



Llywodraeth Cymru  
Welsh Government

# **LOCAL GOVERNMENT (DEMOCRACY) (WALES) BILL**

**Explanatory Memorandum**  
incorporating the  
Regulatory Impact Assessment  
and Explanatory Notes

November 2012



# **LOCAL GOVERNMENT (DEMOCRACY) (WALES) BILL**

## **Explanatory Memorandum to the Local Government (Democracy) (Wales) Bill**

This Explanatory Memorandum has been prepared by the Department for Local Government and Communities of the Welsh Government and is laid before the National Assembly for Wales.

### **Member's declaration**

In my view the provisions of the Local Government (Democracy) (Wales) Bill introduced by me on 26 November 2012 would be within the legislative competence of the National Assembly for Wales.

### **Carl Sargeant AM**

Minister for Local Government and Communities  
Assembly Member in charge of the Bill

26 November 2012



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## **PART 1 – OVERVIEW**

### **1 Description**

- 1 The provisions of the Local Government (Democracy) (Wales) Bill are intended to reform the organisation and functions of the Local Government Boundary Commission for Wales.
- 2 The Bill also contains provisions which would amend the Local Government (Wales) Measure 2011 in relation to the responsibilities of the Independent Remuneration Panel for Wales and the structure of local authority audit committees.
- 3 The Bill includes provisions concerning the public's access to information concerning town and community councils.
- 4 The Bill amends Part III of the Local Government Act 2000 to facilitate the creation by local authorities of joint standards committees.
- 5 The Bill contains a provision concerning the role of the Chairman or Mayor of principal councils.
- 6 The Bill also recasts and consolidates existing local government provisions in relation to the Boundary Commission and therefore progresses the development of a Welsh Statute Book.

## 2 Legislative background

- 7 The National Assembly for Wales ('the Assembly') has the legislative competence to make provision for and in connection with Local Government under Part 4 of the Government of Wales Act 2006 (GOWA 2006). The relevant provisions of GOWA 2006 are set out in section 108 and Schedule 7.
- 8 Paragraph 12 of Schedule 7 sets out the following subjects on which the Assembly may legislate under the heading of "*Local Government*" to make provision in an Act of the Assembly for electoral arrangements of local authorities and the powers and duties of local authorities and their members and officers. Schedule 7, subject 12 of GOWA 2006 is reproduced below:

### **12 Local government**

Constitution, structure and areas of local authorities. Electoral arrangements for local authorities. Powers and duties of local authorities and their members and officers. Local government finance.

"Local authorities" does not include police authorities.

#### *Exceptions –*

Local government franchise.

Electoral registration and administration.

Registration of births, marriages, civil partnerships and deaths.

Licensing of sale and supply of alcohol, provision of entertainment and late night refreshment.

Anti-social behaviour orders.

Local land charges, apart from fees.

Sunday trading.

Provision of advice and assistance overseas by local authorities in connection with carrying on there of local government activities.

- 9 This gives the Assembly legislative competence to make the provisions of the Local Government (Democracy) (Wales) Bill. None of the provisions of the Bill falls within any of the exceptions specified in Part 1 of Schedule 7 to GOWA 2006 or applies otherwise in relation to Wales or confers, imposes, modifies, or removes (or gives power to confer, impose, modify or remove) functions exercisable other than in relation to Wales; or breaches any of the restrictions in Part 2 of Schedule 7 - having regard to any exception in Part 3 of that Schedule from those restrictions.

### 3 Purpose and intended effect of the legislation

- 10 The overarching objective of the Bill is to ensure local democracy operates as efficiently as possible and to improve the democratic process in local government. It is intended to ensure local authorities are democratically representative of their communities, are organised in the most effective way and communicate well with the public. Robust local scrutiny will be a strong driver for the improvement of public services and allow the public to have greater confidence in the democratic system.

#### 3.1 Improving the delivery of statutory roles and functions

- 11 There are a number of statutory bodies and committees in Wales whose remit involves local government, covering areas including:
- The geographic and numerical structure of councils;
  - Scrutiny of the activity of councils and actions of individual councillors;
  - Setting the remuneration of councillors.

A number of problems have been identified which prevent these bodies from operating in the most effective manner, and this Bill provides an opportunity to amend the statutory frameworks within which they work to address these issues. The issues identified and the changes proposed are laid out separately below for each body and committee.

#### **Local Government Boundary Commission Wales**

- 12 The Local Government Boundary Commission for Wales ('the Commission') was established in 1974 under provision of the Local Government Act 1972 ("the 1972 Act"). Its primary function is to review the structure of each of the principal council areas in Wales (the 22 county and county borough councils) and to make proposals to the Welsh Ministers concerning the appropriate number of councillors in each area and their distribution into electoral divisions. These reviews are commonly known as electoral reviews. The Commission is required by legislation to do this within a five-year period starting ten years after the previous review of those councils.
- 13 Each council was reviewed in the five years following local government reorganisation in 1996. As a consequence, the review period for some councils commenced in 2006. However, the Commission agreed to delay the start of this exercise until after the 2008 local elections and to complete the reviews before the 2012 elections.
- 14 The Commission began publishing draft reports in 2009. It became clear that, in pursuing their overarching goal of achieving, as close as possible, equal numbers of electors for each councillor, the Commission had not appreciated the extent to which their inability to cross community boundaries would have on

the formulation of their proposals. The extent of negative responses to the draft reports led the Commission to slip behind their timetable for completing the reviews. As a result, there was a possibility that the 2012 elections would take place with some county and county boroughs having been subject to significant change and others left as they were. There were also a number of incidents of administrative and drafting errors associated with some of the published draft reports.

- 15 In March 2010, in response to concerns relating to these matters, the Welsh Ministers appointed Glyn Mathias, previously a long-serving member of the Electoral Commission, to conduct a review (“the Mathias Review”<sup>1</sup>) which investigated the Commission’s programme of electoral reviews. The Mathias Review found the Commission had, in conducting its electoral review programme, lost the support of local government and the Welsh Ministers and therefore was no longer fit for purpose. Mathias made a number of recommendations (see Annex B) for the reform of the Commission and its practices, as well as proposing revision to the rules under which electoral reviews are conducted. Implementing recommendations of the Mathias review would require legislative change.
- 16 On 25 January 2012 the Minister for Local Government and Communities issued a Written Statement in response to Mathias’ recommendations which included a commitment to legislate as appropriate. The following sections outline the changes made by the Bill to implement these recommendations.

#### *Name and structure of the Commission*

- 17 The Bill renames the Commission as the Local Democracy and Boundary Commission for Wales, in recognition that it reviews the appropriate number of councillors and their distribution in relation to numbers of electors, as well as electoral boundaries.
- 18 As provided for by the 1972 Act, the Commission consists of a Chair, Deputy Chair and not more than three other members, and has a quorum of two. In fact there have been only three members in total since before the creation of the National Assembly for Wales in 1997. The Welsh Government considers it inappropriate for important decisions regarding reviews or the management of the Commission to be taken by only two members. The Bill addresses this issue by providing for the quorum to be increased to three. The maximum permitted size of the Commission remains at five members so additional members could be appointed, if it was deemed appropriate by the Welsh Ministers. This might be the case if, for instance, it was clear that the quorum might not be achieved otherwise, such as in the case of a Commissioner being regularly indisposed for some reason.

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<sup>1</sup> THE MATHIAS REVIEW – An Independent Review into the electoral reports and electoral review processes as conducted by the Local Government Boundary Commission for Wales. (June 2011) <http://wales.gov.uk/topics/localgovernment/publications/mathiasreview/?lang=en>

- 19 The 1972 Act predates the Welsh Language being afforded substantive protection by legislation and as such makes provision for at least one member of the Commission to be a Welsh-speaker. Commission members will be appointed in accordance with the Welsh Government's Welsh language scheme<sup>2</sup> ('the Welsh language scheme') and future Welsh Language Standards regarding public appointment.
- 20 The Welsh Ministers may appoint other persons to provide expert advice to the Commission in specified circumstances, for example, in connection with holding local inquiries. The Welsh Government considers that the Commission is best placed to decide when such persons are required, and so the Bill gives the Commission the power to appoint and pay persons to provide expert advice. The Commission, prior to the appointment of an expert, must consult the Welsh Ministers.

#### *Remit of the Commission*

- 21 A number of public bodies in Wales other than councils also include elected councillors or council appointees in their structure. The Welsh Government considers it would be advantageous to have an independent body able to review and make proposals in relation to the constitution of such bodies. The Bill will give the Welsh Ministers the power to name other public bodies in Wales whose structure includes elected councillors or council appointees, as being subject to review by the Commission.

#### *Functions of the Commission*

- 22 **Boundary reviews:** these are reviews by the Commission of the boundaries between two or more principal areas (the areas of county and county borough councils), following which the Commission may propose alterations to local government areas (principal council, community council or community) that it deems desirable in the interests of ensuring effective and convenient local government.
- 23 The Bill will not change the Commission's current duties to undertake reviews, but will provide that whenever the Commission suggests a change to local government areas it must also consider making proposals for consequential changes to electoral arrangements (i.e. the numbers and distribution of councillors within a county area).
- 24 The Bill will require the Commission to follow a set consultation procedure on their proposals prior to issuing a report to the Welsh Ministers. This would require the Commission to publish the draft report on their website with hard copies being provided to the Welsh Ministers, the mandatory consultees and the principal council(s) affected by the proposals. Any other person who submitted evidence during the review must be notified of the draft report's publication and where it can be viewed.

