

Julie James AM

Minister for Housing and Local Government

23 January 2020

Dear Julie

Local Government and Elections (Wales) Bill

I am writing regarding our scrutiny of the Local Government and Elections (Wales) Bill and would like to set out in advance some detailed questions on the regulation-making powers it contains. Before doing so I would like to, on behalf of the Committee, pass on our sincere condolences for the bereavement you have suffered recently.

We anticipate that the focus of our evidence session (to be re-arranged) will be on the broader legislative principles behind the Bill, and depending on timings, your responses to the detailed questions below.

Delegated powers

1. Why is it appropriate to include 98 powers for the Welsh Ministers to make regulations, orders and directions, and to issue guidance?
2. Do you believe that the correct balance has been achieved between what provisions contained on the face of the Bill and what has been left for secondary legislation?

Voting systems for elections to principal councils

3. Section 13(3) provides the Welsh Ministers with a wide power to make “any other provision for the conduct of elections of councillors for local government areas in Wales”. Although it is subject to the affirmative procedure, can the Minister explain why this wide power is needed and what purpose it is intended to be used for?



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Database of electoral information system

4. Section 18(1) provides the Welsh Ministers with the power to establish a database of electoral registration information. Such a register will retain personal information regarding the electorate without their explicit consent and therefore impacts on their private lives. The regulations made under this power may also permit the transfer of the information to prescribed third parties. Can the Minister confirm why this database is needed and why she considers it appropriate to use executive powers to create such a database rather than include details on the face of the Bill?

Election pilot schemes

5. Section 26(1) provides for an order to be made by the Welsh Ministers, without any Assembly scrutiny, for an election pilot scheme to be undertaken. Why is this power subject to no procedure?

General power of competence

6. For what purposes do you intend to use the powers under section 35 of the Bill (in relation to amending/removing existing legislative restrictions on the use of the general power of competence or further restricting the general power of competence)?
7. How does this sit with section 32 of the Bill (that the use of the general power of competence is subject to existing legislative restrictions)?

Conduct of members

8. Section 67(2) provides the Welsh Ministers with the power to make regulations about the circumstances in which members of a principal council in Wales are to be treated as constituting a political group and in which a member of a political group is to be treated as a leader of the group. The Welsh Ministers are obliged to “consult such persons as they think appropriate” before making these regulations.
 - (i) who do you propose to consult?
 - (ii) why is the regulation-making power subject to the negative procedure, rather than the affirmative, given that the content of such regulations could be politically sensitive and affect individual rights?

Joint committee regulations

9. Section 82(1) gives the Welsh Ministers the power to amend by regulations, any regulations which establish a joint corporate committee. This power can be used to confer, modify or remove a function of a corporate joint committee, or “for any other purpose”. Can the Minister explain what she envisages “any other purpose” will be and why this catch-all provision is necessary?



10. Section 84(1) permits joint committee regulations and any regulations made under sections 82 or 83 to amend, modify, apply, disapply, repeal or revoke any enactment (which includes primary legislation). Why is this provision subject to the negative procedure when it contains a Henry VIII power to amend, modify, apply, disapply, repeal or revoke primary legislation?
11. Can the Minister also explain how section 84 will work when used in conjunction with sections 82 or 83, when regulations made under those sections are subject to the affirmative procedure?
12. Section 84(2) gives the Welsh Ministers the power to amend, modify, apply, disapply, repeal or revoke any enactment (which includes primary legislation) in relation to any enactment for the purposes of, or otherwise in connection with, Part 5 of the Bill which deals with corporate joint committees. This is a very wide power, so can the Minister explain why this is required and what she envisages that this power will be used for?
13. Section 86 obliges principal councils and corporate joint committees to have regard to any guidance issued by the Welsh Ministers in relation to Chapters 3-5 of Part 5 of the Bill.
 - (i) Can the Minister explain what this wide power to issue guidance is intended to cover and why specific reference to what the guidance will cover is not made on the face of the Bill?
 - (ii) Given the wide remit of the power, does the Minister agree that an Assembly procedure should be applied to any guidance issued under it?

Panel assessments of performance

14. Section 93(1) enables the Welsh Ministers to make regulations using the negative procedure for, amongst other things, the appointment of members of panels to carry out performance assessments of principal councils, and fees to be paid to such members.
 - (i) Can the Minister explain what steps will be taken in these regulations to ensure the independence of the members of the performance assessment panels and why such independence is not enshrined on the face of the Bill?
 - (ii) Can the Minister also explain why she considers that regulations setting the fees to be paid to panel members will not be subject to the affirmative procedure?

Powers of the Welsh Ministers to amend enactments and confer new powers

15. Section 109(2) enables the Welsh Ministers to make provision in regulations conferring on any or all principal councils any power which the Welsh Ministers



consider to be necessary or expedient to permit or facilitate compliance with Chapter 1 of Part 6 of the Bill (performance, performance assessments and intervention for principal councils). Can the Minister explain why it is necessary to use the word “expedient” here and why “necessary” is not sufficient?

