

National Assembly for Wales
Legislation Committee No. 2

Proposed National Assembly for Wales
(Legislative Competence) (Local Government)
Order 2009

Committee Report
December 2009



The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales and holds the Welsh Government to account.

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Legislation Committee No.2

Legislation Committee No. 2 was established by the National Assembly for Wales to consider and report on legislation introduced into the Assembly, particularly by the Welsh Government. The Committee is also able to consider and report on non-government legislation, as appropriate.

Powers

The Committee was established on 9 December 2008 as one of the Assembly's legislation committees. Its powers are set out in the National Assembly for Wales' Standing Orders, particularly Standing Orders 10, 22 and 23. These are available at www.assemblywales.org

Committee membership

<i>Committee Member</i>	<i>Party</i>	<i>Constituency or Region</i>
Val Lloyd (Chair)	Labour	Swansea East
Jeff Cuthbert	Labour	Caerphilly
Gareth Jones	Plaid Cymru	Aberconwy
Sandy Mewies	Labour	Delyn
Jenny Randerson	Welsh Liberal Democrats	Cardiff Central
Brynle Williams	Welsh Conservative Party	North Wales

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Summary of conclusions and recommendations

Our conclusions and recommendations are listed below, in the order that they appear in this report. Please refer to the relevant pages of the report to see the supporting evidence:

General principles

We consider that the transfer of legislative competence in Matters 12.8 – 12.17 will serve to enhance local democracy and community engagement in Wales. (Paragraph 31)

We support the general principles of the proposed Order. (Paragraph 32)

Matter 12.8

We are content with Matter 12.8, as drafted. (Paragraph 50)

Matter 12.9

We are content with Matter 12.9, as drafted. (Paragraph 82)

Matter 12.10

We are content with Matter 12.10, as drafted. (Paragraph 105)

Matter 12.11

We are content with Matter 12.11, as drafted. (Paragraph 136)

Matter 12.12

In relation to Matter 12.12, we have some concerns that an unintended consequence of exercising power in this area may be an expectation that some town and community councils can deliver more than they are able to and we would not wish to see these councils disadvantaged as a result. We suggest the Minister gives consideration to this when developing Measures under this Matter, and under Matter 12.13, in the future. (Paragraph 157)

We are content with Matter 12.12 as drafted. (Paragraph 158)

Matter 12.13

We are content with Matter 12.13, as drafted, although we refer the Minister to the evidence we received and the conclusions we reached in relation to Matter 12.12. (Paragraph 184)

Matter 12.14

We are content with Matter 12.14, as drafted. (Paragraph 198)

Matter 12.15

In relation to Matter 12.15, we acknowledge the concerns of some consultees that new duties which may arise as a result of this Matter may lead to an increase in expenditure and that some town and community councils, particularly those smaller in size, may need financial assistance in fulfilling these duties. We suggest the Minister gives consideration to this matter at the appropriate time. (Paragraph 212)

We are content with Matter 12.15, as drafted. (Paragraph 213)

Matter 12.16

We are content with Matter 12.16, as drafted. (Paragraph 231)

Matter 12.17

We are content with Matter 12.17, as drafted. (Paragraph 245)

Interpretation provisions

In relation to the interpretation provisions, we have some sympathy with evidence from consultees that there are now many terms in use to describe the various tiers of local government in Wales and that this can be very confusing. We consider it to be important for there to be clarity and consistency in the terminology used in legislation and we therefore urge the Minister to give careful consideration to the terminology used to define local government in future Measures arising out of the proposed Order. (Paragraph 264)

In the longer term, we suggest the Minister considers undertaking a wider review of terminology relating to local government, at the appropriate time, with a view to improving clarity and consistency. (Paragraph 265)

1. Introduction

Background

1. On 13 July 2009, Dr Brian Gibbons AM, the Minister for Social Justice and Local Government, laid the proposed National Assembly for Wales (Legislative Competence) (Local Government) Order 2009¹ ('the proposed Order') and Explanatory Memorandum², in accordance with Standing Orders 22.13 – 22.14.

2. On 7 July 2009, the Business Committee agreed to refer the proposed Order to Legislation Committee No.2 for detailed consideration, in accordance with Standing Order 22.16, and agreed a reporting deadline of 4 December 2009.

Scope of the Committee's Scrutiny

3. At our first meeting on 16 July 2009, we agreed the scope of our scrutiny, as set out below:

To consider —

- (i) the general principles of the proposed LCO and whether legislative competence in the areas identified in Matters 12.8 – 12.17 should be conferred on the Assembly; and
- (ii) whether the terms of the proposed LCO are too broadly or too narrowly defined.

Evidence

4. We issued a general call for evidence and invited key organisations with a subject area interest to submit written evidence to inform our work. A list of those who submitted consultation responses is available at the end of this report.

5. We took oral evidence from a number of witnesses, details of which are attached at the end of this report.

6. We had to conduct our scrutiny in a relatively short time and are grateful to all those who gave evidence, particularly at short notice. Their contribution to our consideration of the proposed Order has been invaluable.

¹ http://www.assemblywales.org/lco-ld7630-e_.pdf

² <http://www.assemblywales.org/lco-ld7630-em-e.pdf>

7. Under Standing Order 22.21, in preparing our report we must, so far as is reasonably practicable, take into account any recommendations made on the proposed Order by:

- (i) any other committee of the National Assembly for Wales;
and
- (ii) any committee of the House of Commons, the House of Lords or any Joint Committee of both Houses of Parliament.

8. No such recommendations have been made in respect of the proposed Order.

9. The following report represents the conclusions we have reached based on the evidence received during the course of our work.

2. Principle of the proposed Order

Background

10. The purpose of the proposed Order is to amend Part 1 of Schedule 5 to the Government of Wales Act 2006 ('the 2006 Act') to confer legislative competence on the Assembly in relation to local government in Wales, by inserting new matters under Field 12 (local government) relating to—

- local government at community level (the legislation currently in force provides for community meetings and community and town councils, generically referred to as "community councils");
- public information about local government for communities, counties and county boroughs;
- remuneration of councillors in community, county and county borough councils and of members of National Park Authorities and fire and rescue authorities;
- promoting and supporting membership of community, county and county borough councils.³

Matter 12.8

Areas of communities and constitution, structure, and procedures of local government institutions for communities.

Matter 12.9

Electoral arrangements for elected local government institutions for communities.

In this matter "electoral arrangements" does not include—

- (a) the local government franchise;
- (b) electoral registration and administration;
- (c) the voting system for the return of members in an election.

Matter 12.10

Conferral on local government institutions for communities of powers—

³ GPO-12-EM, Memorandum from the Minister for Social Justice and Local Government; Proposal for a Government Legislative Competence Order relating to community councils and councillor recruitment, retention and allowances, para 5

- (a) to which this matter applies,
- (b) that are exercisable in relation to their areas, and
- (c) that are powers exercisable by principal councils in relation to the areas of principal councils.

This matter applies to powers to do anything which the holder of the power considers likely to promote or improve the economic, social or environmental well-being of an area.

Matter 12.11

Grants from the Welsh Ministers to fund local government for communities.

Matter 12.12

Relations between different communities (and their local government institutions), or between communities (and their local government institutions) and principal councils.

Matter 12.13

Schemes for the accreditation of quality in local government for communities.

Matter 12.14

Public participation in local government for communities (apart from elections).

Matter 12.15

The provision of information relating to local government to the public.

For the purposes of this matter “local government” means—

- (a) local government for communities;
- (b) local government for counties and county boroughs.

Matter 12.16

Salaries, allowances, pensions and other payments for members of the following—

- (a) local government institutions for communities;
- (b) county councils and county borough councils;
- (c) National Park authorities;

- (d) fire and rescue authorities constituted by schemes under section 2 of the Fire and Rescue Services Act 2004 or schemes to which section 4 of that Act apply.

Matter 12.17

Promoting and supporting membership of the following—

- (a) local government institutions for communities;
- (b) county councils and county borough councils.

Interpretation of this field

In this field—

“communities” means separate areas for the administration of local government, each of which is wholly within the area of a county council or county borough council (but does not comprise the whole area of a county council or county borough council);

“principal councils” means county councils and county borough councils.”.

11. The conferral of legislative competence on the Assembly by the proposed Order will enable the Assembly Government, Assembly committees or individual Members to bring forward proposals for legislation, in the form of Assembly Measures, within the scope of Matters 12.8 to 12.17.

*Explanatory Memorandum*⁴

12. The Explanatory Memorandum accompanying the proposed Order states:

“The context for the Assembly Government’s proposal flows from three reviews and their associated reports into the circumstances of community councils and of councillors in Wales. Firstly, the study undertaken in 2003 by the University of Wales, Aberystwyth: Institute of Geography and Earth Sciences into community councils in Wales [“Research Study into the Role, Functions and Future Potential of Community and Town Councils in Wales”] (“the Aberystwyth Report”). Secondly

⁴ GPO-12-EM, Memorandum from the Minister for Social Justice and Local Government; Proposal for a Government Legislative Competence Order relating to community councils and councillor recruitment, retention and allowances (Explanatory Memorandum)

[the Report of the] Councillor Commission Expert Panel Wales⁵, [which followed] (...) the [2007] Report of the Councillors Commission “Representing the Future” (...). Thirdly, the report of the Independent Remuneration Panel for Wales (...).”⁶

13. The Explanatory Memorandum further clarifies that:

“The Assembly Government has resolved to bring forward the (...) Legislative Competence Order seeking to confer powers on the Assembly to legislate in relation to the areas identified by the reviews.”⁷

14. The Explanatory Memorandum goes on to explain that the National Assembly for Wales already has legislative competence in relation to many aspects of local government, however neither the Assembly nor the Welsh Ministers have power at present to legislate for significant changes to the law covering community councils (constitution, structure, procedures and responsibilities), community reviews, relations between tiers of local government, councillor allowances and the recruitment and retention of councillors.⁸

15. It states:

“The legislative competence that would be conferred by the proposed Order would enable the Assembly to make changes to the law in these areas by way of Measure.”⁹

Evidence from consultees

16. A significant majority of consultees agreed with the general principle that legislative competence in Matters 12.8 – 12.17 be conferred on the Assembly. These included 49 community and town councils and related bodies and some individual councillors.

