

Mick Antoniw AM

Chair, Constitutional and Legislative Affairs Committee

National Assembly for Wales

Cardiff Bay

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Dear Mick

Senedd and Elections (Wales) Bill

Thank you for the opportunity to present evidence to you on the Senedd and Elections (Wales) Bill on 7 May 2019. I look forward to considering your Committee's report on the general principles of the legislation.

Further to your correspondence of 8 May 2019, I enclose in the following Annex my response to the further questions which time constraints prevented the Committee from reaching during the evidence session on 7 May.

It may also be helpful for me to clarify one point during the evidence session on 7 May. During the evidence session, Dawn Bowden AM asked:

"there won't be any obligation on them to prove a connection, will there? Presumably, the local authority could follow that up and say, 'Well, actually, we do need a bit of information from you', but there isn't an absolute requirement on them to prove they've got a connection to a particular area. Am I right?"

For clarity, there will be a number of pieces of information that an applicant making a declaration will have to provide (outlined in section 7B of the 1983 Act, as amended by the Senedd and Elections (Wales) Bill)). This system is based upon a regime already in place, which currently allows people without a home to make a declaration of local connection.

A local authority will be able to seek additional information, as outlined in the evidence session.

Yours sincerely,



Elin Jones AM, Llywydd.

Annex

Electoral Commission

The Electoral Commission will retain responsibility for UK elections. How will this impact on the accountability of the Commission to the Assembly?

Should the Electoral Commission become accountable to the Assembly in future, this accountability would be for its work in relation to devolved Welsh elections only. The Electoral Commission's continuing responsibility for regulating UK elections would not be affected by its accountability to the Assembly.

The Electoral Commission will remain one corporate body and I understand it intends to retain one pan-UK corporate plan. The split accountability and financing arrangements would be unusual, with part of its funding being agreed by the Speaker's Committee, the Scottish Parliament (provided they legislate as expected in Scotland) and the Assembly.

My officials are discussing with the Electoral Commission the need to provide clarity in its budget plans and estimates about which elements relate to devolved Welsh elections and which relate to UK activities.

What engagement have you had with the Electoral Commission about the design of new registration forms?

The administration of elections, including the design of registration forms, is a matter for the Electoral Commission and local authorities. They will receive advice and support from the Welsh Government.

I understand that the Electoral Commission included this statement in its evidence simply to reflect that it intends to keep Assembly Commission officials informed of the development of the registration forms, as the design process will likely begin before the Senedd and Elections (Wales) Bill has received Royal Assent. This dialogue may assist Assembly Commission officials in updating the cost estimates included in the Explanatory Memorandum in relation to this activity.

In evidence local authorities talked of the local government Bill potentially providing some general enabling legislation to pursue digital administration. How would this impact on Assembly elections?

I acknowledge the importance of modernising elections. Now that electoral powers have been devolved, it is particularly important that there is a clear strategy for Welsh elections and for improving democratic engagement. This Bill is a step in the right direction, but clearly there is more to be done.

Modernising electoral administration is a matter for Welsh Government to lead, not the Assembly Commission, and so the Assembly Commission has not specifically discussed digital administration, nor does it have a view on the roll out of any such developments for Assembly elections.

My understanding is that any changes to the way that the local government register is administered would apply equally to registrations for Assembly elections, as the register serves both elections (the same is true of the canvass and registration process i.e. the same process is used for updating the local government and Assembly register).

These will be matters for the Welsh Ministers to decide as powers are devolved to them. The Welsh Ministers will, of course, be held to account by the Assembly in relation to their decisions on these matters.

In its evidence the Association of Electoral Administrators suggests that “the Welsh Assembly should scope, commission, oversee, monitor and pay each EMS supplier directly for the software changes”. What is your view of their comments?

The Assembly Commission is not responsible for the operation of electoral registration, and it would therefore not be responsible for any costs relating to electoral registration processes or management systems. Assembly Commission officials will not be involved in the scoping, commissioning or monitoring of the registration process or systems. Rather, this would be a matter for the Welsh Government and local authorities to resolve.

I discussed this issue when I met with the Minister for Housing and Local Government, Julie James AM, on 30 April 2019: she agreed that this was a matter for Welsh Government.

Disqualification

The Welsh Government has previously stated that its priority for the provisions relating to disqualification is to ensure that the law in this area is as clear as possible. Are you satisfied that the provisions as drafted achieve this aim?

I am satisfied that the provisions are clear. Clarifying the rules on disqualification is one of this Bill's primary objectives. I would of course welcome any proposals from the Committee if you consider that further clarity could be achieved.

The provisions on disqualification are based on the recommendations on disqualification made by your predecessor Committee in the Fourth Assembly. That Committee recommended a particular legislative framework for disqualification, whereby the rules on disqualification would be set out in primary legislation, with the disqualifications themselves set out in Orders within two categories – the first category being disqualifications which apply upon candidature, and the second disqualifications which apply upon taking the oath.

