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Page: 1 of 11

Dea Christine,

THE DRAFT LOCAL GOVERNMENT (WALES) BILL

Thank you for the opportunity to comment on the draft Local Government (Wales) Bill.

I attach an annex setting out detailed comments, but it may be helpful if I provide a summary here of key points.

Overall, there are no findings from my work in relation to local government that suggests that any of the proposed provisions relating to the creation of the new counties are unreasonable or unworkable. Similarly, however, I cannot give a view as to whether any of the proposed configurations of local government have particularly strong merits or drawbacks.

The local government finance provisions (section 16 and Schedule 3 of the draft Bill) seem to be reasonable in terms of enabling the new structures to function. The provisions, do not, however, represent substantive change from current mechanisms. I understand from the Welsh Government consultation document that the Welsh Government intends to consult on proposals for substantive change, and I look forward to that consultation. I also look forward to consultation on changes in accounts and auditing, which I understand the Welsh Government intends to include in the Bill for introduction.

I welcome the replacement of the duty to make improvement arrangements (required by the Local Government (Wales) Measure 2009) with the proposed duty under Part 5 of the draft Bill to make good governance arrangements. However, I am concerned at some of the remaining content of Part 5. I have particular concerns at section 143, which provides for Welsh Ministers to make regulations for co-ordinating my work with that of Estyn and CSSIW. Using these powers, the Welsh Ministers will be able to set timetables for when audit work is done and require the sharing of information. This is clearly at odds with audit independence (currently protected by section 8 of the Public Audit (Wales) Act 2013).

Audit independence is a fundamental principle, as recognised by professional bodies, including the Auditing Practices Board and the Public Audit Forum. It is critical to maintaining the rigour and credibility of audit reporting, which in turn is important to maintaining the credibility of audited bodies. Indeed, I note that the Welsh Government said in its Explanatory Memorandum on the then Public Audit (Wales) Bill that it was "acutely aware of the need to preserve and protect the independence and objectivity of the AGW."

I have similar concerns with section 132, which places the Auditor General under an obligation to provide Welsh Government appointed reviewers with "whatever facilities and assistance" the reviewers require. I also think that Part 5 leads to a multiplicity of reviews, including an inefficient requirement for combined assessments.

With regard to the Regulatory Impact Assessment, with Part 1 (the geographical structure of local government), by and large, and taken as a whole, the cost and savings estimates do not seem unreasonable. It is not, however, possible to be certain about this, as the basis for many figures is not clear. Some individual estimates seem rather optimistic, such as the lower total for pay harmonisation of £3.5 million (table 15 of page 69). However, this optimism does not seem so great as to undermine the overall picture that the costs should "pay back" in about 4 years, assuming the upper estimates of costs and the lower estimates of savings.

Overall public sector cash-flow is important, and it seems that 2019-20 is to be a critical year for local government in terms of funding requirements. In that year authorities will need to find some £60 million to £100 million to fund redundancies, early retirement packages and other costs.

Part 2 of the Regulatory Impact Assessment (constitutional reforms, governance, community councils and workforce matters) seems to be incomplete, as, for example, no cost is identified for self-assessments. Such omission is, however, unlikely to significantly affect the overall pattern of costs and savings arising from the provisions of the Bill, but would have local resourcing implications.

I should be happy to provide further explanation.



