



Elin Jones AC, Llywydd

Cynulliad Cenedlaethol Cymru

Elin Jones AM, Presiding Officer

National Assembly for Wales

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Your ref:
Our ref: EJ/TJ

12 February 2019

Dear Mick

Senedd and Elections (Wales) Bill

As you will be aware, earlier today I introduced the Senedd and Elections (Wales) Bill at the Assembly.

At annex 1 to this correspondence is my statement of policy intent and at annex 2 is correspondence recently received from the Secretary of State, and my response to such. I anticipate these may be of interest to your committee in its scrutiny of the general principles of the Bill.

Finally, I believe it may be helpful to provide some additional context for your committee in its consideration of section 27 of the Bill: 'Duty to consider reform of oversight of the work of the Electoral Commission.'

The view of the Electoral Commission is that it should be financed by and be accountable to the Assembly for its work in relation to devolved elections, rather than the UK Parliament.

The Assembly Commission considers that as the Assembly takes responsibility for devolved elections, the Assembly should also consider changing the financial and oversight arrangements for devolved elections. The legislative competence for this was devolved in Wales Act 2017, which took effect in April 2018.

However, a number of key issues require further consideration, including:

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- the cost to the Electoral Commission of regulating Welsh devolved elections and referendums;
- the funding of such costs by the Assembly;
- how the funds required to cover such costs would be transferred from Westminster to the Assembly;
- the arrangements by which the Assembly would hold the Electoral Commission to account for its work on devolved Welsh elections; and
- how such scrutiny arrangements would work alongside scrutiny of the Electoral Commission by the UK Parliament.

The Bill therefore places a duty on the Senedd to consider whether the Electoral Commission should be financed by the Assembly for its work in relation to devolved Welsh elections, and become accountable to the Assembly for such work.

This provision is intended primarily to signal a policy intention (during Stage 1 of the Bill) to address the financing and accountability of the Electoral Commission through amendments to the Bill.

If the Assembly recommends support for such a move, I anticipate that amendments would be introduced at Stage 2 to establish arrangements for the Electoral Commission to be financed by, and to be accountable to, the Assembly.

In taking this approach, I have considered possible concerns that Members may have limited opportunity to scrutinise such arrangements. However, I believe that this approach (of using this Bill as a legislative vehicle to introduce such provision) would be a more appropriate use of the Assembly's time than the alternative approach of including it in a standalone Bill.

I look forward to further engagement with the Committee during the course of Stage 1.

Yours sincerely

Elin Jones AM
Llywydd

PART III: Electoral Franchise

REGULATIONS RELATING TO	Invitation to Register: further provision about persons under the age of 16
BILL PART	III
SECTION	14
METHOD OF BRINGING INTO FORCE	Negative unless the instrument contains provisions modifying primary legislation then affirmative must apply
DESCRIPTION OF THE REGULATIONS	
Section 14 provides the Welsh Ministers with the power to make regulations about invitations to apply to be registered as a local government elector in Wales. These regulations may need to be made as a consequence of lowering the voting age at Senedd elections.	
WHAT CAN THE REGULATIONS ACHIEVE?	
This power enables Welsh Ministers to among other things agree regulations about the form and timing of invitations to register on the electoral register and how invitations to register must be given. The regulations may also set out the requirement for invitation to register being accompanied by application forms or other documents. Regulations may also confer functions on the Electoral Commission. The Electoral Commission has responsibilities around the design and testing of certain forms. Welsh Ministers must also consult before making such regulations.	
WHY THE REGULATIONS ARE REQUIRED	
Regular amendments are required to the forms which invite individuals to register and the Electoral Commission has previously advised that secondary legislation is preferable. There are no immediate proposals to use this power and section 4 of the Bill sets out adjustments to the existing system for giving invitations to register to voters, where the person being given the invitation is under the age of 16. The intention is that these adjustments will allow a single invitation to be used for all persons, of whatever age. However, as this is an untested system, it is possible that experience of operating it will suggest that it would be better to have a specific form of invitation for persons under 16, and that there should be procedural changes to take account of their special circumstances. This power is therefore sought to enable that change without the need for further primary legislation.	
POLICY INTENTION OF THE REGULATIONS	