The Bill follows the framework recommended by the Fourth Assembly Committee, with the exception that the first category of disqualifications are set out on the face of the Bill (Schedule 1A). This reflects the added significance of those disqualifications which prohibit standing for election. I believe this offers a clear and coherent legislative framework for disqualification.

The provisions on the rules on disqualification are quite detailed in order to provide clarity in a range of different scenarios. For instance, the provisions must take account of the possibility of an existing Member becoming disqualified whilst serving in the Assembly, for example due to their election to another Parliament.

It is also worth bearing in mind that the provisions on disqualification in this Bill are primarily amendments to the Government of Wales Act 2006. Whilst the amending provisions in Part 4 of the Bill may not be easy to read in isolation, the provisions in GoWA as amended by the Bill will be more easily understood. The text of the Government of Wales Act 2006 as it will appear once amended by the Bill is set out in Annex 9 of the Explanatory Memorandum – schedule of amendments to legislation.

It has been suggested that it would be simpler to say if you take the oath to become an Assembly Member, anything that would have disqualified you, you are deemed to have resigned from that position. Are you still of the view that this would be outside the Assembly's legislative competence?

If the Assembly wished to introduce a process of automatic resignation, legislative competence issues arise because the appointment of, and removal from, some of the disqualifying posts are outside the Assembly's legislative remit. To give some examples, the Assembly could not legislate as to the removal from office of judges, Civil Service Commissioners or the Comptroller and Auditor General.

It may also be noted that the implications of automatic resignation for employers could be considerable, and it is reasonable to expect candidates to take responsibility themselves for resigning disqualifying posts or offices.

The Counsel General said in oral evidence last week that there is work to be done in relation to this part of the Bill. For example, he said that it doesn't provide for Assembly Commission staff to be disqualified. What is your view on his comments?

One of the objectives of the provisions on disqualification was to encourage democratic participation by enabling as many people as possible to stand for election.

Where holding particular offices represents potential conflicts of interest with **standing for election**, the Bill includes provision to disqualify those office holders. For example, the Chief Executive and Clerk of the Assembly Commission will be disqualified from standing for election. This symbolises the independence and impartiality of advice given to elected Members by the Chief Executive.

There is a distinction to be drawn between:

- (i) Assembly Commission officials who may have a conflict of interest because their role is advisory; and
- (ii) those whose role is operational and not, therefore, likely to give rise to a conflict of interest.

Identifying 'categories' of Assembly Commission staff on the face of legislation would be an unwieldy mechanism through which to address this issue. Instead, this issue is better addressed via staff's individual contracts of employment and their code of conduct, which could include specific restrictions. A similar rationale underpins the legislation's approach to the disqualification of civil servants.

I anticipate that all Assembly Commission staff would be disqualified from **servicing as Members** (i.e. the disqualification would take effect upon an individual when they took the oath or made the affirmation). To this end, all Assembly Commission staff would be included in future disqualification orders made by the Welsh Government.

However, I would very much welcome the Committee's consideration of this matter.

How will the changes to the Bill regarding disqualification be publicised?

Changes to the law on disqualification introduced by the Bill will need to be accompanied by guidance from relevant bodies. Guidance relating to disqualification from membership of the Assembly is routinely provided by the Electoral Commission. It is possible the Assembly Commission, Welsh Government and House of Lords may also need to provide guidance as and when required. All of these organisations have been consulted on the changes to the law on disqualification and are therefore aware of the need to revise their guidance in due course.

Further information on this point is set out in section 4.4.3 of the Bill's Explanatory Memorandum.

At what point will disqualification from holding a particular public office now take effect and how does the Bill achieve that change?

As identified by the Fourth Assembly's Constitutional and Legislative Affairs Committee, the National Assembly for Wales (Representation of the People) Order 2007 contradicted the provisions on disqualification in the Government of Wales Act 2006 by requiring candidates in an Assembly election to declare on nomination that they were not disqualified from membership of the Assembly. Effectively, this means that persons who are disqualified from **servicing** in the Assembly are also unable to **stand for election**. This is an unnecessary restriction on democratic participation.

The Senedd and Elections (Wales) Bill amends the 2007 Order to require candidates to declare only that they are not disqualified from standing for election to the Assembly. This will ensure persons who are disqualified from membership of the Assembly, but not from standing for election, can stand as candidates. They would only need to give up their disqualifying post or office in the event that they were elected.

As a result:

- where holding a particular public office represents a conflict of interest with standing for election to the Assembly (e.g. members of the Electoral Commission), those post holders will be disqualified from standing for election;

- where holding a particular post presents a conflict of interest with serving in the Assembly, but not with standing for election, those post holders, if elected, will be disqualified from the point at which the oath is taken.

Disqualifications from standing for election have been limited as far as possible in order to ensure that as many people as possible are eligible to stand.

