

Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 2 – Senedd

Meeting date:
9 December 2013

Meeting time:
13:30

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



For further information please contact:

Gareth Williams
Committee Clerk
029 2089 8008/8019
CLA.Committee@wales.gov.uk

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Negative Procedure: Date Made: 27 November 2013; Date Laid 29 November 2013; Coming into Force Date: 31 December 2013

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Agenda Item 2

Constitutional and Legislative Affairs Committee

CLA(4)-30-13: Paper 1

BACKGROUND INFORMATION ON STATUTORY INSTRUMENTS WITH CLEAR REPORTS

CLA334 – The Lydstep Haven Mussel Fishery Order 2013

Procedure: Negative

This Order confers on Pembrokeshire Seafarms Ltd (Company Number: 07587777) (“the Grantee”) a right of ‘several’ (exclusive) fishery for mussels (*Mytilus edulis*) over an area of approximately 168.4 hectares near Lydstep Haven, Pembrokeshire for a period of 15 years starting on 13 December 2013.

CLA335 – The Public Audit (Wales) Act 2013 (Consequential Amendments) Order 2014

Procedure: Affirmative

This Order amends section 145B of the Government of Wales Act 1998 by removing references to the staff of the Auditor General for Wales. The Order also amends section 68 of, and Schedule 3 to the Public Audit (Wales) Act 2004 to substitute references to the Wales Audit Office for references to the Auditor General for Wales.

CLA336 – The Food Safety, Food Hygiene and Official Controls (Sprouting Seeds) (Wales) Regulations 2013

Procedure: Negative

These) provide for the enforcement in Wales of Commission Regulations 208/2013, 209/2013, 210/2013 and 211/2013, which establish measures for control for the safe supply of sprouted seeds and seeds for sprouting.

The objective of the Regulations is to ensure public health protection through the introduction of specific hygiene controls for sprouts and seeds for the sprouting sector and corresponding enforcement.

Agenda Item 3

STATUTORY INSTRUMENT CONSENT MEMORANDUM

THE LEGISLATIVE REFORM (PAYMENTS BY PARISH COUNCILS, COMMUNITY COUNCILS AND CHARTER TRUSTEES) ORDER 2013

1. This Statutory Instrument Consent Memorandum is laid under Standing Order (“SO”) 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the National Assembly for Wales (“Assembly”) if a UK Statutory Instrument makes provision in relation to Wales amending primary legislation within the legislative competence of the Assembly.
2. The Legislative Reform (Payments by Parish Councils, Community Councils and Charter Trustees) Order 2013 was laid in draft before Parliament on 11 November 2013 and before the Assembly on 12 November. The order can be found at:

[The Legislative Reform \(Payments by Parish Councils, Community Councils and Charter Trustees\) Order 2013](#)

3. Section 11 of the Legislative and Regulatory Reform Act 2006 (LRRRA 2006) provides that an Order cannot contain provision which is within the legislative competence of the National Assembly, unless the Assembly agrees to it.
4. Section 1 of the LRRRA 2006 enables provision to be made for the purpose of removing or reducing burdens resulting directly or indirectly for any person from any legislation. For the purposes of section 1 “burden” means a financial cost, an administrative inconvenience, an obstacle to efficiency, productivity or profitability or a sanction, criminal or otherwise, which affects the carrying on of any lawful activity.

Summary of the Order and its objective

5. The objective of the Order is to remove an outdated burden on the affected bodies. The Order would remove the requirement for every cheque or other order for the payment of money by a parish and community council to be signed by two members of the council – the “two signature rule”. With the advent of electronic banking this requirement is considered out-dated.
6. The Order would remove the unnecessary burden on parish and community councils and chartered trusts and facilitate the use of modern methods of banking for payments such as electronic banking to ensure financial management is adequate and effective whilst maintaining sound financial control.
7. The Order applies in relation to England and Wales.

Provision to be made by the Order for which consent is sought

8. Article 2 – repeals subsection (5) of section 150 of the Local Government Act 1972 (“the 1972 Act”). This will remove the requirement for every cheque or other order for the payment of money by a parish or community council to be signed by two members of the council. The Order also removes a similar requirement for every cheque or other order for payment of money by charter trustees to be signed by two charter trustees.
9. It is the view of the Welsh Government that the requirement of signing cheques currently provided for within section 150(5) of the 1972 Act falls within the legislative competence of the National Assembly for Wales as set out under the local government subject heading and in particular in relation to the “powers and duties of local authorities and their members and officers” under Part 1 of Schedule 7 to the Government of Wales Act 2006.

Advantages of utilising this Legislative Reform Order

10. There is no appropriate legislative vehicle for the National Assembly for Wales (NAW) to make a similar provision. Section 1 of the Legislative and Regulatory Reform Act 2006, in accordance with which this Order is made, provides that a Minister of the Crown may make provision the purpose of which is to remove or reduce any burden resulting from any legislation, which specifically includes Acts of Parliament and Measures and Acts of the Assembly. Section 11 of that Act specifically envisages such an Order to include provision within the legislative competence of the Assembly, but only with the agreement of the Assembly. Therefore it is considered appropriate for the Order to apply in relation to England and to Wales.
11. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this Order as it represents the most appropriate and proportionate legislative vehicle to enable these provisions to apply in Wales at the earliest opportunity and ensure consistency in the provisions applied to parish and community councils and charter trustees across England and Wales so that a burden on all these bodies is removed.
12. For parish and community councils the benefits would include the simplification of financial transactions, saving time and would make electronic payment easier, thus allowing access to discounts for electronic payment and avoiding bank charges associated with previous payment methods.
13. Larger councils would be able to adopt a tiered approach to payment control that would make better use of members’ time and improve

control. At present such an arrangement is unlikely to be consistent with section 150(5).