17. Councillor Neil Stonelake said:

“My views on the general principle that legislative competence in the areas identified in Matters 12.8-12.17 be conferred on the Assembly are that I would be strongly in favour of this on the general grounds of subsidiarity. It makes complete sense to

⁵ “*Are we being served*”, The Report of the Councillor Commissioner Expert Panel Wales, August 2009

⁶ Explanatory Memorandum para 7-9

⁷ Explanatory Memorandum para 10

⁸ Explanatory Memorandum para 12

⁹ *Ibid.*

me that this be a devolved matter and Welsh Assembly level is the most appropriate to have competence over this.”¹⁰

18. The Society of Local Council Clerks gave the proposed Order "its unqualified support":

“The SLCC believes that, since community and town councils represent the grass roots of local government in Wales, it is very much in keeping with the devolution settlement that the National Assembly for Wales is given competence over the matters set out in the proposed Order. For example, the recently enacted Local Government Assembly Measure has made community and town councils statutory partners in the development and implementation of Community Strategies. This LCO would facilitate further development of the joint working envisaged under that Measure.”¹¹

19. The Powys Association of Voluntary Organisations (PAVO) also supported the general principles of the proposed Order, saying it was “desirable that the Assembly should have the appropriate powers to act as necessary to enhance the quality of local government in Wales, particularly to promote increased transparency, understanding and participation in this important area of civic life.”¹²

20. However, they expressed some concerns about the potential for future Measures made under the proposed Order to enable the Assembly “to be able to intervene in local matters in an unnecessarily directive or centralist manner (thereby compromising legitimate local autonomy) or to disturb otherwise satisfactory local arrangements.”¹³

21. They acknowledged that these were concerns about the possible use of the powers arising from the proposed Order, rather than concerns about the content of the proposed Order, but felt it was important that these concerns be reflected upon when developing future Measures.

¹⁰ LGCC1

¹¹ LGCC55

¹² LGCC8

¹³ *Ibid.*

22. Six town and community councils and one individual respondent opposed the principle of the Assembly acquiring legislative competence in the Matters proposed.¹⁴

23. Llantrisant Fawr Community Council said they were “opposed in principle to the Assembly gaining any new powers over community councils in Wales.”¹⁵ Similarly, Conwy Town Council said they were “opposed to law-making powers in Matters 12.8 to 12.17 being conferred on the Assembly.”¹⁶ Gwehelog Fawr Community Council also did not support the general principles of the proposed Order, saying they were “happy for the powers to stay with Westminster.”¹⁷

24. More specifically, one concern of those councils opposing the transfer of competence seemed to be a fear that administrative and financial burdens on them would increase as a result. In their response, Caia Park Community Council said they were of the opinion that “this could lead to the introduction of Measures that could increase bureaucratic and costly burdens upon Community Councils and inconsistencies of approach. [We] did not see the necessity in transferring the powers from the body in which they are currently vested.”¹⁸

25. A few consultees¹⁹ noted that, in their view, the proposed Order was too widely drawn and that it “leaves the competences as perhaps too open to interpretation”.²⁰

26. In contrast, several consultees were of the view that the scope of the Order was too narrow, particularly in respect of Matter 12.9.21 This is discussed in greater detail in the section of the report relating to Matter 12.9.

¹⁴ LGCC10 Gwehelog Fawr CC, LGCC17 Conwy TC, LGCC18 Llantrisant Fawr TC, LGCC38 Caia Park CC, LGCC56 Penycae CC, LGCC57 Rhosddu CC, LGCC2 S Daintith.

¹⁵ LGCC18

¹⁶ LGCC17

¹⁷ LGCC10

¹⁸ LGCC38

¹⁹ LGCC12 Abergele TC, LGCC20 Llandudno TC, LGCC35 Llandyfaelog CC.

²⁰ LGCC35

²¹ LGCC1 Cllr Neil Stonelake; LGCC19 Welsh Liberal Democrats; LGCC22 Cllr. Aylwin; LGCC36 Cllr. Holley.

Evidence from the Minister

27. In his oral evidence, the Minister said:

“The [Local Democracy, Economic Development and Construction Bill] will give us a new range of competence, and this proposed LCO will give us competence in a further 10 matters, which, hopefully, will give us the full suite of powers to make significant change and improvement in the way that local government operates in Wales.”²²

28. He concluded:

“(…) there is a great deal in this proposed legislation that will (….) enable county councillors and community and town councillors to better fulfil their roles as local elected members representing their communities.”²³

Our view

29. We note the broad support that exists amongst consultees for the general principles of the proposed Order.

30. We recognise the importance of the proposed Order in enabling the Welsh Ministers to bring forward legislation to implement the relevant recommendations of the Aberystwyth Report, the Report of the Councillor Commissioner Expert Panel Wales, and the Report of the Independent Remuneration Panel for Wales.

31. We consider that the transfer of legislative competence in Matters 12.8 – 12.17 will serve to enhance local democracy and community engagement in Wales.

32. We support the general principles of the proposed Order.

²² Record of Proceedings (RoP), para 17, 24 September 2009, Legislation Committee No.2

²³ RoP, para 182, 5 November 2009, Legislation Committee No.2

3. Scope of the proposed Order

Matter 12.8

Background

33. The Explanatory Memorandum states that Matter 12.8 would give the Assembly competence over the constitution, structure and procedures of community councils and for community meetings. It would also give competence over arrangements in respect of community reviews, in so far as they relates to the areas of communities, and the co-option of members and youth representatives.²⁴

Evidence from consultees

34. The majority of consultees were broadly content with the legislative competence as provided for in Matter 12.8.

35. One Voice Wales said they believed it was appropriate for the Assembly to have legislative competence in this area and that this was “in keeping with the principle of subsidiarity in that it will enable decisions affecting the sector to be taken closer to, and thus more easily informed by, those affected by the decisions.”²⁵

36. They also felt it was appropriate for the Assembly to have competence over matters relating to the co-option of members and youth representatives and the Local Government Boundary Commission in Wales, noting that current arrangements “seem to be a rather cumbersome way of proceeding”.²⁶

37. Mr. Owen Watkin²⁷ expressed his support for this Matter, stating:

“If enacted, Community Councils would be strengthened, in terms of governance, by having modern arrangements for their constitutions, structures and proceedings which would enhance their standing within communities.”²⁸

²⁴ Explanatory Memorandum para 15

²⁵ Legislation Committee No.2 Paper LC2(3)-18-09 Paper 2, 22 October 2009

²⁶ Legislation Committee No.2 Paper LC2(3)-18-09 Paper 2, 22 October 2009 and RoP, para 61, 22 October 2009, Legislation Committee No.2

²⁷ Member of the Councillor Commissioner Expert Panel Wales; evidence given in a personal capacity

²⁸ Legislation Committee No.2 Paper LC2(3)-17-09 Paper 1, 15 October 2009

38. In his evidence, Professor Michael Woods, lead author of the Aberystwyth Report, stated:

“Our research identified a number of concerns with the functioning of current procedures, in particular concern that the low threshold for the dissolution of a Community or Town Council can create instability that could hinder the effective operation of a council (...).”²⁹

39. He went on:

“Whilst the Order does not commit the National Assembly for Wales to making any changes to these procedures and structures, it would empower the Assembly to address these concerns (...).”³⁰

40. In relation to the co-option of members and youth representatives, Professor Woods noted that “in addition to enhancing the breadth of representation of the community on councils, (...) this measure could also help to encourage young people to take greater interest in local government, and could lead to formal involvement in all levels of local government as an elected representative”.³¹

41. The Powys Association of Voluntary Organisations (PAVO) also welcomed Matter 12.8 “insofar as it would allow for new measures to enhance councils’ inclusivity and accessibility, particularly as regards youth representatives and the calling of public meetings”.³²

42. One council, Abergele Town Council, did not support the transfer of competence to the Assembly in relation to the co-option of members and youth representatives, saying they feared this may lead to the “social engineering” of councils. They argued that the current democratic process of elections should continue, with the full support of the Assembly.³³

²⁹ LGCC58

³⁰ *Ibid.*

³¹ *Ibid.*

³² LGCC8

³³ LGCC12

Evidence from the Minister

43. At the evidence session of 24 September, the Minister stated:

“Matter 12.8 looks mainly at the structure of community and town councils, their constitution, the procedures by which they operate, and also how they can be established and abolished. It also looks at issues around community meetings that are involved in the establishment and dissolution of community and town councils.”³⁴

44. He went on:

“One of the conclusions of the Aberystwyth report was that it should be easier to establish community councils and that it should be more difficult to abolish them. Bearing that in mind, we want to get the legal competence to propose Measures, in order to, for example, test that out in practice and see whether there is support for that. Community meetings are often the prelude to establishing or abolishing community and town councils. Deciding the terms of reference and the rules of engagement of those community meetings is an area over which we do not currently have competence.”³⁵

45. We asked the Minister what discussions had taken place between him and the Local Government Boundary Commission for Wales about the acquisition of competence in this area. The Minister replied:

“One impetus for bringing the proposed LCO forward was that the boundary commission has found the current process quite cumbersome and bureaucratic. (...) If a local authority (...) feels that it needs to review its communities, but does not have the capacity to do so itself, it has to write to me so that I can write to the boundary commission to ask it to do it. (...) The boundary commission and local authorities recognise that (...) this competence is needed to address some of that.”³⁶

46. In relation to the acquisition of competence over the co-optation of members and youth representatives, we asked the Minister what discussions he had had with interested parties and what the outcome of those discussions had been.

³⁴ RoP, para 23, 24 September 2009, Legislation Committee No.2

³⁵ RoP, para 27, 24 September 2009, Legislation Committee No.2

³⁶ RoP, para 29, 24 September 2009, Legislation Committee No.2

47. The Minister informed us that he had not undertaken any detailed consultation with young people's organisations to date, but that when bringing forward Measures in this area, "it would be essential to engage with young people".³⁷

Our view

48. In relation to Matter 12.8, we note that broad support exists amongst stakeholders for the transfer of legislative competence in this area to the Assembly.

49. We welcome this Matter as a means of enabling effect to be given to the relevant recommendations of the Aberystwyth Report relating particularly to the establishment and dissolution of Town and Community Councils. We also welcome that arrangements for co-option of members and youth representatives will form part of this competence.

50. We are content with Matter 12.8, as drafted.

Matter 12.9

Background

51. Matter 12.9 would give the Assembly competence over the electoral arrangements for community councils. The Explanatory Memorandum states that this includes issues such as the number of councillors that may be returned; whether or not community councils should be divided into wards for electoral purposes; and reviews of these arrangements.³⁸

52. Matter 12.9 specifically excludes the local government franchise, the arrangements for electoral registration and electoral administration, including the conduct of elections, and the voting system used at community council elections in Wales.³⁹

Evidence from consultees

53. A significant majority of consultees were broadly in favour of the transfer of competence as provided for in Matter 12.9.

³⁷ RoP, para 32, 24 September 2009, Legislation Committee No.2

³⁸ Explanatory Memorandum para 16

³⁹ *Ibid.*

54. In his evidence, Professor Woods explained that the Aberystwyth report outlined a number of measures to encourage participation in town and community council elections. He said that one of the study's conclusions was that, in some cases, it may be appropriate to review the number of members of a council, or its arrangements for wards, particularly where there had been a consistent shortage of candidates in a number of electoral cycles. He noted that Matter 12.9 would provide the Assembly with legislative competence to conduct and implement such a review.⁴⁰

55. In expressing his support for this Matter, Mr. Owen Watkin said that, in principle, the Assembly should have the powers set out under Matter 12.9 "as they are congruent with other similar existing powers."⁴¹

56. One Voice Wales were also supportive of Matter 12.9 arguing that they believed it to be "in the interests of joined up government in Wales".⁴² The WLGA and the North Wales Association were similarly supportive of this Matter.⁴³

57. One town council, Penarth Town Council, stated they did not see a need for these powers as "the arrangement with the Local Government Boundary Commission for Wales and the Welsh Assembly Government would seem to work well".⁴⁴

58. We asked consultees for their views on the exceptions provided for under Matter 12.9. Of those who responded to this question, the majority were in favour of the exceptions⁴⁵, with a minority⁴⁶ expressing their opposition to the inclusion of the excepted matters.

