

Agenda – Committee on Senedd Electoral Reform

Meeting Venue:	For further information contact:
Videoconference via Zoom	Helen Finlayson
Meeting date: Tuesday, 19 May 2020	Committee Clerk
Meeting time: 13.30	0300 200 6565
	SeneddReform@senedd.wales

In accordance with Standing Order 34.19, the Chair has determined that the public are excluded from the Committee's meeting in order to protect public health.

In accordance with Standing Order 34.20, the Senedd Commission has determined that it is impractical for the proceedings to be broadcast.

Informal pre-meeting

(13.30–14.00)

- 1 Introductions, apologies, substitutions and declarations of interest**
(14.00)
- 2 Motion under Standing Order 17.42(ix) to resolve to exclude the public for the remainder of the meeting and the Committee's next meeting**
(14.00)
- 3 Forward work programme**
(14.00–14.40) (Pages 1 – 8)

Attached documents:

CSER(5)–8–20 Paper 1 – Forward work programme



4 Papers to note

(14.40-14.45)

4.1 Responses to the Committee's consultation on the note of the issues discussed at the Committee's stakeholder event on the capacity of the Senedd

(Pages 9 – 24)

Attached documents:

CAP_STK 01 Electoral Reform Society Cymru

CAP_STK 02 Women's Equality Network Wales

CAP_STK 03 Individual

4.2 Letter from the Chair of the Finance Committee in relation to committee legislation – 22 April 2020

(Pages 25 – 32)

Attached documents:

CSER(5)–8–20 Paper to note 1

4.3 Written submission from Professor Laura McAllister in relation to legislative mechanisms and draft Bills – May 2020

(Page 33)

Attached documents:

CSER(5)–8–20 Paper to note 2

Document is Restricted



**Committee on Senedd Electoral Reform
Consultation on the Capacity of the Assembly
ERS Cymru response
27th March 2020**

1) Does the Assembly have the capacity it needs to carry out its representative, scrutiny and legislative functions now and in the future?

We have long been convinced that the Senedd does not have the capacity it needs to deliver its functions. That has been reaffirmed not only by multiple reports examining the Senedd's capacity but also its own Members, who last year voted in favour of a motion which supported an increase in the size of the Senedd.

We remain very concerned that, over 15 years after arguments to increase its capacity were first recommended by the [Richard Commission](#), nothing has been done to rectify this.

The arguments demonstrating capacity in the Senedd is insufficient, are clear.

At just 60 Members for a population of 3.1 million, the Senedd is dwarfed by the Northern Irish Assembly at Stormont with 90 Members of the Legislative Assembly (MLAs) for around 1.8 million people. Therefore, one MLA represents 20,000 people in Northern Ireland, with a Member of the Senedd representing around 52,000 people.

Scotland has more than double the number of Members of the Senedd with 129 MSPs.

These inequalities look far more stark when you consider the changing role of the Senedd in the last twenty years. What was an Assembly in 1999 has now become a fully fledged law-making, tax-varying Parliament. Yet, we still remain far smaller than these comparative institutions.

What this means in practice is that, after you exclude Government, party leaders and speakers, the Senedd is left with just 41 Members to scrutinise the government, examine legislation and fulfil the vital committee functions of a parliament.

Furthermore, it creates extensive pressure on backbench members and members of the opposition to fill committee spaces.

Currently, 17 Members of the Senedd sit on three committees or more.

**Committee on Senedd Electoral Reform
 Consultation: Note of the issues raised at the stakeholder event on capacity
 CAP_STK 01 Electoral Reform Society Cymru**

Figure 1. Number of MSs that sit on each number of committees¹

Amount of committee memberships	Number of MSs
1	11
2	13
3	14
4	2
5	1

This has huge consequences in terms of the capacity of each member. While we have moved on from the early days of the Senedd, where diary clashes between multiple committees were not unheard of, leading to members having to leave bags in one and swap between them, we do still face members having to read stacks of paperwork and evidence for each committee in order to properly fulfil their scrutiny role.

As the [Expert Panel on Assembly Electoral Reform](#) concluded, while examining the committee structure of the Senedd:

“The size of the Assembly makes membership of two, sometimes three, demanding committees inevitable for most backbench Members. This is damaging to the effectiveness of the Assembly. It constrains the time available for Members to read, research and prepare and has a corresponding effect on the capacity of Members to undertake high quality scrutiny, develop alternative policy thinking, and engage effectively with stakeholders and the public.”²

We have also seen particular examples of this pressure being applied within the Senedd, with subcommittees of around 3-4 members having previously been used to scrutinise legislation.

Over the last decade and a half, many reports and commissions have recommended that the size of the Senedd be increased, including the Richard Commission, the Expert Panel on Assembly Electoral Reform, and our own work such as our [Size Matters](#) and [Reshaping the Senedd](#) reports.

Yet, the calls for reform have gone beyond these reports. In July last year, the Assembly voted in favour (by 35 to 15) of a motion calling for more members.³

At the same time, a range of organisations from civil society raised their own concerns around the size of the Senedd, and signed up to a call for more members. These

¹ Figures correct as of 19th March 2020. The number of Members who are ruled out from committees also includes one Member currently on maternity leave.

² [A PARLIAMENT THAT WORKS FOR WALES](#)

³ <http://www.senedd.assembly.wales/ieListDocuments.aspx?CId=401&MID=5673>

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organisations included the WCVA, IWA, British Heart Foundation, Colleges Wales and the National Autistic Society.⁴

The reality is that the limited capacity of the Senedd is being felt not just by members, but by organisations across the third and private sector who feel that it is limiting the Senedd's potential to deliver for the people of Wales.

