

DRAFT LOCAL GOVERNMENT AND ELECTIONS (WALES) BILL

1. Evidence Submitted By South Wales Fire and Rescue Authority

1.1 South Wales Fire and Rescue Authority appreciates the opportunity to comment on the draft Local Government and Elections (Wales) Bill issued at the end of November. It is intended to deal with comments under two headings, the first being generic comments on the Bill and the second, specific comments on fire and rescue specific provisions within the Bill itself.

2. Generic Comments

2.1. It is noted that much of the Bill appears at first sight to apply only to Councils, with just a few specific sections dedicated to the Fire and Rescue Authorities. However, on closer scrutiny, it is important to note that there are many provisions within the Bill that are applicable to “authorities connected with the Council”. Under this definition, community councils and national parks authorities are specifically referenced under the specific provisions in the Bill, yet the Fire and Rescue Authorities appear to have been consciously omitted. The reason this appears to be a conscious decision is that in the original draft of the Local Government (Wales) Bill issued in 2016, where some of the provisions have been lifted from word for word, the Fire and Rescue Authorities were specifically included in many of the provisions as a body connected to Councils. The Fire and Rescue Authority is comprised of wholly local authority appointed members and receives the majority of its funding through its constituent local authorities. It is therefore, by definition an authority connected Councils.

2.2 An example of this omission would be Part 3 Chapter 2 of each of the respective Bill’s covering public participation in local government. In the 2016 version of the Bill, the Fire and Rescue Authorities were specifically included within the definition of an authority connected to the council and therefore bound by the requirements in promoting public participation in local government and other requirements contained therein, yet in the 2019 Bill, this reference has been omitted. Whilst it is accepted that for this specific example, the vast majority of fire and rescue authority users do not consciously choose to utilise their services, doing so purely in an emergency situation; but this does not address the fact that it is unclear as to the rationale for the exclusion of Fire and Rescue Authorities from the definition for other relevant aspects of the Bill.

2.3 There are also other parts of the Bill that have the potential to impact upon Fire and Rescue Authorities, because of the way they are required to operate in the

same way as local authorities by virtue of legislation. For example, Fire and Rescue Authorities are under the same obligations to publish notice of meetings as local authorities, yet the changes detailed by virtue of s.56 and Schedule 4 of the Bill appear to exclude Fire and Rescue Authorities from the ability to publish such notice electronically. In addition, as Fire and Rescue Authorities operate under identical provisions as local authorities for meetings, it would be beneficial for us to have the same working practices, to include electronic publication of notices and electronic service of summonses. It is considered to be a detrimental step not to fully embrace the digital age for Fire and Rescue Authorities at the same time as local authorities. It is noteworthy that all the provisions within Part V of the Local Government Act 1972 apply to Fire and Rescue Authorities as well as local authorities, and therefore, unless there is a proposal to break Fire and Rescue Authorities links with local authorities (of which there is none within this Bill), then this consistency should continue.

- 2.4 It is also noted that s.53(7&8) provides that the Welsh Ministers may by regulations make provision for Fire and Rescue Authorities to broadcast their meetings electronically and it is recognised that this would create a financial burden on Fire and Rescue Authorities to do so. However, it is the Fire and Rescue Authority's understanding that local authorities had Welsh Government funding made available to them to facilitate the installation of necessary infrastructure for this, which at the time was not made available to Fire and Rescue Authorities. It is therefore suggested that to create parity amongst public services, necessary funding will be required to deliver this capability to ensure that it does not fall as a burden to local authority funders.
- 2.5 Turning next to the provisions of s.66 & 67 of the Bill (family absence for members of local authorities and the duties of leaders of political groups in relation to standards of conduct of members), these provisions also only appear to relate to local authority roles and have again been omitted for Fire and Rescue Authority roles. The principles and obligations of members under the code of conduct apply equally to Fire and Rescue Authority members as they do to local authority members, with members being subject to the same standards committee and Ombudsman interventions if appropriate. It would therefore be wholly appropriate for these provisions to extend to members of Fire and Rescue Authorities in addition to local authorities. This would then have the positive effect of having consistent standards and expectations across connected public sector organisations. Similarly, the provisions for family absence for a local authority member and family absence for a Fire and Rescue Authority member should also be consistent, as to do otherwise could be argued to be discriminatory.