59. Expressing support for the excepted matters, Bridgend County Borough Council stated:

"We note that the experience and expertise that currently exist in the Ministry of Justice in Whitehall to deal with these issues does not exist in the Welsh context. The proposed exclusions

⁴⁰ LGCC58

⁴¹ Legislation Committee No.2 Paper LC2(3)-17-09 Paper 1, 15 October 2009

⁴² Legislation Committee No.2 Paper LC2(3)-18-09 Paper 2, 22 October 2009

⁴³ Legislation Committee No.2 Paper LC2(3)-18-09 Paper 1, 22 October 2009 and Legislation Committee No.2 Paper LC2(3)-19-09 Paper 1, 5 November 2009

⁴⁴ LGCC37

⁴⁵ 19 respondents

⁴⁶ 6 respondents

would therefore ensure that legislation on these areas would remain where the skills and expertise exist.”⁴⁷

60. Bagillt Community Council was also in favour of the excepted matters, arguing:

“(…) there is merit in having the local government franchise, electoral registration and administration including the conduct of elections and voting system on a wider area basis than just for Wales, given the specialised nature of this work and the need to ensure the public understand the processes involved on a UK basis.”⁴⁸

61. In their evidence, the North Wales Association of Larger Town and Community Councils stated:

“The Association has some concerns over the idea of any change in the voting system at present used for local elections. At Town and Community Council level the electorate is voting for ‘people’ and not parties. This should remain as there is little or no place for party politics at this level of government.”⁴⁹

62. Those who stated they were not in favour of the inclusion of the exceptions in Matter 12.9 were concerned primarily with exception (c), the voting system.

63. Bay of Colwyn Town Council argued that “all aspects [of Matter 12.9] should be handed over the Welsh Assembly Government and none should be retained by Westminster.”⁵⁰

64. Community Councillor Neil Stonelake said that he did not feel the proposed exceptions were necessary or in keeping with the principle of subsidiarity. He said “in particular, I feel the voting system should be a devolved matter.”⁵¹

65. Professor Woods, although noting that this was an issue which was outside the remit of the Aberystwyth report, said he considered that “further research and analysis would be required in order to support any change to the voting system, however, I would support the inclusion of the voting system in the competence transferred by the

⁴⁷ LGCC40

⁴⁸ LGCC14

⁴⁹ Legislation Committee No.2 Paper LC2(3)-19-09 Paper 1, 5 November 2009

⁵⁰ LGCC5

⁵¹ LGCC1

Order so that the National Assembly have the ability to pursue this matter at a future point if it chooses.”⁵²

66. Mr. Owen Watkin was of a similar view. In his oral evidence, he argued that the importance of the proposed Order was that it provided the Assembly with the opportunity to gain competence in this area and it was then for the Assembly to debate the use of that competence.⁵³

67. He went on:

“If there is a proposed LCO going through the system, it would be a shame to have to delay and wait for a different one in a different climate and different circumstances.”⁵⁴

68. The Welsh Liberal Democrats and two Liberal Democrat councillors also argued that exception (c) was a “missed opportunity to reform many of the problems that exist within local government elections in Wales.”⁵⁵

69. Chepstow Town Council stated similarly that there was “perhaps a missed opportunity to trial alternative election methods with the intention of increasing the electoral mandate. The relatively small and local nature of community and town councils might well suit alternative electoral arrangements.”⁵⁶

70. The WLGA said that their membership was divided on the question of electoral arrangements. They stated that there were few matters on which their membership tended to disagree, but that the matter of electoral arrangements was probably the main point of disagreement because of the strong views involved.⁵⁷

“Some members would express or have expressed a desire to see the responsibility for electoral arrangements devolved and they clearly support proportional representation; others, possibly the majority, regard the status quo as appropriate on the grounds that there is clear accountability between those who elect and those who have been elected and the concerns

⁵² LGCC58

⁵³ RoP, para 24, 15 October 2009, Legislation Committee No.2

⁵⁴ RoP, para 25, 15 October 2009, Legislation Committee No.2

⁵⁵ LGCC19 Welsh Liberal Democrats, LGCC22 Cllr Aylwin and LGCC36 Cllr Holley

⁵⁶ LGCC6

⁵⁷ RoP, para 14, 22 October 2009, Legislation Committee No.2

around different electoral systems being used for different tiers of government.”⁵⁸

71. One Voice Wales said that the question of electoral arrangements was “an issue that has never been raised within the sector—or, at least, not in the time that I have been involved, which is three years, nor before that when I was a town councillor. During the process of consultation on the proposed LCO, once again, it has not been raised with us.”⁵⁹

72. They did, however, suggest that the question of electoral arrangements might be better addressed in a separate LCO, as “it could clearly have quite a broad impact across local government. If it were to be included, it should be taken in terms of looking at the local government franchise, as well as electoral registration and administration arrangements. So, the exclusions, taken together, are of sufficient scope for an LCO on their own.”⁶⁰

Evidence from the Minister

73. In his oral evidence on Matter 12.9, the Minister stated:

“Matters 12.8 and 12.9 overlap, but, to summarise the distinction, matter 12.9 is about the political implications of what would follow matter 12.8, and it deals with issues such as deciding the number of councillors that community and town councils would have, whether community and town councils should contain wards and similar issues. So, it is about what practical political structure or political mechanism will fall out of that.”⁶¹

74. We asked the Minister to explain why he had specified the exceptions listed under Matter 12.9. In relation to exceptions (a) and (b) under this Matter, he told us that these were areas which, by definition, were not within the Assembly’s competence:

“Local government franchise is about who is entitled to be a voter and so on. We did not think that it was a good idea to further complicate that. We have a system, and I do not think that there is any real demand to change it. On electoral

⁵⁸ RoP, para 14, 22 October 2009, Legislation Committee No.2

⁵⁹ RoP, para 63, 22 October 2009, Legislation Committee No.2

⁶⁰ RoP, para 64, 22 October 2009, Legislation Committee No.2

⁶¹ RoP, para 37, 24 September 2009, Legislation Committee No.2

registration and administration, we feel that the current system is not asking to be changed.”⁶²

75. In relation to exception (c), the Minister said:

“The voting system is more contentious (...). There are a few answers. First, I do not think that there is a real consensus on whether the voting system should be changed. On consistency, it would add complexity rather than simplify the system if there were different voting systems for different local elections.”⁶³

76. In arguing that there was an overwhelming consensus behind the proposed Order, but no consensus in relation to Matter 12.9(c), the Minister stated:

“We have to bear in mind that there is a window of opportunity for us to get through our long-standing commitments to key partners (...) before the end of the current Parliament. If we were to put controversial areas in, or others for which there is not consensus, it would be a recipe for delaying this set of commitments (...).”⁶⁴

77. Further to this, and responding to evidence we had received suggesting that issues such as the voting system would be best addressed in a separate Order, the Minister agreed that the case for this “should be made independently of this proposed LCO.”⁶⁵

Our view

78. In relation to Matter 12.9, we note that broad support exists amongst consultees for the transfer of legislative competence in this area. We welcome this Matter as a means of enabling effect to be given to the relevant recommendations of the Aberystwyth report, particularly in relation to reviewing the number of council members or warding arrangements in areas where there are consistently low candidate numbers for elections.

79. In relation to excepted matters (a) to (c), we acknowledge the evidence we have received from some consultees opposing the inclusion of these exceptions, particularly exception (c) – the voting system for the return of members in an election.

⁶² RoP, para 39, 24 September 2009, Legislation Committee No.2

⁶³ RoP, para 39, 24 September 2009, Legislation Committee No.2

⁶⁴ RoP, para 120, 5 November 2009, Legislation Committee No.2

⁶⁵ RoP, para 118, 5 November 2009, Legislation Committee No.2

80. However, we note that the majority of those who responded to the question of the excepted matters supported their inclusion in the proposed Order. We accept the Minister's argument that the issue of the voting system is a contentious one, and that its inclusion in the proposed Order could impede the progress of an otherwise relatively uncontroversial Order, particularly in the absence of a body of evidence supporting the transfer of competence in relation to the voting system.

81. We note the suggestion that, given their potential impact on local government, the excepted matters could be the subject of a separate Order. We agree that this approach would be appropriate and would provide all affected parties with the opportunity to undertake a more detailed consideration of these specific issues.

82. We are content with Matter 12.9, as drafted.

Matter 12.10

Background

83. Matter 12.10 would provide the Assembly with competence to extend to community councils in Wales the power to promote or improve the economic, social or environmental well-being of their areas.⁶⁶

Evidence from consultees

84. The majority of consultees supported the principle that legislative competence in this area be conferred on the Assembly.

85. In their evidence, the WLGA said that the power of wellbeing is a principle that applies to principal authorities in Wales.

“It is currently an important legislative recognition of the role of principal authorities; therefore, if this proposed LCO goes through and a Measure follows, it will place community and town councils on an equal footing. It is an important demonstration from the Assembly and Assembly Government of the fundamental role of local government institutions for communities as well as principal councils.”⁶⁷

86. One Voice Wales agreed with this view, stating:

⁶⁶ Explanatory Memorandum para 17

⁶⁷ RoP, para 18, 22 October 2009, Legislation Committee No.2

“The power of wellbeing has already been extended to parish councils in England, even though One Voice Wales understands that it was first mooted in relation to community councils in Wales. This is mentioned as it underlines why we are supportive of the overall thrust of the LCO, i.e. it illustrates how the current balance of legislative competence between Wales and Westminster has frustrated, in spite of efforts by the Assembly Government, the implementation of agreed recommendations to progress local democracy and community development.”⁶⁸

87. Further to this, One Voice Wales stated:

“(…) the power of wellbeing will facilitate the role of community councils in collaborating to produce and deliver community strategies, now a statutory function under the new Local Government Measure. (…) we think [the power of wellbeing] sends a very strong and positive message to councils regarding their role in developing communities by encouraging them to move beyond the restrictive nature of the powers currently available. This message should encourage a wider spectrum of citizens to consider becoming councillors.”⁶⁹

88. The Society of Local Council Clerks also expressed their support for the extension of powers of wellbeing to community and town councils, arguing that “it will (…) enhance the collaborative working envisaged under Making the Connections by facilitating the involvement of community and town councils in the planning and delivery of public services.”⁷⁰

89. In their written evidence, the South Wales Fire and Rescue Services said:

“This (…) Authority would welcome any drive which ensures elected members at any level look to improve the social/environmental wellbeing of their area in line with other councils. This will help the Fire and Rescue Authorities meet their objectives to reduce harm to people and the environment through fires and other incidents.”⁷¹