HUW VAUGHAN THOMAS
AUDITOR GENERAL FOR WALES

Annex

Comments on individual parts of the draft Local Government (Wales) Bill

Part 1, Local Government Areas and County Councils

1. Overall, there are no findings from my work in relation to local government that suggests that any of the proposed provisions are unreasonable or unworkable. Similarly, however, I cannot give a view as to whether any of the proposed configurations of local government have particularly strong merits or drawbacks.
2. The provisions relating to local government finance (section 16 and Schedule 3 of the draft Bill) seem to be reasonable provisions to enable the new structures to function. They do not represent substantive change to the overall current general approach to local government finance, and I note that the Welsh Government intends to consult on proposals, including for further legislation, to address the mechanisms for distributing, raising, managing and accounting for the funding of local government. I welcome the Welsh Government's intention and look forward to the consultation.
3. I also note that, while not in the draft Bill, the Welsh Government's consultation document (page 14) says that the Bill for introduction will contain updated and modernised provisions for how local government bodies should account for their spending and how their accounts will be audited. Again, I look forward to the consultation on those proposals.
4. I also note from page 14 of the consultation document that the Welsh Government says that it will make regulations governing the funding of shadow authorities and, if deemed necessary, the audit of accounts. I think it is appropriate that there are regulations to govern shadow authority funding and accounting, and I also think it would be useful if the Welsh Government consulted on such regulations before they are laid, so as to enable unforeseen problems to be headed off. The expenditure of shadow authorities should be subject to appropriate audit.
5. I note from page 16 of the consultation document that the Welsh Government proposes that the Bill on introduction will include provision for the Welsh Government to make regulations regarding Non Domestic Rates avoidance. The Welsh Government asks in its consultation document for suggestions as to how legislation could reduce avoidance. While it may not be of direct relevance to the draft Bill itself, the Committee may wish to be aware that I am minded to mention that it seems sensible to make provision requiring NDR payers to notify authorities of changes in circumstances. It might also be worth considering provision for

authorities to have right of entry to premises so as to enable checks for evidence of activity, such as by reading utility meters.

Part 2, General Power of Competence

6. The provision for local authority general power of competence in Chapter 1 of Part 2 of the draft Bill, is, I think, appropriate. I note that there has been some confusion in at least one Welsh authority as to whether the competence provided by the Localism Act 2010 applied, and Welsh provision should help prevent such confusion in the future.
7. In relation to the draft Bill's provision for the use of audit opinions in determining community council competence (section 31), I should note that while such opinions are of relevance to the abilities of bodies in terms of financial management and governance, audit work is not actually designed so as to provide assurance as to whether a council meets competency requirements. Current audit provisions in section 17 of the Public Audit (Wales) Act 2004 do not require audits to address general competence. If audit arrangements are to be fully appropriate to determining whether a council has competence, it will be necessary to amend the scope of audit work. In many, if not most, cases, this will increase community council audit fees (or will need to be funded by other means). Rather than making this a blanket requirement for all audits, it may be more cost-effective if provision were made requiring community councils to obtain specific reports on fitness for competence. Such reports could be provided on an agreement basis under section 19 of the Public Audit (Wales) Act 2013.
8. I note that section 35 of the draft Bill requires community councils to have regard to guidance issued by Welsh Ministers on the exercise of functions in relation to the general power of competence. I think this is appropriate and would add that I think that such guidance will be very important, as community councils are likely to be unfamiliar with recognising the limits of competence, as imposed, by, for example, European State Aid rules.

Part 3, Promoting Access to Local Government

9. I generally welcome the proposals in Part 3 to encourage public participation. Many of the requirements are consistent with good governance principles, and they may assist in contributing to a framework for assessing compliance with the good governance duty (Part 5 of the draft Bill).
10. I particularly welcome the duty to publish a constitution guide to aid transparency and good governance (section 79).

11. I do, however, see the provisions for improvement requests (Chapter 4 of Part 3) as leading to potentially administratively burdensome procedures. In that respect, it may helpful if the Welsh Government were to consider means of minimising such burdens, for example, by setting out in guidance a realistic range of examples of reasonable grounds for refusing requests.

