

National Assembly for Wales
Communities, Equality and Local
Government Committee

**Local Government (Wales) Bill:
Stage 1 Committee Report**

May 2015

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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Communities, Equality and Local Government Committee

The Committee was established on 22 June 2011 with a remit to examine legislation and hold the Welsh Government to account by scrutinising expenditure, administration and policy matters encompassing: Wales's culture; languages communities and heritage, including sport and the arts; local government in Wales, including all housing matters; and equality of opportunity for all.

Current Committee membership:



Christine Chapman (Chair)

Welsh Labour
Cynon Valley



Peter Black

Welsh Liberal Democrats
South Wales West



Alun Davies

Welsh Labour
Blaenau Gwent



Jocelyn Davies

Plaid Cymru
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Welsh Labour
Neath



Rhodri Glyn Thomas

Plaid Cymru
Carmarthen East and Dinefwr

The following Member was also a member of the Committee during this inquiry



John Griffiths

Welsh Labour
Newport East

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The Committee's Recommendations

The Committee's recommendations to the Member in charge are listed below, in the order that they appear in this report. Please refer to the relevant page of the report to see the supporting evidence and conclusions:

Recommendation 1. We recommend that the Assembly agrees the general principles of the Local Government (Wales) Bill. (Page 18)

Recommendation 2. We recommend that the Minister clarifies whether the existing guidance on voluntary mergers ("the Prospectus") will continue to be applicable, in particular whether the criteria set out in this guidance will be used for the purpose of assessing any further expressions of interest in, or applications for, voluntary mergers. (Page 25)

Recommendation 3. We recommend that the Minister amends section 4(1)(g) so that the requirement on principal local authorities to consult organisations representing staff employed by those authorities before making an application for voluntary merger is not conditional on those organisations having asked to be consulted. (Page 26)

Recommendation 4. We recommend that the Minister brings forward an order to amend the Public Audit (Wales) Act 2004 to add shadow authorities to the list of local government bodies whose accounts are subject to audit by the Auditor General for Wales. (Page 27)

Recommendation 5. We recommend that the Minister ensures that sufficient time is available for the preparation, publication and closure of any merging authorities' accounts. (Page 28)

Recommendation 6. We recommend that the Minister provides the Local Democracy and Boundary Commission for Wales with sufficient resources to enable it to complete its electoral review programme for proposed new principal areas. The level of resources provided should take into account any revisions to the review programme that may need to be made as the merger programme progresses. (Page 36)

Recommendation 7. We recommend that the Minister considers including provision in the Bill to require local government to follow the Code of Practice on Workforce Matters. (Page 47)

Recommendation 8. We recommend that the Minister includes a definition of “chief officer” in the Bill for the purpose of provisions in relation to pay policy statements. (Page 47)

Recommendation 9. We recommend that the Minister amends section 31 to increase the thresholds relating to restraining transactions from £150,000 to £250,000. (Page 50)

Recommendation 10. We recommend that the Minister considers including provision in the Bill enabling transition committees to refer proposed transactions of merging authorities relating to capital spend to the Welsh Ministers for a decision, where those committees believe there is good reason for doing so. Before considering such provision in the Bill, we expect the Minister to assess the practical and financial implications for the Welsh Government and local authorities of this proposal. (Page 51)

Recommendation 11. We recommend that the Minister clarifies the meaning of “chief officer” provided in section 35(2). If the intention is for the definition of “chief officer” to apply to local government posts with a salary in excess of £60,000, we recommend that the Minister includes in the Bill a suitable definition of “chief officer” that reflects that intention. (Page 57)

Recommendation 12. We recommend that the Bill includes a self-contained definition of “chief officer” for the purpose of section 35(2). We refer the Minister to recommendation 7 in Chapter 6 on the definition of “chief officer”. (Page 57)

Recommendation 13. If the Minister does not intend to provide financial support for merging authorities, we recommend that he provides further detail on how he envisages merging authorities to meet the cost of merger. We expect this information to be provided no later than the completion of the passage of the Bill. (Page 62)

Recommendation 14. While we acknowledge that new principal authorities will be required to comply with Welsh language standards, we recommend that the Minister looks at all options to strengthen the way new principal local authorities use the Welsh language, particularly

within their internal administration. This should include seeking to share best practice and also through issuing Ministerial guidance and directions under the Bill. We expect this work to be undertaken at the earliest possible stage in the process. (Page 65)

Recommendation 15. We recommend that he engages with the local government sector at an early stage to set out how this power would be exercised and what the implications of this would be for local authorities. In addition, we recommend that, as mergers get underway, the Minister should provide clear guidance to merging authorities on the issue of council tax harmonisation. (Page 68)

1. Introduction

1. On 26 January 2015, Leighton Andrews AM, Minister for Public Services (“the Minister”) introduced the Local Government (Wales) Bill¹ (“the Bill”) and accompanying Explanatory Memorandum.² The Minister made a statement on the Bill in Plenary on 28 January 2015.

2. At its meeting on 9 December 2014, the National Assembly’s Business Committee agreed to refer the Bill to the Communities, Equality and Local Government Committee (“the Committee”) for consideration of the general principles (Stage 1), in accordance with Standing Order 26.9. The Business Committee agreed that the Committee should report to the Assembly by 8 May 2015.

Terms of scrutiny

3. The Committee agreed the following framework within which to scrutinise the general principles of the Bill:

To consider—

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

- enable preparations to be made for a programme of local government mergers and reform;
- allow Principal Local Authorities to merge voluntarily by April 2018;
- amend provision in the Local Government (Wales) Measure 2011 relating to the Independent Remuneration Panel for Wales and the survey of councillors and unsuccessful candidates for election as councillors;
- amend provision in the Local Government (Democracy) (Wales) Act 2013 relating to electoral reviews.

(ii) any potential barriers to the implementation of the Bill’s provisions and whether the Bill takes account of them;

(iii) whether there are any unintended consequences arising from the Bill;

¹ Local Government (Wales) Bill, available at:

<http://senedd.assembly.wales/mglIssueHistoryHome.aspx?IId=11809>

² Local Government (Wales) Bill, Explanatory Memorandum, available at:

<http://senedd.assembly.wales/mglIssueHistoryHome.aspx?IId=11809>

- (iv) the financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum); and
- (v) the appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum).

The Committee's approach

4. The Committee issued a consultation and invited key stakeholders to submit written evidence to inform its work. A list of the consultation responses is attached at Annexe 1.
5. The Committee took oral evidence from a number of witnesses. The schedule of oral evidence sessions is attached at Annexe 2.
6. The following report represents the conclusions and recommendations that the Committee has reached based on the evidence received during the course of its work.
7. The Committee would like to thank all those who have contributed to its work.

2. General principles of the Bill and the need for legislation

Evidence from respondents

8. There was general consensus among respondents that the Bill is needed to achieve the Welsh Government's stated aims of enabling preparations to be made for a programme of local government mergers, and allowing principal local authorities to merge voluntarily by April 2018.

9. According to the WLGA and SOLACE, the Bill "sets in place appropriate and non-contentious arrangements" and "features mechanisms and governance arrangements (...) which are common to previous legislation which initiated the reform of principal authority structures".³ Similarly, UNISON acknowledged that the Bill simply puts in place a process for structural reform, and "is necessary just in terms of dealing with the process".⁴ The Auditor General for Wales stated that "the merger proposals in the Bill are simply a means to an end".⁵

10. Notwithstanding the above, respondents raised concern about specific provisions or sought clarification on certain matters. The key issues raised by many respondents were:

- the lack of an agreed map for the main merger programme ("the merger map");
- uncertainty about whether voluntary mergers are still viable, and
- concerns about the timetable for reform;

11. These are considered in more detail later in the report.

The need for reform and the merger approach

12. Although the Committee's focus during this inquiry was the general principles of the Bill, we also touched upon the wider issue of local government reform and the Welsh Government's current preferred approach to restructuring. This entails a programme of mergers based on existing local authority areas, in line with the recommendations made by the Williams Commission. If adopted, it will

³ Written evidence, LG 01

⁴ Written evidence, LG 03

⁵ Written evidence, LG 08

mean a reduction of local authority areas from the current 22 to 12, which would involve nine mergers with three local authority areas remaining the same.

13. The Welsh Government has also made clear that this Bill is the first of two Bills that will deliver the above restructuring programme. While this first Bill relates, in the main, to voluntary mergers and preparatory work, the government intends to publish a second Bill in draft form in autumn 2015 that will contain the main merger proposals. A link is made between this Bill and the unpublished second Bill via the definition of “merging authorities” in section 2, which includes authorities that are to be merged under the provisions of a future Bill or Act.

14. By virtue of the definition of “merging authority” set out in section 2, the Bill only facilitates the voluntary merger of existing principal local authority areas. For mergers under a future Bill or Act, the definition used of “merging authorities” is the same but the Bill allows a different, unspecified definition to be used if the “context otherwise provides”.

15. The majority of respondents, including local government representatives and trades unions, agreed that some form of local government restructuring is necessary. This was largely based on the need to address financial challenges facing local authorities in Wales and to improve local governance and service delivery.

16. The WLGA and SOLACE pointed out that, while “local government (...) recognised the need for some structural reform”, there are different views across local authorities on the government’s approach and, more specifically, on its preferred option of 12 authorities.⁶

17. UNISON stated that the government’s approach to retaining the existing local authority boundaries, to ensure that they remain coterminous with the recently reconfigured local health boards, “seems sensible” and that “the most straightforward way of managing that would be through a merger process”.⁷

18. In contrast, the Welsh NHS Confederation believed that the Bill “is potentially a missed opportunity to support better integration between

⁶ Written evidence, LG 01

⁷ Written evidence, LG 03

all public bodies in Wales”. It went on to state that the Bill is overly focussed “on structures and boundaries and not on the outcomes it is trying to achieve; improving the way all public services are governed and delivered in Wales”.⁸

19. Linked to the above, the Auditor General for Wales stated that “it’s probably true that we have too many units of local government in Wales”.⁹ However, he implied that the government should give further consideration to the future functions of local government and how they can most effectively be delivered before determining the new structure. He acknowledged that this issue “is hinted at [in the Welsh Government’s White Paper, *Reforming Local Government: Power to Local People*] but is not obviously addressed in this Bill”.¹⁰

20. Representatives of local government also recognised the need for changes in the way that local authorities operate beyond just structural reform. Councillor Hunt, Torfaen County Borough Council, stated:

“We don’t want just to bolt together councils and then, beyond the scale of things, act like nothing’s different. We want to be more expansive than that, be more imaginative than that, and as well as looking at the form of what takes shape, and building maybe council units that have more capacity to deal with the effects of austerity, we also want to look at how we do business and look more fundamentally at how local services are governed (...) if all the emphasis is on the form of things, then you lose track of what would be at best a missed opportunity, if you’re forming new units of governance, not to look at how they do business and how they provide better outcomes for local services.”¹¹

Timing and progress of the reform programme

21. The Auditor General for Wales warned against restructuring based on financial motivation. He stated:

“(...) there’s a danger that, because we’re in financial straits, we are reorganising. I don’t think it’s a sufficient argument. There is a need to do more; there is a need to revisit local

⁸ Written evidence, LG 20

⁹ RoP, para 169, 12 March 2015

¹⁰ RoP, para 169, 12 March 2015

¹¹ RoP, para 56, 26 February 2015

government; there's a need to make sure that it is fit for what we need in Wales in the future."¹²

22. On a related point, the Chartered Institute of Public Finance and Accountancy ("CIPFA") stated that mergers "should be based on the need to deliver an effective and optimum level of public services". It raised concern that the Bill (in particular voluntary mergers) "could lead to merger proposals based on political judgements rather than the best fit for service delivery and the current financial position of authorities".¹³

23. Local government representatives emphasised the need to avoid agreeing a structure for local government that is based on "political acceptability".¹⁴ Linked to this, UNISON stated that the existing structure, which it believed was in need of change, "was more produced out of political expediency rather than the most efficient way of running local government in Wales".¹⁵

24. On a wider point, local government and trade union representatives reported a sense of frustration and uncertainty within the sector, which they attributed, in part, to the lack of an agreed merger map. While acknowledging the importance of agreeing an effective structure, most representatives reported a keenness across the sector to move forward. Reasons for this included the need to ease existing financial pressures, to address the concern that some authorities may soon be unable to meet their statutory duties and to avoid further redundancies and outsourcing of services.

