

Draft Local Government (Wales) Bill

Response from the Association of Local Authority Chief Executives and Senior Managers (ALACE) to the Welsh Government's consultation dated 24 November 2015

ALACE (the Association of Local Authority Chief Executives and Senior Managers) is a duly registered trade union whose approximately 300 members comprise heads of paid service and other senior managers in local authorities throughout the UK, and other agency chief executives associated with local government. The Council of ALACE forms the staff side of the Joint Negotiating Committee for Chief Executives, the body responsible for the salary and terms and conditions of employment for chief executives. The Association also represents the interests of its members in responding to draft legislation and regulations which affect the role of the head of paid service and other senior officers, together with issues such as the reorganisation of local government.

SUMMARY

1. ALACE is pleased to see (i) that a proposal it put forward in its response to the 2015 White Paper "Reforming Local Government: Power to Local People" (more flexible timings for peer reviews) has been incorporated into the Draft Bill, (ii) that the measures in the White Paper that ALACE supported have been carried forward into the draft legislation, and (iii) that some of the measures it opposed have been dropped. However, some matters of concern remain.

2. More detailed comments appear below, with the matters of concern emphasised in bold italics. They are confined to matters of proper concern to a trades union.

PART 4 OF THE DRAFT BILL

Executives of county councils (chapter 5)

3. In its 2015 response, ALACE welcomed the Welsh Government's intention to clarify the respective roles and responsibilities of the leader, chief executive, and other councillors and officers. Chapter 5 of the Draft Bill includes provisions that are helpful in this regard.

Appointment of a chief executive (clause 103(1))

4. As stated in its response to the 2015 White Paper, ALACE wholeheartedly supports the inclusion in primary legislation of a requirement for each local authority to appoint a chief executive.

Council leaders to set objectives for chief executives (clause 104)

5. ALACE still holds the views it expressed in its 2015 response. They were that the chief executive's objectives should indeed be set by the executive, but that the process of setting and reviewing objectives should follow the Joint Guidance on Appraisal of the Chief Executive set out in the official conditions of service agreed by the Joint Negotiating Committee for Local Authority Chief Executives, which is applicable in Wales. (This states that "it is a contractual obligation on the part of both the chief executive and the employing council to engage in a regular process of appraisal".)

6. The joint guidance makes clear that a local authority chief executive is accountable to the whole council, not just to the leader (which, of course, is a very different constitutional position to that of a senior civil servant); and consequently states that "it will be for local decision in the light of local circumstances whether the appraisal should be carried out by a small committee representing all political groups or by a senior representative or representatives of the controlling group". **ALACE believes that Clause 104 of the Draft Bill should be amended to reflect that the senior executive member must consider annually whether to involve other executive members in the arrangements.** This would not compromise what are understood to be the Welsh Government's broad intentions.

7. Statutory guidance rather than the face of the Draft Bill should be used as follows:

(i) to state that the public report on the achievement of the chief executive's objectives referred to in clause 104(5) should focus on overall outcomes, not on more personal details that may have been discussed in a confidential setting

(ii) more generally to draw on or point to the Joint Guidance on Appraisal of the Chief Executive

(iv) to state that any councillor lacking experience of conducting appraisals should undergo appropriate preparation before participating in an appraisal process.

8. However, ALACE is totally opposed to guidance being issued to individual councils, as provided for in clause 104(8), rather than to the generality of councils. Such a provision allows for wholly unwarranted interference in an individual employer's performance management of its employee. By the same token, the guidance on councillor training referred to in clause 167(2) should not be targeted at an individual council.

9. ALACE firmly welcomes the requirement in clause 104(7) for the leader to consult the chief executive over the setting, review, and reporting of the latter's objectives.

OTHER ISSUES RELATED TO PART 4 OF THE DRAFT BILL AND REFERRED TO IN THE CONSULTATION DOCUMENT

The cost of senior management in local government

10. ALACE is pleased to see that the Draft Bill omits mention of (i) a permanent control mechanism for salary awards for all chief officers, (ii) a central appointment process for chief executives and chief officers, and (iii) term limits for chief

executives. As it stated in its response to the 2015 White Paper, ALACE is strongly opposed to these, and believes that such matters should be for each individual local authority to determine.

11. However, ALACE's support for the omission of these matters from the face of the Draft Bill is tempered by the stated intention in the consultation document that they will be addressed as part of wider considerations across the public service and through the Public Services Staff Commission (a matter picked up in paragraphs 16 and 17 below).

The role and responsibilities of chief executives

12. ALACE made clear in its 2015 response that it was strongly opposed to the proposal for legislation to prevent the payment of an additional fee for the Returning Officer role in each principal authority, as it should be a matter for each individual council. While ALACE is disappointed to see that the consultation document expresses the Welsh Government's intention to seek a further legislative opportunity to take the matter forward, it could understand the principle of such a change if it related only to county council elections.

13. However, the National Assembly and Welsh Government do not have legislative competence or responsibility for a range of other elections and referendums, including elections for police and crime commissioners, Parliamentary elections, European Parliamentary elections, and national referendums such as the forthcoming referendum on the UK's membership of the EU – these are matters for the UK Government and Parliament, and additional fees will be payable in accordance with whatever arrangements are decided by them. **ALACE would be strongly opposed to any suggestion that the Welsh Government's proposal might extend beyond the Returning Officer role for county council elections, as the other electoral processes entail quite separate employments and considerable additional work.**

The power to dismiss the chief executive, the chief finance officer, the monitoring officer, and the head of democratic services through a vote by the Full Council

14. The question posed in the consultation document is misleading, and appears to be based on a misunderstanding of the current legislation. In both Wales and England, it is already the case (under long-standing provisions) that only the Full Council has the power to dismiss its statutorily-protected officers – and only after observing certain procedural requirements. In England, although the Designated Independent Person provision has been repealed, the replacement provision requires a council to consider the advice and views of an Independent Panel before dismissing a statutorily-protected officer.

PART 5 OF THE DRAFT BILL

Frequency of peer assessments (clause 119)

15. In its 2015 response, ALACE argued against the inflexibility of the two-year frequency of peer reviews set out in the White Paper. So ALACE is pleased to see that the Draft Bill incorporates a sensible flexibility.

PART 7 OF THE DRAFT BILL

Guidance to public bodies on workforce matters (chapter 1)

16. ALACE believes the provisions in this chapter of the Draft Bill – and the future legislation foreshadowed in the consultation document – give ministers far too much scope to put unwarranted pressure on legally separate employers, particularly over matters such as those set out in paragraph 10 above.

17. ALACE concluded its 2015 response with the following words: “In understandably seeking to foster the prudent use of public money, the Welsh Government would be unwise to lose sight of the danger of greatly reducing the appeal of senior roles in local government to people of genuine calibre. There have already been a number of changes in terms and conditions in recent years that have diminished the attractiveness of senior local government careers; and the Welsh Government would be well advised to guard against populist actions that proved counter-productive in the development of vibrant and innovative Welsh local government – as opposed to enfeebled local administration.”

18. ALACE believes those words remain highly relevant, especially in relation to Part 7 of the Draft Bill.

Approved by Amar Dave, Honorary Secretary, and Rob Tinlin, Chair, on behalf of the ALACE Council

10 February 2016