14. If the Order is made, guidance will be provided to the affected bodies in the Practitioners Guide prepared and published jointly by One Voice Wales and Society of Local Council Clerks and endorsed by the Wales Audit Office. This guidance will assist the councils to comply with their general statutory duties to make proper arrangements for their financial affairs and to have a sound system of internal control. This is considered to provide equal or better protection for public funds whilst permitting modern methods of payment and more efficient control procedures.
15. The Order would not prevent the present arrangements continuing if a parish or community council preferred to maintain the two signature rule. A robust framework to protect the councils' funds will be in place after the repeal.

Financial Implications

16. There are no anticipated financial implications for the Welsh Government.

Lesley Griffiths
Minister for Local Government and Government Business
November 2013

Draft Order laid before Parliament under section 14 of the Legislative and Regulatory Reform Act 2006 to which the Secretary of State has recommended that the negative resolution procedure under section 16 of that Act should apply

DRAFT STATUTORY INSTRUMENTS

2013 No.

REGULATORY REFORM, ENGLAND AND WALES

LOCAL GOVERNMENT, ENGLAND AND WALES

**The Legislative Reform (Payments by Parish Councils,
Community Councils and Charter Trustees) Order 2013**

Made - - - - 2013

Coming into force in accordance with article 1(c).

The Secretary of State for Communities and Local Government makes the following Order in exercise of the power conferred by section 1 of the Legislative and Regulatory Reform Act 2006(a).

For the purposes of section 3(1) of that Act, the Secretary of State considers that the conditions in section 3(2), where relevant, are satisfied.

Agreement to the making of the Order has been given by the National Assembly for Wales in accordance with section 11(1) of that Act(b).

The Secretary of State has consulted in accordance with section 13(1) of that Act.

The Secretary of State laid a draft of the Order and an explanatory document before Parliament in accordance with section 14(1) of that Act.

Pursuant to section 15 of that Act, the negative resolution procedure (within the meaning of Part 1 of that Act) applies in relation to the making of the Order.

Neither House of Parliament resolved within the 40-day period referred to in section 16(3) of that Act that the Secretary of State should not make the Order(c).

(a) 2006 c. 51.

(b) Section 11 was substituted by S.I. 2007/1388 article 3, Schedule 1, paragraphs 143 and 146.

(c) The expression “40-day period” is defined in section 16(7)(b) of the Legislative and Regulatory Reform Act 2006.

Citation, extent and commencement

1. This Order—

- (a) may be cited as the Legislative Reform (Payments by Parish Councils, Community Councils and Charter Trustees) Order 2013;
- (b) extends to England and Wales only; and
- (c) comes into force on the day after the day on which it is made.

Payment of money by parish and community councils

- 2. Omit subsection (5) of section 150 of the Local Government Act 1972(a).

Payment of money by charter trustees

- 3.—(1) Omit subsection (12) of section 246 of the Local Government Act 1972(b).
- (2) Omit paragraph (2) of regulation 15 of the Charter Trustee Regulations 1996(c).

Signed by authority of the Secretary of State for Communities and Local Government

Name
Parliamentary Under Secretary of State
Department for Communities and Local Government

Date

EXPLANATORY NOTE

(This note is not part of the Order)

This Order removes the requirement for every cheque or other order for the payment of money by a parish or community council to be signed by two members of the council. The Order also removes a similar requirement for every cheque or other order for payment of money by charter trustees to be signed by two charter trustees.

The Order is made under the provisions of the Legislative and Regulatory Reform Act 2006 (c. 51) and removes a burden on parish and community councils and charter trustees and facilitates the use of electronic means of payment.

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(a) 1972 c. 70; there have been amendments to section 150 which are not relevant to this Order.
(b) There have been amendments to section 246 which are not relevant to this Order.
(c) S.I. 1996/263, to which there are amendments not relevant to this Order.

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Department for
Communities and
Local Government

Reform of parish and community council payments law

The Legislative Reform (Payments by Parish
Councils, Community Councils and Charter Trustees)
Order 2013

Explanatory Document by the Department for
Communities and Local Government

Any enquiries regarding this document/publication should be sent to:

Department for Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 030 3444 0000

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Chapter 1

Introduction

- 1.1 Parish councils (and community councils in Wales) are subject to a statutory rule that all their cheques and other orders for the payment of money must be signed by two members of the council. This rule is a significant barrier to these councils using electronic means of payment, and the effect is to impose additional burdens and costs both on them and on the private firms and other public sector bodies they make payments to. The draft Order accompanying this explanatory document proposes the repeal of this rule. At the same time changes to the financial and audit framework for the councils will ensure that they maintain robust controls on payments as an integrated part of their overall financial control system. These changes are described in this document.
- 1.2 This explanatory document is laid before Parliament in accordance with section 14 of the Legislative and Regulatory Reform Act 2006 (“the 2006 Act”) together with the draft of the Legislative Reform (Payments by Parish Councils, Community Councils and Charter Trustees) Order 2013 (“the draft Order”) which we propose to make under section 1 of that Act. The purpose of the draft Order is to repeal sections 150(5) and 246(12) of the Local Government Act 1972 and to revoke regulation 15(2) of the Charter Trustees Regulations 1996.
- 1.3 The Government is satisfied that Ministerial duties have been met under the relevant sections of the 2006 Act. This includes that the order serves a purpose under section 1(2) of the 2006 Act, that the pre-conditions under section 3 of the 2006 Act have been met, and that the appropriate consultation has been carried out in accordance with section 13 of the 2006 Act.