⁶⁸ Legislation Committee No.2 Paper LC2(3)-18-09 Paper 2, 22 October 2009

⁶⁹ *Ibid.*

⁷⁰ LGCC55

⁷¹ LGCC21

90. The North Wales Association of Larger Town and Community Councils said they supported the transfer of competence in relation to wellbeing on the basis that “it gives a much wider remit for the council to move towards.”⁷²

91. However, they went on to say that “a big issue that comes out of this is that a lot of community and town councils are very small and the amount they can take on is probably small. To take, for example, my area of Welshpool, it might be that because Welshpool has a bigger council, it should, for some items – with particular reference to wellbeing – spread its wings out to help and work with the surrounding smaller councils to deliver a service economically and on the right level.”⁷³

92. Mr. Owen Watkin was also supportive of the power of wellbeing contained in Matter 12.10, stating that “principal authorities have been given similar powers previously and there is no reason why the power of competence should not be given to Community Councils.”⁷⁴

93. However, he noted in his evidence that the “wording of the LCO omits any reference to the exercise of the powers by Community Councils in the interest of sustainable development.” He argued that “the emphasis of [community councils’] activities should be to contribute to sustainable development” and suggested that “the omission should be rectified”.⁷⁵

94. On the question of sustainable development raised by Mr. Watkin, we asked One Voice Wales for their views on whether the term ‘sustainable development’ should be included on the face of the proposed Order. They argued:

“The guidance that is currently being drafted, which will apply to community strategies, emphasises the need to take account of the Assembly’s overall commitment to sustainable development and for sustainable development principles to be adhered to in the development of the community strategy. That is also reinforced in the recently approved Local Government (Wales) Measure 2009. So, I think that the sustainable

⁷² RoP, para 43, 5 November 2009, Legislation Committee No.2

⁷³ *Ibid.*

⁷⁴ Legislation Committee No.2 Paper LC2(3)-17-09 Paper 2, 15 October 2009

⁷⁵ *Ibid.*

development angle is appropriately covered (...) in existing legislation and in the guidance pertaining to that legislation.”⁷⁶

95. Both PAVO and Pembroke Dock Town Council supported the principle of Matter 12.10. PAVO said they thought that the wellbeing power would enable greater freedom for local councils to respond effectively to local needs.⁷⁷ Pembroke Dock Town Council said that its members felt that this power could enable community councils to target funds and provide some much needed facilities to benefit the community.⁷⁸

Evidence from the Minister

96. We asked the Minister to set out his reasons for pursuing legislative competence in this area. He stated that there is currently a discrepancy between the powers of community and town councils and the powers of principal authorities. He argued that principal authorities have the power to promote wellbeing for their areas, “so the sentence in Matter 12.10, which states that ‘This matter applies to powers to do anything which the holder of the power considers likely to promote or improve the economic, social or environmental well-being of an area’ is a pretty enabling power for the principal local authority (...).”⁷⁹

97. He went on to say that the powers available to town and community councils are more restricted and that the purpose of the proposed Order is to broaden the range of powers available to town and community councils “to shadow more effectively the range of powers that the principal authorities have”.⁸⁰

98. He argued that this was particularly important in light of the local government improvement Measure, in which community and town councils are established as statutory consultees for community strategies.

99. In relation to the question of sustainable development being specifically provided for on the face of the proposed Order, the Minister said that the definition of ‘wellbeing’ from earlier legislation

⁷⁶ RoP, para 81, 22 October 2009, Legislation Committee No.2

⁷⁷ LGCC8

⁷⁸ LGCC34

⁷⁹ RoP, para 58-59, 24 September 2009, Legislation Committee No.2

⁸⁰ RoP, para 60, 24 September 2009, Legislation Committee No.2

was expressed in terms of social, economic and environmental wellbeing.

100. He argued “when we talk about sustainable development we talk about sustainable development in the sense of social, economic and environmental sustainability. The concept of well-being is almost symmetrical with what we are trying to achieve in the concept of sustainability.”⁸¹

101. He went on:

“That sort of symmetry between definitions is there, but to further underpin that, if we look at the requirements for community strategies, which are the broad strategies on which community and town councils will be our statutory consultee, this specifically requires sustainability factors to also be taken into account.”⁸²

Our view

102. In relation to Matter 12.10, we note the broad support that exists amongst stakeholders for the transfer of competence in this area.

103. We recognise the important role town and community councils could play in relation to the promotion and improvement of wellbeing within their areas. We note that community councils already have the ability to exercise such powers in England and we welcome the Minister’s intention to similarly empower town and community councils in Wales via Matter 12.10.

104. In relation to sustainable development, we agree that the principle of sustainable development is an important one for all tiers of government in the exercise of their powers. However, we are persuaded by the evidence we have received that arrangements for sustainable development are already provided for to a sufficient degree, by the power of wellbeing in the proposed Order, and through existing legislation and guidance. We are, therefore, content that Matter 12.10 does not make specific reference to ‘sustainable development’.

105. We are content with Matter 12.10, as drafted.

⁸¹ RoP, para 159, 5 November 2009, Legislation Committee No.2

⁸² *Ibid.*

Matter 12.11

Background

106. The Explanatory Memorandum states that this Matter would provide the Assembly with competence for the Welsh Ministers to make grants to community councils.⁸³

Evidence from consultees

107. The majority of consultees supported the transfer of legislative competence in this area to the Assembly.

108. Henllanfallteg Community Council stated:

"The adoption of this Matter is essential if local councils are going to take a more active role in providing a greater range of services for the communities."⁸⁴

109. Beulah Community Council said they fully supported the ability of Welsh Minister to provide direct funding for town and community councils "so that a wider range of services can be delivered by councillors in touch and elected locally."⁸⁵

110. In his evidence, Professor Woods said:

"Community and Town Councils in Wales currently receive over 75% of their income from the precept, and the availability of funding is a major constraint on the development of the role of Community and Town Councils. In the research study we examined a number of options concerning local council financing (...). We concluded that the most appropriate, fair and accountable mechanism for enhancing the funding of Community and Town Councils would be through targeted direct grants from the Welsh Assembly Government."⁸⁶

111. He concluded:

"This matter would give the National Assembly for Wales the competence to introduce (...) direct grants to Community and

⁸³ Explanatory Memorandum para 18

⁸⁴ LGCC31

⁸⁵ LGCC25

⁸⁶ LGCC58

Town Councils, but does not commit the Assembly to any of these specific proposals.”⁸⁷

112. One Voice Wales also supported the principle of competence contained in Matter 12.11. In their evidence, they stated that, whilst they recognised that the Matter would be unlikely to lead to a “wholesale change” in the funding arrangements for community councils, “(and neither are we seeking such a change since the sector values its direct accountability to local electorates for its income and expenditure) we do believe it makes sense for Welsh Ministers to have powers to make direct grants in support of wider public service objectives.”⁸⁸

113. They expanded on this point in their oral evidence, stating that the issue of by-elections is one where community councils, particularly smaller councils, could face relatively large bills in the event of one or more by-elections taking place within a few years. They argued that this sort of impact on community council budgets “can be a disincentive to the local democracy process (...) [and] is a strong example of a case in which a direct grant from the Assembly Government would help to facilitate local democracy.”⁸⁹

114. In expressing their support for Matter 12.11, the North Wales Association of Larger Town and Community Councils raised the issue of ‘best value for money’, saying:

“If you are passing money down from the Welsh Assembly Government to a county and then to a town, it gets reduced in sum from the moment that it leaves the Welsh Assembly Government to the time that it arrives at the town council due to various administrative costs that are deducted on the way down. If it comes directly to the town council, you have cut out that loss and gain a little from it.”⁹⁰

115. In their evidence, Pembroke Dock Town Council stated that its members “felt very strongly” that competence in Matter 12.11 should be conferred on the Assembly. They argued that without such

⁸⁷ LGCC58

⁸⁸ Legislation Committee No.2 Paper LC2(3)-18-09 Paper 2, 22 October 2009

⁸⁹ RoP, para 85, 88, 22 October 2009, Legislation Committee No.2

⁹⁰ RoP, para 50, 5 November 2009, Legislation Committee No.2

competence, the power of wellbeing in Matter 12.10 “could not be effective”.⁹¹

116. PAVO also expressed support for the principle of Matter 12.11, but felt its application should be accompanied by some safeguards “to ensure that it did not have detrimental effects upon some aspects of services and community activity.”

117. They argued that any direct grants from Welsh Ministers to town or community councils should be additional funds and not monies that would otherwise be directed to county councils or used to support Third Sector activity.⁹²

“It would be a retrograde step if a measure intended to enhance local activity Town and Community Councils in fields such as community regeneration or local service provision was to result in a reduction in the monies available to support current or future community based activities by other community groups. Such a scenario would not only fail to increase the overall level of community activity but would also damage current and future relationships between community groups and voluntary organisations and their local Town and Community Councils and impede effective partnership working.”⁹³

118. Mr. Owen Watkin said that, in relation to the power to make revenue or capital grants, his general view was that “you have to look carefully at anything that takes resources away from real front-line services”.⁹⁴

119. However, specifically on Matter 12.11, he stated that grants to help town and community councils fund elections would be welcomed.⁹⁵

120. Abergavenny Town Council expressed a similar point of view, stating:

“[Matter 12.11] would be welcomed in relation to by-election costs, but if direct funding from the Assembly is imposed

⁹¹ LGCC34

⁹² LGCC8

⁹³ LGCC8

⁹⁴ RoP, para 28, 15 October 2009, Legislation Committee No.2

⁹⁵ *Ibid.*

instead of the present precept system, it could put constraints on community councils which would be counter-productive.”⁹⁶

121. One town council ⁹⁷specifically opposed the acquisition of legislative competence in this Matter on the grounds that funding should be via the principal authority.

122. Similarly, the WLGA did not support the transfer of competence in Matter 12.11, saying this lack of support was partly because of the principle involved and partly the practicalities.⁹⁸

123. In their evidence, they stated that their members had “expressed concern about the transfer of this Matter during the current financial climate, given there are limited resources for front-line services.”⁹⁹

124. They argued:

“Community and town councils already have powers to set precepts and some receive funding from principal authorities where agreed services have been delegated. Such funding arrangements are best agreed locally (...). The risk of an additional central grant direct from the Assembly Government could further cloud clarity and transparency over the funding for specific agreed services.”¹⁰⁰

125. They were further concerned about the issue of double taxation, where, “in an authority area, there is a community and town council and, in another part of the principal authority area, there is no community and town council. Essentially, it relates to where a precept is raised for services in areas that are served by a community and town council, but, in the other parts of the principal authority, only council tax is raised. So, theoretically, citizens in those areas could be taxed via council tax and via the precept for the same services.”