Part 4, Functions of County Councils and their Members

12. Overall, the provisions of Part 4 appear reasonable.

Part 5, County Councils: Improvement of Governance

13. I welcome the replacement of the duty to make improvement arrangements, under the Local Government (Wales) Measure 2009, with the proposed duty under section 111 of the draft Bill to make good governance arrangements. My view is that the improvement duty was seen by many councils as an additional burden rather than being an integral part of their business. The new proposed good governance duty should go to the heart of what makes organisations successful in the delivery of their priorities, and should encourage councils to critically examine their full range of arrangements while also improving transparency and democracy.
14. I also welcome the focus on economy, efficiency and effectiveness in section 111 and the alignment that this provides to my duties under the Public Audit (Wales) Act 2004 to satisfy myself that proper arrangements are in place to secure economy, efficiency and effectiveness.
15. I find, however, that much of the other content of Part 5 of the Bill raises issues of concern, as follows:
- a) Well-being objectives not being at one with priorities in corporate plans;
 - b) The multiplicity of assessments and reviews;
 - c) The use of peers for repeated diagnosis rather than help with improvement;
 - d) Resource limitations in relation to peer review;
 - e) Differences between the work required by the assessment provisions of the draft Bill and the illustrations of expectations in the consultation document;
 - f) Confusing nomenclature;
 - g) The inefficiency of the requirement for combined assessments;
 - h) Conflicts with audit independence.

Well-being objectives not being at one with priorities in corporate plans

16. Section 112 concerns the preparation of authorities' corporate plans. The section recognises that well-being objectives should be included in the corporate plan. However, as currently set out, it appears that the well-being objectives (required by the Well-being of Future Generations (Wales) Act) are a separate add-on to the "statement of priorities". If it is the intention that well-being objectives are central to the priorities of the council then this section needs amending to make this clear.

The multiplicity of assessments and review

17. Altogether Part 5 leads to multiple assessment and review requirements:
- a) section 116 self-assessments;
 - b) section 118 peer assessments;
 - c) section 124 combined assessments, and
 - d) section 128 Welsh Government appointed governance reviews.

While there is scope for section 124 combined assessments and section 128 Welsh Government appointed reviews to draw on the following, the above are in addition to:

- e) the Auditor General's existing consideration of governance arrangements as part of consideration of arrangements for securing economy, efficiency and effectiveness under the Public Audit (Wales) Act 2004, and
 - f) the duty under section 15 of the Well-being of Future Generations (Wales) Act 2015 for examinations for assessing the extent to which bodies have acted in accordance with the sustainable development principle (which is also a fundamental matter of governance).
18. Altogether the requirements for assessments and reviews of governance matters are stacking up. In my view, any new proposed assessments, to be worthwhile, should add value to, rather than duplicate other work. I also think that there is a need for arrangements that have coherence and help lead to improvement. An over-emphasis on diagnosis rather than cure will not be productive.

The use of peers for repeated diagnosis rather than help with improvement

19. The peer assessment is the prime example of a resource being used for repeated diagnosis rather than help with improvement. The use of peers to support improvement where issues have been identified by other assessments is likely to be more productive than further peer assessment. I would therefore suggest that the

provision for peer review is amended so as to address improvement support in place of further assessment of governance arrangements.

Resource limitations in relation to peer review

20. Another concern with regard to peer assessment (particularly the approach set out in the consultation document) is that the available pool of potential peers that meet the requirements set out is currently very small. Considerable effort will need to be made in developing such a pool and building capacity in the sector as well as quality assuring potential reviewers.
21. The example given in the consultation document refers to a peer assessment taking several months and ongoing engagement, but then refers to it as a "short, sharp process" (page 50). This appears contradictory. I am also concerned that the process described is unrealistic in the speed at which it is proposed to be carried out. In order to ensure that evidence is robust and that findings are adequately quality assured a more measured approach is likely to be necessary.

Differences between the work required by the combined assessment provisions of the draft Bill and the expectations set out in the Explanatory Memorandum

22. There is lack of alignment between the combined assessment provisions of section 124 of the draft Bill and the process described in the explanatory memorandum. The description in the Explanatory Memorandum goes further than assessing compliance with the good governance duty of section 111. While it is the case that by sharing information about our respective work, the Auditor General, Estyn and CSSIW can identify, so far as the areas of examination and findings permit, risks to good governance, this is not the same as setting out an assessment of compliance with statutory duties. The process described in the explanatory memorandum lends itself better to a duty to share information in the exercise of the respective functions of review bodies than it does to duties to assess and report jointly.

