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Llywodraeth Cymru
Welsh Government

John Griffiths, AM
Chair
Equality, Local Government and Communities Committee
National Assembly for Wales
Ty Hywel
Cardiff Bay
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23 March 2020

Dear John,

Local Government and Elections (Wales) Bill

I would like to thank the Equality, Local Government and Communities 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 Finance Committee and the Legislation, Justice and Constitution 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 Equality, Local Government and Communities Committee Stage 1 Report Conclusions and Recommendations

Recommendation 1. We recommend that the general principles of the Local Government and Elections (Wales) Bill are agreed by the Assembly

I note and welcome this recommendation and the support of the Committee for the general principles of the Bill. I would like to thank each member of the Committee for their considered and thorough scrutiny of the Bill.

Recommendation 2. We recommend that the Bill should be amended to include specific provision to roll out an adequate level of education on politics and democracy in Wales across all schools. In particular, young people from the ages of 14 and 15 should receive this education to prepare them for voting at 16 years old. This programme of political awareness should be accompanied by clear lesson plans to empower teachers to deliver the lessons

I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation as I do not consider that express provision needs to be made on the face of the Bill as work is already being taken forward.

We are developing educational resources, adopting a two phase approach. This will enable us to inform first time voters in the immediate term and develop ethical, informed citizens of Wales, and the world, in the longer term. We are using the delivery mechanisms available to us through both the existing school curriculum and the new curriculum being developed.

Phase one resources will be designed for delivery within the current curriculum for both learners and practitioners to use (although they will also continue to be relevant and accessible in the longer term) while phase two resources will be integrated into the new curriculum. These resources will help develop a generation of politically engaged and informed young people.

Phase one resources will be published by September 2020 so schools (and colleges, youth groups and others) can plan the use of these resources in the 2020-21 academic year. They will be standalone, to be delivered by schools in assemblies, on extra-curriculum days, as part of their Personal and Social Education as well as outside schools in settings such as youth groups.

There are also opportunities for learners to explore politics within the current curriculum, through the Welsh Baccalaureate. Officials are working to generate a teaching and learning resource pack for KS4 Welsh Baccalaureate students as part of the Global Citizenship Challenge.

We are also working on developing professional learning resources to support teachers to deliver political education and deal with situations that may arise from the extension of the franchise and questions on political issues.

Recommendation 3. We recommend that the duty in section 4 is extended to include a specific duty on electoral registration officers to promote awareness and provide assistance to relevant young people

I do not accept this recommendation. Local authorities have a duty towards a number of children as a corporate parent so imposing a duty to promote awareness and provide assistance to young people in respect of electoral arrangements is an extension of this role.

Young people of 14 to 17 years to whom this duty applies are voting for the first time and I consider there should be a specific duty on authorities to target this cohort of new voters. I also intend to bring forward a stage 2 amendments to extend the definition in section 4 of the Bill to include care leavers within that age bracket.

Ensuring the promotion of democratic participation is something for which the whole local authority should take responsibility, electoral registration officers already have a specific duty to ensure the accuracy and completeness of the electoral register therefore I do not consider that a further duty is required.

Recommendation 4. We recommend that the Welsh Government undertakes an engagement programme with the WLGA, principal councils and communities across Wales around reforming voting arrangements for local government elections. This work should include giving consideration to the impact that STV could have on increasing diversity among candidates and exploring mechanisms for citizens to express their views to principal councils on the voting system used

I do not accept this recommendation. I consider this could undermine the principle expressed in the Bill, namely the introduction of choice meaning the voting system is a matter for local determination.

If a council expresses interest in considering a change to STV we will work with them to ensure all the implications are fully thought through and local people are fully involved. Citizens are able to express their views in respect of the voting system to be used as a council considering a change in voting system, must consult:

- Local government electors in the council's area;
- The community councils in the area; and
- Such other persons as it considers appropriate

Recommendation 5. We recommend that the provision in section 13 is amended to include a duty on the Welsh Ministers to consult with the Electoral Commission before it makes rules about the conduct of local elections in Wales

I recognise the intention behind the Committee's recommendation and agree, in principle that an amendment should be made to this section. Section 13 of the Bill inserts a new section 36A into the Representation of People Act 1983. As currently drafted section 36A does not subject the Welsh Minister to a statutory consultation requirement. I intend to bring forward an amendment which would require the Welsh Ministers to consult 'such persons as they consider appropriate'. This would be consistent with other similar electoral powers in the Bill. Given the

nature of the Electoral Commission's role they would clearly be captured by this requirement. I also consider that this amendment will provide for a wider consultation, capturing, in addition to the Electoral Commission, the wider electoral community, Electoral Registration Officers, principal councils, community councils etc.

