



Ein cyf/Our ref: MA/L/CG/0626/19

Llyr Gruffydd AM  
Chair, Finance Committee  
National Assembly for Wales  
[Senedd.Finance@assembly.wales](mailto:Senedd.Finance@assembly.wales)

20 September 2019

Dear Llyr,

I am writing ahead of my appearance before your Committee on 25 September to set out my intentions with regard to the Electoral Commission provisions in the Senedd and Elections (Wales) Bill, and other related matters.

### **Electoral Commission provisions**

My overall policy objective in respect of the Electoral Commission (“the EC”) is that now elections to the Assembly and to local government in Wales have been devolved, the EC’s work in relation to those devolved Welsh elections should be funded through devolved mechanisms and it should be accountable to the Assembly.

The EC needs to be funded for devolved Welsh elections from out of the Welsh Consolidated Fund (“the WCF”). However, the core financial provisions in the Government of Wales Act 2006 (“GoWA”) (particularly sections 124 and 125) are predicated on an assumption that a body which is directly funded out of the WCF should not also be directly funded out of the UK Consolidated Fund (“the UKCF”). So bodies which are directly funded from the WCF are accountable only to the Assembly, and bodies directly funded from the UK Consolidated Fund are accountable to the UK Parliament.

The expenditure of a number of UK bodies will ultimately be funded from budgets derived from both the UK Parliament and the devolved legislatures. However, in these cases the additional funding is provided by way of grant support rather than direct from another consolidated fund. These arrangements maintain the accountability for the bodies overall performance to the legislature providing the majority of its funding.

However, establishing a formal funding and accountability relationship between the EC and the Assembly in respect of devolved Welsh elections requires the EC to receive monies

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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.

from at least two legislatures, each with their own processes for scrutiny. As such, it is a novel approach for which there is no obvious precedent.

We have explored four potential ways to achieve a new funding and accountability model for the EC.

*1. Adding the EC to list of relevant persons at section 124(3) of GoWA*

Section 124(3) of GoWA lists the “relevant persons” to whom monies can be paid from the WCF. This list does not include the EC. If it were added, the EC would continue to receive monies from Parliament for all its non-devolved activities. In effect therefore the EC would be a relevant person only for part of its funding and functions, which would be a very novel approach. The general approach has been for the addition of “relevant persons” to apply to newly created bodies who only operate in Wales. In effect GoWA would need to be amended in such a way that it limited the status of the EC as a “relevant person” to the extent of its work on devolved Welsh elections. In addition, the Assembly does not have the legislative competence to amend the list in section 124(3) of GoWA. Overall, this option is neither desirable, nor deliverable in the current timescales.

*2. Making provision in the Political Parties, Elections and Referendums Act 2000 (“PPERA”) allowing funding for the EC to be a direct charge on the WCF under section 124(1)(a) of GoWA*

Section 124(1)(a) of GoWA allows a payment to be made from the WCF if “it has been charged on that Fund by any enactment”. However, this is intended to be used only where the legislation clearly and specifically sets out what is to be funded, as the payment is not subject to an Assembly Budget resolution as the costs are deemed to be such that it would not be appropriate for the Assembly to scrutinise and authorise. It has not previously been used for funding a body’s activities more broadly, and that is not its purpose. Overall, this option is inappropriate from a constitutional and a financial perspective.

*3. Making provision in PERA to make it a relevant enactment for the purposes of section 124(2)(b) of GoWA, to enable payment to be made to the EC out of the WCF*

This would require procedures to be put in place for the EC to have its own ambit in the Assembly’s annual budget motion, possibly prescribed in legislation. This option would involve inserting provision into PERA enabling payment to be made to the EC out of the WCF. This would make PERA a ‘relevant enactment’ for the purposes of section 124(2)(b) of GoWA. However, this would be a novel approach for which there is no precedent as far as we are aware. As a minimum we would need to introduce similar accounting and audit requirements around WCF funding as the EC have for UKCF funds.

*4. The EC is paid via a body already listed as a relevant person in section 124(3) of GoWA*

Given the difficulties associated with the other options above, we have decided to pursue this approach. Given its role in relation to elections to the legislature, it would not be constitutionally appropriate for the Welsh Ministers (the executive) to do so; the only other appropriate body already listed in section 124(3) of GoWA would be the Assembly Commission.