Chapter 2

Background to the Order

Current arrangements

- 2.1 Parish councils (in England) and community councils (in Wales) provide the most local level of local government in the two countries. The exact number of parish councils is not known, but there are more than 9000 of them. There are 734 community councils in Wales. Parish and community councils do not cover all areas, but are mainly confined to rural parts and small towns.
- 2.2 Charter trustees have been established as part of local government reorganisations. They cover the areas of abolished local authorities which held a royal charter giving them the status of a city or borough where there was no successor body covering the same area as the abolished authority. There are currently charter trustees for 18 areas, all of them in England.

- 2.3 Section 150(5) of the Local Government Act 1972 provides as follows:

“Every cheque or other order for the payment of money by a parish or community council shall be signed by two members of the council.”

This provision reproduces requirements that have applied to parish councils since they were established by the Local Government Act 1894.

- 2.4 Three groups of charter trustees have been established since 1974. The first two are governed by the following provision:

“Every cheque or other order for the payment of money by charter trustees shall be signed by two of them.” (identical wording in section 246(12) of the Local Government Act 1972 and regulation 15(2) of the Charter Trustees Regulations 1996)

There are currently 13 sets of charter trustees subject to this requirement. The third group of charter trustees, established under the Local Government and Public Involvement in Health Act 2007, is not covered by the requirement.

- 2.5 Parish and community councils and charter trustees are subject to duties imposed by the Accounts and Audit Regulations made under audit legislation in England and Wales. In both countries these duties include requirements:

- to ensure financial management is adequate and effective
- to maintain a sound system of internal control

- to conduct an annual review of the system of internal control
- to publish with the annual accounts a statement reflecting the outcome of the annual review
- to have an adequate and effective internal audit of accounting records and the system of internal control.

2.6 These bodies are also subject to external audit.

The case for repeal

2.7 In the Government's view the "two signature rule" detailed in paragraphs 2.3 and 2.4 represents an unreasonable burden on the bodies it applies to, and should be removed. The case for removal turns on two specific burdens imposed by the rule:

- that it inhibits the use of electronic means of payment
- that it involves an unreasonable and unproductive use of members' time in the larger bodies..

Repeal or revocation of the legislative provisions would not prevent any of the bodies from requiring two member signatures on their cheques; indeed, many are likely to do so as a part of the controls they incorporate in their payment procedures.

2.8 Electronic methods are now the predominate way of making non-cash payments. Figures for United Kingdom payments published by the Payments Council show that cheques accounted for 7% of non-cash payments in 2010; credit cards, debit cards and automated transfers accounted for the rest. Electronic methods are generally cheaper and quicker, and evidence submitted in the consultation responses shows that businesses and other public bodies that parish and community councils deal with are increasingly either refusing to take cheques or discouraging their use by, for example, allowing discounts on electronic payments. HM Revenue and Customs has had to make special arrangements for receiving payments from bodies covered by the two signature rule, which involves the affected bodies paying at a bank.

2.9 Some banks do make available methods of authorising electronic payments involving two electronic signatures, but these facilities are not generally available and may be difficult for the smaller bodies to operate because of the access required to computer facilities. Some of the consultation responses have described the "work-arounds" used by councils to make electronic payments. These often involve the use of the council clerk's personal credit or debit cards to make a payment. This is an unreasonable imposition on an employee, and can also attract unwarranted suspicion when the reimbursement payments to the clerk are listed in the council's payment disclosures.

2.10 Figures for 2010-11 suggest that in the region of 50 parish councils in England spend more than £1 million a year. For them and other larger bodies the requirement that every payment must be signed by two

members represents a significant commitment of time that might otherwise be spent more usefully. Also, where large numbers of items have to be signed at one time, the effectiveness of the check provided is likely to be reduced. No exceptions are permitted by the current rule, and so a tiered system, allowing for example smaller payments to be authorised by the clerk, is not possible.

- 2.11 In addition to the specific burdens described in the paragraphs above there is a more fundamental objection to the imposition of the two signature rule as a statutory requirement. The process of procuring goods and services by any organisation involves a number of financial procedures, including budgeting, seeking quotations, authorising purchase, checking receipt, making payment and reconciling bank statements. Controls are required at each of these stages, which together provide the sound internal control system required by the Accounts and Audit Regulations. The same principle applies to other transactions that result in payments, such as employing staff, making grants and paying taxes. To pick out one stage in the process and specify one particular form of control detracts from the responsibility placed on the body by the Accounts and Audit Regulations to devise a sound system of control appropriate to its own circumstances and the types of transactions it enters into. There is a risk that, because it has a statutory basis, it is regarded as a sufficient control, and, as a result, bodies do not fully address the comprehensive system of controls that is needed to provide adequate security for their funds.

Payment controls after the repeal

- 2.12 If the order is made as drafted the affected bodies will be responsible for devising controls over their payments within the framework set by:
- the continuing requirements of the Accounts and Audit Regulations in England and Wales outlined in paragraph 2.5
 - new guidance on payments issued by the local council sector
 - the annual return made for the purposes of the external audit.
- 2.13 In England the Joint Practitioners Advisory Group is responsible for preparing “Governance and Accountability for Local Councils: A Practitioners’ Guide”, which provides guidance on the financial accountability framework for parish councils. The Guide is freely available to all on the website of the National Association of Local Councils. The Advisory Group comprises members of organisations representative of local bodies (including parish councils) and their clerks, audit authorities, accountancy institutes and government departments. The Group has recently published a new section for the Guide giving guidance on payments procedures, which they intend to incorporate in the Guide in the event of section 150(5) of the 1972 Act being repealed. This is available on the National Association’s website at:
http://www.nalc.gov.uk/Latest_News/Governance_and_Accountability_2010.aspx

- 2.14 In Wales a similar Guide is published jointly by One Voice Wales and the Society of Local Council Clerks, and is freely available to all on the former's website at:

<http://www.onevoicewales.org.uk/practitioners-guide/practioners-guide/>

In preparing the Guide these bodies consult the Local Councils Audit Liaison Group, which was established by the Auditor General for Wales in 2007 and includes representatives of community councils and their clerks, the Auditor General, audit firms and the Welsh Government. A new section on payments, the same in substance as the English guidance, has been incorporated in the Guide (currently with a note reminding councils that section 150(5) of the 1972 Act remains in force).

