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Dear Mr Griffiths,

The Local Government & Elections (Wales) Bill

1. At the Committee's meeting on 11 December 2019, I undertook to provide further thoughts on alternatives to the condition in section 128(2)(a) of the Bill (i.e. receipt of special inspection report) for the making of restructuring regulations.
2. To put these thoughts into context, it may be helpful if I briefly refer to the concerns expressed in the Auditor General's letter of 5 December 2019 and at the Committee's meeting on 11 December 2019. In essence, we have concerns that the conditions in section 128 may not be sufficient in themselves to ensure a sound basis for deciding on whether to make such regulations and for deciding their content. In particular, while a special inspection report may contain relevant information in relation to local government effectiveness and governance, it is unlikely to cover all the matters relevant to a decision on restructuring, even alongside further information obtained from consultation (the third condition). (This is in addition to our particular concern that having special inspection reports as a condition of making restructuring regulations may lead to the Auditor General's independence being called into question.)
3. The key condition in section 128 appears to be the fourth condition (s128(5)), i.e. that following consultation:
"...the Welsh Ministers are satisfied that, unless restructuring regulations are made, effective and convenient local government is not likely to be achieved in the area of the council under consideration."
4. The term "effective and convenient local government" has been in use for some time; for example, it features in section 8 of the Local Government & Public Involvement in Health Act 2007, which concerns reviews of local

government areas in England. However, neither the Bill nor existing legislation defines the term¹. The Welsh Ministers will, however, be required by section 146(2)(b)(ii) of the Bill to explain why they are satisfied that restructuring regulations are necessary for the achievement of effective and convenient local government (as per(s128(5)). It may therefore be helpful, whether on the face of the Bill, or in another publication, for the term to be defined along with criteria for drawing a conclusion as to satisfaction. This may help the Welsh Ministers to identify and take account of all relevant considerations.

5. In addition, under the Well-being of Future Generations (Wales) Act 2015, the Welsh Ministers are under a duty to pursue sustainable development. While that duty does not apply to every function the Welsh Ministers exercise, given the important role of local government in people's lives, it would seem appropriate for Welsh Ministers to arrive at their conclusion on satisfaction (the fourth condition) in accordance with the sustainable development principle (section 5 of the 2015 Act).
6. In any event, a credible approach to being satisfied that, unless restructuring regulations are made, effective and convenient local government is not likely to be achieved will require careful analysis of a range of factors. These are likely to include evidence of actual or impending service failure, democratic and service inaccessibility, and lack of financial sustainability. Such factors will need analysis in geographical context, including in terms of demographic change, economic development patterns and transport networks.
7. Finally, it seems to be implicit in the fourth condition that the Welsh Ministers must not only conclude that the current structure in an area is not likely to achieve effective and convenient local government but that also restructuring regulations can be made that make it likely (or more likely than not) that effectiveness and convenience can be achieved. If this interpretation is not correct, then it appears that section 128 provides nothing to help prevent restructuring regulations making a bad situation

¹ While not a definition *per se*, it may be helpful to note that the 2010 guidance for community governance reviews in England (under the 2007 Act), says:

“...the effectiveness and convenience of local government is best understood in the context of a local authority’s ability to deliver quality services economically and efficiently, and give users of services a democratic voice in the decisions that affect them.”

Also, while specific to parish and town councils, the guidance goes on to say:

...effective and convenient local government essentially means that such councils should be viable in terms of providing at least some local services, and if they are to be convenient they need to be easy to reach and accessible to local people.

worse. Either way, it would seem appropriate to clarify this point and to make explicit provision for restructuring regulations to be required to be designed to improve effectiveness and convenience of local government.

8. To ensure that the Welsh Ministers have adequate information and advice on these matters, it may be helpful for the Welsh Ministers to have a duty to seek advice from the Local Democracy and Boundary Commission for Wales. Such a duty could be included as a condition in section 128. The existing provision at section 137 of the Bill, by being confined to a power to direct the Commission to undertake reviews of electoral arrangements in relation to proposals and restructuring regulations appears unduly narrow.
9. I hope that this is helpful to you. I should be happy to discuss or provide further assistance.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Martin Peters', with a stylized flourish at the end.

Martin Peters

Head of Law & Ethics