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



Llywodraeth Cymru
Welsh Government

Alun Davies MS
Temporary Chair
Legislation, Justice and Constitution Committee

26 January 2024

Dear Alun,

Senedd Cymru (Members and Elections) Bill

Thank you for the Legislation, Justice and Constitution Committee's report in relation to the Senedd Cymru (Members and Elections) Bill published on 19 January 2024. Please see my responses to the set of recommendations within the report in Annex 1.

As the Bill will be considered by a Committee of the Whole Senedd at Stage 2, I anticipate that a significant number of Members will have an interest in it. With this in mind, I am providing a written response to Committee reports in advance of the general principles debate.

I would like to express my thanks to the Committee for scrutinising the Bill and its supporting documentation. I look forward to continuing to work with Members as the Bill progresses through the Senedd process.

I am copying this letter to the Chair of the Reform Bill Committee, the Chair of the Finance Committee and all Members of the Senedd for information.

Yours sincerely,

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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.

Annex 1

Recommendation	Response
<p>Recommendation 1. The Counsel General should respond to the conclusions and recommendations we make in this report at least two working days before the Stage 1 general principles debate takes place.</p>	<p>Accept</p> <p>This recommendation is accepted, and actioned through the response detailed below.</p>
<p>Recommendation 2. The Counsel General should publish the Welsh Government's assessment of the Bill's impact on the European Convention on Human Rights two working days before the Stage 1 debate</p>	<p>Noted</p> <p>The Explanatory Memorandum which accompanies the Bill contains a statement by me, as the Member in Charge, that the provisions of the Bill are within the legislative competence of the Senedd. One of the competence tests is that provisions must not be incompatible with the Convention rights. This statement is therefore confirmation that I am satisfied that the provisions of the Bill are compatible with the Convention Rights.</p>
<p>Recommendation 3. The Counsel General should write to the Committee to provide details of the timetable for the preparation, scrutiny and implementation of the re-statement of the National Assembly for Wales (Representation of the People) Order 2007 (the Conduct Order), required for the Senedd general election in 2026.</p>	<p>Accept</p> <p>I will write to the Committee on this matter in due course.</p>
<p>Recommendation 4. The Counsel General should confirm whether or not, in his opinion, the reservation in relation to section 25(1)(a) of the Government of Wales Act 2006 would prevent its restatement in the Bill.</p>	<p>Accept</p> <p>The general restrictions to legislative competence are contained within Part 1 of Schedule 7B of the Government of Wales Act 2006 ("GoWA 2006). Paragraph 7(1) of Schedule 7B provides that the provisions of GoWA are protected from modification by an Act of the Senedd. None of the exceptions to that restriction apply to section 25(1)(a) of GoWA and as such it is protected from modification subject to the general exceptions from the restrictions.</p> <p>Part 2 of Schedule 7B provides for general exceptions to the restrictions. Paragraph 13(1)(a) does not prevent an Act of the Senedd restating the law (or restating it with</p>

	<p>such modifications as are not prevented by Part 1).</p> <p>However, please see further my responses to recommendations 5 and 6.</p>
<p>Recommendation 5. The Counsel General should table an amendment to section 4 of the Bill for the purpose of achieving a consolidation (and subject to recommendation 4 a re-statement) of section 25 of the Government of Wales Act 2006, within the boundaries of the Senedd's legislative competence.</p>	<p>Reject</p> <p>Please see my response to Recommendation 6.</p>
<p>Recommendation 6. If recommendation 5 is not achievable because of restrictions in the Government of Wales Act 2006, rather than it being a drafting choice, the Minister should provide a detailed explanation of why this is the case.</p>	<p>Accept</p> <p>In my view section 25 should not be consolidated within the Senedd Cymru (Members and Elections) Bill, but rather remain a provision of GoWA 2006. The legislative framework governing Senedd Cymru is provided for in Parts A1 and 1 of GoWA 2006. The Presiding Officer (and Deputy Presiding Officer) provisions contained within section 25 are an integral part of this framework. There are numerous references and cross-references to these office holders and their functions and responsibilities throughout GoWA 2006.</p> <p>The approach taken at section 4 of the Bill (additional Deputy Presiding Officer) is distinguishable from that taken at sections 8 (General Elections) and 9 (Vacant seats). Section 8 of the Bill substitutes section 6 to 9 GoWA 2006 and section 9 substitutes a new section 11; this is reflective of a significant proposed change in the electoral system which will move from a Mixed Member System to a fully closed proportional list system. In contrast, the current provisions governing the Presiding Officer and the Deputy Presiding Officer are, in essence, unaffected. The proposed amendments to section 25 GoWA are limited to providing for the election of an additional Deputy Presiding Officer and the consequences of this event.</p> <p>Whilst it is accepted that this is achieved through a series of amendments to the text of section 25, the overall effect of those amendments is nonetheless limited as described.</p>