This approach is consistent with what is being proposed for Scotland, where responsibility for the funding of the EC in respect of devolved Scottish elections will be given to the Scottish Parliamentary Corporate Body (“the SPCB”), which is the Scottish equivalent to the Assembly Commission. (We do acknowledge, though, that unlike the Assembly Commission, the SPCB is an established route for funding arms-length bodies.)

In addition, under this option the existing budget, scrutiny and audit framework which applies to the Assembly Commission (as one of the four relevant persons whose expenditure can be met from the WCF) would apply to the funding of the EC. This provision will still allow the Assembly to make provision as to the detail of the scrutiny arrangements and budget process within its own Standing Orders.

In respect of the funding, PPERA currently provides for the EC to be funded out of monies provided by Parliament. However, there are exceptions which allow the Welsh Ministers and the Assembly Commission to fund the EC for specific activities. To support the delivery of option 4, the Senedd Bill amends PPERA to create a further exception which would make the Assembly Commission responsible for funding the EC's work in relation to devolved Welsh elections as well as retaining its ability to fund the EC for specific matters as it does now e.g. promoting Assembly elections.

Under the provisions as drafted, the process would operate as follows:

- PPERA is amended to create an exception to the general provision for the EC to be funded out of monies provided by Parliament, so that the Assembly Commission would be responsible for funding the EC in respect of its work in relation to devolved Welsh elections.
- The Assembly is required in its Standing Orders to designate a relevant body (which would be either a committee chaired by the Presiding Officer or Deputy Presiding Officer, or the Assembly Commission) to have responsibility for oversight of the financing and work plan of the EC in connection with its work in relation to devolved Welsh elections.
- The AC will retain its ability to fund the EC for specific matters as it does now, for example promoting the Assembly elections. The relevant body would scrutinise the budget estimate and plan of the EC, take evidence from the EC and others if appropriate (with the procedures being set out in the Assembly's Standing Orders).
- The results of the scrutiny of the relevant body would determine the budget for the EC in respect of its work on devolved Welsh elections, which becomes part of the Assembly Commission's budget through the annual budget process.
- Once budgets are approved, the Assembly Commission pays the EC for its work in relation to devolved Welsh elections, and the EC undertakes the work set out in its plan.
- At the end of each financial year the EC produces a consolidated set of accounts for the entirety of its UK operations which are then audited by the NAO. The WAO has indicated that it is content for the NAO to continue undertake this work, there is specific provision in Schedule 1 of PPERA setting out the NAO role. We propose that an inter-institutional agreement will be needed which will include (along with other matters) provisions that address how the audit arrangements will work in practice.
- The EC then submits a report, based on its consolidated accounts, to the Assembly.
- The Assembly Commission's own accounts are then produced, and are audited by WAO as per existing arrangements.

We recognise that the approach we have decided to pursue presents a range of challenges in terms of the Assembly Commission taking on a new function, and clarity about how these arrangements fit with the budget process and the role of Finance Committee. However, we consider that these challenges can be addressed through changes to Standing Orders, and that the risks and disadvantages of the other options outweigh the challenges of our approach.

Discussions are ongoing – including between the Welsh Government and the UK Treasury – about the transfer of funding which we would expect to be made into the WCF in order to

cover the cost of funding the EC for its work in relation to devolved Welsh elections. The EC has submitted estimates to the Assembly Commission suggesting that the annual costs of their administration in relation to Welsh elections would vary between £500,000 and £1.6 million over the 2018/19 – 2022/23 period.

As with all functions that are devolved, we would expect a transfer from the UK Treasury to cover these costs. The precise mechanism for determining the value of the transfer has yet to be agreed. Discussions with the UK Treasury are ongoing. If the total costs prove to be higher than the value of the transfer, the shortfall would need to be met from existing Welsh resources.

Matters relating to the EC's budget in respect of devolved Welsh elections will, together with other operational matters, be set out in an inter-institutional agreement, referred to above. The parties to the agreement are expected to include the UK Parliament, the Assembly, the Scottish Parliament and the EC.

I enclose the latest draft of our amendments. Please note that for illustrative purposes the draft amendments use the name for the Assembly previously indicated as the Government's preference. Some of the amendments make provision requiring Minister of the Crown consent, which I will seek as soon as possible.

### **Financial resolution**

On a related matter, I am mindful that Stage 2 proceedings on the Senedd Bill are due to take place on 9 October. With that in mind, I intend to table the financial resolution on 24 September, with a view to holding a debate on it on 1 October.

