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Llywodraeth Cymru  
Welsh Government

Welsh Government  
Consultation – summary of response

## **Draft Corporate Joint Committees (General) (No.2) (Wales) Regulations 2021**

**September 2021**

Mae'r ddogfen yma hefyd ar gael yn Gymraeg. This document is also available in Welsh.  
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<b>Overview</b>	This document provides a summary of the responses to the consultation on the Draft Corporate Joint Committees (General) (No.2) (Wales) Regulations.
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<b>Additional Copies</b>	This summary of responses and copies of all the consultation documentation are published in electronic form only and can be accessed on the Welsh Government's website.

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## **SECTION ONE: Introduction**

### **This consultation**

On 12 July 2021, the Minister for Finance and Local Government (the Minister) launched a consultation on a second tranche of draft Regulations related to Corporate Joint Committees (CJCs), as provided for in the Local Government and Elections (Wales) Act 2021 (the Act).

The first consultation, which closed on 4 January 2021, was in regard to draft Establishment Regulations which would enable the establishment of four CJCs in Wales. These Establishment Regulations were made on 17 March 2021, alongside a number of statutory instruments, which ensured that from day one CJCs would be subject to the duties which would be expected to apply to public bodies in Wales; and also to ensure appropriate governance and oversight.

This second consultation continued the process of putting in place the legislative framework which CJCs would operate within and sought views on the application of specific elements of that framework as provided by the draft Corporate Joint Committees (General) (No.2) (Wales) Regulations 2021 (“the Draft No.2 Regulations”). This has mainly focused on the regulation of CJCs’ meetings and proceedings; the roles of certain ‘executive officers’ to support the work of the CJC, i.e. the Chief Executive, Monitoring Officer and Chief Financial Officer; and for the functions of the CJC to be discharged by other people, for example its staff or sub-committees; as well as some general provision in relation to CJC staff. The Draft No.2 Regulations also make a small number of miscellaneous and consequential amendments to give full effect to these provisions.

This consultation ran for 8 weeks from 12 July to 6 September 2021, and was published on the Welsh Government website. The link to the consultation document was sent to a wide range of stakeholders, a number of whom were key professional leads in local government who had been involved in co-producing the policy detail behind the Draft No.2 Regulations.

A number of questions related to the content of the Draft No.2 Regulations were initially asked during the Establishment Regulations consultation, when we referred to them as ‘Regulations of General Application’. The reasoning behind this was that these supplementary Regulations are necessary to support the implementation of the Establishment Regulations, and will form a package of underpinning legislation for the CJCs. The responses at that time have informed our ongoing work with local government on the content of the Regulations.

### **Who responded?**

The consultation process resulted in 23 written responses. Respondents are identified as follows:

- 14 Local Authorities (including the Welsh Local Government Association - WLGA)
- 6 Government agency / other public sector body
- 1 Auditor / Regulator

- 1 Third Sector organisation
- 1 Representative body, professional body or association

A full list of respondents to the consultation is provided at **Annex A**.

## **Engagement on the consultation**

In addition to the formal consultation process, officials have worked closely with key local authority stakeholders on the development of the intent behind the detailed Draft No.2 Regulations. Wider engagement sessions had been held during the consultation on the Establishment Regulations and the views of stakeholders during those sessions and technical briefings have been captured in the development of these Draft No. 2 Regulations.

Officials have also attended a number of meetings where CJsCs have been discussed, and met with representatives from the CJsCs themselves.

## **Next steps**

The Minister has expressed her thanks for the constructive engagement which has helped shape both the initial CJC Establishment Regulations, these supplementary Regulations, and also the development of the draft CJC Statutory Guidance (currently out to consultation). Local government Leaders, officers, the WLGA and other key stakeholders have been engaged throughout the development of the CJC proposals, and this input has been invaluable in shaping this work.

The consultation responses have highlighted a number of areas where the Draft No.2 Regulations should be amended to ensure they work in practice, and the Welsh Government is very grateful for those views. These changes will help build on what is already in place to ensure CJsCs will add real value to the regional landscape in Wales, with Regulations and guidance providing the requested combination of clarity and flexibility. The areas where the Draft No.2 Regulations are being amended are highlighted under the “Welsh Government response” section towards the end of this document.

The Minister has confirmed her commitment to continuing to work with Leaders in each of the CJC regions, with the WLGA, National Park Authorities and other partners to ensure that all work to support the implementation of CJsCs meets the needs of local government and partners.

## **Approach to developing the summary of responses**

This document is intended as a summary of the responses received. It does not aim to capture in detail every point raised by respondents. The consultation asked four questions relating to:

- The general clarity of the Draft No.2 Regulations
- The clarity of the specific elements of the Draft No.2 Regulations
- The perceived impact on the Welsh Language
- Any other related issues.

The summary of responses has been set in line with the four questions.

In responding to the consultation, two local authorities fully endorsed the response from the WLGA as part of their own response. Where this has happened this response counted the view of the WLGA as the view of the relevant local authority and included them in the various calculations.

