



Llywodraeth Cymru
Welsh Government

Draft Local Government (Wales) Bill

Draft Explanatory Memorandum
Incorporating the Regulatory Impact
Assessment and Explanatory Notes

November 2015

DRAFT LOCAL GOVERNMENT (WALES) BILL

Explanatory Memorandum to the Draft Local Government (Wales) Bill

This Explanatory Memorandum has been prepared by the Education and Public Services Group of the Welsh Government and is published as part of the consultation on this Draft Bill.

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Description

1. The provisions of the Draft Local Government (Wales) Bill are intended to establish new Counties and their Councils by the merger of two or more existing County or County Borough Councils and to establish a new and reformed legislative framework for Local Government democracy, accountability, performance and finance. The provisions of the Draft Bill will also establish a statutory Public Services Staff Commission.

2. Legislative background

2. The National Assembly for Wales (“the Assembly”) has the legislative competence to make provisions in the Draft Local Government (Wales) Bill under Part 4 of the Government of Wales Act 2006 (GOWA 2006). The relevant provisions of GOWA 2006 are set out in section 108 and Schedule 7.
3. Paragraphs 2, 3, 5, 6, 7, 9, 12, 14, 15, 16 and 19 of Part 1 of Schedule 7 to GOWA 2006 set out the relevant subjects which give the Assembly legislative competence to make the provisions in this Bill. The relevant paragraphs are reproduced below:

Ancient monuments and historic buildings

2 Archaeological remains. Ancient monuments. Buildings and places of historical or architectural interest. Historic wrecks.

Culture

3 Arts and crafts. Museums and galleries. Libraries. Archives and historical records. Cultural activities and projects.

Education and training

5 Education, vocational, social and physical training and the careers service. Promotion of advancement and application of knowledge.

Environment

6 Environmental protection, including pollution, nuisances and hazardous substances. Prevention, reduction, collection management, treatment and disposal of waste. Land drainage and land improvement. Countryside and open space. Nature conservation and sites of special scientific interest. Protection of natural habitats, coast and marine environment (including seabed). Biodiversity.

Fire and rescue services and fire safety

7 Fire and rescue services. Promotion of fire safety otherwise than by prohibition or regulation.

Health and health services

9 Promotion of health. Prevention, treatment, Provision of health services, including medical, dental, ophthalmic, pharmaceutical and ancillary services and facilities, Clinical governance and standards of health care, Organisation and funding of national health service.

Local Government

12 Constitution, structure and areas of local authorities. Electoral arrangements for local authorities. Powers and duties of local authorities and their members and officers. Local government finance.

“Local authorities” does not include police authorities.

Public Administration

14 Equal opportunities in relation to equal opportunity public authorities.
Access to information held by open access public authorities.

Social welfare

15 Social welfare including social services. Protection and well-being of children (including adoption and fostering) and of young adults. Care of children, young adults, vulnerable persons and older persons, including care standards.

Sport and recreational activities

16 Sport and recreational activities.

Water and flood defences

19 Water supply, water resources management (including reservoirs), water quality and representation of consumers of water and sewerage services.
Flood risk management and coastal protection.

4. None of the provisions of the Draft Bill falls within any of the exceptions specified in Part 1 of Schedule 7 to GOWA 2006, or apply otherwise than in relation to Wales, or confer, impose, modify or remove (or give power to confer, impose, modify or remove) functions exercisable other than in relation to Wales, or breach any restrictions in Part 2 of Schedule 7, having regard to any exception in Part 3 of that Schedule from those restrictions.

3. Purpose and intended effect of the legislation

Background: Local Government Reform

5. The Programme for Government sets out the Welsh Government's Action Plan for the fourth Assembly term. Chapter 2 of the Programme for Government introduced commitments which aim to support continuous improvement in public services.
6. One of these commitments was to establish the Commission on Public Service Governance and Delivery. The Commission, established in April 2013, was remitted to produce an independent report on how public services in Wales are governed and delivered now, how this needs to change in order to meet the needs of people today, and how to build a sustainable basis for the future.
7. The Commission's report, published in January 2014¹, contained a series of recommendations for action. It made a compelling argument for radical change to improve the ability of public services to respond to growing challenges. The recommendations were presented as a package, covering a range of areas including action to:
 - streamline delivery arrangements and reduce complexity;
 - generate the scale and capability to sustain and improve services;
 - strengthen the governance, scrutiny and delivery of services;
 - develop the right leadership, culture and values for public services; and
 - improve the performance and performance management of services.
8. The Commission concluded the public sector in Wales was too crowded and many public organisations were too small. It found this meant interrelationships were too complex, both formal structures and less formal partnerships and collaborative arrangements. Whilst some small public organisations in Wales may perform well (and some large organisations may perform badly), the smaller ones faced multiple and severe risks to governance and delivery which were likely to get worse in the medium term. Among its recommendations, the Commission stated the current 22 County or County Borough Councils should be combined by merging existing County or County Borough Councils to create new Councils and not by re-drawing boundaries. The Commission presented four options for merger, creating 12, 11 or 10 new Councils.
9. In July 2014, the Welsh Government responded to the Commission on Public Service Governance and Delivery's report through the publication of *Devolution, Democracy and Delivery – Improving public services for people in Wales*.² This accepted the Commission's recommendation for a

¹<http://wales.gov.uk/topics/improvingservices/public-service-governance-and-delivery/report/?lang=en>

²<http://gov.wales/topics/improvingservices/devolution-democracy-delivery/?lang=en>

reduction in the number of County or County Borough Councils in Wales through a process of merger.

10. In July 2014, the Welsh Ministers also published the *Devolution, Democracy and Delivery White Paper – Reforming Local Government*,³ which stated the Welsh Ministers' intention to introduce legislation into the National Assembly for Wales to deliver Local Government reform.
11. The White Paper indicated the Welsh Government's preferred Option 1 of the Commission's recommendations for Council mergers i.e. to reduce the number of County or County Borough Councils from 22 to 12.
12. Within the Paper, the Welsh Ministers noted the Commission's argument of the principles for merger: the boundaries of merged County or County Borough Councils should support integrated service delivery through aligning with Local Health Board and Police Force boundaries and the reforms should be based on mergers to avoid the upheaval involved in splitting existing County or County Borough Councils. The Welsh Ministers, in keeping with these principles, stated their intention any new Local Government Area should be based upon the merger of two or more whole existing Local Government Areas.
13. The White Paper, however, acknowledged some County or County Borough Councils had suggested they might prefer alternative merger configurations. The Welsh Ministers indicated they remained open to possible alternatives, but any alternative proposal would need to be backed by evidence and supported by all the existing County or County Borough Councils directly and indirectly affected.
14. In addition to outlining the Welsh Ministers' preferred option for mergers, the White Paper provided details of the plan to deliver the full programme of mergers.
15. The White Paper acknowledged reducing the number of Councils through a process of mergers avoids many of the complexities and challenges which would be associated with a redrawing of boundaries, but nonetheless represents a significant undertaking. The Welsh Ministers considered there was insufficient time to develop, plan and legislate for a full programme of mergers before the next National Assembly elections in May 2016. The White Paper therefore detailed the Welsh Government's intention to publish a Draft Bill (this Draft Bill) for consultation in the autumn of 2015, which would set out the intentions for merging County or County Borough Councils and the wider reform of Local Government.
16. The White Paper also outlined the Welsh Government's commitment to support and facilitate those County or County Borough Councils who wished to begin a voluntary early process of merger, through making

³<http://gov.wales/consultations/localgovernment/white-paper-reforming-local-government/?lang=en>

specific legislative provision, by way of a first Local Government (Wales) Bill.

17. The *Invitation to Principal Local Authorities to Submit Proposals for Voluntary Mergers*⁴ was issued in September 2014. It reiterated the preference for Option 1 of the Commission's recommendations for County or County Borough Councils' mergers, but noted Ministers would be willing to consider alternative proposals from Councils to create a new Council by seeking to group together into larger configurations than envisaged in 'Option 1'.
18. Councils wishing to merge voluntarily were invited to submit detailed expressions of interest by November 2014 and fully developed cases for merger by June 2015. Three expressions of interest were received, which were considered against set criteria. On 25 January 2015, the Minister for Public Services confirmed the decision not to pursue any of the expressions of interest. To date no further expressions of interest or cases for merger have been submitted. The deadline for applications under the first Bill is 30 November 2015.
19. The first Local Government (Wales) Bill was introduced into the Assembly on 26 January 2015, and was passed by the Assembly on 20 October. The legislation will enable preparations to be made for the programme of Local Government mergers and reform. The legislation puts in place safeguards to discourage and counter activities by existing County or County Borough Councils which might bring reputational or financial harm on any county councils created by future merger. It also amends provisions of the Local Government (Wales) Measure 2011 and the Local Government (Democracy) (Wales) Act 2013 to ensure the effective operation of those statutes.
20. A second White Paper published in October 2014 set out proposals for a Public Services Staff Commission to develop and disseminate good practice in workforce arrangements across public services.⁵ The Staff Commission was established on a non-statutory basis in September 2015.
21. The third White Paper *Reforming Local Government: Power to Local People*⁶ was published in February 2015. It focused on the internal redesign of Councils to complement and support the structural reform set out in the first White Paper, *Reforming Local Government*. This involves a range of fundamental reforms to ensure strong performance, robust democracy, good governance and effective delivery for communities.

⁴<http://gov.wales/topics/localgovernment/publications/local-authorities-proposals-for-voluntary-mergers/?lang=en>

⁵<http://gov.wales/consultations/improving/public-services-staff-commission-consultation/?lang=en>

⁶<http://gov.wales/consultations/localgovernment/power-to-local-people/?lang=en>

22. On 17 June 2015 the Welsh Government set out its preference for the future configuration of Local Government in Wales.⁷ Two maps were published which show the preference for the future structure in south, mid and west Wales with two options (two or three Local Government Areas) in north Wales.
23. These proposals form the basis of this second Bill, the Local Government (Wales) Bill. This consultation provides the public, the current County or County Borough Councils and others with the opportunity to comment on the proposals, presenting the Welsh Government which 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.

Purpose of the provisions

24. The purpose of the Draft Bill is to establish new Counties by the merger of existing Counties and County Boroughs, to establish a new and reformed legislative framework for Local Government democracy, accountability, performance and finance, and to establish a statutory Public Services Staff Commission. The following sections outline the changes to be made by this Draft Bill. In these sections, a reference to ‘the White Paper’ is a reference to the *Reforming Local Government: Power to Local People* White Paper, unless stated otherwise.

Intended effect of the provisions

Part 1: Local Government Areas and County Councils

(Key references in the Draft Bill: Part 1, Chapters 1 to 4 and Schedules 1 to 5)

Local Government Areas (Chapter 1)

25. The Welsh Government has set out its preference for the future configuration of Local Government in Wales. The Welsh Ministers have stated publicly their guiding principle is that any new Local Government Area will be based on the merger of two or more whole existing Local Government Areas.⁸
26. Section 1 establishes new Counties in Wales from 1 April 2020. The White Paper proposed the new Local Government Areas should be known as ‘Counties’ and the term ‘County Borough’ should no longer be used. Sixty per cent of the online respondents to the consultation agreed. The Bill provides that from 1 April 2020, the Principal Local Government Areas in Wales will be known as Counties.
27. Schedule 1 sets out two alternative proposals for the number of Counties. One proposal envisages eight Counties, the other envisages nine Counties (including Powys in both cases) and they are described by reference to the

⁷ [Welsh Government | Written Statement - The Future of Local Government in Wales](#)

⁸ Referred to as “principal areas” in the Local Government Act 1972

constituent existing Counties and County Boroughs. It is proposed Powys County and its Council will be retained within its existing boundary. This section also provides that the existing Counties and County Boroughs and their Councils (with the exception of the County of Powys and its Council) will cease to exist on 1 April 2020. The Local Government Areas for communities remain unchanged.