25. On the issue of timing, Councillor Hunt, Torfaen County Borough Council, stated, "(...) we want to get it right, but I think there is a pressing time issue here, because if we wait too long (...) we'll be trying to weld together authorities that will have been decimated".¹⁶ Similarly, Mr Phillips, a Chief Executive, stated, "we're all bought in to the need for public service reform, but I'm afraid I'm an advocate of speed", particularly in the context of current financial challenges and "the threats to public services".¹⁷

¹² RoP, para 201, 12 March 2015

¹³ Written evidence, LG 19

¹⁴ RoP, para 114, 26 February 2015

¹⁵ RoP, para 5, 4 March 2015

¹⁶ RoP, para 127, 26 February 2015

¹⁷ RoP, para 99, 26 February 2015

Evidence from the Minister

26. The Minister explained that, if local government is to be restructured in “an orderly way, we need to have in place provisions that allow work to begin in certain areas, regardless of what the [main merger] map might look like”.¹⁸ He further explained that, in practice, the Bill “accelerates the timetable [for mergers]” as it allows preparatory work to be undertaken ahead of the planned introduction of the second local government Bill.¹⁹ Subject to the outcome of the next Assembly elections, the Welsh Government’s intention is to formally introduce the second Bill at the start of the Fifth Assembly.

27. In response to the suggestion that the two-Bill approach may lead to redundant preparatory work if the next Welsh Government chooses not to pursue mergers, the Minister stated:

“I do not anticipate coming back in 2016 with a Government that does not wish to make progress on local government reform.”²⁰

28. The Minister acknowledged that there are other ways to approach restructuring, citing the example of “a complete boundary commission review and [the] design [of] new boundaries”. However, he stated “that what we’re seeking to do is a less disruptive process”.²¹

29. On the wider point of structural reform, the Minister stated that there is “a very substantial body of evidence” that makes the case for reform, including the Williams Commission report and responses to the initial White Paper, *Reforming Local Government: Devolution, Democracy and Delivery*. He believed that the government had been, and would continue to be inclusive in taking forward this agenda:

“I think everybody’s had the opportunity to make their views heard very clearly. Even at the stage where we publish a map (...) there will be an opportunity therefore for people to reflect on that (...) there’s still plenty of scope for people to make

¹⁸ RoP, para 4, 5 February 2015

¹⁹ RoP, para 16, 5 February 2015

²⁰ RoP, para 18, 5 February 2015

²¹ RoP, para 22, 5 February 2015

representations and to comment on things as we move forward.”²²

30. In commenting on whether it was still the government’s intention to base the main merger map on existing local authority areas, the Minister stated that he “[did] not envisage a fundamental move away from existing boundaries”, particularly in the case of any voluntary mergers.²³ He confirmed that the government’s “preferred option remains the Williams option 1”.²⁴

31. We questioned the Minister further on whether the government would consider redrawing boundaries in a way that would dissect the current local government units, if that was deemed necessary to ensure a more robust, enduring and sustainable configuration. He stated, “that might be something that we conclude, after the conversations with other parties have taken place. I wouldn’t want to absolutely rule it out”.²⁵

32. Further to this, he stated:

“(…) there is a degree of frustration now emerging amongst local government; a feeling that we now need to make some progress on this. I can understand that and I sympathise with that (…). Clearly it will be important to test the map (…). That may then result in further revisions, but that, of course, is a matter for the next Assembly and the next Welsh Government (…). We are committed to the conversations with other parties and to publishing our preferred version of the map by the summer recess.”²⁶

33. Linked to the above, the Minister acknowledged that there will need to be political consensus on the merger map in order for the government to move forward with restructuring local government. He reported that, given the range of views held across the Assembly, “it is very, very difficult to get a consensus” and that, in order to achieve this “there is going to be a significant degree of compromise”.²⁷

²² RoP, para 9, 26 March 2015

²³ RoP, para 5, 26 March 2015

²⁴ RoP, para 4, 26 March 2015

²⁵ RoP, para 20, 26 March 2015

²⁶ RoP, para 43, 26 March 2015

²⁷ RoP, para 20, 26 March 2015

34. In responding to the suggestion that there is a lack of clarity about the government’s vision for the future of local government, the Minister stated that it has “been very open and very transparent about the overall package and where we want to go”, citing the Williams report, the White Papers, the Prospectus and the Bill as examples of this.²⁸

35. The Minister agreed with respondents that the future functions of local government should be the primary focus of the reform agenda. He acknowledged that much of the emphasis to date had been on the merger map and stated that he was keen to refocus the debate on local government functions and on service delivery.²⁹

Our view

36. The issue of local government reform, including the restructuring of existing local authority areas, has been the subject of ongoing debate in recent years and has intensified considerably following the publication of the Williams Commission report. There is general consensus, both within and outside the sector, that local government reform is necessary and that restructuring should form part of this. While the restructuring of local authority areas is the main focus of the Bill, it cannot be viewed in isolation from the Welsh Government’s wider reform programme, set out in the February 2015 White Paper, *Reforming Local Government: Power to Local People*.

37. We note that the majority of respondents are content that this Bill is needed if the government is to meet its aims of enabling voluntary mergers and of paving the way for further mergers via a second Bill. We acknowledge that the government has chosen, at present, to pursue restructuring by merging existing local authority areas, although firm details of the proposed restructure have yet to be published. Accepting that this is the government’s intention, and that the only way to restructure local government is through legislative changes, we believe that the Bill is necessary.

We recommend that the Assembly agrees the general principles of the Local Government (Wales) Bill.

38. Notwithstanding the above, on a wider issue, we know that the decision to restructure is well intentioned and motivated by a desire to

²⁸ RoP, para 35, 26 March 2015

²⁹ RoP, para 31, 26 March 2015

improve service delivery and the resilience of local authorities. The proposals for wider reform set out in the White Paper have the potential to radically change local government for the better. The Welsh Government must therefore ensure that the units of government created as a result of restructuring have the capability and capacity to deliver these changes.

39. In addition, it will be important to engage the public in the debate on the restructuring programme and provide every opportunity for meaningful community consultation before proposals are formulated rather than after the final map has been published.

40. We are mindful that the proposed restructure will be the third to have taken place within a period of fewer than fifty years. This makes it all the more important to ensure that the outcome is one of a sustainable and enduring structure. Anything less could mean the need for further, untimely structural reform. It could also create additional challenges for local government and, if not effective in the long term, could be considered a wasteful and potentially costly exercise.

41. We note that this Bill and the proposals for a second local government Bill are the result of an extensive process, involving, amongst other things, public engagement and consultation which began with the establishment of the Williams Commission in April 2013. While we acknowledge this, we are concerned that the time available before the dissolution of this Assembly, along with the challenging timetable for the programme of mergers, pose a risk to the successful completion of the programme within the deadlines set out in the Bill and timetables provided to us by the Minister.

42. Decisions on the future structure of local government and agreement on the definitive map will be subject to a political process and that some level of compromise will be required. We accept that this is a political reality and is necessary in order for further progress to be made on this matter in this Assembly.

43. Notwithstanding this, we are concerned that the desire to meet a pre-determined timetable and the need for political compromise in order to make further progress could result in a settlement which may not be as robust as it could otherwise be. We reiterate that the principal consideration that should drive structural reform is the need

to create a sustainable structure that is both fit for purpose and capable of delivering the government's wider aspirations for the future of local government in Wales.

44. As such, we believe that the Minister should give further consideration to whether his current preferred approach of merging existing local authority units is the most effective and sustainable form of restructuring. We believe that there is a case for the Minister to consider whether a more holistic approach, of looking more fundamentally at the boundaries of local authorities and local government functions might lead to a more enduring and robust configuration.

45. If the Minister accepts this, he will clearly need to consider whether any changes are needed to this Bill as a result, particularly because the definition of merging authorities in relation to voluntary mergers only allows mergers along current boundaries. Regardless of the above, in the event that the Assembly agrees the general principles of the Bill, we have made recommendations in this report about a number of areas where we believe provisions should be strengthened or where we consider further clarity is required.

3. Voluntary mergers of local authorities

Background

46. Section 3 provides for the Welsh Ministers to make regulations enabling voluntary mergers following the successful application of two or more principal local authorities. Section 3(1) sets the deadline for applications of 30 November 2015, or a later date specified in regulations made by the Welsh Ministers.

47. Section 4 requires local authorities to consult a range of named stakeholders before making an application to merge voluntarily. Section 5 enables the Welsh Ministers to issue guidance to local authorities about merger applications. It also requires authorities to have regard to the guidance when developing proposals and making applications for mergers. Section 5(3) of the Bill provides for the Prospectus to be treated as though it had been issued before the commencement of section 5.

48. Section 7 requires merger regulations to include provisions for the establishment of a shadow authority made up of all members of the principal local authorities that are to be merged. These regulations must, among other things, set out the functions of the shadow authority and shadow executive and how these functions are exercised.

49. In September 2014, the Welsh Government published an *Invitation to Principal Local Authorities in Wales to submit proposals for voluntary merger* (“the Prospectus”), which outlined the timeline for the voluntary merger process and provided guidance to authorities on developing proposals. The Prospectus invited authorities who wished to merge voluntarily to submit initial expressions of interest to the Welsh Government by 28 November 2014. Three expressions were submitted by six authorities (one of which conformed to the Welsh Government’s preferred option).

50. On 27 January 2015, the Minister announced that he had decided to reject all three expressions of interest for voluntary merger on the grounds that they did not meet the criteria set out in the Prospectus.

Evidence from respondents

Proposals for merger

51. The WLGA and SOLACE highlighted that the voluntary merger provisions “appear unusual if not unique in Assembly legislation (...) as the Bill seeks to retrospectively give powers to Welsh Ministers (to issue guidance which has already been published i.e. the Prospectus) and to authorities (to make applications for voluntary mergers) before the Bill has been enacted”.³⁰ Given the rejection of expressions of interest for voluntary mergers, local government representatives emphasised the need for clarity on how authorities that may still wish to apply for voluntary merger should proceed. They also called for clarity on the criteria that they would need to meet in order for an application to be successful.³¹

52. A number of respondents, including local government representatives, questioned whether the voluntary merger provisions would be workable, particularly given that the Welsh Government’s map of proposed principal areas (“the merger map”) would not be published until the summer 2015.

53. The WLGA and SOLACE explained that “it is unlikely that any further expressions of interest or formal proposals for [voluntary] merger will be submitted” until the merger map has been published.³² They raised concern that the timing of the publication of the map combined with the deadline for applications for voluntary mergers of 30 November 2015 (section 3(1)) would “impact significantly on the practicability of voluntary mergers”.³³ Based on a publication date of June 2015, authorities would have five months within which to develop merger proposals that met the consultation requirements (section 4) and that satisfied the criteria set out in statutory guidance (section 5).