3. Fire and Rescue Authority Specific Comments

- 3.1 It is noted that s.162 – 164 of the Bill deal specifically with fire and rescue related provisions. Looking first at s.162, this makes very specific changes to ss.2 & 4 of

the Fire and Rescue Services Act 2004. It is fair to say that the Authority has some grave concerns about the purpose of these changes, which were highlighted by the Authority during the 2016 consultation on the then Local Government (Wales) Bill when similar provisions were included.

- 3.2 In its current form, the relevant 2004 provisions require a public inquiry to be held where changes are proposed to any of the elements of the Combination Scheme Order that establishes the Fire and Rescue Authority and Fire and Rescue Service for the respective area unless the respective Fire and Rescue Authority affected by the proposals agree to the changes.
- 3.3 However, the proposed amendments would mean that a public inquiry would only need to be held if the Combination Scheme were to be revoked in its entirety or there were to be a change to the combined geographic area. This has the consequence that an inquiry would not need to be held (where it previously would have been) for any changes to the funding mechanisms of the Fire and Rescue Authorities, its governance structures and systems, the appointment of officers, the use of local authority services and the application of various legislative provisions.
- 3.4 These protections were put in place for a reason when the 2004 legislation was enacted, and that was to ensure due regard was given to the safety of firefighters or the community before changes were implemented that could detrimentally impact on these. This change is an extremely concerning step as it could result in unsuitable or ill thought through changes being made to some of the key areas noted above without sufficient inquiry, debate, scrutiny or challenge. It is also noted that these changes are once again being proposed against the backdrop of consultations on the potential reform of governance and funding mechanisms for fire and rescue authorities in Wales (the 2018 White Paper on reform of the Fire and Rescue Authorities in Wales governance and funding arrangements) and therefore has the potential to be perceived as a back door attempt to either avoid public inquiry, scrutiny challenge or to implement changes that garnered no support in the previous White Paper.
- 3.5 In relation to proposals to move away from the performance requirements contained within the Local Government Measure 2009, this is something that is welcomed and has long been argued for within the fire and rescue sector as the current regime was not designed for an emergency response and prevention style organisation. Again, the link to a new performance regime being aligned to the requirements of the National Framework for fire and rescue are supported and will more properly focus on what is important from a delivery perspective, which is missing from the current regime.
- 3.6 The proposals within s. 163 (detailing the new s.21A FRSA'04 provisions) are broadly supported, although there are several aspects which are considered not

sufficiently strategic enough and could inhibit the ability of Fire and Rescue Authorities to determine key areas of focus. Whilst a new system is welcomed, this should not be so prescriptive as to hinder how a plan is developed. Therefore, there should be flexibility in its lifespan and detail, as many priorities will involve behaviour change which can take a considerable period of time to influence. It is therefore considered that detailing key priorities and objectives is important, but specifying actions under each of these at this strategic level is not appropriate (s.21A(3)(c)). These should more properly sit at an operational level feeding in to the higher level strategic plan, they should also be fluid enough to change as required. It is noted that actions to achieve priorities could be considerable in number and it would be inappropriate to detail all of these in a strategic level plan.

- 3.7 A natural consequence of this means that it may not be appropriate, as detailed within s.21A(4) for clear parameters to be detailed on how performance assessment will be measured or assessed. Given the different risk profiles within the three Fire and Rescue Authority areas there is likely to be some difference between each of the Fire and Rescue Authorities on what their priorities are. There is also likely to be considerable subjective performance evidence, especially with regard to preventative work, where standard methods of assessment of performance (such as key performance indicators) will not be appropriate.
- 3.8 It is therefore suggested that this section requires some further review (in consultation with the Fire and Rescue Authorities) to keep it strategic in nature and avoid prescriptive requirements on the plan content or assessment of performance.