

24th September 2021

CORPORATE JOINT COMMITTEES UPDATE

Purpose

1. To update members on the latest developments regarding the establishment of corporate joint committees.

Background

2. The Local Government and Elections (Wales) Act 2021 set out the Welsh Government's approach to the establishment of Corporate Joint Committees in Wales (CJCs).
3. Regulations creating four CJCs in Wales (Establishment Regulations) were made on 17 March 2021 and came into force on 1st April 2021. These Establishment Regulations set out that the four CJCs should be established and the timeframes for the discharging of specific functions (South East Wales from 28 February 2022 and the three other CJCs on 30 June 2022).
4. The Establishment Regulations provided an initial framework, including constitution, membership, budget and functions, however a series of further Regulations would be drafted and consulted upon during 2021.
5. The Welsh Government has just concluded its consultation on the Corporate Joint Committees (General) (No.2) (Wales) Regulations 2021. The Welsh Government is also currently consulting on draft statutory guidance.
6. A third stage of Regulations will put in place further legislation for the operation of the CJCs and its functions, which Welsh Government will consult on later in the Autumn 2021.
7. A fourth stage will put in place any remaining provisions which a CJC might need but which are unlikely to be needed at the point at which they begin to deliver their functions. It is anticipated the Welsh Government will consult on this stage in the Spring 2022.

Corporate Joint Committees (General) (No.2) (Wales) Regulations 2021

9. The draft No.2 Regulations set out:

- the roles of certain 'executive officers' to support the work of the CJC

- general provisions in relation to the staff of a CJC
- discharge of functions of a CJC by other persons (sub-committees, staff, etc.)
- regulation of meetings and proceedings of a CJC.

10. The consultation closed on 6th September. The WLGA (and several authorities and the Cardiff Capital Region) submitted responses.

11. The draft regulations were largely based on previous consultations and discussions with the Welsh Government and as such, most authority responses did not identify significant issues. The WLGA consultation response (Appendix 1) was shaped by authority responses and was endorsed by Group Leaders. The WLGA's response included the following key points:

- 11.1 **Discharge of functions by other persons** (Part 3 and regulation 33(7) – Part 3 allows the CJC to delegate some functions to a sub-committee, member of staff, another CJC or an LA, which is welcome and allows some flexibility for carrying out CJC business and functions. However, 33(7) appears to limit this by precluding delegation of the transport policy/plan and preparing a strategic development plan. Whilst it is clear that the CJC would need to agree the transport policy/plan and strategic development plan (as these are the core functions of the CJC), in reality much of the preparations could (and probably will be done) by transport officers and planners within constituent councils before the plans or proposals are considered by the CJC (or even before the CJC is formally established). **The WLGA response stresses the need to ensure there is sufficient flexibility for delegation to allow for this preparatory work to be undertaken.**
- 11.2 **Independent Remuneration Panel** - the regulations appear to suggest that although the CJsCs will come under the remit of the Independent Remuneration Panel, they could only determine travel and subsistence etc. and not remuneration for the members of CJsCs. Although the IRP could increase leaders' salaries (as the members of CJsCs), it is not clear whether co-optees would be able to be remunerated (if CJsCs decided to invite co-optees) and it is not clear that the IRP could recommend that senior roles (e.g. chair of CJC) could receive specific remuneration. **It would be clearer and more straightforward if CJsCs came fully under the remit of the IRP for consistency.**
- 11.3 **National Park Authority Members** - an amendment relating to CJC members and co-optees makes the National Park members' role and voting rights less clear. In the original regulations, national park members were CJC members (and could therefore vote) only for strategic planning matters. The amendments in these regulations appear to indicate that they may (rather than must) be members and vote on planning matters (and could have their role extended to other functions/matters, if the CJC i.e. leaders, were in agreement). Several council responses not this issue and have sought clarity as to whether National Park representatives are automatically voting

members on strategic planning matters or whether this is conferred by the CJC.