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<sup>2</sup> Welsh Language Scheme 2011 – 2016, published by the Welsh Government in March 2011. Details can be found at [www.wales.gov.uk/topics/welshlanguage/publications/wls11-16](http://www.wales.gov.uk/topics/welshlanguage/publications/wls11-16)

- 25 If any of the alterations affect the boundaries of a police area the Commission is to inform the Secretary of State for the Home Department, who can, by order, change the police area boundaries to make them coterminous with amended county boundaries.
- 26 **Electoral arrangement reviews:** this refers to the exercise of examining the number of councillors within each principal area and their distribution within electoral divisions. Currently, the Commission has a duty to carry out electoral arrangement reviews of all principal areas not less than ten and not more than fifteen years since the previous review. Following an electoral review the Commission makes proposals to the Welsh Ministers who may make an order responding to the proposals.
- 27 The Bill replaces the ten to fifteen year timeline with a continual cycle of electoral reviews, commencing in 2014. No final report can be published during the nine-month period preceding a normal day for local elections, so as to ensure that any changes can be implemented in good time for any forthcoming election.
- 28 The Commission is currently required to have regard that each councillor in a principal area is to represent, as closely as possible, the same number of electors. However, the Commission is also to have regard to setting boundaries which are easily identifiable and take account of local community ties. The Bill seeks to clarify that these goals have equal importance.
- 29 The 1972 Act prevents the Commission from proposing electoral divisions which straddle community boundaries. The Welsh Government considers this can impede the Commission's desire to make proposals that equalise, as far as possible, the councillor to elector ratio. The Bill therefore removes this impediment and also proposes that the Commission may propose changes to community boundaries as part of an electoral review, should it feel it appropriate.
- 30 The Bill will require that the Commission must, prior to conducting a review, explain its approach to calculating the appropriate number of councillors in a principal council, and publish this as part of its consultation prior to an electoral review. The Commission will be required to consult with the Welsh Ministers as part of this process.
- 31 **Review of communities:** these reviews examine the community areas within a county and may make proposals to change community boundaries, change ward boundaries within communities, amalgamate communities or divide communities. In addition, where there is a community council, the review may propose appropriate numbers of community councillors.
- 32 Currently, each principal council is required to keep its community areas under review. They are required under section 122 of the Local Government (Wales) Measure 2011 to report to the Commission at least every fifteen years on what they have done to meet this review duty. The first such reports, however, are

due to be received by the Commission by July 2015. A council can, if it wishes, ask the Commission to carry out a review of its communities on its behalf, and the Commission may charge the principal council for doing so.

- 33 The Bill will tighten this review requirement so that, once notified of a forthcoming electoral review, a principal council will be required to ensure that its communities have been recently reviewed to the satisfaction of the Commission. Should a principal council fail to comply with this requirement, the Commission will be empowered to carry out a community review and charge the principal council for doing so. The Commission would also be empowered to issue guidance to the principal council on the timing and process of reviews together with the principles to be followed.
- 34 Currently the Commission consider proposals by principal councils regarding changes to the community areas within its area. The Welsh Ministers have the power to make an Order to effect these changes. The Bill will change this situation by giving order making powers to the Commission. However, if the Commission carries out the review of community areas, or recommends changes to the local authority's areas, those proposals are to be referred to the Welsh Ministers who will consider making an order.

#### *Conducting reviews*

- 35 The Welsh Ministers have the power to issue directions to the Commission for their guidance in conducting any type of review. There is currently a requirement that these directions cannot be made without first consulting with representative local authority associations. The Bill requires the Welsh Ministers to also consult with the Commission itself, in order to ensure that, so far as possible, the policy intent of the directions is understood and shared.
- 36 The Commission (and principal councils where they are conducting a community review), are currently required to consult with interested persons in advance of any type of review. These include any local authority affected by the review, together with any staff union who have asked to be consulted and anyone else the Commission or principal authority thinks fit. To assist an effective evidence-gathering process, the Bill will empower the Commission (and principal authorities in the case of a community review) to require the council for the local government area under review to provide them with any information they consider relevant to the review.
- 37 The Commission and principal council are under a duty to ensure that interested persons are advised of draft proposals or orders and told where these documents may be inspected. The Bill extends this duty to cover the provision of documents in electronic format.
- 38 The Commission, or principal council, will also be required to describe within their proposals the steps they took to consult and how they responded to the representations received.

- 39 The Bill also places on the Commission or principal council that conduct a review of any kind which results in a change to local authority areas under a duty to inform Ordnance Survey, and any other persons and organisations which may be prescribed by the Welsh Ministers, once the changes have been made.
- 40 The power of the Welsh Ministers within section 60(6) of the 1972 Act to prescribe the procedure for reviews has not been used and this power is therefore not restated within the Bill, and will be repealed by the Bill.

### **Independent Remuneration Panel for Wales**

- 41 The Independent Remuneration Panel for Wales (“the Panel”) was established and operated under The Local Authorities (Allowances for Members) (Wales) Regulations 2007 (“the Regulations”) made by the National Assembly for Wales
- 42 The Panel is independent of central and local government and was established on a permanent basis initially to determine the range and levels of allowances payable by county and county borough councils to their councillors and co-opted members with voting rights.
- 43 The Panel’s remit was extended by the Local Government (Wales) Measure 2011 (‘the 2011 Measure’), to also include members of National Park Authorities (NPAs), Welsh Fire & Rescue Authorities (FRAs) and community and town councils in Wales.
- 44 Each year the Panel must produce an Annual Report, which sets out the type and levels of payments that authorities may or must make available to their members and co-opted members. The Panel is able to prescribe different amounts for different councils. Each Annual Report must be produced by 31 December prior to the year in which the report relates. The 2011 Measure required the first Annual Report to be produced by 31 December 2011 and take effect from 1 April 2012. The Panel may produce Supplementary Reports at any time.
- 45 The 2011 Measure requires the Panel to consult with the Welsh Ministers, relevant authorities and interested parties before finalising their Annual and Supplementary Reports. There must be a minimum period of eight weeks between publication of an annual or supplementary report in its draft and final form. The Welsh Ministers may direct the Panel to reconsider the content of a draft report. The Welsh Ministers must specify their reasons for issuing the direction and give a date for a response. The Panel is not obliged to vary the draft, but must respond and explain if it decides not to vary.
- 46 Every report produced by the Panel is placed on the Independent Remuneration Panel for Wales’ website. The Panel must also send a copy of every report it produces to the Welsh Ministers, relevant authorities and other interested parties.

- 47 The Panel has now had experience of producing its first annual report<sup>3</sup> under the requirements of the 2011 Measure and has identified a number of areas where these requirements are unnecessarily restrictive or onerous. The Bill will make amendments to the 2011 Measure to enable the Panel to undertake its duties in a more efficient and effective manner by:
- Providing the Panel with an option to prescribe a numeric limitation on those entitled to prescribed payments, as well as expressing this as a proportion of each authority.
  - Empowering the Panel to choose any date for the coming into force of their determinations and be able to backdate any of their determinations for a period of up to three months prior to the publication of a report.
  - Altering the final date for publication of the Panel's annual report from 31 December to 28 February of each year preceding the start of the new financial year on 1 April.
  - Providing that the consultation period for supplementary reports be reduced to a period of between four and eight weeks, at the discretion of the Panel.
- 48 The 2011 Measure also enables the Panel to require local authorities to publish information about payments received by individual councillors, but only those payments which fall within the Panel's remit. In their 2011 annual report, the Panel strongly indicated that they felt it to be in the public interest for all income received by councillors in relation to public offices held by them in their capacity as councillor to be published. The Welsh Government agrees with this and the Bill empowers the Panel to require local authorities to publish all information relating to remuneration received by individual councillors in connection with the performance of public duties.
- 49 The Panel can make decisions concerning payments to members of relevant authorities listed in the 2011 Measure, currently county and county borough councils, community councils, National Park Authorities and Fire and Rescue Authorities. The Bill will enable the Welsh Ministers to prescribe other public bodies for which the Panel be given responsibility to determine payments to members.

### **Local Authority Audit Committees**

- 50 The 2011 Measure imposed a requirement for each principal council to establish an audit committee with functions specified in that Measure. Membership of the committee is determined by the authority, who must ensure that at least two-thirds of the committee's members are councillors, and that at least one member is a lay member. The authority can also elect that one of its executive (but not its senior member/leader) to be on the committee.
- 51 Guidance supporting the 2011 Measure suggests that an authority should ensure that the councillor membership of an audit committee reflects the

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<sup>3</sup> Independent Remuneration Panel for Wales Annual Report December 2011  
<http://wales.gov.uk/irpws/sub/home/publication/201112/irpannreport111/?lang=en>

political balance within that authority but this was not made a requirement within the Measure. Local Government representatives have, however, expressed the view that political balance is the established way of appointing council committees, and deem that it should be a requirement to prevent ongoing debate on the matter. The Bill amends the 2011 Measure to place this requirement on the face of the legislation.

## **Democratic Services Committees**

- 52 The 2011 Measure also required each council to establish a democratic services committee to perform the following roles:
- carry out the local authority's function of designating the Head of Democratic Services (HDS);
  - keep under review the provision of staff, accommodation and other resources made available to the HDS, in order to ensure that it is adequate for the responsibilities of the post; and
  - make reports to the full council in relation to these matters.
- 53 The 2011 Measure prevents a Democratic Services Committee from discharging any functions other than those provided for in the Measure. The policy intention behind this provision was to ensure the Committee is focussed on its primary functions. The Bill will remove this provision as a direct response to concerns identified by local government. Committees will have flexibility to consider other matters which might be considered supportive of members and their development, such as training and development, annual reporting, remuneration and family absence of members.

## **Standards Committees**

- 54 The Local Government Act 2000 ("the 2000 Act") established the current ethical framework that promotes the observance of consistent standards of conduct by local government members in England and Wales. It places a duty on every relevant authority (for this purpose a county/county borough council, National Park Authority, Fire and Rescue Authority and a Police Authority) to establish a standards committee.
- 55 The general functions of standards committee are:
- Promoting and maintaining high standards of conduct by the members and co-opted members of the authority; and
  - Assisting members and co-opted members of the authority to observe the authority's code of conduct.
- 56 Without prejudice to its general functions, a standards committee has the following specific functions:
- Advising the authority on the adoption or revision of a code of conduct;
  - Monitoring the operation of the authority's code of conduct; and

- Advising, training or arranging to train members and co-opted members of the authority on matters relating to the authority's code of conduct.
- 57 The county/county borough council's standards committee exercises these functions in relation to community and town councils in its area.
- 58 The Welsh Government believes that there would be benefit from relevant authorities in Wales collaborating to establish joint standards committees based upon the 'Welsh Government's Collaboration Footprint for Public Services'. Some of these benefits include:
- Helping to overcome problems experienced in some areas in finding suitable independent people to sit on standards committees;
  - Making more efficient and effective use of resources and providing flexibility to deal with alleged failures to comply with the code of conduct;
  - Avoiding potential conflicts of interest and enhancing public confidence in the complaints process by creating distance between committees and complainants / subjects of complaints;
  - Facilitating consistent responses to complaints across Wales, especially where action is taken through local resolution processes; and
  - Facilitating the spread of good practice in promoting high standards of conduct.
- 59 The Bill amends Part III of the 2000 Act to facilitate the establishment by local authorities of joint standards committees for the purposes of exercising functions under that Act.

