

# Communities, Equality and Local Government Committee

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Meeting Venue:  
**Committee Room 2 – Senedd**

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Meeting date:  
**17 January 2013**

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Meeting time:  
**09:30**

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Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



For further information please contact:

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## Agenda

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### **1. Introductions, apologies and substitutions**

### **2. Local Government (Democracy) (Wales) Bill Evidence Session 2: (Stage 1) Local Government Boundary Commission for Wales (9:30 – 10:45)** (Pages 1 – 11)

- Owen Watkin, Chairman
- Steve Halsall, Deputy Secretary

### **3. Local Government (Democracy) (Wales) Bill Evidence Session 2: (Stage 1) Welsh Local Government Association (WLGA) & Association of Council Secretaries and Solicitors, Wales Branch (ACSeS) (10:45 – 12:00)** (Pages 12 – 25)

- Daniel Hurford, WLGA, Head of Policy Improvement and Governance
- Dilys Phillips, ACSeS, Monitoring Officer, Gwynedd
- Phillip Johnson, Association of Electoral Administrators, Electoral Services Manager, Newport

### **4. Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business: (12:00 – 12:05)** Item 5

**5. Inquiry into Participation in the Arts in Wales – Consideration of draft report (12:05 – 12:10)**

**6. Papers to note (Pages 26 – 27)**

**Equality considerations in the Welsh Government's Budget – Letter from the Minister for Finance and Leader of the House (Pages 28 – 29)**

## **To: the Communities, Equality and Local Government Committee, National Assembly for Wales**

### **Response of the Local Government Boundary Commission for Wales to the Local Government (Democracy) (Wales) Bill**

#### **Introduction**

The Local Government Boundary Commission for Wales (the Commission) welcomes this opportunity to comment on the Local Government (Democracy) (Wales) that has been introduced to the National Assembly for Wales. The Commission notes that the current arrangements and procedures affecting the Commission were enacted forty years ago. It accepts that the basic building blocks for reviewing electoral arrangements are in place; it is of the view that the measure presents the means to improve and modernise the ways in which the Commission and its partners operate in the future, so that the work of reviewing those arrangements is made more effective and efficient in the interests of sound local government and local democracy. We recognise the value and validity of the recommendations made by Mr Glyn Mathias in his Report of 2011 and generally accepted those proposals in our earlier response to the Minister. The Commission had submitted detailed comments on the White Paper and is pleased to find that a number of its concerns have been addressed in the Bill. It is rare that the opportunity arises for a body such as ours to be able to comment on and influence the legislation that determines our existence and defines our operation and are of the view that the Bill presents an unique opportunity to introduce improvements. We wish therefore to make further comments in order to help the National Assembly for Wales to make a piece of legislation that is robust and fit for purpose.

In order to assist the process of collating and analysing all of the responses to the consultation on the Bill we have used the consultation questionnaire as a template for our response.

#### **Response**

**Q1 Is there a need for a Bill to make changes to the constitution and functions of the Local Government Boundary Commission for Wales (“the Commission”) and to make various provisions relating to local government?**

Yes. The Commission is in broad agreement with the findings of the Mathias report in respect of changes required to the constitution and functions of the Commission. Given the breadth of the changes required to the existing legislation in order to implement these changes it is agreed that this will be more effectively achieved by a new Bill rather than by making piecemeal changes to the existing legislation.

**Q2 Do you think the Bill will improve the delivery of the statutory roles and functions of the Commission? (paragraph 3.1 of the explanatory memorandum)**

Yes, in a number of respects. There are however some provisions of the Bill that we consider that, if left unchanged, would have a detrimental effect on the Commission’s ability to undertake its statutory roles and functions. The following are the areas of our main concerns:

The provision (Section 26 (3) (b)) for the Commission to consider consequential changes to the principal council electoral arrangements when reviewing community boundaries;

The provision (Section 29 (7)) whereby the Commission must not conduct a review or publish electoral arrangements proposals within 9 months of an election;

The requirement (Section 30 (2) (a)) for the Commission to take account of any discrepancy between the number of those on the electoral register and the number of those eligible to vote.

A detailed consideration of each of these issues is given within our responses to the questions below.

We consider that the provisions of the Bill give greater recognition to the importance of achieving appropriate community boundaries and electoral arrangements prior to a review of principal area electoral arrangements. In the view of the Commission however it does not go far enough to set up a specific relationship between community reviews and principal area electoral reviews. We would like to see arrangements whereby there is a requirement on principal councils to have conducted a community review within five years of a principal area electoral review as set out in the Commission's 10-year programme and for them to report to the Commission not less than 1 year prior to the scheduled start of the electoral review. This would provide a single integrated system for community and principal council reviews. All of the stakeholders would be clear about when reviews are scheduled to take place and would allow for greater engagement with the process.

We recognise that there would need to be a transitional period for this provision so that it ties in with the Commission's first 10-year programme either by giving a dispensation for those authorities in the first half of the programme or by the Commission front-loading the programme with authorities who have most recently undertaken community reviews (if possible).

**Q3** Do you think the changes being made to the Commission are appropriate? (Part 2 of the Bill)

Yes, in general. We would wish however to make the following comments and suggestions:

### **Section 2 - Local Democracy and Boundary Commission for Wales**

With regard to the status of the Commission, comment is made in respect of Section 3, below. With regard to Section 2(1), it is suggested that the words "The body corporate called the " be deleted and the section should begin "The Local Government Boundary Commission...".