11.4 Transition from City or Growth Arrangements

The WLGA response also noted that Cardiff Capital Region's (CCR) submission identifies several issues that remain to be resolved with regards transition from the CCR's current legal status to the CJC, which are being explored through ongoing discussions with Welsh Government and should be addressed through future CJC regulations. These include:

- *"The 'public body' status of the CJC and important considerations such as VAT status and implications for accounting, investment planning and systems operations;*
- *The scope of the CJC's ability to borrow, invest and to act commercially (in line with objectives of new 5-year Strategic Business Plan) are to be confirmed;*
- *The process and timings for securing additional powers aligned to the pipeline of projects to be confirmed;*
- *The timing and process for the novation of the City Deal funding agreement to the CJC;*
- *The application of the Public Procurement Regulations and the Subsidy Control Regime to the CJC, as we expect to be the case, to be confirmed."*

Regional Developments

- 13 The four regions are at varying stages of planning around the establishment of CJsCs. There have inevitably been some initial corporate capacity challenges for authorities in identifying resources and senior officers to plan and manage the complex process.
- 14 The timetable for CJC establishment including the scheduling of initial meetings and the budget-setting process during late 2021/early 2022 remains challenging, particularly as the full set of regulations are yet to be laid. Regular dialogue with Welsh Government officials and draft guidance and indications regarding the content of expected regulations is however assisting the process.
- 15 The WLGA has been convening meetings between lead officials from each of the regions and lead legal officers to consider emerging issues, share advice and approaches. These meetings have also included Welsh Government officials where relevant.
- 16 Welsh Government officials have also been in discussions with lead officers in the CJC regions and have reiterated that the Minister for Finance and Local Government is keen to meet and provide further guidance and support to the regions as appropriate.

- 17 Welsh Government financial support to the establishment of CJs has been welcomed, providing £1m grant funding across the regions to enhance project management capacity and commission legal advice.
- 18 The four regions have been considering and seeking legal advice on the approach to and implications of 'transferring' current city and growth arrangements into CJs. Initial legal advice and the challenging timescales means that the Welsh Government's aim that these arrangements would transfer into CJs is more challenging and complex than anticipated, given these were set up in specific ways for a specific purpose. It is therefore not yet clear whether CJs in each of the regions would be able to or decide to incorporate the city and growth deal governance arrangements from the point of establishment of CJs or that a phased, transitional or parallel approach may be necessary for a period of time. This matter is being explored further within the regions. Similarly, regions may also consider different options with regards the governance of CJs and the potential role of sub-committees.
- 19 Cardiff Capital Region, in particular, has stressed the need for assurances from the Welsh Government that the region will be in a 'no worse off' position under the CJC compared to the current Accountable Body led model. The Minister has confirmed that this is her intention and that CJs are treated as part of the local government family and, where appropriate, are subject to the same powers and duties as principal councils in the way that they operate (including an ability to borrow and invest as appropriate).
- 20 Leaders continue to make the case, given CJs see functions and powers transferred 'up' from local government, that the Welsh Government should consider how to further empower and devolve appropriate powers and functions to local government (or through CJs), such as strengthening the economic development role of local government.

Recommendations

21. Members are asked to:

21.1 Note the content of the report.

Report Cleared by Cllr Andrew Morgan, WLGA Leader

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APPENDIX 1

Consultation Response Form - Corporate Joint Committees (General) (No. 2) (Wales) Regulations 2021

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Q1. Are the draft regulations clear?

If no, please provide details of how they can be made clearer.

Yes, subject to comments below.

Once the complete set of Regulations have been introduced, it would be helpful and provide clarity if a complete set of 'clean' Regulations, incorporating all subsequent amendments and including all provisions as they apply to the CJs.

Q2. Do they clearly provide for;

- a) the roles of certain 'executive officers' (Chief Executive, Monitoring Officer and Chief Financial Officer) to support the work of the CJC – Part 1.**

If no, please provide details of how they can be made clearer.

Yes, the regulations provide CJs sufficient flexibility to designate 'lead' executive officers from constituent authorities or appoint such officers directly to the CJC, as appropriate according to local needs.

It should be noted that the administrative burdens and capacity and resource requirements for the establishment of and servicing of CJs are yet to be fully identified; the Welsh Government's financial support for the establishment of CJs has been welcomed, however, there are likely to be significant ongoing resource requirements on authorities in administering and delivering CJC functions.