- 2.15 The new payments guidance sets out the key principles that must govern a payments system without attempting to specify every detail. This is consistent with the duty placed on parish and community councils by the Accounts and Audit Regulations outlined in paragraph 2.11. The guidance for both countries makes provision for the transition from the current framework with the provision that "Councils must not relinquish the 'two member signatures' control over cheques and other orders for payment until they have put in place safe and efficient arrangements in accordance with this guidance."
- 2.16 Parish and community councils are subject to external audit by an auditor appointed by the Audit Commission or the Auditor General for Wales. In both countries almost all local councils fall within a limited assurance framework, which involves the completion of an annual return set out in the two guides mentioned in paragraphs 2.13 and 2.14 above. The annual return, in addition to accounting statements, includes:
- an Annual Governance Statement, which must be approved by the full council, and requires confirmation that key aspects of internal control have been complied with during the year; and
 - an annual internal audit report, to be signed by the person performing the internal audit function during the year, and stating whether assurance has been obtained on a list of key internal control objectives.
- 2.17 If the order is made, these sections of the return will be amended so that they require confirmation that the mandatory elements of the Practitioners Guides (including those in the new payments guidance) have been complied with. This will provide an annual check on compliance. This, taken with the new payments guidance and the duties under the Accounts and Audit Regulations, will in the Government's view provide a robust control framework for payments by the councils. Note that in Wales, because of a lower threshold for the limited assurance framework, a handful of community councils are subject instead to a full annual external audit.

- 2.18 In both countries proposals to reform the external audit framework for local government are being pursued, but in both the limited assurance framework is likely to continue. In England consultations have indicated support for the framework, and the Local Audit and Accountability Bill, currently before the House of Commons, provides for it to continue. The proposals include an annual turnover threshold of £25,000 below which a parish council would not be subject to an automatic external audit. But such councils would still be required to publish an Annual Governance Statement and an annual internal audit report, and an external audit could be triggered in certain circumstances.
- 2.19 Charter trustees are subject to the same duties as parish councils under the English Accounts and Audit Regulations, and come under the limited assurance framework for external audit. They will therefore be expected to confirm that they have followed the new payments guidance in the same way as if they were a parish council.

Chapter 3

The Order

Power to remove burden under section 1 of the 2006 Act

- 3.1 The Government is committed to removing outdated and cumbersome controls on public bodies. The purpose of the Order is to remove one such control on the most local level of local government in England and Wales. The Order is therefore made under section 1 of the 2006 Act. The “two signature rule” places burdens not only on the parish and community councils and charter trustees who must apply it, but also on the small and large private sector organisations and other public bodies with which they have financial dealings.
- 3.2 Further detail of the burdens imposed by the rule is given in chapter 4 of this document.

Compliance with conditions in section 3 of the 2006 Act

Non-legislative solutions

- 3.3 The Minister is satisfied that no non-legislative solution is possible. Sections 150(5) and 246(12) of the 1972 Act can only be removed by other primary legislation or by a Legislative Reform Order. While regulation 15(2) of the Charter Trustee Regulations 1996 could be revoked using other powers, it would not make sense to make that change in a separate instrument. It is desirable to make all the changes together in the same instrument.

Proportionality

- 3.4 Only the specific provisions that create the barrier to using modern payment methods and proportionate controls are being removed. All the other components of the legal framework for the finances of the affected bodies remain in place. The Minister therefore considers the proposal proportionate to the problem it is addressing.

Fair balance

- 3.5 It is not expected that any individual will be adversely affected. The Order does not stop the present arrangements continuing if a parish or community council prefers to maintain the two signature rule. A robust framework to protect the councils' funds will be in place after the repeal. The Minister therefore considers that the Order meets the requirement to strike a fair balance between the public interest and the interests of any person adversely affected by it.

Necessary protection

- 3.6 The Minister considers that the proposals maintain necessary protection by bringing payment procedures within the same control framework as applies to all other aspects of the bodies' financial procedures. In addition, as outlined in paragraphs 2.12 to 2.21, specific guidance will be given by the sector on effective payment procedures, and compliance with that guidance will receive specific attention in the year end accounting and audit processes.

Rights and freedoms

- 3.7 The Minister does not believe that the proposal will prevent anyone from exercising an existing right or freedom.

Constitutional significance

- 3.8 The Minister does not believe that the proposal is constitutionally significant.

Other Ministerial duties under the 2006 Act

Consultation

- 3.9 The Minister conducted an eight week consultation exercise on the proposal between July and September 2012 and is satisfied that the consultation met the requirements of section 13 of the 2006 Act. More details of the consultation and the responses received are set out in chapter 4.

Parliamentary procedure

- 3.10 The Minister recommends that the draft Order should be considered by Parliament under the negative resolution procedure in accordance with section 16 of the 2006 Act. The Order proposes a low key and straightforward reform which does not introduce any new controls. It does not reverse any decisions recently taken by Parliament, but simply responds to developments in technology that make a nineteenth century provision inappropriate for the twenty first century. It has been requested by the local council sector and is a high priority for them.