28. The make-up of the proposed new Counties is the subject of consultation.

County Councils (Chapter 2)

29. Section 2 provides that the Councils for the new Counties are to be known by the name of the new County followed by 'County Council' or 'Council' (at the discretion of Councils).

30. With the exception of Powys, the proposed new Counties are simply referred to as County 1 etc. in the Tables presented in Schedule 1 to the Draft Bill. The intention is that Shadow Authorities, to be elected in 2019 will determine the names of their new County (in English and Welsh forms). The regulation-making power in paragraph 2(1) of Schedule 1 will enable the Welsh Ministers to give legal effect to the names determined by the Shadow Authorities

31. Sections 3-12 restate, with some modifications, sections 22 to 26 and 74 of the Local Government 1972 Act ("the 1972 Act"). These provide for:

- the election of the chair, vice-chair, presiding member and deputy presiding member of a County Council;
- the "ordinary" election of Councillors and their term of office ("ordinary election" is a term used in legislation for the election of the entire Council at regular intervals); and
- enabling a County Council to change the name of the County for which it is the Council.

32. The modifications include:

- The chair of a County Borough Council is entitled to the title of mayor; the title is not currently available to the chair of a County Council. Section 6 provides that a county council may determine that the chair is to have the title of mayor;
- Section 8 provides that the functions of a deputy presiding member will, subject to the standing orders of the Council, be consistent with the functions of a vice-chair;
- Section 9 provides that, in the event that a Council determines to have a presiding member and deputy presiding member, the chair of the council must have the title of mayor or civic chair as determined by the Council;
- The first elections to the new Councils established by the Draft Bill will be in May 2019 (see section 14). Section 10 provides that from the ordinary elections of Councillors of the new Councils in May 2023, the cycle of elections and the term of

Councillors will be five years. This is to avoid clashes with Assembly and UK Parliament elections which have both been moved to five-year terms.

33. The provision in section 12 is to enable a County Council at any future date to change the name of the County by a resolution passed by at least two thirds of members voting. This function will not be transferred to the Shadow Authorities by way of regulations made by the Welsh Ministers under the Bill and, therefore, will not apply to the first naming of the new Counties.

Establishing the Councils for the New Counties (Chapter 3)

34. The Draft Bill provides for transitional arrangements relating to the establishment of the new County Councils (not including for Powys). Section 14 provides that the first ordinary elections of Councillors for the new Councils will be held on 2 May 2019. Schedule 2 makes provision relating to the first ordinary elections and first meetings of the new Councils. These provisions are necessary so as to ensure the effective operation of the first elections and first meetings of these Councils to accomplish the transition from the current Local Government structure to the new.
35. Section 15 provides that the new County Councils elected at the first elections will be Shadow Authorities from May 2019 to 1 April 2020. On 1 April 2020 the new County Councils will become responsible for the full range of Local Government functions.
36. The functions of the Shadow Authorities, and their funding, during the shadow period will be provided for under regulations made by the Welsh Ministers. The functions transferred will enable them to prepare and plan for their taking over the full range of Local Government functions. The Shadow Authorities will exist and work alongside the Councils they will replace. These regulations will include, for example, the crucial role of each Shadow Authority in relation to the immediate budget and medium term financial plans for the new Council and how those plans will be funded. The Welsh Ministers will have powers to issue guidance to the Shadow Authorities which will include matters such as the Welsh Minister's expectations in relation to financial planning. We will expect this important preparatory work to build on the planning and preparations initiated by Transition Committees. The existing County and County Borough Councils will continue to be responsible for the day-to-day operation and delivery of services in their areas until 1 April 2020. Further provision in relation to Transition Committees and Shadow Authorities is contained in the first Local Government (Wales) Bill (sections 11 to 15, 25 to 30 and 38).
37. Schedule 3, which is introduced by section 16, contains provisions which are necessary to ensure the exercise of finance functions by the new County Councils from 1 April 2020. Firstly, the new Councils will be the "billing authority" for the purposes of raising local tax revenue from domestic and non-domestic properties for the financial year beginning on 1

April 2020. This will enable Shadow Authorities to begin the preparatory work necessary in advance of the financial year beginning on 1 April 2020. This includes enabling Shadow Authorities to set the budget and council tax requirements in readiness for the first financial year (2020-21). By law, this will need to happen before 11 March 2020 to enable Shadow Authorities to issue bills to domestic and non-domestic local tax-payers before the start of the financial year.

38. To enable a smooth transition in respect of billing activities for the new areas, the Draft Bill proposes that the valuation lists for the purposes of council tax and non-domestic rating for the new County Councils will be the amalgamation of existing valuation lists. This is in line with the approach adopted when there have been changes to the structure of Local Government in the past.
39. Further provision is made in relation to the establishment of council funds, the keeping of general and special accounts, and payments to precepting authorities.
40. Section 17 includes the necessary provisions for transferring functions from the abolished County and County borough Councils to the successor County Councils.
41. Schedule 4, which is introduced by section 18, make provision for the transfer of staff, property, liabilities and other transitional requirements. In terms of the transfer of staff, the Transfer of Undertakings (Protection of Employment) Regulations 2006 will apply to staff being transferred under the Bill. This is, however, subject to two exceptions in relation to criminal liability and pensions. The first is to ensure that any criminal liability arising in respect of a contract of employment will be transferred to the new County Councils. The second is to ensure that any accrued rights or liabilities under an occupational pension schemes are transferred so that transferring staff are not disadvantaged.

Miscellaneous Provision (Chapter 4)

42. Section 19 provides the Welsh Ministers with the power to make consequential, supplementary, incidental, transitional or saving provision by regulations. This may include regulations in relation to the transfer of staff, property, rights and liabilities where the default position in the Bill would not be appropriate. Regulations under this section include provision to maintain historic privileges and rights, such as those associated with city and borough status.
43. Section 21 includes consequential amendments to the Local Government Act 1972. There will be other consequential amendments to other legislation arising from this Bill which will be included in the Bill at introduction.
44. Section 21 also introduces Schedule 5 which makes further amendments to the 1972 Act and transitional provision relating to elections in

consequence of the reform of Local Government. Moving to a new Local Government structure, including a period of transition where a Shadow Authority will be in existence, has an impact on the term of office of Councillors. Schedule 5 makes the necessary provisions in relation to elections in consequence of the reform of Local Government. It provides that the last term of office of the Councillors of the abolished Councils will be three years. The last elections to the abolished Councils will be held in May 2017 and the term of office of the Councillors will come to an end on 1 April 2020.

45. The term of office of the Councillors of the new County Councils elected in May 2019 will be four years, coming to an end in May 2023.
46. The period of reform also impacts the elections of Powys County Council even though Powys is not affected by the merger provisions in this Part of the Draft Bill. In consequence of the need to bring the elections in Powys in line with the remainder of Wales, provision is made so that elections in Powys will take place in May 2020 and May 2023. This means Councillors in Powys will serve two three-year terms from the elections of 2017 and 2020.
47. Elections will take place in all the new Counties in 2023. Thereafter elections to all Counties will take place every five years in accordance with section 10.

Part 2: General Power of Competence

(Key references in the Draft Bill: Part 2, Chapters 1 to 2)

The General Power (Chapter 1)

48. There was strong support from respondents to the consultation on the White Paper for County and County Borough Councils to be granted a general power of competence (referred to as 'a general power'). Accordingly, sections 23 to 26 provide County Councils and 'Community Councils with competence' ("qualifying Local Authorities"), with a general power. The restrictions on the use of the general power are in line with similar restrictions placed on councils in England in relation to their use of a general power. Section 27 provides the Welsh Ministers with power to vary the application of the general power, and its exercise, by regulation. The section also enables the Welsh Ministers to, by regulation, repeal or amend existing legislation which obstructs qualifying Local Authorities' use of the general power.
49. The general power will allow qualifying Local Authorities to act in their communities' best interests, generate efficiencies and secure value for money outcomes. They will also be able to raise money by charging for discretionary services and to trade in line with existing powers. In addition, the general power will allow qualifying Local Authorities to engage in activities potentially judged to be outside the remit of well-being power within the Local Government Act 2000 (which will be repealed by the

provisions in section 28). For example, it would enable them to provide certain indemnities and guarantees. It is considered the general power will allow qualifying local authorities to be more innovative, and move away from a position where they have to identify a specific power in order to undertake a particular activity, to one in which it is assumed they can do something unless there is a statutory restriction preventing it.

Community Councils with Competence (Chapter 2)

50. These provisions are aimed at improving the professionalism and competency of the Community Council sector so that it is capable of making a greater contribution to local well-being and community resilience. Community Councils achieving this will be able to make use of the general power of competence. This is the most significant additional power granted to Community Councils since civil parishes were first created in the 1890s and will enable them to be ambitious and innovative.
51. The provisions in section 31 to 33 establish requirements which Community Councils must meet, and pass a resolution that they meet, in order to be considered 'competent' and able to exercise the general power of competence. The conditions are:
- *Democracy*: at least two-thirds of Councillors on a Community Council have been elected (whether at an ordinary election or a by-election);
 - *Capability*: the Community Council must employ a clerk with a relevant professional qualification;
 - *Governance*: the Council has received an unqualified auditor's opinion in respect of its accounts for two consecutive financial years, with the latest opinion having been received within the last 12 months.
52. Being deemed 'competent' will provide other organisations dealing with the Community Council with a degree of confidence that the Council in question has met certain conditions and, therefore, has the knowledge, capability and reliability to 'do business'. There will also be a reputational benefit whereby communities will be able to see their Council is meeting certain standards in the way they are undertaking their functions.
53. Community Councils will be required to assess and resolve whether they have 'competence' at each annual meeting held in the year of an ordinary election. They will remain 'with competence' until the next annual general meeting following an ordinary election. This holds true whether or not they continue to satisfy the competence requirements, unless they pass a resolution to the contrary. A Community Council which ceases to be a Community Council with competence may continue to exercise the general power of competence in relation to any activities begun using the general power of competence.
54. It is our intention to commence the provisions in respect of the general power of competence and Community Councils with competence as soon as possible after Royal Assent.

Part 3: Promoting Access to Local Government

(Key references in the Draft Bill: Part 3, Chapters 1 to 6)

Public Participation in Local Government (Chapter 2)

55. The policy intention is to encourage members of the public to engage with local democracy. The respondents to the White Paper consultation agreed Local Authorities should engage more effectively with residents. The provisions in this chapter provide that new County Councils will be required to promote participation by the public in their decision-making and scrutiny procedures. Authorities will be required to prepare, consult on, publish and review a 'public participation strategy'.
56. The White Paper asked for views regarding engagement about spending priorities. Some of the responses from Local Authorities recognised the positives of effective engagement and a desire to share good practice. This contrasted with other views from Local Authorities that this type of engagement is not always effective and formalising the process is unnecessary. The responses from individuals and other organisations (including many Town and Community Councils) were overwhelmingly in favour of detailed and comprehensive consultation about Local Government spending. The comments suggested a lack of trust between communities and Councils and a perception that consultation is undertaken to ratify decisions which have already been made.
57. The Welsh Government believes full and wide-ranging engagement about how Councils use public money is essential if they are to be transparent, trusted, and truly responsive to the changing needs of their communities. This will become imperative as continuing austerity forces County Councils to make difficult decisions about service delivery.
58. Section 40 puts a duty on County Councils to carry out consultation and engagement activities before formally setting their budget. These provisions work with the other provisions relating to public participation but specific provision is being made for budget-setting processes because they directly affect a much wider range of stakeholders, as well as the whole population of local people.
59. County Councils will be subject to guidance from the Welsh Ministers as to how they facilitate participation.

Community Area Committees (Chapter 3)

60. The provisions in sections 43 to 58 require County Councils to implement an inclusive area-based approach to community governance through the establishment of statutory community area committees in each community area, as defined in the Well-being of Future Generations (Wales) Act 2015. Community area committees will comprise all the County Councillors in the community area, and representation from Community Councils, other public bodies and voluntary bodies. Community area committees are intended to give Councillors and community representatives direct influence over local spending by making an annual statement about local

priorities and objectives. The provisions permit a county council to delegate functions to community area committees.