With regard to Section 2(2), the Commission accepts the proposed name.

We have considered the one-off additional cost that will be incurred as a result of the name change and consider that this will not exceed £5,000 and will be met from the Commission's budget as agreed with Welsh Government.

### **Section 3 – Status**

It is suggested that the drafting of the provisions relating to the status of the Commission can be made clearer. A proposal for amending Section 2 has been made above.

It is suggested, as a consequence, that an additional provision should be introduced as Section 3(1):-

*“The Commission will be a body corporate, consisting of a chairman, a deputy chairman and being comprised of not more than four members overall”.*

The next two sub-sections are re-numbered as a consequence.

The amendment to the draft Bill essentially re-enacts the provision found in the Local Government Act 1972, Schedule 8 (1) (1); in this particular case no advantage over the original provision is seen in the proposed wording of Section 2(1). The repeal of the provisions relating to the status of the Commission now in the 1972 Act would create an uncertainty were Section 2(1) as drafted to remain.

The amendment also seeks to remove an ambiguity found in Section 4(1)(a), dealt with below. The matter relating to number of members is considered under Section 4.

### **Section 4 - Membership**

The ambiguity referred to in relation to Section 3 concerns the phrase “chairing member” found in Section 4(1)(a). The Framework Agreement between the Minister and the Commission sets out formal responsibilities for the Chairman of the Commission and the members respectively. The Chairman has accountabilities differing from those of the members. The phrase is ambiguous and does not recognise the implication of the duties of the Chairman. It is suggested that, as in normal practice, the wording should be as set out above, in respect of Section 3(1).

The Bill removes the present requirement that at least one member be a Welsh-speaker. The Explanatory Memorandum states that, instead, Commission members will be appointed in accordance with the Welsh Government's Welsh Language Scheme and future Welsh Language Standards regarding public appointment. The Commission has improved its practices by appointing Lead Commissioners, having functions relating to individual reviews, and wishes to engage and communicate in better ways with the public and its key partners. As part of this new approach the Commission would be strengthened by the appointment of a member with language skills. The Commission is of the view, accordingly, that reference to the appointment of members with regard to the Welsh Government's Welsh Language Scheme should be specifically referred to in Section 4(2).

### **Section 6 – Proceedings**

It is understood that it may be considered inappropriate for decisions affecting the review process or the management of the Commission to be made by two members only and by increasing the quorum from 2 to 3, and by providing the option of appointing additional members this risk would be eliminated. We consider however that the increase in the quorum combined with the existing arrangement of 3 members would increase the risk of meetings being inquorate. Increasing the membership to 4 or 5 members would reduce this risk but would increase the cost of running the Commission. We are of the view that in order to ensure meetings are quorate and to avoid incurring additional costs the quorum should remain at 2. We consider that the normal membership of the Commission should be 3 (including the chair and deputy) but agree that in order to cover any long-term absence provision should be retained for appointing additional members.

### **Section 8 - Chief Executive**

It is agreed that the designation of the Commission's chief officer be changed from Secretary to Chief Executive. The Commission would prefer that all appointments to its staff should be made by the Commission, however it is recognised that in the case of the chief officer, who may be nominated Accounting Officer for the Commission, answerable to the Director General in Welsh Government, there is justification for the appointment to be made in the name of the Minister. The Commission welcomes the provision in section 8(3) that it will be consulted before an appointment is made and it is hoped that the Commission would be integral to the process leading to the appointment.

### **Section 9 – Other staff**

In the interests of staff relations, the Commission suggests that a statement be made, either in the Bill, or by a letter in the name of the Minister, to the effect that the employment rights of existing staff are unaffected by the passing of this legislation. As any appointments of staff will have to be funded from the annual budget agreed with Welsh Government, section 9(3) is not necessary and can be deleted.

### **Section 10 - Experts**

The Bill makes provision for the Commission to appoint (and pay) persons to provide expert advice. The current legislation allows the Welsh Government to appoint persons to provide expert advice. The draft Bill delegates this power to the Commission. The Commission's Framework document with Welsh Government provides the necessary safeguards for assuring Welsh Government that this delegated power would be managed appropriately. It is therefore suggested that Sections 10 (2) and 10 (5) are not necessary.

### **Section 14 - Directions**

We suggest that the equivalent provision as is found in Section 48(8) which is restricted to Part 3 only of the Bill, is included with similar effect in respect to Part 2. The suggested wording of the provision would be

*“Section 14(2) But, before making a direction under this section relating to this Part, the Welsh Ministers must consult with the Commission.”*

### **Section 18 - Audit Committee: membership**

Section 18 (1) (a) requires the appointment of a lay member of the Audit Committee but no provision is made for making the appointment. The following is suggested as an addition to the section:

*“Section 18 (3) The Commission may appoint a person to be the lay member of the audit committee.”*

The Commission would make the appointment on the basis of experience and relevant expertise and following the public appointment procedures.

(Consequential re-numbering of sub-clauses would ensue.)

### **Q4 Do you think the provisions relating to procedures for local government reviews are appropriate? (Chapter 4 and 5)**

Yes, in general. We would wish however to make the following comments and consider that it is appropriate here to comment on provisions in Chapters 2 and 3 which also consider provisions for local government reviews.