In some cases a respondent has provided a single general response or has responded to specific issues on the Draft No.2 Regulations under a more general response under 'other issues'. This response includes those responses as part of the question on 'other related issues' but the Welsh Government will consider those comments against the specific issues / parts of the Draft No.2 Regulations as appropriate.

## SECTION TWO

### Consultation Question One:

**Question 1 asked for views on whether the Draft No.2 Regulations were clear, and if not, for details of how they could be made clearer.**

There were twenty two responses to this question. Of those who responded, eighteen felt that the Draft No.2 Regulations were clear, or in the most part appeared clear, and reflected the underlying principles that CJsCs should be treated as a member of the local government family. One respondent felt that the approach more generally to the application of local government legislation was not clear and made it difficult in the first instance to track the impact of the proposed changes.

Of those who thought that the Draft No.2 Regulations were clear, a number of additional points were made:

- One respondent welcomed that the Regulations provide for the local discretion which underpins the CJC approach.
- One respondent sought additional information regarding scrutiny arrangements for CJsCs.
- A number felt that whilst the Regulations were clear, it would have been helpful to the implementation of CJsCs if all aspects of CJC legislation were provided for in a single set of Regulations.
- Some felt that it would be helpful for Welsh Government to provide a resource which encapsulated all of the relevant Regulations and what they provided for in a single document, or as part of the CJC Guidance.
- One respondent made the case that Regulations should require CJsCs to co-opt specific representation from sectors such as the town and community councils sector, and that town and community council representatives should be involved in the implementation of CJsCs in each region from the outset.

In addition to the above, one respondent who did not respond to the specific question, noted that the CJC should be added to the list of organisations to which the Sustainability and Well-being duties applied. They also sought clarity on how CJsCs will operate alongside Regional Partnership Boards.

### Consultation Question Two

Question 2 sought views on whether the Draft No.2 Regulations were clear in the specific areas they provided for. Question 2 was split into a number of parts - a) to e). In each case the consultation asked if they thought the Draft No.2 Regulations were sufficiently clear and, if not, how they could be made clearer. A summary of each is included below.

#### Question 2 a)

**Do the Draft No. 2 Regulations in Part 1 clearly provide for the roles of certain 'executive officers' (Chief Executive, Monitoring Officer and Chief Financial Officer) to support the work of the CJC?**

There were twenty responses to this question. Thirteen respondents agreed that the provisions in the part were clear, two felt that the provisions were not clear and five did not express a view, but included general comment on the part.

Of those that agreed that the provisions were clear, a number of additional points were made:

- Agreement that the Draft No.2 Regulations contain the provisions thought necessary to extend the provisions in local government legislation to CJsCs, and this would be helpful to allow consistency and transparency of decision making.
- That the resource requirements, and impact on constituent councils capacity, for the establishment and servicing of CJsCs is yet to be fully identified and that there are likely to be significant ongoing resource requirements on authorities in administering and delivering CJC functions. One respondent sought clarity on how the roles in Part 1 of the Draft No.2 Regulations were to be funded.
- One respondent noted that the role of the Monitoring Officer is clear, however Regulation 8(3) appeared to be at odds with the wording in Section 5 of the Local Government and Housing Act 1989 insofar as the 1989 Act provision in effect provides that the staff, accommodation and resources identified as in the MO's opinion as being required will be provided.
- That the appointment of statutory officers will need careful management and monitoring by the CJC to ensure appropriate relations between the CJsCs and the local authorities involved, with a clear demarcation between respective remits and roles.
- One respondent took the opportunity to call for more information / provision in terms of employment models.

Of those who thought that the provisions were not clear, the following additional points were made:

- That the general approach to the Regulations, i.e. that they are not self-contained and instead amend a numbers of other parts of the local government legislative framework, means that it is difficult to fully identify and understand their effect, and is not helpful for securing such arrangements.
- That further explanatory notes containing marked up excerpts of the legislation being amended, together with objective narrative explanation, would be helpful in interpreting the Regulations.
- One respondent noted that whilst the Draft No.2 Regulations in this part were largely clear, greater clarity is required on the role of the Monitoring Officer. Specifically, if the Monitoring Officer was prohibited from providing legal advice by Regulation 8(2).

In addition the following points were made by respondents who did not express an opinion either way on the clarity of the Draft No.2 Regulations.

- One respondent raised concerns on the removal of the Chief Governance Officer role and felt that the role of Chief Governance Officer had value.
- That the statutory officers of a local authority and CJC should be distinct with no option for 'two-statutory hats' or 'dual hatting' within these roles, although it was noted that it was not clear whether the proposal still allowed / intended for dual mandates.
- That Monitoring Officers must ensure scrutiny committees have open, accessible routes for engagement so all stakeholders, including the voluntary sector, are able to engage.



- Two respondents felt that Regulation 8(2) which prohibits the Monitoring Officer from providing legal advice on how the functions of the CJC should be exercised could cause confusion in terms of the Monitoring Officer broader duties under the Local Government and Housing Act 1989, and should be removed.
- That Regulation 4(2) which enables the Independent Remuneration Panel for Wales to review the remuneration paid to Chief Executives of CJs, but specifically excludes any remuneration paid to members of CJs, should be amended so as to remove the prohibition.

