

Dawn Bowden MS
Chair of Committee on Assembly Electoral Reform
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

Reference: AC/193/caf
Date issued: 15 May 2020

Dear Dawn

Capacity of the Senedd

I am grateful for the helpful deadline extension to provide views on the capacity of the Senedd. I am not sure that I am in a position to answer your third question, but I think it is appropriate as Auditor General, with my functions of examining and reporting on the use of public money, to give views on your first two questions.

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

No, I do not think the Senedd has the capacity it needs to carry out all its representative, scrutiny and legislative functions now and in the future. In particular, like the previous Auditor General (Huw Vaughan Thomas—please see his response to *Creating a Parliament for Wales* of 5 April 2018), I think the Senedd has insufficient capacity for scrutiny. Such scrutiny is essential for holding the Government to account for its spending, as well as examining proposed legislation and its potential effects.

The currency of parliamentary scrutiny is time. Insufficient Senedd capacity reduces the time available for scrutiny in several ways – less time for individual Members to prepare because of competing demands, less time for committees to meet, less time within committee agendas, and so on – and that inevitably weakens its effectiveness.

When legislating, less effective scrutiny leads to resources being unnecessarily consumed by defects in legislation. An example of this, with which I am very familiar, is the work caused by the Public Audit (Wales) Act 2013. This is a relatively narrow piece of legislation with a very specific focus. It is significant for the operation of my own organisation, however, and that has allowed me to observe the impact of

weaknesses in its drafting that could have been addressed at Bill stage had Senedd capacity – and hence time and depth of scrutiny – been greater.

Since its passing, Audit Wales and the Senedd Commission have had to spend resources on dealing with the Act's defects, such as its excessively complex and onerous fee provisions, which cause somewhere in the region of £35,000 a year in additional fee administration (about 10% of the total cost of such administration). Both Audit Wales and the Senedd Commission have also spent time and money (including on legal advice) in order to deal with the Act's rather disjointed appointment and remuneration provisions. Further work has included developing proposals for remedial amendments where the Finance Committee has had to devote a considerable amount of its scarce time to the development of draft legislative proposals to address accepted weaknesses in the Act. More effective scrutiny at the pre-legislative and legislative stages, allowing more weight to be given to the views of those responsible for implementing the legislation, could have avoided the need for such additional work.

Issues of insufficient scrutiny are not confined to the Public Audit (Wales) Act 2013. A common theme that arises in the course of audit work is that not enough consideration is given to the practicalities of implementing policy. In 2019-20, I published four reports on how local authorities are responding to the challenge of implementing new legislation: *Local planning authority services*, *The new 'Front Door' to adult social care*, *Review of Public Service Boards (PSBs)* and *Progress in implementing the Violence Against Women, Domestic Abuse and Sexual Violence (VAWDASV)*. Each of these reports identified difficulties faced by local authorities and their public sector partners in implementing their new responsibilities. And in our forthcoming briefing, *Better law making: the implementation challenge* (to be published shortly), we draw common themes from these reports to highlight the importance of the Welsh Government and the Senedd considering the ability of bodies to implement legislation in practice.

Key aspects of scrutiny of proposals for new legislation are its likely cost and impact. The main vehicle for this is the Regulatory Impact Assessment (RIA) included in a Bill's Explanatory Memorandum. While the quality of the RIA for a Government Bill is first and foremost a matter for Welsh Ministers, Senedd scrutiny is essential for ensuring that it is realistic and that the legislation is affordable and effective.

My predecessor noted shortcomings in RIAs, particularly unrealistic cost estimates, and reported on them in the case of the Well-being of Future Generations (Wales) Bill. Since then, further examples of lack of realism in RIAs have become apparent. For example, in relation to the Gender-based Violence, Domestic Abuse and Sexual Violence (Wales) Act, it is apparent that the RIA did not sufficiently recognise the circumstances public bodies face in terms of increasingly constrained budgets and reducing capacity. While the RIA estimated the costs for local authorities and health boards to carry out mapping and production of local strategies at £220,000, it was not clear as to how that work would actually be resourced. More effective scrutiny of

these important issues at Bill stage could have avoided some of the subsequent difficulties seen in implementation.

Greater capacity for scrutiny is also needed to increase the alignment and integration of different pieces of legislation. We have found that often—for example in my report *The Effectiveness of Local Planning Authorities in Wales*—because the requirements of different pieces of legislation are not aligned, there is limited integration and collaboration of services, which leads to fragmented and inefficient service delivery. Greater scrutiny capacity in the Senedd would enable more rigorous and consistent consideration of the connections and relationships between different pieces of legislation and testing of the degree to which they have been aligned and integrated in Government proposals.

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

With the current 60 Members, non-ministerial Members need to undertake multiple roles, including multiple committee memberships. This reduces the time individual Members can devote to any given portfolio and the degree to which they develop specialist policy knowledge.

Having more Members should enable non-ministerial Members to have fewer committee memberships, so providing more opportunity to reflect fully on research and evidence ahead of meetings and develop deeper subject expertise. The questioning of the Government's plans and activities should as a result be better informed, and consequently the Government would need to respond with more carefully designed policies, legislation, implementation and delivery.

Additional capacity would also allow the Senedd to undertake aspects of best practice parliamentary scrutiny that are difficult to accommodate at present. In my recent report on the extent to which public bodies have followed the sustainable development principle of the Well-being of Future Generations Act 2015¹, for example, I recommended that the Senedd undertake some post-legislative examination of the Act. Post-legislative scrutiny is widely recognised as a desirable and important part of the work of an effective legislature, but it undeniably requires considerable dedication of Member time and capacity if it is to be achieved.

Quantifying the benefit of improved scrutiny is clearly very difficult to do. As noted above, we estimate that the cost of sub-optimal scrutiny of the Public Audit (Wales) Act 2013 led to about £35,000 of additional annual unnecessary fee administration expenditure (some 10% of the total of such expenditure). This cannot be extrapolated to all Welsh Government expenditure because most such expenditure does not relate directly to Welsh legislation. Nonetheless, it is illustrative of the maxim that 'good

¹ So, what's different? Findings from the Auditor General's Sustainable Development Principle Examinations May 2020

*scrutiny means good legislation, and good legislation pays for itself.*² The costs and implications of policy and spending decisions taken by the Welsh Government and Senedd are significant. With that in mind, it is important to recognise that a 0.17% annual saving, or improvement in value, in Welsh Government spending (£17.5bn), would pay for 30 extra members (at £10 million a year in total, including support costs³).

I hope that these views are helpful. In view of potential interest to their respective committees, I am copying this letter to the Chairs of PAC and the Finance Committee.

Yours sincerely



ADRIAN CROMPTON
Auditor General for Wales

² Commission on Devolution in Wales, Empowerment and Responsibility: Financial Powers to Strengthen Wales 2014

³ A Parliament that works for Wales, November 2017, estimates total recurring cost of 30 additional members at £9.64 million, including member and support staff salaries, accommodation, training, broadcasting, IT and IT support.