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Llywodraeth Cymru  
Welsh Government

Eich cyf/Your ref  
Ein cyf/Our ref

Mick Antoniw AM  
Chair, Constitutional and Legislative Affairs Committee  
National Assembly for Wales  
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25 June 2019

Dear Mick,

During my evidence session with the Committee on 29 April, I undertook to provide further information about our proposals in respect of the Electoral Commission.

As the Committee will know, the Government of Wales Act 2006 (as amended by the Wales Act 2017) gives the Assembly legislative competence in relation to devolved elections. This includes competence to legislate on certain matters relating to the Electoral Commission's activities in relation to Assembly and local government elections in Wales, such as:

- the financing of the Electoral Commission;
- the preparation, laying and publication by the Electoral Commission of reports about the performance of its functions; and
- provision by the Electoral Commission of copies of regulations it has made, altered or revoked.

In the light of these changes, the Welsh Government believes that oversight and reporting of the work of the Electoral Commission in relation to devolved elections should also be the responsibility of the Senedd, drawing on the arrangements set out in the Political Parties, Elections and Referendums Act 2000 (PPERA).

Section 27 of the Senedd and Elections (Wales) Bill as introduced sets out provisions which place a duty on the Senedd to consider the financial and oversight arrangements for the work of the Electoral Commission in relation to devolved Welsh elections and devolved

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

referendums with a view to making recommendations for reform of those arrangements. A further duty is placed on the Electoral Commission to respond to any recommendations relevant to it by laying a report before the Senedd. A power is also conferred on the Senedd to make provision in Standing Orders regarding the exercise of the functions conferred upon it by section 27 of the Bill.

The Government intends to seek to amend section 27 to make clearer the financial and accountability arrangements between the Senedd and the Electoral Commission. In essence, our objective is to ensure that the Senedd should be placed under a duty to fund the Electoral Commission in respect of devolved elections in Wales, and that the Senedd should have oversight of the work of the Electoral Commission in so far as it relates to devolved Welsh elections.

We are continuing to refine our approach to this matter in discussions with the Electoral Commission and the Assembly Commission whilst also liaising with the Scottish Government. Our aims are to ensure:

- the responsibilities being undertaken are clear but that there is some discretion in how they are exercised; and
- there is as much consistency as possible between arrangements in Wales and those in Scotland, to assist the Electoral Commission with operational planning and delivery.

As this is a complex area of the law, and detailed discussions are ongoing, I am not in a position to confirm the final form of the amendments at present. However, I am confident that the work will be completed in time to table amendments at Stage 2.

Subject to the caveats I have outlined, I thought it would be helpful to outline my current thinking about the structure of the amendments. I envisage, subject to further consideration and legal advice, that the amendments will seek to:

- create a Committee of the Senedd (the Senedd Committee) chaired by the Llywydd with responsibility for the oversight of the work of the Electoral Commission in relation to devolved Welsh elections. No further detail on the structure of the Senedd Committee will be included in the Bill as this is a matter for the Senedd through its Business Committee decision-making and/or its Standing Orders. This approach also retains operational flexibility for the Senedd;
- clarifying the EC's duties in respect of devolved Welsh elections including:
  - laying before the Senedd the Welsh elements of the Electoral Commission's rolling 5 year plan and budget detailing how the Electoral Commission intends to exercise its functions in relation to devolved Welsh elections;
  - laying before the Senedd an Annual Report;
  - laying before the Senedd reports relating to Senedd elections and local government elections in Wales;
  - the preparation, revision and submission of Codes of Practice on candidate expenditure to the Welsh Ministers who, will in turn have to lay them before the Senedd;

- the preparation, revision and submission of Codes of Practice on the attendance of observers at devolved Welsh elections; and
- consultation with the Senedd on performance standards for ROs and EROs and reporting on those performance standards in relation to devolved Welsh elections.

We are also considering whether all of the Secretary of State's functions in relation to the Electoral Commission's role in devolved Welsh elections have been appropriately conferred on Welsh Ministers.

It is not my intention that the amendments will make provision about the mechanism for the financing of the Electoral Commission in the text of the Bill, because this can and should be dealt with via administrative arrangements – though amendments may prove to be necessary once further consideration has been given to these matters. The administrative arrangements should in my view, but subject to further work and legal advice, include:

- a funding formula, set out in a high level inter-institutional agreement, agreed between the Senedd, the Scottish Parliament, the Speaker's Committee and the Electoral Commission; and
- a commitment that whilst the Speaker's Committee retains overall control of the total budget and work plan of the Electoral Commission it would not exercise any decision making in relation to Wales or Scotland and would, in accordance with their new statutory duty, give regard to the recommendations of the Senedd Committee in giving final approval to the overall 5 year plan and budget.

Discussions are continuing – including between the Welsh Government and the UK Treasury – about the mechanism by which the funding would reach the Electoral Commission. There are two main options under consideration, both of which assume that the funding transfers from the UK Consolidated Fund to the Welsh Consolidated Fund:

- The Electoral Commission being paid directly from the Welsh Consolidated Fund.
- Electoral Commission funding being taken from the Welsh Consolidated Fund and ring-fenced as part of the Senedd Commission funding.

I hope this information is of use to the Committee, and I will keep the Committee updated on progress. Given the financial aspects of this work, I am copying this letter to the Chair of the Finance Committee. I am also copying it to the Llywydd, to the Minister for Housing and Local Government and to the Head of the Electoral Commission in Wales.



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