

National Assembly for Wales
Constitutional and Legislative Affairs
Committee

Report on the Local Government (Wales) Bill

May 2015

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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Constitutional and Legislative Affairs Committee

The Committee was established on 15 June 2011 with a remit to carry out the functions of the responsible committee set out in in Standing Orders 21.2 and 21.3 and to consider any other legislative matter, other than the functions required by Standing Order 26, referred to it by the Business Committee.

Current Committee membership:



David Melding (Chair)
Welsh Conservatives
South Wales Central



Alun Davies
Welsh Labour
Blaenau Gwent



Suzy Davies
Welsh Conservatives
South Wales West



William Powell
Welsh Liberal Democrats
Mid and West Wales



Simon Thomas
Plaid Cymru
Mid and West Wales



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The Committee's Recommendations

Recommendation 1. we recommend that the Minister takes into account the views we express in paragraphs 28-31 of our report and considers bringing forward appropriate amendments at Stages 2 and 3 to ensure that new local authorities arising from the Bill are founded on the basis of clear principles and that the Assembly has adequate opportunity to scrutinise their creation. (Page 13)

Recommendation 2. we recommend that the Minister tables an amendment to apply the affirmative procedure to the making of regulations under section 3(1) of the Bill. (Page 16)

Recommendation 3. we recommend that the Minister should table an amendment to apply the negative procedure to any future guidance issued under section 5 of the Bill. (Page 18)

Recommendation 4. we recommend that the Minister should table amendments to the Bill applying:

- the negative procedure to directions issued under section 16(1) and guidance issued under section 17(8);
- the affirmative procedure to directions issued under section 17(3). (Page 20)

Recommendation 5. we recommend that the Minister should table an amendment to apply the negative procedure to the making of regulations under section 23 of the Bill. (Page 23)

Recommendation 6. we recommend that the Minister should table an amendment to apply the affirmative procedure to the making of regulations under section 24 of the Bill. (Page 23)

Recommendation 7. we recommend that the Minister should table an amendment to apply the affirmative procedure to the making of regulations under sections 32(4) of the Bill. (Page 26)

Recommendation 8. we recommend that the Minister should table either:

- an amendment to apply the affirmative procedure to the making of regulations under sub-paragraph (1A) of paragraph 1 of

Schedule 2 to the *Local Government (Wales) Measure 2011* (as inserted by section 36 of the Bill); or

- an amendment to apply a numerical range to the number of Panel members set out under sub-paragraph (1) of paragraph 1 of Schedule 2 to the *Local Government (Wales) Measure 2011* (as amended by section 36 of the Bill). (Page 26)

1. Introduction

The Committee's remit

1. The remit of the Constitutional and Legislative Affairs Committee (“the Committee”) is to carry out the functions of the responsible committee set out in Standing Order 21 and to consider any other constitutional or governmental matter within or relating to the competence of the Assembly or the Welsh Ministers.
2. Within this, the Committee considers the political and legal importance and technical aspects of all statutory instruments or draft statutory instruments made by the Welsh Ministers and reports on whether the Assembly should pay special attention to the instruments on a range of grounds set out in Standing Order 21.
3. The Committee also considers and reports on the appropriateness of provisions in Assembly Bills and UK Parliament Bills that grant powers to make subordinate legislation to the Welsh Ministers, the First Minister or the Counsel General.

Introduction and consideration of the Bill

4. On 26 January 2015, the Minister for Public Services, Leighton Andrews AM, (“the Minister”) introduced the Local Government (Wales) Bill (“the Bill”) and accompanying Explanatory Memorandum.¹
5. The Assembly’s Business Committee referred the Bill to the Communities, Equality and Local Government Committee for consideration, setting a deadline of 8 May 2015 to report on the general principles.
6. We considered the Bill at our meeting on 2 March 2015, taking evidence from the Minister.

¹ Welsh Government, *Local Government (Wales) Bill, Explanatory Memorandum incorporating the Regulatory impact Assessment and Explanatory Notes*, January 2015

2. Background

The Bill's context

7. The Williams Commission published its report on public service delivery and governance in January 2014.² One of its conclusions was that some local authorities were too small to perform effectively and the Commission called for Welsh local authorities to be merged to create either 10, 11 or 12 authorities.

