



Mick Antoniw AM  
Chair  
Constitutional and Legislative Affairs Committee  
National Assembly for Wales  
Cardiff Bay  
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Your ref:  
Our ref: EJ/TJ

13 June 2019

Dear Mick

### **Financing and accountability of the Electoral Commission**

When I gave evidence to your committee on 7 May, I undertook to share with you more detailed information about the proposed policy direction relating to the financing and accountability of the Electoral Commission in relation to devolved elections in Wales.

I would welcome your Committee's views on this matter, and look forward to reading - and responding to - your stage 1 report in the coming weeks.

To assist your consideration, the following is an update on the work undertaken by my officials in discussion with the Welsh Government, Electoral Commission and Wales Audit Office.

The Assembly Commission considered this matter at its meeting on 10 June. Whilst there was broad agreement on a proposed approach, the Commission also recognised the need for discussions with the Counsel General to continue, and for account to be taken of the views of your Committee and the Finance Committee.

The existing arrangements for the financing and accountability for the Electoral Commission and the role of the Speaker's Committee are set out in the Political Parties, Elections and Referendums Act 2000 (PPERA). I anticipate that the

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Counsel General will table amendments to the Senedd and Elections (Wales) Bill which will, in turn, amend the provisions in PPERA. My expectation is that the development of these amendments by the Counsel General will be informed by the view of the Commission. Further detail as to how the new arrangements for the financing and accountability of the Electoral Commission will operate in practice are more suited to Standing Orders, and will therefore need to be considered by Business Committee in due course.

Accountability arrangements

*Preferred option: a 'Llywydd's Committee'*

The Electoral Commission has emphasised its preference is to be accountable to a committee chaired by a politically impartial 'non-party representative' (i.e. the Llywydd or Dirprwy Lywydd).

I share this view, and anticipate that this new 'Llywydd's Committee' would meet two to three times per year, and have a broad membership including representation for smaller political groups within the Assembly.

Following our discussion during the evidence session on 7 May, my view is that the requirement for such a committee, and at least the principles on which its composition would be determined, should be set out in primary legislation by using the Senedd and Elections (Wales) Bill to amend PPERA. For example, it would be appropriate for legislation to enshrine the principle that the membership should reflect, as far as possible, the balance of the political groups to which Members belong.

Further membership requirements, for example, whether the Llywydd's Committee should include some ex-officio members, such as relevant committee chairs, would be better left for the Assembly to determine in Standing Orders.

The establishment of a 'Llywydd's Committee' would not, of course, prevent other Assembly committees from scrutinising the Electoral Commission on any particular issues within their remits.

*Alternative option: the Assembly Commission*

An alternative to establishing a Llywydd's Committee would be for the Electoral Commission to be accountable to the Assembly Commission. However, it is not



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currently within the role of the Assembly Commission to hold external organisations to account. For that reason, the establishment of a separate committee to undertake this function is my preferred option.

#### Financing arrangements

Currently, the work of the Electoral Commission in relation to devolved elections in Wales is paid for by the UK Treasury via the Speaker's Committee. To enable the Assembly to be responsible for funding the Electoral Commission's work in Wales, I anticipate that provision for high-level budget and audit arrangements would be specified in primary legislation (again through amendments to PPERA).

#### *Funding through the Assembly Commission's budget*

One option would be for the Electoral Commission to be funded as part of the Assembly Commission's budget (which is scrutinised by the Finance Committee and agreed by the Assembly by the usual process). I understand that this approach would be consistent with that expected to be taken on this matter in Scotland.

However, if a separate Llywydd's Committee were to be established, then part of its role would be to scrutinise the Electoral Commission's budget. If the Electoral Commission's budget were to be included in the Assembly Commission's budget, this could give rise to an overlap with the Finance Committee's role in scrutinising the Assembly Commission's budget, leading to complex budgeting, reporting and audit arrangements and potential lack of clarity over the body which is primarily responsible for scrutinising the Electoral Commission.

#### *Preferred option: funding from the Welsh Consolidated Fund*

Consequently, my preferred option is for the Electoral Commission to be funded directly from the Welsh Consolidated Fund in a similar manner to the Wales Audit Office. Section 124 of the Government of Wales Act 2006 allows for payments to be made out of the Welsh Consolidated Fund to bodies other than those set out in subsection 124(3) if they are for the purposes of "meeting expenditure payable pursuant to a relevant enactment". A relevant enactment is an enactment which provides for payment out of the Welsh Consolidated Fund.



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Under this option, the Electoral Commission's budget and audit report would be scrutinised by the Llywydd's Committee, and there would be no overlap with the remit of the Finance Committee in respect of the Assembly Commission's budget.

My officials are exploring the legal and constitutional implications of this option further with the Welsh Government, Electoral Commission and Wales Audit Office.

#### Interinstitutional arrangements

Given the complexities of retaining a single UK body, funded separately by the Assembly, Scottish Parliament and Speaker's Committee, it would be important for the legislative provisions to be supplemented by a shared understanding between the three legislatures and the Electoral Commission on respective responsibilities for funding arrangements and apportionment of the Electoral Commission's costs relating to devolved matters.

I am aware that the Counsel General has also committed to write to you setting out the Welsh Government's position in relation to these issues. I am confident that we hold broadly similar views, and I will continue to work with him to ensure that the amendments brought forward result in clear and effective legislative proposals that will attract the support of a super-majority of Members.

I have copied this letter to the Chair of the Finance Committee and to the Counsel General.

Yours sincerely

Elin Jones AM  
Llywydd