### **CHAPTER 2**

#### **Section 26 - Review of community boundaries by the Commission**

The provision exists under the current legislation for the Commission to consider consequential changes to the principal council electoral arrangements when reviewing community boundaries and is essential for tidying up the boundaries of electoral divisions. This provision needs to be added to 26.3(b). If it is not added then the implementation of community boundary changes will result in anomalies between community boundaries and electoral division boundaries that will not be resolved until a principal area electoral review has been carried out and implemented.

### **CHAPTER 3**

#### **Section 29 - Review of electoral arrangements for principal area**

It is considered that the title of this section may read better as *‘Review of principal area electoral arrangements’*.

The Commission considers that given its current timetable of work an earlier start date than 1 May 2014 would be beneficial. We consider that September 2013 (or as soon as possible after the Bill receives Royal Assent) is an appropriate start date for the 10 year period.

The Commission does not agree with the provisions of Section 29 (7) as this will restrict the timetable. In effect the provision would mean that no reports will be published during the period from August 2016 through to May 2017 and for

subsequent elections. This may mean that reviews that are underway are suspended for 9 months. To avoid this, the Commission would have to timetable the reviews so that reviews are either completed by the start of the period or not begun until after the election. It is agreed that it may not be appropriate to publish recommendations after the date of official notification of a poll. We consider that it would be possible to prepare a programme of reviews to the satisfaction of Welsh Ministers without this restriction. The removal of this restriction would allow the Commission to ensure a steady stream of work over the period which would aid staff retention and budgetary allocation. Table One at Appendix A shows the programme of reviews with the 9-month period and Table Two shows a programme without this restriction.

Section 29 (10) defines the terminology. It is noted that what were previously designated as 'electoral divisions' are now 'electoral areas' and 'multi-member electoral divisions' are now multiple 'member areas'. There has been no explanation given as to why the terminology has changed. The Bill is introducing changes to terminology that is of long-standing (since the 1972 Act) and the Commission is concerned that this may cause confusion but has no objection in principle.

### **Section 30 - Consideration for a review of principal area electoral arrangements**

Section 30 (2) (a) requires the Commission to take account of any discrepancy between the number of those on the electoral register and the number of those eligible to vote. This adds a new element to the consideration that has to be given by the Commission when conducting electoral reviews. It is implied that this element would allow a greater variance in the ratio of local government electors to the number of members but it is not clear as to what weight this element should be given and the extent of the variance allowed. This requirement has also been placed on reviews of community electoral arrangements in Section 33. We are concerned that whereas the statistics for the number of registered electors are available on a regular basis and to a level of detail required for review purposes, the statistics for the number of those eligible to be electors are not available on the same basis. We are of the view that the provision at Section 30 (2) (a) and the equivalent at Section 33 (5) should be removed from the Bill.

In the event that the provision is enacted, the Commission would favour entering into discussions with the Department with a view to developing guidance for the implementation of these provisions. To add transparency and understanding, other appropriate bodies should be involved in drafting or in a consultation upon any such guidelines.

### **Section 31 - Review of electoral arrangements for community by principal councils**

It is considered that the title of this section may read better as '*Review of community electoral arrangements by principal councils*'.

### **Section – 32 Review of electoral arrangements for community by the Commission**



It is considered that the title of this section may read better as '*Review of community electoral arrangements by the Commission*'.

## **CHAPTER 4**

### **Section 35 - Consultation and investigation**

Section 35 (3) makes provision for the draft proposals report to be published electronically and further paragraphs make mention of 'copies' of the report. It may be implied that these further copies are also electronic copies rather than paper ones. The same is true under Section 36 for the final proposals report. If the intention is for only electronic copies to be produced this should be made explicit for each reference to a report. Whilst we are of the view that there are cost benefits to be gained from only producing electronic copies of the report we are concerned that there still exists a number of potential consultees who lack the provision to receive information in this form. We would wish, in the short term, to continue to provide, at least some, paper copies of our reports but are agreed that all-electronic publication is something we wish to move towards.

### **Section 36 - Reporting on Review**

Section 36 (6) (c) makes the Commission the implementing authority in respect of reviews under Section 25 (Review of community boundaries by principal council). Under existing arrangements, Community boundary reviews more often than not require consequential changes to be made to the electoral arrangements of the principal area (to avoid anomalies between community and electoral division boundaries). This is currently managed by the Commission making proposals for consequential changes when making proposals to the Welsh Ministers following consideration of the council's proposals to the Commission. As noted above (when considering Section 26.3(b)), there is no provision for this consideration in the draft Bill. The Commission are of the view that it should be. This however would have implications for the Commission being the implementing authority in respect of community boundary reviews as these may make changes to the principal council electoral arrangements. Under both the current legislation and the draft Bill the implementing authority for changes to principal authority electoral arrangements is Welsh Government. Would this still need to be the case if Section 26 (3) (b) is changed as proposed by the Commission?

## **CHAPTER 5 IMPLEMENTATION FOLLOWING REVIEW**

There should be a provision for the implementing authority to notify affected local authorities when an Order is made.