61. Community area committees will be framed in an inclusive manner, but it is essential they remain within the sphere of democratic governance as committees of the County Council. This will enable Councillors to undertake a more active community leadership role and provide a counterbalance to the power of the Executive, as well as making sure County Councils are in touch with their communities and alive to their aspirations and concerns. This will ensure open and transparent decision-making and enable people to see the difference their involvement in local democracy makes.
62. There is a very clear opportunity for community area committees to forge a strong relationship with the local Public Services Board (PSB). The PSB will have conducted its assessment of well-being across the County Council area by considering the needs of each community area. In so doing, and in shaping and delivering its local well-being plan, we would expect the PSB to engage actively with community area committees so that community priorities are recognised in the preparation of the local well-being plan and the community area committees' actions to improve local well-being are acknowledged in the PSB's annual reports.

Improvement Requests (Chapter 4)

63. Sections 64 to 72 include provisions which give community bodies the power to submit an improvement request to a County Council with the aim of entering a dialogue about how services could be improved. The definition of 'interested bodies' is drawn widely, to include groups working for the benefit of the community, voluntary groups, charities and others, in order to be as inclusive as possible and ensure some communities (of place or interest) are not further disadvantaged by stringent conditions.
64. The procedure sets out that at the end of a period of dialogue, the County Council will set out in a report, to be published on its website, a summary of the discussions and the actions that have been agreed by the interested body and the County Council. The County Council will be required to publish an annual report of all the improvement requests it has received and the changes they have resulted. Both County Council and interested bodies will be expected to hold to the matters they have agreed publicly. We do not believe it would be conducive to good relations between County Councils and community groups or to fostering a culture of working together if we were to impose more heavily prescribed duties on the County Council.
65. Section 70 requires the County Council to establish a complaints procedure relating to improvement requests. The Welsh Ministers may, by regulation, make provision about matters which must be addressed in the complaints procedure. Section 74 includes further regulation making powers for the Welsh Ministers, including in relation to the procedures to

be followed, promotion of improvement requests and support to be provided to interested bodies.

Access to Meetings etc. of Local Authorities (Chapter 5)

66. Section 75 requires the Leader of the Council, at least once a year, to attend a meeting to provide members of the public with the opportunity to meet the Leader in person and ask him or her questions about the operation of the Council.
67. Section 76 requires County Councils to broadcast their meetings which are open to the public electronically as they take place. The broadcast must be available electronically for a reasonable period after the meeting. Councils will be under a duty to have regard to guidance published by the Welsh Ministers. Provisions also enable the Welsh Ministers, by regulations, to impose a similar requirement on Fire and Rescue Authorities and National Park Authorities (and their committees). The Welsh Ministers will also have power to issue regulations and guidance which would address which meetings must not be broadcast.
68. Furthermore, section 77 provides that by regulations, the Welsh Ministers may make provision for the filming and recording of Council meetings by the public. The prohibition of such activities puts councils at loggerheads with the norms of public life and militates against an open and transparent approach. The making of regulations under this section should reduce bureaucracy and administration for the County Council and requires the Council to think about public involvement in all its activities, leading to more joined up and effective involvement.
69. Regulations under section 77 may also apply to the filming etc. of meetings of Community Councils, Fire and Rescue Authorities and National Park Authorities.
70. Section 78 also provides for public participation at Community Council meetings which are open to the public.

Further Duties of County Councils (Chapter 6)

71. Section 37 of the Local Government Act 2000, requires County Councils to adopt a constitution which sets out their standing orders and rules relating to procedures, conduct, and role specifications relating to the governance, administration, finances, commercial and collaborative activities of councils. Their purpose is to enable Councillors, officers, the public and stakeholders to understand how the Council makes decisions and who is responsible for those decisions.
72. The result is County or County Borough Council constitutions in Wales which range from around 250 pages to over 450. While County Council constitutions may need to be lengthy to fulfil the requirements of the legislation, it is questionable whether documents of this length help an ordinary member of the public to understand Local Government decision-

making, or help communicate the values of a County Council to the people it serves.

73. In response to the consultation on the White Paper, 92% of online respondents agreed “Local Authorities should set out in plain language their values and the principles they will use to operate in their constitution”. There was also support amongst the free-form respondents, with many highlighting the need for constitutions to be people instead of process focused.
74. The provisions in section 79 require County Councils to prepare and publish a guide to their constitution which explains in ordinary language the content of their constitution. This will be a layperson’s guide to their constitution, enabling the general public to understand how the County Council operates and makes decisions.
75. Councillors should also be freely accessible to local people. Section 80 requires County Councils to publish the official addresses of each Member of the Council on its website.

Part 4: Functions of County Councils and their Members

(Key references in the Draft Bill: Part 4, Chapters 1 to 8)

Duties on Members of County Councils (Chapter 2)

76. The majority of respondents to the White Paper consultation agreed the roles and responsibilities of Councillors should be defined in legislation. Sections 82 to 86 provide that Members of the new County Councils will be subject to certain statutory responsibilities, as described below.
77. Members of County Councils will be placed under an obligation to attend meetings of the full Council and any Committees of which they are members, and other meetings they would reasonably be expected to attend in the exercise of their functions as Members of the Council, unless they have a good reason.
78. Members will be subject to a requirement to hold regular ‘surgeries’, i.e. sessions held within their wards to which members of their electorates may attend and speak with their Councillor in private.
79. Members will also be subject to a requirement to answer correspondence sent to their official address, unless they have a good reason for not doing so.
80. Members will be required to complete all compulsory training courses. Councils will be enabled to decide what elements of the training and developmental courses made available to members should be compulsory for the Members to complete. The Welsh Ministers will produce guidance to which Councils and their Members should have regard.

81. At present, Members are encouraged to produce annual reports to summarise what they have achieved for local people in the previous year. However, not all do so. Section 86 will make it a requirement that all Members publish an annual report.

Breaches of Duties under Chapter 2 (Chapter 3)

82. Section 87 provides that a person may make a complaint about an alleged failure by a Councillor to abide by the duties set out above to the monitoring officer of that Council. Sections 88 to 93 set out the procedure for handling such complaints. The procedure requires the monitoring officer to refer the matter to the chair of the Standards Committee. If the Monitoring Officer and the chair of the Standards Committee both consider that a matter should not be investigated, no investigation may take place. If either the Monitoring Officer or the chair of the Committee considers a matter should be investigated, the Monitoring Officer must investigate it. After conducting an investigation the Monitoring Officer must provide the Standards Committee of the Council with a report of the investigation. The provisions set out the role of the Standards Committee and the actions it may take if a Councillor has breached a duty.

Further Provision about Duties on Members (Chapter 4)

83. Sections 94 and 95 provide that the Welsh Ministers may by regulation make further provision about the way in which a possible breach of the duties is to be dealt with, and issue guidance which Councillors, Monitoring Officers and Standards Committees must have regard to. Sections 96 and 97 amend the duties on Standards Committee to provide training for Members so that it includes the new duties.

84. Section 98 provides that a leader of a political group of a Council must take reasonable steps to promote and maintain high standards of conduct by the members of the group. This provision supports the policy intention of ensuring the promotion of diversity and combating bullying and harassment amongst Councillors and Council staff. The provisions in Chapter 7 of this Part place a duty on a Standards Committee to make an annual report which will include the Committee's assessment of the extent to which leaders of political groups on the Council have complied with their duties.

Executive of County Councils (Chapter 5)

85. The White Paper sought views on defining the roles and responsibilities of Leaders and Elected Mayors in legislation. Most of the online respondents (73%) agreed with this proposal. Section 99 provides that the Leader of a County Council will have certain responsibilities placed upon them and be given responsibility for setting objectives for the Cabinet and, separately, under section 104, for the Council's Chief Executive.

86. After appointing the Cabinet, the Leader of the Council will be required to set objectives for the Cabinet which must be published. These will be subject to review with objectives capable of being revised at any time. The

Leader will be required to publish an annual report which outlines the Cabinet's progress towards achieving those objectives.

87. Section 100 requires each candidate for the post of Council Leader to produce a written manifesto. The Leader must be given the opportunity to promote their written manifesto at a meeting of the Council prior to the election of the Leader.
88. In the White Paper we consulted on whether there should be a role for deputy Cabinet members, with the aim of broadening the diversity of Executives and giving an opportunity for younger members to gain experience. The majority of respondents were in favour. The provisions in section 101 will enable the appointment of Councillors as 'assistants to the Executive'. However, the Welsh Government believes the present upper limit of 10 on the number of members of the Executive is sufficient, therefore these provisions do not permit assistants to the Executive to be members of the Executive for the purposes of remuneration or voting on decisions of the Executive etc.

Appointment etc. of Certain Chief Officers (Chapter 6)

89. In the White Paper, we consulted on a requirement to appoint a Chief Executive, management of the Chief Executive's performance and a clear separation of the Leader's and Chief Executive's responsibilities, and the status of the role of 'Head of Democratic Services'. The majority of respondents were in agreement with our proposals.
90. As outlined in the White Paper, a County Council must, under the provisions of the Local Government and Housing Act 1989, designate an officer as its 'Head of Paid Service'. That officer is usually also described as the Council's Chief Executive Officer or, on occasion, the Managing Director. However, there is nothing in legislation to require the Head of Paid Service post to be combined with that of the Chief Executive and there is no obligation for a Council to appoint a Chief Executive. In addition, there is no statutory definition of any other duties of a Chief Executive in a County Council.
91. The provisions in section 103 require a County Council to appoint a Chief Executive. The provisions define in law the post of a County Council Chief Executive Officer. This post will encompass the role of 'Head of Paid Service' as well as new duties with regards to performance and improvement. In this way, the Chief Executive becomes clearly accountable both for the management of the Council's staff and also for ensuring the Council's officers carry out the necessary steps to achieve the Executive's policy intentions.
92. Section 104 requires the Leader to set the Chief Executive's objectives for the term of the Council and to review these on an annual basis at a performance review. The objectives will be published. The Leader will be required to prepare a report for the Council on the outcome of the review with the Chief Executive. This will provide for a clear delineation between

the roles of the Council Leader and that of the Council's Chief Executive. The Leader will have responsibility for developing policy and the Chief Executive will be responsible for ensuring the Council's officers carry through these policies.

93. The provisions in section 105 amend the Local Government (Wales) Measure 2011 and the Localism Act 2011 so that the head of Democratic Services is treated as a chief officer.

Overview and Scrutiny Committees and Standards Committees (Chapter 7)

94. We consulted in the White Paper on proposals to make the role of scrutiny within a County Council more effective and to ensure the local community has a greater involvement in the scrutiny of Council policies.
95. Currently, the law permits co-opted members of advisory committees to the Council to have voting rights, but (with some exceptions) it does not permit co-opted members of Scrutiny Committees to have voting rights. The Welsh Government believes this restricts Scrutiny Committees from making the most of the experience and knowledge of experts, service users and under-represented people. The purpose of the provision in section 106 is to enable County Councils to grant voting rights to co-opted scrutiny members more generally. The Draft Bill provides that the Welsh Minister's may by regulations, make provision about the exercise of this new function.
96. Section 22(10) of the Local Government Act 2000 enables the Welsh Ministers to make regulations requiring the provision of information about decisions the Executive have made or intend to make. In England regulations have been made regarding what are commonly known as 'key decisions', that is, decisions which have a significant financial implication or a significant effect on local communities. To date, the Welsh Government has not made such regulations. As we indicated in the White Paper, it is our intention to do so, in order to ensure Scrutiny Committees are given sufficient notice of important decisions before they are made, so they may scrutinise the Executive more effectively. Section 107 amends section 22(10) of the 2000 Act so that regulations may require that Scrutiny Committees and their sub-committees are given such notice.
97. Section 108 of the Draft Bill provides that regulations may require County Councils to establish a Joint Scrutiny Committee. The regulation-making power could be used to require Councils to establish a Joint Scrutiny Committee where services are being provided across those Councils' areas. The purpose of this provision is to ensure effective and efficient scrutiny of services delivered in collaboration.
98. Given the more significant role afforded to Standards Committees under the Draft Bill, it is important they have an opportunity to review their work periodically and report on significant matters they have dealt with and any emerging trends. Under section 109, Standards Committees will be

required after the end of each financial year to make an annual report to the Council describing how the Committee's functions have been discharged during the financial year.

