



Elin Jones MS
Llywydd and Chair of Business Committee
Senedd Cymru
Cardiff Bay
CF99 1SN

4 June 2020

Dear Elin

I am writing to request that the Business Committee initiates work to implement the provisions in the Senedd and Elections Act 2020 (“the Act”) which relate to the financing and accountability of the Electoral Commission (“the EC”).

I appreciate that this work will necessarily be lower priority than responding to the Coronavirus pandemic, and indeed that the pandemic may interfere with our ability to complete the work successfully. However, I consider it important that we aim to give effect as planned to the provisions so that the EC is accountable to the Senedd for its activities in relation to devolved elections in our 2021 election year.

Background

The Act amends the Political Parties, Elections and Referendums Act 2000 to provide for the EC to be funded by and accountable to the Senedd in respect of its work in relation to devolved Welsh elections and devolved Welsh referendums (“Welsh Elections”).

The Act provides that EC expenditure on devolved Welsh Elections is payable out of the Welsh Consolidated Fund (“the WCF”). The Senedd preferred this approach, which you advocated, to the approach proposed by the Welsh Government that the Bill should explicitly provide for the EC to be funded via the Senedd Commission.

In March 2019, the EC estimated that the cost of devolved Welsh Elections to be funded by the Senedd would be likely to be in the range of £0.7m for a non-election year to £1.6m in an election year (or £5.3m over a typical five year period).

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

The process set out by the Act is that:

- by the end of September each year, the EC submits to the Llywydd's Committee a budgetary estimate of the income and expenditure it expects to receive/incur for the next financial year with regard to its work on Welsh Elections. The Llywydd's Committee, is a new committee which the Senedd is required to establish and which must be chaired by the Presiding Officer or DPO;
- the Llywydd's Committee examines the budgetary estimate in terms of economy, efficiency and effectiveness, and makes any changes it considers appropriate, taking into account the latest National Audit Office report and the views of the Welsh Ministers;
- the Llywydd's Committee then lays the budgetary estimate before the Senedd.

The Act also provides that the Llywydd's Committee:

- must scrutinise on a regular basis, following the same process, the EC's five-year work plan which sets out the EC's aims and objectives in relation to the exercise of its functions with regard to Welsh Elections;
- must lay the scrutinised plan with or without modifications before the Senedd;
- can seek a further examination by the Wales Audit Office of any accounts audited by the NAO;
- must lay an annual report on its work before the Senedd.

The Act further provides that the EC:

- can produce codes of practice, conduct reviews of devolved electoral matters and set performance standards (with requirements about how they are to be developed);
- must lay an annual report on its work before the Senedd.

If the Llywydd's Committee agreed a larger payment to the EC than the amount of funding received by the Welsh Ministers (under a funding agreement with HM Treasury and other stakeholders), the Welsh Ministers would have to find the shortfall from within other budgets. This risk is mitigated to some extent by the requirement for the Llywydd's Committee to consult the Welsh Ministers when examining the EC budget estimate and by the other checks and balances in the Senedd budget process.

The Act provides that the Welsh Ministers may commence the provisions relating to the EC by Order. As the Counsel General and Brexit Minister made clear during proceedings on the Bill, our commencement of the provisions is subject to our being satisfied about the robustness of the accountability and audit regime.

Until the provisions are commenced, the EC will continue to be funded out of the UK Consolidated Fund, and have its budget and work plans agreed and scrutinised by the Speaker's Committee in respect of its work on Welsh elections. The Senedd would of course be perfectly entitled to scrutinise the EC's activities in relation to Welsh elections using existing powers, as is the current position, even without having responsibility for the funding.

Implementation

My expectation remains that, if possible given the wider situation, the relevant provisions should be commenced in time for the 2021-22 budget scrutiny process starting in September. As I indicated above, this seems appropriate given that the 2021 Senedd election will be the first held since the devolution of election responsibilities.

The law in respect of drawing payments out of the WCF is set out in section 129 of the Government of Wales Act 2006 ("GoWA"). Specifically, subsection 129(4) requires that

subject to an approval to draw, funds must be made available to the Welsh Ministers, the First Minister, the Counsel General, the Senedd Commission, the Auditor General, the Wales Audit Office or the Public Services Ombudsman for Wales.

So under the law as it stands, one of the bodies listed above must be administratively responsible for paying the EC from funds it receives from the WCF. The only two appropriate bodies to undertake this administrative role are the Welsh Ministers or the Senedd Commission. The Senedd Commission have indicated that they do not consider this to be an appropriate solution. The concern is that it would not be possible for the payments to be made simply on an administrative basis without the payment being incorporated into the Senedd Commission's annual budget, which raises issues relating to timing and accountability.

The Welsh Government has previously objected to fulfilling this role given the important constitutional principle of the EC's independence from the executive branch of government. However, we are prepared to do so on an interim and purely administrative basis to enable the provisions to be brought into force quickly, assuming this is acceptable to the EC and to the Senedd. The EC recognises the importance of its independent role from Government but is prepared to proceed in this way on an interim basis provided that there is an agreed written protocol put in place reflecting these arrangements.

We intend to continue to explore an alternative option which would involve bringing forward primary legislation to amend GoWA to add the EC to the list of payee bodies in s129(4) GoWA so that funds from the WCF, once approved, could be paid directly to the EC. Doing so would engage the requirements set out in s130A of GoWA, which stipulate that Welsh legislation must provide for the EC to prepare separate accounts in respect of the funding it receives from the WCF and for the Auditor General for Wales to audit those accounts and undertake other accountability functions in respect of the funds the EC receives from the WCF. The complexity of this and the range of stakeholders involved mean that it could not be delivered until the budget process for 2023-24 at the very earliest.

Next steps

The advantage of the interim solution I have described above is that it would rely upon the existing accountability and audit regime which applies to the Welsh Government. However, commencement of the provisions would also be subject to the completion of the necessary Standing Order changes, the establishment of a Llywydd's Committee, and the negotiation of an inter-institutional funding agreement.

I would be grateful if you could initiate the process of amending Standing Orders and establishing a Llywydd's Committee. EC officials are taking forward work on the funding agreement. My officials stand ready to assist and to liaise with yours on the timing of the Commencement Order.

I am copying this letter to the Chairs of the Finance and Legislation, Justice and Constitution Committees, to the Auditor General for Wales and to the Head of the Electoral Commission in Wales.

Best Wishes

A handwritten signature in blue ink that reads "Mark Drakeford". The signature is written in a cursive, slightly slanted style.

MARK DRAKEFORD