Law Commission provisions

You previously told the Committee that giving powers to Welsh Ministers to implement Law Commission recommendations was seen at the time of the introduction of the Bill as a reasonable way of introducing these provisions. Are you still of this view that this approach is the most appropriate way of reforming electoral law?

I believe the provisions in the Bill highlight the importance of consolidating electoral law as recommended by the Law Commission and as referred to by several witnesses in evidence to this Committee.

I am aware of the Counsel General's view that the Law Commission's recommendations should instead be taken forward via an expedited primary legislation procedure.

I will await with interest the Committee's view on this matter, with the intention of discussing this alternative proposal with the Assembly Commissioners.

Supplementary questions

Do you intend to seek approval to extend the timetable for Stage 2 to ensure proceedings do not take place until the amendments you propose to section 27 of the Bill have been published and fully costed, with the opportunity for scrutiny by us and stakeholders?

The Counsel General has indicated that he will lead on tabling amendments to section 27. I will be discussing with him issues relating to these amendments, including the timescales within which they might be made available to the Committee. I am conscious of the Committee's view that there should be clarity at the earliest opportunity about any policy which might be pursued through amendments, so that the Committee and other stakeholders are able to consider them. My officials will work closely with those of the Council General and Electoral Commission to enable such.

The electoral community has consistently expressed the view that legislation needs to be in place at least six months before the canvass of the year before the election for which it should have effect. This would currently be achieved by the legislative timetable for the Senedd and Elections (Wales) Bill, as it is intended that it will receive Royal Assent in either December 2019 or January 2020. Extending the timetable for Stage 2 could put this timetable at significant risk.

What role should educational establishments and local authorities play in the awareness campaign for those young people outside the school system?

The Assembly Commission is working in partnership with the Welsh Government, Electoral Commission and the Wales Electoral Co-ordination Board towards making the legislation a success, with smooth implementation paving the way for a new generation of voters to have their say. As part of that process, we will ensure that we also engage with those young people who may be considered harder to reach.

For instance, discussions between my officials, the Welsh Government and the Electoral Commission have identified the need to raise awareness among young people who are home schooled, as well as those from Gypsy, Roma and Traveller communities. As part of its responsibilities to promote awareness of elections, the Electoral Commission already works with the Traveller Movement to encourage registration.

The Welsh Government has awarded a contract to a research organisation to conduct exploratory research with newly-enfranchised groups of voters to inform strategies for engaging with them about their democratic rights and to promote voter participation and engagement. The research will comprise a number of focus groups

and interviews with young people in and out of school, as well as other enfranchised but disengaged groups. The research is due to be published in January 2020. However, interim findings and reports submitted throughout the research contract will start to inform the development of educational and engagement resources and awareness-raising campaign.

Notably, the Welsh Youth Parliament also recently identified 'Life Skills in the Curriculum' – which included politics as well as finance and sexual education - as one of its top three priorities for the next two years. More generally, engaging with partner organisations outside the school environment has had a significant positive impact on the development of the Youth Parliament in helping us engage with hard to reach young people. The learning from that approach will feed into our work in this area.

If the Local Government and Elections (Wales) Bill were to provide voting rights for prisoners and qualifying foreign nationals, do you think it would be confusing to have a different approach in Wales for Assembly and local government elections? Is it your intention to bring forward amendments to cover these issues at Stage 2 of the Bill?

I do not intend to bring forward amendments on the issue of enfranchising non-EU and non-commonwealth citizens.

The Counsel General has previously stated to this Committee that he intends to table amendments on this issue. While such amendments may receive the support of a majority of Members in the Assembly during the amending Stages, the Bill will then need to be passed by a two thirds majority of Members at Stage 4.

On the issue of prisoner voting, the Assembly's Equality, Local Government and Communities Committee is currently undertaking an inquiry into voting rights for prisoners. I look forward with interest to hearing the Committee's findings and do not wish to pre-empt its recommendations. Any legislative action which was taken in future would have to be informed by careful consideration of the Committee's report.

More generally, I have previously stated my hope that the local government and Assembly franchises can remain aligned. It would be administratively more convenient for the same people to be able to vote in local government and Assembly elections.

However, while it would be preferable to have a single approach across both local government and Assembly elections, this does not mean that we cannot amend the Assembly franchise without amending the local government franchise. The elections serve different constitutional purposes. Local government makes decisions about

local services, which directly affect local residents. The National Assembly for Wales makes decisions about issues of principle and the direction, values, and laws of Wales as a whole.

From my perspective, the key requirement for this Bill is to ensure that the Assembly franchise fits the needs of the Assembly's elections. I would hope that matters of consistency, clarity and administrative convenience are taken into account by Welsh Government in any future legislation relating to the Local Government franchise.

It is already the case that different people are able to vote in UK Parliamentary elections, compared to those who can vote in local government and Assembly elections. So, if there was to be a divergence, the electoral community and electoral systems already have experience of managing differences, usually by marking the electoral registers appropriately.