

POLICY AND STRATEGY

Local Government and Elections (Wales) Bill: overview

The Local Government Elections (Wales) Bill will reform and strengthen local government and improve electoral arrangements.



Llywodraeth Cymru
Welsh Government

REPORTS TO CABINET DECEMBER 2021

Summary

Corporate Joint Committees &
Governance and Performance

Summary

Local Government and Elections (Wales) Bill

- The Bill is a substantial piece of legislation covering electoral reform, public participation, governance & performance and regional working.
- The Bill was introduced in 2019 and passed by the Senedd on 18th November 2020. It is anticipated the Bill will receive Royal Assent early in 2021.
- The Bill will replace the current improvement duty for principal councils set out in the Local Government (Wales) Measure 2009.
- The new approach as set out in the Bill is designed to be a more streamlined, flexible, sector-led approach to performance, good governance and improvement. The intention is for councils to be proactive in considering how internal processes and procedures should change to enable more effective planning, delivery and decision-making to drive better outcomes.

Summary of the Bill

Reforming electoral arrangements for local government

- Extending the voting franchise to 16 and 17 year olds and foreign citizens legally resident in Wales
- Enabling councils to choose between 'first past the post' or the 'single transferable vote' voting systems
- Change of electoral cycle for principal councils from four years to five years
- Allowing non-politically restricted council staff to stand for election in their own authority (but who should resign if elected)
- Removal of Returning Officers' Fees or local elections

Introduction of a general power of competence

Reforming public participation in local government

- Duty to encourage local people to participate in local government (and to produce a strategy to that effect)
- Duty to make petition scheme (and repeal of community polls);
- Duty to broadcast certain meetings
- Greater flexibility around remote attendance of members

Reforms around democratic governance and leadership

- Appointment of Chief executives (rather than a head of paid service) with specific duties
- Appointment of assistants to cabinets and allowing job-sharing leaders or cabinet members
- Updating family absence provisions in line with those available to employees (via regulations)
- Requiring leaders of political groups to promote and maintain high standards of conduct by members of their groups

Collaborative Working

- Powers for councils to initiate the establishment of Corporate Joint Committees (CJCs) covering any functions
- Powers for Ministers to establish CJCs covering the four functions of economic wellbeing, transport, strategic planning and school improvement

Reform of the performance & governance regime

- Repeal of the 2009 Measure duties, replacing audit and reporting duties with self-assessment and panel assessment (peer review);
- Reforms to Audit Committees, renaming as Governance and Audit Committees and prescribing membership and chair (lay member).

Powers to facilitate voluntary mergers of principal councils

Corporate Joint Committees

Corporate Joint Committees (CJCs)

- CJCs have been the subject of extensive political dialogue during 2019-20, though there have been limited political discussions during the past 6 months due to COVID 19.
- Most authorities have submitted 'preferred footprints' should CJCs be developed, these were based largely on the 4 current City Deal/Growth footprints.
- Although there is support for CJCs as a voluntary model for collaboration, there is a concern about the 'mandation' of regional structures or services and what outcomes will be achieved.
- The Minister wishes to meet with leads on a regional basis during the consultation period.
- When the Bill passed through the Senedd on 18th November 2020 the amendments to the CJC included:
 - Clarifying 'economic development' as a broad 'economic well-being' power.
 - Inclusion of national park members in the strategic planning role of CJCs.
 - Clarification that CJCs replace Strategic Development Panels and that all CJCs must produce Strategic Development Plans.

Regulations to Establish CJs

- Draft Regulations were published on Monday 12th October and have been issued for consultation (closing date of 4th January)
- There are 44 questions in the consultation, the Welsh Government has outlined that these are draft and would welcome input to ensure that regulations are shaped by local authorities to ensure that they reflect local/regional requirements.
- The consultation includes an overarching consultation document and draft regulations for each of proposed CJs for North Wales, Mid Wales, South East Wales and South West Wales.
- An additional set of 'Regulations of General Application' will be issued for consultation in the New Year. It is envisaged these will cover what existing legislation and wider statutory duties might apply to CJs, such as the sustainable development duty and Welsh Language Standards. Statutory guidance will also be produced

Regulations to Establish CJs

- The draft regulations largely reflect previous discussions with the Minister and Welsh Government officials and include staffing and finance matters and governance arrangements. Details include:
- **Corporate Joint Committee**
 - Although called 'Committees', these are corporate bodies, described by the Minister as 'part of the local government family'
 - They are separate legal entities from their 'constituent' councils, similar to Combined Authorities or Fire and Rescue Authorities.
- **Membership**
 - The membership of CJs will be leaders.
 - CJs can co-opt other members if they choose, either cabinet members or other partners. These could be voting or non-voting members.
 - National park members must also be a member when dealing with SDP functions
- **Voting**
 - 'One member one vote' basis, however, once established, a CJC could adopt alternative voting procedures should they wish
 - Some member authorities remain concerned that OMOV is not equitable or fair given the different sizes of authorities which would undermine accountability.

