

POLICY AND RESOURCES

CABINET BOARD

6TH DECEMBER 2012

DIRECTORATE OF FINANCE AND CORPORATE SERVICES

REPORT OF THE HEAD OF LEGAL SERVICES

INDEX OF REPORT ITEMS

Part 1 - Doc. Code: PRB-061212-REP-FS-DM

SECTION A - MATTER FOR DECISION			
	Report Item	Page Nos.	Wards affected
1	Local Government (Democracy) (Wales) Bill	2-10	All

ITEM No. 1
PART 1 SECTION A

THE LOCAL GOVERNMENT (DEMOCRACY) (WALES) BILL

1. Purpose of Report

To advise Members of the content of the Local Government (Democracy) (Wales) Bill published by the Welsh Government.

2. Background

- 2.1. On 27th November 2012 the Welsh Government published the Local Government (Democracy) (Wales) Bill. The Bill is accompanied by an Explanatory Memorandum. I have extracted from the Explanatory Memorandum which relates to part 5 of the Bill. Parts 1 to 4 of the Bill deal with the Local Democracy and Boundary Commission for Wales and will be dealt with separately by the Chief Executive and his staff.
- 2.2. We have received an indication that the Communities, Equality and Local Government Committee of the Assembly will consider the general principles of the Bill and it has been agreed that the Committee should report to the Assembly by 8th March 2013. The Business Committee of the Assembly have agreed that stage 2 proceedings should be completed by 3rd May 2013 subject to the general principles of the Bill being agreed by the Assembly.
- 2.3. I have to say that many of the provisions in the Bill amend Welsh Assembly legislation which itself had only been passed recently. Sometimes the amendments deal with issues which had previously been brought to the attention of the Assembly during consultation on previous legislation. The comments follow the sequence of topic headings in the Explanatory Memorandum.
- 2.4. The proposed amendments to the rules on the Independent Remuneration Panel for Wales and its reports effectively reduce the amount of notice which local authorities will have of proposals to alter remuneration. There are also issues to be dealt with about the practical effect on Members' remuneration of backdated determinations. In that connection see paragraph 47 bullet point 3 of the explanatory note.

- 2.5. Over the years both Whitehall Government and now the Assembly have caused confusion by failing to adopt a standard form of wording to describe local government committees i.e. committees that exercise non executive functions. Doubt has crept in from time to time as to whether the standard rules which previously applied across the board apply to individual new committees e.g. Standards, Audit etc. In the case of Audit Committees any reference to political balance was left out of the Local Government (Wales) Measure 2011. It is now proposed that the Audit Committee be clearly brought in the requirement to secure political balance.
- 2.6. The Local Government (Wales) Measure 2011 requires local authorities to set up Democratic Services Committees. These Committees were given a very specific and narrow statutory role ie to designate the Head of Democratic Services and keep under review the provision of staff, accommodation and other resources available to that Head of Service. Unusually the Democratic Services Committee was prohibited from dealing with other business. Many consultees were critical of this provision questioning the setting up a specific statutory committee with a very restricted role.
- 2.7. The Bill will enable Democratic Services Committees to look at matters specifically referred to them by the local authority thus expanding their role. The Bill as drafted would still not enable local authorities to set up Democratic Services Committees with wider terms of reference.
- 2.8. Section 63 of the Bill would enable but not compel local authorities to set up joint Standards Committees.
- 2.9. Sections 53 to 55 of the Bill make provision requiring Town and community Council to make available electronically contact details for the Council or its Clerk, information about Members and minutes of its meetings.
- 2.10. The Bill contains at Section 51 provision which would allow local authorities to separate out the ceremonial and civic functions of the Mayor and Deputy Mayor from the function of chairing the Council meeting. Some local authorities already have this separation based it is said on Royal Charter where the authorities concerned have a Lord Mayor. Over the years some other authorities have tried to implement this type of division of responsibilities without statutory authority. The Bill would allow local authorities that wished to do so to separate out the Civic and Ceremonial functions from the function of chairing the Council meeting.

- 2.11. The above comments are based on a short reading of the Bill and the Explanatory Memorandum received the day before the deadline for the receipt of reports. I may make supplementary comment at the meeting.

3. **Recommendation**

That Members note the report and authorise the Head of Legal Services to make further comment to the Welsh Government on the detailed wording of the Bill.

4. **Reason for Proposed decision**

To enable representations to be made to the Welsh Government and Assembly on the proposed Bill.

5. **List of Background Papers**

Local Government (Democracy) (Wales) Bill

6. **Wards Affected**

All

7. **Officer Contact**

Mr. David Michael – Head of Legal and Democratic Services
Tel No: 01639 763368
Email: d.michael@npt.gov.uk

COMPLIANCE STATEMENT

THE LOCAL GOVERNMENT (DEMOCRACY) (WALES) BILL

(a) **Implementation of Decision**

The decision is proposed for implementation after the 3 day call-in period.