8. The Welsh Government responded to the Williams report in July 2014. This included publishing an initial White Paper on Local Government Reform,³ which set out the Welsh Government's preference for 12 local authorities. The Welsh Government said that it intended to proceed with this process of merger through two Bills, as there would be insufficient time in this Assembly to deliver a full legislative merger programme before the 2016 elections.

9. In September 2014, the Welsh Government published a Prospectus⁴ inviting local authorities who wished to merge voluntarily to submit expressions of interest by 28 November 2014. Three expressions were submitted by six authorities (only one of which conformed with the Welsh Government's preferred option contained in the White Paper). On 27 January 2015, the Minister for Public Services announced⁵ 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 initial Prospectus.

Purpose of the Bill

10. The Explanatory Memorandum states:

“The overarching objective of the Bill is to enable preparations to be made for a programme of local government mergers and reform and to allow Principal Local Authorities to merge voluntarily by April 2018. The Bill will also put in place safeguards to discourage and counter activities by existing

² Commission on Public Service Governance and Delivery, Full Report, January 2014

³ Welsh Government, *Devolution, Democracy and Delivery White Paper – Reforming Local Government*, July 2014

⁴ Welsh Government, *Invitation to Principal Authorities in Wales to submit proposals for voluntary merger*, 18 July 2014

⁵ Welsh Government, *Written Statement - Voluntary Mergers: Update on Expressions of Interest Received*, 27 January 2015

Principal Local Authorities which might bring reputational or financial harm on any new Principal Local Authority created by future merger. It also amends provisions of the Local Government (Wales) Measure 2011 (relating to the Independent Remuneration Panel for Wales and the survey of councillors and unsuccessful candidates) and the Local Government (Democracy) (Wales) Act 2013 (relating to electoral reviews) to ensure the effective operation of those statutes.”⁶

11. It adds that the Bill is the first of the two proposed Bills to deliver local government reform in Wales.⁷

⁶ Explanatory Memorandum, paragraph 5

⁷ Explanatory Memorandum, paragraph 19

3. Legislative competence

Explanatory Memorandum

12. The Explanatory Memorandum indicates that the Assembly has the legislative competence to make this legislation by virtue of paragraph 7 (Fire and rescue services and fire safety) and paragraph 12 (Local Government) of Part 1 of Schedule 7 to the *Government of Wales Act 2006*.

Evidence from the Minister

13. The Minister told us that he was satisfied that the Bill was within competence.⁸

14. Section 29 of the Bill provides that contracts (and other transactions) entered into by a merging authority will be unenforceable if the authority has not taken certain steps in advance. When questioned on this provision, the Minister indicated that it did not have any human rights implications.⁹

Our view

15. We note the Minister's view regarding the National Assembly's ability to make this legislation under Schedule 7 to the *Government of Wales Act 2006*.

16. We also note his view that section 29 of the Bill does not have any human rights implications.

17. We wish to reinforce the view we have expressed in previous reports that it would be helpful for Explanatory Memoranda to show how human rights issues have been taken into account in developing a Bill.

⁸ Constitutional and Legislative Affairs ("CLA") Committee, *RoP paragraph [10]*, 2 March 2015

⁹ CLA Committee, *RoP paragraphs [22-23]*, 2 March 2015

4. General observations

Evidence from the Minister

19. Section 2(3) of the Bill defines “Merging authority”. The definition includes, under section 2(3)(b), authorities which are to be merged under the provisions of a future Bill to be introduced by the Welsh Ministers.

