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Llywodraeth Cymru
Welsh Government

Mick Antoniw, AM
Chair
Legislation, Justice and Constitution Committee
National Assembly for Wales
Ty Hywel
Cardiff Bay
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23 March 2020

Dear Mick,

Local Government and Elections (Wales) Bill

I would like to thank the Legislation, Justice and Constitution Committee for their scrutiny of the Local Government and Elections (Wales) Bill during Stage 1 and for the report which was published on 13 March 2020.

I have set out responses to the Committee's recommendations at Annex A. It has not been possible for me to accept all of the committee's recommendations in full. However, I have carried the principles and underpinning reasoning through as far as possible.

I hope this letter is helpful in setting out responses to the Committee's Report. I will also be writing to the Chairs of the Equality, Local Government and Communities Committee and the Finance Committee with respect to their Stage 1 Reports, and will copy the letters to all three Committee Chairs.

I look forward to continuing to work with Members as the Bill progresses through the Assembly process.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

**Annex A: Response to Legislation, Justice and Constitution Committee
Stage 1 Report Conclusions and Recommendations**

Recommendation 1. The Minister should table an amendment to the Bill to apply the negative procedure to the making of regulations under paragraphs 9 and 10 of Schedule 1.

I do not accept this recommendation. Schedule 1 sets out, in detail, the process for initial reviews of electoral arrangements by the Local Democracy and Boundary Commission ('the Commission'); the process set out in the Bill provides for comprehensive local consultation and is entirely open and transparent. This is consistent with the process for all electoral arrangements reviews of principal councils by the Commission, which as local regulations are not subject to procedure in the Senedd. The initial reviews are very likely to be undertaken with very tight deadlines to meet scheduled dates of elections.

If the Welsh Ministers were to make regulations under paragraph 9(1)(b) or 10(2) of Schedule 1, paragraph 12 of the Schedule provides that the Commission must undertake a new review of the electoral arrangements, in line with the standard process set out in section 29(1) of the Local Government (Democracy) (Wales) Act 2013, as soon as possible after the first ordinary elections and in any event before the next ordinary elections.

Recommendation 2. The Minister should table an amendment to section 18 of the Bill, such that regulations to provide for a database of electoral registration information are subject to a super-affirmative procedure in the first instance, and the affirmative procedure thereafter.

I do not accept this recommendation. The Welsh Government's *Legislation Handbook on Assembly Bills* outlines that the 'super affirmative' procedure should only be used in 'exceptional cases'. I do not consider this case to be 'exceptional'.

Recommendation 3. The Minister should table an amendment to the Bill to apply the affirmative procedure to the making of an order under section 10(1B) of the Representation of the People Act 2000 (as inserted by section 26(1) of the Bill).

I do not accept this recommendation. Any Order made under this power will be only be applied in circumstances where the Welsh Ministers feel an electoral pilot would be of specific benefit to electors but no principal council is forthcoming. The Order would be time limited and local in nature applying to a small number of principal councils at most. It will be followed by a statutory evaluation undertaken by the Electoral Commission, with any long term changes resulting from such a pilot would be subject to full Senedd scrutiny.

I consider subjecting an Order of this nature to the affirmative procedure to be disproportionate.

Recommendation 4. The Minister should, during the Stage 1 debate on the Bill, explain clearly why regulation-making powers contained in paragraphs 6, 10(3) and 10(4) of Schedule 4 to the Bill cannot be replaced by equivalent provisions on the face of the Bill.

I accept the principle of this recommendation. Following consideration of the evidence provided to ELGC Committee by stakeholders, I have asked officials to explore options for bringing forward an amendment so as to apply the new provisions in respect of electronic notices of meetings, as inserted into the Local Government Act 1972 by Schedule 4, to both fire and rescue authorities and national park authorities.

Recommendation 5. The Minister should table an amendment to the Bill applying the affirmative procedure to regulations made under section 52A of the Local Government Act 2000 (as inserted by section 67(2) of the Bill).

I accept this recommendation and am proposing to bring forward an amendment to bring effect to this recommendation.