(b) **Sustainability Appraisal**

Community Plan Impacts:

Economic Prosperity	No impact
Education and Lifelong Learning	No impact
Better Health and Well Being	No impact
Environment and Transport	No impact
Crime and Disorder	No impact

Other Impacts:

Welsh Language	No impact
Sustainable Development	No impact
Equalities	Positive
Social Inclusion	Positive

(c) **Consultation**

There has been no requirement under the Constitution for external consultation on this item.

Independent Remuneration Panel for Wales

- 41 The Independent Remuneration Panel for Wales ("the Panel") was established and operated under The Local Authorities (Allowances for Members) (Wales) Regulations 2007 ("the Regulations") made by the National Assembly for Wales
- 42 The Panel is independent of central and local government and was established on a permanent basis initially to determine the range and levels of allowances payable by county and county borough councils to their councillors and co-opted members with voting rights.
- 43 The Panel's remit was extended by the Local Government (Wales) Measure 2011 ('the 2011 Measure'), to also include members of National Park Authorities (NPAs), Welsh Fire & Rescue Authorities (FRAs) and community and town councils in Wales.
- 44 Each year the Panel must produce an Annual Report, which sets out the type and levels of payments that authorities may or must make available to their members and co-opted members. The Panel is able to prescribe different amounts for different councils. Each Annual Report must be produced by 31 December prior to the year in which the report relates. The 2011 Measure required the first Annual Report to be produced by 31 December 2011 and take effect from 1 April 2012. The Panel may produce Supplementary Reports at any time.
- 45 The 2011 Measure requires the Panel to consult with the Welsh Ministers, relevant authorities and interested parties before finalising their Annual and Supplementary Reports. There must be a minimum period of eight weeks between publication of an annual or supplementary report in its draft and final form. The Welsh Ministers may direct the Panel to reconsider the content of a draft report. The Welsh Ministers must specify their reasons for issuing the direction and give a date for a response. The Panel is not obliged to vary the draft, but must respond and explain if it decides not to vary.
- 46 Every report produced by the Panel is placed on the Independent Remuneration Panel for Wales' website. The Panel must also send a copy of every report it produces to the Welsh Ministers, relevant authorities and other interested parties.

- 47 The Panel has now had experience of producing its first annual report³ under the requirements of the 2011 Measure and has identified a number of areas where these requirements are unnecessarily restrictive or onerous. The Bill will make amendments to the 2011 Measure to enable the Panel to undertake its duties in a more efficient and effective manner by:
- Providing the Panel with an option to prescribe a numeric limitation on those entitled to prescribed payments, as well as expressing this as a proportion of each authority.
 - Empowering the Panel to choose any date for the coming into force of their determinations and be able to backdate any of their determinations for a period of up to three months prior to the publication of a report.
 - Altering the final date for publication of the Panel's annual report from 31 December to 28 February of each year preceding the start of the new financial year on 1 April.
 - Providing that the consultation period for supplementary reports be reduced to a period of between four and eight weeks, at the discretion of the Panel.
- 48 The 2011 Measure also enables the Panel to require local authorities to publish information about payments received by individual councillors, but only those payments which fall within the Panel's remit. In their 2011 annual report, the Panel strongly indicated that they felt it to be in the public interest for all income received by councillors in relation to public offices held by them in their capacity as councillor to be published. The Welsh Government agrees with this and the Bill empowers the Panel to require local authorities to publish all information relating to remuneration received by individual councillors in connection with the performance of public duties.
- 49 The Panel can make decisions concerning payments to members of relevant authorities listed in the 2011 Measure, currently county and county borough councils, community councils, National Park Authorities and Fire and Rescue Authorities. The Bill will enable the Welsh Ministers to prescribe other public bodies for which the Panel be given responsibility to determine payments to members.

Local Authority Audit Committees

- 50 The 2011 Measure imposed a requirement for each principal council to establish an audit committee with functions specified in that Measure. Membership of the committee is determined by the authority, who must ensure that at least two-thirds of the committee's members are councillors, and that at least one member is a lay member. The authority can also elect that one of its executive (but not its senior member/leader) to be on the committee.
- 51 Guidance supporting the 2011 Measure suggests that an authority should ensure that the councillor membership of an audit committee reflects the

³ Independent Remuneration Panel for Wales Annual Report December 2011
<http://wales.gov.uk/irpwsb/home/publication/201112/irpannreport111/?lang=en>

political balance within that authority but this was not made a requirement within the Measure. Local Government representatives have, however, expressed the view that political balance is the established way of appointing council committees, and deem that it should be a requirement to prevent ongoing debate on the matter. The Bill amends the 2011 Measure to place this requirement on the face of the legislation.