The Public Services Ombudsman for Wales (PSOW) took the opportunity to raise a number of points in relation to the application of the Ethical Framework to CJs (although it should be noted that this is not part of the Draft No.2 Regulations). Points included:

- That the relevant Standards Committee of one of the designated Monitoring Officer's "home authority" should be able to perform any standards committee functions under the Local Government Act 2000 in relation to ethical standards matters relating to CJs.
- That the inclusion of CJs (and their sub-committees), as a "relevant authority" in s49 of the 2000 Act should be introduced as soon as possible to ensure all members of the CJs and their sub-committees are subject to the ethical standards regime.
- That in applying the ethical framework to CJs, provision should be made to ensure that any person who is a member or participant of a sub-committee should be required to comply with the Model Code of Conduct, and fall within the ethical standards framework.
- The need for clarity on the application of the Adjudication Panel for Wales and standards committees' powers of suspension/disqualification following a referral of a member for breaches of the Code of Conduct by the PSOW.

## **Question 2 b)**

**Do the Draft No.2 Regulations in Part 2 clearly provide for general provisions in relation to the staff of a CJC?**

There were eighteen responses to this question. Fourteen respondents felt that Part 2 of the Draft No.2 Regulations clearly provided for general provisions in relation to staff of a CJC, two thought they did not, and two didn't express a specific view either way.

Of those that thought Part 2 clearly provided for general provisions in relation to staff, the following additional points were made:

- That the Draft No.2 Regulations contain the provisions thought necessary to extend the provisions in local government legislation to CJs, and this will be helpful to allow consistency and transparency of decision making.
- In relation to staffing (and resources generally), taking account of the potential for the concurrency of some functions, one respondent queried whether there needed to be a mixed pattern of employment (for example, direct and secondments) with some officers supporting the CJC as part of their substantive duties with their constituent council.

Of those who thought that the provisions in relation to staff were not clear, the following additional points were made:

- That the general approach to the Regulations, i.e. that they are not self-contained and amend a number of other parts of the local government legislative framework, means that it is difficult to fully identify and understand their effect, and is not helpful for securing such arrangements.

In addition, the following points were made by respondents who did not express an opinion either way on the clarity of Part 2 of the Draft No.2 Regulations:

- Concern was raised as to the appointment of staff to service the CJC with potentially no local knowledge of the geographical area in question.
- That there should be similar staffing arrangements to that of Principal Councils in order to promote public accountability.
- With regards Regulation 9 and the reference to “proper officer”, one respondent noted that amendment inserting subsection 3A into Section 270 of the Local Government Act 1972 refers to a “member of staff” rather than an officer, as is currently provided for in subsection 3 of section 270 of the Local Government Act 1972. The respondent felt that for consistency the provision should be amended to be ‘officer’ and not ‘member of staff’. They felt that it is usual for the function of an appropriate officer to be exercised by a Senior Officer and it is not inevitable that such an officer would be a “member of staff” of the CJC, as the CJC can appoint staff through a number of means (secondment, direct employment, service level agreement).

### **Question 2 c)**

**Do the Draft No.2 Regulations in Part 3 clearly provide for the discharge of functions of a CJC by other persons?**

There were nineteen responses to this question. Fourteen respondents thought that the provisions in Part 3 clearly provided for the discharge of functions of a CJC by other persons, two thought that they did not. A further three provided comment but did not express a specific view either way.

Of those that thought Part 3 clearly provided for the discharge of functions of a CJC by other persons, the following additional points were made:

- That the discharge of functions by other persons is appropriate and provides flexibility for CJCs to delegate functions to a sub-committee, a member of staff, another CJC or a local authority.
- Five respondents (taking into account those that specifically referenced comments on this issue elsewhere in their response) noted that Regulations 33(7), 34(7), 35(7) and 36(7) introduced a ‘Limitation on discharge of functions by other persons’ which includes ‘agreeing a transport policy...’ and ‘...preparing a strategic development plan’. They felt that this limitation unnecessarily constrained the CJCs’ ability to exercise these functions, and felt that these amendments should therefore be revisited to provide for maximum discretion and flexibility and to enable a CJC to make arrangements for the discharge of the regional transport planning and strategic development planning functions by other persons.
- One respondent sought clarity on the issue of nominated substitutes attending on behalf of the Leader and noted that mechanisms may be required to support the CJC to resolve issues when consensus cannot be reached.

- Another respondent noted that the Independent Remuneration Panel's remit will not include the remuneration of members of CJs and thought that consideration would be required of the remuneration arrangements / implications relating to Members and co-opted members of a CJC.

Of those who thought that the provisions in relation to delegation of functions to others were not clear, the Auditor General for Wales felt that it would be helpful if any arrangements made by the CJC for the discharge of functions by other persons were made in writing. This they felt would help prevent confusion about responsibilities and authorisations.

