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Counsel General and Minister for the
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Dyddiad | Date: 16 December 2021

Pwnc | Subject: Special Purpose Committee on Senedd Reform

Dear Counsel General and Minister for the Constitution,

I am writing to seek your assistance with gathering information on a range of matters relevant to the Special Purpose Committee on Senedd Reform.

As you are aware, the Committee has been established to consider the conclusions previously reached by the Committee on Senedd Electoral Reform in the Fifth Senedd (as set out in its report, Senedd reform: The next steps laid before the Senedd on 10 September 2020); and by 31 May 2022, to make recommendations for policy instructions for a Welsh Government Bill on Senedd reform.

The Committee has agreed to structure its work around the following broad phases:

Phase One: Members will identify where there is – or a potential to establish – common ground between the policy positions of their political parties, in relation to Senedd reform;
Phase Two: on areas identified in Phase 1, gather further information as necessary for the Committee to develop recommendations for policy instructions; and
Phase Three: develop recommendations for policy instructions.

The Committee is now beginning its 'Phase Two' considerations, and as part of this process would wish to better understand the position of the Welsh Government on certain technical matters.

I anticipate that some of these might also benefit from being addressed via private technical briefings to the Committee from Welsh Government officials, if you were content to authorise such.

First, the Committee would be grateful for the Welsh Government's understanding of how long it might take for a full review of Senedd boundaries to take place, including whether there are any flexibilities within such timescales (and any associated risks), and the process by which a body could be provided with the legislative powers necessary to undertake such a review. Specifically, the Committee is seeking to ascertain whether there is sufficient time to carry out a full boundary review prior to 2026.

In the scenario in which there is no full boundary review before the 2026 election, the Expert Panel suggested two models for possible multi-member constituencies, based either on existing Senedd constituencies (20 multimember constituencies) or on existing local authorities (17 multimember constituencies).

The Expert Panel's modelling was based on electorate data from December 2016. Since then there have been changes in population, franchise and local government ward boundaries. Legislation to reform the electoral system would need to specify the electorate data upon which the apportionment of seats to constituencies would be based. There is therefore a case for independent review of the proposed local authority-based boundaries.

The Expert Panel also suggested that a boundary commission be tasked with calculating the Members to be returned for any proposed new constituencies, using the Sainte-Laguë method of apportionment.

The Committee would therefore be grateful for the Welsh Government's view on the appropriate approach and timings for seeking independent review of the proposed boundaries put forward by the Expert Panel by a boundary commission, the seat apportionment and whether any or all of this work could precede the drafting of legislation or whether legislation would be required in order to authorise such work to be undertaken.

On measures to encourage diversity, the Committee is conscious that restrictions within the Government of Wales Act 2006 with regard to 'Equal opportunities' and 'Funding of political parties' could constrain the Senedd's capacity to legislate for the election of a legislature which more closely reflects the diversity of the people and communities it serves. Such measures might include- for example- the integration of candidate gender quotas into the electoral system or the introduction of legislative requirements for political parties to publish anonymised data on the diversity of their candidates. The Committee would therefore be grateful to hear about the Welsh Government's consideration of such matters.

If the Welsh Government takes the view that restrictions related to Equal Opportunities and Funding for Political Parties could be seen to cast doubt on the Senedd's capacity to legislate for such measures, the Committee would also be grateful for an indication of whether it would be willing to engage with the UK Government to seek amendment to the Government of Wales Act 2006 (through

a section 109 order) to resolve any such doubts. In addition, the Committee would be grateful for an indication of whether the Welsh Government would be willing to engage with the UK Government to ask that it commences section 106 of the Equality Act 2010 with respect to Senedd elections. Such engagement might variously take place through both correspondence and dialogue between Welsh Government and Wales Office officials, taking account of any previous discussions on relevant issues.¹

Finally, the Committee would be grateful if the Welsh Government could indicate if it is aware of any other options- in addition to those previously identified by the Expert Panel or the Fifth Senedd's Committee on Senedd Electoral Reform- which could potentially encourage the election of a more diverse Senedd.

The Committee would be grateful for a response to this correspondence by or before 17 January.

Yours sincerely,

A handwritten signature in dark ink that reads "Huw Irranca-Davies". The signature is fluid and cursive, with a long horizontal stroke underneath the name.

Huw Irranca-Davies MS

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

¹ As referred to, for example, in the Secretary of State's correspondence of 19 December 2018 to the Llywydd
<https://business.senedd.wales/documents/s97839/CAER5-03-20%20Paper%20to%20note%201.pdf>

Mick Antoniw AS/MS

Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution



Llywodraeth Cymru
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17 January 2022

Dear Huw,

Thank you for your letter of 16 December. In light of the timescales involved, I am grateful to the members of the Committee for the priority they have given to commencing their work. In your letter you identify a number of areas on which you would like information to support the work of the Committee. I welcome the chance to provide some initial information on these areas, as outlined below.