Compatibility with the European Convention on Human Rights

- 3.11 The Minister does not believe that the repeals proposed by the draft Order would prejudice any of the rights and freedoms protected by the European Convention on Human Rights.

Compatibility with the legal obligations arising from membership of the European Union

- 3.12 The Minister is satisfied that the proposals are compatible with the legal obligations arising from membership of the European Union.

Territorial extent

- 3.13 The draft Order extends to England and Wales. The Government is satisfied it has no implications for the devolved administrations in Scotland and Northern Ireland.
- 3.14 The Order does not affect the functions of Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Government in a way that would require the agreement of Welsh Ministers under section 11(2) of the 2006 Act or require them to be consulted under section 13(1)(c). Nevertheless officials of the Welsh Assembly Government have been kept informed throughout the development of the proposals, and the Welsh Minister for Social Justice and Local Government has written to the Parliamentary Under Secretary of State in this Department to confirm his support for the making of the Order.
- 3.15 The Order, however, is within the legislative competence of the Welsh Assembly, and will therefore require the agreement of the Assembly under section 11(1) of the 2006 Act. A motion to provide the necessary agreement will be tabled at the appropriate point after the draft Order has been laid in Parliament.

Binding the Crown

- 3.16 The Minister is satisfied that the proposed repeals and revocation will not bind the Crown.

Chapter 4

Consultation

- 4.1 Proposals have been put forward to remove or modify the “two signature rule” since at least the year 2000. The current proposal has its origin in a letter from the Minister of Housing and Local Government to the Chairman of the National Association of Local Councils dated 21 July 2010. The letter asked whether officials of the Association might assist in the preparation of a draft order, including the drafting of guidance to be added to the Practitioners’ Guide. The Chairman responded on the same day accepting the invitation to assist. Following meetings between the Department, the Association and other interested parties, the Minister announced the intention to change the law on 9 October 2010, and this announcement was included in a written ministerial statement on 11 October (Hansard, 11 October 2010, Column 2WS). The letter indicating the support of the Welsh Assembly Government (see paragraph 3.14) was sent on 8 October. Preparation of the new guidance was then taken forward.
- 4.2 A formal consultation on the proposal was initiated by the publication of a consultation paper on 17 July 2012. The consultation period ran for eight weeks, ending on 11 September. A list of those to whom the paper was sent is attached at Annex A, though the paper made clear that others were welcome to submit responses. Notification of publication of the paper was also sent to the House of Commons Regulatory Reform Committee and the House of Lords Delegated Powers and Regulatory Reform Committee. Some responses were received after 11 September, all of which have been considered and are included in the analysis below.
- 4.3 A total of 503 responses were received. An analysis of those replying is given in Table 1 on the next page. The national bodies replying were:
- | | |
|-----------------|--|
| England | - National Association of Local Councils
- Audit Commission
- Joint Practitioners Advisory Group |
| Wales | - One Voice Wales
- Auditor General for Wales |
| England & Wales | - Society of Local Council Clerks
- Chartered Institute of Public Finance and Accountancy |

Table 1 - Responses to consultation

	England	Wales	England & Wales	Total
National Bodies	3	2	2	7
County Associations	16	0	0	16
Parish/Community Councils	376	64	0	440
Personal or Other	39	1	0	40
Total	434	67	2	503

- 4.4 The reference to county associations in Table 1 is to the county associations of the National Association of Local Councils. Note that parish councils are sometimes designated town, village, community, neighbourhood or city councils, but remain parish councils for the purposes of section 150(5). Similarly some community councils in Wales are designated town councils.

The policy proposal

- 4.5 Of the 503 responses, 394 (78.3 per cent) supported the removal of the two signature rule from legislation, 86 (17.1 per cent) were opposed, and 23 (4.6 per cent) either did not answer or were not entirely for or against. An analysis of the answers is given in Table 2. Points to note from this analysis are:
- six of the seven national bodies supported the proposal. The exception was the Joint Practitioners Advisory Group, which provided a factual commentary on the proposal, but left formal responses to the questions to its members.
 - 15 of the 16 county associations in England supported the move. The one that did not (Yorkshire) did not oppose, but was of the view that councils that did not use electronic means of payment should remain subject to the two signature rule.
 - The level of support among parish councils was higher than for community councils (82 per cent as against 59 per cent of those responding), but a clear majority of responses supported in both countries.

Table 2 – Response to policy proposal question

Do you agree that the two signature rule for parish and community councils and charter trustees should be removed from legislation?

	<u>Yes</u>	<u>No</u>	<u>No Response</u>
England			
National Bodies	2	0	1
County Associations	15	0	1
Parish Councils	309	54	13
Personal or Other	25	10	4
Sub total	351	64	19
Wales			
National Bodies	2	0	0
Community Councils	38	22	4
Personal or Other	1	0	0
Sub total	41	22	4
England & Wales			
National Bodies	2	0	0
Total	394	86	23

4.6 The main points made by those opposing the Order are set out later in this chapter, together with the Government's observations on them. Evidence given in support of the Order is summarised in the next section.