Confusing nomenclature

23. Section 123 defines the Auditor General as a "relevant regulator" and the Auditor General's local government functions as "relevant functions". (The other "relevant regulators" defined by the section are Her Majesty's Chief Inspector of Education & Training in Wales (Estyn) and the Welsh Ministers exercising social services inspection functions (CSSIW).) It is misleading to label the Auditor General as a "regulator", as audit is not regulation. This leads to confusion as to the Auditor General's functions and independence. I think this could be easily addressed by a small change in nomenclature, such as by using the term "relevant review body".

The inefficiency of the requirement for combined assessments

24. Section 124 provides for “combined assessments” of the governance of county councils. Such combined assessments are to assess compliance with governance arrangement duties under section 111. However, jointly conducting and reporting such an assessment is likely to prove unnecessarily complicated given the necessarily distinct roles and independence of the bodies involved. The joint clearance and sign off of reports by multiple parties, both within councils and relevant review bodies, will, of necessity, take additional time. Given that examination of governance is already an integral and necessary part of the Auditor General's audit functions, it would be more efficient to require the Auditor General to assess the discharge of the duty to make good governance arrangements, while requiring other relevant review bodies to contribute relevant information, and requiring the Auditor General to have due regard to such information.

Conflict with audit independence

25. Several aspects of Part 5 are not compatible with audit independence, which is a fundamental audit principle and essential for overall credibility of reporting on the stewardship of public resources, both at the local government level and the Welsh Government level. The greatest problem is in section 143, which empowers the Welsh Ministers to make regulations for co-ordinating work of the Auditor General with work of Her Majesty's Chief Inspector of Education and Training in Wales (Estyn) and work of the Welsh Ministers in terms of their social services inspection functions (CSSIW). Using these powers, the Welsh Ministers will be able to set timetables for when audit work is done and require the sharing of information.
26. I understand that the provision for Welsh Ministers' regulations may have been intended to help achieve the first part of the section, which is that Estyn, CSSIW and the Auditor General should have regard to the need for co-ordinating their work. That first part of the section is reasonable, but the provision for regulations is not appropriate. Apart from being harmful to audit independence and, by extension, Ministers' financial credibility, the provision for regulations is unnecessary, as co-ordination is already being pursued through the Inspection Wales voluntary co-ordination group.
27. A similar problem arises in section 132, which places the Auditor General, along with Estyn and others, under an obligation to provide Welsh Government appointed “reviewers” (appointed under section 128) with “whatever facilities and assistance” the reviewers require. There is a danger that the obligations under section 132 will divert resources from independent audit work.

28. I can see that if the Welsh Government is to create its own local government governance review arrangements that it will want to ensure that those arrangements are co-ordinated with the work of other review bodies, such as the Auditor General, and do not lead to unnecessary duplication. It would, however, seem more appropriate to seek such co-ordination through the existing Inspection Wales arrangements (at no significant additional cost), rather than by providing for the requisition of independent resources, which have been voted by the National Assembly for other purposes.
29. The capturing of the Auditor General by a duty in section 144 to have regard to Welsh Ministers' guidance in relation to functions under Part 5 is also at odds with overall audit independence.

Part 6, Community Councils

30. Overall, the provisions of Part 6 do not seem unreasonable, but some issues may arise on practical implementation.
31. As referred to in the consultation document, I (or in some cases, appointed auditors) have made reports in recent years highlighting the need to improve financial management and governance across the sector. In order to enhance the capability of the sector, it seems likely that generally larger community councils need to be created, as it is in the smaller councils that we have found more significant issues during audit. Larger councils are generally better-placed to offer higher remuneration to attract full-time and qualified staff. This consideration and the fact that there are many community areas without community councils makes a review of all communities appropriate.
32. I support provision for the training of community councillors. Community councillors often demonstrate a lack of understanding of their responsibilities (see, for example, the appointed auditor's report in the public interest on Mawr Community Council, January 2015), particularly in relation to the fairly complex legal framework, finance and governance. Training therefore seems to be a good idea.
33. I am in favour of the Welsh Government's proposal mentioned in its consultation document (but not in the draft Bill) that community councils should be required to consider and plan for the training needs of their own members and employees. I think it is important for community councils to take ownership of their training needs both because this should enhance and maintain their independent abilities, and it should make it more likely that members undertake training. However, at present I doubt that many councils would be well-positioned to identify training needs and gaps, so I do see county councils as having a role, as provided for in section 167, in considering the training needs of community councillors. Furthermore,

