

LOCAL DEMOCRACY, ECONOMIC DEVELOPMENT AND CONSTRUCTION BILL

WELSH ASSEMBLY GOVERNMENT MEMORANDUM ON THE FRAMEWORK PROVISION FOR THE NATIONAL ASSEMBLY FOR WALES

Introduction

1. This memorandum sets out the background and context relevant to the proposed provision in the Local Democracy, Economic Development and Construction Bill conferring legislative competence on the National Assembly for Wales (the Assembly).

Background

2. Part 3 of the Government of Wales Act 2006 (c.32) (“the 2006 Act”) gives the Assembly the power to pass legislation known as Assembly Measures. Assembly Measures will be able to make any provision that could be made by an Act of Parliament, subject to the restrictions contained in the Act.

3. The Assembly may pass Measures in relation to the “matters” which are listed in the (currently 20) “fields” in Part 1 of Schedule 5 to the Act. Additions to the Assembly’s legislative competence may be made by adding new matters to the fields in Part 1 of Schedule 5. The Act includes a power to add new matters by Order in Council. Acts of the UK Parliament may also add to the Assembly’s legislative competence by inserting matters into Part 1 of Schedule 5 to the Act. Such provisions are referred to as “framework powers”.

4. The proposed framework powers in the Local Democracy, Economic Development and Construction Bill would extend the Assembly’s legislative competence by inserting new matters in Field 12: Local Government.

Context

5. The Welsh Assembly Government set out its policy for public service reform in *Making the Connections*¹ - a vision for a Welsh public service that operates by different agencies agreeing shared targets and cooperating in order to deliver improved services across functional and organisational boundaries. The task in hand is to reform public services in Wales to make them more citizen focused; responsive to the needs of communities; driven by a commitment to equality and social justice; and to deliver efficiency. This vision, together with a *Delivering the Connections* action plan², resulted in the Welsh Assembly Government asking Sir Jeremy Beecham to undertake a review of local service delivery in Wales. The aim was to identify innovative improvements to support the delivery of the *Making the Connections* agenda.

¹ The Assembly Government’s policy for public service reform established during the second Assembly.

² *Delivering the Connections: From Vision to Action – Our 5 Year Action Plan for delivering better services in Wales* - published June 2005.

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Sir Jeremy reported his conclusions and recommendations to the Welsh Assembly Government in *Beyond Boundaries: Citizen-Centred Local Services for Wales*³ (the Beecham Review).

6. In response the Welsh Assembly Government published, *Making the Connections – Delivering Beyond Boundaries: Transforming Public Services in Wales*⁴. This was designed to take the *Making the Connections* agenda further and faster. It identified actions to put citizens at the centre of service design and delivery; to facilitate and enable the public services to work together to develop a world class workforce; to attain better value for the Welsh pound; and, to ensure that inspection, regulation and performance management systems supported the delivery of citizen-centred services.

7. In Spring 2007, the Welsh Assembly Government published the policy statement, *A Shared Responsibility*⁵, examining how Welsh local authorities can contribute to the general public service reform agenda in Wales. The policy statement covered issues such as performance management and appraisal, maintenance of minimum standards, community leadership and the delivery of services across boundaries.

8. The Local Government and Public Involvement in Health Act 2007 conferred framework powers on the Assembly to enable the Welsh Assembly Government to take forward this agenda and in September 2008 the Local Government (Wales) Measure was introduced into the Assembly. The measure relies on two of the framework powers conferred by the 2007 Act and will make provision about arrangements by local authorities and other authorities in Wales to secure continuous improvement in the exercise of their functions; to make provision for community strategies; and for connected purposes. This is a major piece of legislation which will effectively replace Part I of the Local Government Act 1999 (“best value”) as regards Wales, and make substantial changes to key provisions in the Local Government Act 2000.

9. The Local Democracy, Economic Development and Construction Bill is an opportunity for the Assembly Government to seek framework powers that will enable it to bring forward proposals for legislation in respect of governance and overview and scrutiny. The Welsh Assembly Government is committed to:

- Developing governance arrangements across sectors to make it easier to bring together service provision to get best value for people and communities.
- Enhancing the role of local councillors and non-executive members of boards in the scrutiny (performance appraisal) of local services.

³ *Beyond Boundaries: Citizen-Centred Local Services for Wales* – published July 2006

⁴ *Making the Connections – Delivering Beyond Boundaries: Transforming Public Services in Wales* – published November 2006

⁵ *A Shared Responsibility Local Government’s contribution to improving peoples lives* – published March 2007

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- Establishing a governance development programme to ensure public service bodies and cross cutting partnerships have clear and effective governance frameworks.