126. We asked One Voice Wales for their views on the WLGA’s concerns relating to double taxation. They did not consider this to be an issue because they considered any grant issued by the Minister would be constrained to a particular activity and, as such, “it would be

⁹⁶ LGCC15

⁹⁷ LGCC48

⁹⁸ Legislation Committee No.2 Paper LC2(3)-18-09 Paper 1, 22 October 2009; RoP, para 20, 22 October 2009, Legislation Committee No.2

⁹⁹ Legislation Committee No.2 Paper LC2(3)-18-09 Paper 1, 22 October 2009

¹⁰⁰ *Ibid.*

quite easy to delineate what was being funded through the grants and what might be happening elsewhere.”¹⁰¹

127. They went on:

“Double taxation is an issue in the funding relationships between principal authorities and community and town councils. (...) if the two parties come together with a positive approach to look at the delegation of services, any double taxation issue that arises can be addressed through discussion and debate.”¹⁰²

Evidence from the Minister

128. In his oral evidence, the Minister stated that the only source of funding available to town and community councils was via the precept. He said that the current law did not provide for Welsh Ministers to make grants directly available to these councils.

129. He went on:

“I am not saying that we have a wide range of proposals to directly fund community and town councils if this LCO goes through, but should the opportunity present itself, this will allow us to do that. There are also opportunities with regard to facilitating elections.”¹⁰³

130. Further to this, the Minister’s official confirmed that the Matter would provide for the Welsh Ministers to directly finance community council by-elections – one of the recommendations of the Aberystwyth report. He stated:

“It is felt that the cost of running a by-election, which is more likely to fall on a community council than those of their general elections every four years, may put off community councils from doing everything that they could to bring about an election. (...) It is being suggested that a method of directly financing those elections would improve matters.”¹⁰⁴

131. We pressed the Minister on the WLGA’s statement that they did not support the transfer of competence in relation to Matter 12.11. He

¹⁰¹ RoP, para 90, 22 October 2009, Legislation Committee No.2

¹⁰² *Ibid.*

¹⁰³ RoP, para 70, 24 September 2009, Legislation Committee No.2

¹⁰⁴ RoP, para 71, 24 September 2009, Legislation Committee No.2

argued that this competence was part of a “package” of proposals being brought forward in this area, “not just for the short term, but, we hope, for the medium to long term. So, it makes sense to bring this proposal forward, but not in the expectation that it will result in massive transfers of resource [to town and community councils] in the foreseeable future.”¹⁰⁵

Our view

132. In relation to Matter 12.11, we note that broad support exists amongst stakeholders for the transfer of legislative competence in this area.

133. We welcome this matter as a means of enabling effect to be given to the relevant recommendations of the Aberystwyth report relating to the provision of targeted direct grants from the Welsh Ministers to town and community councils to enhance their funding where appropriate.

134. We note the evidence from some stakeholders that any money provided by way of direct grants from Welsh Ministers to town or community councils should be additional money, rather than money diverted from other services, but we consider these questions of finance to be matters more appropriately addressed during consideration of future Measures arising as a consequence of legislative competence conferred by this Order.

135. We also note the opposition of some consultees to the transfer of competence under Matter 12.11 and their concerns about the possible financial implications of this Matter and the issue of double taxation. Again, we consider these points to be more relevant to the scrutiny of future Measures and, as such, do not believe they should prevent competence in this Matter from being sought, particularly in light of the weight of evidence we have received in support of this Matter.

136. We are content with Matter 12.11, as drafted.

¹⁰⁵ RoP, para 124, 5 November 2009, Legislation Committee No.2

Matter 12.12

Background

137. This Matter would provide the Assembly with competence to legislate to encourage productive relations and collaboration between community councils and between community councils and principal councils (i.e. county and county borough councils).¹⁰⁶

Evidence from consultees

138. There was broad support amongst consultees for this Matter, although some felt that the power, if acquired, should be kept in reserve and that voluntary agreements between councils should be pursued in the first instance.

139. Chepstow town council welcomed “the opportunity for the Welsh Assembly to be able to legislate to encourage productive relations and collaboration between the tiers of local government” and acknowledged that “considerable benefits arise from positive partnership working.”¹⁰⁷

140. Llanelli Rural Council, in expressing their support this Matter, also noted the value of improving relations and establishing Charter agreements and said “introducing legislation would strengthen and support this area of work.”¹⁰⁸

141. One Voice Wales were also in favour of Matter 12.12, although they saw it as a power to be kept in reserve. They argued that the development of charters between the tiers of local government in Wales has provided evidence of “more effective working relationships in support of citizen-focused services (...).”

142. However, in arguing that voluntary agreements to develop and participate in charter working were the best way forward, they did acknowledge “the ability for this to be mandated would be an important reserve power (...).”¹⁰⁹

143. They expanded on this point in oral evidence:

¹⁰⁶ Explanatory Memorandum para 19

¹⁰⁷ LGCC6

¹⁰⁸ LGCC39

¹⁰⁹ Legislation Committee Paper LC2(3)-18-09 Paper 2, 22 October 2009

“We think that there is more time to run to allow the charter working process to embed itself (...). However, if we were to find three, four or five years down the road that 90 per cent of unitary authorities had put in place a charter that was seen to be working effectively, and there were one or two authorities where it was not happening, the reserve power for the Assembly Government to require that type of discussion to take place towards producing a charter would be important.”¹¹⁰

144. The WLGA held a similar view to that of One Voice Wales. In their evidence, they said they regarded any new powers as being “powers of last resort, given the relationships between the two tiers are bilateral and need to be developed in partnership rather than as a result of direction from another tier of government.”¹¹¹

145. They suggested that powers under Matter 12.12 should only be implemented “if collaboration is not happening naturally and if there has been some kind of breakdown in relationships.”¹¹²

146. In his evidence, Professor Woods explained that “relations between Community and Town Councils and principal authorities were one of the most problematic areas identified by our study. Frustrations were recorded on both sides, but mostly resulted from poor communication, inadequate structures and misperceptions.”¹¹³

147. He went on to say that the Aberystwyth report emphasised the introduction of Charter agreements between principal authorities and the community and town councils in their area as an appropriate vehicle for codifying relations. He noted that the Welsh Government’s response to the Aberystwyth report stated that it wished to encourage the development of Charters via a voluntary scheme to begin with, although he expressed his ongoing concern that the take-up of a voluntary Charter scheme by principal authorities would be uneven.¹¹⁴

148. The North Wales Association of Larger Town and Community Councils also expressed their support for this Matter and noted that some of the larger councils, such as Denbigh and Welshpool, were already operating voluntary charter arrangements, under which

¹¹⁰ RoP, para 92, 22 October 2009, Legislation Committee No.2

¹¹¹ Legislation Committee No.2 Paper LC2(3)-18-09 Paper 1, 22 October 2009

¹¹² RoP, para 32, 22 October 2009, Legislation Committee No.2

¹¹³ LGCC58

¹¹⁴ *Ibid.*

responsibility for matters such as CCTV systems, managing car parks and the local tourism service had passed from the principal authority to the town council.¹¹⁵

149. However, they noted there was considerable variation in the size and capacity of town and community councils. Further to this, they said that there was evidence of concern amongst smaller councils that they might not be able to cope with greater responsibilities in the same way that larger councils could. They stated:

“(...) it comes back to the fact that one size does not fit all. Some councils may feel that they cannot go down this route, and some will feel that they want to. How you square that circle so that you do not end up with a fragmented system is a difficult issue to approach.”¹¹⁶

150. Both Mr. Owen Watkin and Henllanfallteg Community Council made a similar point. Mr. Watkin said:

“A virtue of the [town and community] councils is the voluntary nature of councillors and their willingness to participate in local affairs. Additional responsibilities may discourage voluntary involvement in some, while it may be attractive to others, especially some that will wish to become councillors without being members of principal councils.”¹¹⁷

Evidence from the Minister

151. In oral evidence, the Minister stated:

“Since 'Making the Connections' and the Beecham review, and so on, the case for greater collaboration across organisations and public bodies in Wales has been well made. So, the purpose of this is to make sure that there is no uncertainty about the legal situation with community and town councils, and how they collaborate to deliver a shared purpose. It is also to provide legal competence to further consolidate the relationship between community and town councils and the unitary authority in their area.”¹¹⁸

¹¹⁵ RoP, para 55, 5 November 2009, Legislation Committee No.2

¹¹⁶ RoP, para 66, 5 November 2009, Legislation Committee No.2

¹¹⁷ Legislation Committee No.2 Paper LC2(3)-17-09 Paper 1, 15 October 2009

¹¹⁸ RoP, para 75, 24 September 2009, Legislation Committee No.2

152. In response to the suggestions that Matter 12.12 should be used as a 'reserve power', the Minister said he did not envisage the power under Matter 12.12 to be "part of the mainstream means of promoting collaboration between community and town councils, or between those councils and the lead authority", but rather that it "would be a last stop or a reserve power, which we would not really use except in unusual or exceptional circumstances."¹¹⁹

Our view

153. We note that broad support exists for the transfer of competence as provided for under Matter 12.12, and believe that the principle of greater collaborative working across tiers of local government is one to be welcomed and encouraged.

154. We acknowledge that some consultees felt the power under Matter 12.12 should be used as a reserve power and that collaborative working relationships between tiers of local government should be developed on a voluntary basis in the first instance, possibly by way of charters. We note that this is also the Minister's preferred approach, and we are content with this.

155. We also acknowledge the evidence we have received that some town and community councils are already operating voluntary charter arrangements with their principal authority, under which they have taken on additional duties and responsibilities. We consider this an approach to be welcomed, where practicable.

156. However, we note that considerable variation exists in terms of the size, structure and skill set of town and community councils in Wales and that this may affect their capacity to expand their duties and responsibilities.

157. We have some concerns that an unintended consequence of exercising power in this area may be an expectation that some town and community councils can deliver more than they are able to and we would not wish to see these councils disadvantaged as a result. We suggest the Minister gives consideration to this when developing Measures under this Matter, and under Matter 12.13, in the future.

