

## Invitation to submit written evidence



April 2014

Dear Colleague

Committee Inquiry: Making Laws in the Fourth Assembly

The Constitutional and Legislative Affairs Committee has agreed to carry out an inquiry into Making Laws in the Fourth Assembly.

### *Terms of reference*

The purpose of the inquiry is to consider how laws are being made in the Fourth Assembly, in particular by:

- considering the principles applied to the legislative drafting of Government Bills, and amendments, for the Assembly and identifying respects in which they conform with or depart from best practice in the United Kingdom and comparable jurisdictions;
- considering the principles applied to the legislative drafting of Members' Bills, and amendments, for the Assembly and identifying respects in which they conform with or depart from best practice in the United Kingdom and comparable jurisdictions;
- considering the impact of legislative competence on the drafting of Bills (including the possible impact of alternative methods of defining legislative competence);
- reviewing the purpose and effect of Explanatory Memoranda which accompany Bills, and other explanatory or background material;
- reviewing the effectiveness of the opportunities provided by Standing Orders for the scrutiny of Bills;
- considering the time allowed for the scrutiny of Bills, and other matters relating to Bill procedure;

- reviewing the scope and effectiveness of arrangements for “fast-tracking” Bills within the existing Assembly procedures;
- considering the capacity of the Welsh Government and National Assembly to legislate;
- considering issues relating to the management by the Welsh Government of its legislative programme;
- considering any other matters relating to the making of legislation;
- making recommendations.

### *General questions*

The Committee would welcome your views on these specific matters. To assist consultees frame their response, general questions are provided below which highlight the main issues that the Committee wishes to address. The consultation questions are intended as a guide only. There is no need to answer every question, so you may wish to concentrate on certain questions only.

1. What constitutes good practice in the drafting of a Bill? For example in relation to:
  - (a) the policy development process leading up to introduction;
  - (b) the drafting accuracy and completeness of a Bill on introduction;
  - (c) the balance between what is included on the face of a Bill and what is left to subordinate legislation;
  - (d) the accessibility of the language used (both English and Welsh);
  - (e) the way in which a Bill is structured;
  - (f) their fitness for purpose;
  - (g) the use of consolidation provisions;
  - (h) any other matter you consider to be of relevance.

It would be useful if responses could contain examples of good and bad practice, where possible.

2. What impact has the Assembly’s conferred powers model of legislative competence had on the drafting of Bills? What would be different if the Assembly has a reserved powers model?

3. What is your view of the content of the Explanatory Memoranda which accompany Bills and how useful are they in explaining the purposes of Bills?

It would be helpful to identify whether comments are made in general or in relation to specific examples, when responding to this question.

4. In a single chamber legislative system, what value to you place on the use of:
  - (a) draft Bills for consideration before a Bill is formally introduced;
  - (b) more time for Stage 1 scrutiny;
  - (c) the optional Report stage at the end of Stage 3 proceedings (as for example in the Mobile Homes (Wales) Bill and the Social Services and Well-being (Wales) Bill).
5. What is your view of the need for, and impact of, curtailed scrutiny of Bills? In considering this issue you may wish to consider the scrutiny arrangements that applied to the following Bills in the 4th Assembly:
  - (a) the Agricultural Sector (Wales) Bill (procedures for Emergency Government Bills used)
  - (b) the Control of Horses (Wales) Bill (bypassed Stage 1 committee scrutiny)
  - (c) the National Health Service Budgets (Wales) Bill (bypassed Stage 1 committee scrutiny)
6. What is your view of the scope for “fast-tracking” Bills within the Assembly’s existing procedures?
7. What is your view of the Welsh Government’s and the National Assembly’s capacity to legislate?
8. What is your view of the Welsh Government’s management of the legislative programme?
9. If you have had experience of following plenary and committee proceedings on the scrutiny of Bills, or participating in the process, what are your views on this experience and what improvements, if any, could be made?
10. What other comments would you like to make about the making of laws?

