

Legislation Committee No. 2

LC2(3)-17-09(p1)

Consultation on proposed Legislative Competence Order relating to community councils and councillor recruitment, retention and allowances.

Response by Owen Watkin OBE DL

I am responding, at the invitation of the Clerk to the Committee, in a personal capacity based on the following. I worked in local government for 34 years, mostly in senior positions, in a District Council, from 1974 until 1995, and from then as Chief Executive of Ceredigion County Council, until 2006. As a solicitor, I was the chief legal adviser to my employing authorities and was involved in the democratic and corporate governance of those authorities as well as being Deputy Returning Officer for Parliamentary elections, Counting Officer for European Parliamentary elections and Returning officer for elections to the County Council, and Electoral Registration officer. I worked closely with elected members and with Town and Community Councils. In 2008 I was a member of the Expert Panel established by the Welsh Assembly Government to advise on the applicability of the Councillors Commission to Wales and on related issues.

I am grateful for the opportunity for submitting my responses to the Committee and wish to thank those concerned.

Summary of the main points of my Response.

1. I support the principle that the National Assembly should have primary law making powers but, until that is achieved, the general principle that legislative competence in the areas identified in Matter 12.8 -12.17 is supported. I have reservations in respect of some aspects.

2. The proposed Order is not too narrowly drawn. It should be sufficiently broad in scope to enable the enactment of legislation in respect of the matters specifically identified and in respect of the recommendations of the Reports of the Independent Remuneration Panel and the Expert Panel when their reports are received.

3. In respect of the specific Matters

12.8 Supported. Duplication with the powers of principal authorities should be avoided.

12.9 Supported. The exclusions are dealt with in Question 4.

12.10 Supported. Community Councils should also act to contribute to sustainable development.

12.11 Reservations as to the possible impact on finance available to principal authorities in a time of lessening resources.

12.12 Doubts about the efficacy of laws to enforce the encouragement of productive relations and collaboration

12.13 Supported. An important measure.

12.14 Supported to give certainty.

12.15 Supported to encourage participation.

12.16 Supported to enable action to be taken in the light of the recommendations of the Independent Remuneration Panel.

12.17 Supported to enable action to be taken in the light of the Report of the Expert Panel.

4. No adverse comment.

5. No additional comment.

Proposed National Assembly for Wales (Legislative Competence) (Local Government) Order 2009

Consultation questions and responses

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1. What are your views on the general principle that legislative competence in the areas identified in Matters 12.8-12.17 be conferred on the Assembly?

I hold the view that National Assembly should have general competence to enact primary legislation in the full range of devolved policy areas under Part 4 of the Governance of Wales Act 2006. In the specific case of the proposed Order (LCO), I am in favour of granting the competences proposed by the LCO for the reasons that the National Assembly is the existing law making body for most of the legislation relating to local government in Wales and the matters proposed lie comfortably within the areas of existing competence. From

my experience, and in the evidence of the Expert Panel, and there is a need for the fields contained in the LCO to receive the early attention of the Welsh Assembly Government (WAG) and the National Assembly in order that progress be made, before the next National Assembly and local government elections. As will be stated below, I have some reservations concerning some of the proposals but, were the LCO to be enacted, it will be for the judgement of the National Assembly whether, and on what terms, the powers are exercised in the particular case. It appears to me that it is difficult to argue that the National Assembly should not be empowered in these areas.

2. What are your views on the terms or scope of the proposed Order? For example, is it too narrowly or too broadly drawn?

The nature of the LCO is to enable the WAG and the National Assembly to consider whether to enact Assembly legislation in the fields contained within it so it would have the discretion of determining matters that will be the subject of the Reports of the Independent Remuneration Panel (12.16) and the Expert Panel (12.17) respectively. However, the powers granted by the LCO should be sufficiently wide to enable the National Assembly to legislate on matters that may be in the final Reports of those two bodies but are not listed in the Explanatory Memorandum to the proposed Order. If this is the case, there is reason to state that the proposed Order should have wider scope. Additionally, the range of other options which might be considered for inclusion within the proposed Order are not stated, making it difficult to make a judgement on whether the scope could be wider than as drawn.

The proposed Order should seek to maximise the powers of the National Assembly in the jurisdiction of local government to enable local authorities to operate as effectively and efficiently as possible and to introduce measure that will improve and enhance the operation of local democratic institutions in accordance with the obligation of the National Assembly to sustain and promote local government in Wales.

The LCO is not considered to be too broadly drawn.

3. What are your views on each of the matters contained in the proposed Order?

Matter 12.8

This measure would appear to place the National Assembly as regards Town and Community Councils (Community Councils) in a similar position as its position in relation to principal authorities (County and County Borough Councils) in respect of the areas described and that is a progressive move. If enacted, Community Councils would be strengthened, in terms of governance, by having modern arrangements for their constitutions, structures and proceedings which would enhance their standing within communities. The expectations of Community Councils is growing, as they become more important in voicing concerns of local residents and the public must have confidence that those Councils are constituted and run properly and democratically. If the matters contained in Matters 12.10 and 12.11 are enacted, it is essential that the basic governance issues are put in place.

