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Welsh Government
Consultation – Summary of Response

Draft Corporate Joint Committee (General) (Wales) Regulations 2022

January 2022

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Overview

This document provides a summary of the responses to the consultation on the Draft Corporate Joint Committees (General) (No.2) (Wales) Regulations.

Action Required

This document is for information only.

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Contact details

For further information, please contact:

Local Government Performance & Partnerships Division
Local Government Directorate
Welsh Government
Cathays Park
Cardiff
CF10 3NQ
e-mail: LGPartnerships@gov.wales

Additional Copies

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.

Contents

SECTION ONE: Introduction 4

- This consultation 4
- Who responded? 5
- Engagement on the consultation 5
- Next steps 5
- Approach to developing the summary of responses..... 6

SECTION TWO – Summary of Responses 7

- Consultation Chapter one..... 7
- Consultation Chapter Two 15
- Consultation Chapter Three 15
- Consultation Chapter Four 16
- Welsh Language 17

SECTION THREE - Welsh Government Response to the Consultation on the Draft Corporate Joint Committee (General) (Wales) Regulations 2022..... 20

Annex A: List of respondents 25

SECTION ONE: Introduction

This consultation

On 10 November 2021, the Minister for Finance and Local Government (“the Minister”) launched a consultation on a third 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.

A second consultation, which closed on 6 September 2021, 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 (the second tranche). The Corporate Joint Committees (General) (No.2) (Wales) Regulations 2021 were made on the 3 December 2021, providing for 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 Regulations also made a small number of miscellaneous and consequential amendments to give full effect to these provisions.

This third consultation, on the Draft Corporate Joint Committee (General) (Wales) Regulations 2022 (“the Tranche 3 Regulations”) continued the process of putting in place the legislative framework CJCs will operate within. The Tranche 3 Regulations included provisions which require a CJC to adopt a Code of Conduct for members and extend the powers of the Public Services Ombudsman for Wales (PSOW) and the adjudication panel for Wales to CJCs, and members of CJCs. They also provide for a CJC to trade and undertake commercial activity. They also require the CJC to publish their constitution and a constitution guide, as well as containing a number of minor provisions in relation to finance, legal proceedings, records, documents, staffing and workforce matters and other miscellaneous amendments. The consultation on the Tranche 3 Regulations also outlined the intention to include provision for overview and scrutiny in the Tranche 3 Regulations – subject to the outcome of the consultation.

This consultation ran for 6 weeks from 10 November to 22 December 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 Tranche 3 Regulations.

A number of questions related to the legislative provisions within the Tranche 3 Regulations were also asked during the Establishment Regulations consultation, when we referred to them as ‘Regulations of General Application’. The responses at

that time have informed our ongoing work with local government on the content of the Tranche 3 Regulations.

The Minister has expressed her thanks on a number of occasions, including during the Senedd debates on the various CJC Regulations laid to date, for the constructive engagement which has helped shape both the initial CJC Establishment Regulations and the supplementary Regulations. 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.

Who responded?

The consultation process resulted in 21 written responses. Respondents are identified as follows:

- 11 Local Authorities (including the Welsh Local Government Association – WLGA, the Mid Wales CJC and one on behalf of Lawyers in Local Government)
- 4 from Community and Town Councils
- 1 National Park Authority
- 1 Ombudsman
- 1 Fire and Rescue Authority
- 1 Third Sector organisation
- 2 Representative bodies, professional bodies or associations

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 proposed content of the Tranche 3 Regulations. Wider engagement sessions had been held during the consultation on the original CJC Establishment Regulations and the views of stakeholders during those sessions and technical briefings have also informed in the development of these Tranche 3 Regulations.

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

Next steps

The consultation responses have highlighted a number of areas where the Tranche 3 Regulations should be amended to ensure they work in practice as intended, and the Welsh Government is very grateful for those views. These changes will help build on what is already in place, with Regulations and Guidance providing the requested combination of clarity and flexibility. The areas where the Tranche 3 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 closely with Leaders in each of the CJC regions, and with the WLGA, National Park Authorities and other partners to ensure that all work to support the implementation of CJs 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 20 questions set within 4 Chapters.

- Chapter 1 related to the draft Tranche 3 Regulations themselves and asked a number of questions on:
 - o The general clarity of the Tranche 3 Regulations
 - o The clarity of the specific elements of the Tranche 3 Regulations
 - o The establishment of joint Standards Committees
 - o The provision for substitute or temporary members
 - o The power to trade and CJs acting commercially
- Chapter 2 asked about qualification and disqualification of members from CJs
- Chapter 3 asked about the approach which should be taken to the scrutiny of CJs
- Chapter 4 asked about the application of further subordinate legislation in relation to CJs, in particular in relation to the Local Government Act 2000 and the Local Government and Housing Act 1989.

The consultation also asked about the impact of the Regulations on the Welsh Language, and for any other general comments as part of the consultation.

The summary of responses has been set out in line with the four chapters and associated questions.

In some cases a respondent has provided a single general response or has responded to specific issues on the consultation 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 Tranche 3 Regulations as appropriate.

SECTION TWO – Summary of Responses

Consultation Chapter one

Question One

Question 1 asked for views on whether the Tranche 3 Regulations were clear, and if not, for details of how they could be made clearer.