	<p>Upon section 4 of the Senedd Cymru (Members and Election) Bill coming into force, section 25 GoWA 2006 will read as amended, as can be seen in the relevant section of schedule of amendments included in the Explanatory Memorandum. A wholesale substitution of section 25 GoWA 2006 would not result in a significant difference for the end user. It is also arguable as to whether- in terms of clarity and accessibility of law- a wholesale substitution would be beneficial, in this instance, given that the existing approach provides for the amendments to be discernible as such; representing an addition to, rather than a change of, an established provision.</p> <p>There are no omissions to the current provisions of section 25 GoWA 2006.</p>
<p>Recommendation 7. A majority of the Committee considers that the Counsel General should table an amendment to the Bill to leave out section 5(b).</p>	<p>Reject</p> <p>The inclusion of the power in section 5(b) provides for future-proofing, enabling the Government to react quickly and flexibly to circumstances, without utilising primary legislation for the purpose of increasing the legislative limit by one or two Ministers. This could be necessary due to the devolution of further powers, or otherwise circumstances whereby an increase is merited.</p>
<p>Recommendation 8. The Counsel General should take account of our comments on section 7 of the Bill and its constitutional propriety, and accordingly, consider tabling an amendment to leave out section 7 of the Bill.</p>	<p>Reject</p> <p>Should the Business Committee accept recommendation 42 of the RBC report, such work is not incompatible with section 7 of the Bill. In the event that this work has been completed by the end of this Senedd, the seventh Senedd could simply reject the motion provided for in section 7. Please also see my more detailed response to recommendations 41 and 42 of the Reform Bill Committee's report, and my response to recommendation 9 below.</p>
<p>Recommendation 9. If the Counsel General decides to retain section 7 in the Bill he should write to the Committee and all Members of the Senedd in advance of the Stage 1 debate on the general principles of the Bill and set out in detail why it is constitutionally appropriate for the Welsh Government to ask the Sixth Senedd to</p>	<p>Accept</p> <p>The only duty being imposed by section 7 is on the Presiding Officer to table a motion within a specific timescale on the issue of job-sharing. It is not unprecedented for duties to be placed on a Presiding Officer. An example of such a duty can be found in</p>

<p>pass legislation which would impose duties on the Seventh Senedd and its Presiding Officer, in so doing breaching the principle that an Act of a Parliament should not constrain the freedom of action of a future Parliament</p>	<p>section 110(3)(a)(b) of the Government of Wales Act 2006 where a duty is placed on the Presiding Officer to make a decision on whether or not a Bill is within the Senedd's legislative competence, and to state that decision.</p> <p>In accordance with Standing Order 12.22, the motion may be amended by any Member. The motion may also be rejected, resulting in no further action.</p> <p>On this basis, and considering the freedom which remains for the Senedd to determine how it responds to any such motion, it is not considered that the provisions in section 7 constrain the freedom of action of a future Parliament.</p> <p>The Special Purpose Committee was clear in its recommendations that further consideration should be given, on a cross-party basis, to exploring the feasibility and legislative challenges associated with enabling election on the basis of job sharing. In the absence of any clear public commitment by the Senedd to consider this issue in detail across a broad range of offices, section 7 of the Bill provides a pathway for this work to be taken forward at an appropriate time in the future.</p> <p>As requested, we have copied this response to all Members.</p>
<p>Recommendation 10. The Counsel General should justify why new section 49J (to be inserted by Schedule 2 of the Bill) of the Local Government (Democracy) (Wales) Act 2013 (to be renamed by virtue of section 11 of the Bill) requires that regulations, to implement recommendations of the Local Democracy and Boundary Commission for Wales (to be renamed by virtue of section 12 of the Bill) for Senedd general elections held after 1 April 2030, must be laid within six months and accordingly, to explain why a period of 4 months as used in relation to UK general elections was not chosen.</p>	<p>Noted</p> <p>I have accepted recommendation 31 of the Reform Bill Committee and will bring forward an amendment to reduce the period for regulations to be made from 6 months to 4 months.</p>
<p>Recommendation 11. The Counsel General should take account of our comments on the constitutional propriety of section 19 of the Bill and consider whether section 19 is an appropriate provision to include in the Bill.</p>	<p>Noted</p> <p>I note the committee's comments on section 19. As the Bill emanated from the recommendations of the Special Purpose Committee, it is appropriate that the</p>