The nature of electoral law is that it is technical and complex. In addition, there is the potential added complexity of a Local Government and Elections Bill dealing with the same or similar subject matter, being considered to similar timescales. It is therefore considered prudent to take powers to respond to any unexpected difficulties encountered in practice a result of wider changes made to the franchise.

The regulation making power would provide a safeguard to make further provision in light of any practical experiences that arise from the extension of the franchise to this age group.

REGULATIONS RELATING TO	Power to add certain categories to the definition of secure accommodation
BILL PART	III
SECTION	18
METHOD OF BRINGING INTO FORCE	Negative
DESCRIPTION OF THE REGULATIONS	
Section 18 of the Bill empowers Welsh Ministers to make regulations to add certain categories to the definition of secure accommodation and so enabling young people residing in those categories of accommodation and in specified circumstances to make a declaration of local connection.	
WHAT CAN THE REGULATIONS ACHIEVE?	
Section 18 amends section 7B of the 1983 Act in relation to the registration of local government electors in Wales. Section 7B sets out the circumstances under which a person is permitted to make a declaration of local connection. The effect of a declaration of a local connection is that the declarant can be registered by reference to an address which may not be the one at which they normally reside.	
Amendments made by section 18(2) of the Bill allow persons under the age of 18 to make a declaration of local connection where they are being looked after by a local authority or are residing in secure accommodation.	
The regulation making power in section 18 enables Welsh Ministers to add certain categories and specified circumstances to the definition of secure accommodation. This will enable young people residing in secure accommodation for welfare reasons to make a declaration of local connection.	
WHY THE REGULATIONS ARE REQUIRED	

The regulation making power will provide flexibility and enable changes to be made to the specified types of secure accommodation and specified circumstances which are relevant under this section.

Such regulations would need to be developed in liaison with the electoral and justice communities and may need regular amendment. The Electoral Commission has previously advised that secondary legislation is preferable under these circumstances.

POLICY INTENTION OF THE REGULATIONS

Young people from Wales, who are looked after by a Welsh local authority – including those who are placed in secure accommodation - should be able to make a declaration of local connection. Young people from Wales - who are not looked after but who are placed in secure accommodation for welfare reasons - should also have access to a declaration of local connections. The regulation will provide flexibility to ensure that all those young people who entitled to vote should have the mechanism to do so. The nature of electoral law is that it is technical and complex. It is therefore considered prudent to take powers to respond to any unexpected difficulties encountered in practice and a result of wider changes made to the franchise.

The regulation making power would provide a safeguard to make further provision in light of any practical experiences that arise from the extension of the franchise to this category of voter.

REGULATIONS RELATING TO	Power to make regulations about the disclosure of a young person’s information in connection with election to the Senedd.
BILL PART	III
SECTION	25
METHOD OF BRINGING INTO FORCE	Affirmative
DESCRIPTION OF THE REGULATIONS	
Section 16 of the Bill empowers Welsh Ministers to make regulations to make provision for or about the disclosure of a young person’s information in connection with elections to the Senedd. Section 25(2) sets out a non- exhaustive list of the kind of provision that may be made in the regulations regarding the disclosure of a young person’s information. “Young person’s information” is defined in section 23(2) as any entry in the register of local government electors, or an absent voters record or list relating to persons under the age of 16.	

WHAT CAN THE REGULATIONS ACHIEVE?

There are strict limitations on the processing of information about young people (see section 23) and it may only be disclosed in accordance with section 24 or under regulations made under section 25.

The regulation making power in section 25 enables Welsh Ministers to set out the arrangements for how the information of electors under the age of 16 may be supplied and protected.

