



## **LOCAL GOVERNMENT AND ELECTIONS (WALES) BILL** **GWYNEDD COUNCIL'S OBSERVATIONS ON THE NOVEMBER 2019** **CONSULTATION**

### INTRODUCTION

1. The Local Government and Elections (Wales) Bill - November 2019 has been published for consultation. The deadline to respond to the consultation is 3 January 2019.
2. Gwynedd Council welcomes the opportunity to offer observations; however, before turning to these observations, the Council wishes to make some basic and key points.
3. We would like to note that the proposed timetable for consultation is extremely tight and unfair to enable us to give full and fair consideration to a complex legal document, especially as there are considerable implications for local government to implement some elements of the Bill. Whilst we accept that elements have already been discussed along the way with this Bill, the general election will inevitably influence the scope of the political discussions that can be held, and the availability of the specialist officers in the field to offer advice as they are involved with the election's preparation work. Additionally, the period following 12 December up to 3 January is short in light of the Christmas holidays.
4. Another element that requires specific attention is the recognition of the need for additional Resources to implement some elements of the Bill. It must be noted that there is a clear additional cost attached to some elements, such as the webcasting of meetings.
5. We will not propose observations on each individual field within the existing time constraint. We have supported the vast majority of the content in previous responses, and we emphasise our previous opinion and response for those fields.
6. Our main observations and concern on this occasion relates to **Part 5 of the Bill - Collaboration by Principal Councils**, namely the creation of the Corporate Joint Committees (CJC).

7. Mainly, it is felt that creating Corporate Joint Committees based on the model in the Bill would create another tier of local government, with the effect that democracy and decisions are distanced further away from the citizen. The Bill does not provide clarity on how and in what way functions that do not belong to an Executive would be met in the system. This includes adopting the Policy and Finance Framework. Effective collaboration is based on a clear business case for merging, but also on a concept and agreement by the Councils regarding the strategic direction. This is a key element of the success of collaboration which does not manifest itself in constitutional or legislative documents. The typical characteristic of a joint committee, compared to a regional authority, is the accountability to the mother authorities. It would be required for the arrangements to satisfy this, especially so if the corporate joint committees have strategic and financial powers. Without this, it would go against the spirit of the Bill of attempting to encourage and promote access to Local Government and participation and influencing decisions.
8. The flipside of this is the concern about the role of the Leaders in existing authorities in relation to such arrangements, especially the great deal of pressure that would inevitably be on their shoulders. Collaborative models e.g. School Improvement Services, mean that the membership of the Joint Committees would consist of the relevant Cabinet members who are directly accountable to their Authorities for the Service. As noted above, the model inevitably weakens this accountability with this direct contact.
9. It should also be noted that we are of the opinion that what is offered in the context of corporate joint committees is not flexible enough. For example, the request to identify the footprint we wish to work on would create difficulty in itself. Collaboration across North Wales would not necessarily be the best solution for every field. We already collaborate along the West coastline with regard to some developments, and with Anglesey on other matters. The Bill does not have sufficient flexibility to adapt to local needs and the best local arrangements. We do not argue that experience of collaboration has identified aspects where the legislative provision could be improved. This includes joint arrangements to appoint and set salaries, retain assets and implement legal rights. There is an opportunity in this legislation to provide a governance option which could support and strengthen existing successful collaboration arrangements. However, we believe that binding the solutions to a stringent structure that is formed through legislation creates a risk that we will weaken the existing collaboration by shifting focus and obscuring accountability.
10. Essentially, we are of the opinion that any such arrangements should begin at grass roots level, i.e. through the local authorities and the community councils. Local Authorities must be clear of the benefit of establishing arrangements, and local ownership to identify the best way forward is key. Otherwise, there is a feeling that this is a reorganisation of local government through the back door, and we strongly oppose to this.

11. There are some further matters on other headings that I would like to bring to your attention below.

#### **PART 1 - ELECTIONS**

Observations - overall, we support these principles.

- We support the proposal to extend the right to vote, but there is a need to ensure that adequate resources are provided to Electoral Registration Officers to implement and promote the change.
- We support the concept of using a single transferable voting system. However, we do not consider that the need in Section 12 is necessary, and undermines the Council's stance that one-member wards provide the strongest link with the community. The Bill provides for one-member Wards in Section 6(2)(b) and recommending the format and nature of the wards should be a matter for the boundaries review by the Local Democracy and Boundary Commission.
- Likewise, we welcome the principle that should act to increase Electoral Registration. However, as it is limited to the Welsh Senedd and Local Government elections, it will not be relevant to UK elections or referenda. Such experience in the canvassing stage shows that there is scope for confusion with electors unless the registration process avoids becoming complicated. We presume that a similar risk derives from having such a two-track process, and this needs to be addressed.
- Whilst we understand the principle of attempting to ensure that the pool of people who stand extends and expands, we have a specific concern about this element. We believe it to be unwise to give staff employed by the authority the ability to stand in the election of the Council they work for.

#### **PART 2 - GENERAL POWER OF COMPETENCE**

Observations -

- We welcome the principle, but the restrictions around legislation that already exist should be addressed. It is a shame that the opportunity to expand on the power in England has not been taken by reducing the restrictions. Experience from England suggests that the power in this form, although useful, has not been a medium for significant change in the activities of Councils. However, Section 35 provides scope to develop the use of the General Power through the Minister. It is hoped that willingness and flexibility to use this system can be seen to support the work of Local Authorities.
- We also agree that these powers are necessary to secure Competent Community Councils, and they are going to be of assistance to ensure collaboration. However, there is a need to also consider what happens to community councils who are not competent. The work of reviewing town and community councils should perhaps take place first.