There were 15 responses to this question. Of those who responded, 11 felt that the Tranche 3 Regulations were clear, or in the most part appeared clear and were consistent with the principle of treating CJs as a member of the local authority family and subjecting them to exactly the same requirements of openness, transparency and accountability as with other public bodies. Two respondents felt that chapter one itself was merely an overview of the draft Tranche 3 Regulations and the questions were therefore too vague. One respondent felt that chapter 1 could make it clearer that the governance and proper processes of the CJs should be handled in the same way as for the constituent councils, and that there is no relaxation of governance and proper processes on the constituent councils.

One respondent who thought the tranche 3 Regulations were clear did note that, where it was intended to include provision in the Tranche 3 Regulations following the consultation, the absence of the specific text in the draft of the Regulations shared during the consultation may cause some confusion.

Question Two

Question 2 sought views on whether the Draft Tranche 3 Regulations clearly provide for a Code of Conduct for members.

There were 15 responses to this question. Of those who responded 13 felt that the provisions in relation to Code of Conduct were clear, 2 felt that it was not helpful that the regulations only contained amendments to the Local Government Act 2000 without any further explanation.

Of those who thought that the Tranche 3 Regulations clearly provided for a Code of Conduct the following points were also made:

- The Public Services Ombudsman for Wales had concerns about the disapplication of subsection 6 parts (a) and (b) of section 51 of the Local Government Act 2000 for CJs, and the proposal of a new subsection that requires CJs to only publish their codes electronically. The Ombudsman felt that this could discriminate against those who do not have access to, or the skills to use, digital technology, in particular those who face socio-economic deprivation and the elderly
- The Public Services Ombudsman for Wales also sought clarity on where a CJC (Council) member is under investigation for alleged breach of their constituent council's Code of Conduct, if the relevant CJC monitoring officer should also be notified at the same time as the monitoring officer of the constituent council
- Two respondents noted that the Tranche 3 Regulations did not require members of CJs to sign any declaration to abide by the Code of Conduct, in

the same ways that Councillors are required to sign. Both felt that acceptance of the code through signature was a key part of implementing the requirements of the code, in particular for co-opted members, and should be reconsidered. Interestingly the Public Services Ombudsman welcomed the proposed approach within the Tranche 3 Regulations removing the requirement for members to agree in writing to observe the relevant Code of Conduct as a positive move

- One respondent asked if a CJC must publish the code or revised code electronically whether this meant that a CJC will therefore have to have its own website

Question Three

Question 3 sought views on if the Tranche 3 Regulations should provide for the establishment of joint Standards Committees.

There were 15 responses to this question. Of those that responded 7 thought that the Tranche 3 Regulations should provide for the establishment of a joint Standards Committee, 7 thought that they should not – although it should be noted 2 of these responses thought that Standards Committees had been provided for in the CJC Establishment Regulations, which they have not. One respondent sought further detail and opportunity to be consulted on the issue.

Of those that were in favour of the Tranche 3 Regulations providing for joint Standards Committees, it was felt that such an approach would:

- Deliver consistency of procedures; public confidence in the complaints procedure; higher ethical standards; stronger support and advisory functions; pooling of expertise; and joint funding of investigations and training
- Potentially reduce the administrative burden and help avoid unreasonable and disproportionate cost or officer resource
- Provide local discretion and flexibility

One respondent who was in favour of provision for joint Standards Committee felt that the ability to enable a CJC to use the Standards Committee of one of its constituent councils (with agreement) would also be beneficial. Another asked for additional clarification on whether a CJC would be able to have a joint Standards Committee and / or use an existing Standards Committee.

Of those who didn't think the Tranche 3 Regulations should provide for joint Standards Committees, the following additional comments were made:

- That any breach of the code by members should be dealt with by their own constituent councils Standards Committee
- Whether such an approach was necessary, or adds to efficiency or whether local arrangements such as using local Standards Committee chairs might be a sensible approach
- Unless there are specific difficulties in recruiting independent members to serve on the Standards Committees, then the role of the Committee in promoting ethical standards is better discharged at a local level and not jointly with another body

It was also noted that the Standards Committees of CJs should have the same powers under the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 to refer a report or

recommendation relating to a misconduct investigation to another authority's Standards Committee. This will enable arrangements to be made for a more independent determination of a misconduct allegation, where the CJC's Standards Committee considers that it may have a conflict of interest because of a close connection with the member concerned.

Question Four

Question 4 sought views on if the Tranche 3 Regulations clearly provide for arrangements in the event of suspension of a member of a CJC.

There were 15 responses to this question. Of those who responded 13 thought that the Tranche 3 Regulations clearly provided for arrangements in the event of suspension of a member of a CJC, 2 thought that they did not.

Of those respondents who thought that they did clearly provide for arrangements in the event of suspension, the following additional points were made:

- Two felt that a reference to a 'Deputy Leader' within the regulations may make the approach to suspension clearer and avoid any need for a specific nomination by the constituent council
- One respondent noted that the members of the CJC would be Leaders / Cabinet Members and would exercise executive powers within their own councils. Therefore, the impact of any suspension from the CJC on their other roles would need to be clarified
- One respondent noted that neither the amendments made by the Tranche 3 Regulations, nor the draft CJC Guidance, specify how quickly the appointment of temporary members should be made, or what happens in terms of decision making whilst positions on the Committee remain unfilled. They felt it may be useful to include provision in the CJC Guidance so that the continuity of service that the CJC provides is not compromised unduly as a result of vacancies on the CJC or their sub-committees

Of those that felt the provisions did not clearly provide for arrangements in the event of suspension, the following additional points were made:

- Both respondents felt that it was unclear what was meant by 'function' in relation to those functions that a member may not act in relation to
- Both respondents sought further clarity on where a member may act with regards some but not all functions
- Both respondents were unsure why there was a requirement to appoint a replacement / substitute member and thought that this should be optional or discretionary
- Finally both respondents sought clarity on what was meant by office-holders in relation to the provisions with regards the National Park Member

Question Five

Question 5 sought views on if the Tranche 3 Regulations should provide for all substitute or temporary council members or NPA members, to be treated the same as the member whose functions they have been appointed to exercise.