In particular, this includes provision about:

- the persons to whom the information may be supplied;
- the purposes for which the supply of the information may be made;
- the restrictions that apply to the recipients of the information, and
- the restrictions that apply to the persons who prepare the full register.

Section 25 allows regulations to create summary criminal offences about the disclosure of a young person's information in connection with elections to the Senedd. The Bill sets out that Welsh Ministers must consult such persons considered appropriate before making the regulations. This will ensure that the regulations are only introduced where the Welsh Ministers are satisfied that it is necessary and appropriate in protecting young people's information.

WHY THE REGULATIONS ARE REQUIRED

The regulation making power will provide flexibility and enable changes to be made to the list of supply enactments in section 25 of the bill or to make separate provision. These may need regular amendment and the Electoral Commission has previously advised that secondary legislation is preferable. It was decided not to set out the regulations on the face of the Bill due to the need to liaise with the electoral community on the development of the detail of the regulations.

The regulation making power includes the power to create a criminal offences to ensure that the offence and sanction at section 25 can be applied to other provision created using the power. The offence relates to the impermissible disclosure of information that the Bill required to be protected.

POLICY INTENTION OF THE REGULATIONS

The handling of information of young people under the age of 16 is sensitive and provision is required placing strict limitations on the processing of information relating to young people by an Electoral Registration Officer. Section 24 sets out how young people information should be protected in general.

A range of interests have access to the full local government register under current legislation. These include the Electoral Commission for donation controls, and local authorities in relation to their statutory functions relating to security, law enforcement and crime prevention. A number of these may have a legitimate

interest in having access to information on 14 and 15 year old attainers, as well as those aged 16 and over, particularly since this is intended to be a permanent reduction in the voting age.

However, this requires careful consideration and engagement with relevant stakeholder. The regulatory power at section 16 will accompany the arrangements set out in section 15 which will enable the Welsh Ministers to specify in regulations additional purposes for which information about young people can be disclosed. The regulation making power is intended to be broad to allow consideration of the persons who may receive the information and the allowable purposes for disclosure.

PART V: Miscellaneous

ORDER IN COUNCIL RELATING TO	Power of the Welsh Ministers to make provision about elections
BILL PART	V
SECTION	36
METHOD OF BRINGING INTO FORCE	Affirmative
DESCRIPTION OF THE ORDER	
Section 36 makes it clear that the Welsh Ministers may use their existing powers under section 13 of the Government of Wales Act 2006 to make provision giving effect to changes to electoral law that are recommended by the Law Commission for England and Wales as they relate to devolved elections. These regulations may need to be made as a result of changes to electoral law recommended by the Law Commission for England and Wales.	
WHAT CAN THE ORDER ACHIEVE?	
This power enables Welsh Ministers to give effect to recommendations of the Law Commission in relation to the rationalisation of electoral law concerning devolved elections.	
WHY THE ORDER IS REQUIRED	
The clarification of the existing Order making power will enable Welsh Ministers to rationalise electoral law following any recommendations made by the Law Commission, and will in particular enable Welsh Ministers to make changes to electoral law concerning local government elections as well as Senedd elections.	
POLICY INTENTION OF THE ORDER	

The Law Commission is the statutory independent body created by the Law Commissions Act 1965 to keep the law of England and Wales under review and to recommend reform where it is needed. The aim of the Commission is to ensure that the law is fair, modern, simple and cost effective. The Law Commission will not normally consider matters that are more appropriate for government (UK or Welsh) to consider directly. These include highly controversial or political issues or issues of established government policy.

