Proposed Local Government (Wales) Measure

Constitutional Affairs Committee – follow-up questions

Addressed in the meeting on 10 February

Can the Minister explain why he did not consider bringing forward these proposals in a separate Measure? If the need is so that he can respond speedily, why has the Minister chosen to pursue a process that would take longer than the option already open to him of an emergency Measure?

Since introduction of the proposed Measure a number of issues have emerged which have demonstrated that local authorities are unwilling or failing to collaborate. We need to use the opportunity of this measure as it is conceivable, given the developments which I mentioned in the meeting, that the powers may need to be used before the new Assembly would be able to consider a new Measure.

Using a new measure to achieve what can be achieved through the current measure and has been ruled as in order would be costly and time consuming.

I chose this option over the emergency Measure procedure precisely because I wanted to give Assembly Members the opportunity and the time to consider and debate the proposals in some detail. The emergency measure process condenses all the stages into one day and so curtails the time for consideration and debate by Assembly Members. That may be appropriate in circumstances of great urgency – but that is not the case with these matters.

Why does the Minister consider it appropriate that new local authorities can be created by subordinate legislation when previously the creation of new local authorities during local government reorganisation has been a matter for primary legislation?

The precedents referred to involving primary legislation concerned the wholesale re-organisation of local government across the whole of Wales, namely the Local Government Act 1972 and the Local Government (Wales) Act 1994.

Wales has not had to contemplate more localised re-organisation of local government covering only a part of the country, so we have neither precedent nor mechanism. I consider that a measure would be appropriate for wholesale re-organisation, but would be a heavy-handed mechanism for a more localised re-organisation involving only two or three authorities.

I believe that an order, subject to super affirmative procedure is a more appropriate mechanism, offering high levels of consultation and Assembly

scrutiny without pre-occupying the whole Assembly with an issue which is primarily of interest to one part of Wales.

The House of Lords Constitution Committee thinks that "where the further use of such powers[Henry VIII powers] is proposed in a Bill, we have argued that the powers must be clearly limited, exercisable only for specific purposes, and subject to adequate parliamentary oversight." Does the Minister consider that the amendments as drafted:

a) Clearly limit the powers of the Minister;
b) Make it clear that they can only be used for specific purposes;
c) Are subject to adequate oversight by the Assembly?

I believe that the provisions fulfil these criteria. The circumstances in which the power may be used are set out clearly in subsection (2) of what was amendment 91; the Minister must demonstrate that he or she is satisfied that the tests introduced by that provision have been met. The power of the Minister is further limited by the power to amalgamate being limited to two or three local authorities per order. I believe that the super affirmative resolution procedure as set out in what was amendment 98 will give Assembly Members more than adequate oversight.

In amendment 91 (2), why do Welsh Ministers only have to be satisfied that "effective local government is not likely to be achieved…". Would the Minister consider amending this to "effective local government has not been achieved"?

Again under amendment 91(2), before they can use the power to amalgamate, Ministers must satisfy themselves that a number of other powers, that already exist, are not likely to achieve effective local government in an area. Does this mean that Ministers could make an amalgamation order without having relied on these powers if they think such reliance would be unsuccessful? Why is that?

The requirement in amendment 91 (2) is solely in relation to the use of powers. Why is there no requirement to be satisfied in relation to specific performance criteria? Why is there no definition of what constitutes "effective local government"? What do you mean by "effective local government"? Will you consider amendments to clarify the meaning of "effective". Will you consider amendments to specify performance criteria that must be met?

The Welsh Ministers will not be able to make an order for amalgamation at random or at whim. The Welsh Ministers must demonstrate that amalgamation is needed to achieve effective local government – and that this could not be achieved by exercising specified powers already available to them in the 2009 Local Government Measure.

The Welsh Ministers would have to show that they had applied the tests introduced by subsection (2) – in the document to be laid before the Assembly explaining the proposals which is required under the super affirmative resolution procedure.

The term “effective” has long been used in legislation relating to local government. The Local Government Act of 1972 enables the Welsh Commission (i.e. the Local Government Boundary Commission for Wales) to make recommendations in the “interests of *effective* and convenient local government”. Notwithstanding these criteria, in the 1972 Act there is no express definition of the term within the legislation. The Local Government Wales Measure 2009 provides that local authorities must secure continuous improvement in the exercise of its functions and this includes its “strategic effectiveness”.

