

Communities, Equality and Local Government Committee

Meeting Venue:
Committee Room 2 – Senedd

Meeting date:
Thursday, 12 March 2015

Meeting time:
09.00

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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Agenda

Private pre-meeting (9.00 – 9.15)

1 Introductions, apologies and substitutions

2 Local Government (Wales) Bill: evidence session 5 – Local Democracy and Boundary Commission for Wales (9.15 – 10.15) (Pages 1 – 28)

Local Democracy and Boundary Commission for Wales

Owen Watkin, Chair

Steve Halsall, Chief Executive

Break (10.15 – 10.30)

3 Local Government (Wales) Bill: evidence session 6 – Auditor General for Wales (10.30 – 11.30) (Pages 29 – 33)

Huw Vaughan Thomas, Auditor General for Wales

4 Motion under Standing Order 17.42 (vi) to resolve to exclude the public from the remainder of the meeting and from the whole of the meeting on 18 March 2015 (Renting Homes (Wales) Bill Stakeholder event)

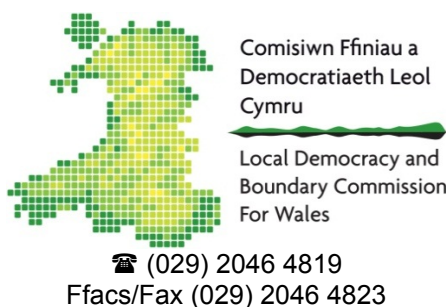
5 Local Government (Wales) Bill: discussion of evidence received in sessions 5 and 6 (11.30 – 11.45)

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Mrs Christine Chapman AM
Chair
Communities, Equality and Local Government Committee
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25 February 2014

Dear Chair

Local Government (Wales) Bill: Written Evidence

Thank you for the opportunity to provide the Commission's views on the Local Government (Wales) Bill and its role in delivering recommendations for new electoral arrangements to Welsh Government for proposed new principal councils.

After careful consideration, the Commission believes there are areas where legislative provision could be made to enable the Commission to effectively consider and make recommendations for electoral arrangements for the new authorities. There are also more general issues to the Commission which it believes it should raise at this juncture; none more important than the issue of timing for when the Commission will be enabled to conduct the reviews.

Reviewing the new authorities will be more complex and resource intensive than the reviews planned under the previous ten-year review programme. The Commission wishes to work with Welsh Government to identify the level of resources required to undertake the programme of work within the timescales required and to achieve appropriate outcome in terms of the quality of the recommendations submitted to Welsh Ministers.

This response has been split into sections reflecting the Committee's terms of reference:

1. The general principles of the Local Government (Wales) Bill and the need for legislation.

In a general sense, the proposal to reform the structure of local government in Wales is not an issue for the Commission to consider and it will acknowledge the decisions of Ministers and the National Assembly in this regard. With respect to the Bill now under consideration, the Commission welcomes its proposals, especially the power for the Minister to direct the Commission to undertake the initial reviews of proposed principal councils.

2. Potential Barriers to Implementation and whether the Bill takes account of them.

The Commission is of the view that the essential matters for enabling progress to be concern resolving issues that would prevent the Commission from having sufficient time made to undertake the initial reviews and to provide clarity with regard to essential issues. The resolution of some of these issues lie in the Bill and others in executive action that would complement the Bill. They can be identified as follows:

1. Bill provisions.

The Commission welcomes specific measures that enable progress to be made.

- The Commission currently is not empowered to review proposed principal councils; Section 16(1) empowers the Minister to direct the Commission to undertake initial reviews; the use of that power would enable the review process to commence at an early date.
- The provision enabling the Commission to start the process of initial reviews on the day on which Royal Assent is received Section 41(2). Action would be subject to the issue of the Direction by the Minister.
- Amendments of the Local Government (Democracy) (Wales) Act 2013: the removal of the 'Pre-election period' as this will assist in the timeliness of the period available for the review process, and the power to re-start the 10 year programme following the completion of the round of initial reviews.

The Commission, however, has reservations concerning the following and respectfully requests that consideration be given to changing the provisions of the Bill as introduced in the areas indicated:

- Review: Initial Consultation.

