



Ein cyf/Our ref qA1762325

Huw Irranca-Davies MS
Chair – Legislation, Justice and Constitution Committee
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

19 December 2023

Dear Huw,

Thank you for your letter of 28 November requesting more information on the Elections and Elected Bodies (Wales) Bill, following my appearance at the Legislation, Justice and Constitution Committee on 20 November. I have provided the detail below.

1. You stated that some of the regulation-making powers in the Bill are more curtailed, particularly in areas where they relate to the creation of offences. Could you explain whether your consideration of a justice impact assessment during the Bill's development resulted in any changes to its provisions?

The Justice Impact Assessment for the Bill considered two areas where offences were created or impacted upon. This included the new offence which was part of provisions regulating how third parties may incur controlled expenditure during a regulated period and the re-drafting of the undue influence offence to clarify and modernise the language. The Justice Impact Assessment was shared with the Ministry of Justice which concurred with our assessment that the impact of both changes would have no or negligible impact on the justice system. No changes to the policy were considered necessary. Any regulations developed as a consequence of the regulation making powers included in the Bill would be subject to a separate Justice Impact Assessment and consultation with the Ministry of Justice, where those regulations are anticipated to impact on the justice system.

2. You stated that, while it is your intention that the Electoral Management Board will maintain the Welsh elections information platform, you have not specified as such on the face of the Bill as it may become apparent that a more appropriate body should undertake this function. Could you provide an example of such a body?

We consider that the EMB is likely to be the natural host for the platform, however, the EMB has not yet been established and so we should bear in mind the possibility of the EMB not

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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.

being able to host the platform, or of a better alternative being identified. Given the host will be specified in the regulations made under section 27, hosting will inevitably be for the Senedd to take into account when it considers those regulations.

The Bill has been drafted to make clear that the Welsh Ministers would be responsible for ensuring the sustainability of any platform. There is scope for the host of the platform to be revisited in the future, taking into account the fast-moving technological environment, the opportunity to learn lessons from experience, and the views of the EMB itself once established. The provisions therefore provide flexibility for the future, in particular lessons from evaluations of elections, while ensuring that a platform is provided.

3. Section 5(4) provides for pilot regulations to mirror the registration without application provisions in section 3; however, the coming into force of section 3 is not triggered by a requirement to pilot it. Could you clarify whether you considered making the ability to bring section 3 into force be conditional (for example, no earlier than the conclusion of at least one relevant pilot) and if so, why considered not doing so?

While I believe piloting automatic registration will result in the best possible system for the elector, I do not believe that the Bill should include a provision which specifically prevents the commencement of section 3 before the pilots have been completed. I have made a commitment to pilot automatic registration before commencing section 3 and will ensure that these pilots go ahead with a full and proper evaluation before rolling out the system. Therefore, such a restriction would not only be unnecessary given my commitment, but it would be predicated on the completion of a process rather than a thorough evaluation that will inform the implementation of automatic registration.

4. It appears that the Welsh Ministers can use the power under section 5 to trial the amended registration provisions introduced by section 3(2); however, there is subsequent power in section 8 to change the power in section 5(3). Could you clarify in what circumstances do you envisage such a power being used?

The power under section 8(1) enables the Welsh Ministers to make regulations to add to the list of relevant electoral matters in section 5(3), or amend or remove matters previously added through regulations. This power is to allow issues not currently considered by the Welsh Government or the Senedd to be possibly piloted in the future, subject to the scrutiny and evaluation processes set out in the Bill. Regulations may only be made under section 8(1) following the approval of the Senedd. However, this power cannot be used to change the voting system for returning Senedd Members, members of a principal council, or members of a community council.

5. Could you clarify why, by virtue of section 26 of the Bill, are you making provision to change the existing regulation-making power in section 1 of the Local Government (Wales) Measure 2011 to a direction-making power?

Section 1 of the Measure currently requires the questions and format of the survey to be set out in regulations. In reality, this has meant that any changes to the survey, either in terms of presentation or the questions included, has entailed using Welsh Ministers' regulation-making powers. This has attracted criticism about the flexibility to amend the surveys in a timely fashion and the disproportionate legislative approach which has had to be adopted in each case.

The approach proposed through the Bill is to remove this requirement and enable a more flexible and agile approach to the consideration and decisions about the survey contents

and format. This approach has been welcomed by partners, especially as the scope of the survey set out in the Measure will remain as at present.

The Bill provides for future surveys to comprise two parts. The first part will be a core set of questions which will apply to all local authorities in Wales, allowing important comparisons to be made from responses across all parts of Wales. The second part would be at the discretion of returning officers, which can reflect the local context and priorities.

6. Could you clarify which functions you envisage will be conferred on persons or categories of persons by regulations made under section 27(4), and could you clarify why those functions are not included on the face of the Bill?

The detailed rules underpinning the Welsh elections information platform will be set out in regulations made under section 27. Although the Government's intention is that the Welsh Ministers should be ultimately responsible for ensuring the platform is established, the involvement of other stakeholders will be crucial in ensuring the platform operates fully. The purpose of section 27(4) reflects that situation: in addition to being used to specify the operational host of the platform, it may also be necessary embed elements of the platform into existing elements of the electoral process. The balance between what is on the face of the Bill and will be in regulations ensures flexibility to take account of the fast-moving legal and technological context, with the appropriate scrutiny in place. The balanced approach has been specifically welcomed by civil society organisations.

