

**Consultation Response
Form**

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The elected members of Denbighshire County Council have considered the consultation document relating to the draft regulations for the establishment of Corporate Joint Committees (CJCs) and have authorised the following response.

In response to the consultation exercise conducted at the beginning of 2020 in respect of the draft Local Government and Elections (Wales) Bill, Denbighshire County Council expressed its opposition to the creation of CJCs by Welsh Ministers in the absence of a request from two or more local authorities for such a body to be created.

The Council considers the mandatory imposition of CJCs to be unacceptable and is disappointed that Welsh Ministers have chosen to proceed with mandatory CJCs as the Council considers this to be a dilution of local democratic accountability.

The proposals appear to create a whole new tier of government which is one step removed from the electorate and has the potential to create an additional layer of bureaucracy which will be seen by many, in these unprecedented times, to be a distraction from the urgent priority to help residents and businesses back on their feet after the massive disruptive impact on their lives and livelihoods that has been the Coronavirus pandemic.

The Council is concerned by the potential for capacity to be drained out of local authorities at both officer and senior member level to create what are in effect new local authorities when the organisation should be wholly focussed on pandemic response and recovery.

Local authorities in North Wales have demonstrated their ability to work collaboratively in order to improve the lives of their residents on numerous occasions, most recently through the completion of the North Wales Growth Deal. The Council does not believe that the imposition of CJCs is either necessary or desirable. The creation of CJCs should only be possible following a request by two or more authorities where they consider that this model would provide a more effective and efficient delivery vehicle than others at their disposal.

The Council has provided answers to the questions set out in the consultation document but this should not be taken to imply that the Council is in favour of the mandatory introduction of CJCs.

Summary of consultation questions

Consultation Question One:

a) What are your views on CJs being subject to broadly the same powers and duties as principal councils?

If CJs are to be created, then it is sensible that they are subject to broadly the same powers and duties as principal councils. Commonality and consistency in how many of these powers and duties apply will assist the transition of functions from local authorities to CJs. This should always however be proportionate to the size and scope of CJs.

b) Do you agree that CJs should have broadly the same governance and administrative framework as a principal council provided that this is proportionate? Please give your reasons.

As in a) above it appears sensible that there should be broad consistency in respect of governance and administration which will assist members and officers who have to work across both bodies. It should however be proportionate to the size and scope of CJs. Local authorities are large complex organisations which operate across a wide sphere of functional areas. Imposing identical arrangements would appear to be disproportionate given the size and limited scope of CJs unless of course it is government's intention to impose additional functions upon them.

c) Do you agree that members of CJs should have appropriate discretion on the detail of constitutional and operational arrangements? Please give your reasons.

The Council's view is that CJs should not be imposed on Councils against their will. If such an imposition is to happen then it is imperative that CJs and their constituent local authorities should have the greatest degree of local discretion in respect of the constitutional and operational arrangements. The ability to tailor arrangements to local circumstances will assist with the transfer and operation of functions.

Consultation Question Two:

These CJC areas have been agreed by local government Leaders as the most appropriate to reflect the functions being given to CJs by these Establishment Regulations. Do you have any comments or observations on these CJC areas in relation to these functions or the future development of CJs?

The Council agrees that if CJs are to exist then the six local authority areas of North Wales provide the most appropriate footprint for the region.

Consultation Question Three:

a) Do you agree with the approach to the development of the regulations for CJs as outlined in this consultation? Please give your reasons.

The Council has previously expressed its support for the creation of CJs as a voluntary model of collaborative regional working, but does not accept the imposition of mandatory CJs. The Council is disappointed that this approach has been taken.

b) We have indicated throughout this document what may be included in the Regulations of General Application, subject to the outcome of this consultation. Whilst the Regulations of

General Application are not the subject of this consultation, in order to inform their development, we would welcome your views on anything else which should be covered?

See question 17

Consultation Question Four:

a) Do you agree with the proposed approach to membership of CJs including co-opting of additional members? Please give your reasons.

In respect of membership of CJs some elected members believed that there should be no co-option of members from outside the constituent local authorities and that only elected councillors should sit on CJs. Others felt that the co-option of some external members may be appropriate but that such matters should be for the CJC to decide locally following consultation with the constituent local authorities and that the CJC should be required to have regard to the views of those constituent authorities.

Some members expressed a concern that if only the Leaders were to be members of the CJC there would be too much power placed in the hands of a very small group of people and that widening the number of councillors would be beneficial.

b) What are your views on the role proposed for National Park Authorities on CJs, as described above?

Members were concerned that the National Park is not a body to which members are directly elected. Members were concerned that the extent to which NPA members participate in CJC matters should be clearly defined and restricted to strategic development planning. Some members questioned how the voice of Areas of Outstanding Natural Beauty would be incorporated into the work of the CJC.

