have told us that the data captured by the survey will not identify the reasons why many choose not to put themselves forward for election. **We therefore recommend that the provisions in section 1-3 should**

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<sup>56</sup> RoP, paragraph 23, 23 September 2010

<sup>57</sup> RoP, paragraph 19, 18 November 2010

<sup>58</sup> RoP, paragraph 21, 18 November 2010

**form part of a wider programme to gather information needed to understand the barriers to participation in local government.**

#### **Remote attendance (section 4)**

72. Section 4 of the proposed Measure enables local authorities to make arrangements for remote attendance at meetings. The Explanatory Notes accompanying the proposed Measure state:

“The change is intended to introduce more flexibility for meeting arrangements to accommodate the needs of councillors from more diverse backgrounds.”<sup>59</sup>

#### *Evidence from witnesses*

73. The provisions for remote attendance attracted strong opposition from some witnesses. Concerns were raised regarding the validity and legality of committee meetings held in this way. The Association of County Secretaries and Solicitors told us:

“Local government operates within a code, and there are requirements for members to declare their interests, and in certain circumstances they have to vacate a meeting. It is normally within the remit of the proper officer and the chair to establish that. However, if you are in situations where you are taking significant decisions, at an executive or at a planning committee level, and they may be legally challenged, how would you be able to demonstrate that somebody was or was not present at a meeting?”<sup>60</sup>

74. Bridgend County Borough Council echoed this view:

“The proposals to promote remote attendance at meetings would be costly, complex and impractical to introduce. They would impact adversely on the governance arrangements in place to ensure effective conduct of meetings and the transparency of the political decision making process. To illustrate this, voting would all have to be done individually and it will be impossible to ensure that exempt and confidential reports are properly handled.”<sup>61</sup>

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<sup>59</sup> Explanatory Notes, page 71 of the Explanatory Memorandum

<sup>60</sup> RoP, paragraph 45, 21 October 2010

<sup>61</sup> Written Evidence, LG68

75. Many witnesses also raised concerns about the cost and implementation of arrangements for remote attendance. The Welsh Local Government Association stated that it would be “costly and impractical to introduce.”<sup>62</sup> Similarly, Conwy County Borough Council commented that “the cost of installing new IT infrastructure would be huge and at a time when Councils are being requested to find savings.”<sup>63</sup>

76. Despite these concerns many witnesses recognised that facilitating remote attendance could be of benefit to scrutiny committees.

77. The Centre for Public Scrutiny stated:

“There could be a big benefit for scrutiny in terms of how committees gather evidence with regard to hearing evidence from other places, and not always requiring everyone to come to the county hall, or wherever, to do so.”<sup>64</sup>

78. Pembrokeshire said that the provisions were “potentially useful”<sup>65</sup> and Gwynedd County Council explained that many of its councillors would “appreciate this facility.”<sup>66</sup>

79. The Equality and Human Rights Commission also welcomed the provisions:

“We strongly support innovative ideas to assist councillors balance work and family commitments. Moves to facilitate remote attendance at meetings would help attract people with caring responsibilities, and other concerns, to become councillors and remain in post when personal circumstances change.”<sup>67</sup>

80. The Association of County Secretaries and Solicitors highlighted concerns about the clarity of these provisions, stating:

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<sup>62</sup> Written Evidence, LG 65

<sup>63</sup> Written Evidence, LG18

<sup>64</sup> RoP, paragraph 81, 4 November 2010

<sup>65</sup> Written Evidence, LG9

<sup>66</sup> Written Evidence, LG 67

<sup>67</sup> Written Evidence, LG 79

“It is not clear from how it is drafted whether this would be a discretionary power given to authorities or whether it would be an obligation.”<sup>68</sup>

### *Evidence from the Minister*

81. The Minister acknowledged that the provisions within section 4 had “exercised people.”<sup>69</sup> Responding to the evidence, the Minister stated:

“We should be considering this as an opportune moment to give people throughout Wales, whoever they are and wherever they are, access to council chambers, to get involved in council meetings.”<sup>70</sup>

82. An official accompanying the Minister, commenting on the evidence from the Association of County Secretaries and Solicitors clarified that the provisions contained in section 4 were enabling:

“We are saying that remote attendance should be allowed, but that the standing orders can say in which circumstances it can be allowed. We do not think that a local authority could say that there are no circumstances in which it would be allowed, but there may be situations where it is difficult for that local authority to allow it for all types of meetings. It would be for the standing orders to deal with that.”<sup>71</sup>

### *Our view*

**83. We are content with the provisions for remote attendance under section 4, and believe that they will encourage wider participation and benefit elected members by introducing more flexible ways of working.** We are reassured by the Minister’s evidence that it will be for local authorities’ standing orders to determine the circumstances under which it would be appropriate to allow committees to operate in this way.

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<sup>68</sup> RoP, paragraph 41, 21 October 2010

<sup>69</sup> RoP, paragraph 25, 18 November 2010

<sup>70</sup> RoP, paragraph 25, 18 November 2010

<sup>71</sup> RoP, paragraph 26, 18 November 2010

## Annual reports (section 5)

84. Section 5 requires local authorities to make arrangements for members, including the executive, to publish an annual report about their activities. The Explanatory Memorandum explains:

“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.”<sup>72</sup>

### *Evidence from witnesses*

85. The Association of County Secretaries and Solicitors was of the view that the proposed Measure was unclear as to whether the provision placed a duty on members to produce annual reports, or a duty on the authority to make arrangements for the production of annual reports.<sup>73</sup>

86. Witnesses from local government raised concerns about the cost of the provisions, and were also concerned that they could be used for party political purposes.<sup>74</sup>

87. Pembrokeshire County Council stated:

“Our understanding is that the proposed Measure will impose a duty on the council to publish reports, rather than on individual councillors themselves. This creates practical difficulties. The council would need to satisfy itself that all the reports produced were accurate, not defamatory, did not contravene the Data Protection Act or breach confidentiality. This would take time and result in significant additional internal work. Members also have other roles (e.g. they may be on the board of a voluntary organisation) and separating out what has been achieved in their various capacities may not be straightforward.”<sup>75</sup>

88. The Association of County Secretaries and Solicitors also highlighted concerns regarding the content of the reports, suggesting

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<sup>72</sup> Explanatory Memorandum, page 71

<sup>73</sup> Written Evidence, LG 33

<sup>74</sup> Ibid

<sup>75</sup> Written Evidence, LG 9

that either the proposed Measure or guidance should stipulate that “it is not an opportunity for party political promotion at public expense.”<sup>76</sup>

89. The Welsh Local Government Association questioned the value of the reports, and were unsure whether there was demand from the public to see annual reports from members:

“I am not certain that, if we have councillors producing lots of documentation and pushing it out there, there is a ready demand for it. People are very forthright when they want to come forward to their councillors- they do not need an annual report from them.”<sup>77</sup>

#### *Evidence from the Minister*

90. The Minister explained:

“...an annual report is not a bad thing for the public, as part of the democratic process and understanding what your councillor does. I do not think that that goes beyond the realms of what is reasonable to ask. I do not believe that it will be burdensome. Many good councillors already do this through newsletters and so on. This will make it a level playing field for all councillors, in which they can post exactly what they do on the authority website.”<sup>78</sup>

91. The Minister clarified how the provisions would operate:

“The duty would be on the local authority; there would be a duty for it to create space for annual reports to be published. It would then be up to the councillors to do so, if they wish, So, the duty would be placed on the local authority to provide an opportunity to do so.”<sup>79</sup>

#### *Our view*

92. The Minister has explained that the provisions that relate to annual reports will place a duty on the local authority to make arrangements for members to produce reports, and not on the members themselves. **We believe that that these provisions should**

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<sup>76</sup> Written Evidence, LG 33

<sup>77</sup> RoP, paragraph 53, 21 October 2010

<sup>78</sup> RoP, paragraph 29, 23 September 2010

<sup>79</sup> RoP, paragraph 28, 18 November 2010

**be welcomed as they will help to increase the public’s awareness of their councillors’ work, and benefit all members.**

93. Witnesses were concerned that these provisions would need to be supported by clear guidance explaining the type of information that it would be appropriate to include in annual reports. Many were of the view they could be used for political gain, and this would be a misuse of public funds. We agree, and believe that such guidance, along with monitoring from appropriate officers within local authorities, will be necessary to provide a safeguard against their misuse. **We therefore recommend that the Minister develops guidance for local authorities detailing the content of annual reports.**

### **Timing of council meetings (section 6)**

94. Section 6 enables Welsh Ministers to issue guidance to local authorities in respect of the timing of council meetings.

#### *Evidence from witnesses*

95. Many witnesses were concerned that the provision was “unduly prescriptive”.<sup>80</sup> Gwynedd County Council stated:

“It should be left to local discretion since proposals which might work in an urban area will not necessarily be welcomed in a rural area with long traveling distances.”<sup>81</sup>

96. Conwy County Council did not think that timings of meetings should be “dictated” by Welsh Ministers,<sup>82</sup> whilst the Welsh Local Government Association told us:

“The idea that a Minister should have the power to set the times for local authority committee meetings is a level of micro-management that is abhorrent to the system.”<sup>83</sup>

97. The Association of County Secretaries and Solicitors echoed this view, suggesting:

“It might be more appropriate to provide additional support to certain members—for example, women with children. That is a

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<sup>80</sup> Written Evidence, LG 33

<sup>81</sup> Written Evidence, LG 67

<sup>82</sup> Written Evidence, LG 18

<sup>83</sup> RoP, paragraph 26, 21 October 2010



more positive way of addressing that than trying to set a centralised approach to meeting times.”<sup>84</sup>

98. In contrast, Professor Laura McAllister suggested that the provisions would help to achieve the Minister’s aim of increasing participation in local democracy, stating:

“Local authorities have had quite some time to make their procedures, processes and meeting times more flexible. As far as I can see, they have not done it in a way that has encouraged under-represented groups to come forward.”<sup>85</sup>

99. Women Making a Difference added:

“It can only be a good thing if what is being suggested is to enable councillors to balance their work and home life through, perhaps, having meetings at hours when they would not traditionally have them.”<sup>86</sup>

#### *Evidence from the Minister*

100. Responding to criticisms of the provisions in section 6, the Minister stated:

“...it is time to take some action in terms of legislation. We have seen far too many reports that say that we wish to create a better environment for councillors and potential councillors to attend council meetings, and we have had endless reports saying that women with families and business people are underrepresented. There has been opportunity for change for a long time, but we have seen little of that. It is therefore time for legislation to enable authorities to consider this.”<sup>87</sup>

101. The Minister continued:

“We are not telling councils that they should have a meeting on Tuesday at 3pm or 2.30pm; we are saying that they should have due regard to this and consider providing opportunities to

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<sup>84</sup> RoP, paragraph 27, 21 October 2010

<sup>85</sup> RoP, paragraph 35, 4 November 2010

<sup>86</sup> RoP, paragraph 32, 4 November 2010

<sup>87</sup> RoP, paragraph 32, 18 November 2010

others rather than conforming with what is considered the norm.”<sup>88</sup>

### *Our View*

102. Some local authorities have been reluctant to make changes to their working practices that would help to attract individuals from more diverse backgrounds to stand for election to local councils, although we acknowledge that this is not the case across the whole of Wales. The provisions that will enable Welsh Ministers to issue guidance regarding the timing of council meetings would be of assistance in this respect, by allowing them to intervene if local authorities are not demonstrating a willingness to work flexibly. **We are therefore content with these provisions contained in section 6.**

### **Training and Development (section 7)**

103. Section 7 requires local authorities to make ‘reasonable’ training and development provision for Members.

### *Evidence from witnesses*

104. Many witnesses told us that reasonable training and development opportunities were already being offered to members, and some questioned the “prescriptive nature of the proposals.”<sup>89</sup>

105. The Welsh Local Government Association raised concerns about the inconsistent drafting in the proposed Measure and the Explanatory Memorandum, commenting that whilst the Measure proposes a duty for authorities to provide personal development interviews for all members, the Explanatory Memorandum refers to performance appraisals, which are both very different in their nature.<sup>90</sup>

106. Flintshire County Council stated that they welcomed the proposals “with the exception of annual performance appraisals...which are appropriate for an employee situation are not appropriate for elected Members.”<sup>91</sup>

107. A number of witnesses questioned why the Executive Leader was excluded from these provisions. The Association of County Secretaries and Solicitors stated:

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<sup>88</sup> RoP, paragraph 33, 18 November 2010

<sup>89</sup> Written Evidence, LG 65

<sup>90</sup> Ibid

<sup>91</sup> Written Evidence, LG 30

“The Executive Leader should not be excluded from this provision, which is after all an assessment of a councillor’s training/development needs, not of the member’s performance.”<sup>92</sup>

108. The Equality and Human Rights Commission welcomed the provisions, explaining that guaranteeing a certain amount of training to help elected members fulfil their duties would encourage individuals from more diverse backgrounds to stand for election, stating:

“The Commission also has research that shows a lack of confidence or concern over the lack of necessary skills to become a councillor; it is one of the main reasons that hinder people from standing for election. So, anything that gave people the confidence to know that the training was available would be welcome—it would certainly help them to stand for election.”<sup>93</sup>

#### *Evidence from the Minister*

109. The Minister, whilst acknowledging that many authorities already offer training and development to members, explained that the aim of these provisions was to ensure “consistency in access to training across Wales.”<sup>94</sup>

110. The Minister also explained his expectations for the training and development to be provided:

“In my view, ‘reasonable’ is, to a large extent, what the Welsh Local Government Association and local authorities already share in their practices. They developed ‘A Wales Charter for Member Support & Development’. And that is what I would consider to be reasonable. There are still deficiencies in the support or application of that process, so I think that we are saying that, if it is there, it should be used for members training and development. That seems to be the standard. It is

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<sup>92</sup> Written Evidence, LG 33

<sup>93</sup> RoP, paragraph 39, 4 November 2010

<sup>94</sup> RoP, paragraph 35, 23 September 2010

about having consistency in ‘reasonable’ provision across 22 local authorities.”<sup>95</sup>

111. The Minister acknowledged the inconsistency in the drafting of the proposed Measure and the Explanatory Memorandum with regards to ‘personal development interviews’ and ‘performance appraisals’. However, the Minister confirmed:

“This is a technical issue that we have discovered is wrong ...The wording in the proposed Measure is correct.”<sup>96</sup>

### *Our View*

**112. We are satisfied that the provisions relating to the training and development of elected members are necessary and hope they will secure a consistent approach across Wales.** Witnesses have told us that requiring local authorities to make arrangements for training and development will help to raise standards across Wales and equip all elected members with the skills required to carry out their duties effectively.

**113. The Minister agreed that the drafting of the proposed Measure and Explanatory Memorandum could be misleading, and we are satisfied that the text of the proposed Measure is correct. We therefore recommend the Minister amends the Explanatory Memorandum following Stage 2 consideration of the proposed Measure in relation to section 7.**

### **Head of democratic services (section 8 - 9)**

114. Sections 8 and 9 require local authorities to create a new post, at Chief Officer level, which will undertake the role of ‘Head of Democratic Services’. The Explanatory Memorandum explains that the ‘Democratic Services’, for which the Head of Democratic Services will be responsible, will include providing support for scrutiny, and ensuring:

“...that councillors outside the executive are provided with sufficient support to enable them to carry out their duties

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<sup>95</sup> RoP, paragraph 36, 18 November 2010

<sup>96</sup> RoP, paragraph 47, 18 November 2010

effectively, with the necessary administrative and research provision.”<sup>97</sup>

### *Evidence from witnesses*

115. Many witnesses opposed the provisions in sections 8 and 9, saying the creation of the Head of Democratic Services could interfere with the democratic processes.<sup>98</sup> The Welsh Local Government Association were concerned that establishing a Head of Democratic Services, separate from the monitoring officer would be “counter-productive and likely to lead to potential tensions, confusions and duplication.”<sup>99</sup>

116. Pembrokeshire County Council believed the proposals were “perhaps the most poorly thought through in the Measure” and “would seem to encourage the emergence of factionalism within local authorities.”<sup>100</sup>

117. Whilst recognising the importance of securing separate support for scrutiny activities, Gwynedd County Council thought that “the creation of a statutory post is an inappropriate and clumsy way of securing this.”<sup>101</sup>

118. The Welsh Local Government Association explained that authorities recognise the importance of scrutiny, and most have a designated officer that provides scrutiny support. They also raised concerns about the fact that the proposed Measure stipulates where the post should be located within the local authorities structures, and the functions attached to the Head of Democratic Services position:

“[The proposed Measure] and the regulatory impact assessment say that this will involve re-designating the chief officer post ... but it also says that the postholder will have responsibility only to advise scrutiny committees on service delivery and decisions on how services are delivered, so our understanding is that they could not advise the executive on such issues ... So in that context, there would need to be a new chief officer post. The resource implications of that would have a knock-on effect, and we would wish to raise concerns about that as well. As we said

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<sup>97</sup> Explanatory Notes, page 72

<sup>98</sup> Written Evidence, LG 40

<sup>99</sup> Written Evidence, LG 65

<sup>100</sup> Written Evidence, LG 9

<sup>101</sup> Written Evidence, LG 67

in our submission, on a point of principle, we do not see the need for a designated post of this nature.”<sup>102</sup>

119. The Association of County Secretaries and Solicitors echoed the concerns regarding the functions of the position detailed in section 9, questioning whether such a senior post is justified:

“With regard to what these officers would do, they would not provide advice to members on the technical functions that the committees are determining. They are certainly not going to be giving legal advice, they are not going to be giving financial advice, and they are not going to be giving advice in respect of conduct. Essentially, they would be giving constitutional advice. The submission that we make is to question the reasons for having a head of democratic services on that basis.”<sup>103</sup>

120. The Association of County Secretaries and Solicitors and the Centre for Public Scrutiny<sup>104</sup> suggested that an alternative approach to the creation of a Head of Democratic Services would be to follow the example of England and appoint a statutory scrutiny officer, stating:

“... giving an officer a clear statutory place with clear statutory functions affords them the protection of independence. They can then rely on the fact that they have a clear legal responsibility. It is similar to the current role of the three statutory officers: head of paid service, financial officer and monitoring officer. When you want to go down a route that may not be comfortable for some elected members, being able to rely on the fact that you are a statutory officer does sometimes assist. That is one solution, if that is the problem that you want to solve.”<sup>105</sup>

121. Clarifying the role of a scrutiny officer, the Centre for Public Scrutiny told us:

“...the role of scrutiny support officers is significantly different from that of the traditional democratic services support officer. It requires working across a whole range of different areas to do more negotiating, communicating and so on. So, it is

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<sup>102</sup> RoP, paragraph 69 - 71, 21 October 2010

<sup>103</sup> RoP, paragraph 77, 21 October 2010

<sup>104</sup> RoP, paragraph 87, 4 November 2010

<sup>105</sup> RoP, paragraph 79, 21 October 2010

important to think about the purpose of the role that you are trying to support.”<sup>106</sup>

122. The Centre for Public Scrutiny told us that the location of Democratic Services within the authority’s structure was less important than securing dedicated support for scrutiny:

“It is not only where they are based, but how that support is organised that is important. We see some correlation between effectiveness and having what we would call a dedicated scrutiny team. It almost does not matter where it is based, as it could be based in democratic services or elsewhere, but it is important that it works only on supporting scrutiny and on no other democratic services.”<sup>107</sup>

123. Dr Rachel Ashworth from Cardiff Business School, on the other hand, gave an overview of current arrangements for scrutiny support within local authorities, and suggested that in some instances it is not completely independent of other functions:

“The initial trend showed that there was a lot of scrutiny support within democratic services, but now that support is coming away from democratic services and is being located in the chief executive’s department...and there is then a debate about how independent that support is.”<sup>108</sup>

124. Dr Ashworth added:

“...there is a balancing act between supporting a general membership, being seen as this promoter of the scrutiny function and being independent of the rest of the authority in that sense.”<sup>109</sup>

### *Evidence from the Minister*

125. Explaining the intent of these provisions, the Minister stated:

“All council members need the proper support and advice ... It is not just the executive that should have support, but backbench members as well. Several authorities already provide

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<sup>106</sup> RoP, paragraph 88, 4 November 2010

<sup>107</sup> RoP, paragraph 87, 4 November 2010

<sup>108</sup> RoP, paragraph 19, 7 October 2010

<sup>109</sup> RoP, paragraph 23, 7 October 2010

good support services to non-executive members...There is not currently a ban on supporting non-executive members or backbenchers, but some do it better than others...There will be a duty to provide that. What we are doing is lifting the support mechanism for councillors to do their jobs better.”<sup>110</sup>

126. Commenting on the concerns of witnesses that the provisions within section 8 and 9 could interfere with the democratic processes in authorities the Minister stated:

“If we are providing specific scrutiny support for members, surely that would drive better scrutiny, better government, and better councils...I completely disagree with the idea of this having a negative effect on scrutiny. It is clearly beneficial to have designated people supporting backbench members of a council.”<sup>111</sup>

127. The Minister clarified why the functions and location of the Head of Democratic Services position are detailed on the face of the Measure:

“The issue is about correctly identifying the duty of an officer of a council, so that there are no grey areas around the position of the head of democratic services, the chief executive, or the monitoring officers ... What we are trying to establish here is good-quality scrutiny, with someone identified to deliver that process for the support of backbenchers and the executive – the whole of the council.”<sup>112</sup>

128. The Minister also explained why he believed the post of Head of Democratic Services, and the functions attached, justified such a senior position, as detailed in the Explanatory Memorandum:

“I do not expect many, if any, new jobs to be created within councils. What we are doing is just redefining someone’s job specification, so that they are defined as head of democratic services, with a duty as stipulated ... so the costs, we believe are accurate, and we are not starting from a baseline ... All we are doing is creating a level playing field, so that there is a

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<sup>110</sup> RoP, paragraph 37 - 39, 23 September 2010

<sup>111</sup> RoP, paragraph 53, 18 November 2010

<sup>112</sup> RoP, paragraph 55, 18 November 2010



designated person within the authority to carry out this duty, which is clearly a different role from that of chief executive.”<sup>113</sup>

129. We asked the Minister whether he had considered adopting the approach being taken in England, by requiring the appointment of a statutory scrutiny officer. The Minister responded:

“We already have those officers in place...We are identifying a person at a higher level who is responsible for the council delivering this service. There would be no change if we followed what is being proposed in England, England is just catching up.”<sup>114</sup>

#### *Our view*

**130. Overall we are content with the provisions in sections 8 and 9, which will require local authorities to put in place a Head of Democratic Services, with supporting staff, to ensure all members, including non-executive members receive adequate research and administrative support to enable them to carry out their duties effectively.**

131. We note the evidence from local authorities that scrutiny support in Wales has improved significantly in recent years, but we also note the Minister’s evidence that this is not the case across all local authorities. We believe that there is a need to legislate in this way to ensure this function continues to improve.

**132. However we have reservations regarding the implementation of these provisions.** We heard strong evidence that, in order for scrutiny to be effective, it needs dedicated support. As drafted, the provisions will require the Head of Democratic Services to be responsible for a wider range of functions than scrutiny alone. The Minister has explained that this position could be created by redefining an existing role. This may justify the position being at such a senior level, but we are concerned that the functions could create confusion. We believe there is a risk that this might not provide sufficient independence for this role, and consequently scrutiny activities, to operate effectively.

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<sup>113</sup> RoP, paragraph 60, 18 November 2010

<sup>114</sup> RoP, paragraph 65, 18 November

**133. We therefore recommend that the Minister clarifies how sections 8 and 9 will protect the independence and integrity of scrutiny activities in local government, to ensure that the scrutiny process holds executives to account and makes a valuable contribution to the governance of local authorities. Clarification should be provided prior to Stage 2 consideration of the proposed Measure.**

#### **Democratic Services Committee (sections 10 – 20)**

134. The Explanatory Memorandum explains that the role of the Democratic Services Committee, detailed in sections 11 to 20 of the proposed Measure, will be to:

“...oversee the work of Democratic Services; ensure the work is adequately resourced; and report to full council accordingly.”<sup>115</sup>

#### *Evidence from witnesses*

135. Some witnesses accepted the concept of a Democratic Services Committee but felt that the role of the Committee, as detailed in sections 11 – 20, was not appropriate. Conwy County Council said:

“The creation of a Democratic Services Committee would be acceptable, if the role was widened, but as they stand the current recommendations would fetter the work of the Council.”<sup>116</sup>

136. Similarly, Caerphilly County Council said:

“The concept of a Democratic Services Committee is acceptable, however, the appointment of the committee by full council will lead to an inflexible system when changes to membership are required.”<sup>117</sup>

137. The Welsh Local Government Association explained that similar arrangements are already in place in many authorities and saw no reason to change this position:

“Many authorities have a principal overview and scrutiny committee, or they have a co-ordinating committee in which

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<sup>115</sup> Explanatory Notes, page 73

<sup>116</sup> Written Evidence, LG 18

<sup>117</sup> Written Evidence, LG 31

the chairs and vice-chairs of scrutiny committees get together to look at forward-work programming and the role of scrutiny within the authority. There are existing mechanisms.”<sup>118</sup>

138. The Association of County Secretaries and Solicitors suggested an alternative approach, namely:

“...a requirement for the head of paid service to report to full council to give assurance of a proper use of resources.”<sup>119</sup>

*Evidence from the Minister*

139. The Minister explained the rationale for the establishment of democratic services committees:

“First, the broader picture of why we are legislating for this is to give a clear message to authorities and councils that this is an important role for non-executive members.”<sup>120</sup>

...We believe that this is the right option. We require local authorities to create a new committee, and so it is reasonable for us to provide guidelines on what those new committees are expected to achieve...it would be down to the committee to decide how it discharges those functions. As long as we believe that the committee is operating within the guidelines, it is up to the council to decide how things operate locally.”<sup>121</sup>

140. The Minister told us why he felt it necessary to establish an independent committee to oversee the functions of Democratic Services within authorities, and why it was important for this to be within the remit of the head of democratic service rather than any other officer of the local authority:

“The Head of Democratic Services [will be] completely independent from the chief executive. That is my view, and it would also be my expectation...I would not want to see any blurring.”<sup>122</sup>

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<sup>118</sup> RoP, paragraph 83, 21 October 2010

<sup>119</sup> RoP, paragraph 83, 21 October 2010

<sup>120</sup> RoP, paragraph 41, 23 September 2010

<sup>121</sup> RoP, paragraph 67, 18 November 2010

<sup>122</sup> RoP, paragraph 69, 18 November 2010

141. When questioned on how he intended to use the power contained in section 10 (which enables Welsh Ministers to modify local authorities' standing orders), the Minister explained that this provision related specifically to the standing orders about democratic services, and added:

“We will perhaps consider redrafting that in a way that is clearer to everybody.”<sup>123</sup>

*Our view*

142. The proposed Measure will require local authorities to establish independent committees to oversee their Democratic Services functions. This will ensure adequate support and resources for the work of non-executive members and scrutiny activities. **We consider this to be appropriate and in keeping with the overall aims of the proposed Measure. We therefore do not consider it sufficient for the head of paid service to report to full council, as suggested by witnesses and are content with the provisions as drafted.**

143. **We welcome the Minister's assurance that he will address the misleading provisions in section 10, and expect appropriate amendments to be brought forward at Stage 2 consideration of the proposed Measure.**

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<sup>123</sup> RoP, paragraph 73, 18 November 2010

## 5. Part 2: Family absence (sections 23 - 32)

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144. Sections 23-32 of the proposed Measure require local authorities to make provision for different types of family absence for elected members, according to various circumstances.

145. The provisions will entitle members of principal authorities, including the executive, to maternity, newborn, adoption and parental absence.<sup>124</sup>

146. The Explanatory Memorandum explains:

“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.”<sup>125</sup>

### *Evidence from witnesses*

147. Some witnesses told us that local authorities already provide for family absence under the requirements of section 85 of the *Local Government Act 1972*, and were therefore of the view that this was an unnecessary requirement in the proposed Measure.<sup>126</sup>

148. Carmarthenshire County Council, for example, did not think that there was a need for the provisions and said that it was “not aware of any difficulties or evidence which would support these changes.”<sup>127</sup> Flintshire echoed this view, adding that it did not see “a need for such provisions as the role of Members is different to that of employees.”<sup>128</sup>

149. The Association of County Secretaries and Solicitors raised concerns that family absence can “cause problems, particularly in single-member wards, and also in the case of an Executive member.”<sup>129</sup> They suggested that, in order for these provisions to work, two powers should be specified in the proposed Measure:

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<sup>124</sup> Ibid

<sup>125</sup> Explanatory Notes, page 75

<sup>126</sup> Written Evidence, LG 65

<sup>127</sup> Written Evidence, LG 25

<sup>128</sup> Written Evidence, LG 30

<sup>129</sup> Written Evidence, LG 33

“(a) a power to appoint an additional ‘cover’ Executive member, so disapplying the existing rule limiting the size of the Executive; and  
(b) a power to pay an additional SRA [Special Responsibility Allowance] for the period of absence, so disapplying the existing rule limiting the number of payable SRAs.”<sup>130</sup>

150. Similarly, although Women Making a Difference supported the provisions, they also highlighted potential problems that could arise as a result of family absence:

“I realise that there will be an impact in that the community may feel that it is going to be without a councillor for six months. It is a fantastic move, but you must have provision in place to replace them.”<sup>131</sup>

151. The Equality and Human Rights Commission fully supported the provisions:

“It would probably set a very positive example to community members that the council, or their local councillor in particular, is leading the way in recognising that people have caring responsibilities and in taking a progressive approach. So, it could be very positive.”<sup>132</sup>

#### *Evidence from the Minister*

152. The Minister explained why Part 2 of the proposed Measure was necessary:

“The operation of authorities has varied across the board. We are trying to introduce some standardisation. They may have to make special arrangements when a councillor has a new child, in terms of their executive arrangements...we wish to make this a statutory requirement, and for each council to understand what they should be doing.”<sup>133</sup>

153. Demonstrating how the provisions in the proposed Measure were a progressive step towards providing entitlements to elected

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<sup>130</sup> Written Evidence, LG33

<sup>131</sup> RoP, paragraph 46, 4 November 2010

<sup>132</sup> RoP, paragraph 47, 4 November 2010

<sup>133</sup> RoP, paragraph 76, 18 November 2010

members, an official accompanying the Minister clarified the current arrangements under section 85 of the *Local Government Act 1972*:

“In a way [*the Local Government Act 1972*] has negative connotations – that a councillor is not turning up, for whatever reason – whereas we feel that the family absence provisions [in the proposed Measure] give it positive connotations, by stressing that it is a right.”<sup>134</sup>

154. Responding to the suggestion made by the Association of County Secretaries and Solicitors relating to payment of a Special Responsibility Allowances to executive members ‘covering’ a family absence, the Minister explained that this would be for the Independent Remuneration Panel to decide.

155. We also asked the Minister to explain how the proposed Measure might deal with members of the executive, and the current limitations on the size of the executive. An official explained that if an authority has the maximum number of people permitted on the executive:

“...The authority could appoint a deputy executive member, who would probably not have the legal functions of an executive member but could nevertheless, cover their portfolio and perhaps make recommendations to the leader, who could authorise their decisions and so on.”<sup>135</sup>

156. Even though he acknowledged this issue could cause problems, the Minister said:

“...that is the conflict between the democratic process and the running of an institution...Those are the complexities of the democratic process working within an equality programme, which we are trying to ensure through some of the legislation that we are bringing in around family absence.”<sup>136</sup>

157. An official explained that there was no provision in the proposed Measure that would enable Welsh Ministers to allow an authority “to appoint an additional member of the executive in excess of the limit.”<sup>137</sup> However, the official clarified that there were provisions that

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<sup>134</sup> RoP, paragraph 79, 18 November 2010

<sup>135</sup> RoP, paragraph 84, 18 November 2010

<sup>136</sup> RoP, paragraph 86, 18 November 2010

<sup>137</sup> RoP, paragraph 93, 18 November 2010

would enable members to substitute for a member of the executive during a period of family absence, under certain circumstances:

“...together with the supporting guidance under section 31, to outline ways in which members might be substituted for and what sort of legal arrangements could be made about the decision-making functions...the IRP will be able to look at this sort of situation and make recommendations about additional allowances that could be granted to a substitute.”<sup>138</sup>

158. When questioned by a member of the Committee about some possible concerns regarding the approach being adopted, and the risk that the current limit of the size of the executive could undermine the overall aim of this Part of the proposed Measure,<sup>139</sup> the Minister responded:

“I will certainly consider it further in detail ... but that appears to be an added complication, which we will try and work around in terms of the detail.”<sup>140</sup>

#### *Our view*

**159. We welcome the provisions in Part 2 of the proposed Measure which will entitle elected members to periods of family absence for a number of reasons, and represent significant progress when compared with entitlements under existing legislation. These provisions are in keeping with the overall aim of the proposed Measure and will reassure those who need to take a period of family absence that they will be supported.**

**160. However, we are concerned that, as drafted, the provisions do not adequately deal with the way in which members of the executive might benefit from the entitlements. Given the current limits of the size of local authority executives we therefore recommend that the Minister considers this issue and addresses it at a further stage of the proposed Measure’s consideration.**

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<sup>138</sup> Ibid

<sup>139</sup> RoP, paragraph 97, 18 November 2010

<sup>140</sup> RoP, paragraph 88, 18 November 2010



## **6. Parts 3 & 4: Available governance arrangements and Changes to executive arrangements (sections 33 - 54)**

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161. Part 3 of the proposed Measure (sections 33 - 35) deals with the governance arrangements of local authorities, and provides for the mayor and council manager executive model and the alternative arrangements (the ‘fourth option’) to be abolished.

162. The Explanatory Memorandum explains:

“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.”<sup>141</sup>

163. And states:

“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.”<sup>142</sup>

164. Three local authorities in Wales adopted alternative arrangements, Gwynedd, Merthyr Tydfil and Powys, although Merthyr Tydfil has subsequently changed to executive arrangements.

165. Part 4 (sections 36 – 53) will simplify the way in which local authorities can adopt a different form of executive. The proposed Measure provides for the procedures to be followed where an authority proposes to vary or replace its executive arrangements, including provisions for a referendum where the change is to a Mayor or executive model.