54. On this issue, Stephen Phillips, a local authority Chief Executive, stated:

“If we get to the early summer with no map, it becomes very challenging. If we get to midsummer with no map, it becomes impossibly challenging, not least because of the way in which

³⁰ Written evidence, LG 01

³¹ RoP, para 202, 26 February 2015

³² Written evidence, LG 01

³³ Written evidence, LG 01

the process is prescribed in the Bill. We have to consult with partners (...) we have a decision-making process to go through in two or more councils; and, ultimately, there's an assumption (...) that all 22 councils will sign up to the process once the map comes out, whatever it says."³⁴

55. Similarly, the Auditor General for Wales suggested that, in view of the timing of the publication of the merger map, "the timetable for voluntary mergers will be difficult to achieve".³⁵ He explained that, even if the deadline for applications for voluntary merger proposals were extended beyond 30 November 2015 to April 2016, this would "leave a challenging timescale to put in place all of the arrangements necessary to run a shadow authority", which are required under section 7.³⁶

56. UNISON expressed similar views.³⁷

57. The Local Democracy Boundary Commission Wales ("the LDBCW") raised concerns that voluntary mergers could have "a significant impact" on the wider electoral arrangements review programme. It explained that electoral reviews for voluntary mergers would need to be prioritised in order to meet the 1 April 2018 deadline (as set out in section 2(8)). As such, if any applications for voluntary merger were made, "the timing of the review programme [for main mergers] as currently understood could be placed in jeopardy". While the LDBCW acknowledged that the dates for the completion of reviews could be revised under the Bill (section 17(5)), it stated that this "may result in elections in new principal councils being held on different dates".³⁸

Evidence from the Minister

58. In commenting on whether the provisions relating to voluntary mergers were necessary, given the rejection of the initial expressions of interest, the Minister stated:

"(...) if we publish a map before the summer recess and there is demonstrable agreement between the Government and at least one other political party I think that could be a very clear

³⁴ RoP, para 131, 26 February 2015

³⁵ Written evidence, LG 08

³⁶ Written evidence, LG 08

³⁷ Written evidence, LG 03

³⁸ Written evidence, LG 09

indication of where the likely map for local government would be in the future. Therefore it would still be possible to facilitate voluntary mergers with the date of 30 November that's set out in the Bill."³⁹

59. He asserted that "voluntary mergers are not off the table".⁴⁰ However, he stated that, "if I were in local government (...) I would not want to bring forward at this moment a voluntary merger proposal without seeing the overall map".⁴¹

60. The Minister accepted that the timescale in respect of voluntary mergers is "tight". He suggested the need to revise the timetable for voluntary mergers "is to some extent, dependent on the publication of the map and whether there is sufficient confidence for local authorities that, in respect of their own areas, that map is likely to remain the final version".⁴²

61. The Minister stated that any merger regulations would need to be made "early" and that the proposed timescale for this "would be quite tight". He went on to state:

"(...) we would have to be clear in our own minds whether we could make those regulations in this fourth Assembly, or whether we would make them in the fifth Assembly (...) if we could not make those regulations early in the fifth Assembly, then that, in itself, could jeopardise the transfer date of 1 April 2018. So, that would be a risk, and I would accept that."⁴³

Our view

62. We are broadly content with the provisions relating to voluntary mergers, which we believe put in place a clearly defined process to enable local authorities to merge voluntarily if they wish to do so. Notwithstanding this, the successful establishment of merged authorities by the proposed April 2018 deadline is dependent on a number of variables, not least the timing of the publication of the Welsh Government's proposed main merger map.

³⁹ RoP, para 14, 5 February 2015

⁴⁰ RoP, para 38, 5 February 2015

⁴¹ RoP, para 39, 5 February 2015

⁴² RoP, para 86, 26 March 2015

⁴³ RoP, para 98, 26 March 2015

63. The deadline for proposals for voluntary mergers of 30 November 2015 will present significant challenges for authorities that may wish to apply. While we note that the Bill provides the Welsh Ministers with the power to extend this deadline by regulations, any meaningful extension would simply limit the time available later in the process. The Minister acknowledged this when he reported that there may be insufficient time available for merger regulations to be made by the end of this Assembly. Taking account of this, we question whether the Bill's aim of enabling voluntary mergers is deliverable in practice.

64. The Minister has made clear that, despite the rejection of initial expressions of interest, any further proposals for voluntary mergers will still be considered, and that voluntary mergers remain a viable option. Accepting this, we share the concerns of local government representatives about the lack of clarity on how authorities that may still wish to apply for voluntary merger should proceed, and on the criteria that they would need to meet in order for an application to be successful. We believe that this needs to be addressed as a matter of priority.

We recommend that the Minister clarifies whether the existing guidance on voluntary mergers (“the Prospectus”) will continue to be applicable, in particular whether the criteria set out in this guidance will be used for the purpose of assessing any further expressions of interest in, or applications for, voluntary mergers.

Consultation before making merger applications

Evidence from respondents

65. As noted above, section 4 requires local authorities to consult a range of named stakeholders before making an application to merge voluntarily. Section 4(1)(g) provides for authorities to consult “any organisation representing staff employed by any of the principal local authorities which has asked to be consulted”.

66. Despite this, UNISON, GMB and Unite expressed disappointment that there is no specific requirement on local authorities to consult trades unions before making an application for voluntary merger. According to these unions, the lack of such a requirement would allow authorities “to by-pass the recognised workplace trade unions” and could “[undermine the] long fought for, established recognition and collective bargaining arrangements”. They called for section 4(1)(g) to

be amended to replace the requirement on authorities to consult “any organisation representing staff” with a requirement to consult “recognised trade unions”.⁴⁴

Our view

67. We acknowledge the concern raised by the trades unions that they are not explicitly named as statutory consultees on proposals for voluntary merger. However, we believe that amending the wording of section 4(1)(g) to this effect could narrow the interpretation of this provision and exclude organisations representing staff that may otherwise be captured.

68. On a separate issue, given the implications of voluntary merger for local authority staff, it is essential that every attempt is made to consult them on merger proposals. As such, we believe that the requirement to consult organisations representing relevant staff should not be conditional on them having asked to be consulted.

We recommend that the Minister amends section 4(1)(g) so that the requirement on principal local authorities to consult organisations representing staff employed by those authorities before making an application for voluntary merger is not conditional on those organisations having asked to be consulted.

Shadow authorities

Evidence from respondents

69. Few respondents commented on the provisions relating to shadow authorities for any voluntarily merging authorities.

70. The Auditor General for Wales explained that “as shadow authorities will in all probability need to spend public money, it would be appropriate to have specific provision for regulations to provide for the audit of their accounts”.⁴⁵ He explained that the simplest way to achieve this would be to amend section 12 of the Public Audit (Wales) Act 2004 (“the 2004 Act”), which would require the Welsh Ministers to make an order.⁴⁶

⁴⁴ Written evidence, LG 03, LG 04, LG 02, LG 03A

⁴⁵ Written evidence, LG 08

⁴⁶ RoP, para 261, 12 March 2015

71. On a separate issue, the Auditor General for Wales raised concern that the timetable for voluntary mergers would coincide with the proposed “first year of early closure of accounts in local government” (where by the UK Government intends to issue new regulations for England which will mean that accounts for 2017-18 onwards will need to be prepared by 31 May and signed off and published by 31 July).⁴⁷

72. In Wales, the timetable for the preparation, publication and closure of local authority accounts is a matter for the Welsh Government to determine as part of any regulations made under Section 39 of the Public (Audit) Wales Act 2004. However, in preparing any future regulations, the Welsh Government may be influenced by the earlier closure timetable that the UK Government is proposing for English local authorities. The Auditor General for Wales explained that any such timetable in Wales “will add to the challenging timescale for both auditors and authorities” in respect of any voluntarily merging authorities. He urged the Minister to reach an agreement with the UK Treasury to exempt any authorities that merge voluntarily from the early closure timetable.⁴⁸

Evidence from the Minister

73. The Minister stated that he would reflect on the issues raised by the Auditor General for Wales.⁴⁹

Our view

74. We support the provisions relating to shadow authorities. However, we note that the existing powers of the Auditor General for Wales in respect of auditing the accounts of local government bodies do not extend to shadow authorities, and we believe that the Minister needs to address this.

We recommend that the Minister brings forward an order to amend the Public Audit (Wales) Act 2004 to add shadow authorities to the list of local government bodies whose accounts are subject to audit by the Auditor General for Wales.

75. We note that, previously, key dates contained within England and Wales regulations for the completion of local government accounts

⁴⁷ Written evidence, LG 08

⁴⁸ Written evidence, LG 08 and RoP, para 269-271

⁴⁹ RoP, para 205, 26 March 2015

have been aligned. Given the proposed earlier closure timetable in England, there may be pressure from the UK Government for Wales to follow suit, not least because a delay in signing off accounts in Wales may hold up the preparation of the UK Whole of Government Accounts. We share the concerns of the Auditor General for Wales that the UK Government's early closure timetable for local government accounts will be challenging for auditors and voluntarily merging authorities if similar provisions for early closure are adopted in Wales.

We recommend that the Minister ensures that sufficient time is available for the preparation, publication and closure of any merging authorities' accounts.

Staff Commission

Background

76. The Welsh Government undertook a consultation between October 2014 and January 2015 on proposals to establish a Public Services Staff Commission ("the Staff Commission"). The role of the Staff Commission will be to advise the Welsh Ministers on staffing matters related to mergers. The intention was to establish the Staff Commission on a non-statutory basis by April 2015, before establishing it on a statutory basis via the planned second local government Bill.

Evidence from respondents

77. The trade unions and other respondents emphasised the need for a Staff Commission to be established on a statutory basis as soon as possible and called for the Bill to make provision for this.

78. UNISON expanded on this and stated:

"Failure to include the need for the establishment of a Commission(er) prior to council mergers, whether voluntary or otherwise, would at best heighten the fears and uncertainties currently being experienced by staff and, at worse, would fundamentally undermine the process and threaten the success of merger. UNISON would like to have seen the Public Services Staff Commission(er) created, on a statutory basis, as soon as possible as there is work to be undertaken immediately, on an all-Wales cross public services basis, in relation to workforce planning to mitigate the effects of the financial austerity across

the public services, a role we envisage for any Commission(er)."⁵⁰

79. The Auditor General for Wales also said that there should be “a staff commission as soon as possible”, particularly “for various regulations to be set out controlling both the early departure and appointment process” for staff as mergers get underway.⁵¹

Evidence from the Minister

80. On 24 March 2015, the Minister issued a statement stating that the Public Services Staff Commission would be established on a non-statutory basis by autumn 2015. Legislative proposals would be made for a statutory Staff Commission in the second local government Bill.⁵²

Our view

81. We welcome the announcement from the Minister that a non-statutory Public Services Staff Commission will be established in autumn 2015. However, we note that this is several months later than originally intended.

82. We hope that the establishment of the Commission, albeit on a non-statutory basis, will go some way in satisfying the concerns of the trades unions and will provide sufficient assurance to local government staff that workforce matters are a priority in any structural reform. We seek assurance from the Minister that the non-statutory Commission will be in a position effectively and promptly to support the staff of, and provide advice on workforce matters to, any authorities that wish to merge voluntarily.

⁵⁰ Written evidence, LG 03A

⁵¹ Written evidence, LG 08

⁵² Written Statement – Update on the proposal to establish a Public Services Staff Commission, Leighton Andrews, Minister for Public Services

4. Transition committees

Background

83. Sections 11 to 15 make provision in relation to transition committees. Section 11 places a requirement on the Welsh Ministers to make regulations requiring merging authorities to establish transition committees. These committees will be responsible for undertaking preparatory work ahead of mergers. This provision applies to all merging authorities, whether merging by virtue of regulations made under this Bill or by virtue of provisions in a second local government Bill.

84. Section 12 provides for the composition of transition committees, which must consist of an equal number of members from each merging authority. Section 13 sets out the functions of transition committees, which include providing advice and recommendations to the merging authorities and shadow authorities. It also provides the Welsh Ministers with the power to direct transition committees and to issue guidance in relation to the exercise of their functions.

Evidence from respondents

85. Few respondents commented in detail on the provisions relating to transition committees. The WLGA stated that the provisions “appear appropriate”. However, it went on to state that the Welsh Ministers’ power of direction over transition committees would “be a potentially significant power which would arbitrate over and potentially over-rule local democratic decision-making processes”. As such, it called for “clear criteria and guidance” setting out the circumstances in which this power could be exercised.⁵³

86. The trades unions pointed out that section 13 (functions of transition committees) fails to acknowledge the role of the proposed Public Services Staff Commission. They called for the Bill to be amended to include provision for “a Public Sector Staff Commission/er to advise on the workforce matters that directly arise out of [mergers]”.⁵⁴

⁵³ Written evidence, LG 01B

⁵⁴ Written evidence, LG 02, LG 03, LG 04

87. A number of respondents highlighted the important role that transition committees could play in addressing issues around the use of the Welsh language by merging authorities. This issue is covered in more detail in Chapter 10.