Recommendation 6. We recommend that the requirements on the Welsh Ministers to consult before making an Order to change the ordinary day of local elections are extended to include the Electoral Commission as a statutory consultee

I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation. Prior to making an order to change the ordinary day of local elections the Welsh Ministers are required to consult 'such persons as they consider appropriate'. As stated in the committee's report the Electoral Commission is recognised as an independent body with responsibility for overseeing elections, and I agree it is appropriate it be consulted prior to these regulations being made. As the existing consultation requirement will provide for this I do not consider it necessary to provide for additional prescription on the face of the Bill. If the Welsh Ministers failed to consult with the Commission, they could be at risk of being challenged for failing to consult with 'appropriate persons'.

Recommendation 7. We recommend that the provisions relating to registration without application are amended to ensure that individuals registered in this way are placed on the closed electoral register rather than the open register

I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation. The provisions in respect of registration without application are subject to commencement by Order.

As the provisions are currently drafted an elector would be put on the full register 28 days after their addition through registration without application. The full register is the one used at elections and is not the one available to buy e.g. from credit agents. Under the provisions, the elector can request not to be included on the edited register. The edited register is the one that can be sold etc. Therefore electors will have to a choice of being on the full register or full and edited register. However given the range of electoral reforms currently being undertaken in Wales we have decided not to commence these provisions upon Royal Assent, rather we will commence them by Order. This will allow the current suite of reforms to be embedded before administrators are asked to consider additional changes.

Prior to commencing we will work closely with electoral administrators and Electoral Registration Officers to consider all matters relating to the implementation of registration without application. Should further provision be necessary consideration will be given to the making regulations under the new section 9ZA(4) of the Representation of People Act 1983, as inserted by section 22 of the Bill.

Recommendation 8. We recommend that, in light of the significant policy change to allow employees of principal councils, bar those in politically restricted posts, to stand for election to the council which employs them, the Welsh Government should work with the WLGA and trade unions to develop guidance to staff and managers on dealing with the implications, particularly where unsuccessful staff continue their employment

I accept the principle behind this recommendation. The intention of the provisions is to allow those with the best knowledge of their communities to stand for elections without having to resign before being elected. These provisions bring us in line with Scotland and will support increasing diversity of candidacy at local government level.

We will work with key stakeholders to develop non-statutory guidance around dealing with the implications of these provisions.

Recommendation 9. We recommend that the Welsh Government commissions an independent evaluation of the impact of the provisions relating to expenditure by Returning Officers following the first electoral-cycle where they are remunerated via their salaries

I do not accept this recommendation. The provisions in the Bill simply clarify the law, that is to say Returning Officers are not permitted to claim a personal fee for running local elections.

It is current practice that Returning Officers claim an amount for their services in the conduct of council elections, there is no provision in legislation for this. Given this, I do not consider that the payment of a fee is means by which the independence of a Returning Officer is guaranteed. The independence of the role is guaranteed by its enacting legislation and the performance standards set by the Electoral Commission.

I therefore do not believe there is any need to conduct an independent evaluation of this policy as there is sufficient scrutiny of Returning Officers and the role they perform.

Recommendation 10. We recommend that the Welsh Government takes this opportunity to ensure consistency in the bilingual delivery of elections across Wales, in line with the principles established by the Welsh Language (Wales) Measure 2011

I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation. As employees of local authorities, Electoral Registration Officers are required to observe the standards set out in the Welsh Language (Wales) Measure 2011.

Whilst the role of Returning officers is independent of the local authority, the Electoral Commission and the Wales Electoral Co-Ordination Board state clearly that Returning Officers should have regard to the Welsh Language (Wales) Measure 2011 and provide bilingual services.