The phrase “not likely to achieve” indicates that Welsh Ministers must make a judgement as to whether, on the means available to them, effective local government is not likely to be achieved. The Welsh Ministers will have to use their judgement; there is a test to be applied; this is a standard format in legislation when powers are given to Ministers and the terminology used is appropriate to the situation. The expression “likely to be achieved” which necessarily entails an element of judgement, is used in a number of contexts in legislation eg, section 99 of the Local Transport Act 2008.

The test for Welsh Ministers in deciding that it is necessary to make an amalgamation order in order to achieve effective local government is laid down in subsection (2) – the test is that Ministers must be satisfied that the other methods open to them laid out in that section are not likely to achieve effective local government.

The Welsh Ministers will have to spell out the rationale and how the test was met in the explanatory document accompanying a proposal to amalgamate which must be laid before the Assembly under the procedure set down in amendment 98

I am satisfied that the wording of what was amendment 91 is appropriate, but will consider whether any changes would clarify matters.

The requirement in amendment 91 (2) also requires a Minister to be satisfied in relation to “a local government area”. Why is there no requirement to have regard to the impact of a forced amalgamation on the local authorities that are not ineffective?
Why should one or two effective local authorities be “punished” for the failures of another local authority?
What consideration has the Minister given to the possibility that the “ineffective” authority will drag down the effectiveness of the other authorities and how does he propose to address this?

The questions seem to imply that amalgamation will be a knee-jerk reaction to circumstances where an authority had failed completely and that greater collaboration between authorities does not bring benefits and opportunities to all concerned. This is unrealistic – not least because it would be irresponsible of the Welsh Ministers to knowingly wait until an authority had failed before proposing amalgamation.

I would expect that a proposal for amalgamation would follow a period of increasing collaboration between the authorities concerned. Application of the tests set out in subsection (2) require there to have been exploration of greater collaboration before amalgamation can be considered. It would not be a bolt from the blue – so the process of integration across many areas, to the advantage of both local authorities, would be already quite advanced.

The amalgamation provisions also allow for a process of transition from the old authorities to the new. The arrangements are based very much on those applied for the re-organisation which followed the 1994 Act, which worked very well and smoothly.

Why does the amendment specify that “two or three” local government areas may be amalgamated? What were the criteria for deciding that no more than three local government areas could be amalgamated?

That was my judgement as to what was appropriate in the context of a proposal for *localised* re-organisation of local government. I find it difficult to perceive of a circumstance where it would be effective to amalgamate four or more local authorities.

The WLGA claims that progress is being made in integrating functions in big service areas and that “constant emphasis on local government boundaries in this context is meaningless”. What is the Minister’s response to this viewpoint?
If the Minister disagrees with the WLGA, and believes instead that local government boundaries are meaningful, why is has the Government left it until this stage to address the issue?

I would agree that some progress is being made, but it is not enough. There have been several disappointments in recent months – which I mentioned in the meeting and already referred to in this note. If local authorities are reluctant to take action themselves, then I must do so.

Is it the intention of the Minister to make use of these powers if and when they are secured? What is the earliest time they might be needed?

These powers may be commenced by order no sooner than two months after the approval of the measure by Her Majesty. They would be available for use once commenced. I am not able to speculate as to when the Welsh Ministers might need to use them.

Given that the Minister has stated that his intention is not to conduct a "wholesale review" how does he propose spelling out his objective rationale and criteria for amalgamation so that individual proposals are not perceived as arbitrary?
Should these criteria be set out on the face of the Measure?

Each proposed amalgamation will be different as it will depend on the authorities concerned and will be conditioned by the circumstances in those authorities. The tests set out in subsection (2) to amendment 91 will provide the rationale and the criteria for each proposal – and these will have to be set out in the explanatory documents required of Ministers under the super affirmative procedure.

Why did the Minister feel that a super affirmative procedure was appropriate in this case? Is it a recognition that the power is a very considerable one to be exercised by Order?

Yes. The super affirmative procedure will provide for a high level of public consultation, allow the opportunity for Assembly scrutiny in plenary and committee and require approval of the final order by the Assembly itself.