### *Detailed questions*

However, if consultees would prefer to submit a more substantive response, specifically reflecting their expertise in this area, Annexe 1 provides more detailed questions. Again, there is no need to answer every question, so you may wish to concentrate on certain questions only.

Responses, either in hard copy or electronically should be sent to the following address and arrive no later than 30 May 2014:

Gareth Williams  
Clerk  
Constitutional and Legislative Affairs Committee  
Tŷ Hywel  
National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NA

[CLA.Committee@wales.gov.uk](mailto:CLA.Committee@wales.gov.uk)

### *Disclosure of Information*

The Assembly's [policy on disclosure of information](#) can be accessed on the Assembly website. Please ensure that you have considered these details carefully before submitting information to the Committee. Alternatively a hard copy of this policy can be requested by contacting the Clerk (029 2089 8008).

If you would like any further information, please contact the Clerk on 029 2089 8008 or Ruth Hatton the Deputy Clerk on 029 2089 8019.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Melding', with a long, sweeping underline that extends to the right.

David Melding AM  
Chair

## Annexe 1

### Consultation Questions

The consultation questions are intended as a guide only. There is no need to answer every question, so you may wish to concentrate on certain questions only.

If you believe the Inquiry should consider issues relating to the quality or processing of Acts in the National Assembly not addressed by a specific consultation question, please outline those issues in your answer to the final question.

Wherever possible, please illustrate your answers with specific examples from Bills before the National Assembly during the Fourth Assembly.

### Drafting techniques

1. Overall, is it your impression that legislative drafting for the National Assembly broadly complies with best practice for legislative drafting within the United Kingdom?
2. As a general rule, are there specific respects in which the quality of legislative drafting for the National Assembly appears particularly admirable?
3. As a general rule, are there specific causes for concern in the quality of legislative drafting for the National Assembly?
4. As a general rule, do Bills of the National Assembly appear to be drafted with the aim of making them reasonably accessible to, and intelligible by, the appropriate target audiences for each Bill?
5. Is there reason to differentiate in your answers to Questions 1 to 4 between Bills and amendments drafted by the Welsh Government and other Bills and amendments?
6. As a general rule, is the drafting style of Bills, and amendments, brought before the National Assembly in accordance with best modern practice?
7. In particular, is the practice in relation to any of the following matters particularly admirable, or a cause for concern?
  - a. the use of plain language;
  - b. the avoidance of archaic or redundant expressions;

- c. gender-neutrality;
  - d. translation;
  - e. length of sentences;
  - f. complexity of sections and subsections;
  - g. the use of statements of purpose;
  - h. the use of overview provisions;
  - i. the division of Bills into Parts and Chapters;
  - j. the use of different kinds of heading;
  - k. the use of Schedules;
  - l. numbering and lettering notation;
  - m. other aspects of Bill structure;
  - n. the use of examples in legislative text;
  - o. the use of exceptions, provisos and savings;
  - p. the use of tables, formulae, and diagrams;
  - q. the incorporation of inert material or material not appearing to be intended to have legislative effect;
  - r. the use of free-standing legislation, and legislation which operates by reference to other legislation;
  - s. the use of textual amendment of other legislation.
8. In general, do Bills before the National Assembly appear to follow equivalent or similar Acts of Parliament or other enactments:
- a. to the extent appropriate;
  - b. more than is appropriate;
  - c. less than is appropriate?
9. Are there significant differences, as a general rule, between the quality of the drafting style of Bills and amendments presented by the Welsh Government and other Bills and amendments?

10. Are there specific Bills before the Fourth Assembly which particularly illustrate, or provide significant exceptions to, any of the answers given in Questions 1 to 9 above?
11. In general, are appropriate opportunities taken for the consolidation of legislation, whether as a separate exercise or in the course of making new substantive legislation?
12. What impact does legislative competence appear to have on the form of, or techniques used in, the drafting of Bills?
13. To what extent does that impact reflect the model of legislative competence adopted by the Government of Wales Act 2006?
14. Might a different model have advantages or disadvantages in relation to the form of, or techniques used in, the drafting of Bills?

