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Communities, Equality and Local Government Committee

Local Government (Wales) Bill: Stage 1

Response from: Welsh Local Government Association and Solace (Wales)

WLGA and SOLACE Evidence

Communities, Equality and Local Government Committee

Local Government (Wales) Bill

February 2015

Introduction

1. The WLGA and SOLACE welcomes the opportunity to give evidence to the Committee's inquiry into the general principles of the Local Government (Wales) Bill [the Bill].
2. Local government engaged constructively with the Williams Commission and has since sought to work with the Welsh Government in determining a collective response to the Williams proposals. Whilst the Williams Report covered all public services and made many broad recommendations, much of the debate has since focused on structural reform of local government. From the outset, local government through the WLGA recognised the need for some structural reform noting in its submission to the Williams Commission that:

“We fully accept that the current structure of twenty two councils is essentially contested but any proposals for structural change must clearly demonstrate a compelling case for change supported by hard evidence.”

3. The Reforming Local Government White Paper in July 2014 set out the Welsh Government's current preferred map of 12 local authorities and confirmed its intention to encourage and incentivise early voluntary mergers. In its response to the White Paper the WLGA stated:

“There is consensus across Welsh local government and the Welsh Government about the need for public service reform. The size of the financial and demographic challenges facing councils is such that their sustainability into the future is an issue. There are however honestly held and passionate views across local government regarding the nature, scale, timing and timescale of such reform and whether proposed structural changes provide the answer.

Local government has responded constructively and proactively to the debate, putting forward discussion documents outlining a vision for local democracy and local government and alternative options for delivering services differently. A number of authorities have also indicated that they are prepared to further explore options for early voluntary mergers.”

4. The Welsh Government published its Prospectus for Voluntary Mergers on 18th September 2014. On 26th September, the WLGA Council unanimously passed the following resolution:

“The WLGA considers that whilst some authorities do not favour mergers, there are a number of authorities that are prepared in principle to consider voluntary mergers. However, all authorities need considerably more information on the support, including financial support that would be available in order to be in a position to develop a sound business case.”

5. There was overwhelming support, at least in principle, within local government to explore opportunities for voluntary mergers. Three formal expressions of interest, from six authorities, were submitted to the Minister for consideration by the 30th November 2014 deadline. In addition, a further eight authorities confirmed that they were prepared to consider mergers, but either did not have willing merger partners or were constrained from proposing alternative options which required boundary changes. Two authorities were determined as ‘stand alone’ authorities in the map of twelve.
6. Although the formal expressions of interest were rejected on 27th January 2015, the Welsh Government continues to encourage voluntary mergers and intends to produce a further local government map by the Summer 2015.

Comments in response to the Committee’s Terms of Reference:

1. the general principles of the Local Government (Wales) Bill and the need for legislation to:

- **enable preparations to be made for a programme of local government mergers and reform;**
- **allow Principal Local Authorities to merge voluntarily by April 2018;**

7. The Bill (Section 11 onwards) sets in place appropriate and non-contentious arrangements to enable the preparation for voluntary mergers and subsequent ‘enacted’ mergers of local authorities. The Bill features mechanisms and governance arrangements, such as transition committees and shadow authorities, which are common to previous legislation which initiated the reform of principal authority structures.
8. There are two sections however which may require further clarification and/or consideration at Stage 2 scrutiny:
 - a. Section 29(1) states that a merging authority cannot undertake certain transactions without providing the detail specified in S29(3) to the transition committee and considering its opinion. However S29(3) does not specify what detail is to be provided.
 - b. Section 31(1) is intended to control land transactions. It governs any transaction where the ‘consideration for the acquisition or disposal exceeds £150,000’. The legislation therefore would not stop a disposal at an undervalue (or for free); for clarity this section could refer to ‘land value’ rather than the more technical legal term of ‘consideration’.
9. Sections 3-10 set out arrangements relating to the Voluntary Mergers of local authorities. The most significant challenge to this part of the Bill is provision of early clarity and the manageability of timescales (the risks of the electoral review process is explored further below). The Bill allows Ministers to make a range of regulations relating to the governance arrangements of voluntary merging authorities, such as the establishment of transition committees and shadow authorities. The dates for the establishment of these are therefore not on the face of the Bill and are not considered in detail in the Explanatory Memorandum. The WLGA however raised a number of points during consultation on the Reforming Local Government White Paper in September notably that