There were 14 responses to this question. Of those who responded, all thought that the Tranche 3 Regulations should provide for all substitute or temporary council

members or NPA members to be treated the same as the member whose functions they have been appointed to exercise.

The following additional points were made:

- That this was equivalent to any interim cover arrangements within local authorities where members are subject to an authorised family absence and another member is appointed to cover their role temporarily
- Two respondents sought a definition of office holders in relation to the provisions on the temporary replacements and the National Park member
- That with a proposed quorum of 70%, and in some cases 100%, there may be practical issues if substitute members were not allowed

Question Six

Question 6 sought views on if the Tranche 3 Regulations clearly provide for commercial activities and controlled entities.

There were 14 responses to this question. Of those who responded 11 thought that the Tranche 3 Regulations did clearly provide for commercial activities and controlled entities, 3 did not.

Of those respondents who thought that the Tranche 3 Regulations did clearly provide for commercial activities and controlled entities the following additional points were made:

- That CJsCs should be required to follow the same process as local authorities in assessing the commercial risks involved in trading and to comply with the same reporting requirements
- That the identified tax and VAT issues need to be resolved before a proper assessment can be undertaken about the ways in which CJsCs should be allowed to trade. Although it was recognised that this was outside the scope of the regulations, and even the primary legislation, the respondent felt that CJsCs themselves should have the same VAT and no-tax status as local authorities. However, any subsidiary trading companies should be treated in the same way as local authority companies in relation to both VAT and corporation tax

Of those respondents who did not think that the Tranche 3 Regulations did clearly provide for commercial activities and controlled entities, the following additional points were made:

- Part 4 (of the Tranche 3 Regulations) could make it clearer – in plain terms – that governance and proper processes of CJsCs should be handled in the same way as for Principal Councils, and that there is no relaxation of governance and proper processes on Principal Councils
- Two respondents felt that such provisions should be in the GPOC (Commercial Purpose) (Wales) Regulations 2021 and that it is questionable whether CJsCs would want to be able to trade - in which case trading powers would not be required. Both thought that it appeared that another layer is being added without necessity. (it is worth noting in this regard that a CJC will not have the General Power of Competence (GPOC) and therefore provision in relation to trading cannot be included in the GPOC (Commercial Purpose) (Wales) Regulations 2021)

Question Seven

Question 7 sought views on if, in order to give full effect to the power to trade provisions in Part 4 of the Tranche 3 Regulations, CJsCs should be included in the proposed order to be made under section 95 of the Local Government Act 2003.

There were 14 responses to this question. Of those who responded, 11 thought that CJsCs should be included in the proposed order to be made under section 95 of the Local Government Act 2003, 3 did not.

Of those respondents who thought that CJsCs should be included in the proposed order to be made under section 95 of the Local Government Act 2003 the same additional points were made as were included for question 6, that is:

- That CJsCs should be required to follow the same process as local authorities in assessing the commercial risks involved in trading, and to comply with the same reporting requirements
- That the tax and VAT issues do need to be resolved before a proper assessment can be undertaken about the ways in which CJsCs should be allowed to trade. Although it was recognised that this was outside the scope of the regulations, and even the primary legislation, the respondent felt that CJsCs themselves should have the same VAT and no-tax status as local authorities. However, any subsidiary trading companies should be treated in the same way as local authority companies in relation to both VAT and corporation tax

Of those respondents who did not think that CJsCs should be included in the proposed order to be made under section 95 of the Local Government Act 2003, the following points were made, again broadly similar to those under question 6:

- That Part 4 could make it clearer – in plain terms – that governance and proper processes of CJsCs should be handled in the same way as for Principal Councils, and that there is no relaxation of governance and proper processes on Principal Councils
- Whilst it is agreed that the same conditions should apply to principal councils both when trading in their ordinary functions and exercising the general power of competence for a commercial purpose, this should not apply to CJsCs
- That there was a lack of reference to the Local Government (Best Value Authorities) (Power to Trade) (Wales) Order 2006 in the draft regulations (it should be noted that the 2006 order will be replaced by the proposed trading order referred to in question 7 and will be a separate order which includes local authorities and eligible community councils)
- That issues arising from the VAT status and Corporation tax status of CJsCs, more generally, should be addressed in the draft regulations
- That these points should all be addressed in the CJC GPOC (Commercial Purpose) (Wales) Regulations 2021. (as with questions 6 it is worth noting in this regard that a CJC will not have the General Power of Competence (GPOC) and therefore provision in relation to trading cannot be included in the GPOC (Commercial Purpose) (Wales) Regulations 2021)

Some additional unrelated comments were also made including a perceived lack of clarity on the levying powers of a CJC (CJsCs will not be a levying body as defined in section 74 of the Local Government Finance Act 1988) and concern that the CJC model appeared to be local authority re-organisation by the back-door.

Question Eight

Question 8 asked if the Local Government (Contracts) Act 1997, and Part 2 of the Deregulation and Contracting Out Act 1994, should be applied to CJs alongside the power to trade.