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<sup>141</sup> Explanatory Memorandum, paragraph 3.16

<sup>142</sup> Explanatory Memorandum, paragraph 3.19

166. The Explanatory Memorandum states:

“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.”<sup>143</sup>

167. The Explanatory Memorandum goes on to describe how the provisions within Part 4 will change their existing arrangements:

“[It] 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.”<sup>144</sup>

*Evidence from witnesses*

168. Most witnesses were content with the provisions in Part 3 of the proposed Measure, however, Gwynedd County Council who operate under the ‘fourth’ option said;

“As one of only two Councils currently operating alternative arrangements, the proposed measure will have a substantial impact on the way that Gwynedd Council operates by forcing it to replace alternative arrangements with executive arrangements. Whilst this will bring the operation of the Council into line with all other Councils in Wales, we believe that the most appropriate time to commence any new arrangements will be when the new Council commences its term following the 2012 local government elections. We would urge the committee to have particular regard to the timing of the commencement of this provision so as to ensure that changes are not brought into effect in the period leading up to the election.”<sup>145</sup>

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<sup>143</sup> Explanatory Memorandum, paragraph 3.18

<sup>144</sup> Explanatory Notes, page 79

<sup>145</sup> Written Evidence, LG 67

169. Cardiff County Council opposed the removal of the ‘fourth’ option, saying that flexibility was required:

“...the Council does not support the removal of the ‘Fourth Option’ model as this should be determined locally by councils. There is a need for flexibility and these alternative arrangements should be retained as an available option for councils.”<sup>146</sup>

170. On the other hand, the Welsh Local Government Association stated:

“The abolition of the fourth option, particularly in light of the emergence of politically balanced cabinets, is something that we, as an association, are very relaxed about.”<sup>147</sup>

171. Dr Rachel Ashworth commented:

“Normally, you would want to be able to provide a degree of local choice, but the Assembly Government must have good reasons for wanting to do away with the alternative arrangements.”<sup>148</sup>

#### *Evidence from the Minister*

172. The Minister explained that there has been little interest in Welsh authorities taking up the mayor and council manager option believing that “in effect it is redundant.”<sup>149</sup>

173. With regards to the alternative arrangements option, the Minister stated:

“It has not worked well over the long term. It has forced political groups to work together sometimes where circumstances have not been conducive to that...and it has actually undermined aspects of coherent leadership and effectiveness, as well as the transparency of some of the decisions...Political relations can be strained when people are placed in that position. You could have opposition within the

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<sup>146</sup> Written Evidence, LG27

<sup>147</sup> RoP, paragraph 87, 21 October 2010

<sup>148</sup> RoP, paragraph 29, 7 October 2010

<sup>149</sup> RoP, paragraph 43, 23 September 2010

board that is making the decisions. We do not believe that it has worked successfully.”<sup>150</sup>

174. Commenting on the evidence calling for flexibility to allow decisions regarding governance arrangements to be made locally, the Minister stated:

“Flexibility is already available to executive structures, and I think that Wrexham is an example in north Wales of an executive structure that is politically balanced. So, there is flexibility around the system.”<sup>151</sup>

175. Responding directly to evidence from Gwynedd County Council regarding the commencement of the provisions in Part 3, the Minister confirmed that this would be dependent upon the enactment of the proposed Measure. An official accompanying the Minister clarified that the provisions relating to the commencement of the provisions are contained in Schedule 1 and explained when they will come into force:

“These sections come into force two months after Royal Approval, so it does depend when that is. However, if you were to assume that it was say 1 April next year, then the provisions in Schedule 1 will start to kick in shortly after that.”<sup>152</sup>

176. The Minister explained that the provisions within Part 4 would remove the “burden” on authorities when changing executive arrangements.<sup>153</sup>

#### *Our view*

177. We have heard evidence from the Minister that the ‘mayor and council manager option’ has not attracted any interest from Welsh local authorities, and where ‘alternative arrangements’ have been adopted, they have not worked well. Even with the removal of these models, it is our view that there will still be a number of ways in which councils will be able to operate their executive arrangements and sufficient flexibility to allow for appropriate arrangements to be put in place to suit local needs. Therefore we are content with these provisions.

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<sup>150</sup> RoP, paragraph 15, 23 September 2010

<sup>151</sup> RoP, paragraph 99, 18 November 2010

<sup>152</sup> RoP, paragraph 102, 18 November 2010

<sup>153</sup> RoP, paragraph 47, 23 September 2010

**178. We recommend that the Minister provides clarity around the commencement of these provisions, so that those local authorities making the transition to a different governance arrangement will be able to plan effectively for the necessary adjustments.**

## **7. Part 5: Local authority functions – discharge by committees and councillors (sections 54 - 56)**

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179. Part 5 of the proposed Measure enables local authorities or their executives to delegate decision making functions to non-executive elected members appointed to local service boards or other partnerships. The Explanatory Memorandum explains:

“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 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.

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....

Section 56 makes consequential changes to the 1972 Act and the 2000 Act. ”<sup>154</sup>

### *Evidence from witnesses*

180. Considering the provisions within Part 5, Dr Rachel Ashworth explained:

“The power to delegate executive functions to non-executive members on partnership boards is to be welcomed. This will reduce the overload for executive members and facilitate the engagement of non-executive members in the partnership and collaboration agenda.”<sup>155</sup>

181. The Association of County Secretaries and Solicitors commented that there should be greater clarity in the proposed Measure regarding the need for frameworks within which decisions should be made. They said:

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<sup>154</sup> Explanatory Memorandum, page 81

<sup>155</sup> Written Evidence, LG 47

“We would say that the proposed Measure deals with the issue of delegation, but it is not quite as explicit as it should be about the kinds of framework that are needed.”<sup>156</sup>

*Evidence from the Minister*

182. The Minister explained the nature of the provisions:

“This is an enabling power only, but it could be used to allow local councillors to address local issues that would otherwise follow the calls-for-action route. It recognises the development of more partnership working across local government and the wider public sector.”<sup>157</sup>

*Our view*

**183. We are content with the provisions in relation to Part 5, which we believe will strengthen the collaboration agenda across local authorities and relevant partnerships.**

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<sup>156</sup> RoP, paragraph 90, 21 October 2010

<sup>157</sup> RoP, paragraph 51, 23 September 2010

## **8. Part 6: Overview and scrutiny (sections 57 – 90)**

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### ***Joint overview and scrutiny committees (sections 57 – 64)***

184. These provisions will enable Welsh Ministers to provide, by regulation, for two or more local authorities to establish joint overview and scrutiny committees (section 57). The provisions also strengthen the position of overview and scrutiny committees, requiring them to scrutinise and report on matters which relate to “designated persons” (sections 58 – 60), and requiring them to take into account the views of the public on any matter being considered by them (section 61).

185. The provisions will also enable a councillor of a local authority to refer a matter to an overview and scrutiny committee (section 62), sets out the steps the committee must take to inform the authority or executive of its report and the steps they must take to respond (section 63).

### ***Evidence from witnesses***

#### ***Joint scrutiny (section 57)***

186. There was broad support for the provisions in section 57, with many witnesses believing the provisions would simplify the process of establishing joint scrutiny committees. The Centre for Public Scrutiny, for example, explained that although legislative provision already allows this to take place, it is unclear how the powers “of the *Local Government Act 2000* can be applied to joint committees.”<sup>158</sup> The Centre for Public Scrutiny also told us:

“Where there is a case for simplifying and clarifying the law as it stands is where services are shared between authorities.”<sup>159</sup>

187. Pembrokeshire County Council agreed that these provisions were to be welcomed, highlighting the importance of joint scrutiny in the context of collaborative service delivery:

“The proposals set out in these sections of the Measure are potentially useful ... it is sensible to allow councils to develop

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<sup>158</sup> RoP, paragraph 93, 4 November 2010

<sup>159</sup> RoP, paragraph 92, 4 November 2010



formal regional mechanisms to hold respective Executives to account.”<sup>160</sup>

188. Similarly, Conwy County Borough Council felt allowing joint overview and scrutiny committees between neighbouring Councils “would enable effective collaboration; especially in relation to joint projects.”<sup>161</sup>

189. Not all witnesses were of the view that a change in the legislation was necessary, given that joint scrutiny committees can be set up under existing legislation. A representative from the Welsh Local Government Association told us:

“This is legislating for the sake of it. There is provision to do this, and we will do it as and when required, so I do not think you need to legislate for it.”<sup>162</sup>

190. The Association of County Secretaries and Solicitors also explained that, to date, they had not “found any bar to our doing joint scrutiny” and therefore did not see the need for the provisions.<sup>163</sup>

191. Witnesses were also of the view that guidance will be needed to assist the practical operation of such multi-authority committees.<sup>164</sup> Cardiff Council, for example told us that:

“...there is a need for clarification and appropriate safeguards to be put in place, which could include provision for local authorities to exercise a veto, where appropriate. In addition, decisions should be subject to scrutiny by a member’s own local authority.”<sup>165</sup>

192. This was echoed by Dr Rachel Ashworth, who highlighted some of the problems that could be encountered:

“We have seen it in Wales, where an authority with independent and strong scrutiny support engages with another authority with a different form of scrutiny support from the chief

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<sup>160</sup> Written Evidence, LG9

<sup>161</sup> Written Evidence, LG18

<sup>162</sup> RoP, paragraph 92, 21 October 2010

<sup>163</sup> RoP, paragraph 93, 21 October 2010

<sup>164</sup> Written Evidence, LG65

<sup>165</sup> Written Evidence, LG27

executive's office, and there is an immediate clash in terms of what scrutiny is about."<sup>166</sup>

### ***Scrutiny of designated persons (sections 58 - 60)***

193. Witnesses generally welcomed the provisions in section 58(5) and (6) which require 'designated persons' to provide scrutiny committees with information, in writing and/or in person, to assist their work. Such a power does not exist at present. The Welsh Local Government Association told us:

"...it gives them the ability to call people in and, if those people are not playing ball, gives them extra clout to persuade them in more forceful terms to give evidence."<sup>167</sup>

194. Dr Rachel Ashworth agreed, commenting that:

"...this kind of development seeks to provide scrutiny with some much-needed 'teeth' in terms of external scrutiny."<sup>168</sup>

195. However, some witnesses raised concerns that, as drafted, the proposed Measure will **require** overview and scrutiny committees to scrutinise and report on matters related to designated persons (section 58(3)), and felt this could place an unnecessary burden on overview and scrutiny committees. The Welsh Local Government Association stated:

"The concern about specifying it as a duty is that there will be an expectation that local authorities will be under some kind of obligation to scrutinise every public service that is being delivered in an area."<sup>169</sup>

196. The Society of Local Authority Chief Executives Wales agreed, calling for this to be an enabling power rather than a requirement:

"[The Society of Local Authority Chief Executives] strongly believes that local authorities should be able to scrutinise other bodies. We are working with local politicians to suggest that they should be owners of the place, as it were, so that they should help the electorate to get the best public services

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<sup>166</sup> RoP, paragraph 35, 7 October 2010

<sup>167</sup> RoP, paragraph 95, 21 October 2010

<sup>168</sup> Written Evidence, LG47

<sup>169</sup> RoP, paragraph 95, 21 October 2010

throughout their area. We are supportive of being able to scrutinise other public services, but we agree that it should be a power and not a duty.”<sup>170</sup>

197. Gwynedd County Council also agreed, believing a duty would dilute the work of scrutiny committees:

“[A duty would] have an impact on the ability of the committees to carry out their functions. Increasing the duties of committees at a time when resources are dwindling is likely to place a strain on the scrutiny function with the possible consequence that resources will be spread too thinly to enable the work to be carried out with sufficient thoroughness. This could be remedied by making these proposals discretionary rather than mandatory.”<sup>171</sup>

198. Some witnesses thought the definition of ‘designated persons’ in section 58 needed further clarification. The proposed Measure will allow Welsh Ministers to specify, by regulation, who the ‘designated persons’ will be. The Centre for Public Scrutiny welcomed “the use of this provision to provide a more manageable approach to scrutiny of partner organisations”, and stressed that it was “important to ensure that the list of designated people is sufficiently expansive.”<sup>172</sup>

199. The Welsh Council for Voluntary Action had some concerns about impact of these provisions on those third sector groups that were already providing services on behalf of local authorities, and had already “undergone robust tendering and procurement processes to secure their contracts.”<sup>173</sup>

“It is especially important at this time of financial austerity that scrutiny committee reviews are not used as a blunt instrument to cut funding. We would like to see the development of guidance that details the status of a scrutiny review in these circumstances and reinforces the primacy of the contractual arrangements. We are also concerned about the possibility of

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<sup>170</sup> RoP, paragraph 96, 21 October 2010

<sup>171</sup> Written Evidence, LG67

<sup>172</sup> Written Evidence, LG80

<sup>173</sup> Written Evidence, LG37

one third sector group scrutinising another and would also like to see this issue covered in guidance.”<sup>174</sup>

200. The Mid and West Wales Fire and Rescue Authority was particularly concerned that Fire and Rescue Authorities should not be included within the list of designated persons, because members of the Fire and Rescue Authorities can often also be local councillors.<sup>175</sup> This could also be an issue for National Park Authorities and Police Authorities.

201. Despite having reservations about how the provisions would operate in practice, the Welsh Local Government Association were of the view that sections 58 to 60 could:

“...set out clear parameters for the rest of the public sector and public services more broadly to realise that they have a duty to give evidence to local, democratically elected people through scrutiny. So, it would strengthen the public service scrutiny power of councils.”<sup>176</sup>

202. The Centre for Public Scrutiny agreed, welcoming “the use of this provision to provide a more manageable approach to scrutiny of partner organisations.”<sup>177</sup>

### ***Taking into account the views of the public (section 61)***

203. Section 61 will require local authorities’ overview and scrutiny committees to comply with arrangements for taking into account the views of the public to be set out in guidance issued by under section 61(4) and (5).

204. Witnesses were concerned that these provisions were too prescriptive and would have a negative impact on existing good practice. The Welsh Local Government Association did not support the proposed new duty, believing it to be a “blunt, one-size-fits-all instrument”. It added:

“It also appears that the proposal is based upon misinterpretation as the Explanatory Memorandum incorrectly states that ‘existing legislation is restrictive in that it does not

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<sup>174</sup> Written Evidence, LG37

<sup>175</sup> Written Evidence, LG60

<sup>176</sup> RoP, paragraph 98, 21 October 2010

<sup>177</sup> Written Evidence, LG80

enable members of the public to contribute their views to scrutiny committees'. This overlooks a range of innovative approaches undertaken by local authority scrutiny committees in seeking citizen-views as part of their work."<sup>178</sup>

205. Several local authorities raised concerns about the implementation of these provisions. Cardiff Council, for example, supported this provision in principle, but had some concerns about its application:

"...the mechanism for bringing matters before or to the attention of a scrutiny committee should be determined locally and there is a need for further clarity on this issue in any future guidance."<sup>179</sup>

206. The third sector, however, were very supportive, with the Welsh Council for Voluntary Action considering it to be:

"...an extremely important proposal, one that in many ways encapsulates why third sector groups should be viewed as important partners in the scrutiny process."<sup>180</sup>

207. Age Concern Cymru agreed, welcoming the recognition that public engagement should be improved:

"The experience of meaningful engagement with older people at a local level has varied between authorities, with some developing strong engagement principles and mechanisms, where as in others there is a perception that consultation is often about authorities ticking the appropriate box, and not resulting in effective empowerment."<sup>181</sup>

208. The Centre for Public Scrutiny however, did not believe it was necessary to place this issue on a statutory footing, arguing that:

"Most scrutiny functions already have systems in place to build a dialogue with people about issues of local importance, and

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<sup>178</sup> Written Evidence, LG65

<sup>179</sup> Written Evidence, LG27

<sup>180</sup> Written Evidence, LG37

<sup>181</sup> Written Evidence, LG52

we do not feel that the creation of this additional duty will enhance these processes.”<sup>182</sup>

*Evidence from the Minister*

209. The Minister explained why it was necessary to simplify the legislation that allows local authorities to undertake joint scrutiny:

“The development of partnership working across local authority boundaries exists ... we need to legislate on the need for joint committees to scrutinise delivery in service areas, across boundaries, across the public sector and so on. Some authorities already do it on an informal basis, and the proposed Measure just puts it on statute.

...the agenda for change in Wales and the UK is about providing services differently. That collaboration message is new. In some authorities, it has never happened, whereas some are already very good at doing it.

