

Meeting of:	Standards Committee
Date of Meeting:	Thursday, 23 January 2020
Relevant Scrutiny Committee:	No Relevant Scrutiny Committee
Report Title:	Local Government and Elections (Wales) Bill
Purpose of Report:	To provide the Standards Committee with details of the key proposals of the Local Government and Elections (Wales) Bill in so far as they directly impact on the work of the Standards Committee.
Report Owner:	Ms. D. Marles, Monitoring Officer / Head of Legal and Democratic Services
Responsible Officer:	Mrs. K. Bowen, Principal Democratic and Scrutiny Committee Services Officer
Elected Member and Officer Consultation:	This report does not involve any consultation with other parties at this time
Policy Framework:	This is a matter for the Standards Committee
Executive Summary:	<ul style="list-style-type: none"> To provide the Committee with an overview of the forthcoming Local Government and Elections (Wales) Bill in so far as it directly impacts on the work of the Standards Committee.

Recommendations

1. T H A T the Standards Committee notes the contents of the report.
2. T H A T a future update report on the details of the finalised Bill, once known, be presented to a future meeting of the Committee.

Reason for Recommendations

1&2 To apprise Members of the Committee.

1. Background

- 1.1 The Local Government and Elections (Wales) Bill was presented in November 2019 to the National Assembly for Wales with the intention to reform and strengthen local government and improve electoral arrangements.
- 1.2 The Bill is a significant and substantial piece of legislation at 176 pages and 683 pages of accompanying documents, including explanatory memorandum and regulatory impact assessment. It is anticipated that subject to successful passage through the Assembly, the Bill will receive Royal Assent by the end of the Summer of 2020 with some provisions being commenced the day following Royal assent and others being introduced at the start of the 2022 Municipal term.

2. Key Issues for Consideration

- 2.1 For Members' information the proposals in the Bill have far reaching implications and include provisions concerning:
 - **Local Government Electoral arrangements**
 - **Disqualification Criteria to Stand as a Councillor**
 - **Governance Arrangements, Chief Executives, Local Authorities Executive, Standards Committees and Town and Community Councils**
 - **Collaboration/Mergers**
 - **Public Engagement**
 - **Finance and Miscellaneous Reforms**
 - **Renaming of Audit Committee and Terms of Reference amendments**
 - **Local Authority Executives, Members, Officers and Committees.**
- 2.2 Under Part 4 of the Bill, Clauses 67, 68 and 69 refer specifically to areas that will directly impact on the work of the Standards Committee as follows:
 - Duties of leaders of political groups in relation to standards of conduct (Clause 67)
 - Duty of standards committee to make annual report (Clause 68)
 - Certain investigations by the Public Services Ombudsman for Wales (Clause 69).

2.2.1 Clause 67 amends the Local Government Act 2000 to include at Section 52(A):

(1) A leader of a political group consisting of members of a county council or county borough council in Wales –

(a) must take reasonable steps to promote and maintain high standards of conduct by the members of the group, and

(b) must co-operate with the council's standards committee (and any sub-committee of the committee) in the exercise of the standards committee's functions.

(2) In complying with subsection (1), a leader of a political group must have regard to any guidance about the functions under that subsection issued by the Welsh Ministers.

(3) The Welsh Ministers may by regulations make provision for the purposes of this section about the circumstances in which –

(a) members of a county council or county borough council in Wales are to be treated as constituting a political group;

(b) a member of a political group is to be treated as a leader of the group.

(4) Before making regulations under subsection (3), the Welsh Ministers must consult such persons as they think appropriate."

The Bill at Clause 67 also proposes that a standards committee of a county council or county borough council in Wales will also have the following specific functions –

(a) monitoring compliance by leaders of political groups on the council with their duties under section 52A(1), and

(b) advising, training or arranging to train leaders of political groups on the council about matters relating to those duties."

2.2.2 Clause 68 imposes a duty on standards committee to make an annual report as follows:

(1) As soon as reasonably practicable after the end of each financial year, a standards committee of a relevant authority must make an annual report to the authority in respect of that year.

