

Local Government (Democracy) (Wales) Bill

Consultation Response Form

Organisation (if applicable):

**Association of Council Secretaries and Solicitors Wales Branch (“ACSeS”)**

Your name:

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**Introduction:**

The Association of Council Secretaries and Solicitors (“ACSeS”) is the professional association for managers of corporate governance (legal, administrative, democratic, scrutiny and standards functions) and statutory monitoring officers and their deputies in local authorities in England and Wales.

The Association plays a leading role in developing governance arrangements in local government and works closely with other associations, Government Departments and agencies. The Association provides a network for its members to enable discussion, consultation, training and development on legal and governance matters.

The Wales Branch of ACSeS represents Heads of Legal Services and Monitoring Officers for Unitary, National Park, Fire & Rescue, and Police and Crime Commissioners in Wales.

**The Local Government Boundary Commission**

Question 1: Is there a need for a Bill to make changes to the constitution and functions of the Local Government Boundary Commission for Wales (“the Commission”) and to make various provisions relating to local government?			
Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Please expand on your answer			
ACSeS has no comments on this point			

Question 2: Do you think the Bill will improve the delivery of the statutory roles and functions of the Commission? (paragraph 3.1 of the explanatory memorandum)			
Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Please expand on your answer			
ACSeS has no comments on this point			

Question 3: Do you think the changes being made to the Commission are appropriate? (Part 2 of the Bill)			
Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
ACSeS has no comments on this point			

**Local Government arrangements**

Question 4: Do you think the provisions relating to procedures for local government reviews are appropriate? (Chapter 4 and 5)			
Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Please expand on your answer			
ACSeS has no comments on this point			

Question 5: Do you think the arrangements for local government in relation to:			
<ul style="list-style-type: none"> <li>• Duties of the Commission</li> <li>• Duties of a principal council</li> </ul>			
are appropriate? (Chapter 1)			
Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Please expand on your answer			
ACSeS has no comments on this point			

Question 6: Do you think the arrangements for local government in relation to:

- Democratic Services Committees (Section 56)
- Audit Committees (Section 57)
- Standards Committees (Section 63)

are appropriate?

Yes

No

Please expand on your answer

(a) Democratic Services Committee.

ACSeS feels that giving statutory authority for extending statutory terms of reference is appropriate. This will however need an amendment of s.16 of the Local Government Measure to reflect this extension of powers.

(b) Audit Committee

ACSeS has strongly supported this since the implementation of the Measure.

(c) Standards Committee.

ACSeS supports the power to establish joint standards committees.

It would also welcome an *additional* clear power for an authority to refer a matter to another authority's standards committee where there might be a difficulty in the 'home' authority's standards committee dealing with a case.

**Independent Remuneration Panel for Wales**

Question 7: Do you think the provisions relating to the Independent Remuneration Panel for Wales are appropriate? (Chapter 5, Sections 58-62)

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
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Clause 60:  
 The changes of dates proposed in this clause seem to use May (AGMs) as the critical date for local authorities in order to justify the proposed publication and implementation dates. This is an incorrect premise, as the critical period for local authorities is that of Budget preparation (beginning December) and council tax/ Budget decision (Feb/March). ACSeS has three comments:

1. to change the Report date to 28<sup>th</sup> February leaves it too late for authorities to responsibly budget for any changed determinations in the Report
2. in the current economic climate, authorities have more restricted flexibility in budgets, so a three month backdating may well result in financial difficulties in implementing changes
3. there may well be justification for late or mid-year changes for an individual council, or for circumstances requiring a supplementary report. In these cases, councils will usually have anticipated the changes, and will have had an opportunity to budget for them

**Access to information (Town and Community Councils)**

Question 8: Do you think the provisions relating to improving access to information (Town and Community Councils) are appropriate?

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
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Ss 53-55:  
 The only issue is with the heading to these sections. The term “Access to information” has an existing definition within local government (Part VA Local Government 1972) and if applied to community councils could raise an expectation in the public to equal rights of access to documents that exist in relation to principal councils, but **not** in relation to community councils.  
  
 Changing the heading to “publicity for information” would solve this. A similar change is needed in the Explanatory Notes.