- Q5** Do you think the arrangements for local government in relation to:
- Duties of the Commission
  - Duties of a principal council
- are appropriate? (Chapter 1)

Yes, in general. We would wish however to make the following comments:

## **CHAPTER 1**

### **Section 21 - Duty of the Commission to monitor arrangements for local government**

The provision under Section 21 (3) that '...the Commission must seek to ensure effective and convenient local government' is different to the provision in the Local Government Act 1972 to the effect that it must 'make proposals .... for effecting changes appearing to the Commission desirable in the interests of effective and convenient local government'. The new statement would seem to imply the Commission has a wider remit than it has (either currently or following the Bill) and inserts a duty that goes further than the powers vested in the Commission by the Bill. This would lead to uncertainty as to the functions of the Commission. It is suggested that the wording of the 1972 Act is followed here and that references to 'ensure' are deleted. This is also a requirement for principal councils under Section 22(3).

### **Section 22 - Duties of principal councils in relation to area**

The title text at Section 22 should read '*Duties of principal councils in relation to communities in its area*'.

## **Q6 to Q9**

### **No Comment**

**Q10** What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?

As noted in answer to question 4 above, there is no provision for the Commission to consider consequential changes to the principal council electoral arrangements when reviewing community boundaries.

**Q11** What are the financial implications of the Bill, if any? In answering this question you may wish to consider Part 2 of the Explanatory Memorandum (the Impact Assessment), which estimates the costs and benefits of implementation of the Bill.

In respect of additional costs to the Commission we are in agreement with the assessments in the Explanatory Memorandum.

The Explanatory Memorandum section 5 (139(ii)), considers the likely cost savings of only publishing the draft reports electronically. The draft Bill however proposes that the final reports are also published electronically. If our interpretation of the Bill is correct (see above) then the requirement is for all copies of the reports to be provided as electronic copies. If that is the case then there will be greater savings in respect of printing and distribution. If however the intention is that hard copies are to be

produced for the mandatory consultees and others then the savings will not be so significant.

**Q12** What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e. statutory instruments including regulations and orders) (section 5 of the Explanatory Memorandum)?

The Commission notes the proposed powers to make subordinate legislation and is in agreement with measures that will enable appropriate action to be taken.

**Q13** Are there any other comments you wish to make about specific sections of the Bill?

### **Section 45 - Police area change**

Section 45 (2) gives an additional power to the Commission to recommend changes to police areas. Currently the Commission notifies the police authorities and the Home Office (Police Reform Unit) of proposed changes to principal area boundaries. It is then for the Home Office to consider consequential changes to the police areas.

The provision at Section 45 3(b) allows the Secretary of State to direct the Commission to carry out a further review of principal area boundaries following modification of the police area boundaries. There is a potential problem in that the requirements of the Secretary of State in respect of police areas may be different to the requirements for effective and convenient local government required by the Welsh Ministers. There would be a possible difficulty in resolving these differences which may cause delays and uncertainty.

### **Section 50 - Reviews of qualifying public bodies**

In the Commission's response to the White Paper we said that we would welcome, if this proposal is enacted, discussions with the Government to define fully the nature of the function proposed and to develop the methodology and processes for undertaking this function. Whilst the draft Bill gives a little bit more detail it does leave it still very open and subject to any directions the Welsh Ministers may decide to make. The Commission suggests that discussions are required with Welsh Government to create guidelines that will allow the implementation of these provisions in the interests of transparency and understanding of the bodies affected.

Table One: Review Programme with 9-month pre-election period

Review Area	2014				2015				2016				2017				2018				2019				2020				2021				2022				2023				2024			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4				
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August to May

August to May

S - Start of review  
 D - Draft Proposals  
 F - Final Proposals

Table Two: Review Programme without a 9-month pre-election period (starting in 2013)

	2013		2014				2015				2016				2017				2018				2019				2020				2021				2022				2023			
	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4				
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E

S - Start of review  
 D - Draft Proposals  
 F - Final Proposals

# Agenda Item 3

Cynulliad  
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Wales



## Local Government (Democracy) (Wales) Bill

### Consultation Response Form

**Organisation (if applicable):**

Welsh Local Government Association (WLGA)

**Your name:**

Daniel Hurford, Head of Policy

**Email address:**

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**Telephone number:**

029 20468615

**Your address:**

Local Government House, Drake Walk, Cardiff, CF10 4LG

**Introduction:**

The following is a provisional response from the WLGA; WLGA members have not yet had the opportunity to consider the Local Government (Democracy) (Wales) Bill formally and will not be able to do so until its Coordinating Committee meeting of 25<sup>th</sup> January. Any further comments on the Bill will be submitted to the Communities, Equality and Local Government Committee ahead of the 15<sup>th</sup> February consultation deadline.

The Welsh Local Government Association (WLGA) represents the interests of local government and promotes local democracy in Wales. It represents the 22 local authorities in Wales and the 3 fire and rescue authorities and 3 national park authorities are associate members.

The WLGA's primary purposes are to promote better local government and its reputation and to support authorities in the development of policies and priorities which will improve public services and democracy.