Minor Amendments to other Legislation (Chapter 8)

99. Section 110 makes minor amendments to the Local Government Act 2000 and the Local Government (Democracy) (Wales) Act 2013.

Part 5: County Councils: Improvement of Governance

(Key references in the Draft Bill: Part 5, Chapters 1 to 7)

Duty to Make Arrangements to Secure Good Governance Etc. (Chapter 1)

100. Section 111 provides that County Councils must make and implement governance arrangements for the purpose of securing good governance, accountability and economy, efficiency and effectiveness in the use of their resources. The Welsh Ministers must make regulations about the principles, processes and practices relating to good governance. This new duty is closely linked to the new provisions in this Part concerning assessments and governance reviews (see below) and together they replace the improvement regime established under Part 1 of the Local Government (Wales) Measure 2009 which will no longer apply to Local Authorities.

Corporate Plans (Chapter 2)

101. Consultation responses to the proposal that all County Councils are required to produce a corporate plan were largely supportive. Respondents felt the proposed list of items to be included in a corporate plan was reasonable, but in setting guidance the Welsh Government should not be too prescriptive. The one aspect respondents did not agree with was that the corporate plan should be the preserve of the Chief Executive, instead it should be 'owned' by the Council. The provisions in the section 112 reflect this feedback.

102. Sections 112 to 115 require County Councils to produce a corporate plan for the electoral term, refreshing the document on an annual basis to report, amongst other things, on previous performance. Consulting on and publishing, a corporate plan will be a way for County Councils to discharge a number of their planning and reporting duties under the Well-being of Future Generations (Wales) Act 2015.

103. Included within the corporate plan requirements is a requirement to set out information about a County Council's strategy relating to 'financial affairs and financial planning'. The linked regulation-making and guidance powers are intended to be used to encourage the new Councils to prepare ambitious plans for the delivery of services within their areas which are built on robust and sustainable resource plans. It is intended that County Councils will be required to prepare and publish financial plans as part of the corporate plan, having regard to guidance issued by the Welsh

Ministers on the principles and components of meaningful and strategic financial planning, including strategies for holding and using financial reserves.

Assessments of Governance Arrangements (Chapter 3)

104. The responses to the White Paper consultation with regards to self assessment and peer assessment were supportive. Concerns were raised, however, about the burden of conducting a biennial peer assessment. County and County Borough Councils and the Welsh Local Government Association (WLGA) emphasised the benefits of peer assessment being sector-led. The Draft Bill reflects changes we have made to this proposal following feedback.
105. The basis for self/peer/combined assessments will be the County Council's compliance with its 'governance arrangements duty' (see paragraph 100). It is possible that elements of the CIPFA/Solace *Delivering Good Governance in Local Government: Framework*⁹ could be adopted (by regulations made by the Welsh Ministers) within the principles, processes and practices relating to good governance etc. with which a County Council would need to comply in making its governance arrangements.
106. Section 117 requires each County Council to undertake an annual self assessment. The self assessment should be used by the County Council to consider and set out what action, if any, they will undertake to improve their governance arrangements.
107. Sections 118 to 121 require each County Council to undertake a peer assessment at least once per election cycle and set out the procedure to be followed. Following a peer assessment, the County Council should consider and set out what action, if any, they will undertake to improve their governance arrangements.
108. County Councils will be required to publish their self assessments and peer assessments as well as their responses. The County Council's Corporate Governance and Audit Committee will be required to consider these responses and provide constructive challenge. Self and peer assessment reports will be public documents and will be available to the relevant regulators. This will help inform the regulators' work programmes. The relevant regulators are Estyn, the Care and Social Services Inspectorate Wales and the Auditor General for Wales.
109. Sections 117 and 122 enable the Welsh Ministers by regulation to set out the form and content of self assessment and peer assessment reports, including when and how they are to be published.

⁹ <http://www.cipfa.org/policy-and-guidance/publications/d/delivering-good-governance-in-local-government-framework>

110. Online responses to the White Paper proposals regarding an external assessment of individual County Councils' governance arrangements were broadly supportive. There was limited discussion regarding these proposals in free-form responses. The WLGA and those County or County Borough Councils that did respond had concerns about the burden of a biennial 'health check'. Following further discussions with the relevant regulators, the Welsh Government accepts this argument and the Draft Bill provides for a less prescriptive regime of combined assessments.

111. Whilst sections 123 to 126 require that the relevant regulators collaborate to produce a combined assessment of each County Council's performance in relation to its 'governance arrangements duty', we asked the regulators to consider how this might work in practice. The system they propose includes:

- the regulators to review annually the corporate 'health' of each County Council drawing on existing information, such as audit and inspection reports, self assessments and peer reviews;
- a discussion would take place with each County Council to discuss any emerging findings;
- the regulators would then produce a combined assessment which would be issued to each County Council and copied to the Welsh Ministers, summarising emerging issues and the discussion held with the County Council;
- County Councils would then need to consider the findings and decide if any action was required.

112. The regulators would use the information provided by the combined assessments to inform their forward work priorities with each County Council and to determine whether any additional work was required. We would expect them to draw on the expertise of other regulators when appropriate, such as the Welsh Language Commissioner and the Public Services Ombudsman for Wales.

113. It is proposed that the onus should be on the Corporate Governance and Audit Committee to challenge the County Council on their proposed action in response to self, peer and combined assessments. Section 126 provides that the Council must make these reports and draft responses available to its Corporate Governance and Audit Committee and have regard to any recommendations made by the Committee. This supports the approach we set out in the White Paper that County Councils must use their internal governance and accountability arrangements to secure opportunities for transformation and improvement.

Governance Reviews and Intervention (Chapter 4)

114. Responses to the White Paper supported retaining powers for the Welsh Ministers to intervene in cases of severe failure of corporate governance. The White Paper proposed that Welsh Ministers should have powers to commission an independent review of the corporate governance arrangements of a County Council prior to any possible intervention. Such

a review would be part of a number of mechanisms that could result in additional support being offered to a County Council or, where necessary, more formal intervention by Welsh Ministers.

115. Sections 128 to 134 set out the arrangements and procedures to be followed for conducting a review of a County Council's compliance with its 'governance arrangements duty'. The reviewer's report must be published within 14 days of being submitted to the County Council and the Welsh Ministers. In preparing its response to the report, the County Council must identify what action it proposes to take and send a copy of its draft response to the Corporate Governance and Audit Committee. The Council must publish its final response within 31 days of receiving the review report, having taken into account any recommendations made by the Corporate Governance and Audit Committee. A copy of the Council's final response must be sent to the Welsh Ministers and published.

116. Sections 135 to 141 provide the Welsh Ministers with powers of intervention following a governance review.

117. Sections 136 to 138 set out the options for intervention by the Welsh Ministers under the Bill:

- directing a County Council to obtain support services (section 136);
- directing a County Council to take specified action (section 137);
- directing that specified functions of the Council be exercised by, for example, commissioners (section 138).

118. Before any intervention, the Welsh Ministers would be required to consult the relevant County Council and the direction must be issued in writing. A County Council is required under section 140 to co-operate with people authorised to carry out an intervention by, for example, providing documents, records and other information. Section 141 provides that the people authorised to carry out an intervention have the right to enter the Council's premises, inspect and copy any records or documents, to access any computer and to require assistance in so doing.

Co-ordination between Regulators (Chapter 5)

119. The aim of the provisions in section 143 is to promote effective working between the relevant regulators in order to minimise the burden on Local Government, enhance transparency for the public, and provide better information to support the work of the Corporate Governance and Audit Committee and Scrutiny Committees of a Council. The provisions will also enable regulations to be made by the Welsh Ministers so as to promote greater sharing of information between the regulators in order to:

- identify and address issues of potential concern with a specific County Council's performance earlier in order to address problems before they escalate;
- identify and address issues of potential concern across Local Government as a whole;

- identify areas of good practice to support sharing between County Councils.

Miscellaneous Provision about Chapters 1 to 5 (Chapter 6)

120. This Chapter makes miscellaneous provision in relation to the exercise of functions under this Part. Section 147 amends the Local Government (Wales) Measure 2009 in order to remove County Councils from the improvement regime in Part 1 of that Measure.

Corporate Governance and Audit Committees (Chapter 7)

121. The White Paper made a number of proposals for strengthening the internal governance and accountability arrangements in County Councils as a consequence of removing Councils from the improvement regime in Part 1 of the Local Government (Wales) Measure 2009. A key proposal was to clarify and strengthen the role of County Council Audit Committees, given the proposal to increase their functions significantly.

122. Section 148 changes the name of the Audit Committee to the Corporate Governance and Audit Committee to reflect this broader role. Section 149 sets out the new functions of the Committee which are to assess and report on the Council's ability (i) to comply with its duty in relation to governance arrangements, (ii) to make progress in relation to the priorities set out in the Council's corporate plan, (iii) to handle complaints effectively, and on the arrangements made for self assessment and peer assessment. Section 150 amends provisions concerning membership of the Committee including a requirement that one third of the membership of the Committee must consist of lay members, one of whom must be appointed as chair.

Part 6: Community Councils

(Key references in the Draft Bill: Part 6, Chapters 1 to 3)

Review of Community Council Arrangements (Chapter 1)

123. The White Paper sought views on proposals to give powers to County Councils to review the structure, role and governance of Community Councils within their areas. As a result of the responses to the consultation and further consideration of the matter, the proposal has been revised. In order to ensure the review is completed by the elections of 2023, the Local Democracy Boundary Commission for Wales will conduct the review (not the County Councils). Sections 153 to 166 set out the procedure for conducting and implementing a review of Community Council arrangements.

124. As originally proposed in the White Paper, the provisions are intended to reform the Community Council sector, resulting in more consistency, and it is anticipated smaller communities may be grouped under common Community Councils, increasing the capacity and capability of the sector to effectively contribute to the achievement of shared public service objectives. These provisions, taken with those relating to the general

power of competence which will be available to Community Councils with competence, will also further the principle of subsidiarity.

125. Section 153 subjects the Local Democracy and Boundary Commission for Wales to a duty to conduct a Community Council review in each of the new counties in Wales, with a view to recommending changes to those arrangements to secure effective and convenient Local Government. The procedure for conducting the review and implementing any changes is set out in sections 153 to 166.

126. Section 163 gives the Welsh Ministers powers to make transitional provision by regulation in relation to matters such as charter trustees and the transfer of staff, property, rights, liabilities and criminal proceedings. In terms of the transfer of staff, the Transfer of Undertakings (Protection of Employment) Regulations 2006 will apply to staff being transferred under implementation orders made under these provisions. This is, however, subject to two exceptions in relation to criminal liability and pensions. The first is to ensure that any criminal liability arising in respect of a contract of employment will be transferred to the new Community Councils. The second is to ensure that any accrued rights or liabilities under an occupational pension schemes are transferred so that transferring staff are not disadvantaged. The new County Councils will be required to implement those changes by the Local Government elections of 2023.

127. Community Councils, County Councils and people who live in areas where there is no Community Council at present will be consulted at each stage of the review. In order to provide the Commission with a stable context in which to conduct the review, section 166 provides that the existing legislation which enables the forming and dissolving etc. of Community Councils will be suspended for the duration of the review and for a period afterwards.

Members of Community Councils to Complete Training (Chapter 2)

128. Sections 167 to 170 provide that County Councils must consider the training needs of Community Councillors and to provide the training. If the training is mandatory, Community Councillors must complete the training.