(2) The annual report must describe how the committee's functions have been discharged during the financial year.

(3) In particular, the report must include a summary of -

- (a) what has been done to discharge the general and specific functions conferred on the committee by section 54 or 56;
- (b) reports and recommendations made or referred to the committee under Chapter 3 of this Part;
- (c) action taken by the committee following its consideration of such reports and recommendations;

(4) An annual report by a standards committee of a county council or county borough council in Wales must include the committee's assessment of the extent to which leaders of political groups on the council have complied with their duties under section 52A(1) during the financial year.

(5) An annual report by a standards committee of a relevant authority may include recommendations to the authority about any matter in respect of which the committee has functions.

(6) A relevant authority must consider each annual report made by its standards committee before the end of 3 months beginning with the day on which the authority receives the report.

(7) The function of considering the report may be discharged only by the relevant authority (and accordingly is not a function to which section 101 of the Local Government Act 1972 applies).

(8) In this section "financial year" means a period of 12 months ending with 31 March."

2.2.3 Clause 69 links to Schedule 8 of the Bill and concerns certain investigations by the Public Services Ombudsman for Wales.

Schedule 8 of the Bill makes amendments to the 2000 Act and other Acts, about investigations by the Public Services Ombudsman for Wales concerning failures to comply with a code of conduct.

2.2.4 Of particular note, Schedule 8 provides in part -

"69A Possible conflict of interest in an investigation

(1) If subsection (2) or (4) applies in a case involving a member or coopted member (or former member or co-opted member) of a relevant authority, the Public Services Ombudsman for Wales ("the Ombudsman") must exercise the power in paragraph 14 of Schedule 1 to the Public Services Ombudsman (Wales) Act 2019 to delegate -

- (a) the decision as to whether to investigate the case under section 69, and
- (b) any investigation of the case.

(2) This subsection applies if at any time within the period of five years ending with the date mentioned in subsection (3) the Ombudsman was -

- (a) a member,
- (b) a member of a committee, sub-committee, joint committee or joint sub-committee, or
- (c) an officer,

of the relevant authority concerned.

(3) The date is -

- (a) if the case is within section 69(1)(a), the date on which the Ombudsman received the written allegation, or
- (b) if the case is within section 69(1)(b), the date on which the Ombudsman received the written allegation investigated under section 69(1)(a).

(4) This subsection applies if the Ombudsman considers that the Ombudsman has, or is likely to have, an interest in the matters which may be investigated or the outcome of any investigation.

(5) If subsection (4) applies the Ombudsman must disclose the nature of the interest to the person to whom any investigation under section 69 would or does relate, and to any person who has made an allegation as described in section 69(1)(a).

(6) If the Ombudsman makes a decision as to whether to investigate a case, or investigates a case, in contravention of subsection (1), that contravention does not affect the validity of anything done by the Ombudsman.

69B Investigation procedure

(1) If the Ombudsman conducts an investigation under section 69, the Ombudsman must give the person to whom the investigation relates an opportunity to comment on whether that person has failed to comply with the code of conduct of the relevant authority of which that person is or was a member or co-opted member.

(2) An investigation must be conducted in private.

(3) Subject to subsections (1) and (2), the procedure for conducting an investigation is that which the Ombudsman thinks appropriate in the circumstances of the case.

(4) The Ombudsman may, among other things -

- (a) make any inquiries which the Ombudsman thinks appropriate;
- (b) determine whether any person may be represented in the investigation by an authorised person or another person.

(5) In subsection (4) “authorised person” means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act).

(6) The Ombudsman may pay to the person (if any) who made an allegation as described in section 69(1)(a) and to any other person who attends or supplies information for the purposes of the investigation -

- (a) sums in respect of the expenses properly incurred by them, and
- (b) allowances to compensate for the loss of their time.

(7) The Ombudsman may attach conditions to payments under subsection (6).

(8) The carrying out of an investigation under section 69 does not affect -

- (a) the validity of any action taken by a relevant authority, or
- (b) any power or duty of a relevant authority to take further action in respect of any matter under investigation.

