

National Assembly for Wales
Bill Summary

Local Government (Wales) Bill

February 2015

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Local Government (Wales) Bill

1. Introduction

Introduction date: 26 January 2015

Member in charge: Leighton Andrews AM, Minister for Public Services.

Assembly Committee undertaking Stage 1 scrutiny of the Bill: Communities, Equalities and Local Government Committee

Stage 1 reporting deadline: 8 May 2015.

2. The Bill's context

The Williams Commission published its [report on public service delivery and governance](#) in January 2014. This report made a package of **62 recommendations for public sector reform**. Amongst them was the conclusion that some local authorities were too small to perform effectively. As such, the Commission called for Welsh local authorities to be merged to create either 10, 11 or 12 authorities.

The Welsh Government responded to the Williams report in July 2014. This included publishing an initial [White Paper on Local Government Reform](#). A [second White Paper](#) was published on 3 February 2015, containing further proposals to improve how local government works.

With regard to mergers, the White Paper published in July set out the Welsh Government's preference for 12 local authorities, in line with the first option recommended by the Williams Commission. 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. See **Annex A for a summary of the proposed key dates in this process**.

The White Paper said that the first Bill would enable local authorities who wished to merge voluntarily to do so early, as well as enabling preparatory work for further mergers to take place. The second Bill would be issued in draft form for consultation in autumn 2015, and would contain the main merger proposals for the remaining authorities. This second Bill would not be introduced formally until after the next Assembly elections in May 2016 (depending of course on whether the government of the day decided to proceed with it).

In September 2014, the Welsh Government published a 'Prospectus' 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 in the White Paper).

On 26 January 2015, this Bill was introduced and contains provisions that would allow such voluntary mergers to take place. The Bill also contains steps that can be implemented to prepare for further mergers once a second Bill is published and then formally introduced.

On 27 January 2015, however, the **Minister for Public Services 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 initial Prospectus. As such, he said that he would give “further consideration” to the provisions in the Bill relating to voluntary merger “as the Bill proceeds”.

3. The Bill

The Bill can be summarised as follows:

- Sections 3 to 10 contain powers for Ministers to make regulations allowing voluntary mergers of local authorities to take place.
- Sections 11 to 15 require Ministers to make provisions for merging authorities (whether merging voluntarily or as set out in the second Bill when it is formally introduced) to establish transition committees to undertake preparatory work for merger.
- Sections 16 to 24 enable Ministers to direct the Local Democracy and Boundary Commission for Wales (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).
- Sections 25 to 28 enable the Independent Remuneration Panel for Wales (IRP) to make recommendations about the remuneration of members and senior staff of the proposed new principal areas.
- Sections 29 to 32 impose restrictions on the current transactions of merging authorities (whether merging voluntarily or as set out in the second Bill when formally introduced), and can require authorities to share certain information.
- Sections 35 to 38 make other amendments to local government law.

3.1. The link with the second Bill and timing

As noted above, the Bill makes significant provisions allowing preparatory work for future mergers to take place, even if voluntary mergers do not go ahead.

In particular, once this Bill is in force, the Bill allows the Local Democracy and Boundary Commission for Wales (LDBCW) to start work on new local authority areas as soon as the Welsh Government has published proposals for new areas. The Welsh Government has clarified that such proposals could be published in any form, although the indication is that it might do so in a draft, second Bill to be published next autumn. The Welsh Government also anticipates that this first Bill, if passed, would receive Royal Assent in November 2015. If these timeframes were kept to, it would enable the LDBCW to start work on proposed new areas soon after. This is despite the fact that it would be up to any new government elected after May 2016 to decide whether it wished to proceed with the merger proposals set out in the draft second Bill.

There are similar provisions relating to the establishment of transition committees and restrictions on transactions for merging authorities, although a second Bill must be introduced formally for those to come into effect.

In the Explanatory Memorandum (EM), the Welsh Government states that the reason for introducing the second Bill in autumn 2015 is to present “the Welsh Government that takes office after May 2016 with the opportunity to make an early decision on how it wishes to proceed, with the benefit of a developed legislative proposition, assisted by a full understanding of the views of stakeholders”. However, the EM also acknowledges that this current Bill includes “measures which anticipate the reform programme”.

3.2. Provisions relating to voluntary mergers (s3-10)

Sections 3 to 10 of the Bill contain provisions relating to voluntary mergers. The Minister has rejected the expressions of interests received so far, and he indicated in Plenary on 27 January that he would be giving “further consideration” to these provisions “as the Bill proceeds”. However, he also told Plenary that “it is still, of course, possible, on Williams’s option 1 footprint, to take forward voluntary mergers on the basis of the Bill ... but we have to do this in the context of, I think, wider discussions on an overall map”. The current deadline set in the Bill for applications for voluntary merger is 30 November 2015, although it seems that fully developed business cases would need to be submitted by 30 June 2015.