Evidence in support of the reform

- 4.7 Because of the large number of parish and community councils and the wide variety of their sizes and circumstances it has been difficult to gather evidence on the effect of removing the two signature rule. A request was therefore included in the consultation paper for evidence on the reduction of the burdens and other benefits claimed for the reform.
- 4.8 149 of the responses provided evidence. They included specific instances of the practical problems created by the rule. The following points are typical of those commonly referred to:
- The difficulty of purchasing certain items, such as anti-virus software, in some cases involving journeys to buy a new product when, with electronic payment, an update could have been downloaded online. Some items, such website domain names and Land Registry online searches, must be paid for electronically.
 - Loss of discounts available for online purchase, or inability to claim discount for rapid payment because of delays in cheque signing and postal payment.
 - Use of personal credit cards of staff, and increasing reluctance of staff to agree to this because of the suspicions created by the frequent appearance of their name in published payment lists. Use of personal credit cards can also complicate the reclaim by a council of VAT from HM Revenue and Customs.
 - Special pleading required to persuade some suppliers to accept payment by cheque.
 - Concern at delays in payments to small local suppliers, and consequent cash flow effects, because the time taken to get signatures on cheques.
 - The time and expense involved in members coming in to sign cheques, in particular at the larger councils.
 - The general effect on the credibility of parish and community councils as business-like bodies.
- 4.9 Two very specific responses help to illustrate the problems. The clerk to the council of one small parish commented as follows:
- “The parish council comprises voluntary clerk (myself), Chairman and councillors. The majority of the councillors have full time jobs and either work/live in London during the week or travel the world as part of their job role. Consequently, finding second signatories available is difficult, even with several nominated. The councillors are distributed through the two villages that comprise the parish requiring cycling (weather permitting) or use of car (in inclement weather) to obtain signatures. This inevitably leads to delays in payments being made. As the council endeavours to use local craftsmen/suppliers, it feels that this puts an additional burden on their financial position in a time of economic hardship. Use of electronic transactions also reduces the burden on the parish council/rate payers through avoidance of stationery/postage.”

The chair of another council commented as follows on the payment arrangements for telephone services:

“We have been subjected to []’s policy of imposing a totally disproportionate “Payment Processing Fee” (effectively a fine) of £9 per bill (regardless of the bill total) for paying by cheque. This amounts to over £100 per year in our case – a significant sum for a small council. We expect the number of organisations imposing such penalties for paying by cheque to increase.”

The case against the reform

- 4.10 Table 2 shows that 86 responses (17.1 per cent) opposed the removal of the two signature rule. In some cases those opposing appeared to be under the impression that the proposal would prevent them requiring their council’s cheques to be signed by two members, and opposed for that reason. This is not the case, and the option for the council to continue to require two signatures will always be available.
- 4.11 Apart from that, there were two principal lines of argument against the reform:
- That the “two signature” requirement is an essential safeguard for public money, which should continue to be required by statute. This was often linked with the safeguard it provides to members and, particularly, the clerk against accusations of impropriety.
 - That removal of the requirement was unnecessary either because banks can or should be able to provide arrangements for dual authorisation of electronic payments, or because there were other ways of securing compliance with the rule.

These two arguments are discussed in the following paragraphs. For the reasons given in those paragraphs, no changes have been made to the proposals as a result of representations made in the responses.

Essential safeguard

- 4.12 The case for retention is that most parish and community councils are small organisations with only a clerk (often part-time) as staff. If the cheque book is held by the clerk the two signature rule requires the involvement of the clerk and two members in all payments. This is a safeguard against fraud and other inappropriate payments. The rule should be mandatory to prevent any party being able to persuade the council to agree different controls that would facilitate fraud. It is also a safeguard against, for example, the clerk being persuaded to become sole authoriser of payments, and as a result becoming vulnerable to accusations or suspicions of acting with impropriety.
- 4.13 The Government accepts that a requirement for two signatures is a valuable control over payments, and expects that it will often continue to form a part of the control framework for parish and community council

payments. But we do not agree that it should continue to be a statutory requirement. This is primarily for the reason given in paragraph 2.11 above. The Chartered Institute of Public Finance and Accountancy commented in its response to the consultation: "CIPFA believes that the two signature rule can lead to a false sense of security over the probity of payments. We believe that it is far more effective for payments to be considered as part of the overall system of internal control and for local councils to give consideration to these in the context of local circumstances and risks." The response of the Auditor General for Wales drew attention to recent audit reports and press comments on financial irregularities in councils in Wales: "A common theme for these councils has been the misuse of cheques involving the use of false signatures and/or council members pre-signing blank cheques. These practices undermine the statutory rule." These irregularities reinforce the message that the cheque signature rule is not a sufficient safeguard in itself.

- 4.14 Removal of the two signature rule from legislation will make clearer that it the responsibility of the council to devise and operate a sound and comprehensive system of internal control in accordance with its duty under the Accounts and Audit Regulations. The new guidance will be available to assist them, and the year end reporting arrangements will be amended to enhance independent scrutiny of the procedures adopted (see paragraphs 2.12 to 21 above)

Removal of the rule unnecessary

- 4.15 Some of the larger councils noted in their responses that their banking arrangements permitted dual authorisation of electronic payments. Some, though not all, of these councils argued that therefore the removal of the two signature rule was unnecessary, as it did not create a barrier to electronic payments. The Government accepts facilities for dual authorisation electronic payments are likely to become more widely available, and indeed the Payments Council has a current project to encourage such a move. These facilities will be a valuable addition to the control options available to councils. However, they will not always be convenient for councils to use, and their availability should not rule out other means of control for electronic payments involving single authorisation which councils may wish to adopt.
- 4.16 Other responses suggested other mechanisms by which electronic payments could be made in compliance with the two signature rule. Some of these turned on an ambiguity in the meaning of the words "or other order for the payment of money" in the statutory provision, as to whether it meant the document actually authorising payment, or an internal document giving authority to an officer to order the payment. This is a potentially useful means for authorising payments that could form part of a control system, but the Government would not want councils to have to rely on ambiguities in the meaning of the statutory provisions in devising their controls. In our view neither of the options outlined in this and the previous paragraph negates the fundamental reasons for wanting to remove the two signature rule from legislation outlined in paragraphs 2.11 and 4.13 and 14.