...One authority said to me that it now had joint service provision ... but that it could not carry out collective scrutiny of that person with the other authority. I said that it could. It then said that that was not in legislation, but that was just convenient; it will be in legislation if the proposed Measure goes through. So, it is about standardisation and tidying up so that there are no legal loopholes that undermine progress and the political process.”<sup>183</sup>

210. When we highlighted concerns regarding some of the practical difficulties such joint committees could face, an official accompanying the Minister explained that these elements would be dealt with by regulations:

“If a large authority and a small authority form a joint committee, how do they decide on representation, how does it reflect political balance within the authorities, and who appoints the chair and so on? It is better for that to be dealt

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<sup>182</sup> Written Evidence, LG80

<sup>183</sup> RoP, paragraphs 53 – 57, 23 September 2010

with in regulations rather than on the face of the proposed Measure.”<sup>184</sup>

211. When questioned why he had chosen to **require** scrutiny committees to scrutinise and report on matters relating to designated persons, the Minister told us that this was “no change. They already have the power to make and report recommendations to authorities.”<sup>185</sup>

212. We asked the Minister to provide further clarity on this issue. The Minister’s official stated:

“...we would not anticipate that a local authority would have a duty to scrutinise the whole public service in an area every year.”<sup>186</sup>

213. However, the official commented that the provisions requiring designated persons to assist scrutiny committees were a new power:

“At the moment, they have the power to investigate external issues, but they do not have the power to require people to give evidence or information to them. The proposed Measure would reverse that situation.”<sup>187</sup>

214. Responding to evidence about the list of designated persons, and potential problems relating to conflicts of interest, the Minister told us he would discuss any issues with stakeholders when forming the relevant regulations. He also confirmed he would issue guidance to avoid any potential conflicts.<sup>188</sup>

215. During our discussions, we also asked the Minister why he felt it necessary to include the provisions requiring scrutiny committees to take into account the views of the public, given that many local authorities already had effective ways of engaging with citizens. He responded:

“...there are some councils that have innovative methods of engagement; there are some that do not. This will mean that the ones that are really good may need to change only a little bit. Some may need to change a little bit more than others. This

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<sup>184</sup> RoP, paragraph 60, 23 September 2010

<sup>185</sup> RoP, paragraph 11, 18 November 2010

<sup>186</sup> RoP, paragraph 121, 18 November 2010

<sup>187</sup> RoP, paragraph 119, 18 November 2010

<sup>188</sup> RoP, paragraph 115, 18 November 2010

is just about making it clear that the public's input is valued. Again, it is about standardisation and raising the bar for local authorities in terms of scrutiny, access and development."<sup>189</sup>

### *Our view*

**216. Scrutiny plays an important part in policy development and service delivery. The proposed Measure puts a number of provisions in place to strengthen this function and ensure local authority overview and scrutiny committees can operate effectively in ways that reflect the operations of local authorities.**

As increasing numbers of local authorities collaborate on service delivery, their scrutiny committees will also need to work together to hold executives to account. Whilst we acknowledge that there are mechanisms that facilitate this already, we have heard evidence that they are unclear. **We therefore consider the provisions in relation to joint scrutiny to be appropriate.**

217. However, witnesses have highlighted some practical problems that will need to be addressed in order for multiple authorities to undertake joint scrutiny. **We therefore recommend that the Minister issues guidance to deal with any problems joint scrutiny committees might encounter that could hinder their activities and ability to operate effectively.**

218. The proposed Measure will also strengthen the ability of scrutiny committees to investigate external organisations (or 'designated persons') that provide services, goods or facilities to the public within their local authority area. We believe this is a welcome development that will enhance the role of scrutiny committees. **We welcome the provisions in section 58(5) and (6) that will enable scrutiny committees to require designated persons to provide information and attend meetings to inform the committees' work. These provisions will help to improve the ability of scrutiny committees to undertake rigorous investigations.**

219. However, we received evidence from a number of witnesses who believed that the provisions in section 58(3), which **require** scrutiny committees to 'make reports or recommendations on matters which relate to designated persons', could place an unnecessary burden on scrutiny committees. Witnesses believed that this could also dilute

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<sup>189</sup> RoP, paragraph 124, 18 November 2010



scrutiny activities and raise expectations. They called for this duty to be amended so that it is an enabling power that would give the committees greater flexibility.

220. We are of the view that the Minister's evidence on this issue was unclear and are unsure why he believes this should be a duty rather than a power. We consider that both an enabling power and a duty have significant merits. We recognise the problems highlighted by witnesses but consider that scrutiny committees could make a substantial contribution to the improvement of service delivery by implementing this duty and requiring a regular review of services in their area. A power, on the other hand, would allow for more flexibility to undertake timely scrutiny as issues arise, but there may be a risk that it would not be applied rigorously. **We therefore recommend the Minister defines how this duty will operate, and provides clarification regarding practical issues such as the number of times designated persons might be called before the scrutiny committee, and the reasons they would be called. We recommend that clarification be provided before the next stage of the proposed Measure's consideration.**

221. We note the evidence regarding the list of designated persons and the need for this to be sufficiently expansive to facilitate scrutiny across a range of service areas. We are reassured by the Minister's undertaking to discuss this issue with stakeholders in developing regulations to ensure any potential conflicts are dealt with effectively in guidance and are content with this approach.

**222. Local authorities actively engage with the public on a regular basis, and there are many examples of good practice. However, the Minister has explained that by including in the proposed Measure requirements for scrutiny committees to take into account the views of the public, there will be a guaranteed route for those citizens wanting to highlight areas of concern, and a requirement for this to happen across all local authorities in Wales. We are content with the provisions in section 61.**

#### **Appointing persons to chair committees (sections 65 – 74)**

223. Sections 65 to 74 contain detailed provisions regarding the allocation of scrutiny committee chairs, the aims of which are to ensure the allocation reflects the political balance of the authority.

### *Evidence from witnesses*

224. Most of the evidence pointed out that these provisions were complex. The Association of County Secretaries and Solicitors believed the provisions provided an “unduly complicated way of addressing the problem.”<sup>190</sup>

225. The Welsh local Government Association noted that they did not have an agreed position on this issue, with some agreeing with the proposal, whilst others believe that such decisions are best made locally based on local discretion.<sup>191</sup> However, when questioned, representatives from the Welsh Local Government Association did not think there was a need for these provisions at all:

“From our point of view, there is no evidence that this has caused a problem. It seems to me that, in most authorities in Wales, opposition members chair scrutiny committees ... You cannot make the automatic assumption that if you put a scrutiny chair in the hands of a member of the opposition, scrutiny will be more rigorous. That is not always the case. Sometimes, when it is in the hands of someone from your own political party, it can be a damn sight more rigorous.”<sup>192</sup>

226. The Centre for Public Scrutiny held a similar view, and raised concerns regarding the risk that the provisions would not capture all potential scenarios, and could also result in the loss of experienced and skilled scrutiny chairs:

“Having a very rigid prescription in the proposed Measure as it is drafted creates different scenarios and you could end up with a position where a good chair is not given a position. I would like to give you an example of a London borough, which is a completely balanced council, where a small independent group holds the balance of power. It was very difficult to fit that example into any of the different scenarios in the proposed Measure.”<sup>193</sup>

227. Many witnesses highlighted existing practice, which they believed works well. Pembrokeshire County Council stated:

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<sup>190</sup> RoP, paragraph 104, 21 October 2010

<sup>191</sup> Written Evidence, LG65

<sup>192</sup> RoP, paragraph 103, 21 October 2010

<sup>193</sup> RoP, paragraph 73, 4 November 2010

“Our committee chairs are appointed by the Council. This system works well and we see no reason to change it. Chairs are often selected on the basis of ability and/or track record. The effect of these proposals would be to emphasise political difference; we do not consider that this would promote effective scrutiny. It could also have the unintended consequence of encouraging Members to form new political groups in an effort to secure a committee chair. It is disappointing to note that this scenario has already occurred in one local authority in Wales.”<sup>194</sup>

228. Carmarthenshire County Council commented on the complex nature of the provisions:

“Firstly, the proposals are far too complicated to implement. Secondly, it is important to understand that in Carmarthenshire (and many other councils), full Council appoints the Chair of each Scrutiny Committee. In other words, the Committee members do not appoint their own Chair.

The Council’s administration group has concerns that if chairs are to be appointed in a way that reflects the overall political balance of the Council, then this would create a risk of politicising the scrutiny process. Clearly the opposition group would take a contrary view and there would be no consensus on this issue.”<sup>195</sup>

229. However, some local authorities believed that legislating for this issue was appropriate. Conwy County Borough Council was supportive of the principle but commented that these appeared to be “an overly complicated set of provisions.”<sup>196</sup> Flintshire County Council said that the percentage calculations in these sections needed to make allowance for those Members who are not in any political group, otherwise there would be practical difficulties in applying the provisions.<sup>197</sup>

230. Cardiff Council supported this provision stating that it "has been a long established practice in Cardiff" and that the appointment of

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<sup>194</sup> Written Evidence, LG9

<sup>195</sup> Written Evidence, LG25

<sup>196</sup> Written Evidence, LG18

<sup>197</sup> Written Evidence, LG30

scrutiny committee chairs should be a matter for decision by full council.<sup>198</sup>

231. Dr Rachel Ashworth commented that there was a view that "...where possible, scrutiny chairs should be awarded to opposition members" and that this was "a timely and appropriate element of the measure."<sup>199</sup>

### *Evidence from the Minister*

232. The Minister explained his rationale for including these provisions in the proposed Measure, and told us he disagreed with those who believed the provisions were too complex:

"I think that it is a fact that all political parties have perhaps been guilty of allocating chairs to the same party. I do not think that that is appropriate. It does not create good scrutiny. We have a good model here in the Assembly in terms of how we operate procedures for political balance with regard to committee Chairs. They may think that it is over complex because it is a mathematical equation ... It is not beyond the treasury department of each local authority to ensure that these numbers are dealt with correctly...This takes the politics out of good scrutiny, and I do not think that that is a bad position to be in."<sup>200</sup>

233. The Minister explained further:

"It takes away the intimation that the leading group could secure votes through committee membership by having the paid chairs of committees."<sup>201</sup>

234. We questioned the Minister about the extent to which these provisions might have a negative impact on the allocation of committee chairs to smaller groups, and whether he was content that all possible combinations were accounted for in the proposed Measure. The Minister's official confirmed that there is scope, under section 73, to waive these provisions, provided there is cross-party support for this to happen, and as long as the outcome is no less

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<sup>198</sup> Written Evidence, LG27

<sup>199</sup> Written Evidence, LG47

<sup>200</sup> RoP, paragraph 132, 18 November 2010

<sup>201</sup> RoP, paragraph 134, 18 November 2010

favourable to the opposition than would have been the case by imposing the formula.<sup>202</sup>

#### *Our view*

235. We have considered the concerns of witnesses regarding the complex nature of the provisions for allocating scrutiny committee chairs. Whilst we note their concerns, we do not agree with those who believe these provisions to be unnecessarily prescriptive. **It is our view that these provisions are appropriate, in that they provide the necessary safeguards to ensure that the allocation of scrutiny chairs reflects the political balance of the local authority, and that this is necessary for good governance.**

236. **We are reassured by the Minister's confirmation that the provisions in section 73 of the proposed Measure will allow councils to waive these provisions under any circumstances that might not be included within the Measure.**

#### **Co-opted members of overview and scrutiny committees (sections 75 – 79)**

237. The provisions in sections 75 to 79 of the proposed Measure, detail the way overview and scrutiny committees may operate with regards to co-opted members. For example, the proposed Measure sets the maximum number of co-opted members on an overview and scrutiny committee at a third of the total membership (section 75), and allows the committees to confer voting rights on co-opted members if they so wish, subject to the agreement of the local authority. Section 79 would enable Welsh Ministers to issue guidance about co-option, to which local authorities would be required to have regard.

#### *Evidence from witnesses*

238. Most local authorities recognised the value of co-opted members on committees, but were strongly against allowing them to vote. The Welsh Local Government Association stated:

“The proposed power, as framed, is an enabling power rather than a duty, allowing authorities to choose to co-opt members and allowing them to confer voting powers. However, the power could be too prescriptive as authorities should have

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<sup>202</sup> RoP, paragraph 137, 18 November 2010

regard to statutory guidance or Ministerial powers of direction. The Welsh Local Government Association would therefore not support this approach.”<sup>203</sup>

239. Wrexham County Borough Council had concerns about:

“...voting powers being given to non-democratically elected individuals who are therefore not directly accountable to the public.”<sup>204</sup>

240. Most local authority responses did not support the proposal that Welsh Ministers be given a power to direct co-option. Flintshire County Council said:

“The Council believes that if there is to be a limit on the number of co-opted members the same limit should apply to both Committees and sub Committees. The Council is against extending the voting rights of co-optees but notes it would be left to local choice.”<sup>205</sup>

241. Caerphilly County Borough Council argued that:

“...a power for Welsh Ministers to direct a Council to co-opt and the extension of voting rights are considered to be undemocratic and undermine the legitimacy of Councillors as scrutineers and community leaders.”<sup>206</sup>

242. However, Dr Rachel Ashworth noted that co-opted members provide additional expertise, and voting rights would “enable them to fully participate within the committee.”<sup>207</sup>

243. Scope Cymru also noted that non-councillors on scrutiny committees could be of great assistance:

“...the third sector has significant expertise in many policy areas and would be well placed to fill some of these positions to assist the local authority in scrutinising the services and policies within their local area.”<sup>208</sup>

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<sup>203</sup> Written Evidence, LG65

<sup>204</sup> Written Evidence, LG46

<sup>205</sup> Written Evidence, LG30

<sup>206</sup> Written Evidence, LG31

<sup>207</sup> Written Evidence, LG 47

<sup>208</sup> Written Evidence, LG35

244. One Voice Wales supported the proposals to enhance the scrutiny process in local government, and felt there is greater scope for principal authorities to co-opt community councillors onto scrutiny committees as a means of capturing “grass roots” experiences.<sup>209</sup>

#### *Evidence from the Minister*

245. When asked whether conferring voting rights on co-opted members of scrutiny committees raised issues of democratic accountability, the Minister stated:

“We are talking about an enabling position here - that is, enabling voting co-option. This is not possible at the moment, but it is for local authorities to decide whether they want to make use of it. We are not saying that they must; we are saying that it is an option that will be open to authorities in order to enhance and improve scrutiny if they feel that that is what they need to do.”<sup>210</sup>

246. The Minister also explained that scrutiny committees would not be obliged to allow co-optees to become members of scrutiny committees; this was an enabling provision and allowed for flexibility at local level. In further evidence, the Minister reiterated this view:

“We are not talking about council decisions here. We are talking about the scrutiny of authorities. A council decision made by democratic process in the council is very different to a process that involves scrutiny by a panel that is supported by an expert group...All that we are proposing is that if local authorities feel that it would strengthen their scrutiny committees—particularly if taken together with the previous provision on broader public services—and if having outside expertise would strengthen their legitimacy in the eyes of partner organisations, they can take that step.”<sup>211</sup>

#### *Our view*

**247. We broadly welcome the provisions that will enable scrutiny committees to co-opt individuals with specific knowledge or**

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<sup>209</sup> Written Evidence, LG38

<sup>210</sup> RoP, paragraph 147, 18 November 2010

<sup>211</sup> RoP, paragraph 74, 23 September 2010

**backgrounds to participate in their activities. This will be of great benefit, providing additional expertise to support and strengthen scrutiny.**

**248. However, we strongly object to the powers in section 77 that will enable co-opted members of overview and scrutiny committees to vote.** The Minister sought to reassure us that allowing local authorities to decide for themselves whether or not to use this provision would allow for flexibility at local level. It is our view that such provisions could be subject to abuse, and we are concerned that this could raise issues of democratic accountability. **We therefore recommend that the Minister brings forward appropriate amendments at the next stage of the proposed Measure’s consideration to reflect our view.**

#### **Prohibition of whipped votes and declaration of party whips (section 81)**

249. Section 81 aims to prohibit the application of a party whip at meetings of overview and scrutiny committees. The provisions specify procedures for declaring, determining and recording a prohibited party whip at scrutiny committee meetings, and the consequences of a whip being imposed.

#### *Evidence from witnesses*

250. A number of local authority responses were of the view that statutory prohibition of the party whip is unnecessary, and that this provision should be removed from the proposed Measure. The Welsh Local Government Association felt that the provisions would be difficult to enforce and might also bring scrutiny processes into disrepute:

“The proposal to place the onus on scrutiny chairs places a significant burden on those individuals, who will not be in a position to objectively determine whether members from other groups have been given directions prior to the meeting. Given the significance of this responsibility, any such decisions by a chair would need to be based on clear evidence, however, it is unlikely that robust evidence to support any allegations or suspicions of whipping would ever be available.



As a result, this provision could be used by other members, members of the public or external bodies either vexatiously or legitimately to question the legitimacy of properly made scrutiny decisions, where it could be alleged that ‘whipping’ occurred when a number of like-minded members, who were from the same group, voted in a particular way, even though they voted independently based on the evidence presented to them.”<sup>212</sup>

251. The Association of County Secretaries and Solicitors echoed this view, believing that:

“...the difficulty of enforcing this provision has the potential for bringing this law into disrepute, and on balance, felt that it should not be a statutory provision, and omitted from the Measure.”<sup>213</sup>

252. Caerphilly County Borough Council, on the other hand, were supportive of prohibiting use of the party whip in scrutiny committees, but noted:

“The proposal to give the chair of a scrutiny committee the power to determine whether a committee member is following an agreed political whip is not considered a practical solution.”<sup>214</sup>

253. Rhondda Cynon Taf County Borough Council’s Overview and Scrutiny Committee, and Wrexham County Borough Council also supported the principle of this provision, but could not see how it would be enforced.<sup>215</sup>

#### *Evidence from the Minister*

254. We asked the Minister to explain why he had included this provision in the proposed Measure:

“I want to discourage hidden whipping...good governance is enhanced by good scrutiny. The driving of whipping underground needs to be tackled in legislation. If it is evident...then the decisions made within those scrutiny

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<sup>212</sup> Written Evidence, LG65

<sup>213</sup> Written Evidence, LG33

<sup>214</sup> Written Evidence, LG31

<sup>215</sup> Written Evidence, LG43

committees should be revisited. That is why we would legislate for this, because this is a serious point.”<sup>216</sup>

255. The Minister did not agree with witnesses who were concerned that these provisions would be difficult to implement, telling us that he was unwilling to “accept that this is a difficult process.”<sup>217</sup>

256. An official accompanying the Minister’s confirmed that the provisions, as drafted, required a declaration at the start of a meeting as to whether or not a whip had been imposed, and that this would need to be provided for by standing orders (section 81).<sup>218</sup>

257. In addition, the Minister explained he was trying to strengthen the role of scrutiny, increase recognition that good governance is supported by good scrutiny, and that prohibiting use of the party whip in scrutiny is part of this:

“I am trying to create an environment where it becomes the norm for scrutiny not to be whipped, because that makes for good scrutiny...We are trying to create a culture where it is recognised within institutions that good governance and excellent scrutiny gives good public services. That is what we are trying to create, and this is just about recording that process.”<sup>219</sup>

#### *Our view*

258. The Minister has explained his view that the use of the party whip in the deliberations of local authority scrutiny committees is inappropriate, and that that the provisions to prohibit this activity are part of a wider agenda to strengthen the contribution scrutiny can make to governance and public service delivery within local authorities. We agree with these aims.

