

Pwyllgor Cyllid
Finance Committee
Bae Caerdydd / Cardiff Bay
Caerdydd / Cardiff CF99 1NA



Nick Bennett
Public Services Ombudsman for Wales

4 October 2016

Dear Nick

Draft Public Services Ombudsman (Wales) Bill

On the 29 September 2016, the Finance Committee considered the recommendations of the Fourth Assembly Finance Committee following its [consultation on the draft Public Services Ombudsman \(Wales\) Bill](#).

Whilst it is possible for the Finance Committee to introduce the draft Public Services Ombudsman (Wales) Bill as a committee bill, a full Explanatory Memorandum (EM) and Regulatory Impact Assessment (RIA) is required to accompany the Bill.

In considering this, the Committee agreed that it would need to see robust financial information to support the proposed legislative intervention, before a final decision is made to introduce the Bill.

I understand that the previous Chair of the Fourth Assembly Finance Committee wrote to you in February 2016 (Annexe A) requesting that you begin preparatory work on the information that would be required for the EM.

The Committee would welcome this information and, in particular, the detailed financial data required for the RIA under Standing Order 26.6(viii):

(viii) set out the best estimates of:

(a) the gross administrative, compliance and other costs to which the provisions of the Bill would give rise;

(b) the administrative savings arising from the Bill;

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(c) net administrative costs of the Bill's provisions;

(d) the timescales over which all such costs and savings would be expected to arise; and

(e) on whom the costs would fall;

It is also worth noting that since the request from the previous Chair, the Assembly resolved to amend Standing Order 26.6(viii) to include new requirements (b) and (c).

Once the Committee has received this information from you, it is likely the Committee will wish to invite you to attend a meeting to examine the financial information and discuss the draft Bill in more detail.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Simon Thomas'.

Simon Thomas AM
Committee Chair

Annexe A

Pwyllgor Cyllid
Finance Committee
Bae Caerdydd / Cardiff Bay
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Nick Bennett
Public Services Ombudsman for Wales

6 February 2015

Dear Nick

Inquiry into the Consideration of Powers: Public Services Ombudsman for Wales

On behalf of the Finance Committee, I would like to thank you for attending our meeting on 21 January 2015 to discuss the changes you would like to see made to the *Public Services Ombudsman (Wales) Act 2005* to strengthen the role of the Ombudsman.

The Committee has agreed to undertake an [inquiry into the consideration of powers of the Public Services Ombudsman for Wales](#). We are currently consulting and holding oral evidence sessions with relevant stakeholders to inform our work. As you will be aware it is the Committee's intention to report on its findings and should the evidence support the extension of powers the Committee may consider the introduction of a Committee Bill.

Whilst I would not wish to pre-empt the outcome of our inquiry, if the Committee is to consider the introduction of Bill, we would need robust evidence and financial information to support this. As you will appreciate the Finance Committee has a role in scrutinising the financial aspects of any Bill introduced into the Assembly. It is essential that any proposed Bill put forward by the Committee, contains the robust financial information.

The Standing Orders of the Assembly requires a Bill to be accompanied by an Explanatory Memorandum (EM). [Standing Orders 26.6](#) sets out the required information to be included in an EM.

The EM must evidence the **need** for a change in legislation and provide compelling evidence that the intervention is the best option and is likely to be worth the cost. As part of the EM, there is a requirement for a Regulatory Impact Assessment (RIA), which contains the cost elements of introducing a Bill (and any other options considered e.g. do nothing, issue guidance etc).

Should the Committee wish to introduce a Bill in this area we would be grateful for your support and assistance in providing much of this required information. Given the limited time left available in this Assembly to consider a Bill prior to dissolution, I would like to request that you begin preparatory work on the information that would be required for the EM. A useful guide to assist you in this preparatory work is attached at Annexe A. Some areas have been highlighted in red and these are the areas the Committee would particularly welcome you to focus your efforts on. I would like to thank you for your help in preparing these documents, and of course, my officials are happy to liaise with your office to provide any information or support you may need.

