

# Legislation Committee No.3

## Proposed Local Government (Wales) Measure

### Response from Cardiff University

#### LC3(3)-17-10 Paper 2

1. Consider the need for a proposed Measure to deliver the aims of:

(iii) enhancing the role of non-executive ("backbench") local authority councillors in the scrutiny of local services (Parts 5 - 6)

The aspects of the measure that seek to promote, enhance and strengthen the role of local government overview and scrutiny committees are very much welcomed. There is a growing body of evidence which suggests the effectiveness of overview and scrutiny is likely to improve if certain conditions are put in place and particular practices are encouraged. The measure clearly attempts to respond to these suggestions and, although there are some questions around the operational elements of the changes affecting scrutiny (see below) the measure should be very much supported in relation to overview and scrutiny.

2-4. How will the proposed measure change what organizations do currently and what impact will any such changes have? Are the sections of the proposed Measure appropriate in terms of achieving the stated objectives? What are the potential barriers to implementing the provisions of the proposed Measure (if any) and does the proposed Measure take account of them?

The measure seeks to:

Enable two or more local authorities to collaborate on overview and scrutiny - this is sensible as it encourages scrutiny committees to pool resources and is likely to result in more effective external scrutiny and increased levels of inter-organizational learning. However, as with all forms of collaboration, there may be difficulties in aligning different cultures, methodologies and supporting mechanisms for scrutiny - this has been the case with some joint scrutiny exercises. The dissemination of best practice case examples from within Wales and beyond and training and support will be important so that lessons and success stories can be transferred quickly across the sector.

Enable overview and scrutiny committees to co-opt non-councillors with voting rights - this is another welcome step forward as research shows that the presence of co-opted members can strengthen the effectiveness of scrutiny whether it involves the incorporation of scientific/academic expertise or the involvement of key service users. Providing co-optees with voting rights will enable them to fully participate within the committee. The measure might consider whether, as with education, co-option should be required rather than just enabled in certain circumstances. In practice, there will also be a need to guard against the co-option of the 'usual suspects'.

Enable scrutiny committees to require information and responses from organizations outside of the council and to require representatives of those organizations attend committee meetings - this kind of development seeks to provide scrutiny with some much-needed 'teeth' in terms of external scrutiny but will be difficult to implement and enforce - indeed it is often difficult for scrutiny committees to obtain information from within their own organizations even though they have the power to secure it. Westminster select committees were famously awarded the power to demand 'persons, papers and records' in 1979 but their ability to secure information and attendance has since been questioned. Even with these powers, research shows it will be difficult to encourage organizations to fully engage with local government scrutiny. Organizations providing public services are operating within a complex system of regulation and accountability and will inevitably prioritise compliance with different scrutiny regimes. For scrutiny to be effective, external organizations will need to be convinced of the benefit and value of engaging with local scrutiny committees.

Place a duty on local authority scrutiny committees to scrutinise services delivered by local public service providers - external scrutiny remains a marginal activity for local overview and scrutiny committees across the UK. Presumably this aspect of the measure seeks to prompt more of this activity. However, evidence shows that effective external scrutiny requires considerable confidence, capacity and resource (in terms of officer support). In general, authorities have been keen to develop and perfect scrutiny internally before turning their attention to external providers. They have also been keen to avoid damaging existing collaborative relationships. Encouraging the scrutiny of external partners in this way is only likely to be successful if accompanied by considerable development work and resource.

Discourage political groups from imposing whipping procedures on members of scrutiny committees - scrutiny committees have always operated in an environment where the use of the party whip is discouraged. Research shows that whipping has been less of a widespread problem than anticipated, nevertheless, this remains an issue in some authorities and so this aspect of the measure should be welcomed. However, the reality is that scrutiny operates within a context of local party politics. Evidence suggests that operating small multi-party task and finish groups and engaging in well-resourced and evidence-based scrutiny helps to facilitate cross-party working and agreement around scrutiny, so these activities should also be encouraged along with the prohibition of whipping.