## 3.2 Improving access to information

### Town and Community Councils

- 60 It is now common practice amongst large sections of the public to use the internet, email and social networking sites to obtain information about their local area, identify available services and contact public bodies. In turn, public bodies routinely publish information relating to their business, structure and functions in electronic format.
- 61 A 2010 survey of community and town councils in Wales<sup>4</sup> found that around half of town and community councils had a website, a significant increase since 2002 when it was less than a fifth. However, this still means that in many areas communities are unable to access information about their council through modern communication methods.
- 62 Although town and community councils are, in the main, relatively small organisations, it is no longer considered appropriate that information about their

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<sup>4</sup> Community and Town Councils Survey 2010 (Welsh Government Social Research Number: 07/2011)  
<http://wales.gov.uk/topics/localgovernment/research/commtcsurv1011/?lang=en>

proceedings may, in some cases, only be available in hard copy and placed on notice boards at various points in their area. To have relevance to the lives of their electorate, it is now essential that information about community and town councils is made available on the Internet and that they are contactable by e-mail.

- 63 The Bill provides that every town and community council should, by May 2015, provide their contact and membership details, and records of their proceedings via the internet. In addition the clerk, as a minimum, should be contactable by e-mail. The Bill does not require each town or community council to have its own website. In many cases, it may be possible for the local principal council or a membership organisation such as One Voice Wales to host the website. The Bill also provides for the Welsh Government to issue guidance on this matter.

### 3.3 Improving the Chairing of Principal Councils

#### **Chairs and Mayors of Principal Councils**

- 64 The Local Government Act 1972 (“the 1972 Act”) provides for principal councils in Wales to elect annually a Chairman of the council and appoint a Vice-Chairman. It also provides that principal councils which are county borough councils may confer the title of Mayor and Deputy Mayor on their Chair and Vice Chairman respectively. In the case of both Cardiff and Swansea City Councils, the Monarch has bestowed on these councils the ability to use the title Lord Mayor and Deputy Lord Mayor.
- 65 Some principal councils have already sought to separate the role of civic head from that of presiding over council meetings. However, it that appears that such a separation of roles could be in breach of existing legislation and Royal Prerogative in respect of the councils bestowed a Lord Mayor.
- 66 The Bill makes provision for a principal council to decide to appoint different member from amongst their membership to act as a Presiding Member or Deputy Presiding Member of the council, when the principal council determines that it is appropriate to separate the role of Mayor/Chairman who will conduct purely civic functions and the Presiding Member to preside over meetings of the Council. This in no way affects the Royal Prerogative to enable the chairman of a local authority to have the designation as Lord Mayor as the position of chairman will remain as a civic/ceremonial post.

## 4. Consultation

### White Paper

67 The First Minister in his Legislative Statement of July 2011 made a commitment to consult appropriately and engage meaningfully with our partners when developing legislation. In keeping with this statement, the Department of Local Government and Communities published, on the 14 May 2012, a White Paper entitled “Promoting Local Democracy”. It can be accessed at:

<http://wales.gov.uk/consultations/localgovernment/promlocdemocracy/?lang=en>

68 The White Paper invited comments on the issues to be included in the Bill during a 12 week consultation period which ended on 7 August. 91 responses were received, which came from the following types of organisations:

Principal Councils	15
Town & Community Councils	35
National Park Authorities	3
Fire and Rescue Authorities and Police Authorities	2
Third Sector/ Voluntary Organisations	5
Welsh Local Government Association (WLGA)	1
Local Government Boundary Commission Wales (LGBC)	1
Independent Remuneration Panel Wales (IRP)	1
Electoral Commission	1
Public Service Ombudsman for Wales	1
ACSeS	1
SOLACE	1
One Voice Wales	1
Ordnance Survey	1
AM's	1
Glyn Mathias	1
Welsh Language Commissioner	1
Others (Individuals, councillors, electoral administrators etc.)	19
<b>Total</b>	<b>91</b>

69 The majority of responses to the provisions proposed in the White Paper consultation were positive. The majority of the proposals have been included as provisions in the Bill. The only exceptions being:

- The option to appoint a reserve member to the Commission, where required. The main argument put forward in the consultation responses opposing this proposal is that it would be difficult for a reserve member to keep up to date with the ongoing business of the Commission. The provision has been amended to reflect concerns raised. The Bill therefore makes provision to

appoint additional permanent commissioner(s) when and if it is felt to be required.

- The majority of consultation responses were in favour of the provision for town and community councils contact details, membership details, and records of their proceedings being accessible via the Internet. However, to give councils more time the coming into force date was moved to May 2015.

70 A published summary report of the consultation responses received to the White Paper consultation can be found at:

<http://wales.gov.uk/consultations/localgovernment/promlocdemocracy/?skip=1&lang=en>

### **Other Consultation**

71 Many of the proposals in relation to the Commission were contained within the Mathias Report, which was produced following an evidence-gathering exercise in relation to the Commission's electoral reviews programme.

72 Provisions contained in this Bill which amend the 2011 Measure address feedback received from local government sources or the Independent Remuneration Panel for Wales.

## 5. Power to make subordinate legislation

73 The Bill contains provisions to make subordinate legislation. The following table sets out in relation to each provision:

- the person upon whom, or the body upon which, the power is conferred;
- the form in which the power is to be exercised;
- the appropriateness of the delegated power;
- the applied procedure (affirmative, negative, no procedure) if any.

## Summary of powers to make subordinate legislation

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
Section 34 (3)(d)  Procedure for reviews	Welsh Ministers	Order	Suitable for order as it is intentionally discretionary to include additional consultees for certain reviews.	Negative resolution	Replicating existing procedure.
Section 37 (1)  Power to make orders to implement recommendations	Welsh Ministers	Order	Suitable for order as the provision gives effect to proposals but not within a six week period of the Commission's proposals	no procedure	Local statutory instrument only, other than when making a change to a principal county or preserved county area, in which case Negative Procedure applies
Section 38 (1)  Power to make orders to implement recommendations	Commission	Order	Suitable for order as the power rests with the Commission to give effect to proposals of a local authority.	no procedure	Local statutory instrument only.
Section 39 (1) &(3)  Electoral arrangements for communities	Principal Councils	Order	Suitable for Order power to rest with local authority as it relates to effects within a local authority area.	no procedure	Local statutory instrument only.
Section 40 (1) &(2)  Implementation Orders: consequential provisions	Welsh Ministers, Commission Local authority	Order	When making an order to give effect to proposals allows for consequential changes to be introduced and what those changes may be	no procedure	Local statutory instrument only.
Section 41 (1)  Consequential and transitional powers	Welsh Ministers	Regulations	Suitable for regulations. Will provide detail for conducting reviews which follows the intent	Negative resolution (unless adding to, replacing or omitting	A technical provision not introducing new policy.

			of the Bill	any enactment – affirmative)	
Section 43 (2) Variation and revocation of orders	Welsh Ministers Commission Local authorities	Order/Regulations	Provision to enable implementing authorities power to correct/ revoked previous orders	No Procedure / Local order	Local statutory instrument only.
Section 45 (3)(a) Changes to police areas	Secretary of State	Order	Suitable for order as the change will be a consequential amendment following a larger review to correct previous orders	no procedure	Secretary of State power-police areas are not devolved.
Section 47 (3) Alteration of water course	Welsh Ministers	Order	Suitable for order as the change will be a consequential where a boundary between to local government areas is water course . Consultation with the Commission must take place prior to the making of an order	no procedure	Local statutory instrument only.
Sections 59 Payments to members	Welsh Ministers	Order	Provision to alter the relevant authorities within the remit of the Independent Remuneration Panel for Wales	Negative resolution	Governed by provisions of section 172 (Orders and regulations) of the 2011 Measure.
Section 63 (3) Joint Standards Committees	Welsh Ministers	Regulations	Suitable for regulations as provision relates to administrative detail which is needed to give effect to the intent of the Bill	Negative resolution	Replicating existing procedure, unless amending primary legislation, in which case affirmative process applies
Section 64 (1)	Welsh Ministers	Order	Over time there may be a need to amend the legislation.	Negative resolution (unless adding to, replacing or omitting any enactment – affirmative)	Technical provision only.

## 6. Regulatory Impact Assessment

- 74 A Regulatory Impact Assessment has been completed in accordance with Standing Order 26.6(vi) for the Bill and follows at Part 2, including a cost benefit analysis.
- 75 There are no specific provisions in the Bill which charge expenditure on the Welsh Consolidated Fund.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **7. Options**

- 76 This chapter presents three different options in relation to the policy objectives of the Bill. Each of the options is examined in terms of how far they would achieve the Government's objectives, along with the risks. The costs and benefits of each option are set out in Chapter 8.
- 77 These options are:
- Option 1 – do nothing;
  - Option 2 – address issues using existing secondary powers or guidance; or
  - Option 3 – introduce a Bill to deliver the policy objectives.

### **Reforms to the Local Government Boundary Commission for Wales**

#### Option 1 – do nothing

- 78 Doing nothing would mean that the Commission operate in accordance with the provisions of the Local Government Act 1972 (the 1972 Act). Some of the recommendations of the Mathias Report, publicly supported by the Minister for Local Government and Communities would not be implemented. In particular:
- The requirement on the Commission to conduct electoral reviews between ten and fifteen years after the previous review would remain. This could lead to a repeat of the situation in 2009-11 when the Commission attempted to complete reviews to an unreasonably tight timetable.
  - Proposals made by the Commission in relation to the number of councillors in each authority would appear first in their report at the conclusion of their review. (It should be noted that there is, at present, no requirement on the Commission to produce a draft report). This could lead to repetition of the negative reaction towards their proposals at the final stage, i.e. when the Minister must make his or her decision in relation to the proposals.
  - The Commission would continue to be prevented from changing community boundaries when conducting electoral reviews. This restricts the ability of the Commission to propose changes to the boundaries of electoral divisions without having to capture complete community areas. In the case of the 2009-11 exercise, the significant expansion in the size of some electoral divisions had been highlighted as a weakness in the Commission's proposals, which the Commission laid, to a great extent, on this limitation.
  - The Commission would be prevented from making orders to implement proposals for changes to community areas proposed by principal councils. This would continue the current situation whereby, even when the

Commission are content with the proposals, the Welsh Ministers must make orders to implement any changes.

