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



Llywodraeth Cymru
Welsh Government

Huw Irranca Davies MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru
Cardiff
CF99 1SN

CC: John Griffiths, Chair, Local Government and Housing Committee
Peredur Owen Griffiths, Chair, Finance Committee

12th February 2024

Dear Huw,

I would like to thank the Legislation, Justice and Constitution Committee for their scrutiny of the Elections and Elected Bodies (Wales) Bill during Stage 1 and for the report which was published on 26 January 2024.

I have set out responses to the Committee's recommendations at Annex 1. It has not been possible for me to accept all of the committee's recommendations in full. However, I have carried the principles and underpinning reasoning for my decision through as far as possible.

I hope this letter is helpful in setting out responses to the Committee's Report. I have written to the Chairs of the Finance Committee and the Local Government and Housing Committee with respect to their Stage 1 Reports and have copied the letters to all three Committee Chairs.

I look forward to continuing to work with Members as the Bill progresses through the Senedd process.

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: Response to Legislation, Justice and Constitution Committee's report on the Elections and Elected Bodies (Wales) Bill

<p>Recommendation 1. The Counsel General should state whether the Welsh Government's current programme of engagement and collaboration with stakeholders in respect of the Bill is likely to result in the Welsh Government tabling substantive policy amendments at stages 2 and/or 3</p>
<p>Accept. We do not anticipate bringing forward substantive policy amendments at stage 2 nor 3 as a result of our ongoing collaboration with stakeholders.</p>
<p>Recommendation 2. The Counsel General should provide an indication of when the Welsh Government intends to introduce a consolidation Bill in respect of Welsh electoral law.</p>
<p>Accept. As I said in my evidence to the Committee this area of the law is ripe for consolidation. The Committee will be aware I have just laid before the Senedd a revised programme under section 2 of the Legislation (Wales) Act 2019. This makes clear that we will continue to work with the Law Commission on potential projects, and informal discussions on the possibility of consolidating electoral law have already taken place with them. This would be a project requiring significant resource, and therefore we will develop this work with a view to the next Government making decisions on the priorities for their programme to improve the accessibility of Welsh law.</p>
<p>Recommendation 3. The Bill should be amended to provide further details about the types of functions which may be conferred on the Electoral Management Board by the Welsh Ministers using the powers within section 1 of the Bill.</p>
<p>Reject. The proposed functions of the EMB set out in the Bill are consistent with the approach taken in Scotland. The power in section 20E (3) (c) of the Bill is required as Welsh Ministers may need to confer further functions related to electoral administration on the Electoral Management Board in the future and it is important to have this flexibility. An example of where provisions specified in regulations may add to the functions of the Commission is that it is envisaged the Electoral Management Board would take forward the Welsh Elections Information Platform and regulations could confer functions on the Electoral Management Board in relation to that platform.</p> <p>This power does not authorise the creation of new Commission functions, it allows the delegation to the EMB of Commission functions created by other means (whether in primary or secondary legislation).</p>
<p>Recommendation 4. The Bill should be amended to provide that section 3 may only be brought into force following the completion of a pilot under section 5(4) of the Bill</p>
<p>Accept. The Government will table an amendment.</p>
<p>Recommendation 5. The Bill should be amended to provide that the Welsh Ministers, at the time of laying pilot regulations in the Senedd which are to be made without a principal council's consent, must also lay a statement to explain the decision to proceed without that consent being obtained.</p>
<p>Accept. The Government will table an amendment.</p>
<p>Recommendation 6. The Bill should be amended to provide that regulations made under section 5 which amend primary legislation will be subject to the affirmative procedure</p>
<p>Reject. The framework established by the Bill will require the Welsh Ministers to involve external stakeholders in the development of the pilots. These factors, coupled with the time-limited nature of pilots and the broader electoral timetable, mean that it is often necessary to legislate for pilots swiftly. Any permanent changes to primary legislation arising out of a successful pilot will be subject to the affirmative procedure.</p>
<p>Recommendation 7. The Bill should be amended to leave out section 8.</p>
<p>Accept. This section was intended to ensure the pilots regime can adapt to reflect the changing nature of electoral practice. On the basis that section 5 provides a rounded</p>

description of potential pilot areas, the Government will table an amendment to remove this section.
Recommendation 8. The Bill should be amended to provide that electoral reform regulations made using the power in section 19 may not create, remove or modify any criminal offences.
Reject. In some circumstances it may be necessary to create, remove or modify criminal offences when making electoral reform regulations. In these cases, the Regulations would be subject to the affirmative procedure (see section 20(3) and (4)), but the Senedd would, in addition, be able to seek enhanced affirmative procedures around the regulations ensuring stringent scrutiny for any proposed amendments.
Recommendation 9. The Bill should be amended to provide that electoral reform regulations may not confer, remove or modify power to make subordinate legislation.
Reject. In some circumstances it may be necessary to confer, remove or modify power to make subordinate legislation when making electoral reform regulations. In these cases, the Regulations would be subject to the affirmative procedure (see section 20(3) and (4)), but the Senedd would, in addition, be able to seek enhanced affirmative procedures around the regulations ensuring stringent scrutiny for any proposed amendments.
Recommendation 10. The Bill should be amended to require the Welsh Ministers, where they decide not to accept in full or in part a Senedd committee’s recommendation in respect of draft electoral reform regulations, to lay a statement to explain their decision.
Accept. The Government will table an amendment.
Recommendation 11. The Bill should be amended to specify which body will be responsible for maintaining the Welsh elections information platform.
Reject. The existence of the Elections Information Platform should not be tied to the establishment and ongoing existence of the EMB. To tie the platform to the EMB reduces flexibility to respond to ongoing developments in this area.
Recommendation 12. The Bill should be amended to specify the functions which may be conferred on persons or categories of person specified in regulations made under section 27 of the Bill.
Reject. Putting the detail in regulations rather than on the face of the bill is a balanced approach to enable greater flexibility to ensure the operational needs of the platform, its users and the host are met and developed with time. It takes account of the fast-moving legal and technological context, with the appropriate scrutiny in place.
Recommendation 13. If recommendation 12 is not accepted, the Welsh Government should, in advance of the first day of Stage 2 of the Bill, publish a statement of policy intent to outline the functions which may be conferred on persons or categories of person specified in regulations made under section 27 of the Bill.
Accept. I have written to the Committee stating the policy intent.
Recommendation 14. The Welsh Government should, in advance of the first day of Stage 2 of the Bill, publish a statement of policy intent to outline the functions which may be conferred on persons within regulations made under section 29 of the Bill.
Accept. I have written to the Committee stating the policy intent.
Recommendation 15. The Bill should be amended to replace references to the Legislation, Justice and Constitution Committee with references to “appropriate Senedd committees”, or similar such wording, to provide certainty in law.
Accept. The Government will table an amendment.
Recommendation 16. The Bill should be amended to provide that regulations made under sections 41 and 51 of the Bill are to be subject to the affirmative procedure.
Reject. Welsh Government guidelines set out that a factor that may tend to suggest the application of the affirmative procedure is that the power may be used to substantially affect provisions of primary legislation. These narrow powers to amend primary legislation are limited to amending the review period in each case which is a relatively minor detail in the overall legislative scheme. Welsh Ministers already have power to alter the review period 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 use of

the negative procedure is considered both appropriate and proportionate and in accordance with Welsh Government guidelines.