Regulations to Establish CJs

• Functions

- CJs will have functions cover economic well-being, strategic planning (LDPs will remain with LAs) and transport.
- The economic wellbeing power is potentially wide-ranging and significant, but how far it is used will be determined by a CJC. Put simply, the Minister has suggested that the current city and growth deal strategic functions would be transferred to CJs
- Concurrency of functions has been a concern to some councils, as they want to ensure a local economic development function as well as a regional one. The regulations make clear that this is a ‘...matter for each CJC in response to local and regional needs’.
- ‘school improvement’ (although in the Bill) does not feature as an early priority for inclusion in the CJs consultation document.
- The Bill specifies that CJs will include only the 4 listed functions in the Bill (which are existing statutory or voluntary regional functions)
- CJs can voluntarily make a request to Ministers to add specific functions to a CJC. **A future Welsh Government could however add other functions to a CJC via future legislation.**
- The Welsh Government has established regional bodies with statutory functions outside of the CJC framework e.g. Regional Partnership Boards and may establish statutory Regional Transport Authorities or regional Strategic Planning Panels.

Regulations to Establish CJs

- **Functions**

- Although the current draft regulations allow a degree of regional flexibility, the Welsh Government could constrain or prescribe CJs through funding or policy instruments. They can provide funding in support of a function via CJs but specify that the funding must be spent in certain way or in line with WG priorities.

- **Sub-Committees**

- CJs can set-up sub-committees to lead on specific functions and could co-opt other members (cabinet members or co-optees).

- **Funding**

- CJs must set a budget each financial year to include the amounts required to exercise its functions, reserves and liabilities.
- The draft regulations provide outline arrangements and timescales for the determination of budgets. The proposed deadlines in the draft regulations will require further exploration to ensure that they align with council budget setting processes and timescales.
- The draft regulations state the CJC members (leaders) must unanimously agree a budget and that 'constituent' councils must pay a proportionate amount. If there is a disagreement on the proportionality of funding, Ministers have powers of direction.

- **Staffing**

- CJs must 'appoint' a Chief Executive, Chief Finance Officer, Monitoring Officer and Chief Governance Officer (however, these could be provided by a constituent authority, or seconded etc).
- During early discussions amongst officers, there have been differing views whether a CJC should appoint its own statutory officers (which may be comparatively limited roles given the scale of budgets and functions) or be provided by 'constituent authorities' given potential risks of conflict of interest, responsibility and workload.
- The RIA estimates a range between 1 day per week to 5 days per week for senior staff undertaking CJC duties.

- **Accountability**

- CJs will be accountable to their 'constituent' councils via their leaders
- Statutory decision-making powers over the specified functions will be vested in the CJs and therefore the leaders who make up the CJC
- Should one (or more) leader not support of a particular regional proposal, but was out-voted, the leader would be bound by collective responsibility and the regional proposals would be delivered for his/her authority area without his/her support and possibly without the support of the authority. He/she or the authority could not withdraw from the arrangements in such circumstances, as is the case currently.

- **Accountability**

- the regulations and CJC constitutions will need to consider dispute resolution arrangements and should plan to respond to a 'worst case scenario' where there is disagreement or disengagement from one or more constituent leaders/councils.
- The regulations state that CJsCs must set up an overview and scrutiny committee. Scrutiny will be essential to ensure accountability back to authorities and wider councillors. Individual council scrutiny committees would be able to seek to scrutinise regional bodies as they do now.

- **Timing**

- CJsCs must meet for the first time by the end of September 2021.
- The draft regulations are less clear about expectations for when implementation of functions such as planning and economic wellbeing, the consultation notes that some transition period will be required and '...it will be for the CJC and its constituent councils to consider the transition of existing regional arrangements such as the City / growth deals should they chose to bring these activities within the remit of their CJC.'

- **Funding**

- The Minister would be prepared to provide set-up costs to support CJs.
- The following table summarises the annual minimum and maximum costs for each CJC region of both No Change and setting up CJs:

Cost Type	Do Nothing Minimum	Do Nothing Maximum	CJCs Minimum	CJCs Maximum
Economic Development	£690,807	£690,807	£690,807	£690,807
Transport	£364,023	£1,380,112	£220,346	£220,346
Strategic Plan Functions	£760,000	£760,000	£721,479	£721,479
Member Time	£522	£2,608	Not Inc	Not Inc
WG SDP Support	£57,790	£57,790	£57,790	£57,790
Senior Officers	Not Inc	Not Inc	£79,356	£366,257
Corporate Body Function	Not Inc	Not Inc	£36,344	£619,677
Building, Admin and IT	Not Inc	Not Inc	Not Inc	£112,640
Meetings	Not Inc	Not Inc	£6,977	£27,192
Audit	Not Inc	Not Inc	£21,000	£34,000
Total	£1,873,141	£2,891,317	£1,834,099	£2,850,188

Performance & Governance

(the best bit)