**259. Whilst we note the concerns of witnesses and recognise that these provisions may be difficult to enforce, we consider that their inclusion in the proposed Measure establishes an important principle that prohibiting the use of the party whip provides members of scrutiny committees with the necessary safeguards**

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<sup>216</sup> RoP, paragraph 80, 23 September 2010

<sup>217</sup> RoP, paragraph 149, 18 November 2010

<sup>218</sup> RoP, paragraph 151, 18 November 2010

<sup>219</sup> RoP, paragraph 154, 18 November 2010

**for them to operate independently of political influence. We are therefore content with these provisions.**

### **Audit Committees (sections 84 – 90)**

260. Section 84 requires local authorities to appoint/establish an audit committee, with a view to reviewing and scrutinising the authority's financial affairs and make relevant reports and recommendations. These provisions also prescribe the membership of audit committees (section 85), their proceedings, for example that they may require members or officers to attend to answer questions (section 86), and their functions (section 88). Section 88 requires audit committees to have regard to guidance issued by Welsh Ministers.

#### *Evidence from witnesses*

261. The Chartered Institute for Public Finance and Accountancy (CIPFA) noted that existing guidance issued by the Welsh Government considers The Chartered Institute for Public Finance and Accountancy's *Delivering Good Governance in Local Government: Framework* and its *Audit Committees – Practical Guidance for Local Authorities* (ACG) to represent good practice.<sup>220</sup> The Chartered Institute for Public Finance and Accountancy expressed concern that the provisions in the proposed Measure do not correlate with the core functions of audit committees highlighted in the guidance, and endorsed by Welsh Ministers. The Chartered Institute for Public Finance and Accountancy commented that the proposed Measure, as drafted:

“...changes the core functions of an audit committee by limiting them to areas only concerned with an authority's “financial affairs.”<sup>221</sup>

262. The Wales Audit Office shared the concerns of The Chartered Institute for Public Finance and Accountancy and was of the view that the provisions setting out the functions of the Audit Committees might prove “restrictive” which would:

“... prevent them reviewing wider governance of the local authority and considering cost issues in the context of performance.”<sup>222</sup>

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<sup>220</sup> Written Evidence, LG59

<sup>221</sup> Ibid

263. The Wales Audit Office concluded that this would “hinder good governance” in Welsh local authorities.<sup>223</sup> The Society of Local Authority Chief Executives Wales told us they supported the evidence from The Chartered Institute for Public Finance and Accountancy and the Wales Audit Office.<sup>224</sup>

264. However, evidence from some local authorities found these proposals to be overly prescriptive, particularly in respect of appointments to the committee. Conwy County Borough Council, for example, stated:

“The power to elect a lay member to the Audit Committee should be a decision for the Council, not a dictat from WAG. If the reason for appointing a lay member is to add an element of independence then we would question the role of our appointed external auditors.”<sup>225</sup>

265. Cardiff Council did not support these proposals as they would require a change to current arrangements which:

“...work well with a majority of independent or lay members. The proposed limit on the number of independent or lay members on the audit committee would have significant implications for the current model and operation of the Council’s independent audit panel. This specific proposal is therefore not supported as it should be a matter for local authorities to determine locally.”<sup>226</sup>

#### *Evidence from the Minister*

266. The Minister explained his rationale for requiring local authorities to establish audit committees:

“Since the guidance in 2005 advocating having an audit committee, many have established them, but not all.”<sup>227</sup>

267. The Minister also told us:

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<sup>222</sup> Written Evidence, LG66

<sup>223</sup> Written Evidence, LG66

<sup>224</sup> RoP, paragraph 138, 21 October 2010

<sup>225</sup> Written Evidence, LG18

<sup>226</sup> Written Evidence, LG27

<sup>227</sup> RoP, paragraph 111, 23 September 2010

“Welsh Ministers have consistently supported the guidance of the Chartered Institute of Public Finance and Accountancy on the creation of audit committees—there are three authorities that still do not have an audit committee—and in relation to audit committees providing good governance, helping to improve strategic planning, facilitating scrutiny and so on.”<sup>228</sup>

268. In light of these comments, we asked the Minister why the proposed Measure, as drafted, provided for a narrow remit for audit committees, and was not in line with the Chartered Institute for Public Finance and Accountancy’s guidance. He responded:

“...I think that it is a drafting issue and a misunderstanding regarding what they are saying, what we are saying and how the two align. I am open to further discussions with both organisations to see how we can overcome that problem, because I just want to broaden the process to get it right. It is an important function, and if we have got that aspect wrong or have misinterpreted that, we can amend the provisions accordingly.”<sup>229</sup>

#### *Our view*

**269. We agree that all local authorities should have an audit committee, to ensure a consistent approach and support effective governance across all local authorities. We are therefore generally supportive of these provisions.** However, we recognise the concerns of those witnesses who believed the functions of audit committees are too narrowly drawn in the proposed Measure. For those who are adhering to existing guidance, implementing the provisions of the proposed Measure, as drafted, would in our view be a backward step. **We received assurances from the Minister that he would discuss the concerns of The Chartered Institute for Public Finance and Accountancy and the Wales Audit Office with those organisations, and consider amending the provisions accordingly. We agree with this approach, and recommend that the Minister brings forward appropriate amendments at Stage 2 of the Measure’s consideration.**

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<sup>228</sup> RoP, paragraph 168, 18 November 2010

<sup>229</sup> RoP, paragraphs 168 & 170, 18 November 2010

## 9. Part 7: Communities and community councils (sections 91 – 143)

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### *Background*

270. The provisions in Part 7 of the proposed Measure are based on the *Aberystwyth Report*, which was a review of the activities of community councils across Wales completed in 2003.<sup>230</sup> According to the Explanatory Memorandum, the *Aberystwyth Report* identified a number of “growing pressures for reform to the structure and working practices of community councils.”<sup>231</sup> The Explanatory Memorandum also states:

“The report noted that some community councils found themselves limited and frustrated by a combination of legislative, financial and administrative constraints.”<sup>232</sup>

271. Concerns were also expressed in the report about the inclusiveness of some councils, the low level of contested elections, the engagement of local people with their community councils, and the need to enhance the role of community councils, should a council wish to take on additional responsibilities.

272. In responding to the Aberystwyth Report, the Welsh Government made a commitment to develop a policy framework to deal with the issues identified. The Explanatory Memorandum states:

“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 increase the effectiveness of their representational role and their ability to work in partnership with other bodies.”<sup>233</sup>

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<sup>230</sup> Research Study into the Role, Functions and Future Potential of Community and Town Councils in Wales (“The Aberystwyth Report”), University of Wales, Aberystwyth, 2003.

<sup>231</sup> Ibid

<sup>232</sup> Explanatory Memorandum, paragraph 3.34, page 17

<sup>233</sup> Explanatory Memorandum, paragraph 3.32, page 17

*Evidence from witnesses*

***The need for legislation***

273. There was general support for the provisions relating to town and community councils although some witnesses were concerned about the cost implications of the proposed Measure.<sup>234</sup>

274. As one of the authors of the *Aberystwyth Report* which has informed Part 7 of the proposed Measure, Professor Michael Woods explained how the provisions would enable the community council sector to become more proactive, and why existing legislation needed updating:

“The majority of recommendations that we made did not require legislation, so this, in a sense, fills some of the gaps where legislation was needed in order to take those recommendations forward.”<sup>235</sup>

275. Similarly, One Voice Wales supported the principles of the proposed Measure because it:

“...addresses needs identified in a range of independent reports (e.g. Aberystwyth study, Councillors Commission Expert Panel for Wales report, Independent Remuneration Panel reports) and ... offers scope to improve considerably the overall operation of local government. These improvements relate to interactions between the two tiers of local government and other bodies as well as the operation of any particular sector or body.”<sup>236</sup>

276. The North Wales Association of Town and Larger Community Councils agreed with One Voice Wales, being of the view that the proposed Measure would help to address problems relating to the delivery of local services:

“there is a need for such a Measure as there are clear conflicts of interest in the provision of services delivered locally.”<sup>237</sup>

277. The Society of Local Council Clerks said that:

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<sup>234</sup> Written Evidence, LG7

<sup>235</sup> RoP, paragraph 83, 7 October 2010

<sup>236</sup> Written Evidence, LG38

<sup>237</sup> Written Evidence, LG73

“...any measures that seek to increase the professionalisation of the sector and make those involved more accountable and able are generally welcomed.”<sup>238</sup>

### ***Flexibility***

278. The permissive and flexible nature of Part 7 was welcomed because of the diverse nature of community councils. One Voice Wales told us the enabling nature of the provisions would allow those that wish to take on more activity to do so.<sup>239</sup>

279. Witnesses explained that some town and community councils will be more willing to take on additional responsibilities than others. The Society of Local Council Clerks told us there are:

“...councils across Wales that embrace all the powers that they currently can take on and, given the opportunity, would embrace more.”<sup>240</sup>

280. However, witnesses felt it was important to emphasise that not all would want to progress in this way. The evidence highlighted a notable divide between larger town and community councils who are eager to acquire new powers, and smaller councils who are more cautious. Abergele Town Council, a larger town council, told us that:

“The introduction of the power of wellbeing will help to remove some of the barriers which currently prevent town and community councils from undertaking provision of some services/activities.”<sup>241</sup>

281. Marteltwy Community Council, a smaller rural community council, on the other hand, stated that in framing the proposed Measure the Welsh Government may have:

“...incorrectly assessed the ambitions of members of small rural community councils, who do not necessarily want to assume some of the powers and functions currently exercised by other authorities”.<sup>242</sup>

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<sup>238</sup> Written Evidence, LG11

<sup>239</sup> RoP, paragraph 21, 14 October 2010

<sup>240</sup> RoP, paragraph 24, 14 October 2010

<sup>241</sup> Written Evidence, LG5

<sup>242</sup> Written Evidence, LG6



282. One Voice Wales also told us that, in addition to being willing to take on more responsibilities, town and community councils should be certain they had the capacity to do so:

“If something is to be devolved, it has to provide added value for that community, and if it is to be provided at the same cost, then it has to be a better quality service.”<sup>243</sup>

### ***Widening participation***

283. Witnesses were of the view that extending the range of activities that town and community councils could undertake would make the role of a community councillor attractive to a wider range of people. The North Wales Association of Larger Town Councils told us:

“If you are to encourage participation, then you have to show those people who make themselves available – before they put themselves up for election – that what they are going to do is worthwhile.”<sup>244</sup>

### ***Evidence from the Minister***

284. The Minister explained why this part of the proposed Measure was mostly permissive:

“We are mindful of the diverse nature of community councils...I think that they do a very good job, but I recognise that they are all very different and that they support their communities very differently. Our aim is to provide a framework to strengthen the role of the local councils by enabling them to deliver a wide range of services locally.”<sup>245</sup>

285. The Minister’s official explained further:

“...it comes back to the question of proportionality. This is not about compulsion; it is about enabling them where they have the capacity to use these powers.”<sup>246</sup>

286. The Minister also told us that the proposed Measure should be seen as a package, and that the aim of increasing participation was as

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<sup>243</sup> RoP, paragraph 28, 14 October 2010

<sup>244</sup> RoP, paragraph 70, 14 October 2010

<sup>245</sup> RoP, paragraph 127, 23 September 2010

<sup>246</sup> RoP, paragraph 134, 23 September 2010

relevant to the town and community council sector as it was to local authorities:

“...in Part 1 [of the proposed Measure] we talked about membership, inclusiveness and diversity. You tend to find that a lot of town and community councillors are also county councillors, so the make-up of those councils is the same. If we can get the collection of data right, and understand the problems people have in becoming councillors, we will have new people, new ideas and new concepts, and we will move forward.”<sup>247</sup>

287. The Minister also explained that this was, to an extent, a ‘tidying up’ of existing legislation:

“The existing *Local Government Act 1972* is extremely complex and we have just tidied that up and made it easier to understand.”<sup>248</sup>

#### *Our view*

**288. Town and community councils in Wales are diverse, and some will be more eager to take on additional responsibilities than others. We welcome the flexibility in the proposed Measure, and agree that, as drafted, it reflects the diversity of the sector and will enable those community councils who wish to take on more powers and responsibilities to do so.**

**289. It is our view that enhancing the work of town and community councils will help to increase awareness of their role and generate more interest in their activities. This will not only be of great benefit to local communities, it will also help to demonstrate to the public that the role of community councillor can make a positive contribution to the locality, and could encourage greater participation in this tier of local government.**

#### **Community meetings and community polls (sections 91 – 102)**

290. According to the Explanatory Notes that accompany the proposed Measure, these sections revise the arrangements set out in the *Local Government 1972 Act*:

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<sup>247</sup> RoP, paragraph 135, 23 September 2010

<sup>248</sup> RoP, paragraph 119, 23 September 2010

“...for the calling and organisation of community meetings and community polls in Wales to make them more representative of local opinion.”<sup>249</sup>

291. The provisions set out: the way in which community meetings may be convened by members of a community council or by electors (section 91); requirements for notice of community meetings (section 95); thresholds for demanding community polls (section 96); and issues around the determination of the poll question, results of and action following, a community poll (sections 97 – 102).

#### *Evidence from witnesses*

292. Witnesses generally welcomed these provisions. The Society of Local Council Clerks and One Voice Wales agreed that there was a need to discourage “vexatious calls” for community polls but had some reservations about the powers vested in the principal authority in relation to determining the poll question. They felt there was a need for a right of appeal to Welsh Ministers should the community council disagree with the monitoring officer’s view. They explained:

“This would provide a fail-safe to avoid the principal authority, through its monitoring officer, being able to frustrate the poll process (possibly on a technicality) where a community has expressed a clear view on, for example, the failure of a principal authority to provide a statutory function within that community.”<sup>250</sup>

293. The Welsh Local Government Association supported the proposals to revise the threshold for demanding a community poll (section 96), but felt that guidance was needed to provide clarity on the relevance and legitimacy of the subject matter, the geographical scope of the subject matter and potential frequency that such matters should be considered. The Welsh Local Government Association commented:

“The costs of organising, administering and responding to a community poll and meeting are significant. Other processes and opportunities for community involvement are already available, such as formal consultation processes, public meetings or councillor calls for action, and it would be

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<sup>249</sup> Explanatory Memorandum page 86

<sup>250</sup> Written Evidence, LG11 and LG 38

inappropriate for community polls to be triggered when such mechanisms have already been used.”<sup>251</sup>

### *Evidence from the Minister*

294. On the issue of guidance regarding community polls, the Minister stated:

“The steps are clearly set out in the provisions. There are safeguards in the higher thresholds for convening a community meeting for staging a community poll. I do not think we need guidance, but it is something that I would consider.”<sup>252</sup>

295. We asked the Minister why there was no provision for community councils to appeal to Welsh Ministers in instances where they did not agree with the principal authority’s determination on the poll question. He responded:

“I do not think that it is necessary. Where does all of this stop? We have to have a responsible person to make a decision. I would consider the monitoring officer to be that person at this level of appeal.”<sup>253</sup>

### *Our view*

296. **We have considered the evidence presented by witnesses and believe the provisions in sections 91 to 102 are appropriate.** The Minister is of the opinion that the amended thresholds for triggering community meetings and polls will safeguard against their misuse. We support the Minister’s view, but believe that community councils should consider carefully whether a community poll is the correct course of action, particularly as they can incur a considerable financial cost. **We therefore agree with witnesses that guidance will be needed to ensure that community polls are not overused, particularly where other ways of gathering public opinion may have previously been adopted.**

297. We believe it would be inappropriate to include a right of appeal to Ministers in instances where the community council disagrees with the principal authority’s determination on a poll question. Such issues

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<sup>251</sup> Written Evidence, LG65

<sup>252</sup> RoP, paragraph 179, 18 November 2010

<sup>253</sup> RoP, paragraph 183, 18 November 2010

should be determined locally, and Ministerial intervention would be inappropriate.

### **Organisation of communities and their councils (sections 103 – 118)**

298. The provisions will amend existing arrangements for establishing and dissolving community councils (sections 103 – 107). The Explanatory Notes accompanying the proposed Measure state:

“...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 of dissolution of a community council. The Welsh Assembly Government considers that the thresholds for establishing a community council are too high and those for dissolving a community council are too low.”<sup>254</sup>

299. Section 104 introduces a new threshold for establishing a community council. 10 per cent of the local government electors for the community or 150 of the electors (whichever is the lowest), will need to be present and voting at a meeting calling for a community council to be established, and there will need to be a majority result in the community poll. The existing threshold is 30 per cent or 300 of the electors.