Voluntary mergers of principal areas

- 16.** Section 122 obliges principal councils to have regard to any guidance issued by the Welsh Ministers about the making of a merger application between two or more principal councils. This provision has retrospective effect, so principal councils may satisfy this obligation by having regard to any guidance which is issued before section 122 comes into force, where such guidance has been expressly issued for the purposes of section 122. The Explanatory Note sets out what should be covered by this guidance, but this is not included on the face of the Bill.
- (i) Can the Minister explain why the detail from the Explanatory Note is not included on the face of the Bill?
- (ii) Can the Minister also confirm when she expects to issue guidance for the purposes of section 122 and why such guidance is not to be laid before the Assembly, given that it can be issued before the statutory power to do so comes into force?
- 17.** Section 123(1) provides the Welsh Ministers with the power to make regulations which merge two or more principal councils. There is no requirement on the face of the Bill for the Welsh Ministers to undertake any public consultation prior to making such regulations. Although section 121(1)(a) requires a principal council to consult local people prior to making a merger application, there is nothing on the face of the Bill to require confirmation that this has been done fully and properly before merger regulations are made. Can the Minister explain how she proposes to ensure that members of the public are fully and properly consulted before any merger regulations are made?
- 18.** Why is the restriction set out in the Explanatory Memorandum in relation to section 126(4), that the Welsh Ministers may only use the power to direct a principal council as to the appointment of a returning officer if merging councils have themselves failed to appoint a returning officer for the first elections to the new council, not reflected on the face of the Bill?
- 19.** Why is the restriction set out in the Explanatory Memorandum in relation to section 127(2), that the Welsh Ministers may only use the power to direct a principal council to take action to facilitate the effective transfer of staff, property etc in a merger where merging councils are themselves failing to take such effective action, not reflected on the face of the Bill?



Restructuring of principal areas

- 20.** Section 130 gives the Welsh Ministers the power to make restructuring regulations, following receipt of a special report from the Auditor General for Wales or an abolition request from a principal council. There is no requirement on the face of the Bill for any public consultation or notification (other than the publishing of an abolition request or a notice of receipt of a special report or abolition request by the Welsh Ministers) prior to any restructuring regulations being made. Can the Minister explain what public involvement is envisaged in relation to any restructuring of a principal councils and why this is not set out on the face of the Bill?
- 21.** Why is the restriction set out in the Explanatory Memorandum in relation to section 134(4), that the Welsh Ministers may only use the power to direct a principal council to take action to facilitate the effective transfer of staff, property etc in a restructuring where restructuring councils are themselves failing to take such effective action, not reflected on the face of the Bill?
- 22.** Section 137(6) provides a power to the Welsh Ministers to reset the start date for the Local Democracy and Boundary Commission's next 10-year electoral arrangements review period and allows them to change the length of the review period. Given the potential effect of either resetting the start date of a review period or extending such a period, why are these regulations not subject to the affirmative procedure?
- 23.** Why is the restriction set out in the Explanatory Memorandum in relation to section 139(1), that the Welsh Ministers may only use the power to direct a principal council to provide them with information relating to a transfer of functions between councils where a principal council does not voluntarily provide the specified information, not reflected on the face of the Bill?
- 24.** Why is the restriction set out in the Explanatory Memorandum in relation to section 140(1), that the Welsh Ministers may only use the power to direct a principal council to provide bodies specified by the Welsh Ministers with information relating to a transfer of functions between councils where a principal council does not voluntarily provide the specified information, not reflected on the face of the Bill?
- 25.** Section 145(3) enables the Welsh Ministers to make regulations of general application to deal with consequences which may have an impact beyond the merger or restructuring provided for in specific merger or restructuring regulations. Such regulations may make supplementary, incidental, consequential, transitional, transitory or saving provision. This is a broad power – why is it necessary and could it be used more broadly than she intends?

Local Democracy and Boundary Commission

- 26.** Can the Minister explain whether she intends to issue statutory guidance to the Local Democracy and Boundary Commission regarding the appointment of its Chief Executive of the Local Democracy and Boundary Commission, and, if so,



whether this will be prescriptive guidance which may negate the removal of the requirement upon the Welsh Ministers to make such appointment? Why does the Minister feel that no Assembly procedure is appropriate for this guidance?

Commencement

- 27.** Section 171(6) enables the Welsh Ministers to make orders providing for commencement of the remaining provisions in the Bill. This committee's previous recommendations on this matter on other Bills have been that commencement orders that include 'transitory, transitional or saving provision' should be subject to the negative procedure. What assessment was undertaken before the 'no procedure' Assembly procedure was specified for the Order making power under section 171(6)?

Schedules

- 28.** Paragraphs 9 and 10 of Schedule 1 provide the Welsh Ministers with regulation making powers to make provision for the electoral arrangements for an area that is under review. Given the significance of amending electoral arrangements, why does the Minister believe that it is appropriate to specify no Assembly procedure?
- 29.** Paragraph 2(4) of Schedule 2 provide the Welsh Ministers with regulation making powers to combine elections of councillors of a Welsh principal council and elections of councillors of a community council if they are held on the same day. This includes the power to modify any relevant provision in the Representation of the People Acts which relates to such elections. Why does the Minister think that this is an appropriate use of a Henry VIII power?
- 30.** Paragraphs 6, 10(3) and 10(4) of Schedule 4 provide the Welsh Ministers with regulation making powers to amend primary legislation. The powers allow the Welsh Ministers to amend or repeal provisions which currently provide that National Park Authorities and Fire and Rescue Authorities are exempt from the requirement to publish notices electronically on their website. Can the Minister explain why Henry VIII powers are being used, rather than putting the exemption on the face of the Bill?
- 31.** Paragraph 3 of Schedule 8 provides the Welsh Ministers with regulation making powers to make provision about the exercise of functions of the Public Services Ombudsman for Wales under section 69 of the Local Government Act 2000. Given that such regulations could seriously affect the way in which the Ombudsman conducts investigations under section 69 of the 2000 Act, did the Minister consider applying a super-affirmative procedure?
- 32.** Can the Minister explain why the power to direct a transition committee for merging or restructuring councils to exercise its functions in accordance with the direction, as set out in paragraph 7(1) of Schedule 10, is not expressly subject to the limitation, as set out in the Explanatory Memorandum, that the power will be used



when it is considered that a transition committee has been negligent or tardy in its responsibility?

Yours sincerely

A handwritten signature in black ink that reads "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw AM
Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.