In addition, all electoral forms and official documentation must already be produced bilingually by law.

Recommendation 11. We recommend that the Welsh Government reviews the use of the general power of competence by principal councils and eligible community councils, by the end of the next local government electoral cycle, to understand its effectiveness

I accept the principle of this recommendation. When the Explanatory Memorandum is revised at the end of Stage 2, we will reference a review of the use of the general power as part the post implementation review strategy. The nature, timing and consideration of such a review will be a matter for a future Assembly.

Recommendation 12. We recommend that the duty in section 46(2) be amended to include a requirement on principal councils to collaborate with connected authorities to encourage participation in the making of decisions. Consequently, section 47 should also be amended so that participation strategies reflect this collaboration

Recommendation 13. We recommend that section 46(3) is amended so that fire and rescue authorities are named as a connected authority with a principal council

I recognise the intention behind the Committee's recommendations, however, I do not accept these recommendations. Having considered the evidence of stakeholder provided to the Committee I have re-considered these provisions and agree that the duty on principal council to encourage participation in decision making should not extend to 'connected bodies', as these are independent and should remain responsible for their own matters.

I intend to bring forward an amendment removing the references to connected authorities. I have carefully considered whether to subject the other authorities, including fire and rescue authorities, to this duty individually however I consider this would be disproportionate.

Recommendation 14. We recommend that the Welsh Government amends the Local Authorities (Model Code of Conduct) (Wales) Order so that councillors are not required to publish their home address in full within the register of interests

I accept this recommendation and I will look to bring forward the necessary subordinate legislation to amend this Order at an appropriate time.

Recommendation 15. We recommend that the Welsh Government clarifies the position regarding the publication of community councillors' home addresses and amends the Bill to extend the provision to them in section 50 if necessary

I accept the principle behind this recommendation, however I do not consider it necessary to bring forward an amendment.

Community councils must, under section 55(1) of the Local Government (Democracy) (Wales) Act 2013, make available electronically information about each of its members including how those members may be contacted, there is no requirement for it to be a personal address.

The 2013 Act also requires a community council to make available electronically information on how to contact it and, if different, its clerk including a telephone number, postal address and email address. Again there is no requirement for the postal address to be a home address.

The Welsh Minister may issue guidance in respect of section 55(1) of the 2013 to which community councils must have regard. We will be issuing guidance to the sector in respect of a range of provisions in the Bill and will give consideration to clarifying in guidance that the publication of members' home addresses is not required or desirable.

Recommendation 16. We recommend that the Welsh Government provides updated guidance on the use of private recording equipment at council meetings in light of the provisions in this Bill relating to the electronic broadcasting of council meetings

I accept the principle behind this recommendation. Officials are currently co-working with representatives of local authorities and the WLGA to co-produce guidance which will underpin a range of provisions within the Bill. To help inform this guidance officials are currently undertaking a series of visits to local authorities to discuss the opportunities and issues connected with both broadcasting and remote attendance.

Recommendation 17. We recommend that the Welsh Government extends the provisions in section 56 to include fire and rescue authorities

I accept this recommendation and will explore options for bringing forward an amendment to extend the provisions in section 56 to both fire and rescue authorities and National Park Authorities.

Recommendation 18. We recommend that the Welsh Government clarifies in guidance that town and community councils are able to produce composite reports covering all of their reporting obligations

I accept this recommendation. I intend to issue guidance to the town and community council sector in respect of a range of relevant provisions within the Bill, in this guidance I will confirm that these councils can prepare composite reports if they so wish.

Recommendation 19. We recommend that the Welsh Government consults ALACE and SOLACE on changes relating to the performance management of chief executives prior to amendments to section 60 being tabled during the amending stages

I accept this recommendation and will bring forward the necessary amendment.

Recommendation 20. We recommend that the Welsh Government bring forward amendments to the Bill that would enable job-sharing for a wider range of specific roles

I accept this recommendation and intend to bring forward an amendment which would enable the Welsh Ministers to, through regulations, make provision facilitating or enabling job sharing in respect of a range of specified roles.