69C Information, documents, evidence and facilities

(1) The Ombudsman may require a person the Ombudsman thinks is able to supply information or produce a document relevant to an investigation under section 69 to do so.

(2) The Ombudsman has the same powers as the High Court in relation to -

- (a) the attendance and examination of witnesses (including the administration of oaths and affirmations and the examination of witnesses abroad), and
- (b) the production of documents.

(3) The Ombudsman may require a person the Ombudsman thinks is able to supply information or produce a document relevant to an investigation to provide any facility the Ombudsman may reasonably require.

(4) The Ombudsman may require the relevant authority concerned to provide any facility the Ombudsman may reasonably require.

(5) Subject to subsection (6), no person may be compelled to give any evidence or produce any document which the person could not be compelled to give or produce in civil proceedings before the High Court.

(6) The Crown is not entitled to any privilege in relation to the production of documents or the giving of evidence that would otherwise be allowed by law in legal proceedings.

(7) Where an obligation to maintain secrecy or other restriction on the disclosure of information obtained by or supplied to persons in Her Majesty's service has been imposed by an enactment or a rule of law, the obligation or restriction does not apply to the disclosure of information for the purposes of the investigation.

69D Obstruction and contempt

(1) If the Ombudsman is satisfied that the condition in subsection (2) is met in relation to a person, the Ombudsman may issue a certificate to that effect to the High Court.

(2) The condition is that the person -

(a) without lawful excuse, has obstructed the discharge of any of the Ombudsman's functions under this Part, or

(b) has done an act in relation to an investigation under section 69 which, if the investigation were proceedings in the High Court, would constitute contempt of court.

(3) But the condition in subsection (2) is not met in relation to a person merely because that person has taken action such as is mentioned in section 69B(8).

(4) If the Ombudsman issues a certificate under subsection (1), the High Court may inquire into the matter.

(5) If the High Court is satisfied that the condition in subsection (2) is met in relation to the person, it may deal with that person in the same manner as it may deal with a person who has committed contempt in relation to the High Court.

69E Disclosure of information

(1) This section applies to information obtained in the exercise of the Ombudsman's functions under this Part by -

(a) the Ombudsman;

- (b) a member of the Ombudsman’s staff or other person acting on the Ombudsman’s behalf;
- (c) a person assisting the Ombudsman.

(2) The information may be disclosed only -

- (a) for the purposes of the Ombudsman’s functions under -
 - (i) Chapter 3 or 4 of this Part;
 - (ii) Part 3 or 5 of the Public Services Ombudsman (Wales) Act 2019;
- (b) for the purposes of the functions of the Adjudication Panel for Wales, including the functions of its President, Deputy President and tribunals, under Chapter 4 of this Part;
- (c) for the purposes of criminal proceedings or the investigation of a criminal offence;
- (d) if the disclosure is made to the Auditor General for Wales for the purposes of the Auditor General’s functions under Part 2 of the Public Audit (Wales) Act 2004;
- (e) if the disclosure is made to the Electoral Commission for the purposes of any of its functions.

Clause 69F provides power for the Welsh Ministers to amend this Chapter or make further or different provisions.

Next Steps

- 2.3** The Standards Committee will be provided with further updates on the transition of the Bill as appropriate.

3. How do proposals evidence the Five Ways of Working and contribute to our Well-being Objectives?

- 3.1** Standards are an implicit requirement to the successful achievement of the Council's corporate priorities.

4. Resources and Legal Considerations

Financial

- 4.1** None as a direct result of this report. It is also unclear at this stage how much the Local Government and Elections (Wales) Bill will cost the Authority. The total cost of the Bill's provision is expected to be around £17.2m being spread over 10 years, the majority to fall to Welsh Government with around £3m falling to local government.

Employment

- 4.2** None as a direct result of this report.

Legal (Including Equalities)

4.3 None as a direct result of this report.

5. Background Papers

Local Government and Elections (Wales) Bill