Community Council Election Dates (Chapter 3)

129. Ordinary elections to Community Councils are usually held on the same day as ordinary elections to the County or County Borough Council in which the communities are located. Where the ordinary elections coincide, section 36(3AB) of the Representation of the People Act 1983 stipulates the polls will be combined and the costs shared between the two elections. This can represent a quite significant saving, particularly for the Community Council, since in many cases the County or County Borough Council will not charge them at all or will seek only a notional reimbursement for the costs of the Community Council election.

130. The provisions in section 171 provide for the postponement of Community Council elections from 2021 to 2023 in consequence of the

reform of Local Government. Elections to all Community Councils will be held in May 2017 and May 2023. The Draft Bill provides that the terms of Community Councillors elected in 2017, including Community Councils in Powys, would for this period be extended so they serve a six-year term. From 2023 Community Council ordinary elections will be held every five years, which will align with the ordinary elections to the County Council in which the communities are located.

Part 7: Workforce Matters

(Key references in the Draft Bill: Part 7, Chapters 1 and 2)

Guidance to Public Bodies on Workforce Matters (Chapter 1)

131. Section 172 provides Welsh Ministers with powers to issue guidance to specified public bodies about workforce matters and those bodies must have regard to it. Section 173 defines ‘workforce matters’ to include workforce planning, recruitment and retention, management and remuneration, training and development, workforce matters in the context of collaboration arrangements, and sharing of information. The specified public bodies are set out in section 174.

Public Services Staff Commission (Chapter 2)

132. Following consideration of the responses to the issues raised in the Public Services Staff Commission White Paper,¹⁰ provisions in the Draft Bill will establish a statutory Public Services Staff Commission to advise the Welsh Ministers on workforce matters in devolved public services in Wales. The statutory Public Services Staff Commission would replace the non-statutory Staff Commission which was established in September 2015. This reflects the comments from some respondents that a Commission established by law would have more status, independence and credibility than a non-statutory one.

133. The existing Commission is established under section 60 of the Government of Wales Act 2006 which permits the Welsh Ministers to do anything they consider appropriate to promote or improve the economic, social or environmental well-being of Wales. Depending on the outcome of continuing developments in the devolution settlement and the basis of the National Assembly’s legislative competence, it is possible that the statutory Public Services Staff Commission will be more restricted in the workforce matters that it may consider in comparison with the non-statutory Staff Commission. The Government will, with its partners, keep this issue under review.

134. In line with our intention that the Commission should not be a permanent body as its purpose is to provide advice on workforce matters during this period of public service reform, section 178 provides that the Commission will cease providing advice from 1 April 2021 and will cease altogether on

¹⁰<http://gov.wales/consultations/improving/public-services-staff-commission-consultation/?lang=en>

1 October 2021 after having submitted a final report to the Welsh Ministers. The Welsh Ministers may by regulations extend the life of the Commission to a date no later than 1 April 2023.

Part 8: General

135. The provisions in Part 8 specify the Assembly procedure for regulations, set out how the different provisions will come into force, and the short title. They also provide a power for the Welsh Ministers to make consequential and transitional provision by regulation.

4. Consultation

136. The First Minister, in his Legislative Statement of July 2011, made a commitment to consult appropriately and engage meaningfully with our partners when developing legislation. In keeping with this commitment, as outlined in Chapter 3, the Welsh Government has published and consulted on three White Papers which have set out the reasons why we are proposing to reform local government in Wales and our proposed approach to the reform.
137. Consultation on the first White Paper *Reforming Local Government* ran from 8 July to 1 October 2014 and received 170 responses. A consultation summary report was published in December 2014, which is available at [Welsh Government | Devolution, Democracy and Delivery White Paper – Reforming Local Government](#). The primary purpose of the White Paper was to set out proposals for the first Local Government (Wales) Bill. It also set out the Welsh Government’s vision for the future of local government in Wales.
138. Fifty two responses were received to the consultation on the second White Paper *Public Services Staff Commission* which ran from 21 October 2014 to 13 January 2015. The consultation focused on a number of issues surrounding the remit, membership, timing, coverage and working arrangements of both a non-statutory Staff Commission and statutory Staff Commission. In the responses, there was general consensus regarding the potential value a Public Services Staff Commission could bring to support mergers of Local Authorities and to consider wider public service workforce issues. The consultation summary report, which was published in March 2015, is available at [Welsh Government | Devolution, Democracy and Delivery White Paper – Public Services Staff Commission](#)
139. Consultation on the third White Paper *Reforming Local Government: Power to Local People* ran from 3 February to 28 April 2015. The primary purpose of the third White Paper was to set out proposals for a Draft Bill (this Draft Bill), to be published for consultation in November 2015, to complete the programme of County or County Borough mergers and reform. The consultation covered a large number of matters, some technical in nature. Three versions of the White Paper were produced to support the consultation, a full version, an Everyday Summary and a Young People’s version. An online consultation questionnaire was developed. This gave respondents an option to address all the issues raised by the White Paper or to complete a shorter version of the consultation questionnaire which focused on the main matters of public interest. Respondents were encouraged to complete the online questionnaire, although the option to submit a written response was also available. The White Paper can be accessed at: [Welsh Government | Devolution, Democracy and Delivery White Paper - Reforming Local Government: Power to Local People](#)
140. A public awareness campaign ‘Councils in Wales are going to change’ ran during the consultation period to raise awareness of the White Paper

consultation, improve understanding about Local Government reform and increase the number of consultation responses from members of the general public. Uniquely, an online ‘Opinion Poll’ was set up, which sought views on key issues. This generated 3,166 responses from a wide age range of people from all Local Government areas in Wales.

141. During the consultation period 38 engagement events were held with Local Authorities and a broad range of stakeholders, attended by over 600 individuals. They were designed to give each stakeholder group an understanding of how they would be affected by the reforms and to help them respond effectively to the consultation.

142. A total of 726 responses were received to the consultation from a wide range of individuals and organisations. 452 respondents completed the full and everyday versions of the online questionnaire. 274 respondents chose to submit free-form responses.

| Respondent Type | No. | % |
|--|------------------|----------|
| Member of the Public | 298 | 41% |
| Elected Member | 49 | 7% |
| County or County Borough Council | 40 ¹¹ | 5% |
| Town / Community Council | 196 | 27% |
| Political Group / Party | 31 | 4% |
| Trades Union | 6 | 1% |
| Third Sector | 20 | 3% |
| Representative body / Professional Body or Association | 26 | 2% |
| Government Agency / Other Public Sector Body | 17 | 4% |
| Other | 43 | 6% |

143. A published summary report of the consultation responses received to the White Paper consultation can be found at: [Welsh Government | Devolution, Democracy and Delivery White Paper - Reforming Local Government: Power to Local People](#)

144. Not all of the proposals discussed in the third White Paper are being taken forward within this Draft Bill. The proposals in the White Paper which have not been included in this Draft Bill are outlined in the Consultation Document which accompanies the publication of this Draft Bill.

¹¹ All principal local authorities responded. Figures include responses from individual County or County Borough Council Departments

5. Power to make subordinate legislation

145. The Draft Bill contains proposed provisions to make subordinate legislation, directions and determinations and to issue guidance. Table 5.1 (subordinate legislation) and Table 5.2 (directions, determinations and guidance) set out in relation to these provisions:

- i) the person upon whom, or the body upon which, the power is conferred;
- ii) the form in which the power is to be exercised;
- iii) the appropriateness of the delegated power; and
- iv) the applied procedure, this is whether the subordinate legislation is subject to affirmative, negative, or no procedure, together with the reasons why that procedure is considered appropriate.

146. The Welsh Government will consult on the content of the subordinate legislation when and where it is considered appropriate to do so.

5.1 Subordinate legislation provisions with the Draft Bill

| Section or Schedule of Bill | Power conferred on | Form | Appropriateness | Procedure | Reason for procedure |
|-----------------------------|--------------------|-------------|---|--|---|
| Section 15(3) | Welsh Ministers | Regulations | Provides the power to specify the functions and funding of Shadow Authorities. Consultation and engagement with existing Councils is needed to determine precisely which functions will need to be exercised by Shadow Authorities. | Negative | These regulations will be temporary in nature and will only relate to existing local government functions to be exercised by the new County Councils during the shadow period. |
| Section 19(1) | Welsh Ministers | Regulations | Provides the power to make supplementary, incidental, consequential, transitional or saving provision. The regulations will deal with matters of detail. | Negative, unless they seek to modify etc. primary legislation, in which case they will be affirmative. | These regulations will be limited to matters for the general purposes of, arising from, or to give full effect, to the provisions of Part 2 of the Draft Bill and will therefore be relatively minor in detail. It is therefore appropriate to follow the negative resolution procedure. In the event that the regulations modify or amend etc. provisions in primary legislation, the affirmative procedure would apply. |

| | | | | | |
|---------------|-----------------|-------------|---|-------------|---|
| Section 20(1) | Welsh Ministers | Regulations | Provides the power to substitute a later date for any date in this Part, other specified provisions in the Draft Bill and sections 2(8) and 39(2) of the Local Government (Wales) Act 2015. Circumstances may dictate that some of the dates in the provisions specified will need to change but whether this power will be exercised and what later date would be specified can not be foreseen at this point. | Affirmative | The regulations would amend primary legislation and therefore it is considered appropriate to follow the affirmative procedure. |
|---------------|-----------------|-------------|---|-------------|---|

| | | | | | |
|---------------|-----------------|-------------|--|---|---|
| Section 27(1) | Welsh Ministers | Regulations | Enables the Welsh Ministers to amend, revoke, repeal or dis-apply existing legislation which they consider prevents local authorities from exercising the general power. It can not be foreseen how qualifying local authorities may wish to use the general power or what legislative obstructions they may face. It is appropriate for the Welsh Ministers to have the flexibility to deal with such obstructions by way of regulations. | Affirmative, unless regulations seek only to amend earlier regulations or secondary legislation (Negative). | Regulations under this section could amend primary legislation and as such it is considered appropriate to follow the Assembly's affirmative procedure in those circumstances. However, it is considered appropriate to follow the negative procedure where the regulations seek only to amend secondary legislation or earlier regulations. |
| Section 27(2) | Welsh Ministers | Regulations | Enables the Welsh Ministers to reduce or remove any overlap between the general power and any existing powers. It can not be foreseen how qualifying local authorities may wish to use the general power or what legislative obstructions they may encounter. It is appropriate for the Welsh Ministers to have the flexibility to deal with such overlaps by way of regulations. | Affirmative, unless regulations seek only to amend earlier regulations or secondary legislation (Negative). | Regulations under this section could amend primary legislation and as such it is considered appropriate to follow the Assembly's affirmative procedure in those circumstances. However, it is considered appropriate to follow the negative procedure where the regulations seek only to amend secondary legislation or to amend earlier regulations. |

| | | | | | |
|---------------|-----------------|-------------|--|--|---|
| Section 27(3) | Welsh Ministers | Regulations | Enables the Welsh Ministers to prevent qualifying local authorities from utilising the general power for specified purposes. It can not be foreseen how qualifying local authorities may wish to use the general power and there may be circumstances in which a constraint on the general power is required. It is appropriate for the Welsh Ministers to have the power to address such circumstances by way of regulations. | Affirmative, unless regulations seek only to amend earlier regulations (negative). | Regulations under this section could have the effect of altering the operation of primary legislation and it is considered appropriate to follow the Assembly's affirmative procedure in those circumstances. However, it is considered appropriate to follow the negative procedure where the regulations seek only to amend earlier regulations (which will have been subject to the affirmative procedure) |
| Section 27(4) | Welsh Ministers | Regulations | Enables the Welsh Ministers to make the exercising of the general power subject to conditions. It can not be foreseen how qualifying local authorities may wish to use the general power and there may be circumstances in which conditions on the exercise of the general power may be required. It is appropriate that the Welsh Ministers should be able to impose such conditions by way of regulations. | Affirmative, unless regulations seek only to amend earlier regulations (negative). | Regulations under this section could have the effect of amending the operation of primary legislation and as such it is considered appropriate to follow the Assembly's affirmative procedure in those circumstances. However, it is considered appropriate to follow the negative procedure where the regulations seek only to amend earlier regulations (which will have been subject to the affirmative procedure) |