There were 14 responses to this question. Of those who responded, 11 agreed that the Local Government (Contracts) Act 1997, and Part 2 of the Deregulation and Contracting Out Act 1994, should be applied to CJs alongside the power to trade, 3 believed that they should not.

Of those who agreed with the proposal to apply the Local Government (Contracts) Act 1997, and Part 2 of the Deregulation and Contracting Out Act 1994, the primary rationale was on the basis that if it applies to local authorities it should apply to CJs. But others also thought it could prove useful in terms of practicalities in relation to executing contracts.

Of those that disagreed, some felt that the question was too vague and it wasn't clear, in particular regarding the Local Government (Contracts) Act 1997, which parts were under consideration. Respondents also felt that CJs should not be permitted to have private entities carry out functions on their behalf, and that this would completely undermine the purpose for which they were established. Finally respondents felt that there should not be any issue regarding CJs' power to enter into contracts and as the requirement for the legislation and statutory certification process for larger, longer-term contracts has become less of an issue for councils, it would seem unnecessary to impose this requirement (the Local Government (Contracts) Act 1997) on a CJ.

Question Nine

Question 9 asked respondents if there was any other legislation which local authorities rely on when operating commercially which isn't currently provided for in regulations.

There were 10 responses to this question. A number of respondents suggested that CJs should be added to the Local Authority (Goods and Services) Act 1990. It should be noted in this regard that paragraph 1 of Schedule 3 to the Corporate Joint Committee (General) (Wales) Regulations 2021 adds CJs to the definition of 'local authority' so as to include CJs in the 1990 Act. A number of respondents also noted the Local Government (Contracts) Act 1997 and the Deregulation and Contracting Out Act 1994 discussed in question 8 as not yet applying to CJs.

One respondent noted that it was important that CJs follow the requirements of the Wellbeing of Future Generations Act (applied to CJs through The Corporate Joint Committees (Amendment of the Well-being of Future Generations (Wales) Act 2015) Regulations 2021) and also sought to ensure that in the event that the Clean Air (Wales) Bill became legislation that CJs be required to comply with this also.

One respondent thought that the General Power of Competence (section 24 of the Local Government and Elections (Wales) Act 2021) should apply to CJs.

Finally one respondent noted that the Welsh Government is already making representations to the UK Government to address taxation matters which could constrain CJs' operation, which are largely covered through the Value Added Tax

Act 1994, Corporation Tax Act 2010, the Income Tax Act 2007 and the Taxation and Chargeable Gains Act 1992. This was supported by the respondent.

Question Ten

Question 10 asked respondents if Part 5 of the draft Tranche 3 Regulations clearly provide for those further miscellaneous financial matters noted in relation to CJs.

There were 13 responses to this question. Of those who responded, 11 agreed that the draft Tranche 3 Regulations clearly provide for those further miscellaneous financial matters noted in relation to CJs (providing no further comment), 2 thought that the regulations were not clear.

Of those who did not think the regulations were clear, the following additional points were made:

- That it was unclear how the 'general fund' was different from normal accounting reserves
- Whether the approach taken in the regulations fettered the discretion of the section 151 officer (section 151 of the Local Government Act 1972) to undertake their statutory duties
- That it was unclear where funding for CJs would come from and that the funding of CJs from council budgets may be to the detriment of local services

Question Eleven

Question 11 asked respondents if Part 6 of the draft Tranche 3 Regulations clearly provide for legal proceedings in relation to CJs.

There were 14 responses to this question. All respondents agreed that the draft Tranche 3 Regulations clearly provide for legal proceedings in relation to CJs. However 2 respondents felt that a CJC should not be permitted to prosecute, and in particular a CJC should not be permitted to prosecute or instigate or defend legal proceedings in relation to its constituent councils.

Question Twelve

Question 12 asked respondents if Part 7 of the draft Tranche 3 Regulations clearly provide for the handling of records, documents and notices etc.

There were 15 responses to this question. All respondents agreed that the draft Tranche 3 Regulations clearly provide for the handling of records, documents and notices etc. One respondent welcomed that clear and straightforward guidance for the maintenance, management and preservation of the records of CJs has been included in the regulations, and welcomed the clarity regarding the arrangements for the long term care of the records of CJs under the auspices of the Local Government Act 1972.

Question Thirteen

Question 13 asked respondents if Part 8 of the draft Tranche 3 Regulations clearly provide for the further matters relating to staffing and workforce.

There were 14 responses to this question. Of those who responded, 12 felt that the draft Tranche 3 Regulations clearly provide for the further matters relating to staffing and workforce, 2 felt that Part 8 was not clear.

Of those that felt Part 8 was clear, one respondent noted that CJsCs should be able to indemnify officers against any claims arising out of the course of their duties in accordance with the Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006 as per regulation 27 of the draft Tranche 3 Regulations. Another noted however that in the short term, it is likely that CJsCs will rely more heavily on seconded staff and/or interim arrangements whilst the organisation is being set up. Noting also that whilst they agreed that all staff should be appointed on merit, in the initial phases of operation it may be that not all appointments are made via open recruitment processes.

Of those that felt Part 8 was not clear, one felt that the statutory protections offered to the statutory officers needed to be clarified. Another noted that Regulation 28 of the draft Tranche 3 Regulations referred to section 92 of the Local Government Act 1972 which is a matter for elected members rather than staffing and workforce and it was therefore unclear why this provision was included under the staffing and workforce heading and why this needs to be specifically applied to the CJC.