If merger applications were to be accepted, these sections of the Bill allow Ministers to make regulations to:

- Merge authorities and create new local authority areas from 1 April 2018.
- Deal with the creation and funding of shadow authorities in advance of this date, comprising of all members of the current authorities.
- Make arrangements for electing councillors to the merging authorities and the new authority.

The regulations can also deal with “other consequential etc. provision” and the EM states that these could include issues “such as the transfer of assets, transfer of staff, continuation of rights and liabilities, staff matters etc”.

At present, if they wish to amend a combination scheme order that establish fire and rescue authorities in Wales, Ministers must hold an inquiry if a fire and rescue authority opposes that change. The EM claims that such inquiries could significantly delay the merger process and as such the requirement to hold an inquiry would also be temporarily waived.

3.3. Provisions relating to transition committees (s11-15)

Sections 11 to 15 of the Bill require Ministers to make regulations that will oblige merging authorities to establish transition committees. These committees would be tasked with undertaking preparatory work for merger. This could apply either to authorities identified for voluntary merger, or merging authorities as set out in the second Bill when formally introduced in the Assembly (possibly in summer 2016).

Section 12 deals with the composition of transition committees (there must be an equal number of members from each merging authority), while section 13 deals with the functions of the transition committees. This could include providing advice and recommendations to the merging authorities and any shadow authority on transition issues.

Their role could also include advising on anything specified in directions or guidance issued by the Welsh Ministers. The EM states that such guidance is likely to ask the transition committees to compare service and organisational arrangements in the existing authorities, and present advice to the incoming shadow authority about gaps, discrepancies and duplication. Transition committees will be required to gradually hand-over the preparatory work to the shadow authorities when they are formed (arrangements for shadow authorities in respect of voluntary mergers are dealt with in this Bill; provisions for shadow authorities for other mergers will be made in the second Bill).

Notably, section 13(6) of the Bill stipulates that current audit or scrutiny committees of local authorities will not be able to exercise their functions in relation to anything done by a transition committee.

According to the EM, requiring transition committees to be established and awarding the Welsh Ministers powers of direction is necessary to avoid “haphazard planning arrangements in relation to the proposed new Authorities”. It is also supposed to minimise the risk that “some Principal Local Authorities may even adopt a policy of non-co-operation and non-negotiation with other Principal Local Authorities involved in a prospective merger”.

Local authorities will be required to meet the costs of establishing transition committees themselves, with the EM estimating this to be around £77,000 per committee.

3.4. Provisions relating to conducting electoral reviews

The Local Democracy Boundary Commission for Wales (LDBCW) is currently required to review the electoral arrangements of each principal area every 10 years, looking at issues such as the number of councillors, the number of wards, and whether wards should be multi or single-member. The Welsh Ministers may then action their recommendations with or without modification.

However, the LDBCW can only undertake reviews of areas already established by statute. The Bill will enable Ministers to direct the LDBCW to conduct reviews of proposed new local authority areas. The Welsh Government has clarified that the new proposed areas can be either ones identified for voluntary merger, ones identified in a future Bill published by the Welsh Ministers (including in draft form), or ones published in another form. The Welsh Government anticipates this Bill receiving Royal Assent in November 2015, and it has also indicated it will publish a draft second Bill in autumn 2015 containing more detailed merger proposals.

The EM confirms that the Welsh Government's intention is to direct the LDBCW to "start undertaking reviews of electoral arrangements for any proposed new Principal Area (whether to be merged voluntarily by regulations, or by a second Local Government (Wales) Bill) soon after this Bill is passed". It also says:

This option will allow for the reviews of electoral arrangements for proposed new Principal Areas to be conducted and implemented in good time for the first elections to take place in 2018 for a new Authority established voluntarily by merger regulations; or in 2019 for Authorities established by a second Local Government (Wales) Bill.

However, despite stating that the Bill enables these reviews to be carried out "in good time", section 23 contains a further power for Welsh Ministers themselves to make provision for the electoral arrangements of a new proposed area if the LDBCW has not completed a review within the set timeframe. As explained in the EM:

Such a situation could cause delays to the merger programme. The Bill, therefore, enables the Welsh Ministers, by regulations, to make provision for the electoral arrangements for a proposed Principal Area. In such circumstances, the LDBCW is required to provide the Welsh Ministers with any relevant information it holds.