- 79 Doing nothing would also have the result of:
- leaving the name of the Commission unchanged,
  - leaving it up to the Commission to decide whether and for how long to consult on any proposals,
  - preventing the remit of the Commission to be broadened so that it might review the membership of bodies other than principal or community councils.

#### Option 2 – use existing secondary powers or guidance

- 80 The Welsh Ministers have the power under the 1972 Act to direct the Commission to carry out a review of local government areas in the whole or part of Wales. They may also issue directions to the Commission in relation to conducting boundary or electoral reviews. The directions can include provisions concerning the timetable of the reviews. The Welsh Ministers may also make regulations on the procedure to be followed either by the Commission or a principal council in conducting a review.
- 81 These powers provide the Welsh Ministers with the ability to determine how and when reviews take place. In order to control the timing of reviews, this would require directions to be made each time a major review procedure was due to commence.
- 82 These powers would not be sufficient to change the methodology of the Commission in their approach to councillor numbers. Crucially, it would not remove the limitations on altering community boundaries when conducting reviews. The process for making community orders would remain unchanged.

#### Option 3 – introduce a Bill to deliver the policy objectives

- 83 Introducing this Bill allows for the Mathias recommendations to be carried through to their conclusion. It lays down a new backcloth for the Commission's practices, enhances its responsibilities and changes its name. It also allows for the legislation surrounding the Commission to be contained within the Welsh Statute Book.
- 84 Most importantly, it will allow the creation of a new framework of rules within which the Commission must perform its duties, giving clarity both to the Commission and its stakeholders as to its functions and methods. Responsibility for conducting community reviews and the division of responsibilities between principal council, the Commission and Welsh Government is also clarified.
- 85 Clarifying the duties and functions of the Commission in the Bill lessens the risk of a repeat of difficulties of the 2009-11 exercise considerably. The provisions of the Bill should result in an ongoing cycle of electoral reviews, with new flexibilities provided in the drawing of new boundaries by the Commission.

- 86 Allowing the Commission to change community areas in conducting electoral reviews does create the risk that their proposals could prove unpalatable at a community level. However, the new rules on consultation and the ability of Welsh Ministers to make final decisions acts as a counterweight to this.

### Preferred option

- 87 Only Option 3 will enable the Commission to conduct its reviews in ways which will most completely achieve the aim of effective and convenient local government. It will enable the Commission to take account of the need for electoral parity while also recognising communities of place.

## **Powers of the Independent Remuneration Panel**

### Option 1 – do nothing

- 88 Continuing to allow the Panel to operate on the basis of existing legislative constraints would result in a continuation of inconvenient and cumbersome practices. The Panel has decided to limit the number of posts which may attract Senior Salaries within each principal council but can only describe these limits as a percentage of the total number of councillors in each authority. As these numbers of elected members varies across authorities, a different percentage must be set for each.
- 89 Under existing legislation, when the Panel wants to issue a supplementary report, it must consult on a draft for eight weeks and then allow another three months before their determinations can come into effect. This is the case even if the Panel are dealing with a single request from a single authority.
- 90 Similarly, the Panel must consult for eight weeks on a draft version of their annual report before publishing the final version and that final report must be published before the end of the calendar year prior to the year in which it takes effect. The Panel's practice is for its determinations to have effect from the start of the following "municipal" year commencing May. In practice, that means sending a draft report by the end of July, taking consideration of any changes during October prior to arranging translation and publication in December. Preparation of the draft begins in June, just a month after the provisions in the previous years' report come into effect.
- 91 Finally, there would be no possibility of the Welsh Ministers adding to the public bodies whose remunerations the Panel could be made responsible.

### Option 2 – use existing secondary powers or guidance

- 92 The Welsh Ministers have limited secondary legislative powers in relation to the functions of the Panel. There are powers under section 149 of Local Government (Wales) Measure 2011 (the 2011 Measure) to direct the Panel to reconsider a decision. Section 155 of the 2011 Measure allows Ministers to direct local authorities to withhold payments to councillors. They may also direct

a local authority to comply with the Panel's decision. Guidance-making power is available to the Panel but not to the Welsh Ministers.

- 93 Section 158 of the 2011 Measure, however, enables the Welsh Ministers, by order, to modify the functions of the Panel. Proceeding in this way would lead to a complex order. It would be subject to the affirmative process. There is no obvious advantage to using a separate piece of legislation to carry through this element of the provisions in the Bill.

### Option 3 – introduce a Bill to deliver the policy objectives

- 94 In order to amend the restrictions on the Panel's flexibilities within the 2011 Measure, legislation is required. The Bill seeks to remedy these restrictions. The provisions will simplify the process of the Panel setting limits on the numbers of payments which can be made in an authority in a way which will allow their decisions to be clearly understood.
- 95 The Bill will also allow the Panel to respond more quickly than at present to cases made to them by local government, without avoiding the need to consult and it will allow the Panel to take account of the results of its previous report before drafting the following year's.
- 96 Finally, the Welsh Ministers would be enabled, should they wish, to invite the Panel to examine and change the payments regimes in relation to other public bodies specified in an order.
- 97 Enabling the Panel to set numeric rather than proportionate limits on the payments available to councillors does not increase or decrease risk, as the provision only allows the Panel to avoid having to present a percentage value to each authority, due to there being differing councillor numbers in each authority. It does not suggest that overall limits on numbers of payments would change.
- 98 The proposed changes to timings have greater implications. An ability for the Panel to reduce the time required for consultation and to choose their own coming into force dates for their decisions in supplementary reports runs the risk that they may make a decision with less evidence than a longer period of time may produce. However, this is outweighed by the inability of the Panel, at present, to respond quickly to changed circumstances or urgent requests as currently a coming into force date cannot be less than three months after a report has been published.
- 99 Risk in relation to the Panel making determinations in relation to public bodies others than those currently within their responsibility is controlled by the need for a ministerial order to bring such a power into effect.

### Preferred option

- 100 Unless option 3 is adopted, the Panel will lack the ability to respond in a timely manner to individual requests from local authorities. The rigidities placed on it

by the Measure provisions require approaches to consultations and timetabling which are appropriate for national annual reports but not particular supplementary reports. Delaying the date for publication of the annual report will allow for previous year's decisions to embed before commencing the following year's report.

## **Changes to certain council committees**

### Option 1 – do nothing

- 101 The 2011 Measure requires every principal council to establish an audit committee, which has up to a third of its membership filled by lay members. There are no provisions governing how the councillor members are to be appointed and a failure to legislate on this leaves this open to interpretation.
- 102 Democratic services functions, as described in section 9 of the 2011 Measure, have the effect of preventing an officer reporting to the Head of Democratic Services from carrying out services for committees appointed by the council's executive. Leaving this in place is a barrier to efficient use of officer skills. It means that a committee clerk cannot act in this capacity for executive committee meetings, as they will at present, and another officer would be required for this role.
- 103 The prohibition, in section 16 of the Measure, of the Democratic Services Committee carrying out any functions other than those described in the Measure prevents the Committee from taking on other responsibilities which an authority may feel appropriate. This could be an unnecessary restraint on the Committee being given responsibilities which might fall within the broad heading of supporting councillors but may be interpreted as beyond the remit as provided for currently within the Measure.

### Option 2 – use existing secondary powers or guidance

- 104 Guidance already issued under the 2011 Measure encourages councils to recognise political balance in making appointments to audit committees. Past experience is that guidance of this nature may be ignored in order to gain political advantage in certain situations. Local government representatives have asked for this to be clarified through legislation.
- 105 Neither of the changes proposed in the Bill to democratic services can be addressed through guidance or secondary legislation. The powers to issue guidance on democratic services committee functions is subject to the provision that they must not exercise any functions other than those provided for in the 2011 Measure.

### Option 3 – introduce a Bill to deliver the policy objectives

- 106 Given that councillors must make up at least two-thirds of the membership of an audit committee – and will frequently be all but one of the members –

requiring political balance rules to apply will fall in line with normal requirements for other council committees (other, clearly, than area committees), a practice recognised across the political spectrum.

- 107 Amending the legislation on the functions of Democratic Services Committees and the officers supporting the Democratic Services Committee will help local authorities to manage their affairs without any relaxation on the requirement to meet their existing requirements.
- 108 There are no obvious risks associated with requiring audit committee membership to reflect political balance other than where authorities might have decided otherwise to go beyond these rules in giving seats to opposition groups. However, the power of an authority to ignore political balance if no member votes against it remains.
- 109 The proposed changes relating to democratic services could be viewed as a weakening of the focus of the committee and its officers in concentrating on the need to support councillors in their non-executive roles. There is, however, no removal of any of the requirements placed by the Measure on Democratic Services Committees or the Head of Democratic Services. The provisions would allow a certain degree of flexibility which has been recommended by local government itself.

#### Preferred option

- 110 Option 3 will enable greater flexibility in approach by democratic services committees, provided that they concern themselves only with matters which fall under the broad heading of advice and support to councillors. Also, allowing for appointment of councillors to audit committees to be in accord with political balance regularises these in line with other council committees.

### **Access to information – town and community councils**

#### Option 1 – do nothing

- 111 It is probable that, in time, the majority of local councils would become accessible electronically and establish a presence on the web simply due to the election of members and the appointment of clerks who would be used to working through electronic media and would find traditional methods of record keeping and publicity frustrating. However, research conducted in 2010 indicated that 50 percent of such councils were still not on the web<sup>5</sup>, which suggests it could be a lengthy process.
- 112 Failing to make it a legal requirement that the public should be able, as a bare minimum, to find certain information about their community council on the web

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<sup>5</sup> Community and Town Councils Survey 2010 (Welsh Government Social Research Number: 07/2011)  
<http://wales.gov.uk/topics/localgovernment/research/commtcsurv1011/?lang=en>

and contact it electronically, will allow a situation to continue indefinitely whereby a resident of a particular locality in Wales, familiar as many people are to conducting personal and business matters through electronic means, to be discouraged from finding out about or contacting their council. This makes it less likely that such people, who may well be of working age or younger, or confined to the house or workplace for much of their lives, will participate in local government.