**The Local Government Boundary Commission**

Question 1: Is there a need for a Bill to make changes to the constitution and functions of the Local Government Boundary Commission for Wales (“the Commission”) and to make various provisions relating to local government?			
Question 2: Do you think the Bill will improve the delivery of the statutory roles and functions of the Commission? (paragraph 3.1 of the explanatory memorandum)			
Question 3: Do you think the changes being made to the Commission are appropriate? (Part 2 of the Bill)			
<b>Yes</b>			
<p>The WLGA supports the Welsh Government’s commitment to reform and modernize the Local Government Boundary Commission for Wales (the Commission).</p> <p>The Bill seeks to implement a number of the recommendations from the Mathias Review which the WLGA welcomed. The WLGA has a constructive ongoing relationship with the recently appointed Commission, however, legislation is required to implement the Mathias recommendations to enhance the capacity, powers and resources of the Commission.</p> <p>In its response to the Welsh Government’s White Paper, the WLGA was not however convinced of the need to rename the Commission. Although this is not a significant concern, the Commission’s role will fundamentally remain around boundary and electoral review matters, a change of name therefore will be inconsistent with the other Local Government Boundary Commissions in the UK and the inclusion of ‘Democracy’ may cause confusion with the wider remit of the Electoral Commission.</p>			

**Local Government arrangements**

Question 4: Do you think the provisions relating to procedures for local government reviews are appropriate? (Chapter 4 and 5)

Question 5: Do you think the arrangements for local government in relation to:

- Duties of the Commission
- Duties of a principal council

are appropriate? (Chapter 1)

<b>Yes</b>			
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Please expand on your answer

The WLGA supports the Welsh Government’s intention to improve the procedures for undertaking boundary, community and/or electoral reviews. The Bill seeks to implement a number of the recommendations from the Mathias Review.

The WLGA welcomes and supports the Welsh Government’s clarification through the Bill that, in the electoral review process, community identity and community ties have equal importance to the aim of establishing that each councillor is to represent (as closely as possible) the same number of electors.

The Bill proposes a number of amendments to clarify, improve and streamline review procedures which are supported. The Welsh Government has also taken on board a number of comments provided during the White Paper consultation, for example the clarification for a route of ‘appeal’ around the Commission’s fees charged on local authorities where it undertakes Community Reviews (see S26 (5)).

There is a need for further consideration however around the commencement of provisions regarding community reviews. As noted in the Explanatory Memorandum, community reviews are due to be received by the Commission by July 2015 and, given 2013 is a non-election year, some authorities are planning to undertake community reviews shortly. However, the Bill’s Commencement Provisions (S69) state that the parts of the Bill relating to Community Reviews will be commenced 2 months following Royal Assent. There is a concern therefore that community reviews already commenced or concluded (yet not formally implemented or approved) which were undertaken under current guidance and legislation may be affected by the new provisions under the Bill (particularly the issuing of the Commission’s guidance on community reviews). It is therefore suggested that the Bill only applies to Community Reviews which are commenced after the Bill has been introduced.



Question 6: Do you think the arrangements for local government in relation to:

- Democratic Services Committees (Section 56)
- Audit Committees (Section 57)
- Standards Committees (Section 63)

are appropriate?

<b>Yes</b>			
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Please expand on your answer

- Democratic Services Committee.

The WLGA supports the amendment to the Measure which broadens the power and remit Committees. The Welsh Government has responded to feedback from local authorities following the establishment of Democratic Services Committees following the Measure; in summary, the interpretation of specific provisions in the Measure regarding the powers and functions of the Democratic Services Committee could, unintentionally, constrain the remit and ambition of a Committee. The Bill seeks to give greater local flexibility which is welcomed.

- Audit Committee

The WLGA supports the proposed amendments to ensure Audit Committees are politically balanced.

- Standards Committee.

The WLGA supports the power to establish joint standards committees. The WLGA would also echo ACSeS' proposal to include an additional power for an authority to refer a matter (subject to prior agreement of relevant parties) to another authority's standards committee where there might be a difficulty in the 'home' authority's standards committee dealing with a case.

**Independent Remuneration Panel for Wales**

Question 7: Do you think the provisions relating to the Independent Remuneration Panel for Wales are appropriate? (Chapter 5, Sections 58-62)

**Yes**

The WLGA supports most of the proposed changes to the Independent Remuneration for Wales (the Panel).

The WLGA understands and supports the proposed changes to timescales for publication and consultation around the Panel’s reports; the WLGA welcomes the proposal to allow the back-dating of allowances, however, there is an issue around linking the Panel’s reports into councils’ financial planning arrangements which currently works well. Whilst minor adjustments to members’ allowances can be accommodated by councils, a significant and fundamental overhaul by the Panel of the allowances framework could provide a financial challenge if councils have already set their budget in advance of the Panel’s recommendations. In its response to the White Paper consultation, the WLGA suggested that legislation or Ministerial guidance could state that when the Panel undertakes a wholesale review of an existing allowances framework, that these determinations should be reported by 31<sup>st</sup> December, to allow authorities an opportunity to take into account any necessary financial implications within its budget setting process.

The WLGA does not support the proposed amendment to the Measure to allow the Panel to prescribe the numeric limitation on those entitled to senior salary payments. The established approach had hitherto worked well and allowed local discretion and flexibility set within an overall cap; whilst the WLGA supports the independence of the Panel and recognizes that there should be a cap on senior salaries, the proposed approach as outlined allows the Panel to constrain and effectively determine the governance arrangements for each local authority. Local authorities are best placed to decide on the most appropriate governance arrangements required to conduct local business effectively, this includes the appropriate constitutional structures as well as the number of members required to exercise executive, scrutiny and statutory functions accordingly. The WLGA would propose that the legislation is amended to the pre-2011 Measure position where no more than 50% of council members could receive a senior salary.

