

DLG 06

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol

Communities, Equality and Local Government Committee

Local Government Draft (Wales) Bill /Bil Llywodraeth Leol (Cymru) Drafft

Ymateb gan: Comisiwn Ffiniau a Democratiaeth Leol Cymru

Response from: Local Democracy and Boundary Commission for Wales

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Communities, Equality and Local Government Committee
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2 February 2016

Dear Chair,

Local Government (Wales) Bill Written Evidence

Thank you for the opportunity to provide the Commission's views on the Local Government (Wales) Bill and its role in delivering recommendations for new community electoral arrangements in principal councils.

After careful consideration, the Commission believes there are areas where legislative provision could be made to enable the Commission to effectively consider and make recommendations for community electoral arrangements. There are also more general issues to the Commission which it believes it should raise at this juncture.

Reviewing the community councils will be resource intensive and the Commission wishes to work with Welsh Government to identify the level of resources required to undertake the programme of work within the timescales required in order to achieve appropriate outcome in terms of the quality of the recommendations.

The general principles of the Local Government (Wales) Bill

In a general sense, this is not an issue for the Commission to consider. The Commission is content that it has been deemed competent to review the community councils in the first instance, rather than the newly forming principal councils. We believe that the Commission's approach will provide for the new arrangements that the Welsh government seeks whilst removing the administrative burden from the newly forming principal councils at a critical stage of their formation.

Areas where the Commission believes the legislation can be improved

The Commission is satisfied that for the most part the provisions within Sections 153 to 166 provide the Commission with the necessary legislative tools to conduct reviews of community council arrangements. The Commission understands from discussions with Welsh Government officials that Guidance or Direction will be provided for, and consulted on, at a future point to set out the specific measures to which the Commission will be operating during the reviews.

However, the Commission believes that there are some areas in the draft legislation that can be improved upon to strengthen the legislation and allow the Commission to complete its duties in accordance with the desires of the Welsh Government. These are set out below:

Section 156 (5)

Section 156 (5) sets out that the timing of the Commission's draft proposals reports should not be published before 1 April 2020. This timing may cause an issue to the Commission in terms of scheduling its reviews.

In the consultation questions, there is a question as to whether this date could be moved to 1 April 2019. From the point of view of timetabling and conducting reviews in an orderly manner, moving the date to 1 April 2019 would be the preference of the Commission. The Commission envisages that it would commence reviews of the community council arrangements shortly after completing its proposed initial reviews of the new principal councils. If this is the case then it is highly likely that the Commission will be in a position to publish its draft proposals for consultation during 2019 and 2020. By not allowing the Commission to publish draft proposals before 1 April 2020, the Commission would be 'stock-piling' draft proposals and would launch the majority of draft proposals reports at that point. That has resource and timetabling implications for the Commission and could result in final reports being delayed.

The Commission cannot envisage any practical difficulties with publishing our draft proposals for consultation before 1 April 2020, and the benefits to the Commission's resourcing and timetabling would greatly benefit from moving the date to 1 April 2019.

Section 156 (5)(d)

Section 156 (5)(d) sets out an additional provision to Community reviews as set out in the Local Government (Democracy) (Wales) Act 2013 (the 2013 Act). It states that the Commission must place on deposit a copy of the report in each of the communities under review (in addition to those in the principal council offices).

This provision could be problematic in areas where community councils are small and do not have offices/centres where there is a reasonable expectation of being able to inspect our reports. In areas with no community councils the Commission is not certain what appropriate places will be available for places of deposit. It may be that the Commission would have to pay public houses or post offices to display the reports. This provision is likely to provide significant logistical and cost issues for the Commission.

The Commission is also looking at ways in which it can move to a more sustainable and digital first approach to our consultations, following the lead from Welsh Government. This new requirement could create an impediment to developing this approach.

Section 157 – Final report on review

Section 157 sets out how the Commission must report on the reviews. This section replicates much of Section 36 of the 2013 Act with three significant differences.

- I. The Commission must report to the Principal Council under review, not Welsh Ministers;
- II. Replication of the problematic Section 156 (5)(d) at Section 157 (3)(d).
- III. No provision for consequential changes.

If the Commission makes changes to boundaries which would be new electoral ward boundaries for principal councils then it is highly likely that the 2023 local government elections would need to be held at two different boundaries on the same election day. By not making provision for consequential changes (to County Council electoral arrangements) this could lead to the two sets of local government elections to be highly problematic for elections officials.

The Bill therefore needs to be amended to provide for provision for consequential changes.

