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## **LOCAL GOVERNMENT AND ELECTIONS (WALES) BILL**

### **Purpose**

1. The purpose of this report is to update members on the passing of the Local Government and Elections (Wales) Bill and encourage authorities to respond to the consultation on the Regulations to Establish Corporate Joint Committees.

### **Background**

2. The Local Government and Elections (Wales) Bill [the Bill] was passed by the Senedd on 18<sup>th</sup> November 2020 by 39 votes to 16, a year to the day after it was introduced in 2019. It is anticipated the Bill will receive Royal Assent early in 2021.
3. The Bill was one of only two Bills in the Welsh Government's legislative programme to continue during COVID 19; it was prioritised given the timescales required to introduce planned electoral reforms in time for the 2022 local elections.
4. The Bill has been the culmination of several years of policy consultation, including:
  - Draft Local Government (Wales) Bill – November 2015
  - Consultation on Electoral Reform – October 2017
  - Reforming Local Government: Resilient and Renewed White Paper - January 2017
  - Consultation on Powers and Flexibilities – January 2018
  - Strengthening Local Government: Delivering for People Welsh Government Green Paper - June 2018
5. Some aspects of the Bill had been shaped by discussions between the Minister for Housing and Local Government and local government leaders through the Local Government Working Group chaired by Derek Vaughan and subsequently via the Local Government Sub-Group of Partnership Council.
6. Through these groups, and since with Leaders, the Minister has engaged constructively with local government to inform the Bill and to shape draft guidance or subsequent regulations.
7. The Bill was initially considered by WLGA Council on 29<sup>th</sup> November 2019 and the WLGA submitted oral and written evidence to the Senedd's Equality, Local Government and Communities Committee and the Finance Committee in January 2020.

8. The Bill and specific provisions, notably Corporate Joint Committees, have been discussed at several meetings throughout 2019 and 2020 at Partnership Council and its Local Government Sub-Group, at WLGA Executive Board and in Leaders' meetings, most recently in October and November 2020.

## Summary

9. The Bill<sup>1</sup> is a substantial piece of legislation covering electoral reform, public participation, governance and performance and regional working. In summary the Bill introduces:
- 9.1 **Reforming electoral arrangements for local government,** including:
    - 9.1.1 extending the voting franchise to 16 and 17 year olds and foreign citizens legally resident in Wales,
    - 9.1.2 enabling councils to choose between 'first past the post' or the 'single transferable vote' voting systems
    - 9.1.3 Change of electoral cycle for principal councils from four years to five years
    - 9.1.4 Allowing non-politically restricted council staff to stand for election in their own authority (but who should resign if elected)
    - 9.1.5 Removal of Returning Officers' Fees or local elections
  - 9.2 **Introduction of a general power of competence;**
  - 9.3 **Reforming public participation in local government;**
    - 9.3.1 Duty to encourage local people to participate in local government (and to produce a strategy to that effect);
    - 9.3.2 Duty to make petition scheme (and repeal of community polls);
    - 9.3.3 Duty to broadcast certain meetings;
    - 9.3.4 Greater flexibility around remote attendance of members.
  - 9.4 **Reforms around democratic governance and leadership,** including:
    - 9.4.1 Appointment of Chief executives (rather than a head of paid service) with specific duties;
    - 9.4.2 appointment of assistants to cabinets and allowing job-sharing leaders or cabinet members;
    - 9.4.3 updating family absence provisions in line with those available to employees (via regulations);
    - 9.4.4 requiring leaders of political groups to promote and maintain high standards of conduct by members of their groups.
  - 9.5 **Collaborative Working:**

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<sup>1</sup><https://business.senedd.wales/documents/s108793/Local%20Government%20and%20Elections%20Wales%20Bill%20-%20As%20amended%20at%20Stage%203.pdf>

- 9.5.1 Powers for councils to initiate the establishment of Corporate Joint Committees (CJCs) covering any functions;
- 9.5.2 Powers for Ministers to establish CJCs covering the four functions of economic wellbeing, transport, strategic planning and school improvement.

**9.6 Reform of the performance and governance regime:**

- 9.6.1 Repeal of the 2009 Measure duties, replacing audit and reporting duties with self-assessment and panel assessment (peer review);
- 9.6.2 Reforms to Audit Committees, renaming as Governance and Audit Committees and prescribing membership and chair.