Recommendation 21. We recommend that the Welsh Government undertakes further work to explore the feasibility of enabling two individuals to jointly put themselves forward for election on a job-share basis

I recognise the intention behind the Committee's recommendation and agree to undertake further work. In my response to the Committee's report *Diversity in Local Government* I committed to considering this issue as part of the next phase of our Diversity in Democracy programme, which is currently being developed.

Recommendation 22. We recommend that the Welsh Government actively promotes the provisions relating to assistants to executives and job-sharing as a means of increasing diversity among council executives

I accept the principle behind this recommendation. We are committed to promoting and increasing diversity in local government which is why I've included provisions in respect of job sharing and assistants to executives in the Bill.

In addition, the Bill also includes provision amending section 38 of the Local Government Act 2000 so as to require principal councils to have regard to guidance as regards equality and diversity in respect of executive arrangements.

Whilst we continue to support and promote opportunities to increase diversity, this is not simply a matter for Welsh Government, it is for all partners to embrace current and future opportunities to maximise the potential offered by these and other provisions.

Recommendation 23. We recommend that the Welsh Government explores how a duty, similar to the duty on political group leaders to maintain standards of conduct, could be placed on independent members currently not sitting within any political group

I reject this recommendation. The Local Government Act 2000 ("2000 Act") established the ethical standards framework to promote the observance of consistent standards of conduct by local government members.

The ethical framework incorporates a set of ten general principles of conduct, a statutory model code of conduct and local standards committees to promote and maintain high standards of conduct by members.

The model code of conduct incorporates the above general principles and guides members on the declaration and registration of interests. Every relevant authority must adopt a code of conduct based upon the model with members required to give a written undertaking to observe the code before they can take up office.

The duty on political group leaders complements the ethical framework, with leaders of political groups required to take reasonable steps to promote and maintain high standards of conduct within their group. The Bill also subjects standards committee to new functions including ensuring group leaders have access to advice and training to support their new duties and to monitor their compliance with their new duties.

This recommendation would subject independent members to a duty to maintain standards in respect of their own conduct which I consider replicates the requirements of the ethical framework.

I consider the ethical framework to be serving local government well. I am considering the potential value of commissioning a review of the framework to ensure the general principles and model code of conduct remain appropriate and robust.

Independent members may come together to form a political group, as defined in the Local Government (Committees and Political Groups) Regulations 1990, if this were to occur the leader of that group will be subject to the duty in respect of the members of that group.

Recommendation 24. We recommend that the Bill be amended to enable the duty on leaders of political groups in relation to standards of conduct be extended to include leaders of groups within town and community councils, fire and rescue authorities and national park authorities

I recognise the intention behind the Committee's recommendations, however, I do not accept these recommendations. All members of a fire and rescue authority are also members of a principal council. The duty on a political group leader within a principal council in relation to the conduct of the group's members will extend to taking steps to maintain conduct of those members sitting on fire and rescue authorities.

The above principle also applies to the two-thirds of national park authorities who are members of a principal councils.

The current legislative basis for political groups is the Local Government (Committees and Political Groups) Regulations 1990 (made pursuant to section 9(10) and Schedule 1 of Local Government and Housing Act 1989). These regulations do not extend to town and community councils, as such there is currently no legal basis for the creation of political groups in town and community councils.

If I were to bring forward an amendment so as to extend the new section 52A of the Local Government Act 2000 to community councils, it would be possible to use the Welsh Minister's regulation making power at section 52A(3) to define a political group, thereby establishing a legal basis for political groups within town and community councils. This would however, immediately subject the leaders of those groups to new duties. I would be reluctant to do so without ensuring sufficient time to fully consider any potential unintended consequences of such new provisions and undertaking appropriate consultation.

Recommendation 25. We recommend that the Welsh Government, in developing guidance on community council training plans, addresses and supports the recommendations by the Independent Review Panel on mandatory training topics

I accept the principle of this recommendation. The guidance on preparation of training plans will make it clear that there are core areas in which all community councillors should be trained in to enable them to discharge their roles effectively. These areas will reflect those identified in the Independent Review Panel's recommendations. I intend to develop a core package of training for all community councillors to support this. I do not however intend to mandate specific training.

Officials will work with representatives from the sector to co-design the package of training.

Recommendation 26. We recommend that the Welsh Government amends the provisions relating to the duty on a principal council to report on its performance to include a deadline for the completion of the self-assessments every year.