### **Access to information (Town and Community Councils)**

Question 8: Do you think the provisions relating to improving access to information (Town and Community Councils) are appropriate?

<b>Yes</b>			
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The WLGA supports these proposals, although would echo ACSeS' point regarding rewording this section of the Bill as 'Publicity for Information' rather than 'Access to Information' which has a much broader and specific application which would not necessarily be appropriate for community and town councils.

### **Chairing of Principal Councils (Chairs and Mayors of Principal Councils)**

Question 9: Do you think the provisions relating to the Chairing of Principal Councils (Chairs and Mayors of Principal Councils) are appropriate?

<b>Yes</b>			
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The WLGA supports this part of the Bill. ACSeS have highlighted an issue which will require further consideration and some redrafting, however, around terms of office of elected members and who should chair the first AGM following a council election prior to a new Chair being appointed.

### **General Provisions of the Bill**

Question 10: What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?

Please expand on your answer

Other than the points of clarification outlined above, there are no specific barriers to implementing the provisions of the Bill other than the inherent complexity of some of the processes over which it seeks to legislate, notably the community and electoral review processes. However, the Bill seeks to better resource these arrangements and aims to clarify and improve current procedures.

Question 11: What are the financial implications of the Bill, if any? In answering this question you may wish to consider Part 2 of the Explanatory Memorandum (the Impact Assessment), which estimates the costs and benefits of implementation of the Bill.

Please expand on your answer

The financial implications are covered in the Explanatory Memorandum. The only area of some uncertainty is around the new charges that could be levied by the Local Government Boundary Commission on authorities for undertaking a community area review. The costs for such reviews vary, and the Explanatory Memorandum estimates that this would cost between £8,000 to £15,000 and that it should not be in excess of the cost should the authority have undertaken a review itself. Most of the costs incurred undertaking a community review relate to local authority staff time; where an authority requests that the Commission undertakes a community review on its behalf or the Commission decides to undertake a review due to delays, it is likely to be due to internal capacity constraints within the authority in question. Any reviews undertaken by the Commission are therefore likely to be an additional cost to an authority.

Question 12: What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e. statutory instruments including regulations and orders) (section 5 of the Explanatory Memorandum)?

Please expand on your answer

The WLGA has no comments.

Question 13: Are there any other comments you wish to make about specific sections of the Bill?

The WLGA has no comments at this stage.



## Local Government (Democracy) (Wales) Bill

### Consultation Response Form

Organisation (if applicable):

**Association of Council Secretaries and Solicitors Wales Branch (“ACSeS”)**

Your name:

**Ian Medicott, Policy Officer**

Email address:

[ianmed@yahoo.co.uk](mailto:ianmed@yahoo.co.uk)

#### Introduction:

The Association of Council Secretaries and Solicitors (“ACSeS”) is the professional association for managers of corporate governance (legal, administrative, democratic, scrutiny and standards functions) and statutory monitoring officers and their deputies in local authorities in England and Wales.

The Association plays a leading role in developing governance arrangements in local government and works closely with other associations, Government Departments and agencies. The Association provides a network for its members to enable discussion, consultation, training and development on legal and governance matters.

The Wales Branch of ACSeS represents Heads of Legal Services and Monitoring Officers for Unitary, National Park, Fire & Rescue, and Police and Crime Commissioners in Wales.

#### The Local Government Boundary Commission

Question 1: Is there a need for a Bill to make changes to the constitution and functions of the Local Government Boundary Commission for Wales (“the Commission”) and to make various provisions relating to local government?

Yes

No

Please expand on your answer

ACSeS has no comments on this point

Question 2: Do you think the Bill will improve the delivery of the statutory roles and functions of the Commission? (paragraph 3.1 of the explanatory memorandum)

Yes

No

Please expand on your answer

ACSeS has no comments on this point

Question 3: Do you think the changes being made to the Commission are appropriate? (Part 2 of the Bill)			
Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
ACSeS has no comments on this point			

**Local Government arrangements**

Question 4: Do you think the provisions relating to procedures for local government reviews are appropriate? (Chapter 4 and 5)			
Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Please expand on your answer			
ACSeS has no comments on this point			

Question 5: Do you think the arrangements for local government in relation to:			
<ul style="list-style-type: none"> <li>• Duties of the Commission</li> <li>• Duties of a principal council</li> </ul>			
are appropriate? (Chapter 1)			
Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Please expand on your answer			
ACSeS has no comments on this point			

Question 6: Do you think the arrangements for local government in relation to:

- Democratic Services Committees (Section 56)
- Audit Committees (Section 57)
- Standards Committees (Section 63)

are appropriate?

Yes

No

Please expand on your answer

(a) Democratic Services Committee.

ACSeS feels that giving statutory authority for extending statutory terms of reference is appropriate. This will however need an amendment of s.16 of the Local Government Measure to reflect this extension of powers.

(b) Audit Committee

ACSeS has strongly supported this since the implementation of the Measure.

(c) Standards Committee.

ACSeS supports the power to establish joint standards committees.

It would also welcome an *additional* clear power for an authority to refer a matter to another authority's standards committee where there might be a difficulty in the 'home' authority's standards committee dealing with a case.