**9.7 Powers to facilitate voluntary mergers of principal councils**

10. The WLGA supported the broad thrust of the Bill and many of the above reforms were welcomed. The WLGA did not support specific parts of the Bill including:

- 10.1 the introduction of two voting systems at local elections and raised concerns about staff standing for election in their own authority;
- 10.2 some of the prescribed new duties were regarded as likely to have limited impact (e.g. duty to produce a constitution summary and participation strategy, as councils already produce these);
- 10.3 concerns were raised about the administrative and cost implications of additional burdens; and
- 10.4 broader concerns about Ministerial powers to introduce Corporate Joint Committees (see below).

11. Stage Two and Stage Three saw several Welsh Government amendments, some of which were the result of WLGA engagement and lobbying:

- 11.1 A new duty on Welsh Ministers to consult before making any rules relating to local government elections in Wales.
- 11.2 Removal of proposed duty on councils to promote access/public participation in 'connected authorities' e.g. fire and rescue authorities, community councils.
- 11.3 Extension of the 'job sharing' provisions relating to executive members to non-executive officer holding members, such as committee chairs
- 11.4 Removal of section 'requiring a principal council to make arrangements for the performance management of the chief executive'.
- 11.5 extension of family absence provisions in line with those provided to workers
- 11.6 changes to the section on broadcasting of council meetings, where the Bill states that *only* the full council meeting should be broadcast and other meetings may be covered in regulations

- 11.7 more flexible arrangements re. remote attendance and electronic publication of documents building on councils' experiences during the pandemic.
12. The Welsh Government had indicated its intention to extend the local government franchise to prisoners through Stage Two or Three amendments, however, such amendments were not introduced.
13. The WLGA raised concerns about the potential burdens and costs implications of the Bill. The Welsh Government has committed to providing support and funding for some aspects of the Bill's implementation, including recently announced £500,000 to support digital democracy and potential set-up costs to support CJs. The Minister has also agreed to provide improvement support to authorities through the WLGA, for example in supporting new councillor duties, public participation duties, statutory self assessments and panel assessments.

## **Corporate Joint Committees**

14. Corporate Joint Committees (CJs) have been the subject of debate and some disagreement with the Minister during the past 18 months. Whilst promoting collaboration and supportive of CJs as a voluntary model, WLGA Council resolved in November 2019 that it had '...fundamental concerns over the principle of mandation which is seen as undermining local democracy but will continue to engage and seek to co-produce the Corporate Joint Committee proposals.'
15. There has been extensive political dialogue during 2019-20, though there have been limited political discussions during the past 6 months due to COVID 19.
16. At a meeting between Leaders and the Minister on Monday 16<sup>th</sup> November, it was recognised that as the Bill was expected to pass in the Senedd and the CJC reforms would be introduced, leaders would seek to engage constructively and shape the CJC regulations to ensure that they built on what already worked well in the city and growth deals arrangements and to ensure maximum local discretion and flexibility.
17. The Minister has described CJs as:

"single consistent vehicle for...collaboration, rather than separate arrangements for different functions...rationalise provision that already existed in legislation in relation to single-purpose collaborations...into a single regional arrangement.

"...this is a very limited power, restricted to areas where regional working arrangements already exist in legislation or in practice. I am hoping that regions will transition their current regional arrangements into the CJs once established... It is not my intention that we start dictating how local government discharges its economic functions through CJs or any other arrangement."

18. Draft CJC Regulations were issued for consultation on Monday 12<sup>th</sup> October with a closing date of 4<sup>th</sup> January 2021. There are 44 questions in the consultation and the Minister has confirmed that the regulations are draft and would welcome input to ensure that regulations are shaped by local authorities to ensure that they reflect local/regional requirements.
19. A summary of key features of the CJC regulations and consultation are included in Annex 1.
20. Since the draft Regulations have been published, there have been several engagement events and officer and member meetings have been set up during November and December to consider the implications of the Regulations, to inform consultation responses and to seek to shape the final regulations.
21. During the meeting with Leaders on 16<sup>th</sup> November, the Minister stressed that the regulations setting up each of the 4 CJs could be different and would not be 'one-size-fits-all' and that authorities could transfer large parts of their existing city and growth deal governance arrangements into the regulations.
22. The Minister confirmed that CJs would have to be established via regulations, laid in the Senedd via the affirmative procedure. It was intended that CJs hold their first meetings by the end of September 2021 but that functions could be transferred in over a transitional period.
23. The Minister also offered to meet with leaders on a regional basis during the consultation period.
24. It is anticipated that all authorities will respond to the draft regulations consultation on an individual and jointly on a regional basis.
25. The WLGA is seeking views from authorities and professional groups and it is proposed that a consultation response will be drafted for consideration by WLGA Executive Board in December.