Evidence from the Minister

88. When questioned on the need for a requirement in the Bill on the Welsh Ministers to regulate for the establishment of transition committees, the Minister stated:

“(…) the reality is there is considerable preparatory work to be undertaken by local authorities coming together, and I think each local authority would want to play its role in that and want to ensure that services to its local community were being protected.”⁵⁵

Our view

89. We are content with the provisions in the Bill that provide for the early establishment of transition committees. These committees will be key to ensuring a smooth transition from merging authorities to the establishment of new principal local authorities.

90. We hope that the planned establishment of a Staff Commission in autumn 2015 will help address the trades unions’ concern about how transition committees will deal with staffing issues. We expect the Staff Commission to engage with transition committees at an early stage in the merger process.

⁵⁵ RoP, para 121, 5 February 2015

5. Electoral arrangements

Background

91. Under current legislative arrangements, the Local Democracy and Boundary Commission for Wales (“the LDBCW”) can only undertake electoral arrangements reviews of principal areas already established by statute. Sections 16 to 24 make provision for electoral arrangements for new principal areas. It enables the Welsh Ministers to direct the LDBCW to undertake initial reviews of proposed new principal areas provided those areas have been identified in applications or merger regulations, a further Act of the National Assembly, or in other proposals published by the Welsh Ministers.

92. Sections 18 to 21 set out the procedure for reviewing electoral arrangements for proposed principal areas, including the pre-review procedure and consultation requirements. Section 23 enables the Welsh Ministers to make regulations in respect of the electoral arrangements for proposed principal areas, if the LDBCW does not report by the date specified in a direction. Regulations made under section 23 will not be subject to any Assembly procedure.

Directions to conduct initial review

Evidence from respondents

93. Apart from the evidence received from the LDBCW, few respondents commented on the provisions relating to electoral arrangements. Those who did comment were supportive of the provisions and believed that they were necessary in order to enable the LDBCW to undertake preparatory work and electoral reviews as early as possible in the merger process.

94. However, respondents raised concern about the timescales within which the LDBCW will need to complete its programme of reviews of proposed principal areas. The LDBCW raised particular concerns about how the prospect of applications for voluntary mergers could impact on the timescales. This issue is covered in more detail in Chapter 3.

95. The WLGA and SOLACE acknowledged the role of the LDBCW in the merger process: “a significant responsibility is placed on the Commission as the electoral review process presents a potential risk to

the effectiveness and timeliness of the local government reform agenda”.⁵⁶

96. The LDBCW emphasised the importance of being able to start reviewing proposed new areas as soon as possible. It stated:

“The key issue to the Commission, in terms of delivering electoral arrangements for the new local authorities, is receiving a direction authorising the start of initial reviews as soon as possible after the date of Royal Assent. Enabling the maximum amount of time will allow the Commission to conduct reviews in a timely fashion.”⁵⁷

97. Similar views were expressed by the WLGA and SOLACE who stated that “an early Ministerial direction to conduct an initial electoral review [is] critical given the potential time and capacity constraints of a local government reform programme”.⁵⁸

98. It raised concern that “a significant delay in receiving a comprehensive direction and starting reviews will jeopardise the review programme”.⁵⁹ When questioned on what would constitute “a significant delay”, the LDBCW explained that, if the date of direction “starts moving into the summer of 2016 (...) that is the point when it’s going to become more difficult”.⁶⁰

99. The LDBCW explained that it would need additional resources to meet the demands placed on it by the Bill.⁶¹ It further explained that the reviews of proposed new areas could be more resource-intensive than reviews undertaken during the last reorganisation of local government because of the “shorter period of time [available]”.⁶² The LDBCW confirmed that it had discussed the issue of resources with the Welsh Government.⁶³

100. The LDBCW reported that it had been planning, both in terms of time and resources, based on the Welsh Government’s preferred option of 12 local authorities, which would involve nine mergers with

⁵⁶ Written evidence, LG 01

⁵⁷ Written evidence, LG 09

⁵⁸ Written evidence, LG 01

⁵⁹ Written evidence, LG 09

⁶⁰ RoP, para 31, 12 March 2015

⁶¹ RoP, para 8, 12 March 2015

⁶² RoP, para 16-19, 12 March 2015

⁶³ RoP, para 8, 12 March 2015

three local authority areas remaining the same. It emphasised that changes to the map, the need to prioritise reviews of any areas merging voluntarily, the date of Royal Assent of the Bill, and the timing of Ministerial Directions would impact on the time and resources needed to complete the review programme.⁶⁴

101. On a related issue, the WLGA highlighted that there is “potential risk that early electoral review work could be made redundant”, depending on the extent to which the merger map changes as a result of the legislative scrutiny process.⁶⁵

Evidence from the Minister

102. The Minister explained that the LDBCW currently need at least 18 months to undertake a review of the electoral arrangements of each principal area. He stated that it “is anticipated the same timeframe will apply to reviews of proposed new Principal Areas under the Bill”. The Minister further explained that the Welsh Government then usually allows 3 months between receipt of a final report from the LDBCW and making an electoral order. In addition, he suggested that electoral registration officers and political parties need some 6 months to translate the new arrangements into practice.⁶⁶

103. The Minister asserted that enabling the LDBCW to begin reviews early, is “the only way of enabling the first elections to merged authorities to take place in good time and on the basis of electoral arrangements drawn up by the Commission.”⁶⁷

104. The Minister explained that the Bill provides the Welsh Ministers with the power to direct the LDBCW to undertake reviews of proposed new areas provided those proposals have been published.⁶⁸ His official went on to state that, in this context, a “proposal” is “most likely” to be the merger map and the accompanying Ministerial written statement, and that the Minister “would direct the Boundary Commission on the basis of that proposal”.⁶⁹

105. In responding to the suggestion that this could be seen to “pre-empt the democratic process”, the Minister stated:

⁶⁴ RoP, para 25-29, 12 March 2015

⁶⁵ Written evidence, LG 01

⁶⁶ Letter from the Minister for Public Services, 23 February 2015

⁶⁷ RoP, para 118, 26 March 2015

⁶⁸ RoP, para 116, 26 March 2015

⁶⁹ RoP, para 121-123, 26 March 2015

“The boundary commission has to start somewhere and, I think, for the business of sensible government, it’s been widely accepted within Wales, we would want them to start work. If there were changes [to the merger map] (...) then there might have to be revisions (...), then there might then have to be further revisions to the overall timetable. So, I don’t think it pre-empts the democratic process. I think it is prudent to move forward on that basis.”⁷⁰

106. In responding to the LDBCW’s concern that a delay in a direction from the Minister could jeopardise the electoral review programme, the Minister stated:

“(...) we have set out our desired timetable in terms of the creation of new authorities, timetables for elections, and so on, on the basis that a Government has to be able to plan. This is an area of great complexity and requires significant political consensus in Wales. Clearly, if at a later date, it became apparent that the conversations between political parties produced a situation that required significant amendment, then that would have to be taken into account by the next Government.”⁷¹

Our view

107. We are content with the provisions relating to electoral arrangements. We note that the way in which the Bill is drafted provides the Minister with the power to direct the Local Democracy and Boundary Commission for Wales to begin its electoral review programme for proposed new principal areas on the basis of publishing a merger map. While not ideal, we accept that this is necessary in order to provide the LDBCW with sufficient time to complete its work. However, there is a risk that undertaking work at this early stage could mean significant revisions to the review programme later on in the process, when proposals are introduced formally by legislation and during the passage of that legislation.

108. Although the Bill enables the LDBCW to commence work early, it is clear that the timetable that the LDBCW will be working to in order to complete the review programme is particularly challenging. If all

⁷⁰ RoP, para 125, 26 March 2015

⁷¹ RoP, para 127, 26 March 2015

progresses as the Welsh Government intends, we are satisfied that the LDBCW should be able to complete the programme within the time available. However, we recognise that there are a number of variables that could impact on the timetable, including proposals for voluntary mergers, the date of receipt of a direction from the Welsh Ministers and changes to the merger map. We are concerned that any significant reduction in the time available for the LDBCW to undertake its work, as a result of these factors, would pose a risk to the completion of the review programme.

We recommend that the Minister provides the Local Democracy and Boundary Commission for Wales with sufficient resources to enable it to complete its electoral review programme for proposed new principal areas. The level of resources provided should take into account any revisions to the review programme that may need to be made as the merger programme progresses.

Consultation and investigation

Evidence from respondents

109. The LDBCW called for the requirement in section 20(1) to consult on conducting an initial review of proposed principal areas to be removed. It stated:

“The Commission recognises that in the ordinary course of a ten year electoral review programme that this process is entirely appropriate. However, in the case of this special programme of initial reviews, and the tight timescales the Commission is likely to be given, that an exception should be made to allow the Commission to complete its activities in a timely fashion.”⁷²

110. According to the LDBCW, “if a significantly truncated period of time is provided in order to conduct reviews, the removal of this provision could prove critical to the Commission”.⁷³

111. When questioned on the above issue, the Auditor General for Wales stated that the removal of the initial consultation process “may

⁷² Written evidence, LG 09

⁷³ Written evidence, LG 09

be a risk". However, he acknowledged the "large expectations" on the LDBCW to complete its work and the challenging timescale for this.⁷⁴

Evidence from the Minister

112. The Minister stated that he would reflect further on the LDBCW's suggestion for the removal of the requirement to consult on the initial review.⁷⁵

Our view

113. We acknowledge the concern raised by the LDBCW that the requirement to consult on an initial review may add to the challenging timescale for the completion of the electoral review programme for mergers. However, we believe that effective and meaningful consultation is important at all stages of the merger process. We must engage the public in this debate and provide every opportunity for people to express their views, particularly given the significance of the changes to local government that the merger programme will entail. As such, we are content with the consultation requirements in section 20.

The number of members in new councils

Evidence from respondents

114. As part of undertaking electoral review arrangements, the LDBCW considers and makes recommendations on the number of councillors to be elected to the council for a principal area.

115. The LDBCW stated that the number of councillors to be elected to a new proposed council is an "essential factor" in undertaking a review of electoral arrangements. Therefore, it stated that is "critical that an early indication is given of the numbers of members" in a direction or in guidance from Welsh Ministers. The LDBCW emphasised that, if it is expected to decide on the number of councillors for the new authorities, it could be problematic for the timescales proposed.⁷⁶

116. The LDBCW outlined the process for determining the number of elected members per council, which, the last time this exercise was

⁷⁴ RoP, para 240, 12 March 2015

⁷⁵ RoP, para 129, 26 March 2015

⁷⁶ Written evidence, LG 09

carried out for all 22 authorities, had taken 18 months to complete. It stated:

“Once an agreed map has been determined, the Commission would therefore need to undergo a similar process to seek agreement on a new model for the appropriate number of members for each new Principal Council. This would have significant implications on the ability of the Commission to complete the timetable on time.”⁷⁷

117. The LDBCW expressed a clear preference for the number of members to be stated in a Direction or in Guidance issued soon after the date of Royal Assent.⁷⁸

Evidence from the Minister

118. When questioned on whether he intended to include the number of elected members for new principal councils in a Direction, the Minister stated that “we would have to”. He explained that the number of elected members would be considered when developing the merger map and stated:

“As we draw up the map, we need to have a view of the size of authorities in respect of the ratio of councillors to electors”, so it might be that we go above the 75 limit, for example, in certain authorities, if they were larger than those conceived of by Williams.”⁷⁹

Our view

119. We acknowledge the view of the Local Democracy and Boundary Commission for Wales that the number of elected members for new proposed councils should be included in a direction by the Welsh Ministers. We welcome the clarification from the Minister that this is his intention.