As Professor Laura McAllister wrote in February 2020:

“Our expert panel heard no compelling argument, backed up with real, hard evidence or suggestions for further innovations in working, as to why 60 members is sufficient to properly deliver for the people of Wales – and nor have I since.”⁵

We cannot have another 15 year of reports and calls for change. Political parties must commit to a larger Senedd as part of manifestos for the 2021 election, with urgent reform to take place immediately after the next election. This is not an issue of politicians voting for more politicians. It's an issue of politicians voting to deliver a stronger and more effective parliament which will benefit the people they represent.

2) Would things be different if the Assembly had more Members? If so, how?

A larger Senedd would be a much more effective Senedd in terms of discourse, debate and proper scrutiny. An increase to 90 Members would see around 70 Members available to undertake the parliamentary functions currently undertaken by around 40.

At a practical level, more Members would mean more capacity to sit on committees and reduce the number of members sitting on multiple committees. This would mean that Members would have the proper time to deal with the many concurrent inquiries and consultations a committee undertakes, being able to read and study the evidence, and be much more across legislation. This would result in a much higher level of specialisation, as we see in other parliaments.

The Expert Panel also found this, arguing that such specialisation would in particular develop at around 90 Members:

“A figure close to 80 would undoubtedly strengthen the institution and make it better able to fulfil its responsibilities effectively. However, at the upper end of our range, the benefits would be greater, providing a more meaningful difference in the ability of many Members to specialise, with consequent benefits for scrutiny and representation.”⁶

⁴ <https://action.electoral-reform.org.uk/page/45132/action/1>

⁵ <https://www.walesonline.co.uk/news/news-opinion/backing-away-addressing-national-assembly-17667591>

⁶

<https://www.assembly.wales/NAfW%20Documents/About%20the%20Assembly%20section%20documents/Expert%20Panel%20on%20Assembly%20Electoral%20Reform/A%20Parliament%20that%20Works%20for%20Wales.pdf>

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Any government needs proper scrutiny and a larger Senedd will deliver that much more effectively. What that means in practice is better delivery of services, more accountability in terms of how money is spent and stronger legislation.

As Professor McAllister wrote recently, *“And not doing it [increasing the size of the Senedd] might pose an even bigger existential risk.... We need to find a counter-narrative and quick, one that is, in itself, populist and positive. How about starting with an explanation of the difference between the Senedd and the Welsh Government? Then showing how a more muscular parliament can save money and deliver more by consistently asking the tougher questions about schools and NHS performance?”*⁷

3) If the Assembly continues to have 60 Members, what could it, its committees, its Members, political parties or others do differently to increase the Assembly’s capacity?

As the Expert Panel concluded, after weighing up many different options for amending the Senedd’s working week or involving non-AMs into decision making, there are no options that can address the fundamental issue of the Senedd’s capacity being too small.

In the *A Parliament that Works for Wales* report,⁸ the Panel concluded:

“None of these approaches can address the underlying limiting factor: the severely limited time available for the 60 elected Members to carry out the full range of their responsibilities. This is, necessarily, a limiting factor on the capacity of the Assembly to truly be a parliament that works for the people of Wales.”

We are frustrated that three years after this report, these options are still being considered. Political parties must commit to an increase in the size of the Senedd at the upcoming election. There is no alternative if we want to effectively represent the people of Wales.

⁷ <https://www.walesonline.co.uk/news/news-opinion/backing-away-addressing-national-assembly-17667591>

⁸

<https://www.assembly.wales/NAfW%20Documents/About%20the%20Assembly%20section%20documents/Expert%20Panel%20on%20Assembly%20Electoral%20Reform/A%20Parliament%20that%20Works%20for%20Wales.pdf>

Capacity of the Assembly

WEN Wales welcomes the opportunity to support the National Assembly for Wales Committee on the Assembly Electoral Reform's inquiry in the Capacity of the Assembly. Like many stakeholders, WEN Wales supports the call for an increase to the size of the Assembly in order to increase scrutiny and efficiency.

We particularly support the incorporation of quotas as outlined by the Expert Panel on Electoral Reform regarding the use of gender quotas and quotas for diversity and have included a briefing paper laying out the case of quotas in Appendix 1. We support the proposal from the Expert Panel of the use of the Single Transferable Vote with integrated equalities quotas, as laid out in the official response from the panel.¹

There is strong evidence that quotas work:

- Research shows that quotas are the **“single most effective tool for ‘fast tracking’ women’s representation in elected bodies for government.”**²
- Among the twenty Organization for Security and Co-operation in Europe (OSCE) countries registering the sharpest growth in the proportion of women in parliament during the last decade...**half had introduced legal quotas. By contrast, among the twenty OSCE countries lagging behind in growth...none had implemented legal quotas.**³
- **Ireland** has successfully used quotas requiring that at least 30 per cent of the candidates each party stands nationally are female (rising to 40 per cent after seven years). **The percentage of women candidates increased 90 per cent at the 2016 election** compared to the 2011 election, with a corresponding **40 per cent increase in the number of women elected**—35 in 2016 compared with 25 in 2011.⁴
- **100 Countries** world-wide now have some form of gender quotas in place and 40 also use them for intersectional groups such as BAME women.

Regardless of whether the Assembly size increases, it is essential that parental leave for Members is supported using locum Members and proxy voting. Creche provisions would also help safeguard the ‘family friendly’ policies that currently exist within the Assembly. We call for a creche provision at the National Assembly, as there is in Westminster, to better support caring responsibilities held by Members, particularly considering the limited provisions for parental leave. Enhancing the ‘family friendly’ ethos of the Assembly is paramount to achieving and maintaining diversity amongst Members. If this ethos was diluted, WEN Wales would expect to see additional barriers and possible decrease to the numbers of women seeking elected office at the Assembly or fulfilling the role of a Member, particularly with issues around caring responsibilities, which disproportionately fall on women.

¹ A Parliament that works for Wales, Report of the Expert Panel on Assembly Electoral Reform, November 2017

² Drude Dahlerup et al., Atlas of Electoral Gender Quotas, International Institute for Democracy and Electoral Assistance [IDEA], IPU and Stockholm University, 2013.