7. Could you clarify which functions you envisage will be conferred on persons by regulations made under section 29(8), and could you clarify why those functions are not included on the face of the Bill?

Section 29 of the Bill provides for financial assistance schemes to be made available to groups of people prescribed in regulations who are seeking to stand for elected office. One such scheme (section 29(2)) will be for disabled people, building on the pilot Access to Elected Office Fund. Section 29(1) enables other such schemes to be put in place by Welsh Ministers when evidence identifies barriers of additional costs that are experienced by individuals of a particular group of underrepresented persons which prevent them from standing for elected office.

Section 29(8) provides for Welsh Ministers to set out the detailed arrangements for each separate financial assistance scheme including those who are to administer the scheme, the components of the scheme and the reporting arrangements required for the purpose of audit. As individual schemes will target different barriers to participation it is appropriate the details are set out in regulations rather than on the face of the Bill. This will enable greater flexibility to ensure the details of each scheme underpins its purpose and enables actions to be taken to address the barriers identified.

8. The regulation-making power in section 41 is subject to the negative procedure. Given that the power can be used to amend primary legislation, please can you explain why it is not subject to the affirmative resolution?

While officials have worked closely with the Local Democracy and Boundary Commission for Wales (the Commission) to ensure the timescales for conducting reviews as introduced in the Bill are realistic, this provision provides Welsh Ministers with the flexibility required to amend the review period (if necessary) in light of the Commission's experiences in completing electoral arrangement reviews after the Bill receives Royal Assent.

The ability of Welsh Ministers to use this narrow provision to amend primary legislation is limited to amending the review period. This power to make regulations does not substantively affect the provisions of the Local Government Democracy (Wales) Act 2013, and the subject-matter of the power is a relatively minor detail in the overall legislative scheme for conducting electoral arrangement reviews. There is already precedent for Welsh Ministers to alter the review period applying to the Commission by making regulations which are subject to the negative procedure – see sections 138(6) and 174(6) of the Local Government and Elections (Wales) Act 2021 – and we therefore consider the use of the negative procedure to be appropriate and proportionate.

9. There appears to be a new regulation-making power contained in section 51 of the Bill which does not appear in the table of delegated powers in the EM. Please can you describe the power, how it will be used and the reasons for the procedure chosen?

I apologise for the omission. Section 51 enables Welsh Ministers to amend the review period for the conduct of community electoral arrangement reviews. It is a similar provision to that set out in section 41 of the Bill and ensures consistency of approach between the different types of review.

Amending the review period and re-setting the start date of a review period is a technical detail which may be necessary in the event of a disruption to a review programme. Examples of situations which could trigger the use of this power include a public health emergency, a change in the date for local government elections or to provide greater synergy between the review periods for both principal area and community electoral arrangements.

The ability of the Welsh Ministers to use this narrow provision to amend primary legislation is limited to amending the review period. This power to make regulations does not substantially affect the provisions of the Local Government Democracy (Wales) Act 2013, and the subject-matter of the power is a relatively minor detail in the overall legislative scheme for conducting community electoral arrangement reviews. There is already precedent for Welsh Ministers to alter the review period applying to the Commission by making regulations which are subject to the negative procedure – see sections 138(6) and 174(6) of the Local Government and Elections (Wales) Act 2021.

The intention is that the negative procedure will also apply to changes to the review period, as it applies to the Commission, in regulations made by the Welsh Ministers under section 41 of the Bill. Accordingly, we consider that the use of the negative procedure to make changes to the review period for community electoral arrangement reviews under section 51 of the Bill is also appropriate and proportionate, as to do otherwise would create an anomaly where the review period for the Commission could be revised using the negative procedure and that for principal councils would be required to use the affirmative procedure. The effect of that would be to require a more detailed regulatory making procedure to change the review period for community electoral arrangement reviews than would be required for principal area electoral arrangement reviews.

10. You also stated that you intend to improve the accessibility of the law in respect of devolved elections. Could you therefore clarify why provisions in respect of disqualification from being a Member of the Senedd are included within this Bill, instead of within the Senedd Cymru (Members and Elections) Bill?

In the course of developing and preparing the Senedd Cymru (Members and Elections) Bill, the Welsh Government, and their Co-operation Agreement partners in Plaid Cymru, considered a number of policies that related to the Special Purpose Committee's original

recommendations, but which were not themselves specific recommendations of the committee. This included the disqualification related to residency. The disqualification provisions in the Elections and Elected Bodies (Wales) Bill are part of a package of reforms which were consulted on as part of a white paper (Consultation on the electoral administration and reform White Paper). Such reforms also have specific implications for Local Authorities and Town and Community Councils. This did not include a disqualification related to residency.

Accordingly, it was considered more appropriate for these disqualifications to be addressed separately, through the two Bills. Both Bills achieve their individual policies by way of amendment to the existing disqualification regime in the Government of Wales Act 2006. This will mean that, if the Bills are enacted, there will still be a single disqualification regime ensuring that the legislation remains accessible.

During the discussion, I was also asked to confirm the position in relation to the method and process of counting at a Welsh election, from a manual to an electronic count. I can confirm that this can be undertaken through secondary legislation. For Welsh Local Government Elections this is enabled through section 36A of the Representation of the People Act 1983. For Senedd Elections this is enabled through sections 13 and 157 of the Government of Wales Act 2006.

I hope that this letter has sufficiently responded to your queries, and I look forward to receiving the Committee's report on the Bill in due course.

Yours sincerely,

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

Mick Antoniw AS/MS

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