	<p>Senedd is responsible for post-legislative review of the operation and effect of the legislation. Section 19 provides a mechanism for the next Senedd to give consideration to this. Please see my more detailed response to recommendation 41 of the Reform Bill Committee.</p>
<p>Recommendation 12. If the Counsel General decides to retain section 19, he should write to the Committee and all Members of the Senedd in advance of the Stage 1 debate on the general principles of the Bill and explain why he believes that a committee of the Seventh Senedd would not on its own initiative be better placed to undertake appropriate post-legislative scrutiny and in so doing determine its own terms of reference and timeframe for that work.</p>	<p>Accept</p> <p>As with section 7, the only duty being imposed by section 19 is on the Presiding Officer to table a motion within a specific timescale on the issue of post-legislative review. It is not unprecedented for duties to be placed on a Presiding Officer. An example of such a duty can be found in section 110(3)(a)(b) of the Government of Wales Act 2006 where a duty is placed on the Presiding Officer to make a decision on whether or not a Bill is within the Senedd's legislative competence, and to state that decision.</p> <p>In accordance with Standing Order 12.22, the motion may be amended by any Member. The motion may also be rejected, resulting in no further action.</p> <p>On this basis, and considering the freedom which remains for the Senedd to determine how it responds to any such motion, it is not considered that the provisions in section 19 constrain the freedom of action of a future Parliament.</p> <p>Given the nature of the reforms, it is important that a post-legislative review is undertaken. As the Bill emanated from recommendations made of the Special Purpose Committee on Senedd Reform, which were endorsed by the Senedd, the Welsh Government remains of the view that it would be appropriate for the Senedd to have a lead role in any review of the legislation's operation and effect.</p>
<p>Recommendation 13. The Counsel General should write to the Committee setting out in detail how the Welsh Government has ensured that the elements of a healthy democracy have been incorporated into the preparation and drafting of the Bill.</p>	<p>Accept</p> <p>The underpinning purpose of the Bill is to strengthen Welsh democracy, making the Senedd a more effective legislature for, and on behalf of, the people of Wales by:</p>

	<ul style="list-style-type: none"> • Increasing the capacity of the Senedd from 60 to 96 members, enabling it to more effectively: <ul style="list-style-type: none"> ○ hold the Welsh Government to account, ○ scrutinise, oversee, and improve policy, legislation and spending; and ○ represent, respond to, and serve the people of Wales. • Removing the disproportional “first-past-the-post” system, requiring all candidates to be elected from proportional lists. • Increasing the frequency with which voters can remove or renew a government’s mandate, by reducing the length of Senedd terms from five to four years. • Preventing political interference in the determination of Senedd constituency boundaries, by delegating the responsibility to the independent Democracy and Boundary Commission Cymru, with no opportunities for either Welsh Government or the Senedd to amend. • Ensuring that candidates for election to the Senedd and Members of the Senedd are resident in Wales, meaning that lawmakers in the Senedd are subject to those laws that they make.
<p>Recommendation 14. The Counsel General should write to the Committee and all Members of the Senedd in advance of the Stage 1 debate on the general principles of the Bill and explain why he did not include a mechanism for the Welsh Ministers to report on the operation and effect of this Bill (if and when enacted), similar to provisions included in previous legislation</p>	<p>Accept</p> <p>As I have set out in my response to the Reform Bill Committee (RBC), it is important to note that this Bill emanated from recommendations made by the Special Purpose Committee on Senedd Reform, subsequently endorsed by the Senedd,</p>

The Welsh Government remains of the view that it would be appropriate for the Senedd to have a lead role in any review of the legislation's operation and effect, as opposed to Welsh Ministers.

I have, however, accepted the RBCs recommendation that Welsh Ministers should be under a duty to respond to a report of the Senedd following such a review. Whilst Welsh Ministers would, by convention, respond to the report – and so such an amendment is not strictly necessary - I will aim to bring forward an amendment to this effect.