Removal of any necessary protection

- 4.17 The consultation paper asked whether the proposals removed any necessary protection. Of the 503 responses received, 295 (59 per cent) responded to this question. Of those 52 (18 per cent) said that a necessary protection was being removed, and 243 (82 per cent) that a necessary protection was not being removed. Some of those answering in the negative added that this was provided that adequate alternative safeguards were implemented, while some of those answering in the affirmative said that this could be offset by new controls. The issues raised by those who held that a necessary protection was being removed are covered in paragraphs 4.12 and 4.13 above.

Preconditions for a Legislative Reform Order

- 4.18 The consultation paper asked whether the proposal satisfied the preconditions for a Legislative Reform Order set out in section 3 of the 2006 Act and reproduced in Annex A to the paper. There were 275 responses to this question (55 per cent of the total responses), of which 265 (96 per cent) agreed and 10 (4 per cent) disagreed.

Parliamentary procedure

- 4.19 The consultation paper asked whether the negative Parliamentary resolution procedure should apply to the scrutiny of the proposal. There were 277 responses to this question (55 per cent of the total responses), of which 264 (95 per cent) agreed and 13 (5 per cent) disagreed. We have excluded from the figures for this question those who supported the negative procedure but opposed the substance of the proposals, as it did not seem appropriate to add to the support for the negative resolution procedure those who did not want an order to be made. Seven responses fell into this category.

Annex A

List of consultees

National Association of Local Councils

Association of Charter Trustees and Charter Town Councils

Audit Commission

British Bankers' Association

Chartered Institute of Public Finance and Accountancy

Payments Council

Society of Local Council Clerks

Wales:

Welsh Government

One Voice Wales

Wales Audit Office

Through the National Association of Local Councils the proposal was brought to the attention of that body's county associations and the parish councils that make up their membership. The Welsh Government brought the proposal to the attention of individual community councils in Wales.

Annex B

List of relevant statutes

Local Government Act 1894

Local Government Act 1972

Local Government Act 1992 (power to make Charter Trustees Regulations 1996, SI 1996 No 263)

Audit Commission Act 1998 (power to make Accounts and Audit (England) Regulations 2011, SI 2011 No 817)

Public Audit (Wales) Act 2004 (power to make Accounts and Audit (Wales) Regulations 2005, SI 2005 No 368)



Llywodraeth Cymru
Welsh Government



Cynulliad
Cenedlaethol
Cymru
National
Assembly for
Wales

Welsh delegation response to Future of Committee of the Regions debate

This submission is from the Welsh delegation to the Committee of the Regions ('CoR'):

Mick Antoniw AM
National Assembly for Wales

Councillor Bob Bright
Leader of Newport City Council

Rhodri Glyn Thomas AM
National Assembly for Wales

Councillor Chris Holley
Swansea City Council

It is fully supported by the Welsh Government.

Preamble

We welcome this opportunity presented by President Valcarcel to engage in this debate and we look forward to discussing the ideas presented with colleagues in a positive and engaging manner over the coming months.

After 20 years it is the right time to reflect on the role of the CoR within the EU. Substantive changes have taken place over this period in the EU in the dynamics and functioning of the EU Institutions, and further changes will take place in the coming years.

Similarly there have been significant changes within many Member States in the internal governance arrangements at the local and regional level, notably within the UK with the introduction of devolution from 1999 and the creation of legislative assemblies/parliaments and governments in Wales, Northern Ireland and Scotland.

The CoR must adapt and reform in light of these forces.

Point 1: Core role and added value

The core role of the CoR is to represent the interests of local and regional authorities (LRAs) in the EU policy and law-making processes in a timely, relevant and effective way.

It is the only 'institution' in the EU that provides a formal voice for LRAs in the EU decision-making process', and as such it should in principle occupy an important place in making the EU democratically accountable and legitimate.

There are weaknesses in its internal rules, structures and functioning that prohibit this. There are also weaknesses in its formal position in the EU decision-making processes that need to be addressed if it is to have a meaningful role to play in shaping policy and legislation.

Point 2: Clarity on the main elements of this core role

In fulfilling this role the CoR should primarily focus on:

- **Influencing EU policy and legislation in the formulation stage:** delivered through 'outlook' or 'own-initiative' opinions

The added value through early engagement is:

- Seeing off potential threats from new policy developments to the regional level, including any potential subsidiarity concerns ('nipping in the bud')
- Ensuring strong evidence base at regional level informs proposals coming out of the EU ('informed policy')
- Scope to influence opinion in the European Parliament

- **Participating actively in the EU legislative process:** preparing 'legislative' opinions in response to draft proposals published by the European Commission

The added value of involvement in the legislative process is:

- championing key local and regional concerns, and giving visibility to these in the European Parliament's discussions in particular

- **Defending the rights of 'subsidiarity' of LRAs:** as set out in the Treaty of Lisbon the right to take the EU Institutions to the European Court of Justice for legislation adopted which is considered to infringe 'subsidiarity'.

Point 3: Adoption of opinions is core function and should be maximised

Given the core role of the CoR is to adopt opinions/resolutions we do not support any moves to reduce the number of opinions adopted by the CoR.

On the contrary, every effort should be undertaken to ensure the CoR gives a view on all dossiers of interest to local and regional authorities.

Point 4: Refocusing the formal business of the CoR towards effective lobbying/influencing of decision-making

There needs to be a 'seismic' shift in the way 'opinions' are drafted, presented and subsequently used by the CoR in the EU decision-making process.

¹ The exception to this is the role played by the regional governments of Belgium

At present the endgame is to adopt an opinion at a Plenary Session which sets out the view of the CoR. These opinions are primarily ‘passive’ documents, and there is no systemic approach in place to promote the key messages beyond contributions at conferences or events in Brussels or elsewhere.