In addition, the Committee would welcome clarity on the proposal for extending the Ombudsman's jurisdiction to include private health services when a patient has received a combination of public healthcare and private health care (not commissioned by the NHS). It would be helpful if you could provide a definition of who you would intend to be covered and under what circumstances. On 4 February, we heard from the Independent Sector Complaints Adjudication Service (ISCAS), which operates a three-stage complaints code of practice across the UK independent healthcare sector. In their submission they said:

"ISCAS would welcome the opportunity to enter into an information sharing agreement with the Ombudsman to jointly address the type of complaint that crosses between the NHS and independent sector, as referred to by the Ombudsman in his submission."

The Committee suggest it may be worth you discussing this proposal with ISCAS. I would be grateful if you could provide a note by 18 February, to enable the Committee to take this information into consideration before hearing from our next witnesses.

Yours sincerely,



Jocelyn Davies AM
Committee Chair

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Requirements of the Assembly's Standing Orders

The Assembly's Standing Orders set out the following requirements for documentation to accompany a Bill:

26.6 At the same time as the Member in charge introduces a Bill, he or she must also lay an Explanatory Memorandum which must:

(i) state that in his or her view the provisions of the Bill would be **within the legislative competence of the Assembly**;

(ii) **set out the policy objectives of the Bill**;

(iii) **set out whether alternative ways of achieving the policy objectives were considered and, if so, why the approach taken in the Bill was adopted**;

(iv) set out the **consultation**, if any, which was undertaken on:

(a) the policy objectives of the Bill and the ways of meeting them;
and

(b) the detail of the Bill,

together with a summary of the outcome of that consultation;

(v) **summarise objectively what each of the provisions of the Bill is intended to do** (to the extent that it requires explanation or comment) and give other information necessary to explain the effect of the Bill;

(vi) **set out the best estimates of:**

(a) the gross administrative, compliance and other costs to which the provisions of the Bill would give rise;

(b) the timescales over which such costs would be expected to arise; and

(c) on whom the costs would fall;

(vii) where the Bill contains any provision conferring **power to make subordinate legislation**, set out, in relation to each such provision:

(a) the person upon whom, or the body upon which, the power is conferred and the form in which the power is to be exercised;

(b) why it is considered appropriate to delegate the power; and

(c) the Assembly procedure (if any) to which the subordinate legislation made or to be made in the exercise of the power is to be subject, and why it was considered appropriate to make it subject to that procedure (and not to make it subject to any other procedure); and

(viii) where the Bill contains any provision **charging expenditure on the Welsh Consolidated Fund**, incorporate a report of the Auditor General setting out his or her views on whether the charge is appropriate.

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High level summary of how these requirements are addressed in the Explanatory Memorandum (EM)

(i) Competence – legal advice is needed here

Relationship with Government of Wales Act [s.110](#) (2), (3), (4), (5)

The person in charge of a Bill must, on or before the introduction of the Bill, state that, in that person's view, its provisions would be within the Assembly's legislative competence. The Presiding Officer will be required to give her view on whether the Bill is within competence, on or before the introduction of a Bill in the Assembly.

Additional points to note: Compare Human Rights Act 1998 [s.19](#) –s.19(b)– must be within competence; Competence includes Convention Rights; Also includes EU law; and what is explained in the EM can influence whether the Bill is within the Assembly's competence.

(ii) Policy objectives

In terms of the objectives and implementation of the policy, the EM should set out:

- The Background in terms of setting out the need for the Bill.
- What policy objectives the Bill addresses.
- Describe in detail what the Bill does and why, including a description of the impact on all organisations and persons that will be affected by the Bill.
- Set out the evidence base showing how the proposals will address the highlighted needs in the most efficient and effective way.

This document can be informed by the initial documentation provided by the PSOW to the Finance Committee, backed up by additional information from further research and evidence from the Committee inquiry.