158. We are content with Matter 12.12 as drafted.

¹¹⁹ RoP, para 130, 132, 5 November 2009, Legislation Committee No.2

Matter 12.13

Background

159. The Explanatory Memorandum states that Matter 12.13 would provide legislative competence for the Assembly to put in place measures to raise the competence of community councils. It sets out that there is currently no national programme to assess the competence of community councils in Wales, unlike in England which has the Quality Parish and Town Council Scheme, a national programme with standards set by stakeholders to the scheme.¹²⁰

Evidence from consultees

160. There was broad support for this Matter amongst consultees.

161. In his evidence, Professor Woods stated:

“Community and Town Councils in Wales exhibit considerable diversity in their size, structures, procedures and employee numbers, as well as in the background and training of council members and clerks. This diversity is in many ways a strength of the sector, but it also has a bearing on the capacity of individual councils to expand their role and functions. In our report we proposed that councils wishing to develop an enhanced role in service delivery or otherwise expand their functions should be required to pass an accreditation test in order to demonstrate that standards of financial, legal and administrative competence and public accountability could be met.”¹²¹

162. He went on to say that a subsequent review of the Quality Parish and Town Council Scheme in England “reaffirmed” their belief that the Quality scheme “has overwhelmingly been successful in raising the standard of practice by parish and town councils [in England] and in stimulating more proactive engagement with local communities and their needs.”¹²²

¹²⁰ Explanatory Memorandum para 20

¹²¹ LGCC58

¹²² *Ibid.*

163. Professor Woods noted that Matter 12.13 would give the Assembly competence to introduce an accreditation procedure in Wales.¹²³

164. In their evidence, Chepstow Town Council “welcome[d] the opportunity for the Welsh Assembly to be able to legislate on a competency framework for local councils and notes that such a framework will contribute significantly to the raising of standards within the sector.”¹²⁴

165. In supporting this Matter, Mr. Owen Watkin stated:

“This is a really important area. On the premise that the aim is to raise the game for Community Councils, it is essential for them to possess the right skills, systems, capacity and confidence to undertake the activities that their existing statutory powers and additional powers would allow them.”¹²⁵

166. He expanded on this point in oral evidence, saying that as this is a matter which affects all local government, “it would be a wise step to have a statutory requirement that town and community councils consider accreditation or ensuring that members have qualifications. Doing that fits in with the other things that the proposed LCO talks about, so there is consistency across the piece.”¹²⁶

167. Linked to this, Mr. Watkin suggested that, in achieving the aim of this Matter, consideration would need to be given by the Welsh Ministers to resources. He argued:

“It might be more productive for the finance considered in Matter 12.11 to be channeled, at least at first, in raising competence and capacity, with the encouragement that Community Councils that can demonstrate both qualities will be empowered to undertake more ambitious tasks.”¹²⁷

168. In supporting Matter 12.13, One Voice Wales were of the view that, should an accreditation scheme for town and community councils be a requirement at some in the future, “such a scheme should be

¹²³ LGCC58

¹²⁴ LGCC5

¹²⁵ Legislation Committee No.2 Paper LC2(3)-17-09 Paper 1, 15 October 2009

¹²⁶ RoP, para 35, 15 October 2009, Legislation Committee No.2

¹²⁷ Legislation Committee No.2 Paper LC2(3)-17-09 Paper 1, 15 October 2009

developed under the auspices of the Assembly in order to ensure the relevance of the scheme to Wales.”¹²⁸

169. However, they stated they did not believe such an accreditation scheme to be critical to the delegation of services to town and community councils, particularly, they argued, “because many such delegations already exist without such an accreditation scheme being in place.”¹²⁹

170. The WLGA were also in favour of a voluntary approach in the first instance:

“(…) it is a similar matter to the development of charters and relationships between town and community councils and principal authorities. It would probably be done best, initially, through voluntary arrangement, best practice and learning from what is happening in England, where (…) it is a voluntary arrangement and not statutory.”¹³⁰

171. They did, however, acknowledge that legislation could be used to provide specific criteria for levels of efficiency, effectiveness and good corporate governance in the delivery of services.¹³¹

172. In their evidence, Henllanfallteg Community Council expressed their support for this Matter, but said that any accreditation schemes “must have realistic goals to be achieved and the bureaucracy should not outweigh the benefits, particularly for small councils.”¹³²

173. Llanelli Rural Council, were of the view that “if local councils wish to take advantage of [Matters 12.10, 12.11 and 12.12] then councils must demonstrate that they are up to the task and they can add value.” However, they went on:

“The Council (…) would ask that the Assembly learns from the English model by not trying to introduce similar rigid criteria for assessing competence. The Council feels that a ‘one size fits all’ [model] would not work in practicable terms.”¹³³

¹²⁸ Legislation Committee No.2 Paper LC2(3)-18-09 Paper 2, 22 October 2009

¹²⁹ *Ibid.*

¹³⁰ RoP, para 35, 22 October 2009, Legislation Committee No.2

¹³¹ *Ibid.*

¹³² LGCC31

¹³³ LGCC39

174. Similar points were made by consultees as part of their evidence on Matter 12.12. Paragraphs 146 and 147 of this report refer.

175. In their evidence, Peterston-Super-Ely Community Council stated the “amateur, part-time principle” of rural local councillors who take no remuneration “has a great deal to commend it.” They went on, however, to argue that “some of the ten Matters [in the proposed Order] (...) suggest a worrying, underlying mentality with a misguided aim of “professionalising” local councils based on a flawed understanding of how such bodies operate on the part of those divorced from the practicalities of the situation (...).”¹³⁴

Evidence from the Minister

176. In his evidence, the Minister told us that the voluntary accreditation scheme in place in England “gives people confidence that the community and town council is meeting certain standards.” He argued that, despite his preferred approach of proceeding on a voluntary basis, the Assembly should have the legal competence to establish a mandatory accreditation scheme in Wales should the need arise.¹³⁵

177. He acknowledged a “serious training and competence deficit” that existed amongst town and community councils and informed us that, over recent years, his department had been putting training programmes in place to increase this competence.¹³⁶ On this point, he said he anticipated “that up to 600 councillors will go through the current training programme, and we are financially supporting that training programme and working with One Voice Wales.”¹³⁷

178. On the issue of the development of an accreditation scheme in Wales, the Minister said “a limiting factor would be the capacity of an organisation such as One Voice Wales to deliver an accreditation system.”

179. He went on:

”From their point of view, this would not be on the front burner of their priorities, because they are still very much at the stage of trying to build the capacity of One Voice Wales, increasing

¹³⁴ LGCC4

¹³⁵ RoP, para 85, 86, 24 September 2009, Legislation Committee No.2

¹³⁶ RoP, para 92, 24 September 2009. Legislation Committee No.2

¹³⁷ RoP, para 144, 5 November 2009, Legislation Committee No.2

the training of clerks to councils and increasing the training given to councillors. Unless that solid infrastructure is in place, going on to accreditation would seem to be putting the cart before the horse. Once a certain level of resilient infrastructure is in place, the next step would be to put in an accreditation system. However, unless clerks are well trained and councillors are better trained, the accreditation system is not likely to prove very much, except that there is a training need. So, the need for the accreditation system will not be on the front burner (...)."¹³⁸

Our view

180. In relation to Matter 12.13, we note the broad support that exists amongst consultees to develop the competence and capacity of town and community councils in Wales, and we support such a move.

181. We note that one way to achieve this may be through the future introduction of an accreditation scheme in Wales similar to that already in operation in England. We acknowledge the evidence we have received that the scheme in England has increased public confidence in town and community council standards.

182. We note the evidence from consultees calling for the development of competence and capacity amongst town and community councils in Wales to be done on a voluntary basis in the first instance. We accept that this is the Minister's preferred approach and are content with this. On this point, we welcome the training programmes put in place by the Minister and are encouraged by the level of take-up amongst town and community councils.

183. We are, however, persuaded of the value of the Assembly having the legislative competence to put any voluntary schemes on a statutory footing should the need arise in the future.

184. We are content with Matter 12.13, as drafted, although we refer the Minister to the evidence we received and the conclusions we reached in relation to Matter 12.12.

¹³⁸ RoP, para 136, 5 November 2009, Legislation Committee No.2

Matter 12.14

Background

185. Matter 12.14 would give the Assembly legislative competence in respect of public participation in local government for communities (apart from elections). The Explanatory Memorandum states that it would enable the Assembly to legislate to encourage transparency and wider participation in the proceedings of community councils.¹³⁹

Evidence from consultees

186. The majority of consultees expressed broad support for the transfer of competence in this Matter.

187. Professor Woods stated:

“The development of appropriate mechanisms for public participation is important for increasing accountability, enhancing the public status of councils and improving the effectiveness of council initiatives.”¹⁴⁰

188. Professor Woods went on to say:

“In our report, we identified a number of possible measures for enhancing public participation and community engagement, including introducing periods for public questions in council meetings, promoting consultation exercises, and advertising vacancies on councils. This matter would give the National Assembly for Wales the legislative competence to take forward these recommendations, with statutory weight if appropriate.”¹⁴¹

189. The WLGA said that, in principle, they and local government in general, supported the rationale of Matter 12.14.¹⁴²

190. Evidence from Pembroke Dock Town Council suggested that:

“It is accepted good practice to advertise openly within the community for people to serve on the council. This avoids the perception of community councils being ‘closed shops’ and provides opportunities for greater participation by under-represented groups. The members recognise that although the

¹³⁹ Explanatory Memorandum para 21

¹⁴⁰ LGCC58

¹⁴¹ *Ibid.*

¹⁴² RoP, para 43, 22 October 2009, Legislation Committee No.2

policy within Pembroke Dock Town Council is to advertise such vacancies, it might be wise to legislate on this issue for councils who do not have that policy.”¹⁴³

191. Abergavenny Town Council, whilst supporting the conferral of competence in relation to this Matter, did sound a word of caution:

“Encouragement of public participation is challenging. People need to be met on their own terms rather than attempts made to attend meetings.”¹⁴⁴

192. In relation to the scope of the Matter, one community councillor commented that it made sense for the responsibility for public participation in local government to reside in powers devolved to Wales but felt the Matter was too narrow and “should also include responsibility for elections if the overall transfer is to work effectively.”¹⁴⁵

Evidence from the Minister

193. In his evidence on this Matter, the Minister said:

“It is about trying to make local democracy more interesting and relevant to local people, and to enhance capacity to allow that to happen.”¹⁴⁶

194. The Minister went to say that he envisaged the Matter would enable him to legislate for the organisation and role of community meetings, and concluded that this type of “direct participation in the democratic process is very healthy”.¹⁴⁷

195. When asked to explain the significance of the Matter, the Minister’s official explained that, at present, there are issues with community meetings, including the ease with which they can be brought about, and the fact that principal councils have no responsibility to take notice of any subsequent recommendations. The official suggested that, under Matter 12.14, Welsh Ministers would have the power to place a duty on principal authorities to, as a

¹⁴³ LGCC34

¹⁴⁴ LGCC15

¹⁴⁵ LGCC1

¹⁴⁶ RoP, para 101, 24 September 2009, Legislation Committee No.2

¹⁴⁷ *Ibid.*

minimum, respond to any suggestions which arose out of properly convened community meetings.¹⁴⁸

Our view

196. With regard to Matter 12.14, we acknowledge the support that exists amongst stakeholders for the conferral of competence in this area. We welcome this Matter as means of enabling effect to be given to the appropriate recommendations of the Aberystwyth report, particularly in relation to enhancing public participation and community engagement. We also welcome the Minister's commitment to make local democracy more interesting and more relevant to local people.

197. We recognise the importance of the Matter in enabling Welsh Ministers to legislate to encourage transparency and wider participation in the proceedings of community councils.