3.5. Provisions relating to remuneration and the IRP (s25-28 and s35-36)

The Independent Remuneration Panel for Wales (IRP) is the body that decides on remuneration for councillors. The Bill will enable the IRP to set payments to members of proposed merged authorities before they come into existence, as well as to members of shadow authorities (whether for authorities merging voluntarily or under a second Bill).

At present, each local authority must prepare a Pay Policy Statement setting out the authority's policy on remuneration. Section 28 of the Bill requires all shadow authorities to approve a Pay Policy Statement for that shadow authority and the vested new authority, after recommendations have been made by the relevant transition committee. The shadow authority will not be allowed to appoint chief officers until the Pay Policy Statement has been approved. The EM says that "extending procedures in relation to Pay Policy Statements should provide significant assurance that existing Councils could not award irresponsible pay rises or inappropriate re-grading to senior officers ahead of mergers".

Sections 35 and 36 of the Bill also temporarily extend the functions of the IRP so that they are able to make recommendations on any salary or a change to a salary of all chief officers, until March 2020 (at present, they are only able to make such recommendations in respect of chief executives). According to the EM, this will act as an "extra safeguard" given that merging authorities "could act inappropriately in respect of pay awards ... ahead of mergers"

3.6. Provisions relating to transactions and information (s29-34)

According to the EM:

Previous Local Government structural changes witnessed opposition from several key stakeholders who, through various actions such as refusing to engage and share information, inhibited effective collective planning for the periods during and after the changes ... As such, the Welsh Ministers want to encourage positive behaviour and guard against various potential negative behaviours which might disrupt the merger process.

Sections 29 to 32 therefore impose restrictions on the transactions of merging authorities. It means current authorities must first seek the opinion of the relevant transition committee and, when established, the written consent of the shadow authority before:

- buying or selling land or buildings for a consideration exceeding £150,000;
- entering into contracts or agreements exceeding £150,000 (non-capital) or £500,000 (capital);
- giving any financial assistance or grants exceeding £150,000.

An authority must publish its reasons if it proceeds contrary to the opinion of the transition committee, while they must also have regard to guidance issued by the Welsh Ministers on these matters. These restrictions will apply to merging authorities whether merging voluntarily or as set out in the second Bill when formally introduced.

Sections 33 and 34 of the Bill also enable Welsh Ministers to require merging authorities to provide information, either to the Welsh Ministers themselves or to other merging authorities, the relevant transition committee or the relevant shadow authority. According to the EM, this is “in line with the recognised difficulties of previous structural changes and the potential for stakeholders to disrupt the merger process through withholding information”.

3.7. Amendments to other local government legislation (s37-38)

The Welsh Government says that it is taking the opportunity in this Bill to make amendments to other legislation, namely:

- The *Local Government (Wales) Measure 2011* requires local authorities to hold a survey of councillors and unsuccessful candidates following an election. In line with a recommendation by the Expert Group on Diversity in Local Government, the Bill will allow that survey to be outsourced and distributed in advance of an election.
- The Bill clarifies the position around electoral reviews completed by the LDBCW before the *Local Government (Democracy) Act 2013* came into force.

3.8. Other matters

3.8.1. Staffing issues and the Staff Commission

In its July 2014 White Paper, the Welsh Government acknowledged that the merger process would be “unsettling” for the local government workforce. However, it also claimed that it did not believe that “reducing the number of Local Authorities through mergers will create as many staffing and workforce issues as has been the case when Local Government has been reorganised”.

The WLGA responded to this comment by stating:

It is difficult to see in what way mergers would make staffing issues any easier. All the same processes will need to be undertaken in terms of creating new structures and recruiting to them. However, whereas in the last re-organisation all staff rather than the very senior officers were guaranteed a job, this is unlikely to be the case in a climate of continuing local government funding cuts. This situation would make the staffing issues more difficult (and more costly), rather than easier. Staff who will not be guaranteed jobs in the new authority may seek alternative employment and this could impact negatively on general officer capacity and expertise as well as ongoing service delivery.

The Welsh Government has indicated that it intends to establish a Staff Commission to advise the Welsh Ministers on staff matters related to local authority mergers. The intention was to establish the Staff Commission on a non-statutory basis initially, before placing it on a statutory footing in the second Bill. In Plenary on 27 January 2015, the Minister said that he was “giving further consideration to the question of the staff commission and the timing of that” in light of the decision not to proceed with the voluntary mergers.