My role and the role of Welsh Government in this process.

I would like to begin by ensuring there is clarity about the role of the Welsh Government in this process. It is the role of the Committee to develop the proposal for legislation and what it should achieve. Any conclusions arising from the Committee will need to be capable of being legislated and obtain the support of two thirds of the Members of Senedd. It is not the role of Government to seek to influence this and it would be wholly wrong for Government to direct this process.

That being said, it will be my role on behalf of the Government to assist in advising on technical and legal issues that will arise where I am asked to do so and ultimately to deliver a draft Bill which incorporates the legislative objectives of the Committee.

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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.

Boundary review

At present, there is no mechanism for initiating a Senedd boundary review and introducing a mechanism to review existing constituencies could only be achieved by primary legislation. Provisions of a Senedd Act would (among other things) need to confer functions on a new or existing body to undertake a review of the existing Senedd constituency and regional boundaries, and place duties on that body to prepare a report setting out their recommendations, with a corresponding secondary legislation-making process to enable the implementation of recommendations made following any review.

A boundary review is a significant piece of work which can take a number of years to complete. This includes time needed to undertake a review, but also the time needed to legislate and establish the organisation that would undertake that review.

As an example, the current review of the UK Parliamentary constituencies began following the passage of the Parliamentary Constituencies Act 2020. The Boundary Commission for Wales published their initial proposals for consultation in 2021 and are due to submit their final report to UK Government by 1 July 2023. Once the reports have been laid in Parliament, the Government lays a single draft Order in Council, to give effect to the Commission's recommendations, which must be agreed by both Houses. The process is likely to take 3-4 years, depending on the timing of the Order and the next UK General Election.

When factoring in the time needed to legislate for and to establish a body to undertake a review, a Senedd boundary review could take a significant number of years to complete if the review followed a similar approach to UK Parliamentary constituency reviews. In this context, a reform programme which makes provision for legislation followed by a full boundary review is highly unlikely to be possible to achieve for implementation in 2026.

Encouraging diversity

We note there are certain restrictions in the Government of Wales Act 2006 which would need to be considered as part of any legislation developed in this area. We would need to consider the detailed policy proposals before reaching a view on the extent to which any of these restrictions are actually engaged.

We will give all the support we can to the Committee during its deliberations to ensure that all reasonable options are capable of being properly considered by the committee.

If it is the wish of the committee, the Welsh Government is prepared to engage with the UK Government on these matters. In response to our previous correspondence on this matter, the UK Government indicated that they would keep Section 106 of the Equality Act 2010 under review.

I hope the above provides the Committee with a useful initial contribution to its considerations. I and my officials are also happy to engage in face to face or online

technical briefings or discussions with the Committee in order to assist the committee. These could be put in place expeditiously if the proposal is acceptable to you and the Committee.

A handwritten signature in blue ink, reading "Mick Antoniw". The signature is fluid and cursive, with a horizontal line drawn underneath the name.

Mick Antoniw AS/MS

Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution

Mick Antoniw MS
Counsel General and Minister for the Constitution

Dyddiad | Date: 2 February 2022

Pwnc | Subject: Special Purpose Committee on Senedd Reform

Dear Counsel General and Minister for the Constitution,

Thank you for your letter of 17 January, in which you agreed that Welsh Government officials would provide a private technical briefing to the Committee. I am grateful for the Government's cooperation in this work, and look forward to the briefing taking place on 9 February.

Ahead of this briefing I thought it would be useful to set out the issues on which it would be helpful to have input from you and your officials at this time, which are principally related to Boundaries and Measures to encourage diversity.

In addition, at annex 1 to this letter, I have set out a number of issues which the Committee is in the process of considering. Although the Committee is not specifically seeking any information from the Welsh Government on these matters as part of the technical briefing, any relevant information to these considerations, which you and your officials are able to share, would be welcome.

Boundaries

The Committee has identified that the path to reform by 2026 is very tight. A full boundary review along the lines carried out for UK Parliament elections is unlikely to be possible.

Whilst alternative processes might be possible, the path to reform by 2026 could variously rely upon the ability of the Government to:

- commission or direct an existing boundary commission to undertake work on boundaries (possibly before or during the legislative passage of a bill); and
- provide funding to enable an existing boundary commission and its secretariat to work on Senedd boundary matters.