20. We explored the reasons for this approach with the Minister. He told us:

“This Bill allows ... the Boundary Commission for example ... to begin its programme of work earlier than if we were legislating, say, at the beginning of the next Assembly, with all the measures that are contained within this Bill ... I think there’s been a debate now around local government reform, which goes back several years ... I’ve yet to find anyone really in the National Assembly who believes that the current local government structure is optimal, and, as far as I can see, there remains a majority in the Assembly for further reform.”¹⁰

21. When asked about creating dependencies in statute he said:

“... some parts of the Bill are dependent on future legislation, but there are other parts, such as the expansion of the role of the Independent Remuneration Panel for Wales, which you could argue ... are not ... clearly, the overall programme of local government reform will not be taken forward until after the next Assembly election. I find it hard to visualise any circumstances in which there would not be a majority for going ahead with local government reform.”¹¹

22. He added that the Bill “reflects the balance of opinion within the Assembly”.¹²

23. Section 2(5) defines a “principal area” as meaning a county or county borough in Wales. Section 2(6) defines a proposed principal

¹⁰ CLA Committee, *RoP paragraph [15]*, 2 March 2015

¹¹ CLA Committee, *RoP paragraph [17]*, 2 March 2015

¹² CLA Committee, *RoP paragraph [19]*, 2 March 2015

area as meaning:

“an area specified as a new principal area—

- (a) in an application under section 3(1) or in merger regulations, or
- (b) in proposals published by the Welsh Ministers (whether or not in a draft Bill), in a Bill introduced in the National Assembly for Wales by the Welsh Ministers or in an Act of the National Assembly for Wales.”

24. We asked the Minister about the breadth of the power being sought given that it appears to permit a policy document to define a proposed principal area. He said he was seeking to allow the development of the proposed mergers, noting the importance of the Local Democracy and Boundary Commission for Wales (LDBCW), in beginning its work early, to “have an indication of the direction of travel”. He added:

“I would anticipate that we would be in a position to produce our desired map before the summer recess ... Ultimately, of course, there will be a further Bill, and we will be publishing that draft Bill this autumn, and it will be that draft Bill, or the subsequent legislation, that will determine the overall map.”¹³

25. He anticipated that the map would have to come through some form of White Paper.¹⁴

26. During the evidence session we also questioned the Minister on why four provisions, in respect of sections 3, 24, 32 and 36, permitted primary legislation to be amended by a statutory instrument subject to no procedure. We comment separately on each provision in Chapter 5, but make some general observations below.

Our view

27. We have reflected carefully on this Bill and wish to highlight some important issues of concern.

¹³ CLA Committee, *RoP paragraph [26]*, 2 March 2015

¹⁴ CLA Committee, *RoP paragraphs [29-30]*, 2 March 2015

28. We note the Minister's reference to clear support for local government reform. However, that is a different matter from there being agreement on, for example, the boundaries and electoral arrangements for any new authorities.

29. The size and shape of new local authorities, and their electoral arrangements, will have a significant impact on our democracy. In our view, the creation of new authorities and the accompanying electoral arrangements should be undertaken in line with clear principles set out in legislation that enable a sustainable local government structure to be put in place in Wales. Unfortunately, no such principles appear on the face of the Bill.

30. As matters currently stand, it would appear to be entirely possible for a new authority to be created through merger regulations without any prior debate in the Assembly to inform those regulations. Such merger regulations, under the affirmative procedure, would be the subject of a straight yes or no vote, without any scope to take into account views raised.

31. We accept that voluntary mergers would take place between willing partners. However, that should not prevent the Assembly from having the opportunity to scrutinise at an early stage the electoral arrangements for new local authority areas should it wish to do so.

Recommendation 1: we recommend that the Minister takes into account the views we express in paragraphs 28-31 of our report and considers bringing forward appropriate amendments at Stages 2 and 3 to ensure that new local authorities arising from the Bill are founded on the basis of clear principles and that the Assembly has adequate opportunity to scrutinise their creation.

32. We note that the definition of a "merging authority" in section 2(3) includes authorities that are to be merged under the provisions of a future Bill to be introduced by the Welsh Ministers.

33. We consider it to be very unusual to tie an event in one Bill to something set out in an as yet undrafted future Bill (to be introduced in an Assembly for which elections have not yet been held), which may also be amended during its passage through the Assembly.

34. Even more so, we have serious doubts about an approach that would permit (under section 2(6)(b)) a proposed principal area to be potentially defined in non-legislative documents.