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| Section 31(5) | Welsh Ministers | Regulations | Power for Welsh Ministers to prescribe the qualifications a Community Council clerk must hold to meet a condition of competence. The Draft Bill sets out that the clerk must hold a professional qualification for the Council to be with competence but the nature of professional qualifications changes regularly and the primary legislation would need to be changed frequently if the detail was prescribed in the Draft Bill. It is therefore appropriate for the Welsh Ministers to be able to prescribe qualifications in regulation. | Negative | It is technical/procedural in nature and therefore it is considered that the negative procedure is appropriate. . |
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| Section 34(1) | Welsh Ministers | Regulations | Provides the Welsh Ministers with the flexibility to amend the conditions relating to community Councils with competence. The conditions are set out in the Draft Bill but in the light of experience, there may be circumstances in which it would be beneficial to either amend, remove or add competency conditions in the future. Therefore it is considered appropriate for the Welsh Ministers to be able to have a regulation making power in order to address such circumstances. | Affirmative | As the regulation power will enable the primary legislation to be amended by removing, adding or changing a competency requirement or changing the circumstances in which a Council may cease to be competent, it is considered that the affirmative procedure will afford the appropriate level of Assembly scrutiny. |
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| Section 37(4) | Welsh Ministers | Regulations | Power to amend the list of bodies which are authorities connected with the County Council. The Draft Bill sets out those bodies which we consider now to be authorities connected with the County Council but there may be a need to amend the list at some point in the future so it is appropriate for the Welsh Ministers to have the flexibility of amending the list by way of regulations. | Affirmative | Being listed as an authority connected with a County Council could have a significant impact on a public body, therefore appropriate Assembly scrutiny is required. |
| Section 52(7) | Welsh Ministers | Regulations | Power to make further provision about the form and content of a statement of priorities and objectives. The Draft Bill sets out the main requirement to produce a statement. It is not considered the detail of form and content of the statement is of sufficient importance to warrant setting out in the Draft Bill. | Negative | It is technical/procedural in nature and it may be necessary to amend it reasonably often. |

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| Section 57(1) | Welsh Ministers | Regulations | <p>Power to require the making of arrangements regarding, or to restrict, delegation of functions to community area committees. In view of the large number of functions the new Councils will have, provisions regarding or restricting delegation of powers are likely to be detailed and technical and may need to be amended relatively often as existing functions are amended, as new functions are conferred or in light of experience. Accordingly, it is appropriate for the Welsh Ministers to have the flexibility to deal with such matters by way of regulations.</p> | Negative | <p>It is technical/procedural in nature and it may be necessary to amend it reasonably often.</p> |
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| Section 61(1) | Welsh Ministers | Regulations | Power to apply enactments to community area committees. It is appropriate to use regulations to make provision relating to the application of other enactments to community area committees because the provisions are likely to be very technical in nature and are likely to need to be updated relatively often to reflect amendments to existing legislation or the enactment of new legislation. It is appropriate for the Welsh Ministers to have the flexibility to deal with the application of enactments to community area committees by way of regulations. | Negative | It is technical/procedural in nature and it may be necessary to amend it reasonably often. |
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| Section 64(3)(e) | Welsh Ministers | Regulations | The Draft Bill lists categories of bodies that may be interested bodies and is drawn widely in order to be inclusive. However, if there were a need to add to the list, this power enables to additional interested bodies to be specified. It is appropriate for the Welsh Ministers to have the flexibility of adding to the list by way of regulations. | Negative | It is technical/procedural in nature and it may be necessary to amend it reasonably often. |
| Section 64(6)(b) | Welsh Ministers | Regulations | Provides the power to specify additional relevant authorities to whom interested bodies can submit improvement requests. In the first instance, the intention is only County Councils will be subject to improvement requests. It could be, in the future, that it would be desirable to include other public bodies. So it is appropriate for the Welsh Ministers to have the flexibility of making such provision in regulations. | Affirmative | On basis that if used it would apply the duty to public bodies for the first time and that may justify the scrutiny involved in the affirmative procedure. |

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| Section 65(c) | Welsh Ministers | Regulations | Provides the power to impose requirements about how improvement requests are made. The Draft Bill sets out in detail the procedure for managing improvement requests but it could be that, in the light of experience, further detail is required therefore this is an enabling power. | Negative | It is technical/procedural in nature so it may be necessary to amend it reasonably often. |
| Section 69(2) | Welsh Ministers | Regulations | Provides the power to require relevant authorities to publish information about decisions to enter into discussions with bodies who have made improvement requests. The Draft Bill sets out the main requirement. Regulations would be appropriate for making provision on matters of detail and procedure which may need to be amended relatively often. | Negative | It is technical/procedural in nature so it may be necessary to amend it reasonably often. |

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| Section 70(2) | Welsh Ministers | Regulations | Provides the power to provide what matters must be addressed in a relevant authority's complaints procedure. The Draft Bill sets out the main requirement and Councils have established procedures which may well be sufficient. Regulations would only deal with matters of detail, if required. | Negative | It is technical/procedural in nature so it may be necessary to amend it reasonably often. |
| Section 74(1) | Welsh Ministers | Regulations | Provides the power to make further provision about improvement requests. Section 74(2) sets out the main issues regulations would need to address. Regulations would be appropriate to provide for the details of procedure for the matters referred to in section 74(2). It is appropriate for the Welsh Ministers to have the flexibility to deal with such matters by way of regulations. | Negative | It is technical/procedural and it may be necessary to amend it reasonably often. |

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| Section 74(3)(a)-(c) | Welsh Ministers | Regulations | Power to amend or repeal the list of interested bodies, the definition of a voluntary body and to make amendments to this Part in consequence of exercising powers under section 64 or 74 (to alter definitions of or to specify additional interested bodies or relevant authorities). The Draft Bill sets out the Welsh Ministers' intentions but gives them an enabling power to make amendments if necessary in future. In any event, exercise of the power would be subject to the affirmative procedure. | Affirmative | It would alter provision on the face of primary legislation. |
| Section 76(4) | Welsh Ministers | Regulations | Power to specify proceedings of a County Council to which the duty to broadcast electronically does not apply. The Draft Bill sets out the main requirements clearly but there may be a need to provide flexibility to address particular circumstances. | Negative | It is technical/procedural and it may be necessary to amend it reasonably often. |

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| Section 76(7) | Welsh Ministers | Regulations | Power to ensure proceedings of fire and rescue authorities and/or National Park authorities are broadcast electronically. The Draft Bill imposes requirements initially on County Councils but it might be considered appropriate in future to apply similar requirements on the other listed Authorities. This power would enable that to happen. | Negative | It is technical/procedural and it may be necessary to amend it reasonably often. |
| Section 77(1) | Welsh Ministers | Regulations | Power to specify principles of publicity e.g. filming or oral recording. Public access to meetings, as described in this section, has generally worked well with some exceptions. The powers would enable regulations to be made about the matters listed but may require amendment to existing primary legislation. | Affirmative | It would alter provision on the face of primary legislation. |

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| Section 91(3) | Welsh Ministers | Regulations | <p>Power to make regulations about the publicity to be given to reports and recommendations made by monitoring officers after investigating alleged failures by members to comply with the performance duties of members. There may be a need to set out more detail about publicity, for example, so that the public are kept informed and also to protect the rights of Councillors. This is a matter of detail more appropriate for regulations, in the light of circumstances at the time.</p> | Negative | <p>It is technical/procedural in nature and it may be necessary to amend it reasonably often.</p> |
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| Section 93(4) | Welsh Ministers | Regulations | Power to make regulations about the publicity that is to be given to any determination under section 93 (the Standards Committee's determinations) and to any action taken against a member. The Draft Bill sets out the principal requirement for the Monitoring Officer to produce reports and make recommendations about breaches of duties in this part. There may be a need to set out more detail about publicity, for example, to keep the public informed and protect the rights of Councillors. This is a matter of detail more appropriate for regulations in the light of circumstances at the time. | Negative | It is technical/procedural in nature and it may be necessary to amend it reasonably often. |
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| Section 93(5) | Welsh Ministers | Regulations | Duty to make regulations conferring rights of appeal on Members of a County Council against any determination of a standards committee under section 93. The Draft Bill sets out that Members must have a right of appeal but the detailed procedure is more appropriately dealt with in regulations. | Negative | It is technical/procedural in nature and it may be necessary to amend it reasonably often. |
| Section 94(1) | Welsh Ministers | Regulations | Power to make further provision about the way in which a possible failure to comply with a duty imposed by Chapter 2 is to be dealt with. Section 94(2) provides detail about the key matters to be considered but the detail of procedures is more appropriately dealt with in regulations. | Negative | It is technical/procedural in nature and it may be necessary to amend it reasonably often. |

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| Section 98(2) | Welsh Ministers | Regulations | Power to make provision for the purposes of section 52A of the Local Government Act 2000 about the circumstances in which members of a County Council in Wales are to be treated as constituting a political group and in which a member of a political group is to be treated as a leader of the group. The Draft Bill is clear who is intended to be affected by these provisions but the detailed definition of these categories of people is liable to change over time and would more appropriately be dealt with in regulations. | Negative | It is technical/procedural in nature and it may be necessary to amend it reasonably often. |
| Section 106 (2) Inserts paragraph 15 in Schedule 1 to the Local Government Act 2000 | Welsh Ministers | Regulations | Suitable for delegated powers as this enables the Welsh Ministers to make further provision for the procedure which Local Authorities are to follow when deciding whether to grant permission for co-opted members of Overview and Scrutiny Committees to vote. | Negative | The subject-matter is relatively minor in the overall legislative scheme and is technical/administrative in nature. |

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| Section 111(3) | Welsh Ministers | Regulations | Duty to make provision about the principles, processes and practices relating to good governance, including prescribing any code of practice or guidance, whether or not issued by the Welsh Ministers. These provisions, including specifying any code of practice, are liable to change over time and therefore more appropriately dealt with in regulations. | Affirmative | To provide additional security for the Assembly that the principles etc. relating to good governance will be fully considered with the opportunity to debate. The principles etc. will be the most significant part of a local authority's duty to make and comply with governance arrangements, and it is compliance with that duty which will be assessed under the later provisions for self/peer/combined assessments and may be the subject of a governance review under section 128. |
| Section 111(4) | Welsh Ministers | Regulations | Suitable for delegated powers as this enables the Welsh Ministers to make further provision about governance arrangements – as to accountability and as to economy, efficiency and effectiveness in the use of a Local Authority's resources. | Negative | It is technical/procedural in nature and it may be necessary to amend it reasonably often. |

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| Section 112(7) | Welsh Ministers | Regulations | Power to make further provision about what must be included in the corporate plan. The Draft Bill sets out the main matters which must be included in the corporate plan but the requirements on County Councils change regularly over time and an enabling power is required to reflect changing circumstances. | Negative | It is technical/procedural in nature and it may be necessary to amend it reasonably often. |
| Section 113(3) | Welsh Ministers | Regulations | Power to make provision about how and when a corporate plan is to be published. This is a requirement that is likely to change over time and so more appropriate for regulations. | Negative | It is technical/procedural in nature and it may be necessary to amend it reasonably often. |
| Section 117(7) | Welsh Ministers | Regulations | Power to make provision about the form and content of a self assessment report, and when and how it must be published. These are procedural details that are likely to change over time and so more appropriate for regulations. | Negative | It is technical/procedural in nature and it may be necessary to amend it reasonably often. |

