



**Elin Jones AC, Llywydd**

Cynulliad Cenedlaethol Cymru

**Elin Jones AM, Presiding Officer**

National Assembly for Wales

**CAER(5)-3-20 Paper to note 1**

Dawn Bowden AM  
Chair  
Committee on Assembly Electoral Reform  
National Assembly for Wales  
CF99 1NA

Our ref: PO784/EJ/TJ

17 January 2020

Dear Dawn,

Thank you for your correspondence of 10 December 2019, in which you raised a number of questions on capacity and diversity following my attendance of your committee on 2 December 2019.

As you asked for responses to these questions to different timescales, I am responding in this correspondence solely to your questions on diversity.

In your correspondence, you indicated that your Committee “would welcome further information about how measures to encourage diversity—such as anonymised candidate diversity data requirements or legislative candidate quotas—might be framed so as to fall within the Assembly’s competence, the reservations which might be relevant, and the arguments which could be advanced for such measures being within competence.”

While there are respectable arguments that seeking to achieve a gender-balanced Assembly is not reserved, the reservation of ‘Equal opportunities’ may be considered to inadvertently constrain the Assembly’s capacity to legislate in relation to electoral matters. However it is not possible to assess competence without specific legislative proposals to consider.

The Committee may be aware that I wrote to the then Secretary of State on 27 November 2018, to ascertain his views on the mechanism by which the Assembly’s legislative competence in this respect might be clarified. This correspondence also outlines some of the potential arguments on whether or not seeking to achieve a gender-balanced Assembly is a reserved matter.

I have attached a copy of my correspondence, and the Secretary of State’s response of 19 December 2018, for the Committee’s consideration.

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Beyond these considerations, I am conscious that under Standing Order 26.4 I am responsible for giving an opinion on whether specific legislative proposals are within legislative competence. I hope you will therefore appreciate why it may not be appropriate for me to give an opinion on how theoretical proposals might hypothetically be framed to fall within competence. Instead, I would recommend that the Committee invites its secretariat to provide it with an analysis of the potential legal arguments in this regard.

In your correspondence, you also indicated that you would welcome my views on the extent to which the current devolution framework enables the collection of Assembly election candidate data, and any actions that the Assembly Commission- or others- could take in this respect without need for further legislation.

In the absence of legislation, voluntary collection and publication of candidate diversity data is possible in theory. However, there must be a clear, lawful basis upon which to process and publish personal data, and the collection and publication of candidate data would necessarily be predicated upon voluntary consent to such.

Members will also be aware that the Expert Panel noted that one of the challenges inherent in supporting diversity is the difficulty in identifying and categorising those who embody different protected characteristics. The Expert Panel considered that voluntary collection and publication of candidate diversity data was insufficient for this purpose.

I look forward to also responding to your questions on capacity.

Yours sincerely,

Elin Jones AM  
Llywydd

Croesewir gohebiaeth yn Gymraeg neu Saesneg / We welcome correspondence in Welsh or English



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The Rt Hon Alun Cairns MP  
Secretary of State for Wales

27 November 2018

Dear Alun

### **Equal opportunities and the Assembly's electoral arrangements**

With effect from 1 April 2018, the Wales Act 2017 devolved power to the Assembly over its own elections. You will be aware that I am leading proposals to reform the Assembly and its electoral arrangements, which includes consideration of diversity of representation.

I have received advice that the reservation of 'Equal opportunities' may inadvertently constrain the Assembly's capacity to legislate in relation to electoral matters. I would therefore welcome your views on the mechanism by which the Assembly's legislative competence in this respect might be clarified, and the timescales for such clarification.

The Expert Panel on Assembly Electoral Reform recommended in December 2017 that the Assembly should have between 80 and 90 Members. Increasing the size of the legislature requires reform of the way in which Members are elected. The Panel recommended that this reform should include measures to support and encourage the election of a legislature which more closely reflects the diversity of the people and communities it serves. Such measures might include, for example, the integration of candidate gender quotas into the electoral system or the introduction of legislative requirements for political parties to publish anonymised data on the diversity of their candidates.

Should the Assembly Commission decide to legislate in relation to the above, it will need to explore how the relevant recommendations might be taken forward.

Paragraph 187 of Schedule 7A of the Government of Wales Act 2006 reserves "Equal opportunities", although the reservation does include a number of

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exceptions. The definition of ‘equal opportunities’ in paragraph 187 is: “the prevention, elimination or regulation of discrimination”. The purpose of any legislation introduced by the Assembly Commission to implement the Expert Panel’s recommendations would be to achieve greater diversity of representation by improving the gender balance among electoral candidates. This would not engage the functions specified in the definition of ‘equal opportunities’ in paragraph 187.

It is clear, therefore, that having regard to the ‘purpose and effect’ test, a respectable argument can be advanced that seeking to achieve a gender-balanced Assembly is not reserved. However, there is currently no explicit exception for Assembly elections. Clarifying the equal opportunities reservation by means of a Section 109 order would place this matter beyond doubt, and would give full expression to the devolution of legislative competence over the Assembly’s electoral arrangements. Such clarification would ensure that the Assembly itself is able to determine if and how it wishes to respond to the Expert Panel’s recommendations.

I welcome the way in which your officials have been willing to engage with Assembly Commission officials in initial discussion of these matters. I look forward to hearing your views, including the timescales within which any Section 109 Order might be brought forward in order to inform cross-party discussions on electoral reform.

Yours sincerely

Elin Jones

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Croesewir gohebiaeth yn Gymraeg neu Saesneg.  
We welcome correspondence in Welsh or English.

cc The Rt Hon Carwyn Jones AM, First Minister



UK Government  
Llywodraeth y DU

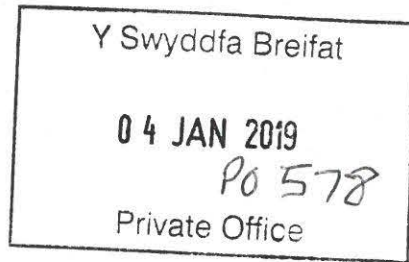
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Rt Hon Alun Cairns MP  
Secretary of State for  
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Ref: 610SUB 18

19<sup>Feb</sup> December 2018

Thank you for your letter of 27 November regarding the possible implications of the 'equal opportunities' reservation for measures to increase diversity in the Assembly.

As you note, there may be scope to argue that the proposals outlined in your letter do not engage the reservation at paragraph 187 of Schedule 7A of the Government of Wales Act 2006 for 'equal opportunities'. I am concerned therefore that inserting an exception to the reservation at this stage may be unnecessary and could, rather than clarifying the reservation, cast doubt on its intended scope. I therefore recommend that our officials continue to work together to explore this matter in detail.

I am copying this letter to the First Minister.

**Rt Hon Alun Cairns MP**  
**Secretary of State for Wales**