Section 157 (3)(a)

Section 157 (3)(a) provides for how Welsh Government intend to provide a deadline for when the Commission must submit its reviews to the principal councils. Whilst previous practice has been for a deadline to be provided in a ministerial direction or specifically stated in an Act, Welsh Government Ministers will set a deadline by regulations at a future point.

Whilst there is no specific problem with this provision, it would be useful to know what the prospective deadline is as soon as possible to allow for effective planning for the reviews.

Section 158

Section 158 sets out how and when a principal council must implement the reviews. The Commission would like to note that it is unusual that an implementing authority is also a mandatory consultee. In all other reviews of electoral arrangements the implementing authority is removed from the consultation process in order to make an objective but informed view on implementing the recommendations of a reviewing body.

The Commission understands the important role the principal council should play during the consultation process, not least that some principal council members also sit on or chair community councils. It is therefore unusual that they also be asked to implement the Commission's recommendations. It is conceivable that a conflict of interest could arise in such circumstances.

Section 160

Section 160 sets out how Welsh Ministers will implement recommendations if a county council does not implement the reviews.

Whilst there is no explicit problem with this Section it does not make provision for a final decision on arrangements if agreement cannot be made between the Commission and

Welsh Ministers. A clause should be provided for which allows Welsh Ministers to implement recommendations, or not, without agreement from the Commission.

Further and Amended Provisions

There are additional provisions or guidance that the Commission believes that would aid the Commission in conducting its review of the community councils of all 9 councils.

Community Council Size

One of the first important tasks when undertaking a comprehensive community review is to set the council size for the community councils (or common councils). This forms a central pillar to how such a review may be conducted. The draft Bill makes little mention of council size, nor does it require the Commission to consult on its proposed community council size policy (either an all-Wales policy or eight or nine different ones).

An early indication from Welsh Government on their intended community council sizes would greatly assist the Commission in creating a new Community Council Size Policy appropriate for the new principal councils (including Powys).

Nomenclature change and Community Areas

Within the Bill there appears to be a change in nomenclature for 'community areas' and communities. Under the 1972 and 2013 Acts 'community areas' covered the whole of Wales. A community area could be used to form a community council, or several could be joined to form a group, or common, council.

As part of the change to local government there is the introduction of 'community areas' which will have representative groups which will inform a Principal Council of the views of this area. Community councils within a community area would form part of that group. The Bill says that these areas would be defined by the Principal Council but does not say how or when. It is assumed that these would need to be created at the beginning of the process so they are in place for 1 April 2020 and would be based upon a collection of the existing 'community areas'.

Within Part 6 of this Bill community areas are not referred to at all but there is a general statement of communities. There are then separate references to 'community councils' and 'communities that are not represented by a council'. This change may in the short term cause some confusion to bodies used to dealing with community areas in the current sense.

The creation of the new definition of community areas will need to be considered as part of any community review the Commission performs. As the new community areas are likely to be created during, and formed before, we have completed our reviews; it may be the case that we propose several new common or new community councils which straddle the new areas. Clarity over this issue would be useful before reviews commence.

Policy and Practice

There is no provision in the Bill to include a consultation on the Commission's proposed policy and practice for these reviews. Provision for this was provided for in both the 2013 Act and the Local Government (Wales) Act 2015.

Reviewing new enlarged community arrangements that may be radically different to the existing arrangements is likely to subject the process and recommendations to some opposition from principal and community councils. Although it is not made explicit in the Bill, the Commission may need to make a decision that it will consult on its policy and practice as it is best practice before a review programme of this nature commences and it would help mitigate against the risk of judicial review.

Until the exact nature of the review process is clarified, either by guidance or direction, and an end date set in regulations, the Commission will not be able to undertake such a process. This could cause a delay in the start of the review programme.

Duty to inform Ordnance Survey

Sections 158 to 162 deal with the making of Orders for the new communities. Whilst there are requirements to inform and send copies of the Orders to the Commission, Community Councils, Principal Councils and Welsh Government (as applicable), there is no mention of sending Orders to Ordnance Survey. The Commission believes that this is essential as they are the 'keepers of the boundaries' for the UK.

Commission Resourcing

The Explanatory Memorandum has the financial implication to the Commission of the Bill. These figures were taken from estimates indicated to Welsh Government. The Commission is glad that the estimated costs provided to Welsh Government have been included in their projections and the Commission will continue to provide updated estimates as the Bill progresses and any changes are made.

We are grateful for the invitation to offer the Committee the Commission's considerations upon this important proposed enactment. If the Committee requires clarification of any of the above or any more information, please let me know.

Yours Sincerely



Mr Owen Watkin OBE DL
Chair
Local Democracy and Boundary Commission for Wales