The Commission believes consideration should be given to Section 20 with regard to consultations on a initial review before the draft proposals are published. The procedure for carrying out initial reviews as set out in the Bill requires firstly consultation on the Commission's proposed Policy and Practice for undertaking reviews, followed by the notification of a review and an initial consultation period, the publishing of a draft proposals report, a week's pause, a further consultation period (6 to 12 weeks) and the submission and publication of a final proposals report.

The Commission recognises that in the ordinary course of a ten year electoral review programme that this process is entirely appropriate. However, in the case of this special programme of initial reviews, and the tight timescales the Commission is likely to be given, that an exception should be made to allow the Commission to complete its activities in a timely fashion.

The Commission's experience of previous electoral reviews is that 60% of the representations received at the initial consultation stage are requests to maintain the existing arrangements. The programme of electoral reviews of the new merged authorities as envisaged will inevitably result in proposals for electoral arrangements that vary fundamentally from the existing arrangements. In anticipation of these changes the numbers of representations received during the initial consultation that call for maintaining the existing arrangements are likely to be even greater than under previous reviews. It is the Commission's view that such representations would not add value to the review process.

In terms of undertaking a review, the requirement of an initial consultation is of concern to the Commission because the processing of representations is resource and officer intensive. All representations must be logged and acknowledged, summarised for the report, considered and included in proposals' summaries. Schemes for electoral arrangements cannot effectively be considered until after the representations period finishes. This problem is exacerbated by the majority of representations being received at end of the consultation period. The time required for the initial stage of a review is therefore not just the number of weeks of the consultation period but several more weeks for the processing and consideration of the representations.

The Commission has noted that the procedures for parliamentary reviews carried out by the Boundary Commission for Wales (under the PVSC Act 2011) do not require an initial consultation stage. This allows the Boundary Commission for Wales to take an initial independent objective view of arrangements.

In conducting the programme of reviews envisioned in the Bill, the Commission's policies and procedures for the initial reviews will be published and widely circulated before the start of the programme of initial reviews. It is intended that the policies and procedures document will include a timetable and details of the proposed numbers of councillors for the new local authorities. Prior to the start of each review the Commission will hold meetings with the officers of the local authorities and make presentations explaining the review process to the Council Members and also to the Community Councils in the area under review. In this way all those with an interest in a particular review will have had the opportunity to understand the review processes and procedures and will have been encouraged to participate in the review. If a significantly truncated period of time is provided in order to conduct reviews the removal of this provision could prove critical to the Commission.

In conclusion therefore, the Commission requests that, for this particular programme of initial reviews under this piece of legislation, consideration be given to removing the requirement to undertake this initial consultation period (Section 20(1)(a)).

- Difference between Eligible Population and Registered Electorate.

The Bill requires the Commission to take into account any discrepancy between the number of electors on the registers and those eligible to vote. These statistics, to the level of detail and accuracy that the Commission require, do not exist at present.

Population data is only accurately held in the year of the Census. All other population statistics are estimates which are corrected, after the fact, by the following Census.

Details of population estimates below electoral ward level are not available at community or community ward level in Wales. The Lower Super Output Areas (LSOAs) which are the smallest units which the Office of National Statistics produces either do not match these boundaries or are larger than these areas. In fact some of the LSOAs (or combined LSOAs) do not match many of Wales' electoral ward boundaries and are, in fact, estimates of population rather than an authoritative source of actual population.

Due to these technical issues, using population data would significantly restrict the ability of the Commission to create electoral wards as the population data for community and community wards does not exist at present.

However, the Commission recognises the introduction of IER has raised concerns in this area and the Commission will use the estimates for population that are available; the existing wards as they were in 2011. Whilst helpful in the reviews where we are amalgamating whole electoral wards together to form new ones, it will not be possible where we are splitting existing electoral wards.

Ideally, until an exercise to create new population data for community and community wards is made, then this provision should be suspended from reviews the Commission undertakes.

The Commission accordingly suggests that consideration be made to recommending the deletion of the relevant provisions in Section 18.