⁷⁷ Written evidence, LG 09

⁷⁸ Written evidence, LG 09

⁷⁹ RoP, para 131, 26 March 2015

Discrepancies between the number of electors on the electoral register and eligible voters

Evidence from respondents

120. When reviewing electoral arrangements for proposed principal areas, the Bill provides that the LDBCW must take into account any discrepancy between the number of local government electors and the number of people eligible to be electors (section 18(4)).

121. The LDBCW raised concern about this requirement and pointed out that “these statistics, to the level of detail and accuracy that the Commission require, do not exist at present”.⁸⁰

122. The LDBCW explained that population statistics, other than population data held in the year of the Census, “are estimates which are corrected (...) by the following Census”. It further explained that “using population data would significantly restrict the ability of the Commission to create electoral wards as the population data for community and community wards does not exist at present”.⁸¹

123. We questioned the LDBCW on why it believed the requirement in the Bill should be removed given that it is already subject to an equivalent requirement when undertaking reviews under the *Local Government (Democracy) Wales Act 2013* (“the 2013 Act”). The LDBCW explained that it was primarily on the basis of time constraints.⁸²

124. The LDBCW called for the relevant provisions in section 18(4) to be removed and for the equivalent provisions in the 2013 Act to “be suspended”.⁸³

Evidence from the Minister

125. The Minister was not convinced that the lack of availability of specific population data was particularly problematic. However, he agreed to further reflect on the matter.⁸⁴

⁸⁰ Written evidence, LG 09

⁸¹ Written evidence, LG 09

⁸² RoP, para 148, 12 March 2015

⁸³ Written evidence, LG 09

⁸⁴ RoP, para 135, 26 March 2015

Our view

126. We note the Local Democracy and Boundary Commission for Wales' concern that the lack of specific population data would make it difficult for the LDBCW to meet its requirements under section 18(4). However, we also note that equivalent provisions are already included in the *Local Government (Democracy) Wales Act 2013*. As such, we believe it is both reasonable and appropriate for the requirement to apply for the purpose of reviewing electoral arrangements for proposed new local authority areas.

127. Notwithstanding the above, we recommend that the Minister should consider taking appropriate action to improve the availability of population data at the level of detail required for the purpose of reviewing electoral arrangements, in the longer term.

Electoral arrangements if no recommendations made

Evidence from respondents

128. Few respondents commented on the power provided in section 23 for the Welsh Ministers to make regulations for the electoral arrangements for a proposed principal area if the LDBCW has not reported. Those who did comment were content that the power is appropriate.

129. The LDBCW stated that it would be “a wise thing to have some kind of backstop in [the] legislation” in case the LDBCW was unable to complete its reviews and report to the Minister within the required time. The LDBCW further stated that the power “gives the Minister a tool to use if [he] has to”.⁸⁵

130. The WLGA and SOLACE appeared to support the provision, but suggested amendments to the Bill to ensure that appropriate “consultative safeguards are put in place”. They also suggested that the Welsh Ministers follow the procedures that apply to the LDBCW, including the publication of, and consultation on, a final report.⁸⁶

⁸⁵ RoP, para 106-107, 12 March 2015

⁸⁶ Written evidence, LG 01B

Evidence from the Minister

131. The Minister was “confident” that the LDBCW will be able to complete the programme of electoral arrangements reviews, and is “very much hoping to avoid having to use [the power in section 23]”, which is a “backstop power”.⁸⁷

132. The Minister’s official explained that the timetable for the last local government organisation had not allowed sufficient time for the Local Government Boundary Commission “to undertake work of any substance”. In order for the elections to new local authorities to be held, “the electoral arrangements were made by Ministers on the basis of advice from officials within the Welsh Office”.⁸⁸

133. In commenting on why the Bill does not provide regulations made under section 23(2) to be subject to any Assembly procedure, the Minister’s lawyer stated:

“(…) electoral arrangement orders, since they first appeared in the Local Government 1972 Act, have always been treated as local orders, which don’t follow a procedure. There is a justification for that, and it’s the amount of scrutiny that goes into the preparation of the recommendations from the Commission during the review process.”⁸⁹

Our view

134. We acknowledge the general support in evidence for the provision relating to electoral arrangements if the Local Government and Boundary Commission for Wales is unable to make recommendations in time. The Minister has made clear his intention only to exercise the power provided to make regulations in respect of electoral arrangements as a last resort, and we are reassured by this. We accept that this power is necessary to ensure that the reform process is not compromised in the event that the LDBCW is unable to complete its programme of electoral arrangements reviews in time.

135. We note that the Bill does not provide for the regulations made under section 23(2) to be subject to an Assembly procedure, which is consistent with the approach for other electoral arrangement orders.

⁸⁷ RoP, para 138, 5 February 2015

⁸⁸ RoP, para 140, 5 February 2015

⁸⁹ RoP, para 148, 5 February 2015

We further note that the application of an Assembly procedure in this case is not deemed necessary given the level of consultation and public engagement that is required as part of the electoral arrangements review process. We are satisfied with this.

6. Remuneration etc. arrangements for new principal local authorities

Background

136. Under existing legislation, the Independent Remuneration Panel for Wales (“the Panel”) is responsible for determining the remuneration of local government elected members, but can only do so for existing principal local authorities.

137. Sections 25 to 27 provide the Welsh Ministers with the power to direct the Panel to consider and make determinations in respect of the remuneration of members of proposed principal local authorities before those authorities come into existence, and of members of shadow authorities.

138. Section 28 requires a shadow authority of merging authorities to prepare and approve a pay policy statement (as provided for under the *Localism Act 2011*) for the shadow period and for the first financial year of the new principal local authority. To assist the shadow authority, the relevant transition committee must publish recommendations in respect of pay policy statements. Shadow authorities are prohibited from appointing a chief officer until the pay policy statement has been prepared and approved.

Remuneration of members of new principal local authorities and shadow authorities

Evidence from respondents

139. Those respondents who commented on the provisions relating to the remuneration of members of proposed principal authorities and of shadow authorities agreed that they were appropriate.

140. The Chair of the Panel emphasised that the associated work could have “a very big impact” on its workload, not least because the Panel would still need to meet its existing statutory responsibilities, including publishing an annual report setting out its remuneration framework for current authorities.⁹⁰

141. He pointed out that the options for mergers that had been identified by the Williams Commission would mean “significant

⁹⁰ RoP, para 147, 4 March 2015

variations in the size of authorities (...) and in the levels of responsibility [of members and post-holders]”. The Panel would need to take these factors into account when considering levels of remuneration. The Chair of the Panel suggested that it may need “to consider bespoke remuneration frameworks for each council”, which “would increase the workload of the Panel considerably”, particularly in the early stages.⁹¹

142. In view of the above, he welcomed the proposal in section 36 to increase the Panel’s membership from five to six. He explained that, on a practical level, this would enable the Panel to form two sub-panels, which would help it to better manage its workload.⁹² Nevertheless, he suggested that there may come a point when the Panel’s workload “is beyond its capacity to deliver”. As such, he emphasised the need to keep the Panel’s workload and size under review.⁹³

Evidence from the Minister

143. On the issue of the increased workload of the Panel, the Minister stated:

“(...) the Bill obviously provides that there will be an additional member appointed to the IRP. The intention is that the IRP could divide itself, if necessary, in order to spread the workload.”⁹⁴

Our view

144. We support sections 25 to 27, which will enable the Independent Remuneration Panel for Wales to make determinations in respect of payments to members of a proposed principal local authority and a shadow authority. This is a natural extension of the Panel’s existing functions in respect of payments to members of existing local authorities and is therefore both reasonable and appropriate.

145. However, it is likely that the provisions will significantly increase the Panel’s workload. As such, we welcome the proposed increase in membership of the Panel from five to six (section 36), which we expect

⁹¹ Written evidence, LG 07

⁹² RoP, para 181, 4 March 2015

⁹³ RoP, para 185, 4 March 2015

⁹⁴ RoP, para 182, 5 February 2015

will go some way in addressing this issue. Despite this, it is possible that the combined impact of these provisions and of the proposed extension of the Panel’s functions to chief officers (section 35), will mean a challenging workload, at least in the short term. We recommend that the Minister keeps the size of the Independent Remuneration Panel under review with a view to ensuring that it is of optimum size and is sufficiently resourced to effectively carry out its existing and proposed new statutory responsibilities.

Pay policy statements

Evidence from respondents

146. The Auditor General for Wales and UNISON were the only respondents to comment on the provisions relating to pay policy statements for merged authorities.

147. According to UNISON, “pay policy statements can better inform the wider general public as to the remuneration of the local government workforce, particularly highlighting the differences between the lowest paid officers and local authority chief executives.”⁹⁵

148. UNISON called for the provisions relating to pay policy statements to apply equally in cases where local authority services are outsourced as a result of mergers. This would help safeguard against the potential “exploitation” of staff and the development of a two-tier workforce. It stated:

“Mergers between local authorities, whether voluntary or otherwise, can lead to increases in privatisation and outsourcing of public services to private corporations. Section 28 should be expanded to cover the services merged authorities may provide via provision of contract with another public, private or third sector service provider. This will ensure transparency across all public services and uphold the principles behind section 28 across all local authority public services.”⁹⁶

149. In addition, the trades unions called for the Bill to be used as an opportunity to strengthen the application of the Code of Practice on Workforce Matters (“the Code”) in respect of local government. They

⁹⁵ Written evidence, LG 03

⁹⁶ Written evidence, LG 03

explained that the Code “covers all aspects of the public services and relates to protection for employees who find themselves working for part of the public service that has been ‘outsourced’”. While there is a statutory requirement on the NHS to follow the Code, local government only has to have regard to it. According to the trades unions, “this has meant, in our experience, a number of authorities ignoring the spirit in which the Code was issued”.

150. On a separate issue, the Auditor General for Wales raised concern that the “the provisions in relation to senior pay in section 28 of the Bill might lead to inconsistency of interpretation, as is currently the case in the reporting of senior pay in local authority statements of accounts”. In order to avoid this, he emphasised the need to include “a clear and unambiguous definition of ‘chief officers’ covered in section 28 of the Bill”.

Evidence from the Minister

151. In responding to the suggestion that section 28 should be extended to apply to bodies to which local authority services are contracted out as a result of mergers, the Minister explained that “we may have to recognise that we may not be able to direct external bodies to develop pay policy statements. But certainly we can consider what is possible through contractual arrangements”.⁹⁷

152. The Minister stated that “it is important to have a clear definition of ‘chief officers’”. He explained that it was his intention to issue guidance for the preparation of pay policy statements by shadow authorities, “which would seek to limit any potential inconsistencies in pay policy”.⁹⁸

Our view

153. We welcome the provision relating to pay policy statements, which we believe will ensure transparency and accountability with regard to the shadow authority’s approach to setting the pay of its workforce. We also believe that this provision will contribute to the Welsh Government’s aim of safeguarding against local authorities awarding irresponsible pay rises or inappropriate regrading to senior officers ahead of merger.

⁹⁷ RoP, para 141, 26 March 2015

⁹⁸ RoP, para 139, 26 March 2015

154. We acknowledge the concerns raised by the trade unions about the potential for staff who provide local authority services that have been outsourced to have less favourable pay and conditions than those who are employed directly by authorities. Given that outsourcing of services may become increasingly likely as a result of mergers, we believe this issue needs to be addressed.

155. We note that this could potentially be done by local authorities through competitive tendering processes. We are aware that, if applied appropriately, the Code of Practice on Workforce matters should address the concern raised by the trades unions in respect of potential inequitable pay and conditions. However, according to the unions, some authorities are not applying the Code as intended.

We recommend that the Minister considers including provision in the Bill to require local government to follow the Code of Practice on Workforce Matters.

156. We note that the meaning of “chief officer” in the context of pay policy statements is not included in section 28. Without a clear definition of “chief officer” the term is open to interpretation, which could lead to undesirable inconsistencies and difficulties in comparing pay across local authorities. As such, we believe that a definition is required.

We recommend that the Minister includes a definition of “chief officer” in the Bill for the purpose of provisions in relation to pay policy statements.