for voluntary mergers there was only a proposed 6 months shadow authority period compared to 12 months for later mergers. 6 months is a very short period of time for transition and set up given need for senior officer recruitment, business and financial planning and continuity, establishment of governance arrangements and hand-over.

10. Sections 3-10 relating to the Voluntary Mergers of local authorities appears unusual if not unique in Assembly legislation, as noted in the Explanatory Memorandum, as the Bill seeks to retrospectively give powers to Welsh Ministers (to issue guidance which has already been published i.e. the Prospectus) and to authorities (to make applications for voluntary mergers) before the Bill has been enacted.
11. It is well documented that whilst the Welsh Government's current preferred map is the Williams Map of 12 authorities and Welsh Ministers now intend to produce a new map by the Summer 2015. Until a new map is produced, it is unlikely that any further expressions of interest or formal proposals for merger will be submitted, as was recognised by the Minister for Local Government in his evidence to Committee on 5th February 2015.
12. The absence of a final agreed map therefore means that it is difficult to assess the practicability and costs of the Bill in entirety. In particular, the timescales between the anticipated Summer publication of a map and the 30th November 2015 deadline (*or such later date as per (S3(1))*) does impact significantly on the practicability of voluntary mergers – this would allow only around five months to develop a fully costed, consulted upon voluntary merger proposal, compared to the original Prospectus timetable of ten months (from publication of the Prospectus to deadline of 30th June 2015).
- **amend provision in the Local Government (Wales) Measure 2011 relating to the Independent Remuneration Panel for Wales and the survey of councillors and unsuccessful candidates for election as councillors;**
13. The WLGA supports the provisions in the Bill (Sections 25-27) relating to amending the powers of the Independent Remuneration Panel for Wales with regards undertaking preparatory reviews of remuneration for future Shadow Authorities and/or new Principal Authorities.
14. The WLGA has been in correspondence with the Welsh Government with regards the implications of the definition of Chief Officers (S35(2)) (for the purposes of the extension of the Panel's remit) as defined in the Localism Act 2011. The WLGA has queried this on the basis that the Localism Act's definition of Chief Officer was based on that of the Local Government and Housing Act 1989 which was introduced for the purposes of political restriction rather than determination of salary levels. The statutory Chief Officer definition therefore also includes 'Deputy Chief Officers' who are described as an officer who '...report directly or is directly accountable...chief officers'. This means that the Panel's workload could be unintentionally but significantly affected by having responsibility for managing pay policy and salary determinations for numerous comparatively junior local government employees.
15. There are also wider potential implications of the Panel making recommendations as to the level of pay for Chief Officers (from the date of commencement until 2020) which would need to be further considered and covered in Guidance. The Panel's remit would appear to apply to any Chief Officer vacancy that might arise during that period. Notwithstanding the above difference in interpretations around the definition of Chief Officers, the provision will prove challenging in practice if it is applied to individual Chief Officer vacancies in an authority with a number of incumbent Chief Officers. For example, a Chief Officer vacancy arises in an authority with a Senior Management Team of 5 Chief

Officers; the Panel recommends a lower salary for the new post than the other current Chief Officers. The authority will then have to consider either the contractual implications of reducing the salaries of the 4 other Chief Officer posts in line with the Panel's recommendation or discriminate against the one Chief Officer post. Furthermore, there would be equal pay implications if the authority applied the Panel's determination only to the vacant post, where the incumbent Chief Officers were men and the authority decided to appoint a woman to the vacant lower paid Chief Officer role.