#### Option 2 – use existing secondary powers or guidance

113 There are limited powers for issuing guidance on these matters. Section 117 of the 2011 Measure provides for guidance to be issued in relation to advertising a casual vacancy to be filled by co-option but there is no general power in relation to access to information. It is proposed, however, that guidance be issued in relation to compliance with these provisions of the Bill, to assist local councils in changing established practices.

#### Option 3 –introduce a Bill to deliver the policy objectives

- 114 Introducing a legal requirement to have information about and an ability to communicate with local councils electronically will make a major difference to how the public may engage with these bodies and the business of their local community. It would, for instance, also improve the possibility for local schools to include exploring websites as part of education related to their local area.
- 115 The most important benefits will be in enabling the public to communicate with their local council and access information about it, which increasingly is seen as a normal way of dealing with local and national bodies. It will also encourage people of working age or younger, or those confined to the house or workplace for much of their lives, to find out what is happening within their local government and participate where they would possibly be unable to otherwise.
- 116 Town and community councils will need appropriate time and guidance to comply with the requirements. There is a danger otherwise that inappropriate steps might be taken in a rush to find ways to address the provisions of the measure which might well be avoided by working in cooperation with other councils, the principal council, or community council organisations such as One Voice Wales.

#### Preferred option

117 Only option 3 will bring about a situation by which information about and communication with town and community councils is appropriate for the 21<sup>st</sup> Century. It is no longer tolerable that information about these bodies can only be accessed through visits to council offices or notice boards.

### **Regional standards committees**

#### Option 1 – do nothing

118 The 'Promoting Local Democracy' White Paper identified a number of benefits for local authorities in collaborating to establish combined standards committees based upon the 'Welsh Government's Collaboration Footprint for Public Services. These benefits included:

- Helping to overcome problems experienced in some areas in finding suitable independent people to sit on standards committees;
- Making more efficient and effective use of resources and providing flexibility to deal with cases;
- Avoiding potential conflicts of interest and enhancing public confidence in the complaints process by creating distance between committees and complainants / subjects of complaints;
- Facilitating consistent responses to complaints across Wales, especially where action is taken through local resolution processes; and
- Facilitating the spread of good practice in promoting high standards of conduct.

119 It appears to the Welsh Government that there are legislative barriers to the establishment of such joint committees by local authorities, which would remain if no action is taken.

#### Option 2 – use existing secondary powers or guidance

120 This is not a practicable option given the view that local authorities lack a legal basis to form joint standards committees.

#### Option 3 – introduce a Bill to deliver the policy objectives

121 Legislating will remove any doubt as to local authority powers to establish joint standards committees and would support the Welsh Government's policy on collaborative working. It will also provide local authorities with the ability to pool and share resources relating to the support of standards committees.

122 Enabling local authorities to collaborate on the establishment of joint standards committees does not in and of itself have inherent risks to the operation of such committees. Authorities generally have experience of operating joint committees in various service areas.

#### Preferred option

123 Option 3 is preferred as there is no statutory backing to the establishment of joint standards committees otherwise. If the workload of standards committee in individual authorities allows for it, this is a sensible approach to management of resources within the current collaborative agenda.

## **Presiding Members of Principal Councils**

### Option 1 – do nothing

- 124 This provision to separate the role of Chairman / Mayor (or ‘Civic Head’) and that of presiding over a meeting of a principal council has been sought by Cardiff and Swansea councils, who have both been bestowed by the Monarch the ability to use the title Lord Mayor for their council chairman (and deputy Lord Mayor for the vice chairman). Currently to separate the role of civic head from that of presiding over council meetings appears to be in breach of existing legislation and royal prerogative.
- 125 However, in a modern principal council there could be good reason for preferring to have one person (and deputy) appointed to preside over the meetings of the council whilst another acts as the council’s traditional civic head to conduct what are often duties external to council meetings.
- 126 Therefore by doing nothing this role would continue to be carried out by one individual (and one deputy) which is clearly not the preference sought from the councils that have requested these provisions.

### Option 2 – use existing secondary powers or guidance

- 127 This would not be an appropriate option due to existing legislation and Royal Prerogative that has already been identified.

### Option 3 – introduce a Bill to deliver the policy objectives

- 128 The intention of the legislation is to enable a principal council to use the option to separate the roles of Civic Head (the ‘Chairman’, ‘Mayor’ or ‘Lord Mayor’) and of presiding over the council’s meetings (the ‘Presiding Member’) if they so choose.
- 129 It is not intended to revoke the provisions in the 1972 Act relating to the appointment of a chairman and vice-chairman and their possible designation as mayor or deputy mayor by principal councils. But to enable them to appoint different persons from amongst their membership to act as Presiding Member of the council, when the principal council determines it is appropriate to have a Mayor conducting purely civic functions.
- 130 Therefore councils such as Cardiff and Swansea would be free to use this option as they previously sought to.
- 131 The risk associated with this provision is minimal. Some may argue that the provision could result in the “downgrading” of the traditional role of the Chairman/Mayor but this is counterbalanced by allowing the possibility of councils appointing individuals with recognised chairing skills to the Presiding Member position.

### Preferred option

- 132 It is clearly advantageous for local authorities to be able to develop council chairs who are skilled at the job and this is difficult if they change on annual basis in line with seniority, which is the most common traditional practice. Option 3 will allow authorities to separate the two functions if they wish.

## 8. Costs and benefits

133 This chapter contains the cost benefit analysis of the options detailed at Chapter 7.

### **Reforms to the Local Government Boundary Commission for Wales**

#### Option 1 – do nothing

134 There are no costs or benefits attached to this option.

#### Option 2 – use existing secondary powers or guidance

135 There are no costs or benefits attached to this option.

#### Option 3 – introduce a Bill to deliver the policy objectives

136 Financial support is currently provided by the Welsh Government to the Commission to help them meet their objectives. The Welsh Government has determined the Commissions budget for the next three years as:

Financial Years:

2012/2013 - £540,000

2013/2014 - £520,000

2014/2015 - £520,000

137 The Commission is expected to contribute to the efficiency agenda by working with the public and private sector to systematically identify potential efficiency savings through shared services. The Commission's operational plan evidences this.

138 There are no significant cost increases associated with the provisions of the Bill, and any costs there are will be met within existing budgets. Introducing a continual cycle of reviews should avoid the need for fluctuating budgets of the Commission as has been the case in recent years.

139 However the cost increases that could arise include:

(i) The change to the Commission's functions which would result in the Commission having order making powers. In this case the preparation, legal checking and publication of an order could cost in the region of £2000. However the Commission is expected to manage this within its existing budget,

(ii) As for the provision for the Commission to issue hard copies of their draft reports to Welsh Ministers, mandatory consultees and principal council(s) affected, although this may appear to be an additional burden as it is a provision which does not mirror any provision within the 1972 Act, it in fact reflects existing practice by the Commission which is met within its budget.

The average cost to the Commission of printing final review reports is £1000. Draft reports tend to be smaller, therefore the average printing cost is £800. Distribution costs for draft and final reports are in the region of £200. With the provision for publication of the draft reports to be on the Commission's website this is likely to result in cost savings.

(iii) Where a boundary change proposed by the Commission affects a police area, and the Secretary of State for the Home Office decides to amend the police area boundary, by order, to make them coterminous, this replicates the existing position in this area. Changes to police areas are rare and any orders made by the Secretary of State are met within their UK Government departmental budget.

(iv) Should the Commission charge a principal council for carrying out a community area review, the estimated cost is between £8,000 and £15,000, dependent on the size of the authority. This cost is not likely to be in excess of the cost to the authority if they had conducted the review satisfactorily themselves.

(v) There are no additional administrative cost to the additional work required by the local authority in providing information to the Commission, as this will be met within existing staff time and budgets.

(vi) Finally any associated one-off costs, which are unlikely to exceed £5,000, which may arise as a result of changing the name of the Commission would be addressed through annual budget discussions between the Welsh Government and the Commission.

## **Powers of the Independent Remuneration Panel**

### Option 1 – do nothing

140 There are no costs or benefits attached to this option.

### Option 2 – use existing secondary powers or guidance

141 There are no costs or benefits attached to this option.

### Option 3 – introduce a Bill to deliver the policy objectives

142 There are no additional costs associated with introducing these provisions. Any additional administrative work required in obtaining information relating to remuneration received by individual councillors in connection with their performance of public duties, would be met within existing staff time and budgets. The current annual budget of the Panel is £50,000. The benefits associated with this option are outlined above.

## **Changes to certain council committees**

### Option 1 – do nothing

143 There are no costs or benefits attached to this option.

### Option 2 – use existing secondary powers or guidance

144 There are no costs or benefits attached to this option.

### Option 3 – introduce a Bill to deliver the policy objectives

145 There are no financial implications associated with these proposed constitutional changes. The proposed changes reflect Local Government's experience of the practical implementation of the 2011 Measure.

## **Access to information – town and community councils**

### Option 1 – do nothing

146 There are no costs or benefits attached to this option.

### Option 2 – use existing secondary powers or guidance

147 There are no costs or benefits attached to this option.

### Option 3 – introduce a Bill to deliver the policy objectives

148 It could be argued that there are significant costs associated with this provision especially when setting up an individual website, however, that is not necessarily the case.

149 Many town and community councils have already established electronic capacity and websites. There are potential savings to offset costs, through savings in postage, stationery, etc, which need to be taken into consideration, and ongoing expenditure is likely to be insignificant. Clearly if a community council does not have access to suitable hardware there would be a cost associated with its purchase, and any training required. This might total in the region of £1,000 for which the councils in question would need to budget. Start-up costs might be in the region of £2,000 for each council. There is a steadily growing number of community councils establishing websites of their own volition. It is estimated that up to 350 community councils are without this facility at present, therefore the potential estimated start-up costs could be £700,000.

It is quite likely, however, that councils without a web facility at present will cooperate with neighbouring councils, One Voice Wales or their principal council to minimise or even negate these costs.