35. While there may be no legal obstacle to these approaches, we are not comfortable with them and draw this point to the attention of the Assembly.

36. We also wish to highlight the lack of any procedure attached to the making of subordinate legislation that would amend primary legislation.

37. If it is appropriate to subject a particular provision to a four-stage legislative scrutiny process in the Assembly, it would seem odd to permit that same provision, however minor it is perceived to be, to be subsequently amended by the Welsh Ministers without any scrutiny at all. In our view, amending primary legislation by means of subordinate legislation subject to no Assembly procedure is not acceptable. At the very least, it should be amended by means of a statutory instrument subject to the affirmative procedure.

38. We are surprised to see this approach, particularly when in other Bills, such as the recent Qualifications Wales Bill, the Welsh Government has indicated that subordinate legislation subject to the affirmative procedure is appropriate to amend primary legislation.¹⁵

39. Our observations set out above have informed the recommendations we make in Chapter 5 and in some cases provide a clear indication of where we believe there are opportunities for the Assembly to have a greater scrutiny role (as highlighted in recommendation 1).

¹⁵ Welsh Government, *Qualification Wales Bill, Explanatory Memorandum Incorporating the Regulatory Impact Assessment and Explanatory Notes*, December 2014 (Chapter 5, page 38)

5. Powers to make subordinate legislation – observations on specific powers

Background

41. The Bill contains 27 delegated powers, four of which are subject to the affirmative procedure, three of which are subject to the negative procedure, and 20 of which are subject to no Assembly procedure.

42. We have focused our consideration below on the issues of most concern to us.

Voluntary mergers of local authorities

43. Sections 3 to 10 contain powers for the Welsh Ministers to make regulations allowing voluntary mergers of local authorities to take place.

Section 3 – Proposals for merger

44. Section 3(1) provides that two or more principal local authorities may, no later than 30 November 2015, jointly apply to the Welsh Ministers to merge into a new principal local authority. It also provides that this date may be amended to a later date by regulations. According to the Explanatory Memorandum, no Assembly procedure applies to the making of such regulations because:

“The subject matter of the regulations is procedural detail. This is a discretionary power and if required, it is likely the power will need to be utilised swiftly to address, for example, a delay in the Bill receiving Royal Assent. Such applications for merger will be voluntary in nature and the procedure seeks to facilitate this voluntary process.”¹⁶

45. The Minister explained the reason for this approach:

“Originally, this was drafted because we felt there might be a danger that we might not get, say, Royal Assent, before 30 November, in which case we might have to amend the date. It could be, however, that we might now, if we are in a position to publish the map and we are in a position to get further

¹⁶ Explanatory Memorandum, Chapter 5, page 27.

applications from local authorities, that we might want to extend a deadline beyond 30 November.

Now, there is no procedure. This would allow us to move swiftly to do that. I think the policy intent, if you like, within the Bill is expressed through the objective of creating the conditions for voluntary mergers. I think it's rather a secondary matter, really, the date and timing, and one that would normally be left to Ministers to determine in any case. There was no procedure, for example, when we suggested that submissions under our voluntary merger prospectus had to be with us by a certain date last autumn. I don't think it's a major point of principle."¹⁷

Our view

46. We disagree with the Minister when he says this is not a major point of principle.

47. As we indicate in Chapter 4, we do not consider it appropriate to allow primary legislation to be amended by means of a statutory instrument subject to no procedure.

48. While amending primary legislation by means of other primary legislation is normally the best approach, we accept that there may be circumstances in which amending primary legislation by means of subordinate legislation subject to the affirmative procedure may be appropriate.

Recommendation 2: we recommend that the Minister tables an amendment to apply the affirmative procedure to the making of regulations under section 3(1) of the Bill.

Section 5 – Guidance about merger applications; Section 7 – Shadow authorities

49. Section 5(1) allows the Welsh Ministers to issue guidance about formulating voluntary merger applications, including the objectives of the application, matters to be taken into account in formulating the application, consultation requirements etc.