- b) general provisions in relation to the staff of a CJC – Part 2.**

If no, please provide details of how they can be made clearer

Yes

- c) the discharge of functions of a CJC by other persons – Part 3.**

If no, please provide details on how they can be made clearer

Yes, subject to the issues identified in (e) below

- d) the regulation of meetings and proceedings of a CJC – Part 4.**

If no, please provide details of how they can be made clearer.

Yes

- e) the small number of miscellaneous and consequential amendments identified, including the changes to the regulations establishing the CJs – Part 5.**

If no, please provide details of how they can be made clearer.

Independent Remuneration Panel for Wales

The WLGA agrees that the powers of the Independent Remuneration Panel [the Panel] should be extended to cover CJs through an amendment of the 2011 Measure. However, as drafted, regulation 4(2) appears to limit these wider powers to exclude '...payments of remuneration'. It would be preferable therefore to extend the Panel's full remit as it applies to principal councils to CJs for clarity, consistency and maximum flexibility. This consistency would allow the Panel to determine whether CJC members (for example co-opted members or sub-committee members) or specific roles within a CJC (for example, the CJC chair, a sub-committee chair or a governance and audit sub-committee chair) should receive specific remuneration in recognition of their additional responsibilities or workload.

Discharge of Functions by Other Persons

The Discharge of functions by other persons (Part 3) is appropriate and provides flexibility for CJs to delegate functions to a sub-committee, a member of staff, another CJC or a local authority. Regulations 33(7), 34(7), 35(7) and 36(7) however introduce a 'Limitation on discharge of functions by other persons' which includes 'agreeing a transport policy...' and '...preparing a strategic development plan'. This limitation unnecessarily constrains councils' ability (and CJs when established) to make necessary preparations in advance of either the establishment of CJs or the commencement of their functions during 2022. Notably, preparatory work on the Regional Transport Plan and Strategic Development Plan will be undertaken in advance of the commencement of such functions, either by officers of a CJC or officers in constituent authorities. This amendment should therefore be revisited to provide for maximum discretion and flexibility.

National Park Members

The consequential amendments to the regulations provide for 'co-opted members' in place of 'co-opted participants'. The WLGA understands that this is to provide greater consistency with the Local Government Act 2000.

The subsequent amendments to regulation 6 (members) and new regulations 8(2A) and 9(2) have however caused some confusion as to the membership and voting entitlement of National Park Members of the CJC (whether automatic or conferred on strategic planning functions) - see consultation responses from Neath Port Talbot County Borough Council and Swansea Council.

Q3. Do you have any views on the specific effects the draft Corporate Joint Committees (General) (No. 2) (Wales) Regulations 2021 might have on the Welsh Language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English, we would welcome your views.

The draft regulations do not have a significant impact on the Welsh language. It is noted that the Welsh Government intends to amend the regulations in future to add CJs to the Welsh Language Standards No 1 Regs 2015.

Q4. If you have any related issues which we have not specifically addressed, please feel free to provide those also.

The WLGA notes that Cardiff Capital Region's (CCR) submission identifies several issues that remain to be resolved with regards transition from the CCR's current legal status to the CJC, which are being explored through ongoing discussions with Welsh Government and should be addressed through future CJC regulations. These include:

- *"The 'public body' status of the CJC and important considerations such as VAT status and implications for accounting, investment planning and systems operations;*
- *The scope of the CJC's ability to borrow, invest and to act commercially (in line with objectives of new 5-year Strategic Business Plan) are to be confirmed;*
- *The process and timings for securing additional powers aligned to the pipeline of projects to be confirmed;*
- *The timing and process for the novation of the City Deal funding agreement to the CJC;*
- *The application of the Public Procurement Regulations and the Subsidy Control Regime to the CJC, as we expect to be the case, to be confirmed."*

The CCR response also notes that there is a *'risk of misalignment and the ramifications of issues such as VAT exemption status and the need for the regulations to be in place in order to create a stable platform from which CCR can plan and deliver...CCR has supplied a framework of the powers, considerations and flexibilities used to date and those that will be required in the future – in order to mitigate this risk and WG have provided a safeguard that as of 28 February 2022, CCR will be in a 'no worse off' position under the CJC compared to the current Accountable Body led model, with a timeframe for additional powers and flexibilities to follow'*.

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here: