

Rebecca Evans AC/AM
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref

Dawn Bowden AM
Chair, Committee on Assembly Electoral Reform,
National Assembly for Wales.

10 February 2020

Dear Dawn,

Committee on Assembly Electoral Reform: inquiry into the capacity of the Assembly

Thank you for your letter inviting the Welsh Government to submit written evidence to inform your Committee's work on the capacity of the Assembly. You asked four specific questions, and my responses are set out below. You will see that I have brigaded the questions into two discrete areas of inquiry.

1. "How any recent or anticipated changes to the Assembly's powers, or the broader constitutional context, might be reflected in the structure or responsibilities of the Welsh Government".

"Any implications an increase in the number of Assembly Members might have for the Welsh Government, including whether the Welsh Government would seek any change to the current limit on the number of Welsh Ministers specified by the Government of Wales Act 2006".

The Committee is right to set its inquiry in the context of a rapidly-evolving constitutional context, including a substantial enhancement of the competences and responsibilities of both the Assembly and of Welsh Ministers. These developments have accelerated and been intensified by the governmental implications of Brexit, a key outcome of which will be a substantial expansion of ministerial responsibilities, particularly in the fields of environment and rural affairs and economic affairs.

It is important to recognise that these additional responsibilities are not limited to the discharge of new statutory functions, important as those are. They also bring with them a substantially-enhanced role in inter-governmental relations. Welsh Government Ministers increasingly need to participate in face to face inter-ministerial meetings with opposite numbers in other administrations, to share information and discuss effective coordination of policies and programmes, for example in the areas to be covered by new frameworks.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Correspondence.Rebecca.Evans@gov.wales
Gohebiaeth.Rebecca.Evans@llyw.cymru

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.

Quite apart from Brexit, domestic policy developments may also lead to additional responsibilities being devolved to the Welsh Government in future years. The Thomas Commission on Justice in Wales has recommended a “substantial devolution of justice functions” to the devolved institutions, and has observed that “With legislative devolution, there must be a new Justice Department in the Welsh Government led by a Cabinet Minister”. Separately, the Keith Williams Review of the rail system is expected to report very soon, and this may have more to say about devolving additional powers to Welsh Ministers (as we have argued for).

In this context of continuing change and expansion of responsibilities, the internal structure and organisation of the Welsh Government is kept under constant review. This is a matter both of the number of Ministers (Cabinet Ministers and Deputy Ministers) in the Government, and the scope and scale of individual ministerial responsibilities. As matters stand, the new statutory responsibilities arising from Brexit will simply have to be added, at least in the short term, to the most appropriate existing Ministerial portfolios. Legislative devolution in relation to Justice would, however, if the Thomas Commission recommendation is accepted, require the creation of a new Ministerial portfolio (with consequential changes to civil service deployment within the government).

In this context, the statutory limit on the number of Ministers who may be appointed is highly relevant. Brexit provides a good example of the difficulties that may arise. The Scottish Government was able to appoint an additional Cabinet Minister to be responsible for managing the very extensive new policy and inter-governmental matters arising. In contrast, the Welsh Government, with a full set of Ministers already in place in line with the statutory limit, has been able to manage these additional responsibilities only by asking the Counsel General to assume them, in addition to his other responsibilities as the Government’s Law Officer.

Given the expansion of Welsh Government responsibilities, whether arising from Brexit or from other domestic developments, there is therefore a good case for increasing the possible number of Ministerial appointments¹. At present, 12 such appointments can be made (additional to those of the First Minister and the Counsel General), this number representing 20% of the total membership of the Assembly. If there were to be an increase in the size of the Assembly, it is not unrealistic to assume an equivalent proportionate increase in the maximum number of allowable ministerial appointments (and this is of course something that the Assembly itself could legislate for, subject to a super-majority requirement at Stage 4 of a Bill).

2. “Any reforms to the Assembly’s procedures, working practices or support arrangements which could be introduced to maximise the capacity of a 60 Member Assembly to carry out its representative, scrutiny and legislative functions”.

“Whether any reform of the Assembly’s procedures or practices would be required if the size of the Assembly were to be increased”.

The Government’s starting point is that it is for the Assembly itself via the Business Committee to determine its own working procedures and practices, and Ministers will always seek to accommodate themselves to those. That said, the Government does have an obvious interest in securing its business, particularly its legislative proposals, in reasonable time, and would support Assembly procedures facilitating this.

¹ Note however that any increase in number of Ministers would necessarily lead to greater plenary time being allocated to OAQs and so (unless there was a corresponding increase in plenary time) reduce the plenary time available for other Government business to be brought forward. This could be mitigated by relaxing the routine of Ministers answering questions from every four weeks to, say, every five weeks.

In this context, I remind the Committee that

- the time for plenary meetings on Tuesdays and Wednesdays has remained constant, notwithstanding the substantial increase in the Assembly's powers²;
- the existing split of plenary time (60% Government business, 40% other business) was agreed in 1999, long before it became possible for the Government to bring forward draft primary legislation;
- and it is further the case that a substantial proportion of the allocated Government plenary time has to be used for mandatory business, such as Oral Questions and the weekly Business Statement, leaving a relatively small proportion of that time for business to be brought forward at the Government's discretion³.

There is therefore a case for all these matters to be reconsidered (although the Government does not think that reform would necessarily be required if the size of the Assembly were to be increased, as your fourth question suggests). That said, our overall view is that the existing arrangements for use of plenary time do not provide a significant constraint on the Government getting its legislative business through in reasonable time, although this potentially can be at the expense of other government business such as Ministerial oral statements which Members might well wish to hear and discuss.

It must be for Assembly Members to decide if the arrangements for use of the available plenary time for scrutiny of draft legislation and other government business are satisfactory. Many Members appear to accept that stage 3 consideration of a Bill can be unnecessarily laborious, particularly when there is a high degree of consensus. Is there a quicker way of disposing of non-contentious amendments, for example a greater use of voting en bloc, or only pressing lead amendments to a vote, with all consequential amendments deemed agreed/not agreed? Further, is it always necessary that secondary legislation has Assembly procedure? In other parliaments, instruments dealing with largely technical matters sometimes have no procedure required, and this might be worth further consideration here (potentially saving plenary time in the case of affirmative procedure).

Committee procedure, both in respect of draft legislation and more generally, is more of a concern. Looking first at legislation, and to take a current example, Ministers will have been required at Stage 1 to make four appearances at three separate Committees to discuss the Local Government and Elections (Wales) Bill. This is an inordinate demand on Ministers' time (a total of more than seven hours of oral discussion in Committee, before the Bill even gets to plenary for debate on general principles), and (I would argue) not conducive to a holistic approach to scrutiny of the Government's proposals. Committees could consider joint meetings where there is shared interest in an issue, and this might avoid Ministers being scrutinised on the same topics by different Committees, as well as facilitating more efficient scrutiny from an Assembly perspective.

So far as non-legislative business is concerned, I make three points, directed at enabling Committees to maximise their impact:

- In relation to Ministerial evidence sessions, given that the objective is for Ministers to give Committees the best possible answers, is there scope for Committees formally to provide advance notice of the areas they want to focus on? This would enable Ministers' and Members' preparation to focus efficiently on the key issues with a view

² Is there potential for increasing the amount of plenary time occasionally, for example a meeting on a Thursday once a fortnight/month, to deal with Committee or back-bench business (Member debates, legislative proposals, short debates)?

³ The Government currently has approximately four hours a week for its discretionary business, once time for FMQs, OAQs and the Business Statement is allowed for; this is a similar amount of time to that made available for non-government business.

to getting high quality evidence from the session. It would also reduce the need for follow-up questions from Committees which can be wide-ranging and which end up requiring written responses that Committee members do not have an opportunity to respond to.

- Secondly, some Committee recommendations appear to be based on misunderstandings. These can make Government responses appear difficult or unhelpful, although that is clearly not our intention. Is there scope for draft reports to be shared with us in advance, as happens with NAO reports under well-established procedures, so that we have the opportunity to clarify or correct misunderstandings? This should make for better informed recommendations and more positive Government responses.
- Thirdly, the Government is available to provide evidence to Committees during Recess, if that would assist their work.

I hope that these observations are useful for your purposes, and I look forward to reading the Committee's conclusions on these issues in due course.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans". The script is cursive and fluid, with a small dot at the end of the last word.

Rebecca Evans AC/AM

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