The proposal for the National Assembly to gain competence over the co-option of members and youth representatives is welcomed, although this is also a subject contained in Matter 12.9. This power sits well in relation to the Children and Young Peoples' Partnerships and schools councils established under the lead of the principal authorities. It would give opportunity for members of the public, especially the young, to begin to become involved in democratic institutions which might lead to their involvement in due course as elected members of such bodies.

The proposal also contains the competence for the National Assembly to make regulations over arrangements for reviews of community areas, calling community meetings and community polls. It would be acceptable if the LCO were to grant powers for the National Assembly to make regulations, but not altering the existing powers of the principal authorities under the Local Government Act 1972, as this would give clarification in the exercise of the provisions of Ss 27-29 of that Act.

Matter 12.9

In principle, the National Assembly should have extended powers in these areas as they are congruent with other similar existing powers. Neither the LCO nor the explanatory Memorandum do not explain how the powers would be exercised and there is no reference to the Local Government Boundary Commission. If it is intended to grant competence to make regulations in these areas, the proposal is unobjectionable.

The exclusion is dealt with in Question 4.

Matter 12.10

Principal authorities have been given similar powers previously and there is no reason why the power of competence should not be given to Community Councils. Such power would give additional flexibility and lessen the issues of vires, however the competence is limited by the terms of the Local Government Act 2000. It is not clear whether the restrictions contained in that Act would apply to Community Councils but it is likely that they would apply.

The wording of the LCO omits any reference to the exercise of the powers by Community Councils in the interest of sustainable development. The issues of climate change and sustainable development should inform the exercise of powers at all levels of governmental activity, including Community Councils. It is not suggested that Community Councils should be obliged to make individual community strategies (S4 Local Government Act 2000) but that the emphasis of their activities should be to contribute to sustainable development. The omission should be rectified.

A power of limited competence, as is proposed, is linked to Matter 12.11 and 12.13 (and possibly to 12.12) as the two big issues facing

Community Councils will be capacity and resources. In my experience, of the 51 Community Councils with which I dealt, not all had the capacity to undertake all their existing statutory powers and a few had the capacity, in terms of staff and systems, to undertake meaningful projects. It would be progressive, and would benefit the local community, if more activity were undertaken by Community Councils and the power to bestow such powers is supported.

Current consideration is being given to a themed approach to service delivery whereby authorities and organisations would collaborate in the realisation of the outcomes appropriate to a theme, e.g. the environment, waste reduction, recreation. Were Community Councils empowered to join in such collaborative efforts, they might bring local perspectives and delivery mechanisms, e.g. voluntary action, to those themes. A power of wider competence might encourage such participation.

Matter 12.11

The LCO and the Explanatory Memorandum do not specify whether the grants to Community Councils would be revenue grants or capital grants and it is assumed that the power would be to apply to both.

While supporting the addition of the power upon the National Assembly to make such grants, there are some reservations concerning the actual exercise of the power but these do not affect the proposed intention of enactment of the power to make such grants. There is no impact assessment, in terms of cost, accompanying the current proposals to give an indication of the possible extent of the budgetary requirement that might arise. This is understandable at this stage.

It might be that the grants, revenue and capital, would be funded from the WAG allocation to local government. It is clear that for the near future, at least, the local government financial settlement will be restricted and that core services, (social services, education, transportation, refuse disposal) will come under increasing pressure for resources while there will be capping on the rate of increase of Council tax, with diminishing Rate Support Grant. It is noted that other proposed LCOs intend to place additional responsibilities on local government. Such considerations will be relevant to the way in which WAG determines how to exercise the terms of the LCO.

This area is also dependent on the capacity of Community Councils to bid for grant aid, manage projects and ensure realisation of the outcomes of schemes, which falls within Matter 12.13. The availability of Assembly grant aid might energise to become more ambitious to undertake work for the benefit of their areas, which would be progressive.

The Minister has suggested that such grants would support the expenses of elections. This is supported.

Matter 12.12

There is a philosophical issue around the point whether encouraging relations and practical collaboration can be achieved through the mechanism of legislation. Law usually controls activities and gives rights and duties : can it require positive attitudes and consequential actions ? Incipient in this consideration is whether the ubiquitous performance targets will be extended by the Welsh Assembly Government and the Welsh Audit Office to measure the performance of productive relations, with action plans to bring the recalcitrant to the appropriate quartile.

In the event that the LCO is approved and that WAG enacts other measures, such as improving the competence of Community Councils and giving them the power of first resort and even providing grant aid, such changes, in association with Local Service Boards, the Spatial Plan, recommendations in Making the Connections and 'Beyond Boundaries' and new ideas around the delivery of themed services, together with encouragement by WAG, more productive relations and collaboration should naturally follow. There is a concern that over the recent past government in general, especially in Westminster, has often been too ready to quickly legislate in too many fields, creating laws that become meaningless because of their inappropriateness. The National Assembly could show its maturity by restraining its legislation to areas which count.