In December 2014 the Law Commission launched a consultation on proposals for electoral law reform. An interim report was published in February 2016 outlining its proposals for reform. The recommendations set out in the interim report are aimed at simplifying the administrative arrangements relating to elections and standardising those arrangements across the four parts of the UK. The UK Government has not, to date, formally responded to the report. Specific areas covered by the detailed recommendations proposed by the Law Commission include the powers of acting returning officers, the manner of voting, absent voting, counts and various other important issues. The Assembly may wish to consider in due course whether the recommendations on electoral law reform proposed by the Law Commission should be implemented in relation to devolved elections in Wales. The Bill therefore clarifies Welsh Minister's existing regulation making powers under section 13 of the Government of Wales Act 2006 and would enable electoral law as it relates to devolved elections to be rationalised as a result of the Law Commission's interim or future recommendations.



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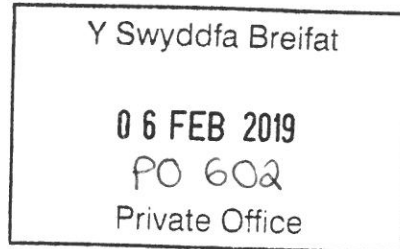
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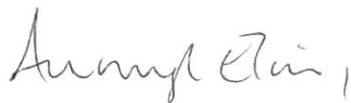
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Ref: 83Sub19



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 **February 2019**



I am writing with regard to the Senedd and Elections (Wales) Bill which you intend to introduce into the Assembly shortly. I note in particular the amendments proposed to section 1(1) of the Government of Wales Act 2006 to change the name of the Assembly to Senedd Cymru. It was of course the Government's clear intention when devolving powers through the Wales Act 2017 that the Assembly should be able to decide for itself what it is to be called and I welcome the approach you have taken to engaging on this matter.

I note your intention to change the term "Assembly" to "Parliament", which is something I support. I am advised the Assembly does not have legislative competence under paragraph 7(2) of Schedule 7B to the Government of Wales Act 2006 to make this change. However, the Assembly plans to use its powers to make consequential or incidental provision set out in paragraph 7(4) of this Schedule.

In this case, I support the change on the basis it can be argued that it is incidental to the Assembly's change of name rather than consequential and would be grateful if you could confirm whether you share this view.

I trust that careful consideration will continue to be given to the use of such powers in future and their use on this occasion does not set a precedent in this regard.

I am copying this letter to the First Minister and to party leaders in the Assembly.

In daiffrwyd,
Alun

Rt Hon Alun Cairns MP
Secretary of State for Wales
Ysgrifennydd Gwladol Cymru



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Your ref: 83Sub19
Our ref: PO602/EJ/TJ

12 February 2019

Dear Secretary of State

Senedd and Elections (Wales) Bill

Thank you for your recent correspondence regarding the Senedd and Elections (Wales) Bill.

I have noted with interest your comments, outlining that:

- you would support changing the term “Assembly” to “Parliament” in Section 1(1) of the Government of Wales Act 2006 (GOWA); and that
- you consider it could be argued that such a change would be incidental to the Assembly’s change of name.

I am very grateful for your positive engagement on this issue. It may be helpful if I clarify two points in your correspondence.

You refer to a proposal to change the name of the Assembly to “Senedd Cymru.” The Senedd and Elections (Wales) Bill, as introduced, would amend the name National Assembly for Wales to “Senedd” not “Senedd Cymru”.

Also, the Bill (as introduced) will not change the term ‘Assembly’ (where it first appears in Section 1(1) of GOWA) to ‘Parliament’. Rather the Bill will provide that

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the Assembly for Wales (as GOWA describes the institution) is to be known as the Senedd, and that the Senedd may also be known as the Welsh Parliament. The rationale for this drafting approach will be set out in the Explanatory Memorandum to the Bill.

I anticipate that the question of how Section 1(1) of GOWA should be amended will be considered during scrutiny of the general principles of this Bill. Your contribution will help inform that debate.

I have noted that you have copied your correspondence to the First Minister and party leaders. I share likewise my response with them and also the Chair of the Constitutional and Legislative Affairs Committee as the Bill will be referred to that Committee.

Yours sincerely

Elin Jones AM
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