The WLGA has also called for clarity on the role of the Staff Commission and questioned the extent to which the Welsh Ministers will be able to issue directions to local authorities based on the Staff Commission’s recommendations.

3.8.2. Welsh language issues

The document summarising consultation responses to the White Paper acknowledges that some people felt that Welsh language issues “did not appear to have been considered” as part of the proposals for reform. However, the EM states:

Guidance issued under the Bill will require joint transition committees to ensure Welsh language considerations are taken into account in relation to the strategic and organisation arrangements for the new Principal Local Authorities. It will provide a valuable opportunity for awareness of Welsh language considerations to be part and parcel of the working culture of the new Authority from the very start.

4. The cost and benefits of the merger process

The EM states that under the direct provisions of the Bill, there will be costs of:

- £1.117 million for the Welsh Government (mainly in additional funding for the LDBCW to undertake reviews of proposed new areas, and additional funding for the IRP to start early work on remuneration and extending its functions).
- £1.219 million for local government (the costs of establishing joint transition committees minus savings made after implementing LDBCW electoral reviews).

These costs are based on the assumption that there will be one voluntary merger and eight mergers via a second Bill. It is clear that these costs would need to be revisited if the number of eventual mergers differed or if there is to be no voluntary merger at all.

If voluntary mergers did take place, the EM states that those costs would be “considered as part of any regulations made”. The EM also states:

For a number of the policy intentions [in the Bill], the nature of the identified benefits means that a qualitative description of the benefits is presented. Since the benefits can not be quantified, it is difficult to compare the costs and benefits in an objective way.

Furthermore, overall costs of the eventual merger process have not been considered as part of this Bill. In a report in November 2014, CIPFA estimated that the transition costs of local government mergers (namely in terms of people, property, systems and programme costs) would range between £159.7 million to £267.9 million. CIPFA estimated that the full year savings (through merging back office services and support services, and through rationalised management) could be £64.7 million after two to three years. However, until the exact nature of the mergers was known, CIPFA warned that it was impossible to assess the financial implications “with any degree of precision”.

Whatever the eventual transition costs, the July 2014 White Paper suggests that the Welsh Government would expect local government to cover these:

The severe financial pressures also mean it is not realistic to expect the Welsh Government to provide large injections of cash to meet the cost of mergers as central Government has often done in the past when Local Government has been restructured.

According to the WLGA:

One of the most fundamental and pressing questions is the estimated costs of local government reorganisation and how such a process will be funded in the current financial climate.

The WLGA remains concerned that the Welsh Government is pressing ahead with legislating for one of the most wholesale public service reforms in two decades, one which will have significant and lasting impact on the nature of public services for Wales’ communities,

notwithstanding the jobs of thousands of public sector employees, without a clear and costed business case underpinned by any form of assessment of potential costs and/or likelihood of return or savings.

5. Response to the Bill

The Minister for Public Services, Leighton Andrews AM, made a statement on the Bill in [Plenary](#) on the 27 January 2015. He stated:

I'm not simply intending to create bigger councils going about their business in the same way as our existing authorities. We need fundamental reform that will lead to a profound change in the way councils work and deliver for their communities. Primarily, as our White Paper next week will make clear, this is about leadership. This is a once-in-a-lifetime opportunity to remodel local government in Wales, a system where councils are engaged in delivering modern, accessible, high-quality services for, and with, their communities. This Bill lays the groundwork for these reforms.

The Bill, if passed, provides for certain preparatory work to enable a programme of local authority mergers. Earlier today, I issued a written statement, following my consideration of the three formal expressions of interest for voluntary merger received from local authorities. In light of that statement, I will give further consideration to the voluntary merger provisions included in the Bill during the legislative process.

The opposition parties questioned the purpose of the Bill following the Minister's statement that none of the Expressions of Interest sufficiently met the criteria for moving ahead to prepare a full voluntary merger proposal. The Conservative spokesperson, Janet Finch-Saunders AM, said:

Well, Minister, today we should have actually been responding and welcoming the reform in the local government Bill [...] looking at ways to pass forward legislation that would see reform to local government in Wales. Part of that, of course, was to include the facilitating and incentivising of voluntary mergers. Now, your earlier statement today actually contradicts the Bill that you're now wishing to introduce.

For Plaid Cymru, Rhodri Glyn Thomas AM stated:

We have a Bill before us for a process that doesn't exist at the moment, because you've turned down the three proposals for moving towards a voluntary merger. What do you say to local authorities across Wales? They face swingeing cuts in their funding and now they face another period of uncertainty. They haven't got the slightest idea when the next elections will be held. They haven't got the slightest idea what will happen to them as individual authorities or as merged authorities. They don't know whether they should move now to propose voluntary mergers or whether you are going to determine this. If it is you who will decide, Minister, why don't you come before the Senedd, present your map of local authorities in Wales to us, and tell us how you intend to deliver services in Wales?