In addition, the following points were made by respondents who did not express an opinion either way on the clarity of Part 3 of the Regulations:

- One respondent noted that if CJs will be taking on the functions of local councils for specific purposes, they should be required to have measures in place to support the same levels of transparency, accountability and participation.
- Another respondent made reference to Regulation 14(1)(b) and the reference to "member of staff" and felt that for consistency with local government legislation, and for the same reason as outlined in the response to Q2c) above on 'member of staff' v 'officer', the provision should refer to "officer of the CJC".
- One respondent noted that there was no equivalent provision for local authorities to delegate functions to the CJC.
- One respondent re-iterated their view on the importance of ongoing and early engagement with Town and Community Councils on the work of the CJC.

### **Question 2 d)**

#### **Do the Draft No.2 Regulations in Part 4 clearly provide for the regulation of meetings and proceedings of a CJC?**

There were twenty responses to this question. Fourteen respondents felt that Part 4 clearly provided for the regulation of meetings and proceedings of a CJC, two thought they did not. A further four provided comment, but did not express a specific view either way.

Of those that thought Part 4 clearly provided for the regulation of meetings and proceedings of a CJC, the following additional points were made:

- That the approach was consistent with local government arrangements generally, and will be helpful to allow consistency and transparency of decision making.
- One respondent welcomed the inclusion in Regulation 23 of providing access to CJC documents for members of the constituent National Parks.
- One respondent noted in relation to Regulation 14 (7) and 14 (8) of the Draft No.2 Regulations (joint arrangements for the discharge of functions) that there may be implications for the scrutiny process in the event that two or more CJs choose to discharge any of their functions jointly.

Of those who thought that the provisions in relation to staff were not clear, the following additional points were made:

- That the approach more generally to the application of local government legislation was not clear, and made it difficult in the first instance to track the impact of the proposed changes.
- One respondent had misgivings with the model, particularly with regards to the access to information and felt that as some exempt reports might contain relevant information for public consumption, members of the Principal Authorities should have access to documents including those containing exempt information.

In addition, the following points were made by respondents who did not express an opinion either way on the clarity of Part 4 of the Draft No.2 Regulations:

- One respondent raises similar points as described above in relation to member of Principal Authorities having access to exempt information. Concern was also raised with regards to the financial arrangements, particularly the CJC determination of a budget in advance of the determination by a constituent local authority. It was felt these proposals may impede the scrutiny of both the financial arrangements and access to information.
- One respondent welcomed the ability of a CJC to co-opt members, but noted that any representatives who are co-opted must be offered support and resource to ensure they are able to maximise the impact this role may offer. They also noted the potential limitations to the current approach to co-option, both in terms of not requiring certain co-optees, and that the number of co-opted members with votes must not exceed the votes of the council members.
- One respondent noted that Regulation 15 distinguishes between co-opted members of the CJC and persons who are not members of the CJC. They felt that this discrimination could lead to unclear status and role of sub-committee members.
- The Public Services Ombudsman for Wales sought clarity on the status of “other persons” in Regulation 24, on who may be entitled to speak at CJC meetings, and whether they would be excluded from meetings considering “exempt” business. They noted that if ‘other persons’ includes persons other than members of staff who are not “members” of the CJC, there may be a potential for third parties who are not subject to the Model Code to unfairly influence decisions on matters in which they may have an interest if they are permitted to attend meetings which members of the public are excluded from.

## **Question 2 e)**

**Do the Draft No.2 Regulations in Part 5 clearly provide for the small number of miscellaneous and consequential amendments identified, including the changes to the Regulations establishing the CJCs?**

There were seventeen responses to this question. Eleven respondents felt that Part 5 clearly provided for the small number of miscellaneous and consequential amendments identified, including the changes to the Regulations establishing the CJCs, two thought they did not. A further four provided comment but did not express a specific view either way.

Of those who felt that Part 5 clearly provided for the small number of miscellaneous and consequential amendments identified, including the changes to the Regulations establishing the CJCs, the following additional comments were made:

- That at this stage the provisions thought necessary to extend the provisions in local government legislation to CJsCs will be helpful to allow consistency and transparency of decision making.
- That the Welsh Government should be satisfied that Planning Guidance is fully reflected in the CJC approach, and in particular the engagement with and involvement of Town and Community Councils.

Of those who thought that the provisions in Part 5 were not clear, the following additional points were made:

- One respondent highlighted potential confusion with regards to the approach to membership as provided for in the Regulations establishing CJsCs, as amended by the Draft No.2 Regulations. In particular on the voting entitlement of the National Park Authority (NPA) member - when they are able to act as a member and when acting as a member includes being able to vote on an item. They thought that the Draft No.2 Regulations should clearly state also that the council members are entitled to vote on all items of the CJC's business.
- That the approach more generally to the application of local government legislation was not clear, and made it difficult in the first instance to track the impact of the proposed changes.
- That Regulation 31 adding provision to CJC petition schemes in section 42 of the Local Government and Elections (Wales) Act 2021 should also change the relevant chapter and section titles to aid accessibility.