Amendment 98(2) states that "Welsh Ministers must consult such persons as appear to them to be representative of persons or interests affected by the proposals. Would this include the population of the local authority areas in question?
In amendment 98(2), why is there no specific requirement to consult the local authorities that would be affected, and community councils within them?
Who else would be consulted and will the Minister consider setting out those to be consulted on the face of the Measure, particularly the local authorities concerned?

The wording imposes requirements which are phrased in broad terms, on the basis of which Ministers would have to consult the local authorities affected (including community councils), WLGA, local representative bodies and local people. Making the wording more specific could mean important interests were left out.

The super affirmative procedure will require Welsh Ministers to set out in the explanatory document the details of the required consultation. If the consultation was wanting in any way, it would be exposed at that point.

Would the Minister still proceed if there was strong opposition to a proposed amalgamation from the population of the local authority areas in question?

I am not prepared to speculate on how I or a future Minister might respond to the different reactions to any potential future proposal as each decision would have to be assessed in light of all the relevant circumstances of a particular case.

Can the Minister explain what powers he currently has in respect of electoral arrangements and the Local Government Boundary Commission for Wales ("the Commission")?

Section 59 of the Local Government Act 1972 enables Welsh Ministers to issue directions for the guidance of the Commission in conducting reviews, including reviews of electoral arrangements. These directions can include guidance in relation to the allocation of single or multi-member divisions, a target councillor to elector ratio and a timetable for completion of the review.

How do the amendments to the Local Government Act 1972, in amendment 97, affect the relationship between Ministers and the Commission?

They should not change them at all. Welsh Ministers already have powers to direct the Commission to review local government areas, including a review of electoral arrangements in consequence of proposals for changes in local government areas, under section 54 of the 1972 Act.

Has the Commission been consulted on these proposals? What was its reaction?

The Commission has not been consulted.

Directions issued by Ministers in 2009 indicated that 30 councillors was the minimum appropriate size for a local authority and 75 the maximum. What is the basis for these figures and do the amendments enable Ministers to alter them?

The minimum and maximum numbers of councillors were in the Directions issued by the then Secretary of State for Wales for the previous electoral reviews conducted by the Commission which began in 1996 and ended in 2001. There was no compelling policy or other reasons to alter them for this

set of electoral reviews. Fresh directions could be issued to the Commission which need not replicate the figures in the 2009 directions.

How would the number of Members and ward boundaries of any new local authority, created by an amalgamation, be decided?

If there was not time for a review by the Commission before the first election to the new/shadow authority, Assembly Government officials would need to propose electoral divisions to Welsh Ministers. This was what happened in the 1994/96 reorganisation – but by Welsh Office officials – because the first elections were too soon for the Commission to conduct a review. They proceeded then to carry out a review following the elections. If there were time for a review before the first elections, the Commission would make proposals to Welsh Ministers on councillor numbers and their distribution.

When local government was reorganised in the 1990s, the Local Government (Wales) Act 1994 contained statutory provisions for transition, including a residuary body.
Why do you think this is not needed under your proposals? Why is it appropriate for transitional issues to be dealt with by Regulations rather than on the face of the Measure?

There is a proposed new section which provides for transitional provision – together with supplementary, incidental, consequential and saving provision. This provides a power to cover transitional issues, some of which are listed in the section. It might well be possible for transitional issues to be included in the amalgamation order and the proposed section provides for that, but the regulation-making power is considered prudent in case it is not possible to include everything in the order.

We do not believe a residuary body will be needed. An amalgamation between two or three unitary authorities is much more straightforward than what happened because of the 1994 Act. There will be only one “successor authority” covering the whole area of the abolished authorities whereas in 1994 each of the abolished counties might have three or more successors.

What assessment has the Minister made of the costs of any amalgamations?

Would the Minister expect that any proposals for amalgamation placed before the Assembly should include an assessment of the costs arising from transition?
Would he consider bringing forward amendments to make this requirement more specific?

This is an enabling power. It is not possible at this stage to make an assessment of the cost implications of using the power. These would depend on so many different factors depending on the authorities concerned.

I would expect each amalgamation to produce large-scale savings – arising from reductions in the number of councillors, staff of corporate services, procurement, economies of scale.

Estimates of costs, including transition costs, would be included in the proposals for amalgamation and would be included in the explanatory document which must be produced under the super affirmative procedure.