¹⁷ CLA Committee, *RoP paragraphs [53-54]*, 2 March 2015

50. Section 5(3) of the Bill provides that any guidance issued by the Welsh Ministers relating to applications for voluntary merger regulations before section 5 comes into force is to be treated as though it had been issued post commencement.

51. In September 2014, the Welsh Ministers issued such guidance,¹⁸ setting out the information principal local authorities would need to provide to evidence their merger proposal.

52. Section 7(4) enables the Welsh Ministers to issue guidance to shadow authorities and shadow executives on the exercise of functions in preparing for the establishment of new authorities.

53. No procedure is considered appropriate to issue guidance because:

“The power ... is intended to facilitate the application of the primary legislation. This guidance is largely concerned with process and, as such, Assembly procedure is not appropriate.”¹⁹

54. When questioned on the absence of a procedure in respect of both these provisions the Minister said:

“...what we are seeking to do, particularly under 7(4), is simply to issue guidance to those shadow authorities and shadow executives that are moving forward the voluntary merger proposals. That, it seems to me, is entirely within the competence of Ministers to undertake; we issue guidance from time to time under existing legislation to local authorities. I think the precedents are there ... under 5(1), around merger applications ... it seems to me a rather bureaucratic procedure to bring that back to the Assembly ... Given that what we’re talking about here in both instances is examples of voluntary mergers, where we have willing partners, I don’t think we need necessarily an extended process.”²⁰

¹⁸ Welsh Government, *Invitation to Principal Authorities in Wales to submit proposals for voluntary merger*, 18 July 2014

¹⁹ Explanatory Memorandum, Chapter 5, page 32

²⁰ CLA Committee, *RoP paragraph [86]*, 2 March 2015

Our view

55. In line with our comments in Chapter 4 and recommendation 1, we believe that the core principles governing the creation of new local authorities should be set out on the face of the Bill.

56. In our view, the guidance under section 5 should supplement these core principles.

57. It is unclear whether there is to be any further guidance issued under section 5, particularly given that proposals for merger may be submitted up until 30 November 2015 (or a later date if specified in regulations). However, we believe that any such guidance, given its importance, should be subject to the negative procedure.

Recommendation 3: we recommend that the Minister should table an amendment to apply the negative procedure to any future guidance issued under section 5 of the Bill.

58. We are content with guidance issued under section 7(4) to be subject to no procedure.

Electoral arrangements etc. for new principal areas

59. Sections 16 to 24 enable the Welsh Ministers to direct the LDBCW to start conducting electoral reviews of proposed new principal areas. This can include reviews of areas proposed in the regulations enabling voluntary mergers, or new areas proposed in a second Bill (even if only published in draft form).

Section 16 – Directions to conduct initial review; Section 17 – Directions and guidance to Commission

60. Section 16(1) enables the Welsh Ministers to direct the LDBCW to conduct initial reviews of the electoral arrangements for proposed new principal areas, prior to the first elections of the authorities for those areas. No Assembly procedure applies because:

“The power to issue directions applies only to the LDBCW and will be utilised only in relation to specified proposed Principal Areas. The issuing of directions mirrors the procedure currently in place in connection with the work undertaken by the LDBCW

in relation to local government arrangements under the Local Government (Democracy) (Wales) Act 2013.”²¹

61. Section 17(3) enables the Welsh Ministers to give general directions to the LDBCW relating to the order of initial reviews, and the matters to have regard to in carrying out the initial reviews. Section 18 provides that when undertaking an initial review, the LDBCW must seek to ensure effective and convenient local government, the definition of which may be provided under directions (and guidance) issued under section 17 of the Bill.