Question Fourteen

Question 14 asked respondents if Part 9 of the draft Tranche 3 Regulations clearly provide for the small number of miscellaneous and consequential amendments identified.

There were 14 responses to this question. Of those who responded 12 felt that Part 9 of the draft Tranche 3 Regulations clearly provide for the small number of miscellaneous and consequential amendments identified, 2 felt that it did not.

Of those that felt Part 9 was clear, respondents also commented that

- In the event that the provisions of the Localism Act 2011 regarding assets of community value and their disposal are ever implemented in Wales, then it is assumed that these provisions would also be applied to CJsCs
- That whilst the principle of publishing CJC constitutional documents is supported, there is a need to ensure that any requirement around the creation or content of a Constitution is proportionate to the size and functions of the CJC

Of those that felt that Part 9 was not clear, the following comments were made:

- With regards the requirement to prepare and publish a constitution both respondents asked if this needed further definition and sought clarity on if the constitution included standing orders or Inter Authority Agreements. They also asked if a constitution guide was required
- Both respondents also highlighted provision in relation to safeguarding, publication of information, or requiring CJsCs to conduct or assist in investigations into any matter in the area of their constituent councils as needing consideration
- Both respondents also felt that there was insufficient rationale for the inclusion of provisions restricting the disclosure of information under health and safety

legislation and on the amendments in relation to the Local Government Planning and Land Act 1980.

Consultation Chapter Two

Question Fifteen

Question 15 asked respondents if the Tranche 3 Regulations should provide for the qualification and disqualification of members and staff of a CJC for office.

There were 14 responses to this question. All respondents felt that the Tranche 3 Regulations should provide for the qualification and disqualification of members and staff of a CJC for office. However the following additional points were made:

- That it was unnecessary to replicate the general disqualification provisions for elected members as they need to be eligible to be elected first to their local authorities before they can be appointed as representatives on the CJC.
- CJC staff should be disqualified from serving as local authority members, but the same provisions in the Local Government & Elections (Wales) Act should apply, so they would be able to stand as a candidate and would only have to resign their employment with the CJC if they were elected.
- The principle that the legal requirements for local government officials are the same as those applicable to CJC staff is key.
- Any provision needs to be clear about the scope of any restriction in the context of all of the constituent councils of a CJC.

Consultation Chapter Three

Question Sixteen

Question 16 asked respondents if they agreed with the proposed approach to providing for overview and scrutiny of CJCs as part of the Corporate Joint Committees (General) (Wales) Regulations 2022.

There were 15 responses to this question. Most respondents agreed or generally agreed with the proposal or the principal of the proposal. In particular respondents welcomed the intent to increase collaboration and focus on democratic accountability and the flexibility for a locally determined approach. One respondents noted however that a more structured model might be required for some elements with pre-scrutiny on some matters assisting in this respect. A number of respondents noted the importance of putting the relevant regulatory framework in place as soon as possible to help ensure clarity in the role of constituent council members in the CJC process.

In addition the following further comments were made:

- One respondent, whilst welcoming the approach, noted that any Scrutiny committee needs to be sufficiently independent of the CJC to provide critical and objective challenge in order to maintain democratic accountability
- That consideration should be made of the role the voluntary sector may have in holding decision makers to account, and also how the National Park Authorities can be engaged in the scrutiny of the relevant functions
- Further clarity was required on the constituent councils' accountability and liability in the scrutiny process

- The importance of avoiding duplication of scrutiny in the locally agreed arrangements
- If this scrutiny process is to work effectively, then the same statutory duties must apply to the CJC as apply to council executives under section 21B of the Local Government Act 2000, in relation to providing information, attending scrutiny committee meetings and responding to scrutiny recommendations

One respondent did not express a view on the proposal itself however noted the benefits and limitations of both scrutiny by each constituent council and joint scrutiny arrangements and suggested that guidance on working practices relating to overview and scrutiny might be useful. It was generally noted however that the choice of what format whether through the constituent councils individual scrutiny committees or through a Joint Scrutiny Committee should be a matter for local agreement.

Consultation Chapter Four

Question Seventeen

Question 17 asked respondents if they agreed with the intended approach to give full effect to the application of the Code of Conduct to CJsCs through the application of the specified Regulations or Orders to CJsCs, the orders included:

- The Conduct of Members (Principles)(Wales) Order 2001
- The Local Authorities (Model Code of Conduct)(Wales) Order 2008
- The Standards Committees (Wales) Regulations 2001
- The Local Government Investigation (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001
- The Standards Committees (Grant of Dispensations) (Wales) Regulations 2001
- The Local Government Officers (Political Restrictions) Regulations 1990

There were 14 responses to this question. All respondents agreed to the approach as outlined in the consultation document. The following additional points were made:

- With regards the Local Government Investigation (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, there was a view that the definition of monitoring officer should be clear so there was no confusion as to which monitoring officer (CJC or constituent council) was being referred to
- The Standards Committee governance arrangements must be properly set out, as should its status within the CJC – i.e. is it a sub-committee
- The standing orders regulations need to apply to CJsCs in terms of section 8 of the Local Government Housing Act 1989 and in particular the Designated Independent Person (noting that standing orders is proposed for the fourth tranche of CJC regulations)
- It would be particularly helpful if Standards Committees and Monitoring Officers of CJsCs are given equivalent powers to refer investigations and determinations to other statutory officers and Standards Committees, either in the constituent authorities or other CJsCs, where there is any conflict of interest
- It would be helpful to clarify whether the suspension of any member from their role as a CJC member as a result of any finding of serious misconduct would

have any impact on their role as an elected member within their individual authorities

- It is important that any amendments to the listed regulations / orders allow for the establishment of a similar system to those of the constituent authorities. Also where there are opportunities to share or use existing arrangements keep this option open

Question 18

Question 18 sought views on the application of the Local Government Officers (Political Restrictions) Regulations 1990 to CJs.