In addition, the following points were made by respondents who did not express an opinion either way on the clarity of Part 5 of the Draft No.2 Regulations:

- Four respondents also highlighted potential confusion with regards to the approach to membership, as provided for in the Regulations establishing CJsCs, as amended by the Draft No.2 Regulations. In particular on the voting entitlement of the NPA member..
- One respondent noted that there is no distinction in CJC Regulations between a co-opted member and an advisor to the CJC. The assumption therefore is that a co-option agreement will not be needed for the appointment of an advisor. The respondent felt however that this could be made clearer, either through the Regulations or via the CJC Guidance which is currently out for consultation.
- Three respondents noted the application of the Independent Remuneration Panel for Wales (IRPW) to CJsCs, but felt that the limitation included in Regulation 4(2) on the scope of the IRPW powers should be removed to ensure clarity, consistency with the constituent councils and maximum flexibility.
- Three respondents commented on the discharge of functions by other persons, these have been taken into consideration in the responses to Part 3 (Q2c)) above and are not reproduced here.

## Consultation Question Three:

**Question 3 asked for views on the specific effects the draft Corporate Joint Committees (General) (No. 2) (Wales) Regulations 2021 might have on the Welsh Language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.**

There were sixteen responses to this question. The responses contained a broad mix of opinions including in relation to Welsh language standards more generally. Of those who responded directly to the effects that the draft Corporate Joint Committee (General) (No. 2) (Wales) Regulations 2021 would have on the Welsh language, six respondents felt that there would be no significant impact on the Welsh language from the Draft No.2 Regulations, or were satisfied with the provision in place.

Whilst the Regulations did not include references to the intention of applying the Welsh Language standards to CJsCs, a number of respondents took the opportunity to comment more widely on CJsCs and the Welsh Language. This included:

- A number noting the Welsh Government intention to amend Regulations to add CJsCs to the Welsh Language Standards (No.1) Regulations.
- A number welcoming that CJsCs will be subject to the Welsh Language standards, but sought clarity on when this would happen and which standards the CJC would be subject to, suggesting that applying the standards should proceed as soon as possible.
- One felt that CJsCs should operate in accordance with the Principal Councils' own language policies, but at the very least all matters relating to CJsCs need to adhere to approved language policies.
- Two respondents sought clarity on if the Welsh Language Commissioner would expect CJsCs to adopt the most comprehensive standards of its constituent authorities, and what impact that might have on the other authorities, or indeed if Regulations should specify this.
- Three respondents raised particular concerns on the capacity for constituent authorities to be able to support the translation requirements for CJsCs, and noted in particular potential additional costs (funding pressures) of providing simultaneous translation for CJsCs.

## Consultation Question Four

**Question 4 asked respondents to raise any related issues which had not been specifically addressed at any other point of the consultation questionnaire.**

There were fourteen responses to this question. Some of the responses were general responses in relation to the CJC approach, some expressed views on specific parts of the legislation. Responses can be summarised as follows:

- Both Fire and Rescue authorities who responded highlighted the strategic links with the constituent councils and potentially the CJsCs, suggesting that there may be a need for a more formal and formalised role for them on the CJsCs, perhaps as co-opted participants. One of the Fire and Rescue authorities suggested that this include allowing access to CJC documents in the same way members of principle councils are provided for in Regulation 22 (the Welsh Government believe this should read as Regulation 23) of the Draft No.2 Regulations.
- The WCVA had some concerns on how the CJC approach might impact on existing partnerships and relationships, in particular with the Health Boards, for example through Regional Partnership Boards. Clarity was also sought on the relationship, if any, between CJsCs and the functions of a Regional Partnership Board.
- One respondent took the opportunity to suggest that Regulations for CJsCs should be made available in a single document and stressed their view that it was important to have the necessary legislation in place before CJsCs were required to set their first budget in January 2022.
- Three respondents took the opportunity to highlight additional legislative areas which may need to be considered for CJsCs, including:
  - o the VAT status of CJsCs, including the application of any local authority exemptions
  - o clarity on the scope of the CJC's ability to borrow, invest and to act commercially
  - o the application of the Public Procurement Regulations and the Subsidy Control Regime to the CJC
- Another respondent noted that members of CJsCs (including co-opted members) should be subject to the statutory code of conduct, and any alleged breaches considered by a local/joint standards committee.
- A number welcomed discussions on the relationship of the CJC with the existing City Deal structures, and the timing of any approaches to novate City Deal activity into CJsCs. The same respondents also welcomed discussions on the potential and possible timing for additional functions to be transferred to the CJC.
- One respondent (in addition to those noted in Q2e)) highlighted potential confusion with regards to the approach to membership as provided for in the Regulations establishing CJsCs, as amended by the draft Corporate Joint Committee (General) (No.2) (Wales) Regulations 2021. This was with particular reference to the NPA member, including clarity on when they are able to act as a member, and when acting as a member includes being able to vote on an item.
- One respondent took the opportunity to highlight the importance of scrutiny of CJsCs to ensure the accountability of CJsCs to their constituent councils, and the members of those constituent councils. The respondent was disappointed that Regulations had not yet been proposed to include such matters.