## Independent Remuneration Panel for Wales

Question 7: Do you think the provisions relating to the Independent Remuneration Panel for Wales are appropriate? (Chapter 5, Sections 58-62)			
Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
<p>Clause 60:</p> <p>The changes of dates proposed in this clause seem to use May (AGMs) as the critical date for local authorities in order to justify the proposed publication and implementation dates. This is an incorrect premise, as the critical period for local authorities is that of Budget preparation (beginning December) and council tax/ Budget decision (Feb/March). ACSeS has three comments:</p> <ol style="list-style-type: none"> <li>1. to change the Report date to 28<sup>th</sup> February leaves it too late for authorities to responsibly budget for any changed determinations in the Report</li> <li>2. in the current economic climate, authorities have more restricted flexibility in budgets, so a three month backdating may well result in financial difficulties in implementing changes</li> <li>3. there may well be justification for late or mid-year changes for an individual council, or for circumstances requiring a supplementary report. In these cases, councils will usually have anticipated the changes, and will have had an opportunity to budget for them</li> </ol>			

## Access to information (Town and Community Councils)

Question 8: Do you think the provisions relating to improving access to information (Town and Community Councils) are appropriate?			
Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
<p>Ss 53-55:</p> <p>The only issue is with the heading to these sections. The term “Access to information” has an existing definition within local government (Part VA Local Government 1972) and if applied to community councils could raise an expectation in the public to equal rights of access to documents that exist in relation to principal councils, but <b>not</b> in relation to community councils.</p> <p>Changing the heading to “publicity for information” would solve this. A similar change is needed in the Explanatory Notes.</p>			



**Chairing of Principal Councils (Chairs and Mayors of Principal Councils)**

Question 9: Do you think the provisions relating to the Chairing of Principal Councils (Chairs and Mayors of Principal Councils) are appropriate?

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
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**Clause 51**  
 The Bill contains a power in cl.51 to split the ‘chairing of meetings’ and the ‘civic’ roles, by the creation of a “presiding member”. The civic head is then either a “mayor” (if entitled to use the term) or otherwise a “civic chair”.

The concern of ACSeS is about the term of office of elected members.

1. S.26 Local Government Act 1972 says that councillors end their term on the fourth day after ordinary elections
2. S.22(3) Local Government Act 1972 says that the Chairman of the council remains in office until their successor is appointed. It has always been assumed that this ensures that there is a Chair to lawfully start the AGM of a council following elections. It also maintains a ceremonial/civic head, if one is needed in the interregnum. So far the distinction has been irrelevant, and there has been no need to address the point
3. As a result of this clause, there is no longer a ‘chairman’ for the purpose of s.22(3) Local Government Act 1972. The Democracy Bill doesn’t seem to address who qualifies for the s.22(3) exemption – the cl.51 presiding member, or the cl.51(3) mayor/civic chair – neither now fits the definition of ‘chairman’ in s.22(3) Local Government Act 1972.

ACSeS submits that this simply needs a drafting change in the Bill to amend s.22(3) Local Government Act 1972, but there is an issue about which of the two should get the benefit of the extended term – or both of them?

Councils might need a constitutional head **or** a ceremonial head in the period between elections and AGM; they will certainly need the constitutional head for the AGM, especially if the outgoing Chairman (under existing law) did not stand for re-election or was not elected.

Given the definition of term of office in cl 51’s new section 24A (6)(b), there is in any event a need for the presiding member’s term to be extended, but there is an argument that for ceremonial purposes, the mayor/civic chair’s term should also be extended.

**General Provisions of the Bill**

Question 10: What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?

Please expand on your answer

These concerns are covered elsewhere in this document.

Question 11: What are the financial implications of the Bill, if any? In answering this question you may wish to consider Part 2 of the Explanatory Memorandum (the Impact Assessment), which estimates the costs and benefits of implementation of the Bill.

Please expand on your answer

Please see the comments in Q.7 in relation to cl.60 of the Bill

Question 12: What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e statutory instruments including regulations and orders) (section 5 of the Explanatory Memorandum)?

Please expand on your answer

ACSeS has no comments on this point

Question 13: Are there any other comments you wish to make about specific sections of the Bill?

**1. Clause 66(1) Interpretation:**

For clarity, the definition of “local authority” need the addition of the words “..in Wales”.

**2. Term of office of councillor members of standards committees:**

ACSeS feels that it would be of assistance to the efficient administration of standards committees that the term of appointment of councillor members of standards committees would be for the term of office for the time being of that councillor, rather than for four years, and that this rule should be applied to current incumbents.

This would accommodate the situation where the date of ordinary elections for a principal council is delayed by one year, as is the case currently.

**3. Remote attendance, s. 4 Local Government Measure 2011:**

ACSeS expressed concerns during the scrutiny of the Measure about the legal implications of the loss of connection to one or more remote attendance councillors during a meeting of a council. These issues were not addressed in the Measure, and ACSeS is extremely concerned that the legal (and possibly serious financial) consequences should be addressed.

These issues cannot be adequately addressed in an authority’s Standing Orders, and must be addressed in statute.

This Bill offers an ideal opportunity to amend the Measure to address these issues, and Assembly members are strongly urged to take this opportunity to legislate to avoid these consequences.