Provide that local authorities allocate appointments to chairs of committees in proportion to political balance on the council - the scrutiny chair is pivotal to the effectiveness of overview and scrutiny and there is a growing argument which suggests that, where possible, scrutiny chairs should be awarded to opposition members. This is important in relation to the 'holding the executive to account' aspect of scrutiny and indicative of a spirit of confidence and openness on the part of local executives. The CfPS 2009 survey indicates fewer chair and vice chair positions are being offered to opposition members so this would seem to be a timely and appropriate element

of the measure.

Require local authorities to establish an audit committee to monitor their financial affairs – this can be argued to be a necessary step as not all local councils have yet established audit committees. Presumably this would be seen as a stand-alone committee, chaired by an opposition member, and in possession of very specific powers and sanctions.

Require scrutiny committees to publish forward plans of their scrutiny work programme – this seems highly appropriate, subject to protecting some scrutiny space for live issues that arise at short notice whilst ensuring that local executives also produce their forward plan in a timely manner facilitating effective scrutiny of executive decision-making.

Require scrutiny committees to consult electors on major issues of policy - the evidence shows that overview and scrutiny committees are well aware of the need to engage the public in scrutiny processes but that their efforts to secure engagement have not been fruitful. The public are not always interested in the issues being addressed and there is evidence of consultation fatigue amongst local citizens. There will be issues of major policy in which the public are disinterested and it will be very difficult for scrutiny to secure engagement under those circumstances. There is a need to encourage greater public engagement in scrutiny but it is not clear whether this type of requirement could always be achieved. The measure provides some more detail and implies a greater level of engagement than the summary implies. The terminology in the summary is interesting – why ‘electors’ and not service users? Why consult and not engage? And why only in areas of major policy?

Introduce councillor calls for action enabling local councillors to ensure a response from their leadership - evidence on the success of this scheme in England has revealed several positive examples but, in general, little take-up of CCfA and has also identified a series of barriers impeding the success of this kind of action. These indicate that, in practice, it has done little to advance existing systems and arrangements for member engagement, has raised high expectations and necessitates overly-bureaucratic processes (CfPS). Further detail on how CCfA would operate in Wales, given the evidence from England would be helpful.

5.What are the financial implications of the proposed Measure for organisations, if any?

The Regulatory Impact Assessment evaluates the financial implications of these changes. However, the emphasis seems to be on the costs involved with establishing and maintaining new structures (in the case of joint scrutiny and public involvement) and in terms of compensating external agencies for the time spent interacting with overview and scrutiny. Evidence indicates that resources do contribute to delivering effective overview and scrutiny. This particularly applies to officer support for the role (see below) and joining-up scrutiny, encouraging additional forms of external scrutiny and placing a duty to engage the public will all necessitate additional officer support. It is not clear whether this has been factored into the impact assessment. The capacity-building and skills development required for these activities (on the part of members and officers) is significant and again it is not clear whether this has been taken into account. Further, these developments also come at a time of difficult financial circumstances where scrutiny spending may be particularly vulnerable.

6.Are there any other comments you wish to make about specific sections of the proposed Measure?

Officer support for scrutiny has been deemed critical to its success and will be especially critical given the challenges contained in the measure (e.g. to engage in more external scrutiny and to engage the public). There is a reference to support in the section on Democratic Services which indicates that the Head of Democratic Services should provide support and advice on overview and scrutiny. However, the measure does not elaborate on the nature of that support. There are different forms of scrutiny support in existence across England and Wales, with the label ‘scrutiny officer’ widely applied to a range of individuals with varying levels of responsibilities (see the CfPS typology of committee, integrated and specialist support). The measure does not seem to directly address the issue of support and some clarification here might be useful.

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.

The decision to remove the alternative arrangements option is interesting given that the direction of travel in England indicates that, under the Localism and Decentralisation Bill, authorities will be permitted to return to a version of the committee system.

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