Part 6 Chapter 1 - Performance and Governance

- The Bill provides a new system for improving performance and governance, replacing the current improvement duty for councils set out in the Local Government (Wales) Measure 2009.
- The new approach set out in the Bill is designed to provide for a more streamlined, flexible, sector-led approach to performance, good governance and improvement.
- The performance and governance provisions will require councils to review the extent to which they are meeting their performance requirements, that is the extent to which they are:
 - i) exercising their functions effectively;
 - ii) are using their resources economically, efficiently and effectively; and
 - iii) are governed effectively.
- The performance and governance provisions in the Bill are framed within the wider sustainable development duties and the seven well-being goals which public bodies must work towards collectively and five ways of working to guide how public bodies should deliver

Part 6 Chapter 1 - Performance and Governance

- The draft guidance specifically addresses the following duties to be placed on principal councils:
- **Duty to keep performance under review**
 - The Bill requires a council to keep under review the extent to which it is fulfilling the 'performance requirements':
 - exercising its functions effectively;
 - using its resources economically, efficiently and effectively; and
 - has effective governance in place for securing the above.
- **Duty to consult on performance**
 - A council must consult a range of people at least once in each financial year about the extent to which the council is meeting the performance requirements. The statutory consultees are:
 - local people;
 - other persons carrying on a business in the council's area;
 - the staff of the council; and
 - every trade union which is recognised (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 92)) by the council.

Performance and Governance

- **Duty to report on performance**

- A council must produce a self-assessment report in respect of each financial year. The report must set out its conclusions on the extent to which it met the performance requirements during that year, and any actions it intends to take, or has already taken, to increase the extent to which it is meeting the performance requirements.

- **Duty to arrange a panel assessment of performance**

- A council must arrange for a panel to undertake an assessment, at least once during the period between two consecutive ordinary elections of councillors to the council, of the extent to which the council is meeting its performance requirements.
- There is a cost to a Local Authority for holding statutory peer assessments.
- The council is responsible for identifying panel assessors, commissioning the panel to undertake the assessment, and meeting any associated costs. At this time the actual costs are unknown.

- **Duty to respond to a panel performance assessment report**

- A council must prepare a response to each panel performance assessment report, setting out the extent to which it accepts the conclusions in the report, the extent to which it intends to follow any recommendation in the report, and any actions the council intends to take to increase the extent to which it is meeting the performance requirements.

Performance and Governance

- There are other provisions within Part 6 of the Bill such as powers for the Auditor General for Wales to carry out special inspections of a council; powers for the Welsh Ministers to provide support and assistance to a council with a view to improving its performance; and powers for the Welsh Ministers to intervene in a council which is not, or may not be, meeting the performance requirements.
- There is also a Socio-economic Duty, which will come into force on 31 March 2021. This duty will require principal councils, when taking strategic decisions such as ‘deciding priorities and setting objectives’, to consider how their decisions might help to reduce the inequalities associated with socio-economic disadvantage - driving better outcomes on people’s lives and experiences through better decision making and further contributing towards our shared goal of becoming “a more equal Wales”.

Implementation, Timescales & Next Steps

Funding, Timelines and Guidance

Funding

- The Welsh Government has committed to providing support and funding for some aspects of the Bill's implementation, including recently announced £500,000 to support digital democracy and potential set-up costs to support Corporate Joint Committees.
- The Minister has also agreed to provide improvement support to authorities through the WLGA, for example in supporting new councillor duties, public participation duties, statutory self assessments and panel assessments.

Timelines

- It is anticipated that the Bill will receive Royal Assent in January 2021.
- The 'Coming into Force' provisions of the Bill are complex, with some provisions coming into force within days of Royal Assent, others within two months and the majority via Ministerial statutory instrument.
- WLGA officials are liaising with the Welsh Government to develop a clear outline timetable for implementation for local authorities.
- An updated and more detailed timeline will be shared in the coming weeks.

Guidance

- The Minister has expressed her intention to engage local government in the drafting of regulations as well as further statutory guidance.

- **Consultation Deadlines**
 - CJs – 4th January 2021
 - Performance and Governance – 3rd February 2021
- **Timelines**
 - It is anticipated that the Bill will receive **Royal Assent in January 2021**
 - **CJC regulations** will be introduced in the Senedd during **February-April 2021**, for commencement in the summer (and first meeting of CJs planned by end of September 2021)
 - **Remote attendance** and related matters will be commenced from **April 2021** (when the current emergency coronavirus meeting regulations end)
 - **Performance and governance** arrangements will be commenced from **April 2021** (with the final performance report from the 2009 Measure published by 31st October 2021)
 - Most of the **electoral reforms** will be introduced in time for implementation at the **2022 local elections**
 - The **power of general competence, public participation duties, panel performance assessments broadcasting of meetings and new councillor duties** will apply from the **2022 local elections**
 - The **first self-assessment reports** will be prepared on the financial year 2021-22, and published early in the **2022-23 financial year**

Next Steps

Cabinet Reports 21st December:

- Overview Report & Council Action Plan for Implementation
- CJC Consultation Response
- Part 6 Performance & Governance Consultation Response