There were 12 responses to this question. Of those who responded, all thought that the Local Government Officers (Political Restrictions) Regulations 1990 should apply to CJs. Respondents felt that the Regulations should apply to senior officers within the CJC in order to maintain public confidence in the political neutrality of officers and their ability to give independent, impartial advice to the CJC. One respondent felt that it would be appropriate and in keeping with the message that CJs are to be regarded as part of the local government family, while another felt that the CJC would need to determine which posts should be politically restricted.

Welsh Language

Question 19

Question 19 sought views on if the Tranche 3 Regulations might have any specific effects on the Welsh Language.

There were 13 responses to this question. Of those who responded all respondents thought that the Welsh language should not be treated differently or less favourably.

The following additional points were made:

- Respondents supported the principle of the CJs being subject to the same Welsh language requirements and considerations as local authorities
- One respondent had strong concerns that the establishment of CJs would have a detrimental effect on the Welsh language and the Welsh-speaking communities when moving to a regional model
- One respondent felt the effects would depend on the level of expectation placed upon the CJC as per the Compliance Notice

Question 20

Question 20 asked respondents if they wished to raise any issues which have not specifically been addressed in the consultation documentation.

There were 11 responses to this question and these covered a number of different issues.

Five respondents highlighted section 19 of the Local Government Act 2000 as one which might usefully be amended to include CJs. Section 19 of the Local Government Act 2000 allows Welsh Ministers to make regulations which enable / allow Executive Functions (of a council) to be delegated to a range of listed bodies.

Respondents felt that having the ability to delegate in this way, in particular where both bodies have broadly the same functions (e.g. functions to promote the economic well-being of their area), would support the regional working approach and facilitate better collaboration between the CJC and its constituent councils. One respondent took this further and suggested a power for a constituent council itself to delegate to a CJC might be needed.

One respondent noted that in order to lessen the disconnect between citizens and decision makers, CJCs must ensure they engage and consult appropriately with those affected by their decisions. The recommendation for CJCs to be subject to section 62 of the Local Government (Wales) Measure 2011 and Part 6 of the Local Government and Elections (Wales) Act, was therefore welcomed. The respondent felt this would help alleviate any potential disconnect with communities by requiring CJCs to take into consideration the views of those who live and work in the constituent council areas, on any matter under consideration by the CJC.

The Public Services Ombudsman for Wales noted that the draft Tranche 3 Regulations continued to place reliance on the Regulatory Impact Assessment which accompanied the Establishment Regulations. The Ombudsman re-iterated previous concerns on the increase in Code of Conduct complaints being managed by his office without consideration of the increase likely from applying the Code of Conduct framework to CJCs. The Ombudsman therefore believed that the financial implications of having additional bodies within his jurisdiction should be considered in advance of the Tranche 3 Regulations coming into force.

Two respondents raised a number of the same additional points as each other, including in particular that the draft Tranche 3 Regulations were silent on Levying powers, Tax, Sub-committees, Standards Committees, Legal and governance structure. They also thought it was unclear why the power to trade was required by the CJCs. They also took the opportunity to question the need for CJCs and the funding of the CJCs once established.

One respondent, whilst supporting the strategic regional planning approach, noted that if CJCs are to deliver on a strategic scale and be successful in transforming regions, they must have adequate capacity and funding. They felt that CJCs should not be funded at the expense of Local Authorities if they are to add real value, as this would further exacerbate the existing problem of under-resourced Local Planning Authorities (LPAs). They also felt that CJCs and Local Authorities must be given adequate time to achieve their regional goals, especially in the context of Covid-19, Brexit etc. There must be a recognition that doing things at a regional level, such as preparing a Strategic Development Plan, will take time to reach consensus etc. There is also a need to ensure that LPAs are properly resourced to accommodate the implications of SDPs, if their objectives are to be achieved. They also noted that there is already excellent cross boundary work taking place across Wales and this must be built on, learnt from and properly resourced to deliver outcomes.

One respondent raised concerns that the regulations underpinning CJCs were still being developed given that CJCs would be required to hold their first meetings as part of the budget setting process no later than the end of January 2022. The same respondent also welcomed clarification on concurrent functions and reserved matters – although for the latter they did not say if this was reserved for CJCs or the constituent councils.

Finally one respondent noted that in order to ensure consistency with local authorities when considering the application of The Local Government (Standing Orders) (Wales) Regulations 2006, regard should be given to the application of these regulations to CJs including matters relevant to Statutory Officers. (it should be noted that provision in relation to standing orders and therefore the above mentioned regulations are proposed for consultation as part of the development of the fourth tranche of CJC regulations due later in 2022).

SECTION THREE - Welsh Government Response to the Consultation on the Draft Corporate Joint Committee (General) (Wales) Regulations 2022.

The Welsh Government remains committed to work with local government and wider stakeholders in the development of the legislative framework which underpins CJsCs and in the implementation of CJsCs. In particular, the Welsh Government remains committed to support discussions on the relationship with the existing City and Growth Deal arrangements, and how we can support the transition of such arrangements in line with regional aspirations.