2. Ministerial Decisions

An essential factor in enabling the Commission to start its work and to conduct reviews is the date of issue and content of a Direction given by the Minister under his proposed powers contained in Sections 16 and 17. A Direction could potentially contain:

- (a) the order and number of reviews;
- (b) the deadline for submitting proposals;
- (c) direction or guidance on the number of elected members for each proposed council;
- (d) any variance in the ratio of electors to elected members in electoral wards contained in a Direction or guidance;
- (e) mandatory consultees; and,
- (f) further additional factors or definitions to consider.

Factors affected by a Direction include :

- Review Programme Timing

The key issue to the Commission, in terms of delivering electoral arrangements for the new local authorities, is receiving a Direction authorising the start of initial reviews as soon as possible after the date of Royal Assent. Enabling the maximum amount of time will allow the Commission to conduct the reviews in a timely fashion. A significant delay in receiving a comprehensive Direction and starting reviews will jeopardise the review programme.

Differing starting points will impact on significant factors, such as recruitment of Commission staff and review policies and procedures. A clear Direction is sought from Welsh Government as soon as is practicably possible.

- **Number of Elected Members**

An essential factor in undertaking a review of electoral arrangements is the number of members that will be elected to a new principal council. Accordingly it is critical that an early indication is given of numbers of members and stated in set in the Direction or Guidance. It is noted that the White Paper *'Power to Local People'* considers the issue of elected members.

Alternatively, If the Commission were to be required itself to determine the appropriate number of members per council, then a proposal on this subject would require undertaking open consultation which would be a time consuming exercise. By way of illustration, the last exercise on numbers of councillors for the 22 existing authorities, took 18 months from inception to completion. The existing model and methodology was specifically designed for the present 22 local authorities, with their varying characteristics in terms of population size and density, and urban/rural nature of authorities. Once an agreed map has been determined, the Commission would therefore need to undergo a similar process to seek agreement on a new model for the appropriate number of members for each new Principal Council. This would have significant implications on the ability of the Commission to complete the timetable on time.

Accordingly, the preferred resolution is for the number of members to be stated in a Direction or in Guidance issued soon after the date of Royal Assent.

3. Unintended consequences arising from the Bill.

The Commission has not so far identified any unintended consequences to the part of the Bill relating specifically to the Commission. However, there is concern that provisions for voluntary mergers, (Sections 3 and 5) could have a significant impact on the Commission's programme of reviews. As drafted, the Bill would enable proposals for voluntary mergers to be made up to and after 30th November 2015, the latter date being dependent on future Regulations. The Commission is concerned that, if any such proposals were made, which would require making and publishing new Regulations and Ministerial Guidance, the timing of the review programme as currently understood could be placed in jeopardy. This could be remedied by making Directions giving revised dates for the completion of the reviews but it may result in elections for new principal councils being held on different dates.

4. Financial implications.

Part 2 of the Explanatory Memorandum has the financial implication to the Commission of the Bill. These figures were taken from estimates indicated to Welsh Government. Since November, the introduction of the Bill and rejection of the voluntary mergers further planning and estimates have been provided to Welsh Government. The Commission is glad that the estimated costs provided to Welsh Government have been included in their projections and the Commission will continue to provide updated estimates as the Bill progresses and any changes are made.

5. Appropriateness of Powers for making Subordinate Legislation

The powers to make subordinate legislation in respect of those which effect the Commission seem entirely appropriate.

Supporting Information

To support its evidence the Commission thought it useful to set out to the Committee its interpretation of the Bill in terms of its timing and the Commission's activities:

Order	Timing	Activity
1	July 2015	A map is published for proposed new local authorities in Wales
2	November 2015	This Bill receives Royal Assent
3	December 2015	The Commission is directed to undertake initial reviews of proposed merged local authorities
4	December 2015	The Commission publishes its Policy and Practice for consultation
5	Early Spring 2016	The Commission commences its first initial review
6	Spring 2018	The Commission has submitted reports to Welsh Government on all initial reviews
7	May 2019	Shadow local government elections are undertaken on the new merged authorities
8	May 2022	Local government elections for all local authorities

From the above it will be seen that it will be highly desirable for the Commission to work to a clearly understood timetable. As described above, the timing and contents of the Direction from Welsh Government is critical to preparation for and conduct of reviews and to meet the anticipated deadline for making recommendations to Welsh Government. It follows that a delay in issuing the Direction carries the risk that there is a significant likelihood that the Commission will not have sufficient time to make recommendations to Welsh Government as required.