Welsh Government guidance, as provided for by section 167(2), should help ensure consistency in standards across Wales.

34. There will no doubt be practical issues arising from ensuring that mandated training is undertaken. I am not sure that the notification procedure in section 170 will be effective, and, as the consultation document notes, there is scope for strained relationships given that the clerk is an employee of the council. However, a requirement for clerks to compile records of training requirements and attendance is sensible, and it would, for example, facilitate audit review of training across community councils if resources and priorities make that appropriate.

Part 7, Workforce Matters

35. Overall, the provisions of Part 7 appear reasonable.

Part 8, General

36. If the Bill to be introduced includes provisions for Welsh Ministers to make regulations for combined assessments and for setting the timetable for the exercise of review body functions and sharing of review information (sections 127 and 143 in the current draft, which, as noted above, are not appropriate), then there should be reference to them in section 182(3). This would at least make such regulations subject to a resolution of the National Assembly.

The Regulatory Impact Assessment, Part 1 (the geographical structure of local government)

37. By and large, and taken as a whole, the cost and savings estimates do not seem unreasonable, though it is not possible to be certain about this, as the basis for many figures is not clear (see, for example, estimates of savings from consolidation of office space on page 63 of the Regulatory Impact Assessment, Part 1). While the overall costs and savings seem to me to be somewhat optimistic, this optimism does not seem so great as to undermine the overall picture that the costs should "pay back" in about 4 years, assuming the upper estimates of costs and the lower estimates of savings.
38. Some individual estimates seem rather optimistic, such as the lower total for pay harmonisation of £3.5 million (table 15 of page 69 of the Regulatory Impact Assessment, Part 1). This estimate appears to be based on staff in new authorities moving to the weighted averages of salaries in the existing authorities.
39. With some justification, the costs of transition committees are not included in the assessment for the draft Bill, as these were given coverage in the assessment for

the Local Government (Wales) Act 2015 (some £2 million 2016-20). However, to get a complete picture of the re-organisation costs, this cost needs to be kept in view, even though it is not likely to make a material difference to the overall pattern of cost and savings.

40. The presentation of the Regulatory Impact Assessment does not seem to me to be user-friendly. There is no immediately apparent and explicitly labelled summary of the gross cost of the Bill. It is necessary to turn to page 71 to identify the "preferred option" and then refer back to pages 68 and 69 for summaries of estimated savings and costs. The presentation does not seem tailored to meeting the requirements of Assembly Standing Orders.
41. One point that is apparent on consideration of the summary cost table on page 69 is that 2019-20 is to be a critical year for local government in terms of funding requirements. In that year authorities (and their pension funds) will need to find some £60 million to £100 million to fund redundancies, early retirement packages and other costs. The Welsh Government's consideration of this requirement is not clear from the consultation materials.

The Regulatory Impact Assessment, Part 2 (constitutional reforms, governance, community councils and workforce matters)

42. I am not in a position to offer definitive views as to costs shown in Part 2 of the Regulatory Impact Assessment, as it is not apparent quite what lies behind the figures given. There do, however, seem to be indications that the costs are incomplete. For example, pages 83 to 85 of the Regulatory Impact Assessment, Part 2, concerns self-assessments and peer assessments, but costs are only identified for peer assessments (£45,000 to £50,000 a year, which seems low, even on the basis of one assessment in each electoral cycle). It therefore seems that the cost of self-assessments has been omitted.