

LG 08

Communities, Equality and Local Government Committee

Local Government (Wales) Bill: Stage 1

Response from: Huw Vaughan Thomas, Auditor General For Wales

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Ms Christine Chapman AM

Chair

Communities, Equality and Local Government Committee

National Assembly for Wales

Cardiff Bay

Cardiff CF99 1NA

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*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*

## **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.