300. At present 30 per cent, or 300 (whichever is the lowest), of the local government electors for the community must be present and voting at a meeting to dissolve a community council. Section 106 of the proposed Measure maintains this threshold. However, a new condition will be introduced, which will require at least two-thirds of those voting in the community poll to be in favour of dissolving the community council.

301. Sections 108 – 118 will enable clustering (or grouping) amongst community councils that wish to work together.

#### *Evidence from witnesses*

302. Witnesses, such as the Society of Local Council Clerks and One Voice Wales, welcomed the provisions to simplify the process of establishing a community council. However, these organisations told

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<sup>254</sup> Explanatory Memorandum, pages 89 & 90

us they wished to see the power to dissolve a community council removed from statute altogether because community councils are:

“... the only form of public body (as far as we are aware), that is subject to such a power. However, we recognise the change to the requirement for a two thirds majority to be a significant step in the right direction.”<sup>255</sup>

303. Professor Michael Woods also told us that he agreed with the provisions in these sections, stating:

“Some councils that have been confronted by repeated attempts at dissolution have been constrained in their capacity to act effectively due to the uncertainty of long-term planning.”<sup>256</sup>

304. In addition Professor Woods welcomed the provisions that will enable the ‘grouping’ of councils, explaining that:

“Joining with neighbouring councils has the benefit of increasing their resources, increasing their capacity to act and of saving on administration costs by pooling minutes and sharing a clerk, which may allow expenditure on other, more community-facing, activities.”<sup>257</sup>

#### *Evidence from the Minister*

305. The Explanatory Memorandum explains that, in its response to the *Aberystwyth Report*, the Welsh Government made a commitment to review:

“...the procedures by which community councils can be established or abolished to make sure that the procedures are transparent and fully representative”.<sup>258</sup>

306. The Minister also told us he wanted to:

“...make it easier for communities to establish community councils...the threshold has been lowered from 30 per cent of

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<sup>255</sup> Ibid.

<sup>256</sup> Written Evidence, LG39

<sup>257</sup> RoP, paragraph 92, 7 October 2010

<sup>258</sup> Explanatory Memorandum, paragraph 3.37

the local government electors or 300 electors to 10 per cent or 150 electors.”<sup>259</sup>

### *Our view*

307. We have heard evidence from witnesses that, whilst it is no longer such a prevalent issue, the existing thresholds for dissolving a community council are too low and have hindered the work of some community councils in Wales. **We consider the proposals to increase the thresholds for dissolving community councils to be appropriate. Furthermore, the proposed Measure as a whole aims to increase participation in local democracy, and as such we believe that it is appropriate to make it easier for communities to establish a community council by decreasing the threshold for doing so.**

### **Co-option of members of community councils (sections 199 - 120)**

308. Section 119 and 120 require community councils to give public notice of vacancies in their membership that are to be filled by co-option.

### *Evidence from witnesses*

309. Witnesses welcomed these provisions, being of the view that issuing public notices could increase interest in community council roles. One Voice Wales, for example, was in favour of the greater transparency that these provisions bring to the co-option process.<sup>260</sup>

310. However, witnesses also emphasised the large number of community council members that are co-opted because filling the seats can be difficult. Most witnesses agreed that whilst this is not ideal, it is the reality in many cases. Professor Michael Woods explained:

“We need to recognise that a very large number of community and town councillors in Wales are co-opted...You are not going to remove co-opted councillors overnight, and therefore we need to increase the transparency of the process. That will improve democratic accountability.”<sup>261</sup>

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<sup>259</sup> RoP, paragraph 121, 23 September 2010

<sup>260</sup> Written Evidence, LG38

<sup>261</sup> RoP, paragraphs 98, 7 October 2010

311. Witnesses acknowledged that there are benefits to co-option, not only in providing additional expertise, but also in increasing the diversity of representation at community council level. Professor Michael Woods stated:

“We hope that it will also work to attract a wider range of candidates, which may help to address the underrepresentation of key groups.”<sup>262</sup>

312. One Voice Wales agreed:

“Co-option is sometimes an opportunity for us to get people who are not as prone to engage.”<sup>263</sup>

#### *Our view*

**313. Many town and community councils in Wales would be unable to operate without co-opted Members. With this in mind, we are content with the provisions in the proposed Measure that aim to increase the transparency of the co-option process by requiring public notices. Furthermore, we believe that, in making the process more transparent, co-option may be an opportunity to increase interest in the work of community councillors.**

314. We hope that, in making the process of co-option more transparent, together with the other provisions of this Measure, the role of community councillors will be strengthened and more citizens will be encouraged to participate in this tier of local government. **However, we strongly believe that the current co-option levels on community councils are unacceptable and are of the view that this is a matter of great concern. We recognise that it is a complex issue as many community councils would not be able to function without co-option. We are of the view that it would be inappropriate to deal with this issue in the context of this proposed Measure without careful consideration being given to the position of existing community councils who co-opt. However, we recommend that the Minister should consider addressing this issue.**

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<sup>262</sup> RoP, paragraphs 98 & 99, 7 October 2010

<sup>263</sup> RoP, paragraph 54, 14 October 2010



## **Appointment of community youth representatives (sections 121 – 124)**

315. These sections enable community councils to appoint up to two community youth representatives, if they so wish. Such individuals must be over the age of 15 but not yet 26. Under the provisions in Section 121, the community youth representative will represent the interests of those under 26 who live, work or are educated in the community area. Section 123 will enable Welsh Ministers to issue guidance in relation to the functions a community council must undertake in this appointment process. Under Section 124 Welsh Ministers may provide, by regulations, that a community youth representative be treated as a member of the council for prescribed purposes.

### *Evidence from witnesses*

316. These provisions were welcomed by witnesses, with many being of the view that they will assist in increasing the participation of young people in local democracy. Professor Michael Woods of Aberystwyth University told us that he was:

“...delighted that this provision has been included in the measure. This is a genuinely radical proposal that will enhance local democracy and public participation in Wales.”<sup>264</sup>

317. One Voice Wales felt that this might be a more comfortable route for many individuals:

“Whilst the age range given for a youth representative (16 to 26) overlaps with the eligible age at which an individual can become a councillor (18), it is recognised that some young people over the age of 18 may prefer to act as a youth representative rather than become a full councillor.”<sup>265</sup>

318. The Society of Local Council Clerks told us that, whilst this would not necessarily be a new initiative in some parts of Wales, it was an important development, and suggested it should be a requirement:

“...the more active councils are already tapping into what could be seen as a valuable resource, because they are responding to

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<sup>264</sup> Written Evidence, LG39

<sup>265</sup> Written Evidence, LG38

the needs of their locality and communities. The younger generation is quite a large section of the community. It should almost be a requirement to appoint community youth representatives on a council.”<sup>266</sup>

319. Some witnesses, however, noted that having the provision as an enabling power, as drafted, rather than a requirement will mean that community councils will be able to choose whether to pursue this route if it reflects the population represented. One Voice Wales told us:

“We would all say that we have to have representation from young people, but, in my area, older people comprise 80 per cent of the population, so you have to be more flexible.”<sup>267</sup>

320. The North Wales Association of Larger Town Councils agreed with this view:

“...it might be that it works for some councils but not for others. Involving youth—yes, that is a good idea. However, legislating for how to do that will require more than just saying, ‘Just have a young person on the council’.”<sup>268</sup>

321. The Association of County Secretaries and Solicitors were concerned that the proposed Measure did not adequately deal with existing legislative provisions, which require a person to be over 18 to be a member of a ‘local authority’:

“Consideration should be given as to whether regulations allowing a youth representative to be treated as a community council Member, are sufficient, or whether the overwriting of prohibition of appointment/voting under the age of 18 should be more appropriately be covered in the Measure. Section 79 of the Local Government Act 1972 provides that a person must be over 18 to be a member of a local authority, and this provision does not appear to have been disapplied in the Measure.”<sup>269</sup>

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<sup>266</sup> RoP, paragraph 64, 14 October 2010

<sup>267</sup> RoP, paragraph 66, 14 October 2010

<sup>268</sup> RoP, paragraph 68, 14 October 2010

<sup>269</sup> Written Evidence, LG33

### *Evidence from the Minister*

322. The Minister explained that his intentions with these provisions were to “engage young people with the local council”.<sup>270</sup>

323. An official accompanying the Minister addressed the concerns raised by the Association of County Secretaries and Solicitors:

“...the power is for Ministers to prescribe that a youth representative could be treated as a member of the council. That is not the same as saying that they are a member. We envisage that it could be used, for example, to extend certain statutory rights, privileges or obligations to youth representatives. One possible example is to allow the payment of expenses or an allowance where appropriate. I suspect that Ministers would look to use that power only where there was a weight of opinion from community councils generally that there was a need to do that in a practical sense.”<sup>271</sup>

### *Our view*

**324. The provisions that will give town and community councils the ability to appoint a community youth representative, if they wish, are to be welcomed. We believe that including this provision could increase opportunities for young people to participate in local democracy.** However, we do not believe this should be a requirement as it might not be appropriate for all communities to be represented in this way. We are content with these provisions being at the discretion of the community councils.

### **Reviews of community areas and electoral arrangements (sections 125 – 128)**

325. These sections require principal councils to publish a report every 15 years explaining how they have kept community areas and electoral arrangement for community areas under review (sections 125 and 126); and introduce a new enabling power for a principal council to agree arrangements by which the Local Government Boundary Commission for Wales may exercise the principal council’s functions, as required by Sections 125 and 126 (section 127).

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<sup>270</sup> RoP, paragraph 187, 18 November 2010

<sup>271</sup> RoP, paragraph 188, 18 November 2010

### *Evidence from witnesses*

326. There was general support for these provisions, but some disagreement regarding the organisations that should have responsibility for undertaking the reviews of community areas and electoral arrangements for those areas.

327. Professor Michael Woods welcomed the introduction of a timescale for the review of community areas and electoral arrangements for those areas:

“...the need to regularly review community areas and electoral arrangements is important to maintaining appropriate mechanisms for democracy and accountability.”<sup>272</sup>

328. One Voice Wales echoed this view and said that the provisions:

“...should ensure that community boundaries are reviewed sufficiently often such that they reflect medium to long term changes in settlement patterns.”<sup>273</sup>

329. One Voice Wales also suggested that reviews of community boundaries would be best undertaken by the Local Government Boundary Commission for Wales rather than the principal authority for the area because, in its view, this would ensure a greater degree of independence and provide no scope for undue political influence by the principal authority.<sup>274</sup>

330. Other witnesses, however, highlighted problems that could arise as a result of One Voice Wales’ suggestion. The North Wales Association of Larger Town Councils believed:

“...the local boundary should be dealt with locally and we felt that the county council was still the right place to do that, because it is more likely to know the demographics of your area than the boundary commission.”<sup>275</sup>

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<sup>272</sup> Written Evidence LG 39

<sup>273</sup> Written Evidence, LG38

<sup>274</sup> Written Evidence, LG38

<sup>275</sup> RoP, paragraph 73, 14 October 2010

331. However, One Voice Wales maintained that there was a need for an independent body to take part in the process should there be any disagreement.”<sup>276</sup>

#### *Evidence from the Minister*

332. We asked the Minister to explain why he had chosen to proceed with the approach outlined in these sections of the proposed Measure:

“Councils are best placed to do this. I believe that they know their areas best, and I think that we have seen recent examples of the boundary commission making recommendations on council reviews that have been challenging for communities. So, I believe that councils are best placed to do that. However, I also believe that, if councils want the commission to do that work, it can arrange that, but it must pay for it. I am not paying twice for it; I am not paying local authorities and the boundary commission to do the same job. I mentioned to the Finance Committee that this was a bit of a loophole, because the duty to do this is on the authority, but it could pass it on to the commission, which meant that it did not have to do it. So, I closed the loophole, and I expect the relevant authority to complete the reviews. If it should wish the commission to carry out that duty for it, it can pay for that.”<sup>277</sup>

#### *Our view*

333. We have considered the evidence from those witnesses calling for the Local Government Boundary Commission for Wales to be responsible for undertaking reviews of community areas and electoral arrangements, by default. As drafted the proposed Measure will enable this function to be delegated to the Boundary Commission, if the principal authority wants this to happen. **We are content that these provisions, as drafted, are appropriate, and allow for flexibility to suit local circumstances.**

#### **Community councils’ powers to promote well-being (sections 129 – 131)**

334. The ‘power of well-being’ will be extended to town and community councils by these provisions, by amending section 1(b) of

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<sup>276</sup> RoP, paragraph 74, 14 October 2010

<sup>277</sup> RoP, paragraph 190, 18 November 2010

the *Local Government Act 2000*. At present, 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.”<sup>278</sup>

*Evidence from witnesses*

335. The majority of witnesses felt that these provisions were appropriate and in keeping with the spirit of the proposed Measure in that they would enable community councils to do more if they wished.

336. Some witnesses believed that such powers would assist in making the role of a community councillor more attractive by increasing awareness of what the role could achieve. The North Wales Association of Larger Town Councils told us:

“You have to make the role attractive in some way, so that people want to serve as town and community councillors. If you are to encourage participation, then you have to show those people who make themselves available—before they put themselves up for election—that what they are going to do is worthwhile.”<sup>279</sup>

337. One Voice Wales agreed:

“...the wellbeing power may encourage people to see what they can do for their communities and to take part in local democracy.”<sup>280</sup>

338. Despite these positive comments, it was evident that witnesses were unsure what the extension of this power meant in practice. The North Wales Association of Larger Town Councils stated:

“The first thing that community councils will have to do is to identify what it means, because most of them at the moment do not know where to start.”<sup>281</sup>

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<sup>278</sup> Explanatory Notes, page 95

<sup>279</sup> RoP, paragraph 70, 14 October 2010

<sup>280</sup> RoP, paragraph 93, 14 October 2010

<sup>281</sup> RoP, paragraph 85, 14 October 2010

339. Although he welcomed the provisions, Professor Michael Woods questioned the extent to which this power differed from existing powers under section 137 of the *Local Government Act 1972* and expressed reservations regarding the extent to which this would be used effectively by community councils:

“I suspect that it will not make a great deal of difference ... as I see it, there is no evidence that there is a need for this power because councils are being restricted powers from doing things that they want to do ... it will do no harm, but I am not sure whether it will be widely used or enable councils to do a great deal more than they are currently doing.”<sup>282</sup>

340. One Voice Wales, however, explained how the power would be used:

“...in England, the powers of wellbeing have only been taken up by larger councils where there is sufficient capacity to enact the wellbeing powers. On whether they will be taken up in Wales, it is debatable how different the wellbeing power is from section 137. However, the wellbeing power, if enacted, would promote the use of it and would encourage community and town councils to raise precept around social, environmental or economic wellbeing matters in their areas.”<sup>283</sup>

341. Similarly, the North Wales Association of Larger Town Councils told us this provision would widen the areas in which town and community councils could spend the precept:

“What the power of well-being does is stop the restrictions and allows you to have a plan that people want to implement. ... It does not mean that we have to raise our precept—it means that we can spread it right across.”<sup>284</sup>

#### *Evidence from the Minister*

342. We received an explanation from an official accompanying the Minister as to how the proposed power of well-being would be used:

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<sup>282</sup> RoP, paragraph 115, 7 October 2010

<sup>283</sup> RoP, paragraph 84, 14 October

<sup>284</sup> RoP, paragraphs 87 & 91, 14 October 2010

“The *Local Government (Wales) Measure 2009* made it a duty for community councils to collaborate with county councils in developing and implementing community strategy. What this proposed Measure does is complement that by extending the power of well-being, and giving a broader basket of powers to community councils to take the actions that they deem to be appropriate.”<sup>285</sup>

343. We also questioned the Minister on the extent to which the well-being power being introduced by this Measure differed from community councils’ existing powers under section 137 of the *Local Government Act 1972*. An official accompanying the Minister explained:

“...section 137 of the Act is different to the wellbeing power in three ways. One concerns the council’s objectives; by its very nature, the wellbeing power is broader because it involves the promotion or improvement of the economic, social or environmental wellbeing of the area and its inhabitants.

... The second difference is that section 137 in the 1972 Act carries a financial limit, which does not apply to the wellbeing power.

Thirdly, the powers have different starting points: section 137 cannot be used if there are other powers in existence, whereas, with the wellbeing power, you would look to that first.”<sup>286</sup>

#### *Our view*

**344. We welcome the provisions that relate to the promotion and improvement of well-being as a means of providing town and community councils with greater powers and responsibilities.** This reflects the findings of the *Aberystwyth Report*, which recommended that community councils should be given broader powers. **These provisions are in keeping with the spirit of the proposed Measure, and will bring this tier of local government into line with those that can already use the power.**

**345. However, despite hearing evidence on this issue from the Minister, we are concerned at the lack of clarity as to the purpose**

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<sup>285</sup> RoP, paragraph 132, 23 September 2010

<sup>286</sup> RoP, paragraph 193, 18 November 2010



**of these provisions, and note that a number of witnesses were unsure how they will be used. We therefore recommend that the Minister addresses this by issuing guidance that highlights how they may be used in practice.**

### **Grants to community councils (section 132)**

346. At present, Welsh Ministers cannot pay grants to community councils. This section will amend the situation. The Explanatory Notes state:

“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.”<sup>287</sup>

#### *Evidence from witnesses*

347. The majority of witnesses from the community and town council sector were in favour of this provision, although some were unclear as to its purpose.<sup>288</sup>

348. It was also welcomed by Professor Michael Woods, who stated:

“...the provision of limited direct grants would particularly encourage the modernisation and pro-active engagement of councils with limited revenue-raising capacity.”<sup>289</sup>

349. One Voice Wales also believed the provision was appropriate:

“This power will complement other developments under the Measure and allow for the targeted support of particular initiatives. Although One Voice Wales sees the accountability of councils to their communities through the precept as an important strength of community councils, we welcome the measure allowing the Minister to pay grant to community councils.”<sup>290</sup>

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<sup>287</sup> Explanatory Memorandum, page 96

<sup>288</sup> Written Evidence, LG13

<sup>289</sup> Written Evidence, LG39

<sup>290</sup> Ibid.