These are the issues:

- i) There is no provision in the Measure governing the validity or otherwise of a decision taken by a meeting where the connection to a ‘remote’ member or members is lost. The legislation should specify whether a decision can be taken in the “electronic absence” of a member or members, and if “yes”, then the right of a disenfranchised member to complain or challenge should be excluded.
- ii) ACSeS prefers statutory provision that the Council can continue to make a decision, with the ‘remote’ member being treated as absent from the meeting. This view is taken by ACSeS because of the potential serious consequences to an authority of:
  - (a) a failure to take a time-critical decision (e.g. council tax resolution or a decision affecting current litigation, or
  - (b) the decision of a regulatory committee (planning or licensing) decision potentially being invalid



## Communities, Equality and Local Government Committee

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Meeting Venue: **Committee Room 2 – Senedd**

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Meeting date: **Wednesday, 9 January 2013**

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Meeting time: **09:00 – 11:26**

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This meeting can be viewed on Senedd TV at:  
<http://www.senedd.tv/archiveplayer.jsf>

Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



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### Concise Minutes:

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#### Assembly Members:

**Ann Jones (Chair)**  
**Peter Black**  
**Janet Finch-Saunders**  
**Mike Hedges**  
**Mark Isherwood**  
**Gwyn Price**  
**Joyce Watson**  
**Lindsay Whittle**

#### Witnesses:

**Carl Sargeant, Minister for Local Government and Communities**  
**Peter Black AM**

#### Committee Staff:

**Bethan Davies (Clerk)**  
**Leanne Hatcher (Deputy Clerk)**  
**Helen Finlayson (Clerk)**  
**Claire Griffiths (Deputy Clerk)**

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### 1. Introductions, apologies and substitutions

- 1.1 Apologies for absence were received from Rhodri Glyn Thomas and Ken Skates.
- 1.2 As Peter Black was the Member in Charge of the Regulated Mobile Home Sites (Wales) Bill, Kirsty Williams substituted for him during these items.

### 2. Local Government (Democracy) (Wales) Bill: Evidence Session 1 (Stage 1)

- 2.1 The Committee received evidence from the Minister for Local Government and Communities, Carl Sargeant AM.

2.2 The Minister agreed to provide the Committee with further information on the Bill.

### **3. Regulated Mobile Home Sites (Wales) Bill: Evidence Session 9**

3.1 The Committee took evidence from Peter Black AM, Member in charge of the Regulated Mobile Home Sites (Wales) Bill.

3.2 Action point: Peter Black AM agreed to send a definitive legal view on whether the Bill, as currently drafted, will raise issues under Article 1 of the First Protocol of the Convention of Human Rights by 16 January.

### **4. Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business**

4.1 The motion was agreed.

### **5. Regulated Mobile Home Sites (Wales) Bill: Consideration of key issues**

5.1 The Committee discussed the key issues and emphasised the areas they wished to make recommendations on.

### **6. Paper outlining options for scrutiny of the White Paper on Legislation to end violence against women, domestic abuse and sexual violence (Wales)**

6.1 The Committee agreed to receive a factual briefing on the White Paper on 6 February.

### **7. Papers to note**



Jane Hutt AC / AM  
Y Gweinidog Cyllid ac Arweinydd y Ty  
Minister for Finance and Leader of the House

Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref SF/JH/3540/12

Ann Jones AM  
Communities, Equality & Local  
Government Committee  
Committee Service

Communities.Equality&LocalGov@wales.gov.uk

3 January 2013

## **Communities, Equality and Local Government Committee – Inquiry into Equality Considerations in the Welsh Government’s Budget**

Thank you for your letter of 28 November regarding the Communities, Equality and Local Government Committee’s Inquiry into Equality Considerations in the Welsh Government’s Budget and the Committee’s recommendations.

I am committed to ensuring that equality is considered in our decision-making within the Welsh Government, including our decisions surrounding the budget and funding. As you outline in your letter, our progress and performance in this area is improving each year and I believe our successes to date and the progress we have made so far, demonstrate the Welsh Government’s considerable commitment to equality in Wales.

This commitment is combined with a pledge to continue to strengthen and develop our equality expertise and improve our approach to assessing the equality impacts of our budgetary decisions. As such, I welcome your Inquiry and the recommendations that you have made. As you will be aware, the Equality and Human Rights Commission (EHRC) Wales has also undertaken an Appreciative Inquiry into our assessment of equality considerations when determining the budget, which was published on 27<sup>th</sup> November. I have asked my officials to work through these recommendations with me, along with the Committee’s recommendations.

It may help if I outline our position so far and recent developments we have made. One of your recommendations suggested a need for us to publish the Equality Impact Assessment (EIA) of the Draft Budget alongside the Draft Budget. For the 2013-14 Draft Budget, we

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published the EIA on 8<sup>th</sup> October; the assessment was published as a separate stand alone document to illustrate our commitment to be transparent in our equality considerations. This has been followed with an update of the changes made within the final Budget to those initial considerations and spending decisions; this illustrates that our assessments are a continual process, evolving over the lifetime of the spending decision.

As you mentioned, the Welsh Government Budget Advisory Group for Equality (BAGE) has been established and will meet in the New Year. This advisory forum will have a key role in supporting the continuous improvement of the Equality Impact Assessment of the Welsh Government's Budget.

I would like to take this opportunity to thank the Committee for their review.

Yours sincerely,

**Jane Hutt AC / AM**

Y Gweinidog Cyllid ac Arweinydd y Ty  
Minister for Finance and Leader of the House