16. The WLGA supports S36 which increases the Panel's membership from five to six, which is appropriate given anticipated workload in advance of any mergers, notably around members' remuneration and senior officer salaries.
17. The WLGA welcomes the amendments to the Local Government (Wales) Measure 2011 regarding the survey of candidates and councillors, these amendments have been shaped by feedback from authorities' experiences of the first statutory survey in 2012. The survey could be further improved with the inclusion of additional qualitative questions, however, this is a matter for regulations.
- **amend provision in the Local Government (Democracy) (Wales) Act 2013 relating to electoral reviews.**
18. The provisions relating to electoral reviews (Sections 16-24 and 38) are deemed necessary to provide the Local Democracy and Boundary Commission [the Commission] to undertake any preparatory or electoral review work as early in the merger process as possible. A significant responsibility is placed on the Commission as the electoral review process presents a potential risk to the effectiveness and timeliness of the local government reform programme.
19. Preparatory work and an early Ministerial direction to conduct an initial electoral review are critical given the potential time and capacity constraints of a local government reform programme. An early direction, for example, in the second anticipated Local Government (Wales) Bill 2016, in advance of enactment however does present (albeit a small) potential risk that early electoral review work could be made redundant should a 'proposed principal area' as set out in a Bill alter as a result of any amendments to the map during the passage of that Bill.
20. Section 23 appears to introduce a significant 'back-stop' power for Welsh Ministers to make 'electoral regulations if no recommendations [are] made' by the Commission by the date set out in any direction. Whilst a back-stop power may be necessary, this is a significant Ministerial power particularly as the Explanatory Memorandum notes that there is 'No Assembly procedure' for this subordinate legislation. The WLGA and SOLACE believe that whilst a reserve back-stop power may be necessary, the Bill should be amended at Stage 2 to ensure that there adequate consultative safeguards are put in place. S23 currently outlines that should a Minister need to make such regulations, any evidence gathered through the Commission's investigation and consultation should be passed to Welsh Ministers to inform their decision which the WLGA and SOLACE would support, however, it appears Welsh Ministers can then make regulations on electoral arrangements for a proposed principal area without any consultation on the final proposals. The Bill should therefore be amended to ensure that Welsh Ministers also have to follow the Commission's consultative procedures (as set out in Section 20(3) and (4) and produce a final report with publication and local (and mandatory) consultation for between 6 and 12 weeks.

2. any potential barriers to the implementation of the Bill's provisions and whether the Bill takes account of them,

21. The most significant potential barrier to the implementation of the Bill's provisions is whether any authorities decide to make an application for voluntary merger following the publication of a revised map in the Summer. Similarly, successful implementation is dependent on whether any application fulfils the criteria set out in the enacted Bill and any accompanying guidance and whether the appropriate preparatory electoral review work can be completed expeditiously.
22. The resourcing of any voluntary mergers (or enacted mergers) is still an issue of some debate (as was reflected in the Committee's discussions on 5th February); the totality of predicted costs is contested and it remains unclear how (and by whom) any mergers will be funded.
23. Although perhaps unlikely, it also appears a possibility that a voluntary merger process started before the end of this Assembly term could be 'revoked' before completion by a new Welsh Minister in the fifth Assembly term, if for example, an alternative map was introduced by a new administration through a new Bill.

3. whether there are any unintended consequences arising from the Bill,

24. The WLGA is not aware of any unintended consequences arising from the Bill, other than any outlined above.

4. the financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum),

21. The financial implications of the Bill appear to be appropriate as far as they go in terms of assessing the costs of known factors, such as the potential cost implications on the Local Democracy and Boundary Commission, the Independent Remuneration Panel and the establishment of Transition Committees and Shadow Authorities.
22. As noted above however, the regulatory impact assessment can only be completed and any financial implications considered when an agreed map is produced and the costs and benefits of (voluntary or enacted) mergers of authorities have been fully and robustly assessed.

5. the appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum).

23. The powers for Welsh Ministers to make subordinate legislation appear appropriate and proportionate (noting the reference to powers under Section 23 above).