198. **We are content with Matter 12.14, as drafted.**

Matter 12.15

Background

199. Matter 12.15 would provide competence for the Assembly to legislate to encourage greater accountability in local government by way of the information provided by principal and community councils about their activities to local people.¹⁴⁹

Evidence from consultees

200. The majority of evidence we received supported the inclusion of this Matter in the proposed Order.

201. Mr. Owen Watkin said:

“This is about raising the awareness and recognition of the multi-faceted role of councillors to enable them to talk to the constituents. Behind all of this is greater public engagement in democracy, in the sense that, if they know more of the positives with regard to what is going on, people may take a greater interest, which may increase the turnout in elections.”¹⁵⁰

¹⁴⁸ RoP, para 102-103, 24 September 2009, Legislation Committee No.2

¹⁴⁹ Explanatory Memorandum para 22

¹⁵⁰ RoP, para 40, 15 October 2009, Legislation Committee No.2

202. Mr. Watkin also suggested that, as a consequence of the transfer of competence under this Matter, people’s willingness to participate and to stand as candidates at town and community council level and at principal authority level may be increased.¹⁵¹

203. In expressing their support for this Matter 12.15, Abergavenny Town Council said:

“The provision of information relating to local government for communities in the form of newsletters, websites and the local media is to be supported.”¹⁵²

204. They did, however, suggest that small councils may need financial support to fulfil any new duties which may arise.¹⁵³

205. The WLGA also commented that any new duties on authorities could lead to additional administrative costs.¹⁵⁴

206. In contrast, Penarth Town Council disagreed with the powers proposed under this Matter as they felt it would amount to “a burden to the tax payer.”¹⁵⁵

Evidence from the Minister

207. In setting out his reasons for including this Matter in the proposed Order, the Minister said:

“Nearly all of us, or those who have been elected, will have heard the statement ‘We never see or hear from you until there is an election’. It is one of the most common complaints that people make about their elected representatives. This matter is partly about addressing that issue.”¹⁵⁶

208. The Minister explained that future Measures would specify the format in which such information would be produced, and said that he would consider whether or not councillors should be required to produce annual reports.¹⁵⁷

¹⁵¹ RoP, para 40, 15 October 2009, Legislation Committee No.2

¹⁵² LGCC15

¹⁵³ *Ibid.*

¹⁵⁴ RoP, para 43, 22 October 2009, Legislation Committee No.2

¹⁵⁵ LGCC37

¹⁵⁶ RoP, para 16, 24 September 2009, Legislation Committee No.2

¹⁵⁷ RoP, para 110, 24 September 2009, Legislation Committee No.2

209. He went on to say that, when considering the details of this proposal in the future, the Welsh Ministers would consider whether local authorities should support town and community councillors in producing annual reports, noting that currently some councillors “do it out of their own pockets”.¹⁵⁸

Our view

210. With regard to Matter 12.15, we note the broad support that exists amongst most consultees for the conferral of competence in this area.

211. We welcome the intention of this Matter to improve and increase effective communication flow between local government and the public.

212. We acknowledge the concerns of some consultees that new duties which may arise as a result of this Matter may lead to an increase in expenditure and that some town and community councils, particularly those smaller in size, may need financial assistance in fulfilling these duties. We suggest the Minister gives consideration to this matter at the appropriate time.

213. **We are content with Matter 12.15, as drafted.**

Matter 12.16

Background

214. The Explanatory Memorandum states that Matter 12.16 would provide the Assembly with competence relating to salaries, allowances and pensions and other payments to members of county and county borough councils, national park authorities, community councils and fire and rescue authorities in Wales.¹⁵⁹

Evidence from consultees

215. The majority of consultees expressed support for the transfer of competence as provided for under Matter 12.16.

216. In his evidence to the Committee, Mr. Richard Penn, Chair of the Independent Remuneration Panel for Wales, commented that Matter 12.16 is closely linked to the work of the Panel, as ensuring provision

¹⁵⁸ RoP, para 111, 25 September 2009, Legislation Committee No.2

¹⁵⁹ Explanatory Memorandum para 23

for appropriate remuneration for councillors is part of “the approach to attracting interest in local government service from across a wide range of the electorate”. He said that it was for this reason that he fully supported the transfer of competence in this area.¹⁶⁰

217. With regard to the scope of Matter 12.16, Mr. Penn stated that the Panel believed consideration should be given to widening the their remit, also suggesting that:

“(…) the National Parks, Fire and Rescue Authorities and Community Councils in Wales would prefer if the Panel’s remit included them also.”¹⁶¹

218. One Voice Wales expressed their support for this Matter on the basis that it would enhance the ability of the Welsh Ministers to respond to the recommendations of the Wales Independent Remuneration Panel.¹⁶² The WLGA also supported this Matter in principle.¹⁶³

219. The Welsh Association of National Park Authorities welcomed the intention to acquire these powers, arguing that “it would ensure and enable greater consistency across Wales”.¹⁶⁴

220. In commenting on the appropriateness of Matter 12.16, Mr. Owen Watkin surmised that, as the National Assembly is a competent law-making body for local government in Wales, it should have the powers associated with Matter 12.16 as it is “part and parcel of that area of responsibility.”¹⁶⁵

221. He further suggested that:

“By being clear about this and by making explicit how it reaches decisions with regard to this contentious area, the Assembly can show innovation, clarity and the highest possible standards in public life.”¹⁶⁶

222. Although content for the Assembly to acquire legislative competence in this area, Llandudno Town Council and Abergele Town

¹⁶⁰ Legislation Committee No.2 Paper LC2(3)-17-09 Paper 2, 15 October 2009

¹⁶¹ *Ibid.*

¹⁶² RoP, para 105, 22 October 2009, Legislation Committee No.2

¹⁶³ RoP, para 45, 22 October 2009, Legislation Committee No.2

¹⁶⁴ LGCC54

¹⁶⁵ RoP, para 43, 15 October 2009, Legislation Committee No.2

¹⁶⁶ *Ibid.*

Council both made the point that it was important that decisions on the issues covered by Matter 12.16 were made at the discretion of councils.¹⁶⁷ In contrast to this, the response from the Association for Public Service Excellence (APSE) quoted a view from its membership that issues under this Matter “should not be determined locally, and that one governing body for the whole of Wales needs to say what is reasonable and what is acceptable.”¹⁶⁸

223. In his evidence, Professor Woods advised that within local government there is resistance to the introduction of a basic allowance, with some fearing that it would compromise the volunteer status of community and town councillors and increase the financial burden on councils. He did, however, acknowledge that there are valid concerns that the costs of council membership are “a deterrent to potential candidates, especially women and younger people.”¹⁶⁹

224. Welshpool Town Council stated in their written evidence that they were opposed to legislative competence being granted in relation to this Matter, but did not provide reasoning.¹⁷⁰

Evidence from the Minister

225. In setting out the purpose of this Matter, the Minister said:

“(...) the independent remuneration panel felt that the current arrangements quite constrained its ability to properly remunerate people and to recognise the costs of being an elected member, particularly at county council level. So, it has asked us to seek legislative competence to allow us greater flexibility in how we could respond to any recommendation that the panel might make.”¹⁷¹

226. The Minister went on to say that, at present, there are limits to what the Panel can recommend, including the incapacity to comment on the allowances for members of the fire and rescue authorities or the national parks.¹⁷²

¹⁶⁷ LGCC20 & LGCC12

¹⁶⁸ LGCC30

¹⁶⁹ LGCC58

¹⁷⁰ LGCC48

¹⁷¹ RoP, para 113, 24 September 2009, Legislation Committee No.2

¹⁷² *Ibid.*

227. As the national parks and fire and rescue authorities currently have to take notice of the allowances for county councillors, the Minister said:

“We think that it would be sensible for the independent remuneration panel to be able to look at the allowances or payment systems for fire and rescue authorities, as well as national parks.”¹⁷³

Our view

228. We recognise that there is broad support amongst consultees for the conferral of legislative competence under Matter 12.16.

229. We note the importance of this Matter in providing Welsh Ministers with the flexibility to respond to the recommendations of the Independent Remuneration Panel for Wales.

230. We acknowledge that there are mixed views amongst consultees about the principle of remuneration for elected members. We consider this a matter to be addressed as part of the consideration of any future Measures arising out of the exercise of competence under Matter 12.16 and, as such, do not believe this should prevent the Assembly from seeking legislative competence in this area.

231. We are content with Matter 12.16, as drafted.

Matter 12.17

Background

232. Matter 12.17 relates to promoting and supporting membership of local government institutions for communities and principal councils. The Explanatory Memorandum states that Matter 12.17 would provide competence for the Assembly to require principal councils and community councils to provide better support and working conditions for serving councillors with a view to assisting in the recruitment of greater numbers of candidates for local government and in the retention of councillors once elected.¹⁷⁴

¹⁷³ RoP, para 113, 24 September 2009, Legislation Committee No.2

¹⁷⁴ Explanatory Memorandum para 24

Evidence from consultees

233. The majority of those who submitted evidence, including Chepstow Town Council, the Powys Association of Voluntary Organisations, Bagillt Community Council, and Pembroke Dock Town Council, supported this Matter and the need for greater support for community, town and county councillors.¹⁷⁵

234. Professor Woods noted:

“(...) one of the major challenges facing the Community and Town Council sector is the shortage of candidates putting themselves forward for election.”

235. He believed that the inclusion of this Matter would provide the National Assembly with the competence to actively encourage greater and broader participation in local government.¹⁷⁶

236. PAVO commented:

“Any initiative to improve participation within local government (either at the level of principal councils or community councils) clearly needs to be able to address the level of support provided to councilors and their working conditions. It is particularly pertinent for the wider equalities agenda that no prospective or serving council should be deterred from this role due to issues of accessibility or unmet support needs.”¹⁷⁷

237. A number of respondents felt that county councillors with non-executive roles required a higher level of support than they received currently, and hoped the proposed Order would facilitate this.¹⁷⁸

238. Simon White of One Voice Wales said:

“I was on the Councillors’ Commission expert panel representing the sector, and that work convinced me that there is a need for more support for councillors. There was a particular concern about the level of support for backbench county borough councillors, and the emphasis of any

¹⁷⁵ LGCC1, LGCC8, LGCC14, & LGCC34

¹⁷⁶ LGCC58

¹⁷⁷ LGCC8

¹⁷⁸ RoP, para 107, 22 October 2009, Legislation Committee No.2; RoP, para 40, 15 October 2009, Legislation Committee No.2

legislation under this matter might well be on support for such councillors.”¹⁷⁹

Evidence from the Minister

239. In his evidence, the Minister said:

“(…) even though councillors work very hard to be genuinely representative of their communities, the fact that the elected members are so atypical must be an issue. This is an attempt to provide legislative competence for us to consider more creative ways by which we address this (…)”¹⁸⁰

240. Responding to the comments made by One Voice Wales and Mr. Owen Watkin regarding support for non-executive members of county councils, the Minister said:

“If you look at the expert group that was established after the Councillors Commission was set up in England, you will see that, among other things, it asked for local authorities to have an executive/legislative split, a bit like our arrangement, so that one part of the council would support the objectives of the cabinet while another part would support the members.”

241. He went on:

“This particular proposed LCO will not give us the legislative competence to change county councils in that way, but it could give us the competence to put in place a statutory requirement that special arrangements be put in place, for example, to support backbenchers in the range of activities that they undertake and to enhance their role.”¹⁸¹

Our view

242. In relation to Matter 12.17, we note that broad support exists amongst the majority of consultees for the conferral of legislative competence in this area.