The Liberal Democrat spokesman, Peter Black AM said:

I think, Minister, that most of us here accept that you obviously have the right to turn down the voluntary merger proposals in front of you on the basis of the criteria that you've set out as part of that. I think the question that I'd like to ask is, having turned down all the voluntary merger proposals that have come in front of you, why are we now discussing a Bill to actually enable voluntary mergers to take place, because there are no voluntary mergers in front of us for this Bill to enable? It does seem to me that we are effectively wasting our time on that particular part of this Bill. I think we do need an explanation as to what processes are going to be in place in terms of future voluntary mergers.

The Minister replied:

The Bill does contain sections in respect of voluntary mergers, and so I think it's very important to be clear about what we have done. What we have done is turn down expressions of interest submitted by six local authorities in respect of voluntary mergers, as set out in our prospectus. We were not satisfied that they satisfactorily met the terms of the prospectus or gave us the sustainable way forward that we wanted to see.

It is still, of course, possible, on Williams's option 1 footprint, to take forward voluntary mergers on the basis of the Bill. Those might be different criteria, of course, from those we set out originally in our voluntary merger prospectus. There is a time-lapse provision in the Bill, which is the end of November 2015, by which time any further discussion of voluntary mergers could be taken forward.

Now, I am perfectly prepared for my officials to talk with local authorities around the provisions in the Bill and to see what we can do to take things forward, but we have to do this in the context of, I think, wider discussions on an overall map.

A. Annex A: Proposed timeframes - based on information in the Bill, EM, the Prospectus and July 2014 White Paper

If voluntary mergers go ahead under this Bill	If voluntary mergers do not go ahead
<p><u>Jan 2015</u>: First Bill introduced</p> <p><u>30 June 2015</u>: Deadline to submit fully developed cases for voluntary merger</p> <p><u>Autumn 2015</u>: Second Bill published in draft form</p> <p><u>30 November 2015</u>: Deadline for formal applications for merger</p> <p><u>November 2015</u>: First Bill receives Royal Assent and provisions relating to merger regulations, transition committees, transaction restrictions and remuneration (after two months) can be implemented in respect of voluntarily merging authorities, as well as provisions relating to electoral reviews for all authorities to be merged (as long as a second Bill has been published)</p> <p><u>Summer 2016</u>: Second Bill introduced formally and provisions in the first Bill relating to transition committees, remuneration and transaction restrictions can be implemented (in respect of all merging authorities set out in the second Bill)</p> <p><u>April 2017</u>: Shadow authorities for voluntarily merging authorities established, consisting of all Members of existing merging authorities</p> <p><u>May 2017</u>: Elections for all authorities not merging voluntarily (three-year terms for ones eventually merging under second Bill, five-year terms for any authorities not merging). No elections for voluntarily merging</p>	<p><u>Jan 2014</u>: First Bill introduced</p> <p><u>Autumn 2015</u>: Second Bill published in draft form</p> <p><u>November 2015</u>: First Bill receives Royal Assent and provisions relating to electoral reviews can be implemented for all merging authorities, as long as a second Bill has been published</p> <p><u>Summer 2016</u>: Second Bill introduced formally and provisions in the first Bill relating to transition committees, remuneration and transaction restrictions can be implemented for all merging authorities</p> <p><u>May 2017</u>: Elections for all current authorities (three-year terms for councillors of all merging authorities, five-year terms for councillors of any authority not merging)</p> <p><u>June 2017</u>: Second Bill receives Royal Assent</p> <p><u>May 2019</u>: Elections to create shadow authorities for all merging authorities (three year-terms for councillors)</p> <p><u>1 April 2020</u>: Vesting day for merging authorities and old authorities abolished</p> <p><u>May 2022</u>: Full elections for all authorities.</p>

<p>authorities</p> <p><u>June 2017</u>: Second Bill receives Royal Assent</p> <p><u>1 April 2018</u>: Vesting day for voluntarily merging authorities</p> <p><u>May 2018</u>: Elections for voluntarily merging authorities (four-year terms for councillors)</p> <p><u>May 2019</u>: Elections to create shadow authorities for all authorities merging under second Bill (three year-terms for councillors)</p> <p><u>1 April 2020</u>: Vesting day for authorities merging under second Bill and old authorities abolished</p> <p><u>May 2022</u>: Full elections for all authorities.</p>	
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