

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

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

Introduction

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

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

Response

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

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

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

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

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

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

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

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

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

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

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

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

Section 2 - Local Democracy and Boundary Commission for Wales

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

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

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

Section 3 – Status

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

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

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

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

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

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

Section 4 - Membership

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

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

Section 6 – Proceedings

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

Section 8 - Chief Executive

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

Section 9 – Other staff

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

Section 10 - Experts

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

Section 14 - Directions

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

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

Section 18 - Audit Committee: membership

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

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

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

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

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

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

CHAPTER 2

Section 26 - Review of community boundaries by the Commission

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

CHAPTER 3

Section 29 - Review of electoral arrangements for principal area

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 4

Section 35 - Consultation and investigation

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

Section 36 - Reporting on Review

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

CHAPTER 5 IMPLEMENTATION FOLLOWING REVIEW

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

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

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

CHAPTER 1

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

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

Section 22 - Duties of principal councils in relation to area

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

Q6 to Q9

No Comment

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

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

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

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

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

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

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

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

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

Section 45 - Police area change

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

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

Section 50 - Reviews of qualifying public bodies

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

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

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

August to May

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

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

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

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