

Elin Jones AM
Llywydd
Chair, Business Committee

24 May 2018

Annwyl Lywydd,

Thank you for your letter of 9 May 2018 regarding the size of the Constitutional and Legislative Affairs Committee and changes needed to Standing Orders as a result of the scrutiny of subordinate legislation arising from the European Union (Withdrawal) Bill. We considered the issues raised by your letter on 14 and 21 May.

As you allude to in your letter, our Committee has traditionally worked in a non-partisan way, a point highlighted in our predecessor Committee's legacy report. We have regularly made recommendations on all Bills and reported on the merits of Statutory Instruments without the Committee's composition reflecting the Assembly's party balance. This has, in our view, become one of the great strengths of the Committee and has resulted in improvements to legislation based on constitutional and legislative principle.

We understand that it is likely the sifting process for the Assembly Committee will be made binding in the Bill, as recommended by this Committee and reflected already in the Bill for Westminster Committees. We also understand that the process in Westminster will be conducted by a politically balanced committee and the constitutional and political implications of this will need to be explored.

While we are not opposed in principle to change, we believe that the reasons for change to the existing size of the Committee need to be based on sound reasoning and the implications of such a change clearly understood. In this regard we make the following observations:

- the Committee size has fluctuated between four and five members in the Fifth Assembly;
- with five members, two independent members sat on the Committee;



- we acknowledge that with a fifth member, concerns about quorum when members are absent are reduced;
- any change to six or more members may change the culture of the Committee;
- attending the Committee would not be optional – ad hoc attendance would not be acceptable;
- before moving to a larger committee size, there would need to be a commitment that six members would be available to attend in our regular Monday slot and any additional slots required to scrutinise the increase in Brexit-related subordinate legislation;
- a disagreement in the Committee, of whatever size, about whether the affirmative procedure should be attached to an instrument, would not prevent an Assembly Member from tabling a motion to annul that instrument in order to facilitate a debate on the floor of the Chamber;
- our request (of 12 April) to consider primary legislation relates only to one Bill – the Welsh Government’s Legislation (Wales) Bill - which we believe concerns matters of constitutional and legislative principle rather than matters of policy; nevertheless we recognise that Business Committee has previously adopted the principle, in most cases, that voting on Bills in committees should reflect the political balance of the Assembly;
- should the Committee be asked to consider a Bill related to Assembly reform, our expectation is that such a request would relate to Stage 1 only as Stage 2 would be conducted by a Committee of the Whole Assembly; rather than increase the size of our Committee for this purpose, another approach may be to set up a new committee for Stage 1 only which incorporates the existing CLA Committee membership but meeting in a different time-slot;
- we would see merit in exploring the possibility of weighted-voting reflecting the political balance of the Assembly, but recognise that this would require careful thought as it may have a number of knock on-effects including inter alia (i) all parties are not currently represented on the Committee, and (ii) the number of independent Members.



If you were in a position to provide more information about what specific roles the Business Committee envisages our Committee undertaking on primary legislation in the future, we would be able to provide a more informed response at the earliest opportunity.

Our ongoing work on operational matters related to the EU (Withdrawal) Bill is considering procedures for the scrutiny of subordinate legislation, including the adequacy and suitability of the relevant existing Standing Orders to deliver the changes needed. It is our intention to report on these matters towards the end of June. This report is also likely to cover other matters related to the Bill and the Intergovernmental Agreement, such as notifying the Assembly of actions taken by the Welsh and UK Governments in devolved areas and the circumstances under which consent is provided to the UK Government to act in devolved areas.

Yours sincerely,



Mick Antoniw

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