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| Section 118(3) | Welsh Ministers | Regulations | Power to make provision about the appointment of panels to carry out peer assessments. These are procedural details that are likely to change over time and so more appropriate for regulations. | Negative | It is technical/procedural in nature and it may be necessary to amend it reasonably often. |
| Section 119(3) | Welsh Ministers | Regulations | Power to amend section 119(1) and (2) in order to change when and how often a peer assessment must be carried out. These are procedural details that are likely to change over time and so more appropriate for regulations. | Negative | It is technical/procedural in nature and it may be necessary to amend it reasonably often. |
| Section 122 | Welsh Ministers | Regulations | Power to make provision about the form and content of a peer assessment report and response, and when and how the report and response must be published. These are procedural details that are likely to change over time and so more appropriate for regulations. | Negative | It is technical/procedural in nature and it may be necessary to amend it reasonably often. |

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| Section 123(3) | Welsh Ministers | Regulations | Power to change the definition of a relevant regulator by amending section 123(2) in order to add or remove any person or function, and to vary the description of a person or function. The Draft Bill sets out the regulators which are currently relevant. This is liable to change in unforeseen ways and so an enabling power is required. | Negative | It is technical/procedural in nature and it may be necessary to amend it reasonably often. |
| Section 127 | Welsh Ministers | Regulations | Power to make provision about when a combined assessment must be carried out, the form and content of a combined assessment report and response, and when and how the report and response must be published. These are procedural details that are likely to change over time and so more appropriate for regulations. | Negative | It is technical/procedural in nature and it may be necessary to amend it reasonably often. |

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| Section 132(6) | Welsh Ministers | Regulations | Power to change the list of people required to assist a reviewer carrying out a governance review by amending section 132(3) to add or remove a person, or to vary the description of a person. These are procedural details that are likely to change over time and so more appropriate for regulations. | Negative | It is technical/procedural in nature and it may be necessary to amend it reasonably often. |
| Section 138(3) | Welsh Ministers | Regulations | Power to amend, repeal, revoke or apply any relevant statutory provision for the purposes of its application in respect of functions exercisable by the Welsh Ministers or their nominee by virtue of a direction under section 138 (1) that specified functions of a County Council be exercised by the Welsh Ministers or a person nominated by them. The circumstances in which an intervention takes place will be different in each case and so it cannot be foreseen what application of statutory provision might be required. | Negative | It is technical/procedural in nature in that the power will only be used where necessary for the purposes of ensuring the effectiveness of a direction under section 138(1). Accordingly any amendment, etc. made by the regulations will be for a limited time only. |

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| Section 143(2) | Welsh Ministers | Regulations | Power to make further provision in respect of the co-ordination of the exercise by relevant regulators of relevant functions. These are procedural details that are likely to change over time and so more appropriate for regulations. | Negative | It is technical/procedural in nature and it may be necessary to amend it reasonably often. |
| Section 157(3) | Welsh Ministers | Regulations | Gives the Welsh Ministers flexibility to set a suitable date by which the Commission must submit its final reports to the County Councils. It is therefore appropriate for the Welsh Ministers to have the flexibility to set such a date by way of regulations. | Negative | The subject matter of these regulations is technical/procedural in nature and just sets a date by which reports must be submitted. |

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| Section 158(1) | County Council | Order | Power to implement recommendations for change to Community Council arrangements in a report of the Local Democracy Boundary Commission, without modifications or with such modifications as agreed with the Commission. The Council will only be able to implement the Commission's recommendations after the Commission has completed its review under the Draft Bill. An order power is necessary to give effect to the recommendations, which do not form part of the Draft Bill. | No Assembly procedure | The order will not be considered by the Assembly as it will be made by the County Council and therefore no Assembly procedure will attach. |
| Section 158(3) | Welsh Ministers | Regulations | Provides the Welsh Ministers with flexibility to set a date by which a County Council order in relation to Community Council arrangements must come into force. This a procedural matter and so appropriate for regulations. | Negative procedure | The subject matter of these regulations is technical/procedural in nature and just sets a date by which an order must come into force. |

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| Section 159(2) | Welsh Ministers | Order | Gives the Welsh Ministers the flexibility to make provision for Community Council arrangements if the Commission does not submit a report containing its final recommendations so that the implementation of the review is not delayed. The circumstances in which such an order might ever need to be made are not known, are not known and, therefore, it is appropriate for the Welsh Ministers to have the power to address such circumstances by way of regulations. | No Assembly procedure | The procedure mirrors that already in place for the implementation of such review recommendations in the Local Democracy (Wales) Act 2013 and the first Local Government (Wales) Bill, which are regarded as “local orders”. As part of the review procedure, the matters to be addressed within the regulations and any recommendations of the LDBCW will be subject to a substantive degree of public consultation. |
| Section 159(6) | Welsh Ministers | Order | Gives the Welsh Ministers the power to vary or revoke an order made under 159(2) where the Commission has not submitted a report containing its final recommendations. The circumstances in which an order might need to be varied cannot be known therefore an enabling power is required. | No Assembly procedure | Orders under section 159(2) are to be regarded as “local orders” and not subject to an Assembly procedure. It is considered appropriate that any orders varying or revoking them should also be considered as local orders and therefore not subject to Assembly procedure. |

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| Section 160(1) | Welsh Ministers | Order | Provides the power to implement the recommendations of the Commission without modification or with such modification as agreed with the Commission if an order has not been made by a Council a specified date. The circumstances in which an order might need to be made cannot be known therefore an enabling power is required. | No Assembly procedure | The procedure mirrors that already in place for the implementation of such review recommendations in the Local Democracy (Wales) Act 2013 and the first Local Government (Wales) Bill, which are considered to be “local orders” having the character of local legislation and not subject to Assembly procedure. |
| Section 162(2) | Welsh Ministers and County Councils | Order | Enables a County Council or the Welsh Ministers (depending on who made the original order) to vary or revoke orders made under section 158(1) and 160(1), including any incidental, transitional, supplemental or transitional provision made under 161(2). The circumstances in which these orders will be made cannot be known in advance therefore an enabling power is required. | No Assembly procedure | Orders by the Welsh Ministers implementing Community Council reviews are to be regarded as “local orders” and not subject to Assembly procedure. It is therefore considered appropriate that any incidental etc. provision should also be regarded as local legislation and therefore not subject to Assembly procedure. Orders made by county councils will not be considered by the Assembly and therefore no Assembly procedure will attach. |

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| Section 163(1) | Welsh Ministers | Regulation | Provides the power to make incidental, consequential, supplemental or transitional provision in relation to orders made under sections 158(1), 159(2) or 160(1). In relation to the Welsh Ministers, the circumstances in which these orders will be made cannot be known in advance therefore an enabling power is required. | Negative procedure, but affirmative procedure if amending, revoking or modifying primary legislation | The subject matter of these regulations will be technical in nature and will not be introducing new policy. Therefore the negative procedure is appropriate, unless the regulations amend primary legislation, in which case the affirmative procedure is considered to afford the Assembly an appropriate level of scrutiny. |
| Section 166(3) | Welsh Ministers | Regulations | Section 166(2) gives the Welsh Ministers a direction power to suspend community applications (to create, merge etc. Community Councils) until a further direction is made. The direction power is only intended to be available for the duration of the Community Council review and implementation period, and for a short period afterwards. This regulation making power enables the Welsh Ministers to repeal the direction making power when it is no longer needed. | Negative | This is a procedural matter relating to local governance and does not introduce new policy. |

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| Section 175(1) | Welsh Ministers | Regulations | Provides the power to add or remove a body from the remit of the Public Services Staff Commission. The list in the Draft Bill is comprehensive but the possible creation or dissolution of public bodies in the future means an enabling power is required. | Negative | The functions of the Staff Commission and Welsh Ministers are on the face of the Bill. The addition of new public bodies would not substantially affect the provision or confer further significant powers on the Welsh Ministers. |
| Section 178(4) | Welsh Ministers | Regulations | Provides the power to amend the date by which subsections (1) to (3) are repealed. The Bill provides for the dissolution of the Commission by a specified date but there may be circumstances in which it would be beneficial to change this date. This is an enabling power but is limited and may not be exercised to extend the life of the Commission beyond 1 April 2023. | Affirmative | An extension to the life of the Public Services Staff Commission would increase levels of Government expenditure in respect of it. |

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| Section 181(1) | Welsh Ministers | Regulations | Provides a power to make supplemental etc. provision in relation to giving full effect to any of the provisions in Parts 2 to 7 of the Draft Bill, apart from Chapter 1 of Part 6. This is a standard regulation making power to make unforeseen consequential changes. | Negative | The subject matter of these regulations will be technical in nature and will not be introducing new policy. |
| Section 183(3) | Welsh Ministers | Order | Power to commence provisions in the Bill which are not already commenced in 183(2). | Negative | The subject matter of these regulations will be technical in nature and will be implementing provisions approved by the National Assembly for Wales. |
| Paragraph 1(2) of Schedule 1 | Welsh Ministers | Regulations | A power to specify the names of the new counties (other than Powys). The determination of the names of the new counties is to be determined by the County Councils as Shadow Authorities. The Welsh Ministers' role is confined to reflecting the name determined by the County Council in the Draft Bill (when enacted). | No procedure | As this is a local matter. |

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| Paragraph 4(9) of Schedule 3 | Welsh Ministers | Regulations | <p>Provides the power to:</p> <ul style="list-style-type: none"> • require assets of a description specified in the regulations falling within a Council fund to be held in a separate fund within the Council fund; and • require any fund of a description specified in the regulations which is established by a new Council to be maintained as a separate fund within its Council fund. <p>The level of detail required is too onerous for including in the Draft Bill.</p> | Negative | This power is technical in nature and subject to change. |
| Paragraph 4(10) of Schedule 3 | Welsh Ministers | Regulations | <p>A power to make provision with respect to the liability of new Councils to make payments from their Council funds in respect of precepts issued under Chapter 4 of Part 1 of the Local Government Finance Act 1992.</p> <p>The level of detail required is not appropriate for inclusion in the Draft Bill.</p> | Negative | This power is technical in nature and subject to change. |

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| Paragraph 4(11) of Schedule 3 | Welsh Ministers | Regulations | <p>Provides the power to make provision for the sharing among a Council and major precepting authorities of an amount equal to all or part of any deduction that falls to be made in calculating the Council's non-domestic rating contribution for a financial year.</p> <p>The level of detail required is too onerous for including in the Draft Bill.</p> | Negative | This power is technical in nature and subject to change. |
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5.2 Powers to make directions and determinations and to issue guidance

| Section or Schedule of Bill | Power conferred on | Form | Appropriateness | Procedure | Reason for procedure |
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| Section 15(5) | Welsh Ministers | Guidance | Power to issue guidance in relation to the exercise of functions by Shadow Authorities. The detail cannot be known at this stage as circumstances may change, including in the light of advice from Councils and Transition Committees. | No Assembly procedure | The power to issue guidance is intended to facilitate the application of the primary legislation. This guidance is largely concerned with process and, as such, to apply an Assembly procedure is not considered appropriate. |

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| Section 35 | Welsh Ministers | Guidance | Power to issue guidance to Community Councils in relation to the competency conditions. Community Councils will require a 'plain English' guide to the legislation. The sections relating to Community Councils with competence contain detailed provision in relation to the competency requirements and it is considered that issuing guidance on those matters would be appropriate to support the Councils in exercising the functions conferred by the provisions. | No Assembly procedure | The power to issue guidance is intended to facilitate the application of the primary legislation. This guidance is largely concerned with process and, as such, to apply an Assembly procedure is not considered appropriate. |
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| Section 40(4) | Welsh Ministers | Guidance | Power to issue guidance to County Councils on consultation on the budget requirement. Sections 40(1) and (2) set out a requirement for Councils to consult on their budget requirement and lists the main people with whom they should consult. It is appropriate for matters of detail and practice in the conduct of consultations to be covered in guidance. | No Assembly procedure | The power to issue guidance is intended to facilitate the application of the primary legislation. This guidance is largely concerned with process and, as such, to apply an Assembly procedure is not considered appropriate. |
| Section 41(1) | Welsh Ministers | Guidance | <p>Power to issue guidance in relation to public participation in Local Government.</p> <p>Section 38(2) sets out the main content of the public participation strategy and section 39 sets out the procedure for consultation and review. The guidance will deal with matters of detail and process and will be subject to periodic revision.</p> | No Assembly procedure | The power to issue guidance is intended to facilitate the application of the primary legislation. This guidance is largely concerned with process and, as such, to apply an Assembly procedure is not considered appropriate. |