Matter 12.13

This is a really important area. On the premise that the aim is to raise the game for Community Councils, it is essential for them to possess the right skills, systems, capacity and confidence to undertake the activities that their existing statutory powers and additional powers would allow them. Of necessity it will be for WAG to propose the actual measures to achieve the aim and in doing so, attention should be given to the resources needed. It might be more productive for the finance considered in Matter 12.11 to be channelled, at least at first, in raising competence and capacity, with the encouragement that Community Councils that can demonstrate both qualities will be empowered to undertake more ambitious tasks ('earned competence').

Not all Community Councils will be able or wish to enter these additional areas. A virtue of the councils is the voluntary nature of councillors and their willingness to participate in local affairs. Additional responsibilities may discourage voluntary involvement in some, while it may be attractive to others, especially some that will wish to become councillors without being members of principal councils.

The proposal is supported.

Matter 12.14

It is right that the methods by which persons become members of democratic bodies, having discretion to act in the name of the public and having responsibilities for the spending of public money, should be objective and clearly established in mandatory laws. This is an area of practice that will benefit from being specifically included in legislation, that will exclude doubt, ensure openness and transparency and assist to give wider confidence in the administration of Community Councils.

WAG and One Voice Wales should also address the issue of there possibly being insufficient responses to public advertisements and how to encourage participation, as it would be disappointing were there to be Community Councils carrying vacancies for long periods.

Matter 12.15

This is an area that received considerable attention of the Expert Panel and was the subject of a range of significant proposals (Recommendations 10 -14, pages 24 - 29).

For democratic accountability to be meaningful, the public must be in possession of information concerning the activities of their elected representatives. The evidence presented to the Expert Panel and used in support of its recommendations testifies to the need to modernise and positively support the way in which elected members communicate with the electors they represent.

It is felt that the public, insofar as they have contact with local government, may have knowledge of particular services with which they engage, rather like the shops they visit and services they use, but do not have access to the services across the wide range provided by the local authority nor a knowledge in the round of the work of councillors.

The National Assembly should be empowered to make subordinate legislation in this area and the proposal is supported. It is hoped that, if the LCO is approved, WAG will give consideration to and adopt the recommendations of the Expert Panel, especially the financial support that will be necessary to make this a reality. It is disquieting that the turnout at local elections is low. This is due in no small way because the electorate are unaware of the activities of councillors and the authorities. The availability of better information should go towards remedying the democratic deficit.

The Matter also refers to communication to be provided by Community Councils. This is welcomed as a way of extending the public's awareness and knowledge of their activities and so assist to increase participation and involvement in their affairs.

It is hoped that the proposal of a communication allowance is supported. This should not be characterised as a charter for self-promotion but a genuine step to better inform the public, put on a modern footing and supported by a modern Code of Conduct on Local Government Publicity.

Matter 12.16

The Explanatory Memorandum points out that the Independent Remuneration Panel has not yet formally reported to the Minister. It is, however, entirely sensible to empower the National Assembly to have the necessary competence over the issues of salaries, allowances, pensions and other payments to members the bodies listed and that the scope LCO should be drawn as widely as legally possible to give the maximum discretion in this important area.

For the first time, powers would be available to make payments to elected members of Community Councils. Such payments would be properly consistent with the additional responsibilities that might be placed on those councils were the proposals made in Matters 12.8, 12.10,12.11,12.13 and 12.14 to be approved and enacted.

Matter 12.17

Much of the thrust of the recommendations of Expert Panel was to seek better support and working conditions for councillors. It is right for the proposed Order to include a provision to enable the enactment of Assembly legislation in these areas. Again, the scope of the LCO should be drawn as widely as possible to enable the National Assembly to act in respect of the recommendations.

It is hoped that the combination of the measures proposed will assist in widening the opportunities of people becoming involved in local democracy, as electors, candidates and as members and that the interest of the community in their bodies in increased.

4. What are your views on the specific exclusions to Matter 12.9 and the 'interpretation of this field' paragraph?

From the proposed Order and the Explanatory Memorandum it is unclear why the specific areas have been excluded but I have had the benefit of reading the transcript of the proceedings of the Legislative Committee No.2 held on Thursday 24th September 2009. It seems to me that the exclusions could be the subject of another LCO to confer competence to deal with the issues relating to electoral registration, the franchise, elections etc., including the voting system, so to give the National Assembly all the discretion necessary to legislate as it judges in these fields. Primary law making powers for the National Assembly would avoid this debate.

However, the Minister's reasons, recorded in paragraph 39 of the proceedings, are, with respect, justified in the present case, although it is hoped that powers will be granted in the future.

5. Do you have any other comments relating to the proposed Order?

No, other to thank the Committee for the opportunity of submitting this response.

Owen Watkin

05/10/09.