Policy development and explanation

15. As a general rule, is there evidence to show that the processes for policy development lead to Bills being brought into the National Assembly with a properly constructed and tested policy?
16. In particular—
  - a. do the processes for consultation in the development of policy appear to be appropriate and effective?
  - b. do the processes for impact assessment appear to be appropriate and effective?
  - c. are the policy purposes of legislation accurately and sufficiently explained to Assembly Members and to the public?
17. Are there appropriate and effective mechanisms for determining whether the policy underpinning a legislative proposal is accurately and effectively addressed by the form of the legislation proposed?
18. In general, do the Explanatory Memoranda provided with Bills serve the purpose for which they are designed?
19. In particular, is the practice in relation to any of the following matters particularly admirable, or a cause for concern?
  - a. the length of Explanatory Memoranda;
  - b. the inclusion of background policy material;
  - c. the use of examples to illustrate the intended effect of provisions;
  - d. the use of tables, diagrams and other illustrations.

20. Are there significant differences, as a general rule, between the quality of Explanatory Memoranda for Bills presented by the Welsh Government and other Bills?
21. Are there specific Bills before the Fourth Assembly which provide particular illustrations of, or significant exceptions to, any of the answers given to Questions 15 to 20 above?

Balance between primary and secondary legislation?

22. Overall, does primary legislation passed by the National Assembly in the Fourth Assembly appear to strike the correct balance between detail on the face of the Act and powers to make subordinate legislation?
23. Overall, where powers are granted to make subordinate legislation do they appear to be subjected to an appropriate level of scrutiny by the National Assembly?
24. Is the use of Henry VIII Provisions (powers for subordinate legislation to amend Acts) broadly satisfactory, or does it give rise to causes for concern?
25. Are there appropriate and effective arrangements for explaining and justifying the taking of powers to make subordinate legislation?
26. What principles should the National Assembly apply in considering the appropriate balance between detail on the face of Bills and powers to make subordinate legislation?
27. How can those principles be applied effectively in practice?

Assembly scrutiny

28. As a general rule, are appropriate and effective arrangements made for the pre-legislative scrutiny of draft legislation?
29. As a general rule, is scrutiny at Stage 1 sufficient and effective for probing the fundamental policy objectives of legislation before the National Assembly?
30. Could more effective use be made of the optional Report Stage following Stage 3?
31. Do the existing Standing Orders of the National Assembly provide sufficient and effective opportunities for the amendment of Bills?



32. Does existing practice within the National Assembly make effective use of opportunities for the amendment of Bills?
33. Are the arrangements for expedited processing of emergency Bills efficient and effective?
34. What arrangements, if any, should be made for formal post-legislative scrutiny of legislation passed by the National Assembly?
35. Does the experience of the Fourth Assembly suggest that the present capacity of the Welsh Government to bring forward legislation is:
  - a. sufficient;
  - b. insufficient; or
  - c. unnecessarily large?
36. Does the experience of the Fourth Assembly suggest that the present capacity of the National Assembly to process Government legislation is:
  - a. sufficient;
  - b. insufficient; or
  - c. unnecessarily large?
37. Does the experience of the Fourth Assembly suggest that the present capacity of the National Assembly to propose and process legislation other than Government legislation is:
  - a. sufficient;
  - b. insufficient; or
  - c. unnecessarily large?
38. Do any aspects of the Welsh Government's management of its legislative programme appear particularly admirable or to give cause for concern?
39. Have there been any particular successes in the National Assembly's ability to pass Acts acquired under the Government of Wales Act 2006?
40. Have there been any particular causes for concern in the National Assembly's ability to pass Acts acquired under the Government of Wales Act 2006?
41. What other comments would you like to make about the passing of Acts by the National Assembly?