Democratic Services Committees

- 52 The 2011 Measure also required each council to establish a democratic services committee to perform the following roles:
- carry out the local authority's function of designating the Head of Democratic Services (HDS);
 - keep under review the provision of staff, accommodation and other resources made available to the HDS, in order to ensure that it is adequate for the responsibilities of the post; and
 - make reports to the full council in relation to these matters.
- 53 The 2011 Measure prevents a Democratic Services Committee from discharging any functions other than those provided for in the Measure. The policy intention behind this provision was to ensure the Committee is focussed on its primary functions. The Bill will remove this provision as a direct response to concerns identified by local government. Committees will have flexibility to consider other matters which might be considered supportive of members and their development, such as training and development, annual reporting, remuneration and family absence of members.

Standards Committees

- 54 The Local Government Act 2000 ("the 2000 Act") established the current ethical framework that promotes the observance of consistent standards of conduct by local government members in England and Wales. It places a duty on every relevant authority (for this purpose a county/county borough council, National Park Authority, Fire and Rescue Authority and a Police Authority) to establish a standards committee.
- 55 The general functions of standards committee are:
- Promoting and maintaining high standards of conduct by the members and co-opted members of the authority; and
 - Assisting members and co-opted members of the authority to observe the authority's code of conduct.
- 56 Without prejudice to its general functions, a standards committee has the following specific functions:
- Advising the authority on the adoption or revision of a code of conduct;
 - Monitoring the operation of the authority's code of conduct; and

- Advising, training or arranging to train members and co-opted members of the authority on matters relating to the authority's code of conduct.
- 57 The county/county borough council's standards committee exercises these functions in relation to community and town councils in its area.
- 58 The Welsh Government believes that there would be benefit from relevant authorities in Wales collaborating to establish joint standards committees based upon the 'Welsh Government's Collaboration Footprint for Public Services'. Some of these benefits include:
- Helping to overcome problems experienced in some areas in finding suitable independent people to sit on standards committees;
 - Making more efficient and effective use of resources and providing flexibility to deal with alleged failures to comply with the code of conduct;
 - Avoiding potential conflicts of interest and enhancing public confidence in the complaints process by creating distance between committees and complainants / subjects of complaints;
 - Facilitating consistent responses to complaints across Wales, especially where action is taken through local resolution processes; and
 - Facilitating the spread of good practice in promoting high standards of conduct.
- 59 The Bill amends Part III of the 2000 Act to facilitate the establishment by local authorities of joint standards committees for the purposes of exercising functions under that Act.

3.2 Improving access to information

Town and Community Councils

- 60 It is now common practice amongst large sections of the public to use the internet, email and social networking sites to obtain information about their local area, identify available services and contact public bodies. In turn, public bodies routinely publish information relating to their business, structure and functions in electronic format.
- 61 A 2010 survey of community and town councils in Wales⁴ found that around half of town and community councils had a website, a significant increase since 2002 when it was less than a fifth. However, this still means that in many areas communities are unable to access information about their council through modern communication methods.
- 62 Although town and community councils are, in the main, relatively small organisations, it is no longer considered appropriate that information about their

⁴ Community and Town Councils Survey 2010 (Welsh Government Social Research Number: 07/2011)
<http://wales.gov.uk/topics/localgovernment/research/commtcsurv1011/?lang=en>

proceedings may, in some cases, only be available in hard copy and placed on notice boards at various points in their area. To have relevance to the lives of their electorate, it is now essential that information about community and town councils is made available on the Internet and that they are contactable by e-mail.

- 63 The Bill provides that every town and community council should, by May 2015, provide their contact and membership details, and records of their proceedings via the internet. In addition the clerk, as a minimum, should be contactable by e-mail. The Bill does not require each town or community council to have its own website. In many cases, it may be possible for the local principal council or a membership organisation such as One Voice Wales to host the website. The Bill also provides for the Welsh Government to issue guidance on this matter.

3.3 Improving the Chairing of Principal Councils

Chairs and Mayors of Principal Councils

- 64 The Local Government Act 1972 ("the 1972 Act") provides for principal councils in Wales to elect annually a Chairman of the council and appoint a Vice-Chairman. It also provides that principal councils which are county borough councils may confer the title of Mayor and Deputy Mayor on their Chair and Vice Chairman respectively. In the case of both Cardiff and Swansea City Councils, the Monarch has bestowed on these councils the ability to use the title Lord Mayor and Deputy Lord Mayor.
- 65 Some principal councils have already sought to separate the role of civic head from that of presiding over council meetings. However, it that appears that such a separation of roles could be in breach of existing legislation and Royal Prerogative in respect of the councils bestowed a Lord Mayor.
- 66 The Bill makes provision for a principal council to decide to appoint different member from amongst their membership to act as a Presiding Member or Deputy Presiding Member of the council, when the principal council determines that it is appropriate to separate the role of Mayor/Chairman who will conduct purely civic functions and the Presiding Member to preside over meetings of the Council. This in no way affects the Royal Prerogative to enable the chairman of a local authority to have the designation as Lord Mayor as the position of chairman will remain as a civic/ceremonial post.