

Julie James AS/MS
Y Cwnsler Cyffredinol a'r Gweinidog Cyflawni
Counsel General and Minister for Delivery



Llywodraeth Cymru
Welsh Government

Mike Hedges
Chair, Legislation, Justice and Constitution Committee

4 December 2025

Dear Mike

Thank you for your letter of 24 November 2025, detailing a number of follow-up questions pertaining to my attendance of the Committee's meeting of 17 November 2025, as part of your consideration of the Senedd Cymru (Member Accountability and Elections) Bill.

I have detailed my answers to these questions in an annex to this letter.

I am copying this letter to David Rees MS, Chair of the Member Accountability Bill Committee.

Yours sincerely,

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive, flowing style.

Julie James AS/MS
Y Cwnsler Cyffredinol a'r Gweinidog Cyflawni
Counsel General and Minister for Delivery

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Cwnsler.Cyffredinol@llyw.cymru
correspondence.Counsel.General@gov.wales

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. *The Welsh Ministers have a duty to make provision prohibiting the making or publishing of false or false and misleading statements of fact (see paragraphs 113 to 116 of the transcript). Please can you clarify the exact timescale within which the Welsh Ministers must make this provision and identify where in the Bill/explanatory materials this is stated? As part of your response, please can you confirm whether or not a further section 13 Order must be made by the next election in 2030.*

I do not believe that it is appropriate to set an arbitrary timescale for the exercise of this duty. As I have set out, it is essential that careful and detailed consideration is given to the development of any offence, to ensure that it specifically addresses the statements we are looking to prohibit. What the duty ensures is that the next government will be required to consider this issue and take steps to satisfy the duty.

Once new sub-section 13(2A) is enacted and has come into force, which will be after the 2026 election, the Welsh Ministers will be subject to the duty. Although there is no deadline for compliance with the duty, I consider it will be incumbent upon the Welsh Ministers to have made provision to satisfy the duty before the next election when any provision made under section 13(2A) would have effect.

Whilst there is no specific legislative requirement to update the Conduct Order prior to each election, the Conduct Order has been revised or remade in advance of every scheduled Senedd election held to date. I believe it is inconceivable that this would not continue to be the case given the critical role the Order plays in enabling an election to be run.

The provision that must be made is provision “of the kind that must be made under 13(1)(a)” i.e. provision about the conduct of elections for Members of the Senedd so the provision that must be made under that sub-section must have a connection to the conduct of elections and it is for this reason I consider the next election is the point by which the duty will need to have been discharged.

2. *The Bill does not contain a definition of what constitutes a “false statement of fact” or a “misleading statement of fact”. As these terms are crucial to the formulation of the proposed offence, is it desirable to have them on the face of the Bill without being defined?*

The duty in section 13, as amended by section 22 of the Act should be read in conjunction with new sub-section (2B) which sets out a list of the type of provision that may be made when making provision to satisfy the duty in (2A). This illustrative list provides for a wide range of options as to the components of any offence.

The precise nature of any offence of deception is novel and complex and therefore requires careful consideration.

Any attempt to precisely define the nature of what is to be prohibited prior to concluding that careful consideration runs the same risk of the Bill being challenged on competence grounds as if we placed the offence itself on the face of the Bill; a risk we are seeking to insulate this Bill from. As I have already stated, I am satisfied that the duty can be exercised in a way that does not unlawfully interfere with Convention rights however more work needs to be done to determine the exact formulation of an offence that meets the policy objective while remaining within competence.

My officials and I are continuing to work to develop an offence for inclusion in a future Conduct Order. The fact that it is a duty to make such provision means that the next government will continue to take forward this work in the next Senedd term.

3. *In your statement in Plenary on 4 November you stated, in relation to Members: “there's no reason why, in certain circumstances, if they've committed the basic tenets of the offence, they wouldn't be able to be held to that”.*
- (i) Can you outline what consideration has been given to this point?*
 - (ii) Would extending the scope of the offence to cover Members create an element of double-jeopardy where Members are sanctioned through the standards process and separately subject to the new offence?*

In its inquiry into Individual Member Accountability, the Standards of Conduct Committee recognised there is a fundamental difference between an elected Member and a candidate standing for election – which is why they recommended separate systems to address false statements made by each.

However, I am of the view that - as far as is possible - the same broad definition of any wrongdoing should apply to both Members and candidates. It is that view that I was seeking to convey during Plenary on 4 November, rather than extending any specific offence to Members.

I understand that is also the position set out by the Standards of Conduct Committee when they recommended that any definition that is developed should be “replicated in any associated Standing Orders and guidance”. I am aware that the Standards of Conduct Committee is currently undertaking work in response to those recommendations, and I am happy to work with them to ensure that, where possible, there is appropriate read-across between the definitions.

With regards to the “double-jeopardy” point, avoiding such a possibility will be a key issue that requires resolving when defining the scope of any future offence. It will be necessary to ensure that a sitting Member is excluded from any definition of “candidate” for the purposes of that definition.

4. *In that same statement on 4 November you mentioned that there were some competence issues relating to extending the offence to Members that you would need to discuss in committee. Can you expand on what these issues are?*

Any attempt to legislate in a way that restricts speech - and in this context political speech – will engage Convention rights, in particular Article 10 freedom of expression. Therefore the same competence issues that arise in relation to candidates would arise for Members.

Of equal concern however is the constitutional appropriateness of a government Bill seeking to place restrictions on the speech of Members. Members are held to account through the Code of Conduct and the standards regime more generally.

The Government of Wales Act already provides for some protections in relation to statements and publications of Members in the context of Senedd proceedings. We have

not yet had sufficient time to consider what the full consequences, including unintended consequences, of creating an offence in relation to Members' speech more generally might be.

5. *The Welsh Government's Statement of Policy Intent states that: "Given the time available for the passage of this Bill in the current Senedd term, it has not been possible to undertake the necessary engagement in the development of an offence at this time."*

Can you confirm what engagement has already taken place up to this point and, looking forward to the next Senedd, what would you say is a realistic timescale within which such engagement could take place?

Specific engagement will be undertaken with key stakeholders in the criminal justice system during the development of any future offence itself, in discharge of this new duty.

However, it is important to note that during the Standards of Conduct Committee's inquiry – the recommendations from which form the basis of this Bill – evidence was received from the Chief Constables in Wales and the Crown Prosecution Service.

That evidence noted that specific observations would be entirely dependent on the detail contained within the legislation and welcomed further close engagement on that detail as proposals were developed.