These concerns and timetables are all predicated on the map reflecting Welsh Government's preferred Option (Williams Option 1 – 9 initial reviews), the Bill passing as it is presently written and a shadow local government election in May 2019. Changes to the map, Bill provisions or date of the election will change the Commission's programming and activities.

We are grateful for the invitation to be present before the Committee and to offer to the Committee the Commission's considerations upon on this important proposed enactment.

Yours Sincerely,



Owen Watkin OBE DL
Chair
Local Democracy and Boundary Commission for Wales

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Date: 26 February 2015
Our ref: HVT/2279/fgb
Page: 1 of 1

Dear Christine

Consultation on the Local Government (Wales) Bill

Thank you for your letter of 28 January inviting me to give evidence to the Committee in respect of the inquiry you are undertaking into the general principles of the Local Government (Wales) Bill.

My written submission is attached. I look forward to appearing before the committee on Thursday, 12 March 2015.



HUW VAUGHAN THOMAS
AUDITOR GENERAL FOR WALES

Enc: Auditor General for Wales Evidence

**Auditor General for Wales Evidence
Communities, Equality and Local Government Committee
Local Government (Wales) Bill
February 2015**

Comments in response to the Committee's Terms of Reference:

- 1. The general principles of the Local Government (Wales) Bill and the need for legislation to:**
 - enable preparations to be made for a programme of local government mergers and reform;
 - allow Principal Local Authorities to merge voluntarily by April 2018;
 - amend provision in the Local Government (Wales) Measure 2011 relating to the Independent Remuneration Panel for Wales and the survey of councillors and unsuccessful candidates for election as councillors;
 - amend provision in the Local Government (Democracy) (Wales) Act 2013 relating to electoral reviews.

1.1. The general principles of the Bill appear appropriate. However, in light of the Minister's decision to reject the three expressions of interest in voluntary mergers, it must be questionable whether the voluntary merger provisions of the Bill will be required. In addition as the response to question 2 below indicates there may be practical difficulties as regards the timetable for implementing voluntary mergers following the planned confirmation of the merger map in the summer of 2015.

- 2. Any potential barriers to the implementation of the Bill's provisions and whether the Bill takes account of them.**

2.1. The timetable for voluntary mergers will be difficult to achieve. The transfer date is specified in section 2(8) as 1 April 2018. However, to achieve this date it would appear to be necessary for:

- Authorities to have sight of the Minister's map of the proposed compulsory mergers— there would seem to be little point for authorities to enter into detailed discussions with authorities which they may not be merged with.
- Authorities to hold detailed discussions with the authorities with which they are to merge (and which it seems they would in any event be required to compulsory merge in 2020).
- Members of each council to formally resolve in full council to pursue a voluntary merger.
- Volunteering authorities would need to formally draw up merger proposals in accordance with Ministerial guidance issued under section 5.
- Authorities to undertake extensive public consultation in accordance with section 4, before submitting an application.

- An application to be submitted to the Welsh Ministers by 30 November 2015 (or such later date specified by Welsh Ministers in regulations).

2.2. Even if the deadline for applications was pushed back to say 1 April 2016, the requirement under section 7 to establish Shadow Authorities prior to the merger would leave a challenging timescale to put in place all of the arrangements necessary to run a shadow authority.

3. Whether there are any unintended consequences arising from the Bill.

3.1. There is a risk that the provisions in relation to senior pay in section 28 of the Bill might lead to inconsistency of interpretation, as is currently the case in the reporting of senior pay in local authority statements of accounts. To avoid any such inconsistency it will be necessary to provide a clear and unambiguous definition of 'chief officers' covered by section 28 of the Bill.

3.2. Section 4 of the Bill requires local authorities, prior to submitting an application for merger, to consult with a range of stakeholders. In addition to any persons that authorities themselves might deem appropriate, it would be desirable if the Bill made a particular stipulation that authorities must consult those that they are in formal co-operation arrangements with, for example the Local Service Board, Local Safeguarding Children Board and Youth Offending Team Management Boards.