7. Restraints on transactions by merging authorities

Background

157. Sections 29 to 32 impose restrictions on the transactions of merging authorities by requiring those authorities to seek the opinion of the relevant transition committee or, once established, the written consent of the shadow authority before:

- buying or selling land or buildings exceeding £150,000;
- entering into contracts or agreements that extend beyond the transfer date exceeding £150,000 (non-capital) or £500,000 (capital);
- giving any financial assistance or other financial assistance exceeding £150,000;
- making a loan that extends beyond the transfer date exceeding £150,000).

The transfer date referred to above means the date on which new principal areas come into existence.

158. If the authority chooses to proceed with the transaction against the opinion of the transition committee, it must publish its reasons for doing so. If it proceeds without the consent of the shadow authority those contracts or agreements will be unenforceable; a land transaction or acquisition will be void; and a grant or other financial assistance or loan will be repayable.

Evidence from stakeholders

159. Those who commented, including the Auditor General for Wales and representatives of local government, supported the provisions relating to restraints on transactions by merging authorities. This support was based primarily on the need to avoid repeating the experience of previous local government reorganisation when, according to the Explanatory Memorandum, authorities opposed to the process “inhibited collective planning for the periods during and after

the changes”.⁹⁹ There was general consensus that the provisions relating to restraining transactions would help safeguard against this.

160. Notwithstanding the above, the WLGA and SOLACE pointed out that, as currently drafted, the provisions “would not stop a disposal [of land] at an under-value (or for free)”. They suggested that this could be addressed by replacing the term “consideration” (section 31(1)) with “land value”.¹⁰⁰ Gareth Owens, representing local government lawyers in Wales, subsequently explained that the provisions would not prevent an authority from manipulating the land value, for example, through the imposition of a restrictive covenant before the sale, which could be lifted once ownership of the land had changed hands.¹⁰¹

161. On a separate issue, the Auditor General for Wales stated that the threshold of £150,000 for referrals of transactions relating to land acquisition or disposal “appears to be low”. He raised concern that “applying [this threshold] could impair an existing council’s ability to run the day to day business of the authority”. He further stated:

“The transition committee/shadow authority could potentially be considering significant numbers of contracts, in addition to planning for a merger, and this might delay legitimate and necessary projects.”¹⁰²

162. The Auditor General for Wales suggested that £250,000 would be a more appropriate threshold.¹⁰³

Evidence from the Minister

163. In commenting on the suggestion that the current proposed threshold of £150,000 should be increased, the Minister said that he was open to reconsidering the thresholds.¹⁰⁴

164. In relation to the concern that the restraints provisions would not prevent merging authorities for disposing of land undervalue, the Minister stated:

⁹⁹ Explanatory Memorandum, para 74

¹⁰⁰ Written evidence, LG 01

¹⁰¹ Additional information from Lawyers in Local Government representative

¹⁰² Written evidence, LG 08

¹⁰³ RoP, para 256, 12 March 2015

¹⁰⁴ RoP, para 158, 26 March 2015

“(…) provided that the value of the transaction is greater than £150,000, then the issue of selling it undervalue would be a relevant consideration of the transition committee, or for the shadow authority as appropriate. Section 123 of the current Local Government Act 1972 provides councils with the power to dispose of land in any manner they see fit for the best price reasonably obtainable, and that’s an important provision because it addresses the matter of disposals for an undervalue. So, I think it’s important that we strike a balance between preventing negative behaviours, but also allowing authorities to take account of local circumstances to get the best deal for taxpayers.”¹⁰⁵

Our view

165. We welcome the aim of the Bill to safeguard against any potential negative and damaging behaviour from merging authorities and we support in principle the provisions relating to restraints on transactions.

166. We note the proposed threshold of £150,000 above which proposed transactions must be referred to transition committees for an opinion, or to shadow authorities for written consent. This threshold could potentially generate a significant number of referrals which could, in turn, considerably add to the workload of transition committees and shadow authorities. In addition, it could impair the ability of existing authorities to run their business effectively. We believe that increasing the threshold to £250,000 (other than for capital contracts) would retain a sufficient level of protection without creating an unnecessary burden on transition committees and relevant authorities.

We recommend that the Minister amends section 31 to increase the thresholds relating to restraining transactions from £150,000 to £250,000.

We believe that section 29 will go some way in safeguarding against potentially damaging behaviour. However, we consider that it could be strengthened by enabling transition committees to refer proposed transactions relating to capital spend to the Welsh Ministers, where they believe there is good reason for doing so. This would provide an

¹⁰⁵ RoP, para 158, 26 March 2015

additional level of protection for proposed new principal local authorities and would enable the Welsh Ministers to have oversight of more sizeable transactions. We recognise the importance of allowing merging authorities to continue to make financial decisions that will benefit the communities that they serve. However, in view of the current financial climate, and the importance of financial prudence throughout the merger process, we believe that this additional level of protection is both reasonable and proportionate.

We recommend that the Minister considers including provision in the Bill enabling transition committees to refer proposed transactions of merging authorities relating to capital spend to the Welsh Ministers for a decision, where those committees believe there is good reason for doing so. Before considering such provision in the Bill, we expect the Minister to assess the practical and financial implications for the Welsh Government and local authorities of this proposal.

167. We note the concern in evidence that, as drafted, the restraints on proposed transactions may not prevent the disposal of land at an undervalue in certain circumstances. We were reassured by the Minister's evidence that local authorities are already under a statutory duty to obtain the best price when disposing of land. However, we draw the Minister's attention to the evidence received from local government that this duty will not prevent the manipulation of land values in order to circumvent the effect of sections 29 to 32.

8. Temporary extension of functions of Panel relating to heads of service to chief officers

Background

168. Under existing legislation, one of the functions of the Panel is to take a view and make recommendations in relation to the salary of a Head of Paid Service within a principal local authority. Section 35 temporarily extends those functions in relation to “chief officers”, until March 2020. The meaning of “chief officer” has the same meaning as in section 43(2) of the *Localism Act 2011* (“the 2011 Act”), which in turn relies on meanings within the *Local Government and Housing Act 1989* (“the 1989 Act”).

Appropriateness of the extension of functions

Evidence from respondents

169. There was broad support for the policy intention behind the provisions in relation to the remuneration of chief officers, namely to prevent local authorities from acting inappropriately in respect of pay awards to senior officers ahead of mergers. Notwithstanding this, many respondents, including the Chair of the Panel, the trades unions and the Auditor General for Wales questioned whether the Panel was the most appropriate body to deal with this issue.

170. Councillor Edwards, Gwynedd Council welcomed the policy intention behind the provisions. He reported that, although there had previously been “no agreement” in the WLGA on this issue, “there is an understanding that establishing a regime where chief executives’ salaries are set by an independent panel makes common sense for the public”.¹⁰⁶

171. Councillor Edwards suggested there was a need to address the existing “free market for chief executives” and to “remove [the] element of competition that exists between councils [in relation to the recruitment and retention of chief executives and senior officers]”. He believed that giving responsibility to an independent body to

¹⁰⁶ RoP, para 190, 26 February 2015

determine the pay of chief executives and senior officers would help address these issues.¹⁰⁷

172. In contrast to the above, the Local Authority Human Resources Directors (Wales) Network (“the HRD Network (Wales)”) argued that the policy intention behind the provisions was based on a “serious and prejudicial misconception about the size and costs of local government senior management teams”. It stated:

“The policy intention behind this provision (...) is to drive down what the Welsh Government regards as ‘the excessive cost’ of management in local government and introduce ‘greater consistency’ by subjecting senior salaries to external scrutiny by an independent body.

(...)

“Unfortunately, it appears that Welsh Government is formulating policy based on misconceptions and the evidence from a small minority of exceptional cases rather than on the basis of evidence from the majority of councils. Policy is being formulated without any real understanding of the unintended consequences that may ensue... It is our strongly held view that the section 35 provisions are very much a sledgehammer to crack a nut, in that they are wholly disproportionate to the real size of the problem that they are aiming to resolve.”¹⁰⁸

173. It was clear that the Chair of the Panel had strong reservations about extending the Panel’s existing functions in respect of remuneration of heads of paid services to all chief officers of principal local authorities. He stated:

“I feel very uncomfortable with that. I don’t think the panel was set up for that purpose. The panel was set up, by definition, to look at the remuneration of elected members. We haven’t got the skillset, we haven’t got the people currently on the panel, who are comfortable with that job (...) it is not what the members were recruited for, and I think that it’s much more

¹⁰⁷ RoP, para 190, 26 February 2015

¹⁰⁸ Written evidence, LG 11

the business of a properly constituted staff commission to look at those kinds of issues.”¹⁰⁹

174. In addition, the Chair questioned whether it was appropriate for the Panel to retain its functions in respect of Heads of Paid Services in the longer term, in particular following the establishment of the proposed Public Services Staff Commission.¹¹⁰

175. Like the Chair of the Panel, UNISON questioned whether the Panel had the necessary skills or expertise to undertake work relating to remuneration of chief officers. It also believed that such work would better sit with the proposed Public Services Staff Commission.¹¹¹

176. Linked to the above, the trades unions raised concern that the proposed expansion of the Panel’s functions “will undermine the work of the Public Services Staff Commission/er and lead to fragmentation of the arrangements for local authority mergers in relation to workforce matters”.¹¹²

Evidence from the Minister

177. The Minister explained that the provisions to extend the functions of the Panel were “interim”. He further explained that the government “might want a different approach subsequently to the whole issue of pay and appointments of senior officers”. As such, it may wish to consider “whether [the Panel] remains the appropriate body” to carry out this role in the longer term.¹¹³

178. The Minister did not share the view of the Chair of the Panel that its members may not have the necessary skillset to undertake the proposed work relating to chief officers’ pay.¹¹⁴

Our view

179. We acknowledge the view of respondents that responsibility for making recommendations relating to the pay of local government chief officers would better sit with the proposed Public Services Staff Commission than with the Panel (“the Panel”).

¹⁰⁹ RoP, para 175, 4 March 2015

¹¹⁰ RoP, para 175, 4 March 2015

¹¹¹ Written evidence, LG 03A

¹¹² Written evidence, LG 02, LG 03, LG 04

¹¹³ RoP, para 182, 5 February 2015

¹¹⁴ RoP, para 148, 26 March 2015

180. Although a non-statutory Commission is due to be established in September 2015, it will not be possible to confer statutory functions on the Commission until it is placed on a statutory footing via the planned second Local Government Bill. According to the government's existing timetable, the earliest date that a statutory Commission can be established is June 2017 (when the second Bill is scheduled to receive Royal Assent). In view of this, and given that the Panel is already responsible for making recommendations relating to the pay of Heads of Paid Services, we are content with the proposals set out in section 35.

181. Notwithstanding the above, we draw the Minister's attention to the evidence that we have received. We believe that, as the role of the Commission develops, the Minister may wish to consider whether overall responsibility for determining the pay of senior local government officers is better aligned to the Commission's other statutory responsibilities.

182. We note the concern raised by the Chair of the Panel that the skillset of its existing members does not correspond with the proposed extension of the Panel's functions in respect of the pay of local government chief officers. We believe that as vacancies on the Panel arise there will be an opportunity to ensure that new members have the necessary skills and expertise to effectively carry out the Panel's extended role.

183. We refer the Minister to our previous recommendation relating to reviewing the size of and resources for the Panel.

Definition of "chief officer"

Evidence from respondents

184. A number of respondents sought clarification on, or raised concern about, the meaning of "chief officer" in section 35(2), to be used for the purpose of extending the functions of the Independent Remuneration Panel.