## **Next Steps**

26. The 'Coming into Force' provisions of the Bill are complex, with some provisions coming into force within days of Royal Assent, others within two months and the majority via Ministerial statutory instrument.
27. WLGA officials are liaising with the Welsh Government to develop a clear outline timetable for implementation for local authorities, but in broad terms, it is anticipated that:
  - 27.1 CJC regulations will be introduced in the Senedd during February-April 2021, for commencement in the summer;

- 27.2 Remote attendance and related matters will be commenced from April 2021 (when the current emergency coronavirus meeting regulations end);
  - 27.3 Performance and governance arrangements will be commenced from April 2021 (with the final performance report from the 2009 Measure published by 31<sup>st</sup> October 2021);
  - 27.4 Most of the electoral reforms will be introduced in time for the 2022 local elections; and
  - 27.5 The power of general competence, public participation duties, broadcasting of meetings and new councillor duties will apply from the 2022 local elections.
28. The Welsh Government is already consulting on the draft Regulations to Establish CJsCs and will soon consult on Regulations of General Application and statutory CJC guidance. The Welsh Government is currently also consulting on draft statutory guidance on the 'performance and governance of principal councils'.
29. In addition to the statutory guidance on CJsCs and performance, it is anticipated that several sets of statutory instruments will be laid and a further 5 statutory guidance notes will be produced during the next 12 months (covering public participation, executive members' duties on equality and diversity, collaboration, mergers as well as updated scrutiny guidance (based on the 2011 Measure).
30. The Minister has expressed her intention to engage local government in the drafting of regulations as well as further statutory guidance. Whilst the opportunity to engage and 'co-produce' statutory guidance and regulations is welcome, this will be a demanding period for councils' leadership and corporate centres given the ongoing COVID 19 pandemic and wider organisational responsibilities, including preparations for the administration of the Senedd elections in May 2022 and the local elections in May 2022.

## Recommendations

### 31. It is recommended that members:

- 31.1 **Note the contents of the report; and**
- 31.2 **Provide initial views on the draft Corporate Joint Committee regulations.**

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## Annex 1

### Summary of Regulations to Establish Corporate Joint Committees

1. Draft Regulations were published on Monday 12<sup>th</sup> October<sup>2</sup>. These have been issued for consultation (closing date of 4<sup>th</sup> January) and will be the subject of discussion at the engagement events.
2. There are 44 questions in the consultation and the Welsh Government has outlined that these are draft and would welcome input to ensure that regulations are shaped by local authorities to ensure that they reflect local/regional requirements.
3. The consultation includes an overarching consultation document and draft regulations for each of proposed CJs for North Wales, Mid Wales, South East Wales and South West Wales.
4. An additional set of 'Regulations of General Application' will be issued for consultation in the New Year. It is envisaged these will cover what existing legislation and wider statutory duties might apply to CJs, such as the sustainable development duty and Welsh Language Standards. Statutory guidance will also be produced.
5. The draft regulations largely reflect previous discussions with the Minister and Welsh Government officials and include staffing and finance matters and governance arrangements. Details include:

#### Corporate Joint Committee

- 5.1 Although called 'Committees', these are corporate bodies, described by the Minister as 'part of the local government family'
- 5.2 They are separate legal entities from their 'constituent' councils, similar to Combined Authorities or Fire and Rescue Authorities.