#### **PART 3 - PROMOTING ACCESS TO LOCAL GOVERNMENT**

Observations -

- The principle of encouraging residents to participate when the Council makes decisions is supported by Gwynedd Council. This already happens extensively through duties to consult, engage and implement legislation such as the Well-being of Future Generations (Wales) Act 2015. Consequently, it is considered on one level that placing a specific statutory duty for all decisions is unnecessary as the requirements

highlighted below mean that the voice of the resident is an integral part of substantial or significant decisions. Additionally, by placing a statutory duty, every decision will have an additional requirement on Cabinet or Officer level to demonstrate how the duty is addressed. We are concerned that the significance of placing the requirement in broad statutory duty terms has not been fully weighed-up.

- The Bill requests that the Strategy states the following: (d) methods of promoting and facilitating processes where local people can participate, or to authorities associated with the council, for a decision before, and after, it is made; "associated authorities" Snowdonia National Park Authority or a Community Council.

The associated authorities are independent corporations from the Principal Council and are the subject of their own statutory governance arrangements.

The justification for this element of the duty has not manifested itself and sets new and significant requirements on Principal Councils with regard to intervention in the governance of these bodies. In Gwynedd's case, this e.g. means 64 Community councils.

- Whilst we agree with the principle of gaining access to meetings (via webcasting), specific attention needs to be given to the necessary additional resources in order to complete the task. The estimation of £12k per year is too low to cope with the additional requirements from the Act, e.g. additional locations and ensuring bilingual provision.
- Again, we support the provision of flexibility to the Councils with regard to the arrangements for remote attendance, but there are Resource implications to ensure a quality bilingual provision.

#### **PART 4 - LOCAL AUTHORITY EXECUTIVES, MEMBERS, OFFICERS AND COMMITTEES**

Observations -

- We agree that being able to appoint assistants (from amongst members) to members of the Executive, who could act on their behalf from time to time would possibly encourage diversity. However, there is doubt regarding to the way it would work in practice, especially as political opinion can differ. Also, in terms of securing a salary for them, *the measure states that they are not members of the Executive, therefore based on current annual letters, a salary cannot be paid. Do restrictions such as membership of a Scrutiny Committee apply to them?* Similarly, the element of permitting job sharing for members of the Executive would certainly encourage diversity. However, it could be challenging in practice e.g. if political views differed between both members who share a job, and could create confusion.
- We agree with the role for political leaders to promote standards within members of their group. It would be a medium to have the discussion in advance and resolve issues. It must be appreciated that the stance of the courts in cases such as Calver\* on Article 10 sets the threshold in terms of member on member complaints.
- The bill gives the power to make it a requirement for authorities to appoint overview and scrutiny joint committees when services are provided jointly. The right to establish such Committees already exist. The argument in favour of enforcement is not highlighted here as any collaboration arrangements between Local Authorities would inevitably deal with scrutiny arrangements, with the existing arrangements acting as the contingency option.

**PART 5 - COLLABORATIVE WORKING BY PRINCIPAL COUNCILS**

- See the observations already included in the main messages of our response.

**PART 6 - PERFORMANCE AND GOVERNANCE OF PRINCIPAL COUNCILS**

Observations -

- Our main observations are around the proposed option for the role and membership of the Audit and Governance Committee, mainly regarding increasing the number of lay members to a third of the committee membership. While we agree that there are benefits of having lay members on the committee, we do not agree that a third of the committee membership need to be lay members. Each individual local authority should be allowed to determine the percentage of lay members on the committee.

**PART 7 - MERGERS AND RESTRUCTURING OF PRINCIPAL AREAS**

Observations -

- In responses to previous consultations, we have already stated that we should be clear what the benefits are of any collaboration before proceeding to establish any arrangements. This is true of regional or sub-regional collaboration. The same principle exists for merging local Authorities on a voluntary or mandatory basis or through any governance arrangements. See our observations in the report itself.

**PART 8 - PERFORMANCE AND GOVERNANCE OF PRINCIPAL COUNCILS**

Observations -

- We welcome the proposal to change the primary legislation so that the Non-domestic Rates multiplier increases annually with the increase in the CPI index rather than the RPI index. In practice, this will mean that secondary legislation will not need to be introduced annually, as has happened in previous years, to have the same effect. The change should mean a lower annual increase in the Non-domestic Rates bills. The billing authorities and Welsh Government alike have been frustrated with the lack of general powers that have been available for billing authorities to get to grips with Non-domestic Rates avoidance. The powers contained in the Bill will assist in reducing such avoidance, while strengthening the public purse somewhat. As a billing authority, Gwynedd Council supports this proposal.
- On the contrary, the Bill also adapts the Local Government Finance Act 1992 to revoke the powers for local authorities to apply to commit an individual to prison for non-payment of Council Tax. These powers have already been revoked through regulations, and we acknowledge that the purpose of this further change is to include it in primary legislation, which will be more difficult to reverse in future. While there may be a slight reduction in the collection rate as a result, we do not oppose what is proposed.”