It would be helpful to know if the Government has any comments on these matters.

Likewise, the path to reform by 2026 may require the Government to introduce a Bill within 12 – rather than 18 – months of this Committee’s report. **Again, it would be helpful to know if the Government has any comment on this possibility.**

Measures to encourage diversity

- Gender quotas

The Expert Panel previously recommended the implementation of legislative gender quotas and suggested how they may be structured, depending on the electoral system chosen. It also considered mechanisms that may be implemented to incentivise compliance with such quotas.

In your letter to the Committee on 17 January, you noted that there are certain restrictions in the Government of Wales Act 2006 which would need to be considered in respect of legislating to encourage diversity. **It would be useful to know the extent to which the Welsh Government has considered the scope of the Senedd’s competence to implement legislative gender quotas, and whether it is in a position to share such analysis with the Committee.**

Your letter also confirmed that the Welsh Government is prepared to engage with the UK Government on these matters if requested to do so by the Committee. **On the basis that the Committee must report by 31 May 2022, it would be useful to understand the potential timescales involved in any engagement between the Welsh Government and UK Government in this context.**

- Requirement to publish diversity information

The Committee is interested in exploring whether the Senedd could legislate to require the publication of electoral applicant and candidate diversity information. The Committee is considering how such a requirement could be structured within the Senedd’s current legislative competence. **The Committee would welcome the Welsh Government’s view on this matter.**

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies MS

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Senedd Cymru
Welsh Parliament

Size

The Committee is aware that considerable work has previously been undertaken on the overall size of the Senedd by the Expert Panel on Assembly Electoral Reform (Expert Panel) and Committee on Senedd Electoral Reform (CSER). For example, the Expert Panel previously reported that:

"We have... assessed the impact of having a parliament of more than 90 Members. We recognise that the potential public concern about the costs of an increase would grow. On the other hand, we also recognise that the benefits in terms of capacity and potential specialisation would continue to rise. However, in our view, the marginal gains would diminish quite rapidly. We are not, therefore, persuaded that the benefits for enhanced scrutiny of an [Senedd] of more than 90 Members would necessarily outweigh the resultant increase in costs."

Similarly, the Committee is aware that consideration has been given to the size of the Welsh Government by the Expert Panel and CSER. For example, the Expert Panel advised that:

"We have received nothing arguing for an increase in the number of Ministers, and we do not believe that there is a compelling case for such an increase. Indeed, should the [Senedd] choose to legislate to increase the limit on the number of Ministers in line with any increase in the size of the [Senedd], the additional scrutiny capacity gained would be significantly affected."

The Committee is considering whether the passage of time and changing political context has had a bearing on these conclusions.

Electoral System

The Committee has noted that Single Transferrable Vote (STV) was the preferred option of the Expert Panel and CSER for Senedd general elections. The Committee has also noted that the Welsh Government has legislated to give local authorities in Wales the option of conducting elections via Single Transferable Vote.

The Committee is aware that were STV were adopted for Senedd elections, there would be a range of secondary policy decisions required, as set out in the Expert Panel report, on issues such as:

- the minimum number of preferences cast by a voter in order for it to be deemed a valid vote;¹

¹ The Expert Panel suggested that for Senedd elections, this should be one. However, in some countries, there is a requirement to declare as many preferences as there are seats to be filled.

- the electoral quota used to determine the minimum number of votes required for a candidate to be elected;²
- the counting methodology for the transfer of surplus votes from one candidate to another;³
- the design of the ballot paper;⁴ and
- the method of filling casual vacancies.⁵

Measures to encourage diversity

The Expert Panel previously recommended the implementation of legislative gender quotas. If the Committee were to recommend the implementation of gender quotas, there would be a range of secondary policy decisions required, such as:

- how gender quotas should be structured, including whether they should be structured as recommended by the Expert Panel;
- how they are enforced in practice;
- whether incentives (including financial incentives) and disincentives should be implemented to encourage compliance (and, if so, how they should be structured); and
- whether non-legislative gender quotas would be an effective means of achieving a more gender-balanced Senedd.

The Committee is also considering whether there are any other options (in addition to those previously identified by the Expert Panel or CSER) which could potentially encourage the election of a more diverse Senedd.

² The Expert Panel recommended the Droop Quota

³ The Expert Panel recommended the Weighted Inclusive Gregory method (as used in Scotland), noting that this would require the introduction of electronic voting). If electronic counting were not an option, the recommended alternative was the Basic Gregory (as used in Northern Ireland)

⁴ The Expert Panel recommended candidates be grouped by party and the party order determined by lot

⁵ The Expert Panel recommended the use of countback.