#### Membership

- 5.2.1 **The membership of CJs will be leaders.**
- 5.2.2 CJs can co-opt other members if they choose, either cabinet members or other partners. These could be voting or non-voting members.
- 5.2.3 National park members must also be a member when dealing with SDP functions

#### Voting

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<sup>2</sup> <https://gov.wales/sites/default/files/consultations/2020-10/consultation.pdf>

- 5.2.4 **'one member one vote' basis**, however, once established, a CJC could adopt alternative voting procedures should they wish
- 5.2.5 CJs can co-opt other members who could be voting or non-voting.
- 5.2.6 Some member authorities remain concerned that OMOV is not equitable or fair given the different sizes of authorities which would undermine accountability.

## Functions

- 5.3 CJs will have functions cover **economic well-being, strategic planning** (LDPs will remain with LAs) **and transport**.
- 5.4 The economic wellbeing power is potentially wide-ranging and significant, but how far it is used will be determined by a CJC. Put simply, **the Minister has suggested that the current city and growth deal strategic functions would be transferred to CJs**
- 5.5 **Concurrency of functions** has been a concern to some councils, as they want to ensure a local economic development function as well as a regional one. The regulations make clear that this is a '...matter for each CJC in response to local and regional needs'.
- 5.6 **'school improvement' (although in the Bill) does not feature as an early priority for inclusion** in the CJs consultation document.

## Additional Functions

- 5.7 Concerns have been expressed that further functions could be transferred to CJs by future Ministers.
- 5.8 The Minister has sought to clarify and reassure that:
  - 5.8.1 The **Bill specifies that CJs will include only the 4 listed functions in the Bill** (which are existing statutory or voluntary regional functions)
  - 5.8.2 **CJs can voluntarily make a request to Ministers to add specific functions to a CJC.**
- 5.9 **A future Welsh Government could however add other functions to a CJC via future legislation which would amend Section 74 of the Bill (the section specifying the 4 CJC functions).** The Welsh Government can already and has established regional bodies with statutory functions outside of the CJC framework e.g. Regional Partnership Boards and may establish statutory Regional Transport Authorities or regional Strategic Planning Panels.
- 5.10 Similarly, although the current draft regulations allow a degree of regional flexibility, **the Welsh Government could constrain or prescribe CJs through funding or policy instruments**, similar to the recent concerns over the draft Regional Investment Framework. For example, the Welsh Government could provide funding in support



of a function via CJs but specify that the funding must be spent in certain way or in line with WELSH GOVERNMENT priorities. These financial and policy levers of control and influence already exist and the Welsh Government can also constrain/prescribe local authorities' individual or collective activities (e.g. through school improvement consortia) through specific grants for example.

## **Sub-Committees**

- 5.10.1 **CJs can set-up sub-committees to lead on specific functions** and could co-opt other members (cabinet members or co-optees).

## **Funding**

- 5.10.2 **CJs must set a budget each financial year** to include the amounts required to exercise its functions, reserves and liabilities. (See costs below).
- 5.10.3 The draft regulations provide outline arrangements and timescales for the determination of budgets. The proposed deadlines in the draft regulations will require further exploration to ensure that they align with council budget setting processes and timescales.
- 5.10.4 The draft regulations state the CJC members (leaders) must unanimously agree a budget and that 'constituent' councils must pay a proportionate amount. If there is a disagreement on the proportionality of funding, Ministers have powers of direction.

## **Staffing**

- 5.10.5 **CJs must 'appoint' a Chief Executive, Chief Finance Officer, Monitoring Officer and Chief Governance Officer** (however, these could be provided by a constituent authority, or seconded etc).
- 5.10.6 During early discussions amongst officers, there have been differing views whether a CJC should appoint its own statutory officers (which may be comparatively limited roles given the scale of budgets and functions) or be provided by 'constituent authorities' given potential risks of conflict of interest, responsibility and workload.
- 5.10.7 The RIA estimates a range between 1 day per week to 5 days per week for senior staff undertaking CJC duties.

## **Accountability**

- 5.10.8 **CJs will be accountable to their 'constituent' councils via their leaders**, however, other than the leader being a member of the CJC, there is no other link through to

'constituent' councils as they are separate rather than subsidiary bodies.

5.10.9 **Statutory decision-making powers over the specified functions will be vested in the CJs and therefore the leaders who make up the CJC** (and possibly any other members who may be co-opted). In reality, however, to ensure accountability and political support, leaders will inevitably need to ensure their councils have considered and endorsed proposed regional plans prior to agreeing them at a CJC, as is the case currently with growth and city deals. Although the Bill will strengthen leaders' powers and transfer these decision-making powers from councils, politically leaders will wish to exercise these powers with the full support of their councils.