- 150 There is also at least one organisation which offers to establish a website for a community council at no charge to the council.
- 151 It would be recommended that if community councils found the costs difficult to manage, there are a number of options:
- 1 – Community councils collaborating with other councils in an area to set up sites together.
  - 2 – Using sites already established by Principal Councils to host their information as apposed to setting up a new individual site.
  - 3 – Organisations such as One Voice Wales, which already contain information on some community councils, providing support or hosting information.
- 152 It is also the intention of the Welsh Government to work with community councils and their organisations, and to produce guidance so as both to identify cost effective methods of implementation and to see how through collaborating together, and with principal councils, this policy maybe pursued in the most effective manner.
- 153 Ongoing costs of maintaining a website will vary according to the sophistication of the site. For example Barry Town Council, covering Wales largest community, reserves £4,000 in their budget for maintenance of their website.
- 154 As set out previously it is estimated that up to 350 community councils are without this facility at present. For them to maintain a basic website it is estimated to be a potential ongoing additional cost of £1,000 per council per annum, totalling £350,000 per annum for all 350 councils. This needs to be weighed against potential savings in removing the need for papers and hard copies and could be lessened considerably through using shared facilities.

## **Regional standards committees**

### Option 1 – do nothing

155 There are no costs or benefits attached to this option.

### Option 2 – use existing secondary powers or guidance

156 There are no costs or benefits attached to this option.

### Option 3 – introduce a Bill to deliver the policy objectives

157 There is a potential increase in travel and subsistence costs for committees covering a larger geographical area. Some savings should accrue, however, as a result of the need for fewer members of standards committees overall. On average, approximately £1,000 per person per year would be saved through any reduction in the number of standards committee members. In addition, the establishment of joint standards committees has potential for local authorities to make more efficient and effective use of resources. This includes greater flexibility in the consideration of complaints against members, so as to avoid

potential conflicts of interest and maintain or enhance public confidence in the process. Therefore, there are no net anticipated additional costs associated with these provisions

### **Presiding Members of Principal Councils**

#### Option 1 – do nothing

158 There are no costs or benefits attached to this option.

#### Option 2 – use existing secondary powers or guidance

159 There are no costs or benefits attached to this option.

#### Option 3 – introduce a Bill to deliver the policy objectives

160 There are no anticipated costs associated with these powers. Any senior salaries for the resulting 'Chairman' and 'Presiding Member' would be decided by the Independent Remuneration Panel, and would then be managed within the Principal Council's budget.

## 9. Competition Assessment

161 The provisions within the Bill will not affect business, charities and/or the voluntary sector. There is therefore no need for the competition filter to be applied in this case.

## 10. Post Implementation Review

- 162 Regular liaison meetings between officials of Welsh Government and the Commission will monitor the implementation of reforms to the Commission and its functions introduced through this Bill.
- 163 The Independent Remuneration Panel are obliged to provide Welsh Ministers with copies of all the reports they produce, which will enable the Welsh Ministers to review the use by the Panel of its flexibilities introduced through the Bill.
- 164 The changed arrangements for council committees introduced through the Bill would not be subject to systematic review. However any difficulties associated with the operation of new procedures could be highlighted in reviews of the councils' operation by the Wales Audit Office.
- 165 The implementation of the access to information proposals by town and community councils would be subject to review. Partly through the Welsh Government's own database of community council contact details, supported by searches of the internet to be conducted by Welsh Government officials.
- 166 The extent to which local authority will take advantage of the facility to create joint/regional standards committees would not be subject to regular review, but this could easily be monitored should the need arise. It should also be noted however that all standard committees must notify the Public Service Ombudsman for Wales of their Terms of Reference.
- 167 Individual local authorities will decide whether they wish to take advantage of the opportunity to separate the functions of their civic head from those presiding over meetings, and would not be subject to on going review.

## PART 3 – EQUALITY IMPACT ASSESSMENT

168 This Bill contains provisions which address the following areas:

1. The functions and structure of the Local Government Boundary Commission for Wales.
2. The procedure and responsibilities of the Independent Remuneration Panel for Wales.
3. The constitutional arrangements of a number of council committees.
4. Access to information concerning town and community councils.
5. The operation of local authority Standards Committees.

None of these provisions has significant relevance to Equality and Human Rights issues.

169 Appointments to the Local Government Boundary Commission for Wales will continue to be governed by the Welsh Government's public appointments process. Recent recruitment has made full use of outlets likely to attract applicants from diverse backgrounds and this practice would be expected to continue.

170 Providing for greater public accessibility to information about town and community councils should assist individuals who may have restricted mobility or for some other reason be largely confined to the house to have access to information about their local council through the Internet.

171 It is the view of the Welsh Government that this Bill has **low relevance** to equality strands.

## **PART 4 – WELSH LANGUAGE IMPACT ASSESSMENT**

- 172 None of the provisions of the Bill have implications for the promotion of the Welsh Language. However, in revoking part of the Local Government Act 1972, the current provision requiring one of the Commissioners to be a Welsh speaker is removed as it is not replicated within the Bill.
- 173 The requirement that at least one member should be a Welsh-speaker reflects a period before the Welsh Language was afforded substantive protection by legislation and in advance, for instance, of readily available translation facilities. Instead, Commission members should be appointed in accordance with the Welsh Government’s Welsh language scheme<sup>6</sup> (‘the Welsh language scheme’) regarding public appointment. Section 7.3 of the Welsh language scheme deals with the need to appoint Welsh-speaking members and for the boards of public bodies to have an understanding of issues affecting the Welsh language. When appointing members, consideration will also be given to any substantive relevant Welsh language standards that are imposed upon the Welsh Ministers in accordance with the Welsh Language (Wales) Measure 2011.

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<sup>6</sup> Welsh Language Scheme 2011 – 2016, published by the Welsh Government in March 2011. Details can be found at [www.wales.gov.uk/topics/welshlanguage/publications/wls11-16](http://www.wales.gov.uk/topics/welshlanguage/publications/wls11-16)

# **ANNEX A - EXPLANATORY NOTES**

## **Introduction**

- 1 These Explanatory Notes relate to the Local Government (Democracy) (Wales) Bill introduced into the National Assembly for Wales on 26 November 2012.
- 2 They have been prepared by the Welsh Government's Department for Local Government and Communities in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the draft Bill and have not been endorsed by the National Assembly for Wales.
- 3 The Explanatory Notes should be read in conjunction with the Bill. They are not meant to be a comprehensive description of the Bill. Where an individual section of the Bill does not seem to require any explanation or comment, none is given.

## **Commentary on Sections**

### **Part 1 – Introduction**

#### **Section 1 – Overview**

- 4 This section provides an overview of the key provisions of the Bill and what the Bill seeks to achieve. The Bill has 70 sections, 6 Parts and 3 Schedules.

### **Part 2 – Local Democracy and Boundary Commission for Wales**

#### **Section 2 – Local Democracy and Boundary Commission for Wales**

- 5 This section changes the name of the Local Government Boundary Commission for Wales to the Local Democracy and Boundary Commission for Wales ("the Commission").

#### **Section 3 – Status**

- 6 This section makes clear that the Commission is not a Crown body.

#### **Sections 4 and 5 – Membership; Tenure**

- 7 These sections provide that the members of the Commission shall be the chair, deputy chair and up to three others, to be appointed on such terms and conditions as determined by the Welsh Ministers. The tenure of a member of the Commissions will be set by the terms and conditions of their appointment.

## **Sections 6 and 7 – Proceedings; Seal and validity of documents**

- 8 These sections set a quorum of three for meetings of the Commission and that the Commission may regulate its own procedure.
- 9 The Commission may also have a seal for use on documents and the use of the seal is authenticated by the signature of a member of the Commission or of another person authorised by the Commission for this purpose.

## **Section 8 – Chief executive**

- 10 This section requires the Welsh Ministers to appoint, and decide on the terms of conditions of a chief executive to the Commission (as opposed to a Secretary as required for the previous Commission), following consultation with the Commission. The functions of the Chief Executive will be the same as that of the previous Secretary. Prior to the appointment of a chief executive the Welsh Ministers are required to consult the Commission.

## **Section 9 – Other Staff**

- 11 This section enables the Commission to employ staff and to decide on their remuneration and terms and conditions. Prior to appointing staff and determining the remuneration, pensions, allowances and expenses payable the Commission must consult with the Welsh Ministers.

## **Section 10 – Experts**

- 12 This enables the Commission to appoint expert advisers to assist in the exercise of their functions. Prior to appointing an expert and determining the remuneration, allowances or expenses payable the Commission must consult with the Welsh Ministers.

## **Section 11 – Assistant commissioners**

- 13 This section allows the Commission to appoint Assistant Commissioners to assist in the conduct of reviews of local government areas or electoral arrangements or to chair local inquiries. Before appointing an assistant commissioner the Commission is required to consult with the Welsh Ministers. Similarly, the Commission must consult the Welsh Ministers prior to determining the remuneration or allowances payable to an assistant commissioner.

## **Sections 12 to 14 – Powers; Delegation Directions**

- 14 The Commission has the power to do anything which will facilitate or is conducive or incidental to the exercise of the Commission's functions. Section 12 makes clear however that the Commission is not allowed to borrow money, acquire land or property (except with Ministerial consent) or form or promote companies.

- 15 Section 13 provides that the Commission may delegate its functions relating to reviews of local government areas or arrangements or conducting local inquiries to individual members or assistant commissioners, without negating the Commission's overall responsibility for the performance of these delegated functions.
- 16 Section 14 provides the Welsh Ministers with a general power of direction of the Commission. The Commission must comply with any direction given by the Welsh Ministers and the Welsh Ministers may vary or revoke a direction by issuing a subsequent direction.

### **Section 15 – Funding**

- 17 This section specifies that funding for the Commission will be provided through Welsh Minister grants. The amount of grant will be determined by the Welsh Ministers subject to any terms and conditions as specified by them.

### **Section 16 – Accounting officer**

- 18 This section requires the Welsh Ministers to appoint an accounting officer from the Commission's staff with responsibilities specified by a direction of the Welsh Ministers, in relation to the Commission's financial arrangements.

### **Sections 17 to 20 – Audit; Audit Committee: membership; Accounts and external audit; Annual reports**

- 19 The Commission must establish an audit committee to keep under review their financial affairs and their corporate governance. It must report to the Commission and the Welsh Ministers. The Audit Committee must include at least two Commissioners and at least one lay member.
- 20 Section 19 requires the Commission to prepare an annual statement of accounts for each financial year, the content of which must comply with any directions from Welsh Ministers. The statement must be sent to the Welsh Ministers and the Auditor General for Wales and must be laid, once certified by the Auditor General, before the National Assembly for Wales ('the Assembly').
- 21 Before the end of November in each year, the Commission must also publish an annual report on their activities during the previous financial year, which the Welsh Ministers must also lay before the Assembly.

