



Mick Antoniw, MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru
Cardiff Bay
CF99 1SN

10 September 2020

Dear Mick

Further to my letter of 23 March in response to the Legislation, Justice and Constitution Committee report I wanted to take the opportunity to update the Committee on some of the amendments I intend to bring forward which include new powers for the Welsh Ministers to make Regulations.

I have tabled amendments which address recommendations 5 and 9 of the committee's report in respect of the Senedd procedure for regulations made under section 93(2) of the Bill and the new section 52A of the Local Government Act 2000.

Having carefully considered the contents of the Bill and taking into account all of the Committees' comments and recommendations, I have also tabled amendments to remove the existing provisions in respect of the Welsh Ministers' power to establish an all-Wales database of electoral registration information and the Welsh Ministers' discretion to direct an election pilot be undertaken from the Bill. These amendments in effect remove the need to address recommendations 2 and 3.

Turning to other amendments, section 13 of the Bill inserts a new section 36A into the Representation of People Act 1983 enabling the Welsh Minister to make rules in respect of the conduct of local elections in Wales ('conduct rules'). As drafted for introduction these conduct rules may apply, with or without modifications, the parliamentary election rules set out in Schedule 1 to that Act.

Following further consideration of this power I intend to bring forward an amendment expanding the existing power to modify so as to enable the conduct rules to amend, modify, repeal or revoke any enactment. Similar powers were provided to the Secretary of State when the Supplementary Vote system was introduced for Police and Crime Commissioner elections. The Welsh Ministers will have to make rules on the conduct of the Single Transferable Vote ("STV"). An STV election has never been held in Wales therefore these rules will be the first of their kind. It is therefore vital for the Welsh Ministers to be provided

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with sufficient powers to make such rules and ensure they align with existing enactments as optional STV is introduced.

In addition, as stated by the Law Commission, electoral law is 'complex, voluminous and fragmented' with an enormous amount of primary and secondary legislation governing elections. As such new electoral legislation will often have implications on a range of existing legislation. It is important that any new electoral law is in agreement with all existing law and electoral practices, and that these can be modified where necessary to ensure the legislation is fit for purpose. It is therefore considered prudent to have a broad power.

These rules are subject to the affirmative Senedd procedure, following the Committees' comments and recommendations an amendment will also be brought forward to require the Welsh Ministers to consult before making such rules enabling the electoral community to have an opportunity to comment on them.

Whilst this power allows for the modification of any enactment and could be considered fairly broad, its application is strictly limited to modifications connected with, or as a consequence of any conduct rules. This will therefore limit the ability of the Welsh Ministers to modify enactments.

An amendment will also be made to enable the Welsh Ministers to make supplementary, incidental, consequential, transitional, transitory or saving provisions under such Rules. Section 201(3) of the Representation of the People Act 1983 provided such a power to the Welsh Ministers when making regulations. However, no provision clarified that this could also be relied on when making rules (such as the conduct rules). The amendment seeks to address this gap.

Potential Stage 3 amendments

The Committee will be aware of the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020 (the '2020 Regulations'), which make provision about remote attendance for a range of local government bodies and meeting arrangements and documents. These provisions have been warmly welcomed by stakeholders and it is my intention to seek to make some of these changes on a permanent basis, through amendment to the Bill at Stage 3. I intend to bring forward amendments in respect of remote attendance for the range of local government bodies covered by the 2020 Regulations and also to address existing provision in respect of meeting arrangements and documents.

The Covid-19 pandemic exposed how out-of-date the current provisions are, in particular the procedural and technical provisions which govern how meetings are recorded, how summonses are sent to members, and how documents including notices, agendas and minutes are publicised. The majority of these provisions are set out in primary legislation dating back from 1960, 1972 and 1985.

Experience of the pandemic has also exposed how difficult it is to update and change these provisions in primary legislation. The UK Parliament, the Senedd and the Scottish Parliament were all able to amend their working procedures relatively quickly as theirs were set out in standing orders. In stark contrast, to enable local authorities, local authority executives and committees in Wales to meet during the pandemic it required an emergency Bill to be passed (the Coronavirus Act 2020) and regulations made under broad powers in section 78 of that Act. This led to a delay in the arrangements for remote meetings being put in place and caused confusion in terms of councils' continuity of business.

I consider the modernisation of these arrangements to be a critical part of enabling authorities to move forward in the post Covid-19 world and build on the changes in practice they have already made.

In order to deliver the necessary changes, in addition to making certain amendments by virtue of the Bill, it is anticipated that it will also be necessary to create new Regulation making powers. These will include powers to amend and repeal primary legislation. The powers, which I intend to make subject to the affirmative procedure, would leave technical arrangements in a form which can be more readily updated and revised as necessary in the future.

My officials are currently working to develop these proposals and I will write again shortly setting out our intentions in more detail.

I have copied this letter to the Chair of the Equality, Local Government and Communities Committee.

Yours sincerely



Julie James AS/MS

Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government