I accept this recommendation and will bring forward the necessary amendment.

Recommendation 27. We recommend that the Welsh Government uses the opportunity, in the making of regulations, to specify minimum levels of skills, experience and representation from different professional sectors and communities required among members of panel performance assessments.

I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation at this time. We are working with WLGA and local authorities to co-design guidance in respect of the new performance and governance regime, to which principal council will be required to have regard. I intend this guidance to cover a number of matters including those detailed in this recommendation.

Should it become apparent that there is a need for a more prescriptive approach, regulations can be prepared and full consideration given to the matters which should be covered by the regulations based on the evidence gained during the implementation of the new performance and governance framework.

Recommendation 28. We recommend that the Welsh Government engages with the Auditor General for Wales to provide clarification on the arrangements for coordination between regulators in sections 118 and 119.

I accept this recommendation and we will continue to engage with the AGW and WAO.

The requirement for coordination between regulators replicates existing requirements contained within the Local Government (Wales) Measure 2009 and the requirement to produce a timetable is not intended to limit or restrict the regulators in undertaking short notice inspections.

The intention in the Bill, as under the 2009 Measure, is to ensure that where possible, (and where inspection dates are known), regulators are able to co-ordinate their activity to minimise the overall audit burden on authorities.

Recommendation 29. We recommend that guidance issued by the Welsh Government clarifies that a special inspection report by the Auditor General for Wales can only be considered as evidence for making restructuring regulations under Chapter 2 of Part 7 if there is a wider range of evidence available

I reject this recommendation. Prior to making restructuring regulations the Welsh Ministers must be satisfied that each of the conditions set out in section 128 of the Bill have been met.

The Welsh Ministers will need to consider all options and draw on evidence of the circumstances of the authority in question. This will include reports and reviews by the various regulators in the normal course of business and such procedures and interventions in the council already sanctioned under the new performance and governance regime, including, if no abolition request has been submitted, a special inspection by the Auditor General for Wales.

Recommendation 30. We recommend that the Welsh Government works with the WLGA to consider alternative measures for recouping debt accrued through non-payment of council tax, in light of the removal of imprisonment as a sanction.

I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation. The sanction of imprisonment was removed through regulations made last year, the provisions in the Bill only act to ensure that this sanction cannot be reintroduced without primary legislation.

Our efforts are focused on prevention as there is considerable evidence that early engagement with households to prevent debt occurring and escalating is more effective than action to enforce the payment of arrears. We have continued our national awareness campaign aimed at improving take-up of the range of support available to help households in meeting their council tax liability. This support is vital in helping to prevent households getting into arrears.

We have been working closely with the WLGA, experienced practitioners in local authorities and advice services to improve all aspects of council tax collection and the management of arrears and we remain committed to doing so. This work is enabling us to identify and share good practice to ensure that any action taken on council tax arrears is proportionate, fair and consistent. The Council Tax Protocol for Wales was developed as part of this work. It has been endorsed by the Welsh Government and the WLGA and is being implemented in every local authority.

Recommendation 31. We recommend that the Welsh Government engages in urgent discussions with the three fire and rescue authorities in Wales on their concerns around the provisions in section 162. Such discussions should begin immediately to enable any necessary amendments to be tabled to the Bill during its amending stages

I accept the principle behind this recommendation. We arranged discussions with representatives of the fire and rescue authorities however, given the current COVID 19 situation it was necessary to prioritise other matters at these meetings. We will look to re-arrange meetings on this matter at the appropriate time.

Recommendation 32. We recommend that the Welsh Government explores options, within legislation, to place a statutory duty on local authorities to have a due regard to the right to adequate housing.

I accept the principle behind this recommendation and agree further work should be undertaken to explore all options. I recognise the potential benefits of placing a statutory duty on local authorities to have a due regard to the right for adequate housing. However, there would be little benefit in creating such a duty without a thorough understanding of what it would entail and knowing the resources are in place to meet the duty. Work is already under way to investigate the scope for legislating in respect of equality and other human rights, in which Dr Hoffman is actively engaged. If adopted, any recommendations to legislate resulting from that work would need to be taken forward in the next Assembly.