62. No Assembly procedure applies because:

“This power to issue directions containing general provisions about the conduct of reviews (directed under section 17) will apply only to the LDBCW, and will facilitate those reviews. A requirement that the LDBCW be consulted before directions of this nature are issued is appropriate.”²²

63. Section 17(8) enables the Welsh Ministers to issue guidance to the LDBCW, and in conducting the initial reviews it must have regard to such guidance. The Explanatory Memorandum considers that the guidance “is largely concerned with matters for which Assembly procedure is not appropriate”.²³

64. When it was suggested that powers of direction under section 16(1) may be worthy of more scrutiny, the Minister said:

“... if there is a proposed principal area, we will have published a map, which will outline what those principal areas might be. Obviously, what we’re seeking to do here is to let the local democracy and boundary commission get on with its work swiftly.”²⁴

65. In terms of the powers under section 17, the Minister felt that policy decisions were relevant. He stated:

“The first of them is around the number of councillors for any principal local authority ... We have a recommendation from Williams for a maximum of 75, and ... for 10, 11 or 12

²¹ Explanatory Memorandum, Chapter 5, page 33

²² Explanatory Memorandum, Chapter 5, pages 33-34

²³ Explanatory Memorandum, Chapter 5, page 34

²⁴ CLA Committee, *RoP paragraph [97]*, 2 March 2015

authorities. If we are to come out with a further map, it would be important ... at that stage ... to make some general policy statements around the size of authorities, and that itself would provide the context ... for any further direction to the local democracy and boundary commission.”²⁵

66. He agreed with a suggestion that there would be scrutiny of a Ministerial statement that would then subsequently inform any direction given to local authorities.²⁶

Our view

67. In light of our views regarding the need for greater scrutiny of the creation of new local authorities and their electoral arrangements, we believe that directions issued under sections 16 and 17, and guidance under section 17, should be subject to Assembly procedures given their importance to the process and the information they could potentially contain.

Recommendation 4: we recommend that the Minister should table amendments to the Bill applying:

- **the negative procedure to directions issued under section 16(1) and guidance issued under section 17(8);**
- **the affirmative procedure to directions issued under section 17(3).**

Section 22 – Implementation by Welsh Ministers; Section 23 – Electoral regulations if no recommendations made

68. Section 22(1) enables the Welsh Ministers by regulations to implement (with or without modification) recommendations of the LDBCW in relation to electoral arrangements for proposed principal areas. Section 22(5) allows for the Welsh Ministers to vary or revoke the regulations.

69. Section 23(2) enables the Welsh Ministers to make provision for electoral arrangements for proposed principal areas prior to the first elections of councils for those areas where the LDBCW has not submitted final recommendations, so that the creation of new principal

²⁵ CLA Committee, *RoP paragraph [103]*, 2 March 2015

²⁶ CLA Committee, *RoP paragraphs [104-105]*, 2 March 2015

councils is not delayed.²⁷ Section 23(5) enables the Welsh Ministers to revoke or vary any provision made in respect of electoral arrangements for proposed principal areas where the LDBCW has not submitted final recommendations.

70. The regulations in these sections are subject to no procedure because:

“The procedure mirrors that already in place for the implementation of electoral arrangements reviews under the Local Government (Democracy) (Wales) Act 2013, which are regarded as “local orders”. As part of the review procedure, the matters to be addressed within the regulations and the recommendations of the LDBCW will be subject to a substantive degree of public consultation.”²⁸

71. This being the case:

“It is considered appropriate that any regulations which amend or revoke the provisions of such regulations should also be regarded as local orders and should not, therefore, be subject to any Assembly procedure.”²⁹

72. We asked the Minister why no Assembly procedures applied to these provisions and he told us:

“These relate to the making of electoral arrangements by the boundary commission, and I think ever since 1972 these areas have been addressed as local Orders. Obviously, there are local consultations around these, and there have been no provisions since that time.”³⁰

73. A lawyer accompanying the Minister explained how the provisions in sections 22 and 23 of the Bill mirrored those in the *Local Government (Democracy)(Wales) Act 2013*:

“The procedures within 22 and 23 in relation to the manner in which the boundary commission will conduct its review and make its recommendations, et cetera, and also the manner in which the Welsh Ministers make their Orders, are exactly the

²⁷ Explanatory Memorandum, Chapter 5, page 29

²⁸ Explanatory Memorandum, Chapter 5, pages 28 – 29.

²⁹ Explanatory Memorandum, Chapter 5, page 29.