The consultation on the draft Tranche 3 Regulations sought comment on both the provisions within the draft itself and on a number of areas intended for inclusion in the Tranche 3 Regulations. This Welsh Government response considers both in turn.

Published draft Tranche 3 Regulations

Generally, respondents felt that the draft Tranche 3 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 Tranche 3 Regulations contain the provisions thought necessary to extend the related aspects of local government legislation to CJsCs, and this will be helpful to allow consistency, accountability and transparency of decision making. However a number of specific issues were raised and we have considered these further here and as part of the Welsh Government response to the responses to the consultation.

With regard to the provision in Regulation 3(3)(a) which disapplied the requirement for a CJC to ensure that copies of its Code of Conduct were available at its office, and to therefore only require electronic publication, the Public Services Ombudsman for Wales noted that this potentially disadvantaged those individuals who were unable to gain access to documentation by digital means. We do not believe that to require a CJC to ensure copies of its Code of Conduct at its office or an office of a constituent council will fully resolve this, particularly for those who may not readily have access to transport. It is proposed therefore to amend the regulations to provide for the CJC to post a copy of the Code of Conduct where requested to do so. This might be similar for example to Regulation 21(1)(b) of the Corporate Joint Committee (General) (No.2) (Wales) Regulations 2021 in relation to the publication of background papers for CJC meetings.

With reference to the proposed amendments in Regulation 3 to sections 71, 72, 78 and 79 of the Local Government Act 2000 requiring the Ombudsman to send reports regarding allegations of breaches of codes of conduct to the relevant constituent council or NPA's monitoring officer, as well as the CJC monitoring office, it wasn't clear whether, where a CJC member is under investigation for alleged breach of a constituent council's Code of Conduct, the relevant CJC monitoring officer should also be similarly notified. The Tranche 3 Regulations provide for matters in relation to the Code of Conduct of CJsCs and their members only and therefore do not amend the legislation relevant to the Code of Conduct of principal councils. We can confirm therefore that the regulations do *not* provide that where a CJC member is under investigation for alleged breach of a constituent council's Code of Conduct (as a member of that council), the relevant CJC monitoring officer must be notified.

In relation to Regulation 3(5) of the Tranche 3 Regulations, inserting new section 52ZA into the Local Government Act 2000, it was noted that the new provision did not require members or co-opted members to sign that they will comply with the code. Some felt that this written undertaking was a key part of the application of the code, although it should also be noted that the Public Services Ombudsman for Wales felt that removing the requirement to provide a written undertaking was a positive move. Both council and National Park Authority members are subject to the same ethical framework as CJs within their own constituent authorities. It was felt therefore unnecessary for them to give an additional written undertaking to adhere to the code. For co-opted members, the effect of Regulation 3(5) is that they will be required to comply with the code if they accept the role. Regulation 9 of the CJC Establishment Regulations provides for terms of co-option which must be agreed by co-opted members. It will be possible therefore for the Code of Conduct to be explicitly referenced in those terms of co-option should a CJC wish to do so and so a written agreement to abide by the Code of Conduct could be included as part of the agreement to the terms of co-option (although it is not required in the legislation). Overall it was felt that the approach adopted in the Tranche 3 Regulations would ensure that all members would be subject to the code from the point at which they took up their role.

With regards the provisions for CJs to trade for commercial purposes in Part 4 of the Regulations, a number of respondents questioned the need for such matters with reference to the General Power of Competence. It is worth noting in this regard that a CJC will not have the General Power of Competence (GPOC) as provided for under the Local Government and Elections (Wales) Act 2021 and therefore provision in relation to trading cannot be included in the GPOC (Commercial Purpose) (Wales) Regulations 2021. CJs have been established to exercise specific functions, the Local Government and Elections (Wales) Act 2021 provides a clear framework for how functions should be provided to CJs. The GPOC is a broad power which could potentially allow the CJC to exercise functions which had not been provided to it in accordance with the legislative framework. However CJs will be able to use the broad economic well-being function to do things to improve the economic well-being of their area.

A number of respondents in considering the provisions for CJs to trade for commercial purposes in Part 4 of the Regulations highlighted the Local Authority (Goods and Services) Act 1990 as potentially helpful / necessary for the operation of CJs. This has already been provided for, in Paragraph 1 of Schedule 3 to the Corporate Joint Committee (General) (Wales) Regulations 2021, which amends the Local Authorities (Goods and Services) Act 1970 so as to include CJs in the definition of local authority for the purpose of the Act. These provisions came into force on the 1 April 2021.

The Public Services Ombudsman for Wales noted in his response that the draft Tranche 3 Regulations continued to place reliance on the Regulatory Impact Assessment which accompanied the Establishment Regulations. The Ombudsman re-iterated previous concerns about the increase in Code of Conduct complaints being managed by his office, without consideration of the increase likely from applying the Code of Conduct framework to CJs. The Ombudsman therefore believed that the financial implications of having additional bodies within his jurisdiction should be considered in advance of the Tranche 3 Regulations coming

into force. We will take into consideration the Public Services Ombudsman for Wales's view as we finalise the Regulations and associated explanatory memorandum.

Proposals for provisions for inclusion in the Tranche 3 Regulations

The Consultation document which accompanied the consultation on the Tranche 3 Regulations set out and sought feedback on a number of provisions for inclusion in the final Tranche 3 Regulations. This included providing for overview and scrutiny, joint Standards Committees, benefits and safeguards of members, protection for staff and members from personal liability, qualification and disqualification from membership of CJs, and provision in relation to contracts and contracting out.