350. Town and community council witnesses felt that this power would be of benefit if a local authority decided not to provide a service but there was still a demand for it locally:

“During the transition, I think that we will have a conflict between asking for money from a county council and it in turn saying that it does not have a budget for it...I think that the easier route would be for the Assembly Government to say that ...there is a benchmark service to be delivered and if that council does not wish to perform it, it could be done by the community council and the money paid directly to it.”<sup>291</sup>

351. However, these witnesses were also eager to clarify that they did not expect that any grant provision would be from additional money, but would be a case of:

“...looking at how much money is in the public services pot and allocating to community and town councils.”<sup>292</sup>

352. In contrast, some witnesses opposed this provision, including The Society of Local Authority Chief Executives Wales and the Welsh Local Government Association.<sup>293</sup> The Welsh Local Government Association stated:

“Community and town councils already have powers to set precepts and some receive funding from principal authorities where agreed services have been delegated. Such funding arrangements are best agreed locally, where issues of ‘double-taxation’ can be mitigated. The risk of an additional central grant direct from the Assembly Government could further cloud clarity and transparency over the funding for specific agreed services.”<sup>294</sup>

#### *Evidence from the Minister*

353. When we asked the Minister to explain how he intended to use the powers in this section, he responded:

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<sup>291</sup> RoP, paragraph 95, 14 October 2010

<sup>292</sup> RoP, paragraph 97, 14 October 2010

<sup>293</sup> Written Evidence, LG48

<sup>294</sup> Written Evidence, LG65

“This could enable us, if we should find it necessary in the future, to grant-fund town and community councils.”<sup>295</sup>

354. The Minister told us he thought it was appropriate for Welsh Ministers to have this power, should it be necessary to change the way services are to be delivered in the future:

“The current state of affairs is that we are not in a position to make grants to community councils ... we are moving into very different economic times, and we do not know what the future may bring in terms of who will make what provision, and where, as regards service delivery—whether local authorities are best-placed to do it, or community and town councils. At the moment, there is no route whereby we can pay for services. It would be useful for the committee to note that this power mirrors a similar grant-making power relating to principal councils in section 31 of the Local Government Act 2003. This is a similar granting function that would enable us to pay direct to community councils should that be necessary.”<sup>296</sup>

355. We asked the Minister to respond to the concerns of local authorities regarding issues of transparency and double taxation. One of the Minister’s officials stated:

“I think that the Welsh Local Government Association is muddling issues here, frankly. There is a grant-making power on the one hand and the issues around the delegation of services and double taxation are something quite different. If they are looking at local arrangements for the delegation of services, they should be addressing the double taxation issue within those arrangements. The Minister has said that he has no intention of funding those sorts of services using this power.”<sup>297</sup>

### *Our view*

356. We note that the Minister wants to have the flexibility to pay grants to community councils, should this be considered appropriate. Many witnesses told us this would be of benefit, particularly as we face increasingly challenging times in the delivery of public services, and

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<sup>295</sup> RoP, paragraph 209, 18 November 2010

<sup>296</sup> RoP, paragraph 198, 18 November 2010

<sup>297</sup> RoP, paragraph 210, 18 November 2010

may need to identify new ways of working to provide those services in the future. **We have considered these provisions in the context of the current and longer term challenges facing local government at all levels, and believe they are appropriate. However, we were not satisfied by the Minister’s explanation regarding the use of this provision, and recommend that he provides greater clarity before the next stage of the proposed Measure’s consideration.**

### **Model charter agreements between local authorities and community councils (sections 133 – 136)**

357. Sections 133 – 136 enable Welsh Ministers, by order, to set out model charter agreements. In the first instance, the intention would be to continue to encourage the development of voluntary charters. The Explanatory Notes explain that at present there is:

“...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.”<sup>298</sup>

358. Section 134 will enable Welsh Ministers to issue directions requiring the adoption of a model charter. Section 135 gives Welsh Ministers the power to issue guidance about charter agreements, to which principal and community councils acting under a direction of the Ministers must have regard.

#### *Evidence from witnesses*

359. We received a mixed response on the issue of charters. The majority of witnesses felt that voluntary charters were an effective way of encouraging collaboration, but that requiring the development of a charter would create an artificial partnership between the local authority and community councils. The Welsh Local Government Association, for example, did not support the proposed provisions “on points of principle and practicality” but supported the concept of voluntary charters between local authorities and community and town councils that are “fit-for-purpose and designed to meet local needs and circumstances”. On this basis, the Welsh Local Government Association believed:

“It would therefore not be appropriate for the Assembly Government either to prescribe a model charter nor direct

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<sup>298</sup> Explanatory Memorandum, page 96

other tiers of government to adopt it. The imposition of an artificial partnership ‘agreement’ on two or more organisations will do little to aid relations should these have been problematic in the first place. Relationships between the two tiers are bilateral and need to be developed in partnership rather than as a result of direction from another tier of government.”<sup>299</sup>

360. Caerphilly County Borough Council, told us:

“The Council’s Charter with its Community Councils has been in place for a number of years and is considered best practice at a national level. It is successful as it is voluntary joint agreement. The proposal to prescribe a model charter could act as a barrier to co-operation and stifle innovation.”<sup>300</sup>

361. However, One Voice Wales fully supported the provisions, believing that they would send an important message to both “tiers of local government regarding the importance of collaboration.”<sup>301</sup> One Voice Wales commented further:

“We recognise that good progress is being made on a voluntary basis in different parts of Wales and it is hoped that the mere existence of the power will encourage the further development of charters. In our experience, those areas that already have charters in place tend to have better working relationships which support a ‘team-based’ approach to meeting citizens’ needs.”<sup>302</sup>

362. The North Wales Association of Town and Larger Community Councils said that it was important for all councils to “feel that they are a real part of it,”<sup>303</sup> whilst One Voice Wales were concerned that any agreement would need to be meaningful, and believed there was a perception that charters were:

“...just a document, and we do not want it to be left sitting on a shelf, getting dusty. To all intents and purposes, the charters have to represent an operating framework that unitary

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<sup>299</sup> Written Evidence, LG65

<sup>300</sup> Written Evidence, LG31

<sup>301</sup> Written Evidence, LG38

<sup>302</sup> Written Evidence, LG38

<sup>303</sup> Written Evidence, LG72

authorities and community and town councils use within their areas as the basis for working documents.”<sup>304</sup>

363. Professor Michael Woods was of the view that these provisions would ensure consistency across Wales, by strengthening:

“...the ability of the Welsh Assembly Government to regulate and require the adoption of Charters if necessary in order to ensure equality of opportunity for Community and Town Councils across Wales.”<sup>305</sup>

364. The Society of Local Council Clerks agreed that there was evidence some principal authorities did not support the concept of charter working, but also were keen to highlight the benefits of this type of collaboration :

“It is felt that this is seen by some as a sign of weakness and potential loss of control. However, without exception, those authorities who have taken the step and evoked the charter ethos have been surprised how effective this shared working (and cost) has been.”<sup>306</sup>

365. The North Wales Association Larger Town Councils shared this view:

“Charters are absolutely vital, but they are two-way arrangements. They clearly set out the formality of dealing with the principal authority, but they also set out the formality of the principal authority’s dealings with the community and town councils, which I believe to be absolutely essential.”<sup>307</sup>

366. Ultimately, witnesses were of the view that forcing organisations to work together would not provide results. The North Wales Association of Larger Town Councils told us:

“...the sector does not think that it should be a mandatory requirement to force marriages of efficiency, which, at the end of the day, is what we are looking at. Once you force together

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<sup>304</sup> RoP, paragraph 108, 14 October 2010

<sup>305</sup> Written Evidence, LG39

<sup>306</sup> Written Evidence, LG11

<sup>307</sup> RoP, paragraph 109, 14 October 2010

two partners who do not want to be together in any context, you have a recipe for disaster.”<sup>308</sup>

### *Evidence from the Minister*

367. The Minister told us, in evidence, that he agreed with those witnesses who felt mandatory charters would not achieve the best outcome:

“A forced relationship will never work in that respect, and we have experienced that with local authorities. When I refer to collaboration, if one does not want to do it, it will just make a bad job of it. What we are trying to do—and it is actually working very well—is that, where we have the partnership council, which includes One Voice, the representative body for town and community councils, we are looking to develop charters between local authorities and community town councils. Already, the charter compact has been signed off and considered by local authorities. Again, some partners are more willing than others. Some just need a little push along the way. This is something that can only lead to a better and more seamless delivery of public services.”<sup>309</sup>

### *Our view*

368. Developing effective relationships between principal authorities and town and community councils can sometimes be difficult, and the process of developing a charter can be a way of overcoming those difficulties. Witnesses have told us that having such an agreement in place to direct activities can help achieve genuine collaboration and effective ways of working. **It is our view, therefore that voluntary charters are the most effective ways of achieving genuine collaboration and the Minister should continue to encourage this approach.**

369. However, in instances where it has not been possible to reach an agreement on a voluntary charter, we believe it is appropriate for the Minister to intervene. **We therefore agree with these provisions, but support those witnesses who believe the use of the powers in sections 134 and 135 should be a last resort.**

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<sup>308</sup> RoP, paragraph 101, 14 October 2010

<sup>309</sup> RoP, paragraph 214, 18 November 2010

## **Schemes for the accreditation of quality in community government (sections 137 – 143)**

370. These provisions will enable Welsh Ministers to make regulations to provide for an accreditation of quality scheme for community councils.

371. The Explanatory Notes explain:

“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 the standards of local government by community councils.”<sup>310</sup>

### *Evidence from witnesses*

372. These provisions were generally welcomed as a means of increasing the professionalisation of the sector. One Voice Wales saw “potential benefits from introducing an accreditation scheme for community councils” but would wish to be closely involved in setting the parameters for such a scheme.<sup>311</sup>

373. Professor Michael Woods believed a:

“...system of accreditation would provide a framework for addressing the divergent interests of different councils, whilst also helping to raise the quality of practice across the sector as a whole.”<sup>312</sup>

374. The North Wales Association of Town and Larger Community Councils favoured such schemes and felt that they would help to support those community councils who wanted to “take over services once they have demonstrated that they are able to do so.”<sup>313</sup>

375. Professor Woods agreed:

“... the accreditation scheme allows you to differentiate between councils in a way that is open and inclusive, so that any council may apply for that scheme, and councils that achieve accreditation on the basis of high standards could take

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<sup>310</sup> Explanatory Memorandum, page 97

<sup>311</sup> Written Evidence, LG38

<sup>312</sup> Written Evidence, LG39

<sup>313</sup> Written Evidence, LG72



an enhanced role that is not available to the sector as a whole.”<sup>314</sup>

*Our view*

**376. Witnesses were supportive of the provisions in sections 137 to 143 that will enable Welsh Ministers to establish an accreditation scheme for town and community councils, believing they will be a useful mechanism for local communities to assess the effectiveness of their community council, and will encourage professionalism in the sector. On this basis, we are content with these provisions.**

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<sup>314</sup> RoP, paragraph 86, 7 October 2010

## **10. Part 8: Members payments and pensions (sections 144 – 163)**

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377. Part 8 of the proposed Measure makes provision for the determination of remuneration levels for councillors by an independent panel. This role will be undertaken by the existing Independent Remuneration Panel for Wales. At present the Independent Remuneration Panel is tasked with prescribing the maximum levels of allowances payable by local authorities. The Panel:

“...sets the range and maximum levels of allowances available to elected members and certain co-opted members of county and county borough councils. It is then for councils to set their own levels of allowances by vote of the full councils but the levels set must not exceed those determined by the Panel. Although the Panel’s remit does not extend to National Park Authorities and Fire and Rescue Authorities, when amending their schemes of allowances, these authorities are required by the Regulations to have regard to the matters prescribed by the Panel in respect of the type and maximum levels of allowances paid by their constituent county and county borough councillors.”<sup>315</sup>

378. The proposed Measure will extend the Panel’s remit to include community councils, National Park Authorities and fire and rescue authorities (section 147). The proposed Measure also provides for the Independent Remuneration Panel to decide the types of councillors to whom a pension will be payable, and provides flexibility for it to vary its decisions according to different types of authorities.

379. The Explanatory Memorandum explains the significance of the Panel’s role, and the importance of securing appropriate levels of remuneration for elected members:

“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

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<sup>315</sup> Written Evidence, LG71

currently under-represented – women, young people, minority ethnic people and those with disabilities, for instance, as well as those who are in employment.”<sup>316</sup>

380. The Explanatory Memorandum also explains why the mechanism for setting members’ remuneration needs to be flexible and responsive, and undertaken by an independent body:

“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.”<sup>317</sup>

381. Furthermore, under current arrangements, both Ministers and the Independent Remuneration Panel play a part in the remuneration of local authority members, and the Welsh Government considers it to be appropriate that this to be undertaken by one body:

“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.”<sup>318</sup>

#### *Views of witnesses*

382. The vast majority of evidence supported the provisions in Part 8, and we received very little detailed evidence on specific sections.

383. The Independent Remuneration Panel welcomed the extension of its remit by the proposed Measure, and was of the view that this would enable it to continue to work independently to set appropriate remuneration levels:

“The provisions will enable the Panel to continue to set maximum levels payable but the Measure will also give the Panel the discretion to set actual levels. This wider remit will provide that the levels for the remuneration framework will be determined in an independent setting and not unduly influenced by local political considerations.

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<sup>316</sup> Explanatory Memorandum, paragraph 3.48

<sup>317</sup> Explanatory Memorandum, paragraph 3.44

<sup>318</sup> Explanatory Memorandum, paragraph 3.50

Placing the determination of allowances ... under the remit of one body which is independent of central and local government will reinforce further the existing open and transparent process for the setting of councillors allowances and will ensure a consistent approach to implementation.”<sup>319</sup>

384. The Panel also welcomed the extension of its remit to include town and community councils, and National Park and Fire and Rescue Authorities, but emphasised the additional work this would create, particularly in relation to town and community councils:

“There are a great number of them and lots of councillors, and they are very different in the way that each operates, how they are structured and in the kind of work that they do ...It would require a lot of investment in time and effort by the panel to come up with a framework for town and community councils that would reflect and deal with all the differences between them, from a big town council, such as Barry Town Council, to a small parish council in a rural area in the middle of Wales.”<sup>320</sup>

385. One Voice Wales supported the proposed role of the Independent Remuneration Panel with regard to community councillor allowances. It also welcomed the fact that the proposed Measure will allow members to forgo payment of allowances, as many community councillors do not want to receive any allowance. However, it commented:

“...the principle of councillors being able to be reimbursed, at least in part, for legitimate expenditure is in our view an important component in the drive to encourage a more diverse range of councillors to stand for election. It should also be borne in mind that, since community councils are in the main funded entirely through the local precept added to the council tax, each council will be directly accountable to its local electorate for any allowances paid.”<sup>321</sup>

386. The North Wales Association of Town and Larger Community Councils was of the view that community councillors should only be paid “reasonable and proper expenses.”<sup>322</sup>

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<sup>319</sup> Written Evidence, LG71

<sup>320</sup> RoP, paragraph 134, 4 November 2010

<sup>321</sup> Written Evidence, LG38

<sup>322</sup> Written Evidence, LG 38

387. Some respondents alluded to the potential power of the Panel to set a national framework. Caerphilly Council wanted the Panel to set a national scheme<sup>323</sup> but a local Councillor from North Wales believed:

“...that it is absolutely imperative that local councils have the discretion to determine reasonable levels of members’ allowances taking into account local circumstances. This is an issue which could lead to public resentment.”<sup>324</sup>

388. The Panel told us that allowances need to reflect the evolving work of councillors, and highlighted the importance of setting appropriate levels of remuneration in order to attract and retain individuals to the role:

“In this modern age, the council is modern, there is modern council work to do, it is not just a jolly, there are important decisions to make and many people’s lives will be affected by the decisions that are made by local councillors, so to attract people of a suitable calibre and to retain them, they must be recompensed appropriately.”<sup>325</sup>

389. Panel members also explained that, in order to make the role of a councillor more attractive it was also important to ensure they had relevant support and development opportunities:

“Our work as a panel is to assist that process, to ensure that councillors are not only properly and appropriately remunerated, which is what we are trying to do in creating a framework for members’ allowances, but also that they have access, for example, to the kind of training provision that is available in normal employment.”<sup>326</sup>

390. Overall, the Panel were content that they would be able to work flexibly under the framework of the proposed Measure, and this would enable them to respond to the changing needs of the sector:

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<sup>323</sup> Written Evidence, LG31