³ Norris, P. and Krook, M. for OSCE, Gender equality in elected office: a six-step action plan, 2011

⁴ Brennan, M. and Buckley, F. ‘The Irish legislative gender quota: the first election’, Administration, vol 65(2), May 2017

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We believe that a healthy Assembly must be more diverse. As you will be aware, the Assembly has never had a Black, Asian or minority ethnic (BAME) woman Member, which is unhealthy for democracy as it does not reflect Wales' national demographic figures. It further entrenches lack of diversity if young political women cannot see anyone who looks like them in the Senedd.

We endorse Bethan Sayed AM's call for 'locum' Members of the Assembly⁵, to support Members for up to 12 months of parental leave. Currently, the provisions mean that Members would have to decide whether to come to the Chamber to vote, as there is no alternative voting system for those on parental leave. As there is no creche on site, there is not a joined-up approach in relation to the caring responsibilities of members on leave and voting responsibilities.

Alternatively, we would also press for the Senedd Commission to implement virtual plenary meetings and remote voting as well as fully rolling out the use of digital Committee sessions and evidence gathering. ERS Cymru have pressed for these changes now to ensure proper scrutiny during the Covid-19 pandemic, however we believe they would work extremely well for example during parental leave.⁶

More Members in the Assembly may mean an increase in diversity, but there are significant barriers to elected office in Wales that need to be addressed – we therefore call on the Committee to lobby Welsh Government to ensure that an Assess to Elected Office Fund is available to candidates seeking elected office, such as election to the 6th Assembly, and that such a fund is available for disabled candidates, in addition to a similar scheme for others who experience additional barriers, such as low-income or childcare constraints and BAME women. Welsh Government has stated that funding for disabled candidates will be in place in time for the local government elections in 2022 however we are extremely disappointed it is not available for the next Welsh Parliament elections in 2021 as this will lead to a less diverse assembly.

The case for increased Members in Wales is marred by the very low understanding of the general population about the role of the Assembly and its Members, and how this relates to the roles of local councillors and Members of UK Parliament. Therefore, we support the Electoral Reform Society Cymru's call for impartial compulsory political education in educational institutions, alongside a wider national awareness-raising campaign. We believe that without this, the necessity of increasing the number of Members in the Senedd will be ill-understood and widely unpopular.

We believe that increase opportunities for cross-party working, through mechanisms such as Cross Party Groups, are very welcome and would increase the efficiency of the Assembly. WEN Wales holds the secretariat for the Cross Party Group on Women and while many Members are supportive of the work of the group, they often do not have the capacity to attend meetings and thus hear from the expertise in the room, and miss an opportunity for cross-party working on areas of shared interest.

COVID-19 is dramatically changing how the Assembly and all places of work are operating. We hope that any good practices that have been adopted during this pandemic will become permanent policies within the Assembly, rather than a resumption of 'business as normal' following this global crisis.

⁵ <https://www.bbc.co.uk/news/uk-wales-50159517> (BBC News, 24th October 2019).

⁶ <https://nation.cymru/news/campaigners-call-for-remote-voting-at-senedd-amid-concerns-over-collapse-in-scrutiny/>

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Recommendations:

- Establish a creche at the Welsh Parliament for Members, their staff and constituents on Parliament business
- Enable a system of 'locum' Members for Members on Parental leave
- Enable a system of proxy voting
- The Committee should raise concerns about the lack of Access to Elected Office Fund with Welsh Government.
- Good work practices adopted during the COVID-19 pandemic should be made permanent, where appropriate.

About WEN Wales:

WEN Wales is a representative women's network⁷ and human rights organisation. Our Vision is a transformed Wales, free from gender discrimination. We call for a Wales where all women and men have equal authority & opportunity to shape society and their own lives.

⁷ Over 1300 individual members and organisational members, including women's rights and allied organisations from across the third sector, academia, international and national NGOs.

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Appendix 1:

BRIEFING PAPER

The case for quotas to deliver equal and diverse representation

WEN Wales favours an electoral system that results in gender balance or 'Equal Power and Equal Voice' in the Senedd and in Local Government in Wales. The system must also ensure that the voices of those with protected characteristics are represented. **We therefore support the use of legally binding prescriptive gender quotas with sanctions or incentives.**

- WEN Wales supports the findings of the Expert Panel on Assembly Electoral Reform, who support the Single Transferable Vote with **the integration of gender quotas into the system.**
- WEN Wales believes that women's participation and the success of women as candidates in elections are vital indicators of the health of a representative democracy, and an integral part of achieving a more equal Wales, in line with the ambitions of the Wellbeing of Future Generations (Wales) Act 2015.
- Gender quotas should be enforced through legislation, and not just through voluntary measures as we believe we need to 'bake in' gender equality into our electoral system or we will continue to see reductions in numbers of woman AMs, low number of women as Councillors and a lack of diversity of political representatives too.

Evidence supporting quotas

- Research shows that quotas are the **"single most effective tool for 'fast tracking' women's representation in elected bodies for government."**⁸
- Among the twenty Organization for Security and Co-operation in Europe (OSCE) countries registering the sharpest growth in the proportion of women in parliament during the last decade...**half had introduced legal quotas. By contrast, among the twenty OSCE countries lagging behind in growth...none had implemented legal quotas.**⁹
- There is international backing for gender quotas. Various international institutions, including the United Nations Committee on the Elimination of Discrimination (**CEDAW**), the Beijing Platform for Action, the EU and the Council of Europe support their use.
- **Ireland** has successfully used quotas requiring that at least 30 per cent of the candidates each party stands nationally are female (rising to 40 per cent after seven years). **The percentage of women candidates increased 90 per cent at the 2016 election** compared to the 2011 election, with a corresponding **40 per cent increase in the number of women elected**—35 in 2016 compared with 25 in 2011.¹⁰
- **100 Countries** world-wide now have some form of gender quotas in place and 40 also use them for intersectional groups such as BAME women.

⁸ Drude Dahlerup et al., Atlas of Electoral Gender Quotas, International Institute for Democracy and Electoral Assistance [IDEA], IPU and Stockholm University, 2013.

⁹ Norris, P. and Krook, M. for OSCE, Gender equality in elected office: a six-step action plan, 2011

¹⁰ Brennan, M. and Buckley, F. 'The Irish legislative gender quota: the first election', Administration, vol 65(2), May 2017

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- A report published by the United Nations in 2012 found that **out of the 59 countries that held elections in 2011, 17 of them had quotas**. In those countries, women **gained 27% of parliamentary seats compared to 16% in those without**.¹¹

Types of Quota

Different types of gender quota have been used in different countries, depending on the electoral system and local circumstances. The Expert Panel on Electoral reform¹² describes the three main types as:

- **Candidate quotas which introduce a 'floor'** for the proportion of male or female candidates a party stands for election. These could be applied in the form of constituency twinning for First Past The Post (FPTP) seats. They could also be applied to multimember systems such as STV or Flexible List at a constituency or a national level. Parties in Scandinavia, Spain and Austria have voluntarily adopted similar quotas, ranging from 33 per cent to 50 per cent.
- Requirements for **the ordering of candidates on any list** element of the system. Voluntary quotas of this nature have been used by parties in Wales in Assembly elections, for example zipping of regional candidate lists. (I.e. listing candidates alternately according to their gender)
- **'Reserved seats'** to which only female candidates could be elected. This type of quota is widely used in South Asia, the Arab region and sub Saharan Africa.

Examples of Incentives used:

- **Croatia** has legally binding quotas and uses incentives - for each MP representing an underrepresented gender, political parties receive an **additional 10 per cent of the amount envisaged** per individual MP;
- **Bosnia and Herzegovina**: where 10 per cent of the funding provided to political parties is distributed to parties in proportion to the number of seats held by MPs of the gender which is less represented in the legislature.
- **Two for the price of one deposits** for two candidates of different genders could be used in Wales —this would appear to us to be proportionate in the context of seeking to ensure that the gender balance in the Assembly reflects the gender balance in the communities it serves.¹³

What needs to happen next

After decades of campaigning by NGOs to make change, women – who make up 52% of the population in Wales - still do not have equality in terms of representation in politics. In Welsh local government just 28% of local councillors, four of the 22 council leaders (18%) and 27% of Council Cabinet members are women. One

¹¹ <https://www.theguardian.com/politics/2013/aug/20/quotas-women-parliament-authors-edinburgh-book-festival>

¹² A Parliament that works for Wales, Report of the Expert Panel on Assembly Electoral Reform, November 2017

¹³ A Parliament that works for Wales, Report of the Expert Panel on Assembly Electoral Reform, November 2017

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local authority cabinet is 100% male. At the rate of change to date, gender balance in Welsh councils is unlikely before 2073.

We have a unique window of opportunity to progress the diversity and equality of representation agenda and push for legislative and party political change to enshrine diversity into our political system for years to come. Wales is at a tipping point and, with legislative quotas, Wales could lead the way and be a trail blazer in terms of showing the rest of the UK how quotas can be used.

Political Context:

In 2017 the Wales Act devolved power to Wales to have control over its own electoral system. An expert panel on Assembly reform, Chaired by Prof. Laura McAllister and appointed by the Llywydd (Presiding Officer) recommended introducing gender quotas for the 2021 Assembly elections as part of a new electoral system with STV or Flexible List PR, lowering the age of voting to 16 and changing the name of the Welsh Assembly to Senedd Cymru.

This resulted recently in 'Phase 1' of the Electoral Reform legislation - The Senedd and Elections (Wales) Bill however it was not bold enough in tackling equality and diversity partly as the Presiding officer felt there was not sufficient public support, though it extended the franchise to 16 year olds. The Liberal Democrats said it is an "important step" that will "ensure the voices of young people are heard within Welsh politics and help us create a better Welsh democracy."

Phase 2 of the reforms are likely to take place after the May 2021 elections and will include looking at the electoral system and the enlarging of the Assembly. **We see the legislation on quotas as being a perfect fit with this reform Bill as it goes hand in hand with STV and an enlarged Senedd.**

Conclusion

WEN Wales believes that legally binding quotas, with sanctions or incentives, are essential to ensure we do not continue to see a reduction in the numbers of women AMs elected to the Senedd and the continuation of low numbers of women elected in Local councils.

We are calling for:

- **All Political Parties to include a commitment to legally binding quotas in their Manifestos for the 2021 elections**
- **The Local Government and Elections (Wales) Bill and forthcoming legislation on Reform of the Assembly should include provisions on legally binding quotas.**

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Consultation on the note of issues raised at the Committee on Senedd Reform's stakeholder event on the capacity of the Senedd: Response from an individual via online questionnaire – February 2020

Issue 1: Size of the Assembly

Extract from note: There was general consensus that the Assembly does not have the capacity it needs, and that this presents challenges for scrutiny and democratic accountability. Some participants noted that the Assembly has responsibility for many of the issues which affect people most in their daily lives, but that once members of the Welsh Government and the Presiding Officers had been taken into account, only around 45 Members are available to undertake the Assembly's scrutiny functions. While there was consensus that scrutiny is generally of a good quality, some participants felt it was inevitable that without increased capacity, the Assembly would miss significant issues which should be subject to scrutiny. There was general support for an increase in the size of the Assembly. Some participants suggested that an increase should be towards the upper end of the Panel's proposed bracket of 80-90 Members to future-proof the institution and avoid further adjustments being required in the foreseeable future.

Response: agree with the assessment above. The National Assembly has done tremendously well to absorb and adapt to a great deal of constitutional change that involved both significant structural changes but also a broadening and deepening of its powers and competencies. It has done so by strengthening the provision supporting the work of the Assembly Members and the work of committees. However, at the core of the representative Welsh democracy should sit the quality of deliberation done by its elected representatives. This deliberation should be driven and enriched by politicians and only supported by officials, experts and civil servants. Evidence has pointed out that by any measure (see the regional authority index for instance), the Assembly's size is under what international benchmarks show as standard floor capacity. And even though the Assembly has a track record of versatility and fast institutional learning, the challenges it faces in the next few years are inseparably more complex and problematic than ever before (Brexit,

nationalist populism in and from England, devolution of justice, etc). The Expert Panel's compelling evidence and arguments for a 90 Member Assembly should be taken into real consideration.

Issue 2: Role and responsibilities of the Assembly

Extract from note: The role of the Assembly has changed significantly since it was established in 1999; in particular it now has law-making and taxation responsibilities. Brexit and the recommendations of the Commission on Justice in Wales that justice and policing should be devolved may result in further changes. Participants noted that the establishment of the Assembly, and subsequent changes to the devolution settlement, had been controversial, but that support for devolution had increased. There was general consensus that it was important to help the public to understand that the Welsh Government and Assembly take decisions which directly affect people's lives, and that such decisions must therefore be properly and effectively scrutinised by Members who have the skills, time, capacity and expertise to do so. The lack of media focus on the Assembly was regarded by some participants as a major concern. It was felt that good work sometimes went unnoticed, and that Members may be aware that they work in a parliamentary environment which is subject to less scrutiny than other UK legislatures. Some participants suggested that the media, both at Welsh and national levels, could do more to explain the work of the Assembly and why more Members are needed.

Response: The above is a fair statement. The Assembly is essentially a very institution to that established in 1999. All main functions of the Assembly (scrutiny, law making, tax raising and representation) are likely to be tested in the next few years by Brexit, devolution of justice and the changing nature of the Union. However, I would like to raise another point here. This is linked with the representational role of the Assembly. One of the main challenges in the Assembly deploying this role is tackling the endemic information deficit, political disaffection and disenchantment. This makes Welsh devolved democracy vulnerable. Sentiments around the Assembly operating in a 'Cardiff Bubble' are counter to the devolution aspirations of inclusivity and shaping a new kind of politics in Wales, essentially different from Westminster. Antidevolutionist sentiments capitalising on the media and information deficit in Wales may prove real challenges in the future.

Issue 3: Assembly Committees

Extract from note: Participants felt there were severe limitations on the time available to Members to prepare for formal Assembly business, to engage with the evidence and available expertise, and to reflect on the matters they are scrutinising. Participants suggested that smaller parties struggle to take up places on all Assembly committees and that larger parties find it difficult to fill all of the committee places allocated to them. It was noted that the recent reduction in committee size had partially alleviated the pressure of the number of places, but that it would now be harder for Members to specialise in different aspects of committee portfolios. This was felt to be exacerbated by the breadth of committees' remits. Participants suggested that the breadth of remits was itself partly driven by the constraint the Assembly's size puts on the number of committees which can be established. A further consequence of the breadth of remits combined with a lack of capacity was felt to be an increase in the number of short inquiries in place of longer, more detailed pieces of work. Opportunities for postlegislative scrutiny and horizon-scanning to anticipate areas of interest and importance were also thought to be limited. Some participants were concerned that scrutiny of Government decision-making tended to be retrospective, limiting the opportunities for Members and committees to influence and shape Government policy. The constraint on strategic and creative thinking was felt to lead to missed opportunities to set the agenda and influence policy, spending and legislation, as the time required to prepare for and attend committee and Plenary meetings limited the time available for creative political thinking or the development or consideration of alternative options. There was also some concern about whether the range of organisations and individuals from whom committees take evidence is sufficiently broad. Some participants observed varying levels of expertise among committee members in relation to the more technical aspects of scrutiny, and were concerned that committee activity was being led by the skills and knowledge of the supporting officials. Participants recognised the technicality and complexity of some of the issues Members consider, including primary and secondary legislation and detailed Government policy proposals. This contributed to concerns about the level of turnover of committee memberships, which participants felt could hinder Members' ability to build up expertise upon which detailed and probing scrutiny could be based, especially in technical areas such as taxation. Some participants noted that constraints on the time or capacity available for scrutiny could have a detrimental impact on the Assembly's capacity; for

example, inadequate scrutiny of legislation could lead to defective or ineffective legislation requiring resolution by further policy or legislative action and giving rise to additional scrutiny requirements

Response: Some fair observations here. This is a typical case of structure vs. strategy. The small size of the Assembly has constrained the strategic choices available to the Assembly in what regards its operation (of its committees for instance), and its focus (legislative burden may take time away from committees that want to engage in more 'out of the box' type of inquiries). It is generally accepted that successful organisations let strategy determine their structure - that is they can adapt and fine tune their structure and operation according to their overall strategic intent. Organisations that are constrained by their own limited capacity (structures of resources) may be resilient, may be great at streamlining and adapting, but ultimately their ability to set their aspirations and goals at strategic level are hindered and limited by size, for instance.

Issue 4: Engagement with the public and stakeholders

Extract from note: Participants felt that the majority of Members' time while on the Assembly estate was taken up with formal Assembly business, with limited opportunities to undertake formal Assembly business away from Cardiff Bay, or for Members to engage informally or meet with stakeholders, constituents, service users or others. Some participants noted that the current capacity constraints are particularly acute for Members representing the constituencies which are furthest from Cardiff Bay, as a greater proportion of these Members' time is spent travelling. Concerns were expressed that access to Members might sometimes be on the basis of personal relationships, rather than the importance of specific issues or strength of argument. Participants felt that if an increase in capacity reduced the time pressures within the working week, or allowed Members to specialise in particular policy issues, it could improve and increase the quality and diversity of engagement. Participants also suggested that constraints on Members' time can limit the scope for them to engage with each other on a cross-party basis. This was felt to encourage a tribal culture within the institution and limit the scope for working across party lines to build consensus and think creatively about the issues facing Wales.

Response: The above is a fair assessment as well. Pressure on Assembly members' time and on committees may impede more meaningful engagement with a wider and diverse range of stakeholders. With the franchise being extended to 16 and 17 year olds, more

effort will need to be paid to make a success of this and really galvanise young people to engage in the democratic process. This is not only a matter for the individual members but also an important matter for the Assembly collectively and in fact for the entire Welsh political class and associated political institutions (including at local level).

Issue 5: Assembly Commission staff support

Extract from note: Participants highlighted the role of Assembly Commission staff in supporting scrutiny, especially through the Assembly's committees. They noted that while staff support has been increased and is generally of a high standard, it cannot substitute for Members having the time to engage directly with the evidence and the issues, or for the political perspective that only Members can bring. Some participants noted that on occasion they had observed a lack of experience or specific technical knowledge in the advice provided to Members, which had been reflected in the approach to questioning taken by Members in committee.

Response: A fair comment and assessment. Official support cannot replace deliberation of political elected representatives and they cannot over rely on advice and support. A better integration of and access to experts is something that can help, but again, ultimately, the democratic deliberation will be influenced both by how big the pool of talent among members is (i.e. size) and by the calibre of those members.

Issue 6: Comparisons with other legislatures and intra-party scrutiny

Extract from note: Participants reflected on the size of other UK and international legislatures, noting that the Assembly appears undersized in comparison. Some participants suggested that in a smaller legislature Members may be less likely to be critical of their own party than members of larger legislatures, and argued that a larger membership might allow for more scrutiny within parties, as well as of the Welsh Government. There also were some concerns that the regional list element of the current electoral system might deter Members from criticising their own party if they felt they had been elected in the name of the party rather than as individuals.

Response: small number do affect the nature and quality of relationships within an organisation.

The respondent did not respond to the remaining extracts from the note.

Dawn Bowden AM

Chair, Committee on Assembly Electoral Reform

22 April 2020

Dear Dawn,

Committee Legislation

Thank you for your letter of 6 March 2020, seeking my views in relation to the Finance Committee's experience of developing a Committee Bill and steering it through the legislative process.

As you mentioned in your letter, the Finance Committee is the only Committee to date that has made use of the provision in Standing Orders (26.81) which enables any Assembly committee to introduce a Bill relating to its remit. The Committee used this provision to introduce the **Public Services Ombudsman (Wales) Bill** (the Bill).

The introduction of this Bill followed substantial consideration of the need for legislation, which spanned two Assemblies. The Finance Committee of the Fourth Assembly undertook an initial inquiry into considering the powers of the Ombudsman in 2015, followed by a consultation on a draft Bill, before the final Bill and Explanatory Memorandum was laid in the Fifth Assembly in October 2017. The Bill passed through the Assembly's four stage scrutiny process and received Royal Assent on 15 May 2019.

This Act represents a significant amount of hard work undertaken over a number of years and a rigorous scrutiny process including work by several Assembly Committees. It was a privilege to be the Chair of the Committee steering this important legislation through the Assembly. Whilst the Bill took a great deal of clerking, legal and research resources, it also provided an excellent opportunity for drafting experience and built capacity within the Assembly Commission.

More recently, the Committee has been developing the draft Public Audit (Amendment) (Wales) Bill and EM, which proposes reform to the existing Public Audit (Wales) Act 2013.



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Additionally, in considering non-government legislation, I would like to refer you to the **Autism (Wales) Bill**. This Bill was introduced by Paul Davies AM in July 2018, and the financial implications were scrutinised by the Finance Committee. The Committee's report detailed that Members were unable to make a decision on the validity, or not, of the Regulatory Impact Assessment due to a lack of information provided by the Welsh Government. Following this, I wrote to the **First Minister** detailing concerns over the lack of Welsh Government engagement in non-Government Bills and the **First Minister responded**.

I have provided a more detailed response to your proposed questions in the Annexe attached which I hope will be useful to you when considering the different mechanisms by which Bills may be introduced.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Llyr', is centered within a light blue rectangular box.

Llyr Gruffydd AM
Chair of the Finance Committee



Annexe – Finance Committee’s experience in relation to developing the Public Services Ombudsman (Wales) Bill

• Developing legislative proposals and provisions, and associated supporting documentation, impact assessments and financial estimates.

Background to the legislation

The role of the Public Services Ombudsman for Wales (the Ombudsman) was established by the **Public Services Ombudsman (Wales) Act 2005** (2005 Act). Since 2013, there had been calls to extend the powers of the Ombudsman’s role in five main areas, by the previous Ombudsman, Peter Tyndall and the current Ombudsman, Nick Bennett. The Communities, Equality and Local Government (CELG) and Finance Committee of the Fourth Assembly scrutinised the work and financial considerations of the Ombudsman’s office. As part of the CELG Committee’s scrutiny of the Ombudsman’s annual report it heard from the outgoing Ombudsman Peter Tyndall that the 2005 Act needed updating.

The Welsh Government said that as it was a public body subject to scrutiny by the Ombudsman, it would be more appropriate for the Assembly to lead on any legislative change.

Subsequently, the CELG Committee wrote to the Finance Committee to say there was merit in reviewing the Act but it was unable to devote the necessary time to it and suggested the Finance Committee could take this work forward if it wished.

Work on the Bill started in 2015 by the Finance Committee. The Committee undertook a public consultation to inform its **inquiry into the proposals to extend the Ombudsman’s powers**. Having been persuaded by the evidence it heard, the Committee agreed that changes were required to the legislation and in early October 2015 consulted on the **draft Bill**. Given the limited time remaining in the Fourth Assembly for a Bill to proceed through its legislative passage, the Committee recommended that a future Committee should introduce the Bill, as soon as possible. It also recommended that the Ombudsman contribute to a fully costed Regulatory Impact Assessment (RIA) to accompany the Bill, which it could track through future budgets presented by the Ombudsman to the Assembly.

Consideration by the Finance Committee of the Fifth Assembly

In September 2016, the Finance Committee considered the recommendations of the Fourth Assembly Finance Committee. It subsequently wrote to the Ombudsman, noting it would need to see robust financial information to support the proposed legislative intervention before Members considered whether to introduce the Bill.

The Ombudsman commissioned OB3, an external research company, to undertake the necessary assessment. In December 2016, the Ombudsman presented the information about the costs and benefits of the Bill to the Chair of the Finance Committee.



The Ombudsman gave evidence regarding the financial implications of the Bill to the Finance Committee at its meeting on **9 March 2017**. Following the meeting, the Finance Committee Chair wrote to the Ombudsman to request further information. Specifically, the Finance Committee sought an estimate of the likely cost to the other public bodies affected by the provisions in the Bill (or 'indirect' costs), which had not been quantified by the Ombudsman. The Finance Committee recognised the challenges and limitations in terms of quantifying these costs due to a lack of evidence and data available. However, it believed it was essential that any Bill introduced included detailed and measured costings. The Ombudsman responded to the Committee's request on **28 April 2017**.

Assembly officials prepared an early draft of the Explanatory Memorandum (EM) and RIA, incorporating the costs and benefits provided by the Ombudsman, while the Finance Committee continued its consideration of the Bill. In preparing an early draft of the EM, Assembly officials made some assumptions about the cost estimates and identified the need for clarification or additional information. The Committee wrote to the Ombudsman to request this, and also sought information to inform its consideration of other aspects of the Bill. As well as responding to the Committee's requests in writing, the Ombudsman's staff also met with Assembly officials to discuss the financial implications of the Bill and the draft EM.

The Committee continued its considerations of the Bill and the draft EM during spring 2017. In July 2017 it agreed that a Bill should be introduced, which reflected a number of changes to that drafted by the Finance Committee of the Fourth Assembly.

▪ **Consulting and working with policy and political stakeholders, including on draft Bills.**

As mentioned above, two consultations were undertaken giving policy and political stakeholders opportunities to shape the legislation prior to introduction of the Bill.

The Welsh Government responded to the Fourth Assembly Finance Committee's consultation on the **draft Bill** but not on the **initial inquiry**.

After introduction of the Bill, the Equalities, Local Government and Communities Committee (ELGC), the responsible Committee (this is covered in more detail in the bullet-point below) undertook full Stage 1 scrutiny of the Bill, which included a further consultation on the general principles of the Bill.

▪ **Introducing legislation and guiding it through the legislative scrutiny process.**

The Finance Committee authorised the Chair of the Committee as the 'Member in Charge' (MiC) of the Bill (SO 24.7). The Chair laid the Bill and EM on 2 October 2017 and made an oral statement in Plenary on 4 October 2017, mirroring the approach adopted by the Welsh Government (but not required in Standing Orders).

At that time, Standing Orders allowed a committee bill to automatically bypass referral to a responsible committee to consider and report on the general principles. However, in the interest of best practice and transparency and as the Bill's drafting had taken place over two different



Assemblies, the MiC proposed that Members should be provided with the opportunity to consider and report on the general principles. As a result, Standing Order 26.82 was removed¹ and the Bill was referred to the ELGC Committee and subject to full Stage 1 scrutiny. This included scrutiny of the general principles of the Bill and its financial implications, given that the latter is normally carried out by the Finance Committee, the ELGC Committee appointed an expert adviser to help assist with its scrutiny of the financial implications of the Bill.

As well as providing oral evidence during the Stage 1 as is customary, the ELGC Committee also wrote to the MiC in December 2017 and January 2018 to request responses to questions and issues raised by the Expert Adviser.

At Stage 1, the Bill was also scrutinised by the Constitutional and Legislative Affairs (CLA) Committee, which considered the subordinate legislation provisions in the Bill. The CLA Committee took evidence from the MiC and the Cabinet Secretary for Finance and reported (as is standard practice for all Bills).

Removing the ability to automatically bypass referral to a responsible committee means it is now the Business Committee's decision whether to refer a committee bill to a responsible committee for Stage 1 scrutiny (as is the case with government and other non-government bills). However, I believe that when the change to Standing Orders was suggested, to allow for a Committee Bill to be referred for Stage 1 scrutiny, the intention was that the provisions to allow a Committee Bill to bypass Stage 1 should remain.

In the preparation of a draft Bill a huge amount of Assembly and stakeholder time is utilised and, if the Government is engaged on the Bill prior to introduction, the automatic referral of a Bill to a Committee for Stage 1 scrutiny could be an inefficient use of Committee time.

Bill's Timetable

The Finance Committee sought to time the Bill's introduction to coincide with a convenient period in the workload of the ELGC Committee and followed best practice by facilitating a longer Stage 1 period, to enable the Committee scrutinising the Bill to carry out a full consultation and allow for other committee work to be undertaken at the same time.

In considering the timetable for the Bill, the MiC also held discussions with the then Cabinet Secretary for Local Government and Finance to minimise the pressure on the Welsh Government. Whilst the Assembly agreed the general principles of the Bill within the timetable agreed by the Business Committee, the MiC sought an extension to the Stage 2 deadline in order to secure the Assembly's approval of the financial resolution. The deadline proposed by the MiC purposely sought to avoid the substantial workloads of both the ELGC Committee and Finance Committee in the autumn term.