The EU decision-making process in contrast is dynamic. To have any chance of influence the CoR focus needs to be shifted towards adopting ‘dynamic’ opinions, with clearly identified ‘outputs’ and ‘messages’, and lobbying the main EU Institutions, in particular the European Parliament and European Commission for these to be taken on board.

For ‘legislative opinions’ the CoR should adopt ‘negotiating mandates’ empowering the rapporteur to ‘lobby’ the EU Institutions on a number of key concerns.

For ‘outlook opinions’ similarly there needs to be a more active follow up to adoption at plenary, with focused lobbying of the European Commission and the European Parliament (and Council as relevant) to highlight the key concerns of LRAs, and to seek for these to be addressed in any future policy/legislative proposals.

Point 5: Ensuring high quality, evidence-based reports

A pre-requisite of effectively fulfilling the role described above is the preparation of high quality, relevant and evidence-based opinions by the CoR.

At present the quality is variable, with much hinging on the quality of the rapporteur and the expert, as well as availability of evidence of the impact of EU policies at the LRA level.

There is no dedicated ‘Research Service’ function within the CoR to support preparation of opinions. Such a function could provide a ‘quality’ control to the preparation of opinions, through provision of more structured support to the rapporteur and expert.

Point 6: Working effectively in partnership with other bodies...

The CoR has established good relationships with a number of the European Commission DGs (notably DG Regional Policy), and other bodies such as the OECD, European Investment Bank, and a range of EU networks.

These links can and should be developed further to ensure informed decision-making.

The CoR needs to be less ‘territorial’ when dealing with the EU networks (many of which include LRAs in their membership). Many of these EU networks undertake evaluation and monitoring of the implementation of EU policy and legislation on the ground, and seek to influence European Commission thinking through this work. The CoR should not seek to replicate or replace this role, but instead should more systematically draw upon such information to inform its own ‘political’ opinions/resolutions.

One area where the CoR can add value is through commissioning studies/research to ensure valid comparative data is available and research undertaken of the impact on LRAs of EU policies and legislation. This can be undertaken in partnership with organisations like the OECD as well as the European Commission, and use can be made of the many excellent universities in Europe’s regions and cities to carry out this work.

Point 7: Responsibilities of members to report back to their local/regional authorities

The CoR members can and should be an invaluable source of information on the impact of EU policy proposals on the ground.

A much stronger emphasis should be placed by the CoR on the responsibilities of individual members to demonstrate a two-way flow of information with their own local and regional authorities.

A pre-requisite to the CoR having democratic legitimacy is that it be comprised of elected representatives from LRAs who are able to represent, defend and act on behalf of interests at the sub-Member State level.

Point 8: Diversity a challenge requiring some special status

There is enormous diversity in the layers of governance that exist at LRA level across the EU. This presents a challenge for the CoR in adequately representing these interests in its decision-making processes, taking account of democratic mandates, and respecting formal structures of decision-making with Member States.

The current system does not give sufficient status or importance to regional legislative assemblies or parliaments (of which there are 74 within eight of the EU Member States).

CALRE (and potentially also REGLEG) should have representation on the political bureau of the CoR, and there should be formal channels through which regional parliaments and governments can exert influence to ensure the political opinions and statements of the CoR adequately represent their interests and concerns, including on matters of subsidiarity.

Point 9: Strong role for political groups

We strongly support the role of political groups within the CoR to retain the primary control over decisions regarding selection of rapporteurs. It is essential that there is co-operation at LRA level by representatives from different parts of Europe, and the political groups provide the most appropriate way of doing this.

Point 10: Not a brand, not an empire

The CoR is a well established name within Brussels and across the EU so we would not support changing its name.

We would like to see a shift in approach in the CoR communications strategy away from seeking to promote itself as a 'brand' across the EU (and beyond). Instead its focus should be to support activities of CoR members in their constituencies that promote engagement and discussion on EU policy and legislative developments of relevance.

Point 11: Engagement beyond the EU...

The CoR does have a role to play in building links with non-EU countries, in particular those countries bordering the EU. This work needs to be focused, and should not be to the detriment of the CoRs' primary role in the EU decision-making processes.

Such engagement also needs to be sensitive to and where appropriate undertaken in

collaboration with other bodies active in this area, such as the Council of Europe's Congress of Local and Regional Authorities.

Point 12: Efficiency and cost-savings

Given the pressures on budget and austerity measures there is merit in exploring scope for efficiency savings within the various support functions in the CoR.

This could include: (i) exploring scope to share support services with the other EU Institutions, provided this does not compromise the CoRs' ability to deliver on its 'core' political role; (ii) reducing the number of CoR meetings held outside Brussels; and (iii) making savings through a reconfiguration of the internal structures in the CoR, including introduction of new support functions as suggested in this paper.

Point 13: Mandate for change

In order to deliver real change the CoR should give a mandate to the new Secretary General to drive forward the agreed reform agenda.

This means the review of the future must be adopted as a resolution of the CoR at full plenary, agreeing the core vision for a change agenda, and the parameters for the Secretary General to work in.

Point 14: Second chamber of the European Parliament

A longer term goal of the CoR could be to become a third legislative institution of the EU as a second chamber of the European Parliament, focused on defending and representing interests at the sub-Member State level. Such a change would require a radical rethinking around the way in which CoR members are appointed, the functions they undertake, the role and relevance (if at all) of national delegations, and the relationships between political groups between the two chambers. It would also require the question of representation from the sub-Member State level across the EU to be addressed more fundamentally.

Such a debate must be part of any future Convention established in the context of Treaty Reform. Wales is ready to be an active player in these discussions.

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