<sup>324</sup> Written Evidence, LG32

<sup>325</sup> RoP, paragraph 148, 4 November 2010

<sup>326</sup> RoP, paragraph 131, 4 November 2010

“I cannot see anything in it that would restrict our flexibility ... It would be up to us to test the proposed Measure and to use it to its full extent.”<sup>327</sup>

391. However, the panel highlighted provisions in others parts of the proposed Measure where they would need to develop new ways of working, and which would have resource implications. This included the provisions within Part 2 of the proposed Measure which relate to family absence:

“...the Panel notes with interest the provisions concerning family absence and looks forward to considering the allowances payable in these circumstances.”<sup>328</sup>

392. The Panel told us that such additional responsibilities would mean that they would need to “work out a process for that and issue guidance on it and adjudicate upon it at some point.”<sup>329</sup>

393. The Panel also highlighted areas of concern, or areas where there was a lack of clarity in the proposed Measure:

“The Measure does not appear to provide a mechanism by which the Panel could place a limit on the percentage of councillors in an authority receiving a Special Responsibility Allowance. This is at odds with current arrangements ... We would welcome provisions which would enable the panel to determine not only the appropriate percentage but also have the power to vary that percentage in relation to one of more authorities.”<sup>330</sup>

394. The Panel considered this to be an oversight, and we heard why the current arrangements were useful:

“There is a provision in current regulations, which we have found very useful, that not more than 50 per cent of the council’s membership shall hold an SRA. The fundamental point is that the SRAs are a payment for additional responsibility—special responsibility, as it says on the tin ... So, we have found the principle of a percentage useful, although

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<sup>327</sup> RoP, paragraph 141, 4 November 2010

<sup>328</sup> Written Evidence, LG71

<sup>329</sup> RoP, paragraph 159, 4 November 2010

<sup>330</sup> Written Evidence, LG71

we do not always think that 50 per cent is the right proportion, which is why we want to vary it, and it is a pity that we do not have it in the proposed Measure; we hoped that we might see it in the proposed Measure.”<sup>331</sup> (Austin, no 169)

395. In addition, the Independent Remuneration Panel wanted to be able to set aggregate levels of allowances payable by local authorities:

“If the authority were to decide that every member of the executive should get the same because, for example that is how it operates, in that it shares responsibility, even though portfolios might be different, then that is fine. However, during our research, we heard it said by leaders and others that they would like some power to operate differentials within the executive.”<sup>332</sup>

396. One of the Independent Remuneration Panel’s main concerns was that the existing regulations under which they operate would disapply as a result of the proposed Measure, and it was thought that this might remove the framework for the panel’s work:

“... when the proposed Measure is approved, the regulations on which we currently rely will disappear. There is much in the regulations that will have to be retained ... The proposed Measure does not have anything near what is contained within regulations in this regard.”<sup>333</sup>

#### *Evidence from the Minister*

397. The Minister addressed the Independent Remuneration Panel’s concerns regarding the way it would operate under the framework, and confirmed that he did not see the proposed Measure as:

“...a weakening of the IRP’s position. The intention is to maintain what panel members have, at least, or improve support for them.”<sup>334</sup>

398. On those areas highlighted by the Panel as being of concern, the Minister confirmed that he would work with the Panel to address these:

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<sup>331</sup> RoP, paragraph 168 & 169, 11 November 2010

<sup>332</sup> RoP, paragraph 172, 4 November 2010

<sup>333</sup> RoP, paragraph 177, 4 November 2010

<sup>334</sup> RoP, paragraph 220, 18 November 2010

“...this is about the detail within the proposed Measure, and something that we picked up from the evidence submitted by the IRP. We are keen to open up dialogue on the details. We did not do this intentionally. These are just some of the issues that were flagged up, issues where we recognise that there are some omissions and where we need to make some amendments in terms of the detail. We are happy to do so.”<sup>335</sup>

399. However, when asked whether he agreed with the Panel’s proposal that they be allowed to set aggregate levels of Special Responsibility Allowance, the Minister responded:

“I do not support that principle. The problem with the relationship between politics and salaries is that it creates a huge issue, internally and externally. I am trying to create an environment where members are given an allowance for doing the duty of a councillor, which takes the political element away. We do not want people accusing each other over who is getting something, and who is not. I am trying to standardise that process to make it fair internally and externally, so that the general public can see, in a very transparent way, the reasoning behind the IRP’s decisions and the way forward, rather than complicating the issue.”<sup>336</sup>

#### *Our view*

**400. We welcome the extension of the Independent Remuneration Panel’s remit. Requiring an independent body to advise on remuneration for councillors at all levels will continue to ensure transparency and consistency across all authorities in Wales. It is our view that it is appropriate for the panel’s role to be extended to include town and community councils, national parks and fire and rescue authorities.**

401. We recognise the Independent Remuneration Panel’s evidence that appropriate levels of remuneration are of great importance in attracting and retaining talented individuals to participate in local democracy at all levels, **and are content that the proposed Measure as drafted will enable the Panel to work in a flexible way so as to respond to future needs and challenges.**

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<sup>335</sup> RoP, paragraph 219, 18 November 2010

<sup>336</sup> RoP, paragraph 222, 18 November 2010



**402. However, we note that members of the Independent Remuneration Panel were concerned at the lack of clarity relating to certain provisions within the proposed Measure, and the disapplication of existing regulations under which the Panel operates. These issues must be addressed to ensure the work of the Panel is given sufficient credibility, and that it does not experience any difficulties in undertaking its activities once these provisions are commenced. The Minister has confirmed that he will work with the Panel to address these concerns. We recommend that this be dealt with as a matter of urgency so that appropriate amendments can be brought forward at the next stage if necessary.**

**403. The Panel suggested that it may be appropriate, in some instances, for it to be able to set aggregate levels of Special Responsibility Allowances that would enable local authority executives to allocate differing levels of allowance according to portfolios within the executive. We are of the view that this would be inappropriate, and would not be in keeping with the overall aim of this Part of the proposed Measure.**

## 11. Part 9: Guidance on collaboration (sections 164 – 172)

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404. The Explanatory Memorandum explains that the purpose of this provision is to deal with a “needlessly confusing” issue that has arisen as a result of the *Local Government (Wales) Measure 2009* (the 2009 Measure).

405. The 2009 Measure included, amongst other things, a general power for relevant authorities to collaborate, where this is for the purpose of ‘improvement’. Whilst the 2009 Measure contains provisions that enable Welsh Ministers to issue statutory guidance to which authorities must have regard, any guidance issued in relation to collaboration is non-statutory. Section 164 aims to rectify this situation.

406. The Welsh Government considers this to be confusing:

“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.”<sup>337</sup>

### *Evidence from witnesses*

407. We received very little evidence on Part 9 of the proposed Measure. The evidence we did receive related specifically to section 164, which will enable Welsh Ministers to issue statutory guidance on collaboration between Welsh improvement authorities.

408. The Welsh Local Government Association considered that the proposed insertion of a requirement that authorities ‘must have regard to any guidance issued by the Welsh Ministers’ in respect of collaboration between improvement authorities is inappropriate. It noted that:

“Under the *Local Government (Wales) Measure 2009*, local authorities already have a duty to consider and exercise powers

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<sup>337</sup> Explanatory Memorandum, paragraph 3.55

of collaboration to assist them in the exercise of their powers and duties of improvement.

In considering exercising powers of collaboration, authorities must balance a range of competing local factors including policy priorities, capacity and resources, workforce engagement, issues of governance, assessment of risk and potential impact on communities as well as the likely proportionate ‘improvement return’ on any collaborative venture. Collaborative activity therefore needs to satisfy locally agreed business cases balancing the collective needs and risks of two or more parties and the result of constructive dialogue and agreement, rather than the result of arbitrary coercion through nationally prescribed guidance.”<sup>338</sup>

409. The Society of Local Authority Chief Executives Wales said that:

“The proposed power will not deliver any notable benefit as a great deal of formal and informal collaboration between local authorities and between local authorities and other public service providers already takes place across Wales.”<sup>339</sup>

#### *Evidence from the Minister*

410. During our evidence gathering, the Minister explained how he intends to use this provision:

“We will draft the guidance later this year in terms of the passage of the proposed Measure. It will set out the different forms in which collaboration can or will take place.”<sup>340</sup>

#### *Our view*

411. Although witnesses representing local government do not agree with **the provision in section 164 that will enable Welsh Ministers to issue guidance on collaboration between ‘Welsh Improvement Authorities’**. **We strongly support this provision and believe it is appropriate and necessary.**

412. There is an increasing need for local authorities to collaborate on service delivery. There may be instances where local authorities will

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<sup>338</sup> Written Evidence, LG65

<sup>339</sup> Written Evidence, LG48

<sup>340</sup> RoP, paragraph 140, 23 September

experience difficulties in working collaboratively, and guidance will help them to overcome any problems that might arise. The guidance to be issued under section 164, of this proposed Measure will provide clarity on how the powers and duties in the 2009 Measure would operate in practice.

413. The Local Government (Wales) Measure 2009 gives Welsh Ministers the power to direct collaboration and compel local authorities to work together where they are failing in their duty to secure continuous improvement in the exercise of their functions. **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. We recommend that the Minister seeks ways of addressing this issue and strengthening the proposed Measure to look at other circumstances where the Minister may want to compel local authorities to collaborate.**

## 12. Subordinate Legislation

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414. The proposed Measure confers thirty delegated legislation provisions upon the Welsh Ministers which enables them to implement the proposed Measure through regulations at a date to be determined.

415. The delegated legislation provisions consist of both order and regulation making powers. Twenty of the delegated provisions consist of regulation making powers and the remaining ten consist of order making powers. Sixteen of the delegated legislation provisions are reserve powers, which Welsh Minister will be able to use in the future if required.

### *Evidence from Witnesses*

416. Witnesses were invited to comment on the balance between those powers contained on the face of the proposed Measure, and those that would follow in regulations.

417. The Association of County Secretaries and Solicitors told us that they would prefer more detail to be provided on the face of the proposed Measure:

“We would prefer the proposed Measure to be more explicit, with fewer options being available to the Minister. We do not doubt the Minister’s guidance, but it is always problematic when a proposed Measure has a number of clauses that simply say that local authorities must have regard to guidance in the future. It leaves it all very unclear ... we need to have a degree of certainty to be able to plan for what may be some substantial changes. We would prefer there to be much more specific legislation and not so much regulation.”<sup>341</sup>

418. The Welsh Local Government Association and the Centre for Public Scrutiny were of a similar view, with the Centre for Public Scrutiny stating:

“As I have said before, we would like as much as possible in the proposed Measure ... having all legislation in one place makes it much easier for people to make it work.”<sup>342</sup>

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<sup>341</sup> RoP, paragraph 162, 21 October 2010

<sup>342</sup> RoP, paragraph 122, 4 November 2010

### *Evidence from the Minister*

419. We asked the Minister to comment on those subordinate legislation provisions contained in the proposed Measure that would give the Minister reserve powers, and why he felt they were necessary. The Minister stated:

“It is not possible or practical to identify at this point all the circumstances in which these elements of legislation will be used ... There are several fall-back powers that we believe are proportionate to the proposed Measure and some will be needed at a later date. So, this is the opportune moment to get them into legislation.”<sup>343</sup>

### *Our view*

420. We have considered the views of witnesses regarding the balance between the powers on the face of the proposed Measure and those that will follow in regulations. We recognise that, without knowing what will be contained in the regulations it may be difficult for local authorities to plan effectively for the resulting changes in their working practices. However, **we are of the view that the subordinate legislation provisions are appropriate**, particularly given that many of them will contain a level of detail that it would be inappropriate to include on the face of a Measure.

421. Given that the proposed Measure aims to raise standards across all tiers of local government in Wales, we agree that the Minister’s ‘fall back’ provisions are appropriate. These reserve powers will enable Welsh Ministers to compel those local authorities that are not implementing the requirements of the proposed Measure to do so, if necessary.

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<sup>343</sup> RoP, paragraph 9, 18 November 2010

## Witnesses

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The following witnesses provided oral evidence to the Committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed in full at <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-perm-leg/bus-committees-third-lc3-agendas.htm>

### *23 September 2010*

Carl Sargeant AM      Minister for Social Justice and Local Government

### *7 October 2010*

Professor Michael Woods      Aberystwyth University

Dr Rachel Ashworth      Cardiff University

### *14 October 2010*

James Griffiths      Society of Local Council Clerks

Robert Robinson      North Wales Association of Town and Larger Community Councils

John Connah      North Wales Association of Town and Larger Community Councils

Lyn Cadwallader      One Voice Wales

John Harvey      One Voice Wales

Mair Stevens      One Voice Wales

### *21 October 2010*

Steve Thomas      Welsh Local Government Association

Daniel Hurford      Welsh Local Government Association

Tim Buckle      Welsh Local Government Association

Kate Berry      Association of CouNTY Secretaries and

Solicitors

Jo Farrar  
Chair of The Society of Local Authority  
Chief Executives Wales and Chief  
Executive of Bridgend County Council

*4 November 2010*

Professor Laura  
McAllister  
Liverpool University

Paula Manley  
Women Making a Difference

Rhian Connick  
National Federation of Women's Institutes  
Wales

Nick Lambert  
Equality and Human Rights Commission

Jamie Westcombe  
Equality and human Rights Commission

Jessica Crowe  
Centre for Public Scrutiny

Richard Penn  
Independent Remuneration Panel

Dr Rita Austin  
Independent Remuneration Panel

*18 November 2010*

Carl Sargeant AM  
Minister for Social Justice and Local  
Government



## List of written evidence

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The following people and organisations provided written evidence to the Committee. All written evidence can be viewed in full at <http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislation-measures-localgov/business-legislation-local-government-measure-consultation-responses-log.htm>

<i>Organisation</i>	<i>Reference</i>
Capita Symonds	LG1
Cyngor BRO Corwen Community Council	LG2
Swansea City Council	LG3
Offa Town Council	LG4
Abergele Town Council	LG5
Martletwy Community Council	LG6
Pontlliw and Tircoed Community Council	LG7
Brecon Town Council	LG8
Pembrokeshire County Council	LG9
Llanelli Town Council	LG10
The Society of Local Council Clerks	LG11
Hawarden Community Council	LG12
F.C Harbud-Individual Response	LG13
Welshpool Town Council	LG 4
Coity Higher Community Council	LG15
Blaenau Gwent County Borough Council	LG16
Llandough Community Council	LG17
Conwy County Borough Council	LG18
Cyngor Cymuned Llanuwchllyn	LG19
Abergavenny Town Council	LG20
Denbigh Town Council	LG21
Newport City Council	LG22
Owen Watkin - Individual Response	LG23

South Wales Fire and Rescue Service	LG24
Carmarthenshire County Council	LG25
Cllr Dania Groome – Bronington in Wrexham County Borough Council	LG26
Cardiff Council	LG27
Caia Park Community Council	LG28
Blackwood Town Council	LG29
Flintshire County Council	LG30
Caerphilly County Borough Council	LG31
Carole O’Toole-Individual Response	LG32
Association of Council Secretaries and Solicitors	LG33
Henllanfallteg Community Council	LG34
Scope Cymru	LG35
Chepstow Town Council	LG36
Wales Council for Voluntary Action	LG37
One Voice Wales	LG38
Aberystwyth University	LG39
Blaenau Gwent	LG40
Denbighshire County Council	LG41
Ceredigion County Council	LG42
Rhonnda Cynon Taf	LG43
Mathry and Llanrhian Community Councils	LG44
Buckley Town Council	LG45
Wrexham County Borough Council	LG46
Cardiff Business School	LG47
Society of Local Authorities Chief Executives Wales (SOLACE)	LG48
Gelligaer Community Council	LG49
Stonewall Cymru	LG50
Nigel Hodges-Individual Response	LG51

Age Cymru	LG52
RNID Cymru and RNIB Cymru	LG53
Save the Children	LG54
National Association of Schoolmasters and Union of Women Teachers (NASUWT)	LG55
Independent Councillors on Cardiff County Council	LG56
Acton Community Council	LG57
Powys Association of Voluntary Organisations	LG58
Chartered Institute of Public Finance and Accountancy (CIPFA)	LG59
Mid and West Wales Fire and Rescue Authority	LG60
National Federation of Women's Institutes Wales	LG61
Graig Community Council	LG62
Mold Town Council	LG63
Fishguard and Goodwick Town Council	LG64
Welsh Local Government Association	LG65
Wrexham County Borough Council	LG66
Gwynedd County Council	LG67
Bridgend County Borough Council	LG68
Caernarfon Royal Town Council	LG69
Chirk Town Council	LG70
Independent Remuneration Panel for Wales	LG71
North Wales Association of Town and Larger Community Councils	LG72
Rhuddlan Town Council	LG73
Bay of Colwyn Town Council	LG74
Penycae Community Council	LG75
Wales Audit Office	LG76
Professor Laura McAllister and Diana Stirbu	LG77

Women Making a Difference

LG78

Equality and Human Rights

LG79

Centre for Public Scrutiny

LG80

## Annex A: Legislative Competence

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The principal powers that enable the National Assembly for Wales to make a Measure in relation to local government are contained in Section 93 of the *Government of Wales Act 2006*. Section 93 gives the National Assembly the power to make Assembly Measures in relation to ‘matters’ listed in Field 12 (local government) of Part 1 of Schedule 5 of that Act. Specifically these are matters 12.5 to 12.17, detailed below:

### “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—

- (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

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.”.