3.3. Procedural defects in merger work, such as omission of consultation, can lead to claims for Judicial Review, as indeed occurred in respect of several areas during the restructuring of local government in England in 1994-97. Such claims lead to additional expenditure and delay.

4. The financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum)

4.1. The costing set out in the Explanatory Memorandum does not seem to give a full overview of the likely cost of the Bill. Appendix A on page 104 has the title "Costing the Options" but appears to be confined to the cost of transition committees. Tables 17 and 18 on pages 96 and 97 could be taken to summarise Welsh Government and local government costs but many items are marked "N/A", and para 208 on page 95 says "there are a few areas (notably policy intention 4) where it has not been possible to produce an estimate at this stage." However, the Bill appears to provide complete primary legislative provision for voluntary mergers, and it would therefore be appropriate for the Explanatory Memorandum to give cost estimates for such voluntary mergers. It is worth noting that the Assembly's Research Service paper on the Bill includes more comprehensive cost estimates for local government restructuring overall.

4.2. The Bill has implications for my audit of authorities' accounts. As shadow authorities will in all probability need to spend public money, it would be appropriate to have

specific provision for regulations to provide for the audit of their accounts. An appropriate means of this would be designation of shadow authorities as local government bodies for the purposes of section 12 of Public Audit (Wales) Act 2004, which could be made in regulations. It would be helpful to have confirmation of the Welsh Government's intentions in this area.

- 4.3. The timetable for local government reorganisation in Wales coincides with the proposed first year of early closure of accounts in local government, as required by HM Treasury, which will add to the challenging timescale for both auditors and authorities. On the basis that the first merged authority came into being on 1 April 2018, the first statement of accounts (2018-19) for that authority would need to be audited by July 2019. During the preceding year (2017-18) the statement of accounts of the demising constituent authorities and the Shadow authority and Transition Committee would need to be audited by the end July 2018, which will be a challenging deadline.
- 4.4. Also the audit of the demising authorities' accounts for 2017-18 would need to have regard to the necessary approvals for the transactions referred to in sections 30, 31 and 32. However leaving such work until year end accounts in summer 2018 will be of little assurance since the actual transactions may have taken place by then. It would therefore be necessary to do some specific audit assurance work between April 2017 and March 2018 for this purpose.
- 4.5. The financial values applied to the relevant land acquisition/disposal provisions appear to be low. Applying these thresholds could impair an existing council's ability to run the day to day business of the authority. The transition committee/shadow authority could potentially be considering significant numbers of contracts, in addition to planning for a merger, and this might delay legitimate and necessary projects.
- 4.6. Para 235 of the section of the explanatory memorandum on post implementation review states:

"The functions of the Wales Audit Office (WAO) in respect of auditing public spending would remain an important contribution to monitoring the effectiveness of existing Authorities as joint working arrangements increasingly emerge. The WAO carries out a programme of audits on Principal Local Authority statutory accounts on an annual basis. The auditors set out their findings and recommendations through the audit certificate (the audit opinion) and a report to the Local Authority. The Auditor General encourages auditors to resolve issues with Local Authorities wherever possible through these means. The recommendations are statutory and Principal Local Authorities are required to act on these recommendations."
- 4.7. This paragraph 235 is unfortunately inaccurate in several respects:
 - It should state "Auditor General for Wales" rather than "Wales Audit Office" in order to correctly reflect legal functions.
 - The relevance of my audit of accounts to the post implementation review process is unclear. Work in respect of satisfying as to arrangements for securing

economy, efficiency and effectiveness, and improvement assessments as undertaken under the Local Government (Wales) Measure 2009 will be more relevant to monitoring the effectiveness of the merger process as opposed to any audit of accounts work. In addition, I will be considering the reform programme as a potential study topic under section 41 of the 2004 Act to help provide post implementation review.

- The Auditor General's recommendations are not statutory in the sense that audited bodies have to comply with them (although there are statutory provisions in terms of how recommendations should be considered in certain circumstances, for example under section 25 of the Public Audit (Wales) Act 2004).

5. The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum)

5.1. I have no comments on the appropriateness of the proposed powers.