185. In commenting on this issue, the HRD Network (Wales) pointed out that the meaning of "chief officer" in the 2011 Act is used "for quite a different purpose" (namely around politically restricted posts) and questioned whether it should be relied upon in the context of section 35. It stated:

“(…) the group encompassed by the definition of ‘Chief Officers’ under the Localism Act is quite large, and (…) it does not correspond to an authority’s Senior Management Team under the Chief Executive (it is much wider than this).”¹¹⁵

186. Similar points were made by the WLGA and SOLACE. They stated that the meaning is “extremely broad” and includes “deputy chief officers”, which in effect is any officer who reports to a chief officer (unless the post is purely secretarial or clerical in nature). The WLGA and SOLACE raised concern that “the Panel’s workload could be unintentionally but significantly affected by having responsibility for managing pay policy and salary determinations for numerous comparatively junior local government employees”.¹¹⁶ They estimated that currently over 570 officers in Wales would fall within the meaning of “chief officer” set out in section 36.¹¹⁷

187. Similarly, the HRD Network (Wales) stated that “a good proportion of the referrals [to the Panel] will be far more complex in nature than those relating to the salary of Chief Executives and will necessitate a detailed understanding of a council’s existing structures and proposed changes”. It raised concern that “the impact of [referrals] would be that councils will be unable to make many day to day decisions about operational pay, grading and organisational design matters for a sizeable group of officers and the IRP will find itself swamped with referrals”. The HRD Network (Wales) also raised concern that the proposed increase in membership of the Panel would be “insufficient given the size of the cadre of local government officers that will need to have any salary changes referred to the IRP”.¹¹⁸

Evidence from the Minister

188. The Minister explained that the provisions relating to chief officer pay are included in the Bill “to not only prevent inappropriate behaviour, but also to send clear messages to staff and residents of local authorities that we put in place robust safeguards to prevent the possibility of this kind of behaviour”.¹¹⁹

¹¹⁵ Written evidence, LG 11

¹¹⁶ Written evidence, LG 01

¹¹⁷ RoP, para 170, 26 February 2015

¹¹⁸ Written evidence, LG 11

¹¹⁹ RoP, para 144, 26 March 2015

189. He further explained that it is his intention for the provision in relation to the pay of chief officers to apply to “[local government] officials who are paid over £60,000”. While he did not believe section 35 to be “problematic”, he agreed to give further consideration to the definition of “chief officer”, in light of any recommendations made by the Committee.¹²⁰

Our view

190. We acknowledge that the Minister’s intention is for the provisions relating to the pay of chief officers of principal local authorities to apply to officers with a salary in excess of £60,000. While we agree that this is a reasonable threshold, we heard evidence to suggest that the meaning of “chief officer” provided in the Bill could, albeit unintentionally, capture a much wider field. As such, it is unclear whether the meaning of “chief officer” reflects the policy intention.

We recommend that the Minister clarifies the meaning of “chief officer” provided in section 35(2). If the intention is for the definition of “chief officer” to apply to local government posts with a salary in excess of £60,000, we recommend that the Minister includes in the Bill a suitable definition of “chief officer” that reflects that intention.

191. On a separate point, we note that the meaning of “chief officer” is defined by reference to another Act. We believe it would be more sensible to include a self-contained definition of “chief officer” in Bill.

We recommend that the Bill includes a self-contained definition of “chief officer” for the purpose of section 35(2). We refer the Minister to recommendation 7 in Chapter 6 on the definition of “chief officer”.

¹²⁰ RoP, para 144, 26 March 2015

9. The costs and benefits of mergers

Background

192. The costs in the Bill are based on the assumption that there will be one voluntary merger under this Bill and eight mergers via a second Local Government Bill. If voluntary mergers do take place, the Explanatory Memorandum states that the associated costs would be “considered as part of any regulations made”.

Evidence from respondents

193. The WLGA and SOLACE were content that the cost estimates provided in the Explanatory Memorandum “appear to be appropriate as far as they go in terms of assessing the costs of known factors”. However, they pointed out that “the regulatory impact assessment can only be completed and any financial implications considered when an agreed map is produced and the costs and benefits of (...) mergers of authorities have been fully and robustly assessed”.¹²¹

194. The WLGA and SOLACE stated that the resourcing of mergers “is still an issue for debate”. They went on to state that the total predicted cost of the merger programme “is contested and it remains unclear how (and by whom) any mergers will be funded”.¹²²

195. The Auditor General for Wales stated that “the costing set out in the Explanatory Memorandum does not seem to give a full overview of the likely cost of the Bill”. He goes on to state:

“(...) the Bill appears to provide complete primary legislative provision for voluntary mergers, and it would therefore be appropriate for the Explanatory Memorandum to give cost estimates for [these].”¹²³

196. The Auditor General for Wales subsequently acknowledged that assessing the costs and benefits of mergers was “virtually impossible” in advance of the publication of the merger map.¹²⁴ However, he

¹²¹ Written evidence, LG 01

¹²² Written evidence, LG 01

¹²³ Written evidence, LG 08

¹²⁴ RoP, para 184, 12 March 2015

emphasised that any cost savings resulting from mergers would only be realised in the longer term.¹²⁵

197. Like the Auditor General for Wales, the Chartered Institute of Public Finance and Accountancy (“CIPFA”) pointed out that the costs in the Explanatory Memorandum “do not reflect the full costs associated with the eventual merger process”.¹²⁶

198. In a November 2014 report commissioned by the Welsh Local Government Association, CIPFA estimated that the full merger programme could cost between £160 million and £268 million. It stated that such costs “are likely to place an increased financial burden on local government in Wales at a time when budgets are under increasing pressure”. On this basis it believed that “there is a strong case for the Welsh Government to consider financial support, either in the form of direct funding or through regulation allowing councils to mitigate the impact of merger costs.”¹²⁷

199. Similar views were expressed by UNISON. It emphasised the need to ensure that funding to meet the costs of mergers is “not taken from local government budgets at the detriment of local services”. It raised concern that cuts to local authority budgets as a result of austerity measures combined with the need for authorities to meet the cost of merger would have a direct and significant impact on service provision. As such, UNISON believed that mergers should be viewed as a new burden on local authorities and, as such, should be “fully funded by the Welsh Government”.¹²⁸

Evidence from the Minister

200. In commenting on the costs and benefits of mergers and whether the case for mergers has been made, the Minister stated:

“(…) there are clearly costs to merger, and there are costs to not merging (…) we’ve seen (…) over the period of time the Welsh Government has conducted a number of reviews of the costs of administration in local government (…) We’ve had had assessments by the Williams Commission and others of the costs of merger and benefits of merger. The Welsh Local

¹²⁵ RoP, para 196-197, 12 March 2015

¹²⁶ Written evidence, LG 19

¹²⁷ Written evidence, LG 19

¹²⁸ Written evidence, LG 03

Government Association, of course, published work by the Chartered Institute of Public Finance and Accountancy, just in the autumn, that suggested that the benefits of merger could be £56 million per annum, which I think is significant (...) there have been genuine attempts to look at these issues (...) The Williams Commission made the case for fundamental reform of local government in Wales. We accept that case.”¹²⁹

201. The Minister explained that he would need to have “a clearer view of the map” in order to be able to produce a full cost-benefit analysis of the merger programme.¹³⁰ He went on to explain that, “as specific proposals come forward (...) there will be further calculations around the subject of costs.”¹³¹ Further to this, the Minister acknowledged that the planned second local government Bill would need to be accompanied by a full cost-benefit analysis of mergers being taken forward via that Bill. However, he was “uncertain” whether such analysis would be available when the draft Bill is published in autumn 2015.¹³²

202. The Minister emphasised what he believed to be the clear, long-term benefits of the merger programme, stating:

“I think there are very substantial benefits overall in respect of more strategic authorities; stronger, more resilient authorities; authorities that are better able to plan to deliver services that take account of the changing needs of local communities and that have greater resilience overall. There are, additionally – from the CIPFA figures we have seen – opportunities for savings down the line.”¹³³

203. In October 2014, during a scrutiny session on the Welsh Government’s draft budget 2015-16, the Minister suggested that, in the case of voluntary mergers, “there will need, then, to be a case-by-case assessment of what might be needed and what might be feasible for us to support, and that is a discussion that I would expect to have at a future date with the Minister for finance”.¹³⁴ He went on to confirm

¹²⁹ RoP, para 79, 5 February 2015

¹³⁰ RoP, para 83-84, 5 February 2015

¹³¹ RoP, para 196, 26 March 2015

¹³² RoP, para 190-110, 5 February 2015

¹³³ RoP, para 192, 26 March 2015

¹³⁴ RoP, para 235, 9 October 2014

that, “there will be resources there to support voluntary mergers”, although he was unwilling to provide specific figures.¹³⁵

204. In initially giving evidence on the Bill, when asked whether local authorities would be expected to meet the transition costs associated with mergers, the Minister stated:

“I certainly don’t rule out having to find some provision to support merger costs in the future. However, I think it would be unwise of me to indicate upfront what level of support might be available.”¹³⁶

205. However, during his second evidence session, he subsequently implied that it was unlikely that additional funding would be made available to local authorities to cover these costs. He stated:

“In the context of a very severely constrained Welsh budget, I think people have to bear in mind that if they’re asking for us to put additional money forward to meet the cost of merger, then there is only one place where it is likely to be found. And the only way to do it, I suspect, would be to reduce the [Revenue Support Grant] overall and take the money from local authorities in a central pool for merger costs. I’m not sure whether that’s what local authorities would want me to do.”¹³⁷

Our view

206. We acknowledge that the Chartered Institute for Public Finance and Accountancy (CIPFA) has estimated that transitional costs of local government mergers would range between £159.7 million to £267.9 million. It also estimated that these costs may be offset by savings of £65m, but that this could potentially take 2 to 3 years or longer to be fully realised. However, we further acknowledge that CIPFA made clear in its report that it was not possible to assess the financial implications for transitional costs with “any degree of precision”.

207. In the absence of the final merger map, it is difficult to gain an overall appreciation of the likely cost of the merger programme for local government, particularly in the short-term. Similarly, it is not

¹³⁵ RoP, para 242, 9 October 2014

¹³⁶ RoP, para 89, 5 February 2015

¹³⁷ RoP, para 167, 26 March 2015

possible to assess the cost of any voluntary mergers without sight of the merger regulations.

208. In relation to voluntary mergers, we expect a comprehensive regulatory impact assessment to accompany any merger regulations that the Welsh Ministers propose to make under section 6 of the Bill. We acknowledge that these regulations will be subject to the Assembly's affirmative procedure, by virtue of section 39(2)), and that this will provide an opportunity for scrutiny of the cost of relevant voluntary mergers.

209. While we note that the second Bill will include a full cost-benefit analysis of proposed mergers under that Bill, we believe that such an analysis should be undertaken much earlier on in the process to help inform the debate on the merger map, which is due to be published in summer 2015.

210. If a full cost-benefit analysis is not available until the introduction of the second Bill, the Minister will need to clarify how this will influence the way in which the Welsh Government will proceed with mergers, particularly given that its preferred map will already have been published.

211. It is clear that the cost of mergers will add to the existing financial pressures facing local government, at least in the short term. Therefore, we share the concern raised in evidence that this could result in further cuts to local services, particularly non-statutory services that have already borne the brunt of austerity measures. We believe there has been a lack of consistency in the message coming from the Welsh Government about the potential support that will be made available for merging authorities.

If the Minister does not intend to provide financial support for merging authorities, we recommend that he provides further detail on how he envisages merging authorities to meet the cost of merger. We expect this information to be provided no later than the completion of the passage of the Bill.

212. More generally, we recognise that the cost of mergers needs to be compared to the opportunity cost to local authorities and communities of maintaining the status quo in terms of savings and efficiencies foregone. The evidence we received suggests that structural reform will result in significant costs, irrespective of the final configuration.

As previously outlined, while the overall cost of mergers is an important consideration, we believe that the overriding concern should be the need to create a sustainable structure of local government that is fit for purpose. In addition, we recognise the potential long term benefits of mergers and we believe it is important not to lose sight of these.

10. Other issues

The potential implications for the Welsh language of any voluntary mergers

Background

213. Under the Welsh Language (Wales) Measure 2011, the first set of Welsh language standards were introduced by regulations on 31 March 2015. These apply to the 22 existing local authorities, who will have to comply with the standards within 6 months of compliance notices being issued by the Welsh Language Commissioner.