**Chairing of Principal Councils (Chairs and Mayors of Principal Councils)**

Question 9: Do you think the provisions relating to the Chairing of Principal Councils (Chairs and Mayors of Principal Councils) are appropriate?

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
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**Clause 51**  
 The Bill contains a power in cl.51 to split the ‘chairing of meetings’ and the ‘civic’ roles, by the creation of a “presiding member”. The civic head is then either a “mayor” (if entitled to use the term) or otherwise a “civic chair”.

The concern of ACSeS is about the term of office of elected members.

1. S.26 Local Government Act 1972 says that councillors end their term on the fourth day after ordinary elections
2. S.22(3) Local Government Act 1972 says that the Chairman of the council remains in office until their successor is appointed. It has always been assumed that this ensures that there is a Chair to lawfully start the AGM of a council following elections. It also maintains a ceremonial/civic head, if one is needed in the interregnum. So far the distinction has been irrelevant, and there has been no need to address the point
3. As a result of this clause, there is no longer a ‘chairman’ for the purpose of s.22(3) Local Government Act 1972. The Democracy Bill doesn’t seem to address who qualifies for the s.22(3) exemption – the cl.51 presiding member, or the cl.51(3) mayor/civic chair – neither now fits the definition of ‘chairman’ in s.22(3) Local Government Act 1972.

ACSeS submits that this simply needs a drafting change in the Bill to amend s.22(3) Local Government Act 1972, but there is an issue about which of the two should get the benefit of the extended term – or both of them?

Councils might need a constitutional head **or** a ceremonial head in the period between elections and AGM; they will certainly need the constitutional head for the AGM, especially if the outgoing Chairman (under existing law) did not stand for re-election or was not elected.

Given the definition of term of office in cl 51’s new section 24A (6)(b), there is in any event a need for the presiding member’s term to be extended, but there is an argument that for ceremonial purposes, the mayor/civic chair’s term should also be extended.

**General Provisions of the Bill**

Question 10: What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?

Please expand on your answer

These concerns are covered elsewhere in this document.

Question 11: What are the financial implications of the Bill, if any? In answering this question you may wish to consider Part 2 of the Explanatory Memorandum (the Impact Assessment), which estimates the costs and benefits of implementation of the Bill.

Please expand on your answer

Please see the comments in Q.7 in relation to cl.60 of the Bill

Question 12: What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e statutory instruments including regulations and orders) (section 5 of the Explanatory Memorandum)?

Please expand on your answer

ACSeS has no comments on this point

Question 13: Are there any other comments you wish to make about specific sections of the Bill?

**1. Clause 66(1) Interpretation:**

For clarity, the definition of “local authority” need the addition of the words “..in Wales”.

**2. Term of office of councillor members of standards committees:**

ACSeS feels that it would be of assistance to the efficient administration of standards committees that the term of appointment of councillor members of standards committees would be for the term of office for the time being of that councillor, rather than for four years, and that this rule should be applied to current incumbents.

This would accommodate the situation where the date of ordinary elections for a principal council is delayed by one year, as is the case currently.

**3. Remote attendance, s. 4 Local Government Measure 2011:**

ACSeS expressed concerns during the scrutiny of the Measure about the legal implications of the loss of connection to one or more remote attendance councillors during a meeting of a council. These issues were not addressed in the Measure, and ACSeS is extremely concerned that the legal (and possibly serious financial) consequences should be addressed.

These issues cannot be adequately addressed in an authority’s Standing Orders, and must be addressed in statute.

This Bill offers an ideal opportunity to amend the Measure to address these issues, and Assembly members are strongly urged to take this opportunity to legislate to avoid these consequences.

These are the issues:

- i) There is no provision in the Measure governing the validity or otherwise of a decision taken by a meeting where the connection to a ‘remote’ member or members is lost. The legislation should specify whether a decision can be taken in the “electronic absence” of a member or members, and if “yes”, then the right of a disenfranchised member to complain or challenge should be excluded.
- ii) ACSeS prefers statutory provision that the Council can continue to make a decision, with the ‘remote’ member being treated as absent from the meeting. This view is taken by ACSeS because of the potential serious consequences to an authority of:
  - (a) a failure to take a time-critical decision (e.g. council tax resolution or a decision affecting current litigation, or
  - (b) the decision of a regulatory committee (planning or licensing) decision potentially being invalid