- One respondent highlighted the additional and ongoing costs of CJsCs on the constituent councils, adding that in their view such costs should be met by the Welsh Government.
- One respondent included specific commentary on the duties in Regulation 8(3) of the Draft No.2 Regulations, noting the contrast with similar provision in section 5(b) of the Local Government and Housing Act 1989. The respondent felt that for consistency, and to ensure the Monitoring Officer has the resources they need, that Regulation 8(3) should follow the same approach as section 5(b) of the Local Government and Housing Act 1989. That is that the opinion of what staff, accommodation and other resources are necessary to discharge the functions in Regulation 8 should be that of the Monitoring officer and not the CJC.
- The importance of considering the success of existing regional arrangements, formal and informal, and how a CJC might build on this, was noted, whilst at the same time understanding the draw on capacity that regional arrangements might have on already stretched local authority members and staff, and that regional arrangements must not operate to the detriment of the constituent councils. The respondent sought recognition that whilst CJsCs might be responsible for regional transport planning, as an example, delivery will still take place at a local level.
- The importance of clarity around the timescale for initial meetings for CJsCs and designation of staff to provide initial governance support, and for early agreement on governance arrangements – voting, frequency of meetings, policies and procedures, scrutiny arrangements, agreement of standing orders and forward work programme.
- The Public Services Ombudsman for Wales’ response noted that the Draft No.2 Regulations place reliance on the Regulatory Impact Assessment laid as part of the Regulations establishing CJsCs. The Public Services Ombudsman noted that his office has seen a significant increase in code of conduct related complaints, and that where future general Regulations sought to apply the code of conduct to CJsCs consideration should be given to the potential increase of costs to the Public Services Ombudsman for Wales’ office of having an additional body in its jurisdiction.

The IRPW provided a single general response to the consultation on the Draft No.2 Regulations. In its response, the panel was of the view that Regulation 4(2) of the Draft No.2 Regulations, which amends Section 142 of the Local Government (Wales) Measure 2011, fundamentally undermines the independence and the capability of the Panel as it prevents, for the first time, the making of any determination in respect of a “relevant authority”. They noted that one of the strengths of the Panel, which has benefits to the Welsh Government, is its statutory based independence to make determinations that are not influenced by Welsh Ministers or the Panel’s stakeholders. They noted that it may be that in the initial formation of the CJsCs that payment to its members is not justified, but this might not always be the case. They felt that potentially, the responsibilities of members of CJsCs might increase to an extent that payment might be justified with a corresponding reduction in payments made for senior members of constituent authorities. The Panel therefore strongly urged the Welsh Government to reconsider the content of this Section by removing the restriction to the IRPW’s remit in Regulation 4(2). A number of other respondents also felt that the IRPW’s remit should include consideration of member remuneration.



## **Welsh Government Response to the Consultation on the Draft Corporate Joint Committee (General) (No.2) (Wales) Regulations 2021.**

Generally, respondents felt that the Regulations were clear and reflected the underlying principle that CJsCs should be treated as a member of the local government family. In general it was clear that the Draft No.2 Regulations contain the provisions thought necessary to extend these aspects of local government legislation to CJsCs, and this will be helpful to allow consistency and transparency of decision making.

Concerns were raised however regarding the approach taken to the application of local government legislation, that is, to apply existing local government legislation through a phased approach, as opposed to creating a single set of new legislative provision for CJsCs. Some felt that this approach may make it difficult to navigate the legislation applicable to CJsCs. However, this approach to the application of the local government legislative framework had been agreed with local government, and helps to ensure that CJsCs are subject to the same legislative framework that local government is already familiar with in a way that has given due consideration to how it is applied. The Welsh Government will work with local government and CJsCs to map out / describe the full legislative framework for CJsCs, as requested by a number of respondents, once work applying the framework has been completed.

**While the Draft No.2 Regulations covered a small number of specific areas of local government legislation, respondents took the opportunity to raise a number of more general issues in relation to CJsCs.**

### *Funding of CJsCs*

A number of more general concerns on the funding / financing of CJsCs were raised, recognising that the resource requirements, and impact on constituent councils' capacity, for the establishment and servicing of CJsCs is yet to be fully identified. The need to consider the ongoing resource requirements in the administration and delivery of CJC functions was also recognised.

The Welsh Government has provided £1m for 2021/22 to support the establishment of the CJsCs. All four CJsCs established in April 2021 have submitted successful grant applications, each totalling £250k to support the administrative costs of establishing CJsCs.

The overall and ongoing costs of administering the CJsCs will largely be dependent on the decisions made by each CJC on how it chooses to deliver its functions. The funding model, where the CJC agrees the proportion of funding to be provided by each of the constituent councils, reflects the local authority Leaders' preference for how CJsCs are to be funded. It is important to note that CJsCs are building on existing regional governance arrangements or transferring existing activity (or elements of existing activity) which are already being serviced by constituent councils, from the constituent councils into the CJC.

### *Staffing arrangements for CJsCs*

A number of respondents raised issues around how arrangements were to be made on the staffing of a CJC, including using local authority resources and the implications that might have on capacity within those authorities, and the need for flexibility in the approach. As we noted in the response to the consultation on the Regulations establishing CJsCs, those Regulations provide for local discretion for each CJC to make its own arrangements on the manner in which staff were to be engaged, including its senior executive officers. This would include through loans, secondments, direct employment or other arrangements as deemed appropriate by the CJC. It is anticipated that such arrangements might evolve over time as the CJC develops and begins to deliver its key strategic functions.