Evidence from respondents

214. The Welsh Language Commissioner pointed out that “many local authorities operate either bilingually or in Welsh only” and that Welsh is therefore “the working language of many officers”. She emphasised that any changes made as a result of the Bill must not undermine the ability of such officers to use the Welsh language at work. She believed that the Bill could be used to increase the number of bilingual local government workplaces which would create more opportunities for people to use their Welsh language skills. The Commissioner suggested that this, in turn, could strengthen the Welsh language in the communities served by local authorities.¹³⁸

215. The Commissioner expected the guidance or directions issued by the Welsh Ministers under the Bill to “include guidance about taking into account matters involving the Welsh language, and especially statutory duties regarding the Welsh language”.¹³⁹

216. The WLGA also emphasised the importance of Ministerial guidance. This was particularly relevant “given the potential issue where merging councils have different approaches and policies with regards the use of Welsh in council business and administration”.¹⁴⁰

Evidence from the Minister

217. The Minister responded to questions around the impact of mergers on the use of the Welsh language by stating that merging

¹³⁸ Written evidence, LG 14

¹³⁹ Written evidence, LG 14

¹⁴⁰ Written evidence, LG 01

local authorities “will need to take stock of the standards already in place in authorities that are merging, and identify any differences in terms of current practice and aspirations in relation to the use of the Welsh language service provision, or in policy making or in operational areas”.¹⁴¹

218. The Minister also outlined how issues around the Welsh language would be addressed during the merger process and that such issues were likely to be reviewed by transition committees “at an early stage”. He reported that, during the merger process, the Welsh Government will “look at best practice in the field, and consider further what can be done in the future”.¹⁴²

Our view

219. We acknowledge that merging local authorities may have an impact on the way in which the Welsh language is used in local government. We also note the Welsh Language Commissioner’s suggestion that the merger programme could be an opportunity to increase the use of the Welsh language within new principal local authorities.

While we acknowledge that new principal authorities will be required to comply with Welsh language standards, we recommend that the Minister looks at all options to strengthen the way new principal local authorities use the Welsh language, particularly within their internal administration. This should include seeking to share best practice and also through issuing Ministerial guidance and directions under the Bill. We expect this work to be undertaken at the earliest possible stage in the process.

Potential impact on Fire and Rescue Authorities: service planning and waiving the requirement to hold a local inquiry

Background

220. Under the Fire and Rescue Act 2004, the Welsh Ministers may vary or revoke orders that established the three Fire and Rescue Authorities in Wales (“combination scheme orders”). If the relevant authority affected by the proposed change does not agree to it, the Welsh Ministers must cause an inquiry to be held into the proposal. Section

¹⁴¹ RoP, para 223, 5 February 2015

¹⁴² RoP, para 207, 26 March 2015

10(9) of the Bill provides for the suspension of this requirement where the proposed change is a consequence of voluntary merger.

Evidence from respondents

221. South Wales and Mid and West Wales Fire and Rescue Authorities raised concern about the proposed suspension of requirement on the Welsh Ministers to cause an inquiry to be held into a proposed variation to a combination order.¹⁴³

222. South Wales Fire and Rescue Service highlighted the potential impact on service planning if its boundary was affected by mergers, particularly in view of recent attempts by the authority to make substantial budget savings. It raised concern that “the efficient and effective planning of the Fire and Rescue Service (...) has the potential to be compromised” if the requirement is to hold a local inquiry is suspended. It went on to state that, a change to its boundary would mean that “[its] plans would require a complete overview and overhaul”.¹⁴⁴

223. Mid and West Wales Fire and Rescue Service stated that it was opposed to the provision on the basis that not holding a local inquiry “could result in there being insufficient consideration given to the impact of realigning structural boundaries”.¹⁴⁵

224. The North Wales Fire and Rescue Authority did not comment directly on the section 10(9) provision. However, it emphasised “the many advantages of coterminosity of authorities and the benefit of having mergers that contribute to achieving or maintaining authorities in an area”.¹⁴⁶

Evidence from the Minister

225. In responding to the concern raised by the Fire and Rescue Service Authorities that the suspension on the requirement to hold an inquiry could impact on their ability to plan, the Minister stated:

“I’m afraid I disagree (...) There would still be extensive consultation and every opportunity for people to undertake that. Do we really think we need to go through a full public

¹⁴³ Written evidence, LG 15, LG 18

¹⁴⁴ Written evidence, LG 15

¹⁴⁵ Written evidence, LG 18

¹⁴⁶ Written evidence, LG 16

inquiry for a relatively small variation in the fire and rescue service boundary? We don't."¹⁴⁷

Our view

226. We note the concerns raised by the Fire and Rescue Services about the proposal to suspend the requirement on the Welsh Ministers to cause an inquiry into proposed changes to fire and rescue authority boundaries in certain circumstances. However, we are assured by the Minister's evidence that any proposed boundary changes will already have been the subject of extensive consultation, which (by virtue of section 4(1)(e) (consultation before making merger application)) will include relevant fire and rescue authorities. Therefore, we are content with the provision in section 10(9).

The need for the Bill to make provision in relation to council tax

Evidence from respondents

227. The WLGA pointed out that the Welsh Government's White Paper, *Reforming Local Government: Devolution, Democracy and Delivery* and the Prospectus on voluntary mergers "were silent on the issue of Council Tax harmonisation", which it believed was "a fundamental issue". It stated:

"[Council Tax harmonisation] has significant financial as well as legal and political ramifications and impact on the public acceptability of merger plans. Council Tax harmonisation is not addressed through the Bill, but the Welsh Government will have to provide clear guidance around what its council tax policy and legal considerations are regarding harmonisation."¹⁴⁸

228. The WLGA suggested that, if the Minister intends to legislate to enable new principal authorities to set different council tax levels in different areas within those authorities, "such key matters should be addressed through this Bill".¹⁴⁹

Evidence from the Minister

229. While the Minister emphasised that council tax levels are a matter for local authorities, he went on to explain that "[the Welsh

¹⁴⁷ RoP, para 203, 26 March 2015

¹⁴⁸ Written evidence, LG 01A

¹⁴⁹ Written evidence, LG 01A

Government] may, of course, wish to create a situation legally where it is possible, for a transitional period, for authorities to hold different council tax levels in different parts of their authority”.¹⁵⁰

230. We asked the Minister to respond to the WLGA’s suggestion that any proposed legislative changes in relation to council tax should be included in the Bill. He explained that the Welsh Ministers already have the power, by virtue of section 13 of the Local Government Finance Act 1992 (“the 1992 Act”), “to ensure a situation where local authorities can charge different council tax levels in different parts of their authority”.¹⁵¹

231. Advice from the Assembly’s legal advisers confirms that section 13 of the 1992 Act provides the Welsh Ministers with the power to make regulations for the purpose of council tax reductions. This power could be used to reduce council tax levels for residents in one part of a local authority area. However, the power can only be used by the Welsh Ministers to reduce council tax levels after the local authority has prescribed its council tax for the year in question, and it does not allow the local authority itself to vary council tax levels in different parts of the area.

Our view

232. In the event that the Minister intends to exercise the power under section 13 of the Local Government Finance Act 1992 to make regulations aimed at harmonising council tax for merging authorities, **we recommend that he engages with the local government sector at an early stage to set out how this power would be exercised and what the implications of this would be for local authorities. In addition, we recommend that, as mergers get underway, the Minister should provide clear guidance to merging authorities on the issue of council tax harmonisation.**

Survey of councillors and unsuccessful candidates for election as councillors

Background

233. *The Local Government (Wales) Measure* (“the 2011 Measure”) provides for a survey to monitor the diversity of councillors and

¹⁵⁰ RoP, para 221, 5 February 2015

¹⁵¹ RoP, para 201, 26 March 2015

candidates standing for elections. Section 37 amends the 2011 Measure to enable local authorities to conduct surveys either after an ordinary election, or by asking candidates to complete the survey before an election takes place. It also removes the requirement for information to be provided anonymously, to enable a differentiation between successful and unsuccessful candidates.

Evidence from respondents

234. The Independent Remuneration Panel for Wales supported the proposal in section 37, which it considered “will provide useful benchmarking data regarding diversity in local government in Wales”.¹⁵²

Our view

235. We are content with this provision.

Proposals submitted before commencement of Part 3 of the Local Government (Democracy) (Wales) Act 2013

Background

236. Section 38 amends the *Local Government (Democracy) (Wales) Act 2013*. It will enable the Welsh Ministers to consider wholly completed reports that were submitted to them by the Local Democracy and Boundary Commission for Wales before 30 September 2013.

Our view

237. We are content with this provision.

¹⁵² Written evidence, LG 07

Annexe 1 - Written evidence

All written evidence received as part of the consultation can be viewed in full at:

www.senedd.assembly.wales/mgConsultationDisplay.aspx?id=167

| Organisation | Reference |
|---|-----------|
| Welsh Local Government Association and Solace | LG 01 |
| Request from the Committee for additional information from the Welsh Local Government Association | LG 01a |
| Response from the Welsh Local Government Association | LG 01b |
| Unite the Union (Wales) | LG 02 |
| Unison Wales | LG 03 |
| Additional information from Unison Wales | LG 03a |
| GMB Wales and South West Region doc | LG 04 |
| Estyn | LG 05 |
| Welshpool Town Council | LG 06 |
| Independent Remuneration Panel for Wales | LG 07 |
| Huw Vaughan Thomas, Auditor General For Wales | LG 08 |
| Additional information from Huw Vaughan Thomas, Auditor General For Wales | LG 08a |
| Local Democracy and Boundary Commission for Wales | LG 09 |
| Chief Constables in Wales | LG 10 |
| Local Authority Human Resources Directors (Wales) Network | LG 11 |
| Blaenau Gwent County Borough Council | LG 12 |
| Conwy County Borough Council | LG 13 |
| Welsh Language Commissioner | LG 14 |
| South Wales Fire and Rescue Service | LG 15 |
| North Wales Fire and Rescue Service | LG 16 |
| RNIB Cymru | LG 17 |
| Mid and West Wales Fire and Rescue Service | LG 18 |
| Chartered Institute of Public Finance and Accountancy (CIPFA) | LG 19 |
| Welsh NHS Confederation | LG 20 |

Annexe 2 - Oral evidence

The following witnesses provided oral evidence to the Committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed in full at:

www.senedd.assembly.wales/mgIssueHistoryHome.aspx?Ild=1306

| Witness | Organisation |
|--|---|
| <i>5 February 2015</i> | |
| Leighton Andrews AM, Minister for Public Services Gareth Thomas, Policy Adviser, Local Government Reform Sharon Barry, Lawyer, Local Government Team | Welsh Government |
| <i>26 February 2015</i> | |
| Councillor Dyfed Edwards, Leader of Gwynedd Council | Gwynedd Council |
| Councillor Ray Quant, Deputy Leader and Cabinet member Corporate Services, Improvement and Performance Management | Ceredigion County Council |
| Councillor Anthony Hunt, Executive Member Resources | Torfaen County Borough Council |
| Daniel Hurford, Head of Policy | Welsh Local Government Association (WLGA) |
| Steve Phillips, Chief Executive | Neath Port Talbot County Borough Council |
| Gareth Owens, Chief Officer | Flintshire County Council and Lawyers in Local Government |
| <i>4 March 2015</i> | |
| Dominic Macaskill, Regional Manager, Head of Local Government | Unison |
| Mike Payne, Regional Political Officer | GMB |
| John Toner, Regional Officer for Swansea | Unite |
| Richard Penn, Chair | Independent Remuneration Panel for Wales |

| | |
|---|--|
| <i>12 March 2015</i> | |
| Owen Watkin, Chair Steve Halsall, Chief Executive | Local Democracy and Boundary Commission for Wales |
| Huw Vaughan Thomas, Auditor General for Wales Alan Morris, Director, Sector Leader for Local Government Criminal Justice. | Wales Audit Office |
| <i>26 March 2015</i> | |
| Leighton Andrews AM, Minister for Public Services Gareth Thomas, Policy Adviser, Local Government Reform Sharon Barry, Lawyer, Local Government Team | Welsh Government |