In general, respondents were in favour of the intended approach for each as outlined in the consultation document and were in favour of including those provisions highlighted as potentially useful to CJs. It is therefore proposed to include these provisions in the Tranche 3 Regulations in line with the approach outlined in the consultation document.

It is worth noting with regards to overview and scrutiny that a number of respondents commented that if the proposed scrutiny process was to work effectively, then the same statutory duties must apply to the CJC as apply to council executives under section 21B of the Local Government Act 2000, in relation to providing information, attending scrutiny committee meetings and responding to scrutiny recommendations. As is outlined in the consultation document, as part of the locally agreed arrangements, the intention is that CJs will have a duty to provide information to scrutiny committees; attend committee meetings if requested to do so; and consider or respond to any report or recommendations made by a committee within the agreed arrangements and which relate to the CJC.

With regard to providing for joint Standards Committees, it is worth noting that the view of respondents was split in terms of providing for them or not. However, it was clear that local flexibility and choice was key, and this has been the approach to the development of the regulations throughout. It is therefore intended to seek to provide a power for CJs to establish joint Standards Committees if they wish to enable local flexibility and choice, and it will then be for CJs to decide if they wish to have a standalone Standards Committee or a joint Standards Committee. To enhance local flexibility further we will also explore if it is possible for a CJC to use the Standards Committee of one of its constituent councils, in line with the preference of a number of respondents.

As part of the consultation on the draft Tranche 3 Regulations, respondents also took the opportunity to raise a number of more general issues in relation to CJs.

Funding of CJs

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

The Welsh Government has provided £1m for 2021/22 to support the establishment of the CJs. All four CJs, as established in April 2021, has access to a grant of up to £250k to support the administrative costs of establishing their CJs.

The overall and ongoing costs of administering the CJs will largely be dependent on the decisions made by each CJ on how it chooses to deliver its functions. However decisions on the overall quantum within the Revenue Support Grant for 2022/23 took into account the overall pressures identified by local government plus a number of specific needs including support for elections developments and ongoing support for CJs.

Discharge of functions

A number of respondents highlighted section 19 of the Local Government Act 2000 as one which might usefully be amended to include CJs. As is noted in the analysis of the responses above, section 19 of the Local Government Act 2000 allows Welsh Ministers to make regulations which enable / allow Executive Functions (of a council) to be delegated to a range of listed bodies. Respondents felt that having the ability to delegate in this way, in particular where both bodies have broadly the same functions (functions to promote the economic well-being of their area), would support the regional working approach and facilitate better collaboration between the CJ and its constituent councils.

The discharge of functions was the subject of consultation on (and subsequently included in) the Corporate Joint Committee (General) (No.2) (Wales) Regulations 2021. It was noted then, and referenced above, that a CJ can only exercise the functions it has been given (in Regulations). A local authority cannot delegate functions to a CJ where the CJ does not already have the powers to deliver those functions. The Local Government and Elections (Wales) Act 2021 provides the framework for functions to be added to a CJ, this provides the appropriate safeguards and assurance for local government, the Welsh Government and the general public on how public services are delivered, and by who.

However, where a CJ has similar functions to its constituent councils which it can exercise concurrently with its constituent councils, for example around promoting economic wellbeing, the Welsh Government can see where a power for a constituent council to ask a CJ to undertake activity on its behalf would be beneficial. The Welsh Government will therefore explore the suggestion by respondents to amend s19 of the Local Government Act 2000.

It should be noted that this is a complex area and it is important that any provision is in line with the agreed legislative framework within the Local Government and Elections (Wales) Act 2021 for establishing CJs, and for the exercise of functions by CJs. As such, it would be more appropriate to include such provision in the fourth tranche of CJ regulations which will be consulted on in the Spring of 2022. It should also be noted that such a provision will only be able to apply where a CJ has the same or similar powers as its constituent councils, delegation is not required where functions have been transferred to a CJ.

Operational matters

Some concerns were raised during the consultation regarding the phased approach taken to the application of local government legislation to CJsCs, and the overlap with the actual implementation of CJsCs within each region. It is important to note that this phased approach has 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. In line with previous commitments, the Welsh Government will work with local government and CJsCs to map out / describe the full legislative framework for CJsCs once work applying the legislative framework has been completed. It will be important that CJsCs understand, and are aware of, all of the legislation in place in relation to CJsCs.

Welsh Language

With regards to the impact of the draft Tranche 3 Regulations on the Welsh Language, the Welsh Government welcomes the general view of respondents that the Tranche 3 Regulations would have no significant impact on the Welsh Language. Amending Regulations to the Welsh Language Standards No.1 Regulations came into force on 3 December 2021 which will add CJsCs to the Welsh Language Standards No.1 Regulations.

Annex A: List of respondents

Local Authority

Gwynedd Council
Swansea City Council
Ceredigion County Council
Pembrokeshire County Council
Carmarthenshire County Council
Newport City Council
Conwy County Borough Council
Vale of Glamorgan Council
Welsh Local Government Association
Mid Wales Corporate Joint Committee
Lawyers in Local Government

Government agency / other public sector body

Snowdonia National Park Authority
Mid and West Wales Fire and Rescue Service
Public Services Ombudsman for Wales

Community and Town Council

Newtown and Llanllwchaiarn Town Council
Llanbadoc Community Council
Welsh St Donats Community Council
Llandough Community Council

Third Sector

WCVA

Representative bodies, professional bodies or associations

Archives and Records Association
Royal Town Planning Institute