5.10.10 There are inherent political and relationship risks which could impact on governance of a CJC, however, should one (or more) leader not support of a particular regional proposal, but was out-voted by the other leaders. The leader would be bound by collective responsibility and the regional proposals would be delivered for his/her authority area without his/her support and possibly without the support of the authority. He/she or the authority could not withdraw from the arrangements in such circumstances, as is the case currently.

5.10.11 Although collaborative arrangements are currently effective and regional relationships constructive, the regulations and CJC constitutions will need to consider dispute resolution arrangements and should plan to respond to a 'worst case scenario' where there is disagreement or disengagement from one or more constituent leaders/councils.

5.10.12 The **regulations state that CJs must set up an overview and scrutiny committee.**

5.10.13 Scrutiny will be essential to ensure accountability back to authorities and wider councillors.

5.10.14 There has been some discussion amongst officials as to whether a 'sub-committee' of the CJC is an appropriate scrutiny vehicle, or whether authorities should set up a Joint Overview and Scrutiny Committee or individual councils should scrutinise their leader and the CJC directly.

5.10.15 Irrespective of any joint scrutiny arrangement, **individual council scrutiny committees would be able to seek to scrutinise regional bodies as they do now.** A balance will need to be struck however in managing multiple scrutiny demands on senior CJC staff and members across several constituent authorities' scrutiny arrangements.

## Timing

6. CJs must **meet for the first time by the end of September 2021.**

7. Although this would be an initial meeting and some bedding in of arrangements will be required.
8. The draft regulations are **less clear about expectations for when implementation of functions** such as planning and economic wellbeing, the consultation notes that some transition period will be required and '...it will be for the CJC and its constituent councils to consider the transition of existing regional arrangements such as the City / growth deals should they chose to bring these activities within the remit of their CJC.'

## Costs

9. The consultation document notes that the **Minister would be prepared to provide set-up costs to support CJs.**
10. The accompanying Regulatory Impact Assessment<sup>3</sup> outlines the financial implications of 'Doing Nothing' and 'Establishing CJs'
11. The RIA notes that it is difficult to accurately estimate, as it depends on how ambitious CJs may wish to be and whether they would have limited core staff/overheads, perhaps provided by an authority, or recruit their own senior staff.
12. The RIA uses a range of sources to estimate costs, including previous RIAs for strategic planning panels, the existing programme office costs for current city and growth deals and benchmarks for senior staff.
13. The following table summarises the annual minimum and maximum costs for each CJC region of both No Change and setting up CJs (these are the annual costs from Year 3 onwards, where it is anticipated that costs will have stabilised):

Cost Type	Option 1 Do Nothing	Option 1 Do Nothing	Option 2 CJs	Option 2 CJs
	Minimum	Maximum	Minimum	Maximum
Economic Development	£690,807	£690,807	£690,807	£690,807
Transport	£364,023	£1,380,112	£220,346	£220,346
Strategic Plan Functions	£760,000	£760,000	£721,479	£721,479
Member Time	£522	£2,608	Not Inc.	Not Inc
WG SDP Support	£57,790	£57,790	£57,790	£57,790
Senior Officers	Not Inc	Not Inc	£79,356	£366,257
Corporate Body Function	Not Inc	Not Inc	£36,344	£619,677
Building, Admin & IT	Not Inc	Not Inc	Not Inc	£112,640
Meetings	Not Inc	Not Inc	£6,977	£27,192
Audit	Not Inc	Not Inc	£21,000	£34,000
<b>Total</b>	<b>£1,873,141</b>	<b>£2,891,317</b>	<b>£1,834,099</b>	<b>£2,850,188</b>

14. The estimates need to be analysed in more detail, but it should be noted that local authorities are not currently incurring the costs of transport or strategic planning functions under Option 1, as these have not been introduced – these would therefore be a new cost.

<sup>3</sup> <https://gov.wales/sites/default/files/consultations/2020-10/regulatory-impact-assessment.pdf>

15. It is also not immediately clear why transport costs would reduce significantly moving from Transport Authority model to CJs.