³⁰ CLA Committee, *RoP paragraph [62]*, 2 March 2015

same. They are presented slightly differently because the 2013 Act deals with more than just electoral arrangements and Orders for principal areas; it also deals with communities. So, they look as though they are slightly different when you read them, but, in fact, the procedures—the substantive elements—remain the same in both instances. In fact, the procedure implemented here was modelled on that presented in the 2013 Act, because it’s a procedure that both the boundary commission and everyone who will be required to work with them is very familiar with.”³¹

74. When asked why the negative procedure applied for certain instruments made under the equivalent provisions in the 2013 Act, the official told us:

“In the 2013 Act, the boundary commission can make recommendations about principal areas and the movement of principal areas that falls out of the reviews that they conduct. They have no such powers under this Bill—hence the reason why this Bill doesn’t require the Welsh Ministers to follow any negative procedure, because the same type of provision can’t be made under this Bill.”³²

Our view

75. We note that section 37 of the *Local Government Democracy (Wales) Act 2013* is in the main identified as the basis for the procedures in sections 22 and 23 of the Bill. We acknowledge that we were content with section 37 of the 2013 Act when we reported on the corresponding Bill.

76. We are content with no procedure applying to the regulation-making powers under section 22.

77. However, there is no equivalent provision to section 23 of the Bill in the 2013 Act. In addition, the 2013 Act relates to existing local authorities, while the Bills deals with the creation of new authorities.

78. Section 23 of the Bill allows the Welsh Ministers to make regulations without a report containing recommendations being

³¹ CLA Committee, *RoP paragraph [65]*, 2 March 2015

³² CLA Committee, *RoP paragraph [67]*, 2 March 2015

submitted by the LDBCW, while the provisions in the 2013 Act are reliant on the LDBCW providing reports.

79. We believe that it would be appropriate, where the Welsh Ministers proceed without a report, for the negative procedure to be applied to the scrutiny of regulations made under section 23.

80. We note that the reason for the Welsh Ministers acting without reports is to avoid any potential delays to the merger programme. We do not believe that the application of such a procedure would delay the merger programme.

Recommendation 5: we recommend that the Minister should table an amendment to apply the negative procedure to the making of regulations under section 23 of the Bill.

Section 24 – Future review periods

81. Section 24 permits the Welsh Ministers to amend section 29 of the 2013 Act to enable the Welsh Ministers to reset the start date for the LDBCW’s next 10-year electoral arrangements review period, following the establishment of new merged authorities. The negative procedure applies to the making of the regulations because according to the Explanatory Memorandum they are a “relatively minor detail”, “technical in nature” and merely re-set the start date for the next 10-year review,³³ points confirmed by the Minister’s official.³⁴

Our view

82. As we indicate earlier, subordinate legislation that amends primary legislation should be subject to the affirmative procedure.

Recommendation 6: we recommend that the Minister should table an amendment to apply the affirmative procedure to the making of regulations under section 24 of the Bill.

Remuneration etc. arrangements for new principal local authorities

83. Sections 25 to 28 enable the Independent Remuneration Panel for Wales (“the Panel”) to make recommendations about the remuneration of members and senior staff of the proposed new principal areas.

³³ Explanatory Memorandum, Chapter 5, page 30

³⁴ CLA Committee, *RoP paragraph [79]*, 2 March 2015

***Section 25 – Directions to Panel to perform relevant functions;
Section 27 – Directions and guidance to Panel***

84. Section 25(1) enables the Welsh Ministers to direct the Panel to exercise its functions under the *Local Government (Wales) Measure 2011* (as modified by the Bill), in relation to pay and pensions of members of shadow and merging principal local authorities. No procedure applies because:

“This power to issue directions applies only to the Independent Remuneration Panel and will relate only to payments to members of specified shadow Authorities and newly merged Principal Authorities and will enable the Panel to do its work.”³⁵

85. Section 27(3) enables the Welsh Ministers to issue guidance to the Panel in relation to the exercise of its functions under the Bill. The Panel must have regard to such guidance, which “is largely concerned with matters for which Assembly procedure is not appropriate”.³⁶

86. The Minister told us:

“... we issue guidance to them at the present time ... we have said in the current White Paper, which is out to consultation, some of what we anticipate the panel looking at in the future. I’d be perfectly happy at a subsequent date, when we are closer to this, to look at a further ministerial statement in respect of what our expectations might be for the panel.”³⁷

Our view

87. On balance, we are content for no procedure to apply to the issue of directions and guidance under sections 25 and 27 of the Bill.