10. Significant changes have already taken place in Wales with the introduction of local service boards and partnership working across geographical and functional boundaries and it is becoming increasingly important that local authority overview and scrutiny processes can be adapted to reflect that. The Welsh Assembly Government can only go so far within the existing legislative framework. The amendments made to Part II of the Local Government Act 2000 through the Local Government and Public Involvement in Health Act 2007 apply to England only. This means that the framework established through the 2000 Act is still extant in Wales. Although Part II includes a number of secondary powers for Welsh Ministers, this excludes, in particular, any statutory basis on which local authorities in Wales may form joint scrutiny committees even where services might be provided on a joint basis. There is also a desire to allow representatives of certain third parties to be full members of scrutiny committees to increase their legitimacy in sectors beyond the local authority, which, again, is not currently possible via existing legislation.

Scope of the proposed powers

11. In effect, the Welsh Assembly Government wishes the Assembly to have legislative competence in the areas covered by the provisions of Part II of the Local Government Act 2000. This Act introduced different models for executive arrangements, including the Mayor and Cabinet and Leader and Cabinet models. The executive became responsible for most local authority functions, working within a policy framework set by the full council. The 2000 Act also brought about the creation of overview and scrutiny committees, made up of non-executive (“backbench”) councillors, to scrutinise the work of the executive as well as reviewing policy within and without the council itself as they affected the local area. This legislative competence would enable the Welsh Assembly Government to give effect to its policies in this area following consideration of the Beecham Review and the outcome of research commissioned into the role and function of elected members in Welsh local government.

12. The powers that are being sought would enable the Assembly to legislate only in respect of the political management structure of county and county borough councils in Wales. It would enable the Assembly to pass Measures relating to:

- Establishing joint scrutiny committees between neighbouring authorities so that services being delivered jointly across county boundaries might be subject to effective review.
- Enabling co-option, with voting rights, to scrutiny committees so that representatives from third parties (e.g. NHS organisations,

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voluntary sector) might act as full members of scrutiny committees and provide greater legitimacy for these committees across the public sector in an area.

- Introducing a duty to scrutinise the whole public sector on devolved functions in an area and a duty on other public bodies to provide information to scrutiny committees on devolved functions. (At present, scrutiny committees have a power – but not a duty – to scrutinise anything which effects their locality. They can only require executive councillors and council officers to attend or provide information)
- Abolishing whipping in scrutiny, so that committee members are not subject to group discipline, which might otherwise fetter independent scrutiny.
- Requiring proportional allocation of chairs, in order to prevent the practice of allocating chairs only to members of the controlling group
- Redesigning options for political structures so that all 22 Welsh county and county borough councils could sign up to some form of executive structure. (Part II of the Local Government Act 2000 requires most councils to operate one of three forms of executive arrangements: a Mayor and Cabinet; Leader and Cabinet or Mayor and Council Manager. A “fourth option” of alternative arrangements is available to some councils, whereby there is no executive but a politically balanced board heading the council).
- Strengthening the role of the citizen through councillor calls for action, by which local communities can combine with their local councillor to ensure a matter is addressed by the local authority.

13. The powers that are being sought **will not** enable the Welsh Assembly Government to legislate in respect of overview and scrutiny of crime and disorder matters as provided for in sections 19 and 20 of the Police and Justice Act 2006 and provisions in Part II of the Local Government Act 2000 concerning local government elections and the conduct of elections.

Geographical limits

14. Section 94 of the 2006 Act provides that a provision of an Assembly Measure is outside the Assembly’s legislative competence if it applies otherwise than in relation to Wales or confers, imposes, modifies or removes functions exercisable otherwise than in relation to Wales (or gives power to do so). There are limited exceptions for certain kinds of ancillary provision such as provision enabling the provisions of the Measure to be enforced or otherwise appropriate to make the provisions of the Measure effective, and to make consequential amendments to other legislation. The limitation relating to functions other than in relation to Wales means that the Assembly would not be able by Measure to confer on the Welsh Ministers, Welsh local authorities or any other public authority functions which did not relate to Wales.

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Minister of the Crown Functions

15. By virtue of Part 2 of Schedule 5 of the 2006 Act, the Assembly may not by Measure alter or remove the functions of a Minister of the Crown without the consent of the relevant Secretary of State (and may not create new Minister of the Crown functions at all). The proposed provisions themselves do not modify or remove any functions of a Minister of the Crown. In relation to any future proposals for Assembly Measures that may impact on Minister of the Crown functions, the appropriate UK Government Departments would first be consulted and agreement sought before any change to, or modification of, those functions could be made.