Consultation Question Five:

a) What are your views on the proposed approach of 'one member one vote' and the flexibility for CJs to adopt alternative voting procedures?

The Council supports the principle of one member one vote for elected members who sit on CJs and would be opposed to alternative voting arrangements.

b) What are your views on the proposed quorum for CJs?

The Council agrees with the quorum requirement.

c) What are your views on the proposed approach to voting rights for co-opted members to a CJC?

This should be a matter for local determination.

Consultation Question Six:

What are your views on CJs being able to co-opt other members and/or appoint people to sit on sub-committees?

The issue of whether or not to appoint additional members must be one for local determination. Given the capacity demands on Leaders it would appear sensible to allow CJs to appoint additional executive members onto a CJC or to committees of the CJC.

The draft regulations make provision for appropriate scrutiny arrangements to be put in place as well as a Corporate Governance and Audit Committee. Oversight and scrutiny will be essential not only to ensure good governance but to ensure local accountability. It is therefore important that there is local determination of what the appropriate scrutiny arrangements should be. It may be that the constituent authorities and the CJC want to set up a joint scrutiny committee, or that scrutiny of the CJC is carried out by local scrutiny of the CJC through the existing scrutiny arrangements that local authorities have in place. This would be similar to the arrangements put in place for scrutiny of the North Wales Economic Ambition Board.

Consultation Question Seven:

a) Do you agree that the approach to co-option of members would enable wider engagement of stakeholders in the work of a CJC?

See b) below

b) What might be needed to support CJC members in the involvement and engagement of appropriate stakeholders in their work?

It is possible for stakeholders to be engaged in the work of the CJC without them having to be members of the CJC, voting or otherwise. If CJs are to have broadly the same duties and powers as local authorities, then they will be subject to the ways of working and duties of consultation and involvement introduced by the Wellbeing of Future Generations (Wales) Act 2015. The preparation and production of documents such as the Regional Transport and Strategic Development Plans will involve extensive consultation and engagement without necessarily requiring the co-option of additional non local government members.

The CJC could seek to involve stakeholders by way of specialist advisory groups such as the Business Delivery Board which advises the North Wales Economic Ambition Board. Stakeholders and partners could take part in scrutiny sessions and in task and finish groups by providing evidence and expert advice.

Consultation Question Eight:

a) Do you agree that members and staff of a CJC should be subject to a Code of Conduct and that the code should be similar to that of Principal Councils? Please give your reasons.

It is imperative for good governance that there are proper ethical safeguards in place for both officers and members.

There is an existing code for local government employees which should be adopted given that CJs are to be treated as part of the local government family.

Local authority elected members are obliged to act in accordance with the code of conduct adopted by their local authority whenever they are acting as a councillor or acting as a representative of their authority. It is assumed that if they are members of the CJC due to their membership of a principal council then they would be covered by their existing Code of Conduct when acting on a CJC and would be subject to investigation by the Ombudsman and if necessary to sanction by their Standards Committee. Co-opted members of local authority scrutiny committees are required to abide by the code of conduct of their authority and the Ombudsman can investigate complaints about their conduct. There should be no lesser expectation in respect of co-opted members of CJs. The

question arises as to the oversight of the conduct of non-elected members of a CJC. It seems onerous to require the creation of a new Standards Committee. There are already 8 Standards Committees in North Wales alone. It may be appropriate for a CJC to have a joint standards committee with one or more of the constituent authorities.

b) What are your views on the adoption of a Code of Conduct for co-opted members?

See a) above

c) Should all co-opted members be covered by a code i.e. those with and without voting rights?

Yes. Co-opted members are still able to influence matters even if they do not vote and should be subject to the same restrictions on participation in debate as elected members when potential prejudicial interests are involved. The Code of Conduct for elected members governs not just the ability of members to vote but also their conduct and propriety in their dealings with members of the public and each other. It is important that those who wish to take part in public life are held to high standards of conduct.

Consultation Question Nine

a) What are your views on the proposed approach for determining the budget requirements of a CJC?

It is unclear from the consultation document what the level of budget required will be and what other sources of funding will be available to CJsCs. It should be a matter for local determination and should be restricted to local authority members of the CJC and the National Park Authority as they are the funding bodies. It is sensible that unanimous consent is required.

It is hoped that additional costs in the first year should be covered by specific grant funding and any ongoing financial impact reflected in future Local Authority Funding Settlements.

b) What are your views on the timescales proposed (including for the first year) for determining budget requirements payable by the constituent principal councils?

The proposal that CJsCs should determine their budget requirement by 14th February is far too late for local authorities' budget setting processes. The CJC would need to be informing local authorities of the budget requirement by late Autumn to enable local authorities to plan appropriately.