### **Responses to Committees' recommendations**

Finally, I thought it would be helpful to confirm in writing the Welsh Government's response to your Committee's recommendations, and to those of the Constitutional and Legislative Affairs (CLA) Committee, in relation to the Senedd Bill, which I set out during the Plenary debate on the Bill's general principles on 10 July.

On your Committee's recommendations:

- We are working closely with the Llywydd to address recommendations 1 and 2 on signage and local authority costs.
- Recommendation 3 and 4 on electoral registration are matters for the Welsh Government. We have consulted on this and will include provisions in the Local Government Bill. We do not intend to pursue further changes at the same time as those to the franchise and canvass reform as this would in our view create significant risks.
- We do not accept recommendations 5 and 6, because these are matters for local authorities.
- Neither do we accept recommendations 7 and 8. We do not consider it appropriate to address either the publication of Assembly elections expenditure or returning officer fees in primary legislation. But we intend to address both issues by other means.
- The costs requested in recommendation 11 will be included in the regulatory impact assessment for the Local Government Bill.
- We accept recommendation 12. We intend to include a wide membership on the democratic renewal steering group and sub groups.

- We also accept recommendation 13. As I said I would in the Plenary debate, I am writing today to provide more information on my proposals, and I have delayed moving the financial resolution until we have had the opportunity to discuss them.

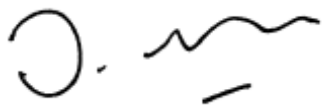
On the CLA Committee recommendations:

- On recommendation 4, I can confirm that the Welsh Government will indeed explain in our explanatory memorandum for the Local Government Bill how the proposed amendments to how existing electoral legislation would look in context.
- On recommendation 6, it remains my view that it would be within the Assembly's legislative competence to amend the opening words of section 1 of GoWA. But in any case the timescales involved to ensure that these important reforms are delivered would make the bringing forward of an Order in Council extremely challenging.
- On recommendation 7, these are matters for the Welsh Government. We are working closely with electoral administrators and the EC through the Wales Electoral Co-ordination Board and other forums. We will publish further financial information when the secondary legislation which implements canvass reform is laid before the Assembly.
- On recommendation 10, the Welsh Government has previously consulted on improving the registration system for electors. We will include provisions in the forthcoming Local Government Bill. But as I stated above, in our view further changes to registration processes should not be taken forward at the same time as changes to the electoral franchise and canvass reform. To do so would create a significant risk to the integrity of devolved Welsh elections.
- On recommendations 11, 12 and 13, the Welsh Government is creating the stakeholder group and will do as the Committee recommends, with the caveat that the work will be wider in scope than recommendation 12 suggests. We are committed to engaging as wide a range of stakeholders as possible in our work on raising awareness about the franchise changes contained in this bill and in the forthcoming Local Government Bill and we will publish the terms of reference and work plan for our stakeholder engagement group in the near future.
- On recommendation 14, the Minister for Education will issue a written statement to outline the delivery of citizenship and political education across Wales from summer 2020.
- On recommendation 15, these are also matters for the Welsh Government and will be considered as part of the budget process for 2020-21. As the awareness-raising campaign will cover the extension of the franchise for both assembly and local government elections I am afraid it is simply not possible to single out the costs incurred for each election in a meaningful way, but we will consider whether there is any other information which we might be able to provide in order to give a fairer picture.
- On recommendations 16 and 17, the Local Government Bill is not a suitable vehicle for provisions relating to the accountability of the EC. This is a matter for the Senedd, not for local government. The Senedd Bill is the right vehicle for these provisions. I have set out my proposals above.
- On recommendation 18, we are preparing amendments on this for consideration at Stage 2, alongside, as previously indicated, amendments to extend the franchise to foreign nationals as well as those on the EC described above and set out in the enclosure to this letter.

I hope that the above information is helpful and I look forward to discussing it further with the Committee next week.

I am copying this letter to the Llywydd, to the Chair of the Constitutional and Legislative Affairs Committee and to the Head of the Electoral Commission in Wales.

Yours Sincerely,

A handwritten signature in black ink, consisting of a large 'J' followed by a series of wavy lines and a short horizontal stroke at the end.

**Jeremy Miles AM**

Y Cwnsler Cyffredinol a Gweinidog Brexit  
Counsel General and Brexit Minister