## **PART 3 – Arrangements for local government**

- 22 This part describes the types of review of local government areas and arrangements that may be conducted and details the procedure which is to be followed in conducting a review. It also deals with the manner in which any recommendations made as a result of the review are to be implemented.

### **Section 21 – Duty of the Commission to monitor arrangements for local government**

- 23 This section outlines the general function of the Commission to keep local government arrangements under review. In doing so, the Commission must seek to ensure that local government is effective and convenient.

### **Section 22 – Duty of principal councils in relation to area**

- 24 This section outlines that a county council or a county borough council (defined in the Bill as “principal councils”) is required to keep the communities in its area and the electoral arrangements of such communities under review and must produce a report on this matter at least once in every period of 15 years.
- 25 In carrying out that duty, and when any conducting reviews under this Part, each principal council must have seek to ensure that local government is effective and convenient.

### **Section 23 – Review of principal area boundaries**

- 26 This section enables the Commission, either at its own behest or if so requested by a principal council, to conduct a review of a county or county borough (defined in the Bill as “principal areas”). Following a review, the Commission must make proposals to the Welsh Ministers. In their proposals, the Commission may propose such principal area change as appropriate and consequential changes to community boundaries or electoral arrangements within communities. The possible changes are defined at sub-section (4).
- 27 In line with the duty imposed under section 21, any recommendations that the Commission makes in connection with such a review should seek to secure effective and convenient local government.

### **Section 24 – Review of principal areas following new town order**

- 28 This section outlines the process to be followed if the Welsh Ministers make a New Towns Order in accordance with the New Towns Act 1981. In such a circumstance, the Commission having received notice from the Welsh Ministers of the New Towns Order must conduct a review in line with the provisions of section 23 of the Bill of any principal areas specified within the notice of the Welsh Ministers.

### **Section 25 – Review of community boundaries by principal council**

- 29 Section 25 provides that a principal council may decide to conduct a community review either at its own behest or at the request of a community council or community meeting. The principal council must not however conduct a review at the request of a community council or a community meeting if the principal

council considers that by undertaking such a review it would impede the proper exercise of its functions.

- 30 Following such a review, the principal council should send a report to the Commission with recommendations for any changes to community boundaries and any consequent effect on any community councils. In line with the duty imposed by section 22, any recommendations made by the Council must seek to ensure effective and convenient local government.
- 31 A principal council and the Commission may agree to the council delegating its functions of conducting community reviews to the Commission. Any such arrangement is subject to any terms and conditions agreed between the two parties.

### **Section 26 – Review of community boundaries by the Commission**

- 32 This section enables the Commission to carry out a community review in certain circumstances, namely: if a principal council asks them to conduct it on their behalf; if they are not content with a report provided to them by a principal council for the reasons detailed at section 26(2), or if a principal council has failed to conduct such a review in accordance with a direction issued by the Welsh Ministers.
- 33 The Commission must send to the Welsh Ministers any recommendations it makes in relation to such a review, which can include changes to community boundaries and consequential changes to community councils. The section also describes circumstances in which the Commission can recover costs from the principal council.

### **Section 27 – Reviews of preserved counties**

- 34 This section provides that the Commission may conduct a review of a preserved county or counties. In doing so, the Commission may recommend changes to the area of the preserved county as it deems appropriate. The Commission when considering whether changes to the area of the preserved county may be appropriate are required to have regard to the purposes for which the preserved counties are retained.
- 35 Preserved counties are not local authorities but are areas, largely based on the pre-1996 Welsh county authority areas, which are used for certain administrative purposes e.g. Lord Lieutenancies.

### **Section 28 – Reviews of seaward boundaries**

- 36 Section 28 enables the Commission to review a local government boundary which lies beneath the sea and does not adjoin another local government boundary, and report to Welsh Ministers if they feel the boundary should be changed.

## **Section 29 – Review of electoral arrangements for principal area**

- 37 This section places the Commission under a duty to conduct an electoral review of each principal area at least every ten years, though it could decide, either at the request of a council or at its own behest, to conduct one at any time.
- 38 However, no review should take place and no report should be published within 9 months of an ordinary council election. Following a review, the Commission must send a report to the Welsh Ministers.
- 39 The section also requires Commission to send their proposed timetable for conducting electoral reviews to the Welsh Ministers.

## **Section 30 – Considerations for a review of principal area electoral arrangements**

- 40 The Commission when considering whether to make recommendations for changes to the electoral arrangements for a principal area must make efforts to ensure that the number of electors represented by each councillor within a principal council is as close to the same as possible. The need should also be recognised to make proposals which are in keeping with the need to secure effective and convenient local government that electoral divisions have recognisable boundaries and that community ties are respected.

## **Sections 31 and 32 – Review of electoral arrangements for community by principal council; Review of electoral arrangements for community by the Commission**

- 41 These sections provide that a principal council may conduct reviews of community electoral arrangements either on its own initiative or when requested by a community council or by at least 30 electors in a community. This is to be read in line with the duty in section 22 which requires a principal council to keep its area under review.
- 42 The Commission (rather than the principal council) may conduct a review of the electoral arrangements for a community in certain circumstances, namely: if it is requested to conduct a review by the principal council, a community council or 30 electors within a community; if a principal council has failed to carry out a direction from the Welsh Ministers to conduct such a review. Where the Commission has conducted a review because a principal council has failed to do so, it may recover the cost from the principal council.

## **Section 33 - Consideration for a review of community electoral arrangements**

- 43 This section provides that where a principal council or the Commission are considering making changes to the electoral arrangements for a community regard should be given as to whether a community should be divided into wards and also the appropriate distribution of electors within those wards.

## Chapter 4 – Procedure for local government reviews

- 44 This chapter details the procedure of consultation and publication of reports to be adopted for reviews.

### **Section 34 – Pre-review procedure**

- 45 Prior to starting a review, the Commission or the principal council conducting the review must notify the mandatory consultees (listed in the section) that a review is about to take place.
- 46 The section also requires the Commission to the mandatory consultees of the procedure and methodology it is going to follow in conducting an electoral review of a principal area. In particular this will deal with its approach to determining the appropriate number of members for the council for that area.

### **Section 35 – Consultation and investigations**

- 47 Section 35 provides that a review must involve the Commission or the principal council conducting the review (referred to in the Bill as “the reviewing body”) must consult with the mandatory consultees and carry out such investigations as it considers appropriate.
- 48 Following the consultation process, the reviewing body must prepare and consult for between six and twelve weeks on a draft report, a copy of which must be made available for inspection at the offices of any principal council for the area which is under review.

### **Sections 36 – Reporting on review**

- 49 Section 36 provides the procedure for reporting on a review by a reviewing body following the consultation period under section 35. Once the reviewing body has considered the representations received during the consultation period they must then prepare a further report. This section makes detailed provision regarding what the further report should contain dependent on the type of review undertaken.
- 50 The reviewing body must then submit the report and its recommendation to the person or body who has the power to implement the recommendations (except when the reviewing body is itself the implementing authority). It must also ensure that the report is published electronically and is available for public inspection for a period of at least six weeks beginning with the date of publication.
- 51 The reviewing body must also ensure a copy of the further report is sent to the mandatory consultees, Ordnance Survey and the Welsh Ministers. Any other person who has submitted evidence or made representations in relation to the report under section 35 of the Bill must be informed of how to obtain a copy.

### **Section 37 – Implementation by the Welsh Ministers**

- 52 This section provides that, on receiving a report on boundary changes from the reviewing body, Welsh Ministers may make an order either in keeping with the recommendations or modifying them. Alternatively, the Welsh Ministers could decide to take no action in light of the report.
- 53 There must be at least 6 weeks between the time when a report is received by the Welsh Ministers and the time when any order is made.

### **Section 38 – Implementation of community boundary change**

- 54 This section provides that when the Commission receives a report of a community boundary review from a principal council, it must make an order implementing the recommendations as they stand or with modifications agreed with the principal council. If, however, the Commission and the principal council cannot agree on any proposed modifications, or if the Commission considers that it should not implement any of the council's recommendations, it may conduct its own review.
- 55 Following that review, the Commission must publish its recommendations and submit them to the Welsh Ministers.

### **Section 39 – Implementation of community electoral arrangements change**

- 56 This section provides that a principal council may make an order implementing changes to electoral arrangements for a community. The changes may be either those on which the principal council had reported under section 26 or those recommended by the Commission under section 32. In certain circumstances the Commission may request the Welsh Ministers to implement its recommendations.

### **Section 40 – Implementation orders: consequential provision**

- 57 Section 40 provides that an order made by the Welsh Ministers, the Commission or a principal council, following a review, may make such other consequential provisions on the changes being introduced as they feel necessary. This could include changing the name of an area, the assignment of existing councillors to new or altered areas and the number and distribution of councillors in a new or altered area.

### **Section 41 – General consequential and transitional provision**

- 58 The Welsh Ministers may, under section 41, also make regulations (of general application) providing for incidental, consequential etc matters so as to give full effect to review orders: for example, transfer of staff, property and liabilities.

### **Section 42 – Transfers of staff**

- 59 Section 42 provides that any transfers of staff must not result in deterioration in their terms and conditions.

### **Section 43 – Variation and revocation of orders**

- 60 Section 43 provides a procedure for the Welsh Ministers, the Commission or a principal council to vary or revoke a review order and to correct mistakes.

### **Section 44 – Transitional agreements as to property and finance**

- 61 Section 44 enables public bodies affected by a review to enter into an agreement with other public bodies about and transfers of property and any financial arrangements consequential on the area changes. The parties to such an agreement are required to deal with any failure to agree by arbitration.

### **Section 45 – Police area change**

- 62 If, as part of a boundary review in accordance with section 23 of the Bill, a change of police area boundaries appears desirable, the Commission may, recommend that the Secretary of State makes such change by order. This circumstance would arise if a change to a county boundary resulted in part of a county being partly inside or outside a police area.
- 63 The Secretary of State's order can change the police area so that a new area falls within the area of a particular Police and Crime Commissioner. It would also enable the holding of a fresh election for a Commissioner if the Secretary of State so decided.