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| Section 59 | Welsh Ministers | Guidance | <p>Power to issue guidance relating to community area committees.</p> <p>It is likely that the guidance will be subject to periodic revision. The provisions of Chapter 3 of Part 3 make detailed provision in relation to community area committees. Issuing guidance on those matters would be appropriate to support the bodies and persons on whom functions are conferred in performing their functions.</p> | No Assembly procedure | <p>The power to issue guidance is intended to facilitate the application of the primary legislation. This guidance is largely concerned with process and, as such, to apply an Assembly procedure is not considered appropriate.</p> |
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| Section 73 | Welsh Ministers | Guidance | <p>Power to issue guidance to relevant Authorities on the application of the provisions relating to improvement requests.</p> <p>Guidance will be subject to periodic revision. The provisions of Chapter 4 of Part 3 make detailed provision in relation to improvement requests. Issuing guidance on those matters would be appropriate to support the relevant Authorities in performing their functions.</p> | No Assembly procedure | <p>The power to issue guidance is intended to facilitate the application of the primary legislation. This guidance is largely concerned with process and, as such, to apply an Assembly procedure is not considered appropriate.</p> |
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| Section 76 (5) | Welsh Ministers | Guidance | <p>Power to issue guidance on the broadcasting of the meetings of certain Local Authorities.</p> <p>Councils will benefit from periodic guidance in the context of rapidly changing technology. It would be appropriate to address such matters in the form of guidance, which can be easily updated to take account of new developments.</p> | No Assembly procedure | The power to issue guidance is intended to facilitate the application of the primary legislation. This guidance is largely concerned with process and, as such, to apply an Assembly procedure is not considered appropriate. |
| Section 78 | Welsh Ministers | Guidance | Power to issue guidance to the person presiding over meetings of community councils. Guidance is appropriate to support persons on whom the duty to give members of the public in attendance a reasonable opportunity to make representations is placed in complying with that duty. | No Assembly procedure | The power to issue guidance is intended to facilitate the application of the primary legislation. This guidance is largely concerned with process and, as such, to apply an Assembly procedure is not considered appropriate. |

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| Section 95 | Welsh Ministers | Guidance | <p>Power to issue guidance to Councillors and Standards Committees on the provisions relating to the performance duties of Councillors and handling possible breaches of the duties.</p> <p>Guidance will be subject to periodic revision. Chapters 2 and 3 of Part 4 make detailed provision in relation to the duties placed on County Councillors and the procedures for enforcing those duties. Guidance is appropriate to support Councillors in complying with those duties and persons with responsibility for investigating and enforcing those duties.</p> | No Assembly procedure | <p>The power to issue guidance is intended to facilitate the application of the primary legislation. This guidance is largely concerned with process and, as such, to apply an Assembly procedure is not considered appropriate.</p> |
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| Section 98(2) | Welsh Ministers | Guidance | <p>Power to issue guidance to leaders of political groups on promoting and maintaining high standards of conduct by members of political groups.</p> <p>Guidance will be subject to periodic revision. Guidance is appropriate to support leaders of political group in ensuring compliance with the functions imposed on them.</p> | No Assembly procedure | <p>The power to issue guidance is intended to facilitate the application of the primary legislation. This guidance is largely concerned with process and, as such, to apply an Assembly procedure is not considered appropriate.</p> |
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| Section 102 | Welsh Ministers | Guidance | <p>Power to issue guidance to Local Authorities, Elected Mayors and Executive Leaders about good practice in relation to equality and diversity in respect of executive arrangements in Local Authorities.</p> <p>Guidance will be subject to periodic revision. Guidance is appropriate to support Local Authorities, Elected Mayors and Executive Leaders in determining their executive arrangements and understanding the factors the Welsh Ministers consider are relevant to determining those arrangements.</p> | No Assembly procedure | The power to issue guidance is intended to facilitate the application of the primary legislation. This guidance is largely concerned with process and, as such, to apply an Assembly procedure is not considered appropriate. |
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| Section 104(8) | Welsh Ministers | Guidance | <p>Power to issue guidance to senior Executive Members and County Councils on the setting of objectives for the Chief Executive.</p> <p>Guidance will be subject to periodic revision. Guidance is appropriate to support senior Executive Members and County Councils in exercising the functions involved in setting objectives for Chief Executives.</p> | No Assembly procedure | <p>The power to issue guidance is intended to facilitate the application of the primary legislation. This guidance is largely concerned with process and, as such, to apply an Assembly procedure is not considered appropriate.</p> |
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| <p>Section 135(1) taken together with section 136 (1)</p> | <p>Welsh Ministers</p> | <p>Direction</p> | <p>Power to give an intervention direction to obtain support services.</p> <p>If the Welsh Ministers consider that an intervention direction is necessary or appropriate following a governance review, they may issue a direction to a Council that it must make arrangements for specified support services to be obtained.</p> <p>Directions could only be drafted in the light of the circumstances and matters pertaining to a particular intervention.</p> | <p>No Assembly procedure</p> | <p>This power of direction is only available after the Welsh Ministers have initiated a governance review under section 128 and considered the report produced by that review and the council's response. If the Welsh Ministers consider that an intervention is necessary or appropriate, it will be their judgement (in the light of all the information and advice available to them) as to the type of intervention which is necessary and appropriate and as to the extent to which that direction will have effect – from directing the council to obtain support services (under section 136) to assuming responsibility for functions specified in the direction (under section 138). Any direction will be time-limited. A direction will also be under constant review with Welsh Ministers needing to consider from time to time whether the direction should be revoked or amended. A direction can only be given to the council which is the subject of a governance review: it cannot apply, for example, to all councils. Such directions are not legislative in nature: they are administrative in nature, the intention being to ensure a council's compliance with its duty under section 111.</p> |
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| <p>Section 135(1) taken with section 137 (1)</p> | <p>Welsh Ministers</p> | <p>Direction</p> | <p>Power to give an intervention direction to take specified steps.</p> <p>If the Welsh Ministers consider that an intervention direction is necessary or appropriate following a governance review, they may issue a direction to a Council that it must take specified steps within a specified period.</p> <p>Directions could only be drafted in the light of the circumstances and matters pertaining to a particular intervention.</p> | <p>No Assembly procedure</p> | <p>This power of direction is only available after the Welsh Ministers have initiated a governance review under section 128 and considered the report produced by that review and the council's response. If the Welsh Ministers consider that an intervention is necessary or appropriate, it will be their judgement (in the light of all the information and advice available to them) as to the type of intervention which is necessary and appropriate and as to the extent to which that direction will have effect – from directing the council to obtain support services (under section 136) to assuming responsibility for functions specified in the direction (under section 138). Any direction will be time-limited. A direction will also be under constant review with Welsh Ministers needing to consider from time to time whether the direction should be revoked or amended. A direction can only be given to the council which is the subject of a governance review: it cannot apply, for example, to all councils. Such directions are not legislative in nature: they are administrative in nature, the intention being to ensure a council's compliance with its duty under section 111.</p> |
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| <p>Section 135(1) taken with section 138 (1)</p> | <p>Welsh Ministers</p> | <p>Direction</p> | <p>Power to give a direction that specified functions be performed by the Welsh Ministers or their nominee.</p> <p>If the Welsh Ministers consider that an intervention direction is necessary or appropriate following a governance review, they may issue a direction that specified functions of a County Council are to be exercised by the Welsh Ministers or a person nominated by them.</p> <p>Directions could only be drafted in the light of the circumstances and matters pertaining to a particular intervention.</p> | <p>No Assembly procedure</p> | <p>This power of direction is only available after the Welsh Ministers have initiated a governance review under section 128 and considered the report produced by that review and the council's response. If the Welsh Ministers consider that an intervention is necessary or appropriate, it will be their judgement (in the light of all the information and advice available to them) as to the type of intervention which is necessary and appropriate and as to the extent to which that direction will have effect – from directing the council to obtain support services (under section 136) to assuming responsibility for functions specified in the direction (under section 138). Any direction will be time-limited. A direction will also be under constant review with Welsh Ministers needing to consider from time to time whether the direction should be revoked or amended. A direction can only be given to the council which is the subject of a governance review: it cannot apply, for example, to all councils. Such directions are not legislative in nature: they are administrative in nature, the intention being to ensure a council's compliance with its duty under section 111.</p> |
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| Section 144 | Welsh Ministers | Guidance | <p>Power to provide guidance to those exercising functions in relation to governance arrangements, corporate plans, assessments of governance arrangements, governance reviews and intervention, and co-ordination between regulators.</p> <p>Guidance will be subject to periodic revision.</p> | No Assembly procedure | <p>The power to issue guidance is intended to facilitate the application of the primary legislation. This guidance is largely concerned with process and, as such, to apply an Assembly procedure is not considered appropriate.</p> |
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| Section 165(1) | Welsh Ministers | Direction | <p>Power to give directions to the Local Democracy Boundary Commission relating to the review of Community Council arrangements.</p> <p>The Welsh Ministers must consult with the Commission and bodies representing the interests of County or Community Councils before issuing a direction.</p> <p>A direction power is appropriate as directions will deal with matters of detail and subject to change according to the circumstances at the time.</p> | No Assembly procedure | The power to issue directions is a limited power as it applies only to the Commission and will relate to its functions in relation to these provisions. |
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| Section 165(3) | Welsh Ministers | Guidance | <p>Power to issue guidance to which the Commission and County (and County Borough) Councils must have regard in relation to the conduct and implementation of a review of Community Council arrangements.</p> <p>A guidance power is appropriate in order to support senior the Commission and Councils in exercising the functions conferred on them by the Bill.</p> <p>The content of the guidance will depend to a large extent on the content of a direction issued under section 165(1).</p> | No Assembly procedure | <p>The power to issue guidance is intended to facilitate the application of the primary legislation. This guidance is largely concerned with matters for which an Assembly procedure is not considered appropriate.</p> |
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| Section 167 | Welsh Ministers | Guidance | <p>Power to issue guidance to which County Councils must have regard in relation to the training of Community Councillors.</p> <p>Guidance will be subject to periodic revision. Guidance is appropriate to support County Council in explaining the factors that the Welsh Ministers consider are relevant in deciding what training should be compulsory for Community Councillors.</p> | No Assembly procedure | <p>The power to issue guidance is intended to facilitate the application of the primary legislation. This guidance is largely concerned with process and, as such, to apply an Assembly procedure is not considered appropriate.</p> |
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| Section 172(1) | Welsh Ministers | Guidance | <p>Power to issue guidance on workforce matters to which some or all of the public bodies specified in section 174 must have regard.</p> <p>The Welsh Ministers must consult with the relevant public bodies, trade unions and other persons before issuing, revising or withdrawing guidance under this section.</p> <p>Guidance will be subject to periodic revision and is appropriate in order to support Welsh public authorities to follow best practice in relation to workforce matters.</p> | No Assembly procedure | The power to issue guidance is intended to facilitate the application of the primary legislation. This guidance is largely concerned with process and, as such, to apply an Assembly procedure is not considered appropriate. |
| Paragraph 1(1) of Schedule 2 | Welsh Ministers | Direction | Power to direct a County or County borough Council to appoint a returning officer for the elections of Councillors to new County Councils in May 2019. This is a power to resolve a technical issue of minor detail. | No Assembly Procedure | This power resolves a technical issue with regards the existing legislation and as such, to apply an Assembly procedure is not considered appropriate. |