If CJsCs are to meet by the end of September 2021 they will need to be asking local authorities for a budget part way through the financial year. It is unreasonable to expect local authorities to accommodate such a request. Any funds required in the first year should be provided direct by Welsh Government.

Consultation Question Ten

a) Do you agree that CJsCs should be subject to the same requirements as principal councils in terms of accounting practices? Please give your reasons.

Yes, it is important that accountancy practices are consistent with those of local authorities to ensure that members and officers are familiar with the practices across the CJC and their constituent authorities. A consistent approach will aid understanding and provide a better basis for scrutiny and challenge.

b) Do you agree that the detail of how a CJC is to manage its accounting practices should be included in the Regulations of General Application? If not what more would be needed in the Establishment Regulations?

Yes

Consultation Question Eleven:

What are your views on the proposed approach to staffing and workforce matters?

The Council is concerned that the proposals as set out in the consultation document will lead to either a substantial increase in cost and the recruitment of additional officers, some of whom will be very senior, or it will lead to a serious drain on the capacity of local authorities to deliver on the priorities for which they are democratically accountable.

The assumption that local authorities will be able to share officers with CJsCs to deliver some functions which are not currently delivered implies that there is some spare capacity lying dormant within those authorities that can be exploited. This is simply not the case. The additional burden of just providing professional support to service regular meetings of the CJC, a potential tier of sub-committees, effective scrutiny arrangements and an Audit Committee will be considerable and will come at a substantial additional cost. These meetings will require democratic services officers whose capacity is already under pressure from the requirements to broadcast meetings, legal advisers and finance advisers. Local authority support services are already pared back and will not, without considerable financial support, be able to facilitate a new tier of government. This is a significant additional burden, before any functions are actually delivered.

If no resources are forthcoming there will be an inevitable reduction in capacity at local authority level and an inadequate level of resource to enable CJsCs to function effectively.

It is right that the terms and conditions of staff of the CJsCs should be similar to those of the constituent local authorities. It should be noted however that salary levels for similar posts are not necessarily the same across the region and equal pay considerations should be taken into account and considered at the outset. TUPE considerations may also apply in the case of transfers of staff into or out of CJsCs.

Consultation Question Twelve:

What are your views in relation to CJsCs being required to have or have access to statutory “executive officers”?

It is ironic that proposals are now brought forward to increase the number of Chief Executives and senior officers when a reduction in their number was advanced as an argument in favour of previous proposals for the merger of local authorities.

The concerns expressed by members are that either the CJC will need to recruit a number of ‘executive officers’ at senior salary levels to administer the operation of the CJsCs, or the CJsCs will ‘have access’ to existing senior officers of the constituent authorities. This again appears to assume that there is under-utilised capacity in the senior officer structures of local authorities. This Council

has reduced substantially the number of senior officers that it employs over the past decade and more. Senior officers now have much broader portfolios than ever before and are already stretched in terms of capacity. Even a requirement to provide one day a week to support CJs is a 20% reduction in the capacity of those officers to support their own organisations at a time when the demands on those organisations have never been greater.

If executive officers are to be released to provide assistance to CJs on top of their existing workload there will need to be backfill of their positions at their local authorities which will again require further resource or will result in a lack of capacity at Council level.

Consideration should also be given to the management of conflicts of interests that may arise in respect of executive officers who are in effect serving two masters, the interests of which may not always coincide.

There is also the issue of capacity for senior members. Being the Leader of a principal council is a full time undertaking. Requiring a whole new set of meetings and responsibilities is a significant additional burden on these members.

Consultation Question Thirteen:

Do you have any other views on provision for staffing or workforce matters within the establishment regulations?

No

Consultation Question Fourteen:

a) Is it clear what functions the CJs will exercise as a result of these establishment regulations? If not, why?

There is some clarity regarding the strategic development planning function following the separate consultation on draft regulations relating to that function. The position is not quite so clear in respect of transport functions and whether there is likely to be any concurrence in that area. The economic well-being function is so broad that it will require further work at local level to determine the extent to which the CJC will overlap with principal council activity in this field.

Given the timescales for the creation of CJs and the work required to set them up in terms of their internal procedures and structures it is unlikely that they will be in a position to begin discharging functions effectively until after the local government elections in 2022. Consideration should be given to delaying the date upon which they will discharge their functions until May 2022.

b) Do the establishment regulations need to say more on concurrence, if so what else is needed, or should that be left to local determination?

The establishment regulations should provide as much flexibility as possible for local determination of the concurrence of functions.

In your view are there any functions which might be appropriate to add to these CJs in the future? If yes, what?