(iii) Policy alternatives

- What alternative approaches have been considered?
- What is the reasoning and justification for the proposed option?

(iv) Consultation

If a consultation has taken place, this needs to be described along with a summary of the outcome of the consultation.

There are no stipulations of what such a consultation includes. The intention is that where possible all organisations and persons impacted upon by a Bill should have their views fed into the formulation of the policy.

The Finance Committee inquiry could potentially fulfil part of this requirement.

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(v) Summary of effects– legal advice is needed here

This section sets out what individual sections of the draft Bill do in plain language. See the Explanatory Notes of the [Safe Nurse Staffing Levels \(Wales\) Bill](#) Explanatory Memorandum, for an example.

This should also cover whether the Bill will have any impact outside Welsh borders and whether there are any direct cross-border issues.

(vi) Regulatory impact assessment

See separate attached document for details.

(vii) Delegated powers– legal advice is needed here

There is usually a balance to be had between including provisions on the face of the Bill and conferring powers to make subordinate legislation.

Where provisions are conferred to make subordinate legislation within the Bill, the EM must set out:

- Who this power is conferred to and how will this power be exercised;
- Why this power is considered the appropriate action; and
- What form of scrutiny / procedure will any sub legislation be subject to by the Assembly.

(viii) Expenditure charged to the Welsh Consolidated Fund

If the Bill contains provisions that charge expenditure on the Welsh Consolidated Fund, there should be a report from the Auditor General as to whether this charge is appropriate.

Note though not a requirement of Standing Orders, it is also good practice to consider including an equality impact assessment and a children's rights impact assessment.

Regulatory Impact Assessments for legislation: Some high level principles

Justifying action

There must be evidence of the **need** for the change in legislation and compelling evidence that the intervention is the best option and likely to be **worth the cost**.

Setting objectives

Set out desired outcomes and objectives in order to identify the range of options that may be available to deliver them.

Option appraisal

Look at a number of options at a high level, from 'do nothing' to a number of more interventionist scenarios, these options are then assessed against this base case.

A number of options should be brought forward, including the 'do nothing' option.

- Identify and value the costs of each option for at least 3 years from commencement
- Identify and value the benefits of each option
- Consider the direct, indirect impacts and possible unintended consequences on other organisations and different sections of society
- Adjust for risk and optimism and consider the impacts of changes in key variables and of different future scenarios on the business case.

Develop and implement a solution

Following the option **appraisal**, decision criteria and judgement should be used to select the best option or options, which then are refined into a solution.

Issues that may have a material impact on the successful implementation of proposals must be considered during appraisal.

A form of ***Cost benefit analysis*** will be required which quantifies in monetary terms as many of the costs and benefits of a proposal as feasible, including items for which evidence does not provide a satisfactory measure of economic value.

Also, Cost effectiveness analysis will be required comparing the costs of alternative ways of producing the same or similar outputs.

Detail on types of costs to include

An overall estimate of all anticipated costs should be included, for direct, indirect and also unintended consequences of the Bill. This should include for example:

- Gross costs should be shown for both direct and indirect costs.
- Administrative costs should be included. Costs should be quantified where existing internal staff resource is being utilised.
- Costs for enforcement and compliance should be included.
- Any income, fees or charges.

Estimates should show on which organisations and individuals' costs would fall, when these costs would be anticipated (ideally between 3 to 5 years) and differentiate between one-off and on-going costs.

Where costs are uncertain it is acceptable to provide an anticipated range of expected costs, or to state that it is not possible to estimate costs due to specified reasons

It is important to provide a description and estimates of benefits that are expected following commencement of the Bill. Where possible these benefits should be quantified.

In summary

Arguments made should provide sufficient evidence to support their conclusions and recommendations, with an audit trail for checking of calculations, supporting evidence and assumptions.

Useful link

HM Treasury's [Green Book: appraisal and evaluation in central government](#)