Recommendation 6. The Minister should, during the Stage 1 debate on the Bill, explain:

- **how she intends to use regulations under section 82(1)(d);**
- **the implications of removing section 82(1)(d) from the Bill.**

This recommendation is no longer relevant, I intend to bring forward an amendment for the purposes of clarifying the process for amending and revoking corporate joint committee regulations. The revised provisions will not provide for the Welsh Minister to make regulations ‘for any other purpose’.

Recommendation 7. The Minister should table an amendment to the Bill to apply the affirmative procedure to the making of regulations under section 84(1).

No action needed as section 84(1) is subject to the affirmative procedure, due to being ‘parasitic’ on the corporate joint committee regulations which are subject to the affirmative procedure.

Section 84(1) sets out the scope of the joint committee regulations and the amending or supplementary regulations, as each of these regulations are subject to the affirmative procedure the making of regulations under section 84(1) is also subject to this procedure.

It appears that the entry in the table of regulation making powers within the Explanatory Memorandum is incorrect and we will address this when the Explanatory Memorandum is revised at the end of Stage 2.

Recommendation 8. The Minister should table an amendment to the Bill to ensure that statutory guidance issued under section 88(3) must cover the need to include members on the performance assessment panel, established under section 91, who are independent of the local authority

I do not accept this recommendation, as I believe it be disproportionate to specify on the face of the Bill exactly what the guidance should cover about panel membership, but be silent on any other points the guidance could cover.

I intend to issue statutory guidance which will emphasise the need to ensure the independence of panel members and that the mix of members includes, as a minimum:

- An independent chair who is not currently serving in an official or political capacity within local government;
- A peer from the wider public, private or voluntary sectors;
- A serving local government senior officer, likely to be equivalent to chief executive or director; and
- An elected member.

The guidance will clarify that it is not intended that the panel be limited to four members.

We are working with local government officers and other stakeholders to develop this guidance. Should it be considered in time to provide for a more prescriptive approach, Welsh Ministers may make regulations in connection with the appointment of the panels under section 93 of the Bill.

Recommendation 9. The Minister should table an amendment to the Bill applying the affirmative procedure to the making of regulations under section 93(2)(b)

I accept the principle of this recommendation and am proposing to bring forward an amendment to subject all regulations made under section 93 to the affirmative procedure.

Recommendation 10. The Minister should, during the Stage 1 debate on the Bill, set out clearly and in detail how she intends to use the powers contained in section 109(2).

I do not accept this recommendation, section 109(2) will enable Welsh Ministers to confer new powers on one or more principal councils, if they consider those powers to be either necessary or expedient to permit or facilitate compliance with the new performance and governance regime.

The nature of the challenges principal council may face in managing their performance and governance regime or complying with their performance requirements, and the interventions and support which might be required to address those challenges, will be different in each case. For this reason I do not consider it appropriate, or of meaningful value, to attempt to set out in detail the circumstance in which it may be necessary to use this power.

Recommendation 11. The Minister should table an amendment to the Bill to delete the words “or expedient” from section 109(2).

I do not accept this recommendation. Section 109(2) will enable Welsh Ministers to confer new powers on one or more principal councils, if they consider those powers to be either necessary or expedient.

Some new powers for principal councils may not be absolutely “necessary” to enable compliance with Chapter 1 of Part 6, but may still be desirable to facilitate compliance, and this is why the term “or expedient” is needed in this section.

The nature of support provided, and the circumstances in which an inspection or an intervention takes place will be different in each case. In order to respond to the individual and particular issues faced by a principal council, the power has to be sufficiently broad to accommodate each individual circumstance as it may arise.

A power to make regulations to confer new powers on principal councils but only if they are deemed “necessary” would be too narrow.

Recommendation 12. We consider that the Explanatory Notes to the Bill should, for each section that includes a power to issue guidance, provide a broad indication of what that guidance is likely to cover. The Explanatory Notes should be amended accordingly.

I recognise the intention behind the Committee's recommendation and agree, in principle, that further work should be undertaken, the Explanatory Memorandum currently provides a broad indication of the matters that could be covered by guidance in respect of a number of provisions of the Bill.

I consider it appropriate to include this type of detail in the Explanatory Memorandum rather than the Explanatory Notes and we will provide more detail on other relevant sections when the Explanatory Memorandum is revised at the end of Stage 2.