### **Section 46 – Extent of seaward boundaries**

- 64 This section provides that communities which border the sea extend to the low water mark of the shore and that any accretion from the sea forms part of the community and county bordering on the shore.

### **Section 47 – Boundary change following the alteration of water-course**

- 65 This section provides that Welsh Ministers may also make an order to change a boundary as a result of a change in water course, following consultation with the Commission.

### **Section 48 – Directions and guidance relating to Part 3**

- 66 This section enables the Welsh Ministers to give directions to the Commission and principal councils in relation to reviews of local government area and electoral arrangements.
- 67 The section also requires the Commission and principal councils, when conducting reviews or implementing recommendations, to have regard to any relevant guidance that the Welsh Ministers have issued.

## **Section 49 – Local inquiries**

- 68 This section enables either the Commission or a principal council to organise a local inquiry associated with any review they are conducting. It also enables the Welsh Ministers or a principal council to arrange for a local inquiry when considering making an order revoking a previous order. The person appointed to conduct the inquiry may require persons to attend or provide evidence under oath.

## **Part 4 – Reviews of public body membership**

### **Section 50 – Reviews of qualifying public bodies**

- 69 The Welsh Ministers are enabled, following consultation, to direct the Commission to review the membership of particular public bodies. This could cover the number of members of the body and the attributes and qualifications which they should have. The power would not cover local authorities and is otherwise limited to bodies (a) whose membership must include a member or appointee of a local authority and (b) which exercise functions conferred by an Assembly Act.
- 70 Following a review, the Commission must report to Welsh Ministers with any proposals for change.

## **Part 5 – Other changes to local government**

### **Section 51 – Presiding member of a principal council**

- 71 This section amends the Local Government Act 1972 so as to allow principal councils to appoint a “presiding member”. A “presiding member” would be able to carry out any of the functions of a council chairman so decided by the council. In particular this provision will enable councils who wish to separate the ceremonial and civic functions associated with the council chairman or mayor from those of presiding over meetings of the council.
- 72 No member of the council’s executive may be the presiding member. The term of appointment is a matter for the principal council subject to the limitation that it cannot extend past the next council election.
- 73 A council may also appoint a deputy presiding member who, again, must not be a member of the executive.

### **Section 52 – Restriction on promotion of Bills**

- 74 This section prevents a local authority from promoting a local Bill which concerns a local government area or the political structure of a local authority.

## **Sections 53 to 55 – Community council websites; Requirement to give public notice electronically; Meetings and proceedings of communities**

- 75 Section 53 requires a community council to publish certain information electronically including details of the council's membership and business and make provision for members of the public to contact the council or its clerk electronically. The requirement to make information available is subject to normal rules on confidentiality.
- 76 A community council must have regard to any guidance issued by the Welsh Ministers in relation to this matter.
- 77 Section 54 requires community councils to publish public notices electronically also.
- 78 Section 55 requires a community council to publish agendas and public reports for forthcoming meetings electronically.

## **Section 56 – Democratic services committees**

- 79 This section amends the Local Government (Wales) Measure 2011 so as to broaden the scope of a democratic services committee so that, if requested by the authority, they can review anything connected with the support and advice made available to elected members and their terms and conditions.

## **Section 57 – Audit committees**

- 80 Section 57 amends the Local Government (Wales) Measure 2011 so as to provide that an audit committee of a local authority is one to which the rules of political balance (which are set out in section 15 of the Local Government and Housing Act 1989) apply.

## **Section 58 - Functions relating to payments to members**

- 81 Section 58 enables the Panel, when considering entitlement to a particular payment, to set a limit on the number of councillors who may receive it. This enhances the Panel's existing power to set a limit on the proportion of councillors who may receive a particular payment.

## **Section 59 – Relevant authorities**

- 82 Section 59 provides that the Welsh Ministers may add to the public bodies whose remuneration should be considered by the Panel. Any such additional body must be one which Welsh Ministers have responsibility for and which includes members of local authorities in its membership. This power is to be carried out by order of Welsh Ministers.

## **Section 60 – Subsequent annual reports**

- 83 Section 60 changes the date by which the Panel must produce their annual report from 31<sup>st</sup> December to the 28<sup>th</sup> February. This has the effect of reducing the time between publication of a report and its implementation the following April. The provisions will also enable the Panel to decide when its reports shall come into force and to backdate its decisions for up to three months.

## **Section 61- Consultation on draft reports**

- 84 Section 61 provides that consultation times on draft supplementary reports, currently set at 8 weeks, would be varied to between four and eight weeks.

## **Section 62 – Publicity requirements in reports**

- 85 Section 62 provides that the Panel may require local authorities to publish details of any income received by their members from specified public bodies.

## **Section 63 – Joint standards committees**

- 86 Section 63 amends section 53 of the Local Government Act 2000 (“the 2000 Act”) so that one or more relevant authorities (i.e. a county or county borough council, national park authority or a fire and rescue authority in Wales) may establish a joint standards committee. An authority considering establishing a joint committee must have regard to any guidance issued by the Welsh Ministers.
- 87 Section 63 also amends section 54 of the 2000 Act to provide that a standards committee must, in exercising any of its functions, have regard to any relevant guidance issued by the Welsh Ministers.

## **Part 6 – Miscellaneous and general provision**

- 88 This Part deals with general provision about the Bill. In particular they:
- Enable the Welsh Ministers to make changes to other legislation if necessary to give effect to the provisions of this Bill;
  - Explain the procedure for making items of secondary legislation under this Bill;
  - Provide for the definition of terminology used throughout the Bill and introduce the index of defined expressions in Schedule 3;
  - Introduce Schedules 1 and 2 which include amendments to and repeals of other legislation required to make certain provisions take effect;
  - Deal with any review by the Commission or principal council which is ongoing at the time the Bill comes into force to be completed under the previous legislation and provides a saving for the regulations which are currently in force under the 1972 Act in relation to reviews to remain in force until such time as new regulations are made under the Bill;
  - Contains provision regarding commencement of sections of the Bill;

- Provides the short title of the Bill for the purposes of citation.
- 89 Schedule 1 includes consequential amendments arising from the main provisions of the Bill and other relevant minor amendments. In particular, Schedule 1 contains an amendment to the Public Services Ombudsman (Wales) Act 2005 which adds the Commission to the listed authorities for whom the ombudsman has responsibility to investigate complaints.

## **ANNEX B**

### **Recommendations from the Mathias Review - An Independent Review into the electoral reports and electoral review processes as conducted by the Local Government Boundary Commission for Wales**

- 1 The Welsh Government should consider the approach it wishes to follow for future electoral reviews. If the Minister decides the priority is to keep electoral imbalances under control on a regular and systematic basis, the 1972 Act should be amended so that such reviews are undertaken on a rolling basis without regard to having all authorities reviewed in time for an electoral cycle.
- 2 If however, the Minister sees value in a more comprehensive review approach on the current cyclical basis, it should set out and monitor the Commission's delivery on an agreed and resourced programme. The Minister should also consider directing the Commission to use its powers of interim review to deal with particular electoral imbalances.
- 3 As a matter of policy, the Commission should consult fully on the approach it proposes to take on electoral reviews, as a starting point to the review programme. The consultation should include the steps it proposes to take towards assessment of council size, the balance between the different criteria, the need for any increase in multi-member divisions, and the responses it expects from key stakeholders.
- 4 Subject to the previous recommendation, the Commission should consult on an appropriate methodology for assessing the number of councillors for each authority. It should include consideration of the approaches taken in Scotland and England. Whatever process is adopted, it should be clear and transparent to all stakeholders.
- 5 The Welsh Government should abandon the requirement laid down in section 4(c) of the Directions to the Local Government Boundary Commission for Wales 2009 for a single councillor to elector ratio. It should be replaced by the process outlined in the previous recommendation for a transparent approach to assessing council size.
- 6 The Commission should ensure there is a clear audit trail, based on minutes of decisions, legal advice and public consultation, for its approach to determining the balance of the criteria they propose to implement under Schedule 11 1A(5) of the 1972 Act. It should ensure that appropriate documentation exists to demonstrate both the way it dealt with the general criteria and how they were applied in each review.
- 7 The Commission should adopt an appropriate methodology for assessing the desirability of multi-member divisions in each authority, as required in section 3(1) of the Ministerial Directions 2009.

- 8 The Welsh Government should seek, as a priority, to amend the Local Government Act 1972 to remove paragraphs 5(c) and 5(d) of Schedule 11 relating to community councils.<sup>1</sup> The Commission should be given power to ward community areas for the purpose of creating electoral divisions.
- 9 The Welsh Government should consider removing the need for orders implementing community reviews to be made by Welsh Ministers. The Commission could be given an order-making power to implement community reviews, with a right of appeal to the Welsh Ministers.
- 10 The Welsh Government should review the structure, personnel and budget of the Commission in the light of the increasing commitments faced by the secretariat.
- 11 The Welsh Government should consider whether Ministerial Directions are a necessary addition to the requirements set out in an amended Act. While it would be sensible to retain the power to issue Directions to meet particular circumstances, it might in general be more practical, and potentially more flexible, for the Government and the Commission to conduct a public exchange of letters setting out the strategic direction of the review process.
- 12 As a matter of priority, the Welsh Government should appoint two new Commissioners with direct experience at a senior level of running elections or other local government experience at a corporate management level. In addition, the Government should consider exercising the power under paragraph 3(1) of Schedule 8 of the 1972 Act to appoint people with expert knowledge to advise and assist the work of the Commission.
- 13 The Commission should improve its assessment of the risks of not meeting the timetable set by the Government, and there should be a risk analysis on a review by review basis. The Commission should make regular assessments of the resources at its disposal to ensure they are sufficient to meet the timetable.
- 14 The Commission should engage with all 22 local authorities to ensure as far as possible that each of them puts forward electoral schemes for their own areas as part of the evidence that informs the Commission's preparation of draft proposals.
- 15 The Commission should review its communications strategy to ensure it engages more pro-actively with all stakeholders.

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<sup>1</sup>“(c) every ward of a community council having a community council (whether separate or common) shall lie wholly within a single electoral division; and  
(d) every community which is not divided into community wards shall lie wholly within a single electoral division”