No

Consultation Question Fifteen:

Do you think the regulations should provide for anything to be a decision reserved to the CJC rather than delegated to a sub-committee? If so what?

The regulations should provide as much flexibility as possible for local determination of delegations, however, it would appear appropriate that matters such as the budget and the approval of strategic plans such as the strategic development plan and regional transport plan should be reserved. Where other general local government legislation is applicable to CJsCs it would be sensible that matters which are reserved to Councils should also be reserved to CJsCs.

Consultation Question Sixteen:

What are your views on the approach to transfer of the exercise of functions to these CJsCs?

There is very little information in respect of the transfer of functions. The strategic development planning function is not currently discharged by local authorities as it does not currently exist. As the CJsCs will inevitably require time to set up their internal processes and structures clarity should be given as to the date upon which they are to begin to discharge their functions, which should probably be after the local government elections in 2022.

Consultation Question Seventeen:

What are your views on CJsCs being subject to wider public body duties as described above?

It would appear sensible that the CJsCs be subject to the wider public duties set out in the consultation document and that the regulations of general application should deal with this issue.

Consultation Question Eighteen:

a) The Welsh Government is keen to continue working closely with local government and others on the establishment and implementation of CJsCs. Do you have any views on how best we can achieve this?

Welsh Government should engage with councils on a regional basis to ensure that the voice of individual local authorities in the region is heard and listened to. While the Council is opposed to the mandatory imposition of CJsCs, it will want to ensure that there is maximum flexibility at local and regional level to determine the arrangements by which the CJC will be established. Specialist professional groups should also be included both from a governance and an operational delivery perspective.

b) In your view, what core requirements / components need to be in place to ensure a CJC is operational, and exercising its functions effectively?

There needs to be sufficient funding in place to resource the preparatory work required to establish CJsCs. Much of this work will need to be done before the CJC meets for the first time and could not be happening at a worse time when the capacity of local authorities should be focussed on recovery. There will need to be sufficient time for CJsCs to establish their own internal governance procedures and 'recruit' executive officers before they can begin to discharge their functions.

In effect the CJC will need to adopt a constitution consisting of, as a minimum, standing orders, financial regulations, contract procedure rules, schemes of delegation, scrutiny arrangements, a code of conduct, access to information rules etc. It will need to adopt policies in respect of any staff that it employs directly and will need to have agreements in place for any services that it needs to

commission from local authorities. The management of conflicts of interest for professional advisers will need to be dealt with in advance of such advisers being resourced from within local authorities.

Will the CJC be an admitted body for pension purposes?

What will be the arrangements for office and meeting premises?

The CJC will have to comply with all relevant regulatory frameworks and have systems in place for compliance e.g. Data protection, Freedom of Information

c) In particular, what do you think needs to be in place prior to a CJC meeting for the first time, on the day of its first meeting and thereafter

There may need to be 'shadow' arrangements in place in order that political approval and direction can be given to the various arrangements required before they are placed before the CJC formally. The first requirements to be in place are funding and an appropriate officer resource to direct and complete the necessary work.

Consultation Question Nineteen:

a) Do you think it would be helpful for the Welsh Government to provide guidance on the establishment and operation of CJCs?

Yes.

b) Are there any particular areas which should be covered by the guidance?

The matters referred to in response to question 18(b) above.

Consultation Question Twenty:

a) How can the Welsh Government best support principal councils to establish CJCs?

By providing the necessary funding to resource their establishment

b) Are there areas the Welsh Government should prioritise for support?

See above

c) Is there anything that CJCs should/should not be doing that these Establishment Regulations do not currently provide for?

No.

Consultation Question Twenty One:

a) Do you agree with our approach to, and assessment of, the likely impacts of the regulations? Please explain your response.

No. The assessment that CJs will cost less than the do nothing option is hopelessly optimistic. It assumes that local authorities are discharging functions at present that they are not and fails to adequately recognise the additional burden of supporting a new tier of decision making and scrutiny. It does not sufficiently recognise the fact that local authorities are already stretched in terms of capacity and cannot absorb the running of these bodies without significant support.

b) Do you have any additional/alternative data to help inform the final assessment of costs and benefits contained within the Regulatory Impact Assessment? If yes, please provide details.

No

Welsh Language Questions

Consultation Question Twenty Two:

a) We would like to know your views on the effects that establishment of CJs would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

The consultation document indicates that CJs are likely to be subject to Welsh Language Standards. This is appropriate and ensures that CJs would make a positive contribution to opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. CJs must have regard to the likely impacts that the discharge of their functions is to have on the Welsh language.

b) What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

No further comment

Consultation Question Twenty Three:

Please also explain how you believe the proposed policy for the establishment of CJs could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No further comment.

Consultation Question Twenty Four:

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

No further comment.