243. We welcome this matter as a means of enabling effect to be given to the relevant recommendations of the Aberystwyth report relating to the provision of better support and working conditions for

¹⁷⁹ RoP, para 107, 22 October 2009, Legislation Committee No.2

¹⁸⁰ RoP, para 115, 24 September 2009, Legislation Committee No.2

¹⁸¹ RoP, para 117, 24 September 2009, Legislation Committee No.2

serving councillors and the recruitment of greater numbers of candidates for local government.

244. We acknowledge the evidence from consultees that there is a need for greater support for members of town, community and county councils, particularly for back bench members, and we consider that this support is a critical component in improving participation in all tiers of local government. We believe that Matter 12.17 will enable Welsh Ministers to legislate to put these arrangements in place

245. **We are content with Matter 12.17, as drafted.**

4. Interpretation provisions in the proposed Order

Background

246. The proposed Order includes interpretation provisions which will apply to Field 12 as a whole. The following provisions are included:

“communities” means separate areas for the administration of local government, each of which is wholly within the area of a county council or county borough council (but does not comprise the whole area of a county council or county borough council);

“principal councils” means county councils and county borough councils.

Evidence from consultees

247. All those who commented on the ‘Interpretation of this field’ paragraph were in support of its inclusion in the proposed Order, including Puncteston Community Council, Ambleston Community Council and the Society of Local Council Clerks.¹⁸²

248. We also asked consultees for their views on the use of the term ‘local government institutions for communities’ instead of the more well known phrase ‘community councils’.

249. The majority of respondents did not oppose the use of the term ‘local government institutions for communities’, although some suggested that related definitions needed to be clarified in any future proposed Measures.

250. The WLGA said:

“We have not received any clarification from the Assembly Government as to why that terminology [‘local government institutions for communities’] has been used. It is not necessarily consistent (...) with previous legislation. ‘Community and town councils’ is the commonly accepted term. However, I presume that it is a broader concept that would allow the legislation to cover community meetings and possibly groupings of community and town councils.”¹⁸³

251. Simon White of One Voice Wales broadly agreed and said:

¹⁸² LGCC26, LGCC43 & LGCC55

¹⁸³ RoP, para 47, 22 October 2009, Legislation Committee No.2

“I have come to the conclusion that we have to accept this term, ‘local government institutions for communities’, because it embraces the community meetings, and if we were solely to refer to ‘community councils’, there would be a type of community meeting that would fall outside the scope of the LCO.”¹⁸⁴

252. Some witnesses suggested that related definitions needed to be clarified in any future proposed Measures, including Owen Watkin who said:

“I am just wondering whether the interpretation at this stage (...) is just a matter of moving through the LCO bit of the process: the definition is vaguer than it might be in the Measure (...). When you move to the area of the exercise of legal powers and the expenditure of public money, there has to be a much tighter definition (...).”¹⁸⁵

253. One Voice Wales, however, stated:

“In putting together our submission, I reflected on how many terms we have for local government in Wales. It is immensely confusing. We talk about unitary, principal and local authorities, community councils, county borough councils, county councils and so on, and, at some point, it would be useful to have some sort of tidying-up exercise because it is quite hard for citizens to relate to us.”¹⁸⁶

Evidence from the Minister

254. We asked the Minister to explain why he had felt it necessary to include interpretation provisions on the face of the proposed Order, rather than leaving this as a matter for future Measures. In response, the Minister’s official said:

“The interpretation section in the proposed Order is there to clarify the scope for matters that will later be drawn from that scope. For example, ‘communities’ is defined in the proposed LCO, but if you did not have that definition there is no definition in other legislation that is relevant to this particular LCO. At least you know the scope of what your proposed

¹⁸⁴ RoP, para 109, 22 October 2009, Legislation Committee No.2

¹⁸⁵ RoP, para 54-56, 15 October 2009, Legislation Committee No.2

¹⁸⁶ RoP, para 110, 22 October 2009, Legislation Committee No.2

Measure can deal with by looking at the interpretation section.”¹⁸⁷

255. In relation to the use of the term ‘local government institutions for communities’, we asked the Minister to explain why, when drafting the proposed Order, he had decided to use a new term and not use the more widely know expression ‘community councils’.

256. In response, the Minister’s official stated:

“The reality is that the proposed Order seeks competence to deal with community meetings, community town councils and community councils. They are not defined in the Local Government Act 1972; there is a reference to community councils, but it is not defined—it refers to those community councils that were in place before 1 April 1996 continuing forth. So, for the purpose of the proposed Order, there needs to be clarification of what exactly we are talking about.”¹⁸⁸

257. In addition, the Minister’s official said the broad definitions within the proposed Order have been included so as to “retain the ability to legislate by way of Measure for entities that may also exist in the future.”¹⁸⁹

258. We questioned the Minister about the intended scope of the term ‘local government institutions for communities’, and in particular, whether it was intended to provide for one-off community meetings. The Minister’s official confirmed:

“The term ‘local government institutions’ refers to community meetings and community and town councils, and the word ‘institution’ just means an organisation of some kind directed to a particular purpose. The purpose here is specified as being local government, so in that context, you could argue that a community meeting could be an institution because it is an organisation of some kind relating to local government.”¹⁹⁰

259. The Minister went on:

¹⁸⁷ RoP, para 123, 24 September 2009, Legislation Committee No.2

¹⁸⁸ RoP, para 125, 24 September 2009, Legislation Committee No.2

¹⁸⁹ RoP, para 155, 5 November 2009, Legislation Committee No.2

¹⁹⁰ RoP, para 129, 24 September 2009, Legislation Committee No.2

“This would not cover every meeting held in the community, but a formally convened meeting with implications for the activities of a council (...).”¹⁹¹

260. With regard to the terminology and interpretations provided for the proposed Order, the Minister said:

“(...) there is no reason why we cannot revisit this in the future and see whether it can be improved upon.”¹⁹²

Our view

261. We note that there is broad support for the inclusion of the interpretation provisions on the face of the proposed Order.

262. We accept the Minister’s argument that the term ‘local government institutions for communities’ is intended to be broader in scope than the more widely recognised term ‘community councils’ and, on this basis, we are content that it be included on the face of the proposed Order.

263. We also accept the Minister’s argument that the use of broad interpretations serves to ‘future proof’ the proposed Order, in that it will provide for future governments to legislate for entities which do not yet exist.

264. We do, however, have some sympathy with evidence from consultees that there are now many terms in use to describe the various tiers of local government in Wales and that this can be very confusing. We consider it to be important for there to be clarity and consistency in the terminology used in legislation and we therefore urge the Minister to give careful consideration to the terminology used to define local government in future Measures arising out of the proposed Order.

265. In the longer term, we suggest the Minister considers undertaking a wider review of terminology relating to local government, at the appropriate time, with a view to improving clarity and consistency.

¹⁹¹ RoP, para 131, 24 September 2009, Legislation Committee No.2

¹⁹² RoP, para 154, 5 November 2009, Legislation Committee No.2

Witnesses

The following witnesses provided oral evidence to the Committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed in full at <http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-legislative-competence-orders/bus-legislation-lco-2009-lgcc.htm>

24 September 09

Dr Brian Gibbons, Minister for Social Justice and Local Government, Welsh Assembly Government

15 October 09

Owen Watkin Member of the Councillor Commissioner Expert Panel Wales *LC2(3)-17-09 Paper 1*

Richard Penn Independent Remuneration Panel Wales *LC2(3)-17-09 Paper 2*

Dr Rita Austin Independent Remuneration Panel Wales *LC2(3)-17-09 Paper 2*

22 October 09

Daniel Hurford Welsh Local Government Association *LC2(3)-18-09 Paper 1*

Sara Titcombe Welsh Local Government Association *LC2(3)-18-09 Paper 1*

Simon White One Voice Wales *LC2(3)-18-09 Paper 2*

5 November 09

Robert Robinson North Wales Association of Larger Town and Community Councils *LC2(3)-19-09 Paper 1*

Dorothy Bulled North Wales Association of Larger Town and Community Councils *LC2(3)-19-09(p1)*

Dr Brian Gibbons

Minister for Social Justice and Local
Government, Welsh Assembly Government

List of written evidence

The following people and organisations provided written evidence to the Committee. All written evidence can be viewed in full at

<http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-legislative-competence-orders/bus-legislation-lco-2009-lgcc.htm>

<i>Organisation</i>	<i>Reference</i>
CLlr Neil Stonelake, Rhymney Community Council	LGCC1
Sue Daintith (Individual Response)	LGCC2
Cilybebyll Community Council	LGCC3
Peterston-Super-Ely Community Council	LGCC4
Bay of Colwyn Town Council	LGCC5
Chepstow Town Council	LGCC6
Llangattock Vibon Avel Community Council	LGCC7
Powys Association of Voluntary Organisations	LGCC8
Llanddewi Velfrey Community Council	LGCC9
Gwehelog Fawr Community Council	LGCC10
Llanbadoc Community Council	LGCC11
Abergele Town Council	LGCC12
Offa Community Council	LGCC13
Bagillt Community Council	LGCC14
Abergavenny Town Council	LGCC15
Caerphilly County Borough Council	LGCC16
Conwy Town Council	LGCC17
Llantrisant Fawr Community Council	LGCC18

Welsh Liberal Democrats	LGCC19
Llandudno Town Council	LGCC20
Chairman of the South Wales Fire and Rescue Service	LGCC21
Cllr Jon Aylwin, Cathays Ward, Cardiff	LGCC22
Maesteg Town Council	LGCC23
Gwersyllt Community Council	LGCC24
Cllr Lyndon Ward, Beulah Community Council	LGCC25
Puncheston Community Council	LGCC26
Lledrod Community Council	LGCC27
Llangybie Fawr Community Council	LGCC28
Cllr Dave King, Henllanfallteg Community Council	LGCC29
Association for Public Service Excellence (APSE)	LGCC30
Chairman, Henllanfallteg Community Council	LGCC31
Llanelli Town Council	LGCC32
Mike Greenaway, Director, Play Wales	LGCC33
Pembroke Dock Town Council	LGCC34
Llandyfaelog Community Council	LGCC35
Cllr Christopher Holley, Cwmbwrla Ward, Swansea	LGCC36
Penarth Town Council	LGCC37
Caia Park Community Council	LGCC38
Llanelli Rural Council	LGCC39
Bridgend County Borough Council	LGCC40
North Powys Community Council Forum	LGCC41
Beguildy Community Council	LGCC42

Ambleston Community Council	LGCC43
St Dogmaels Community Council	LGCC44
Rhyl Town Council	LGCC45
Llansannan Community Council	LGCC46
Acton Community Council	LGCC47
Welshpool Town Council	LGCC48
Mold Town Council	LGCC49
Penyrheol Trecenydd Energlyn County Council	LGCC50
Rhuddlan Town Council	LGCC51
Milford Haven Town Council	LGCC52
Llanedi Community Council	LGCC53
Welsh Association of National Park Authorities	LGCC54
Society of Local Council Clerks	LGCC55
Penycae Community Council	LGCC56
Rhosddu Community Council	LGCC57
Prof Woods, author, the 'Aberystwyth Report' (2003)	LGCC58
Langstone Community Council	LGCC59