Section 32 – Transactions: supplementary; Section 36 – Change in number of Panel members

88. Section 32 empowers the Welsh Ministers by regulations to amend the specified value of transactions which may be subject to the reporting regime (transition committees) or the consent regime (shadow authorities), to reflect changing circumstances.

³⁵ Explanatory Memorandum, Chapter 5, page 35

³⁶ Explanatory Memorandum, Chapter 5, page 35.

³⁷ CLA Committee, *RoP paragraph [107]*, 2 March 2015

89. The power is exercised by the use of the negative procedure because:

“The subject matter of these regulations is a relatively minor detail within the overall legislative provisions for restraints on transactions by merging Authorities.”³⁸

90. Section 36 amends paragraph 1 of Schedule 2 to the *Local Government (Wales) Measure 2011*. Paragraph (a) of section 36 changes the number of Panel Members from five to six. Paragraph (b) also amends paragraph 1 of Schedule 2 of the 2011 Measure; it permits the number of Panel members to be amended subsequently using subordinate legislation subject to the negative procedure. This procedure is suggested because:

“The subject matter of these regulations is a minor detail within the overall legislative provisions relating to the Remuneration Panel.”³⁹

91. The Minister’s official explained the use of the negative procedure in respect of section 32(4):

“... consideration at policy development has been given to what is felt to be the appropriate valuation, and the Bill states what we consider to be appropriate at this point in time. Again, it would be a technical matter whether, in practice, it was found that those values were maybe not pitched at the right level or weren’t achieving the policy intent. The facility to change it by way of negative resolution obviously allows you access to that, and in a rather swift manner, which is what is likely to be needed should it be felt that the policy wasn’t working in that area at that time.”⁴⁰

and, in relation to section 36

“The Bill increases the number of panel members from five to six, so it allows them to take on board the additional work that they will be required to do. This is simply a technical change to either allow the number to go back down when the work level recedes, or, alternatively, if the work should prove to be more

³⁸ Explanatory Memorandum, Chapter 5, page 30

³⁹ Explanatory Memorandum, Chapter 5, page 30

⁴⁰ CLA Committee, *RoP paragraph [80]*, 2 March 2015

demanding and more members are required, again, there's easy access via a negative resolution to swiftly deal with the matter of membership, so that timetables of work are not hindered."⁴¹

Our view

92. As we indicate earlier, subordinate legislation that amends primary legislation, as is the case in respect of sections 32(4) and 36(b) of the Bill, should be subject to the affirmative procedure.

93. We note that the number of Panel members set out in the 2011 Measure is being changed initially by primary legislation (i.e by virtue of section 36(a)).

94. An alternative approach to section 36 may be to dispense with the need for amending regulations altogether and instead, to amend sub-paragraph (1) of paragraph 1 of Schedule 2 to the *Local Government (Wales) Measure 2011* to provide that the number of Panel members must be within a particular numerical range.

Recommendation 7: we recommend that the Minister should table an amendment to apply the affirmative procedure to the making of regulations under sections 32(4) of the Bill.

Recommendation 8: we recommend that the Minister should table either:

- **an amendment to apply the affirmative procedure to the making of regulations under sub-paragraph (1A) of paragraph 1 of Schedule 2 to the *Local Government (Wales) Measure 2011* (as inserted by section 36 of the Bill); or**
- **an amendment to apply a numerical range to the number of Panel members set out under sub-paragraph (1) of paragraph 1 of Schedule 2 to the *Local Government (Wales) Measure 2011* (as amended by section 36 of the Bill).**

⁴¹ CLA Committee, *RoP paragraph [81]*, 2 March 2015