¹ By resolution of the Assembly on 27 September 2017



- **Building and maintaining consensus among Committee members on, for example, policy objectives, legislative proposals and amendment strategies.**

The Committee agreed that the MiC would liaise with the Welsh Government and undertake all relevant functions as the MiC of the Bill. The MiC kept the Committee informed regularly of progress by providing update papers which were discussed in private, in accordance with SO 17.42. Prior to amending stages, the Committee considered and agreed the proposed amendments that would be tabled by the MiC.

- **Building and maintaining consensus in support of your proposals among political parties and stakeholders.**

As mentioned above, the proposals in the Bill had been subject to extensive public consultation and detailed scrutiny by the Committee prior to introduction, allowing for political parties and stakeholders to express their views and influence the development of the Bill.

- **Engagement with the Welsh Government.**

As previously mentioned, the Welsh Government responded to the Fourth Assembly Finance Committee's consultation on the draft Bill. The Welsh Government's involvement was relatively limited until the Bill had passed Stage 1. The Bill cut across various subject areas including health, social care and local government and therefore the MiC established early meetings with the relevant Ministers in order to progress the legislation.

During the Assembly's consideration of the general principles, the Minister indicated that, as well as revisiting the costs included in the RIA, a number of policy and drafting issues would need to be addressed before the Welsh Government could support the Bill.

As a Minister is the only person able to move a Financial Resolution, gaining Welsh Government support was essential to progress the Bill past Stage 1. Securing the Minister's agreement to move the Financial Resolution involved revising the RIA prior to the debate (a step not usually undertaken until Stage 2 has concluded). As SO 26.74(i) requires notice of a financial resolution to be tabled within 6 months of the completion of Stage 1 (21 March 2018), the Committee faced the challenge of revising the RIA and securing the approval of the Welsh Government and the Assembly's agreement of the Financial Resolution before the Summer recess of 2018.

The MiC committed to working with the Minister to progress the Bill in a manner that was satisfactory to both the Finance Committee and the Welsh Government. This involved a significant amount of engagement between Assembly and Welsh Government officials after Stage 1. This not only helped to resolve queries about the financial implications and the Welsh Government's comments on the Bill but also ensured a coordinated approach and that targets dates and milestones were met.

In total 230 amendments were tabled at Stage 2, and 49 amendments at Stage 3. To avoid such heavy workloads for all concerned, the Committee would encourage earlier engagement from the Welsh Government during the development of draft committee bills.



• **Accessing relevant skills and resources**

Working with the Ombudsman's Office

Assembly officials established excellent working relationships with the Ombudsman's officials. This facilitated the sharing of information and resolving queries in a timely manner, which was important given the time pressures at certain points of the legislative process. Officials met regularly to discuss progress and keep the Ombudsman's office updated.

Attached below is a timetable of the Bill's progress for information.



Timeline of the Public Services Ombudsman (Wales) Bill

11 th May 2015	Finance Committee of the Fourth Assembly reports on the Consideration of Powers: Public Services Ombudsman for Wales	22 nd March 2018	Stage 2 began Assembly Members could table amendments to the Bill
18 th March 2016	Finance Committee of the Fourth Assembly reports on the Consideration of the consultation on the Draft Public Services Ombudsman (Wales) Bill	17 th July 2018	The Financial Resolution is agreed in Plenary
2 nd October 2017	Public Services Ombudsman (Wales) Bill is introduced by the Finance Committee of the Fifth Assembly	31 st January 2019	Stage 2 Amendments were consideration by the Equality, Local Government and Communities Committee
9 th March 2018	Equality, Local Government and Communities Committee reports on Stage 1: General Principles of the Public Services Ombudsman (Wales) Bill	1 st February 2019	Stage 3 began Assembly Members could table further amendments to the Bill
9 th March 2018	Constitutional and Legislative Affairs Committee reports on the powers to make subordinate legislation within the Bill	13 th March 2019	Stage 3 Amendment were considered in Plenary
21 st March 2018	Stage 1 Debate in Plenary - Motion is agreed	20 th March 2019	Stage 4 The motion to approve the Bill was agreed

Committee on Senedd Electoral Reform

Response from Professor Laura McAllister, Wales Governance Centre, Cardiff University

Legislative mechanisms:

Given the importance of this change to the future effective working of devolution, the Bill should proceed by the most practical and speediest means. The issue of cross-Senedd consensus is key for a recommended constitutional change of such significance clearly, whichever route is chosen. This means that the political arithmetic of the Senedd is a consideration (albeit a political one!).

In view of this, I would advocate whichever mechanism is the most likely to secure such support. Beginning with a position of some degree of cross-Senedd consensus is ideal and avoids amendments that might derail the Bill. This leads me to suppose either the Commission or a committee is best placed. I would assume the Senedd Reform Committee will be deemed to have completed its work by then and so would not still be in existence, meaning it would have to be another committee.

A government Bill would be feasible only if the government supported its contents. However, if there is no cross-Senedd consensus (or at least consensus between more than half of the 60 MSs), then a government Bill would be acceptable for this Bill - with the caveat above.

I think a Member's Bill is too inherently risky in terms of garnering support and therefore should be avoided.

Draft bills:

I have always supported the pre-legislative publication of draft Bills, especially Bills with constitutional import. The Rt Hon Stephen Crabb MP, whilst Secretary of State for Wales, was aware of the risks of not doing so and ensured that the 2017 Wales Bill was published in draft form. A far stronger and better Act was the outcome, in my opinion.

The only three downsides to draft Bills that I can think of are i. that it risks adding time to what has already been a lengthy process in this case, ii. the danger of recycling more arguments over the contents of the Bill after plenty of opportunities to raise these in earlier debates, and iii. therefore, possibly jeopardising whatever degree of consensus may have been achieved.

Therefore, I see no reason not to follow the sensible recommendation of the Legislation, Justice and Constitution Committee, following its scrutiny of the Senedd and Elections (Wales) Bill, to publish the Bill in draft form.

Laura McAllister