### *Co-opting to a CJC*

A number of respondents raised issues in relation to providing for, or requiring, certain co-opted members, and the important of engagement with regional partners in the exercise of a CJsCs functions. Concern was also raised as to the potential limitations of co-option, where the number of co-opted members with votes cannot exceed the number of voting members. Where partners were co-opted it was noted that it was important to provide appropriate advice and support to co-opted members to fulfil their roles.

The Regulations establishing CJsCs provide the flexibility for CJsCs to engage and involve others in their work through co-option. Who is co-opted, and how they are co-opted (the terms of the co-option), will be for the CJC to decide. In some cases members may also enable co-opted members to vote on such matters. Whilst CJsCs are not required to co-opt, they will want to give thought to the type and range of organisations they wish to be represented by co-opted participants, based on the skills and experience that will be beneficial and relevant to their work.

The Draft No.2 Regulations provide that co-opted members will be treated and afforded the same rights, safeguards etc (save voting entitlement) as CJC members. Co-opted members should therefore have access to appropriate advice and support in undertaking their role on a CJC.

In some cases, such as the Mid Wales CJC with only two constituent councils, adopting an alternative voting procedure might support the approach to involving others through co-option, in particular if the CJC wished to provide co-opted participants with voting rights.

### *Other legislative provisions for CJsCs*

The responses to the consultation also identified a number of legislative provisions that should apply / or should be considered to apply to CJsCs. This included for example certain VAT exemptions afforded to local authorities, the application of the Public Procurement Regulations and the Subsidy Control scheme, and the scope of the CJsCs' ability to borrow, invest and to act commercially. In addition, a number of points were made on arrangements for scrutiny of CJsCs, arrangements which have yet to be applied to CJsCs.

A number made specific reference to the application of the Ethical Framework to CJsCs, including using constituent councils' standards committees, applying the ethical framework to any person who is involved in the work of a CJC, and the need

for clarity on the application of the Adjudication Panel for Wales and powers of suspension and disqualification to CJs. We recognise PSOW view that the code of conduct should be amended as soon as possible so as to apply it to CJs.

Provisions in relation to a CJC's ability to borrow and invest have already been provided for in the Corporate Joint Committee (General) (Wales) Regulations 2021 and the Accounts and Audit (Wales)(Amendment) Regulations 2021. The Welsh Government will continue to work with local government to co-develop the remaining CJC Regulations and explore the inclusion of the identified provisions on acting commercially (e.g. the power to trade) in future tranches of the Regulations. We intend to consult on Regulations applying the ethical framework to CJs, and the impact of applying such provisions to CJs, later in 2021.

### *Operational Matters*

The Welsh Government recognises and agrees with the comments within the responses to the consultation which seek to ensure that CJs take into account, and build on, the successes of existing regional arrangements. The Welsh Government sees CJs as a mechanism under which a number of existing regional arrangements can coalesce in order to bring consistency, reduce duplication and reduce the administrative burden on local government. We are committed to work with local government to support the implementation of CJs, in particular to support discussions on the relationship with the existing City / Growth Deal arrangements and how we can support the transition of such arrangements in line with regional aspirations.

### *Guidance*

The Welsh Government is currently consulting on guidance for establishing CJs. A number of responses to this consultation, in particular those areas requesting further clarity on certain topics, can be addressed through the guidance for CJs and will be considered alongside the responses to the consultation on the CJC guidance. This would include, for example:

- clarity around arrangements for meetings, designation of staff to provide governance support, and for early agreement on governance arrangements – voting, frequency of meetings, policies and procedures, scrutiny arrangements, agreement of standing orders, and forward work programme
- The relationship with other statutory regional partnerships such as the Regional Partnership Boards
- The role of advisors, how they are appointed and their status within CJs, including issues around access to documentation, in particular those which includes exempt information
- clarity on the issue of nominated substitutes attending on behalf of the Leader
- options for dispute resolution.

A significant number of the above however will depend on the decisions that a CJC will make on how it wishes to govern and administer itself, and how it wishes to exercise its functions.

**In terms of feedback on the detail of the Draft Regulations, a number of specific matters were raised on the provisions themselves.**

These included:

- That the limitation included in Regulation 4(2) on the scope of the IRPW powers should be removed to ensure clarity, consistency with the constituent councils, and maximum flexibility.
- That the provisions for the Monitoring Officer under Regulation 8(3) would appear to be at odds with the wording in Section 5 of the Local Government and Housing Act 1989 insofar as the 1989 Act provision in effect provides that the staff, accommodation and resources identified as in the Monitoring Officer's opinion as being required will be provided, and should be amended to reflect the 1989 Act.
- That the prohibition on the Monitoring Officer from providing legal advice by Regulations 8(2) was potentially confusing when taken into context of the wider duties of the Monitoring Officer by virtue of the application of Section 5 of the Local Government and Housing Act 1989 to CJs.
- That Regulation 9, which inserts a new subsection 3A into section 270 of the Local Government Act 1972 similar to section 270(3) of that Act, should make reference to 'officer' as opposed to 'member of staff' as it wasn't necessarily the case that the executive officer roles would be filled by what is traditionally referred to as a member of staff.
- That Regulations 33(7), 34(7), 35(7) and 36(7) which introduced a 'Limitation on discharge of functions by other persons' (with reference to the Regional Transport Planning and Strategic Development Planning Functions) unnecessarily constrain the CJs' ability to exercise these functions and felt that these amendments should therefore be revisited to provide for maximum discretion and flexibility, and to enable a CJC to make arrangements for the discharge of the Transport planning and Strategic Development Planning functions by other persons.

It is proposed to amend the Draft No.2 Regulations to address these issues, including so as to:

- remove the limitation on the scope of the IRPW to make determinations on the remuneration of members of a CJC
- ensure that 8(3) more closely reflects the wording in Section 5 of the Local Government and Housing Act 1989 insofar as it relates to the opinion on the necessary staff, accommodation and resources identified required to undertake the Monitoring Officer's functions
- remove the prohibition on the Monitoring officer providing legal advice in Regulation 8(2)
- amend 'member of staff' in Regulation 9 to be 'officer' or where this is not possible to ensure that any reference to 'member of staff' in this Regulation, or elsewhere in the Draft No.2 Regulations, are taken to mean a member of staff howsoever appointed (e.g. via secondment, service level agreement, delegation of functions, or direct employment)
- provide, as appropriate, for the discharge of a CJs Regional Transport Planning and Strategic Development Planning functions by other persons, whilst retaining the requirement for the CJC to approve any plan, scheme, strategy for adoption / review by the CJC or submission to WG.

In terms of the discharge of functions, one respondent sought clarification on why there was no equivalent provision for local authorities to delegate functions to a CJC. A CJC can only exercise the functions it has been given (in Regulations). A local

authority cannot delegate functions to a CJC where the CJC doesn't already have the powers to deliver those functions. Where local government would want CJs to be able to exercise a function of a local authority (that wasn't already a function of a CJC) the Local Government and Elections (Wales) Act 2021 provides the framework for that to take place.

Where a CJC has functions which it can exercise concurrently with its constituent councils, for example the Economic Well-being function, a Local Authority would not need to delegate that power to the CJC as it already has it. However agreements will need to be made between the CJC and the constituent councils so there is clarity on who does what, when, where and how. Constituent councils will be able to agree that certain things are therefore done at a regional level, but this is not the same as delegation.

In addition to the above, a number of respondents were confused by the position on the voting entitlement for the NPA member when considering the amendments to Regulation 6, 8 and 9 of the Establishment Regulations (Part 5 of the Gen No.2 Regs – Regulation 33(3), (5) and (6)). It was felt that there was potential that the provisions may contradict themselves in terms of when the NPA Member was a member and when acting as a member for a specific item if they were entitled to vote on that item.

The Welsh Government believe that the provisions provide that the NPA member is a member for the purpose of the Strategic Development Planning function and is entitled to vote on any matters, including ancillary matters, in relation to that function. The NPA member may also, in agreement with the council members, be a member for the purpose of the exercising of other functions of a CJC (which is what Regulations 8 and 9 provide for). Any agreement to extend the NPA membership to other functions would include an agreement on whether the NPA member has a right to vote on that function. We will however review the provisions to ensure that this is clear, and if appropriate include further description of this arrangement in CJC guidance.

With regards to the impact of the Draft No.2 Regulations on the Welsh Language, the Welsh Government welcomes the general view of respondents that the Draft No.2 Regulations would have no significant impact on the Welsh Language. We note also that respondents sought assurance that the Welsh Language Standards No.1 Regulations would apply to CJs as soon as possible. We can confirm it is the intention of the Welsh Government to lay amending Regulations to the Welsh Language Standards No.1 Regulations alongside the Corporate Joint Committee (General) (No.2) (Wales) Regulations, which will add CJs to the Welsh Language Standards No.1 Regulations.

## **Annex A: List of respondents**

### **Local Authority**

Rhondda Cynon Taf County Borough Council, Overview and Scrutiny Committee  
Neath Port Talbot County Borough Council  
Gwynedd Council  
Isle of Anglesey County Council  
Swansea City Council  
Ceredigion County Council  
Monmouthshire County Council  
Pembrokeshire County Council  
Carmarthenshire County Council  
Newport City Council  
Conwy County Borough Council  
Vale of Glamorgan Council  
Welsh Local Government Association  
Cardiff Capital Region City Deal

### **Government agency / other public sector body**

Pembrokeshire Coast National Park Authority  
Home Builders Federation  
Mid and West Wales Fire and Rescue Service  
South Wales Fire and Rescue Service  
Public Services Ombudsman for Wales  
Independent Remuneration Panel for Wales

### **Third Sector**

WCVA

### **Auditor / Regulator**

Audit Wales

### **Representative bodies, professional bodies or association**

One Voice Wales