

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

13 August 2019

Dear Mick

Senedd and Elections (Wales) Bill

I would like to thank the Committee for your detailed consideration of the general principles of the Senedd and Elections (Wales) Bill and for your comprehensive report. I enclose the Assembly Commission's response to your report and recommendations.

In addition to the detailed response set out in the annex to this letter, I would like to address some of the key points raised in your report.

Responsibility for electoral administration

Recommendations 7 and 10 of your report relate to electoral administration; in particular where responsibility lies in respect of different aspects of electoral administration and registration processes. During the Stage 1 debate on 10 July I explained that electoral administration is a matter for the Welsh Government, not the Commission. I have discussed the Committee's recommendations with the Counsel General, and anticipate he will respond formally to these recommendations in due course.

Minimum voting age: awareness-raising and citizenship education

The Senedd and Elections (Wales) Bill will enfranchise 16 and 17 year-olds in Wales. The Commission wants to ensure that these young people are supported and encouraged to exercise their right to vote. Your report and recommendations rightly highlight the importance of a reduction in the minimum voting age being accompanied by awareness-raising campaigns and citizenship and political education. The Welsh Government is leading on this work and has established a Democratic Renewal Group as a vehicle for



strategic planning and delivery. I have discussed your recommendations in respect of the funding and delivery of this work with the Counsel General; he has agreed to address these matters in his response to your report.

Financing and accountability of the Electoral Commission

I welcome the Committee's agreement that the Electoral Commission should become accountable to the Assembly for its work in respect of devolved Welsh elections. I note your recommendation that section 27 should be removed from the Bill and that detailed provisions should be included in either a stand-alone Bill or the forthcoming Local Government Bill which the Welsh Government is proposing.

I explained during the Stage 1 debate that my preference would have been to include fully formed proposals in the Bill on introduction and accept that as an important principle. However, it was not possible to conclude the policy development work required in respect of this issue before the Bill was introduced. As you will be aware, discussions have been taking place between the Assembly Commission, Electoral Commission and Welsh Government as well as our counterparts in Scotland and the UK Parliament.

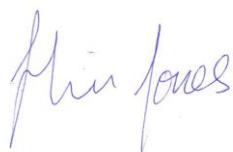
I welcome the commitment made by the Counsel General during the Stage 1 debate to provide further information on the proposed arrangements after the summer recess. I also welcome the indication from the Counsel General that the Welsh Government will not seek the Assembly's agreement to a financial resolution in respect of the Bill until further information on the policy to be given effect by amendments to section 27, and the estimated financial implications, is available for scrutiny.

Thank you again for your scrutiny of this important constitutional legislation and for recommending that the Assembly agrees to its general principles. I look forward to debating these issues further as the Bill progresses through the Assembly.

Yours sincerely

Elin Jones

Llywydd, on behalf of the Assembly Commission



Annex: Response of the Assembly Commission to the Constitutional and Legislative Affairs Committee's Stage 1 recommendations on the Senedd and Elections (Wales) Bill

This annex outlines the Assembly Commission's response to recommendations to the Commission or Llywydd included in the Constitutional and Legislative Affairs Committee's report of 28 June 2019 on the Senedd and Elections (Wales) Bill.

Recommendation 1. *All Bills relating to significant constitutional issues should be published in draft and accordingly, time should be built into the legislative process to enable this to happen.*

Agree in principle

The Commission agrees with this recommendation. However, on this occasion, the Commission's objective was to lower the voting age to 16 in time for the 2021 Assembly elections. This tight timescale did not allow time to consult on all aspects of the Bill in draft form. The alternative would have been to delay its implementation until 2026 which the Commission did not consider acceptable.

The Commission did consult on the draft Bill provisions relating to the name change in 2016-17, and in 2018 consulted on the recommendations of the Expert Panel on Assembly Electoral Reform (but not the specific text of a draft Bill).

The Commission also worked closely with the electoral community, political parties and other stakeholders to take their views into account during the development of the Bill. Individual Assembly Members and the public were kept informed of the Commission's policy decisions relating to the Bill via regular statements and public announcements.

The Commission agrees that time should- wherever possible- be built into the legislative process to enable consultations to take place on draft Bills related significant constitutional issues.

Recommendation 2. *Bills should be introduced into the National Assembly that can be reasonably considered to be fully developed at the point of introduction.*

Agree



The Commission agrees with the principle of legislative transparency that underpins this recommendation.

The Commission understands the Committee's concerns regarding significant amendments relating to the financing and accountability of the Electoral Commission being tabled at Stage 2. See response to recommendations 16 and 17 below.

Recommendation 3. *If the Bill is passed, on receiving Royal Assent the Assembly Commission should publish a revised version of Annex 9 to the Explanatory Memorandum.*

Agree

The Commission agrees with this recommendation.

Recommendation 7. *The Llywydd should issue a written statement:*

- *setting out where responsibilities lie for each aspect of the changes needed to the electoral administration and registration processes;*
- *addressing the funding concerns expressed by the Association of Electoral Administrators and local government relating to implementing electoral registration reforms;*
- *setting out the current position on updates needed to Electoral Management Systems and clarifying the cost of the updates*

This is a matter for the Welsh Government, not the Llywydd.

The Commission agrees that it would be beneficial for a written statement to be made on these matters. The Llywydd has discussed this recommendation with the Counsel General, who agrees that these are matters best addressed by the Welsh Government, given their responsibility for funding and overseeing the implementation of the electoral registration reforms.

The Counsel General will respond to this recommendation.

Subject to any resolution to the contrary under Standing Order 26.27, the Llywydd intends to lay a revised Explanatory Memorandum and Regulatory Impact Assessment after Stage 2 has been completed, which will include updates on costs.



Recommendation 8. *The Llywydd should consider the feasibility of amending the Bill to create a duty on local authorities to promote awareness of how looked-after children can register as local government electors.*

Agree in principle

The Commission agrees that local authorities should promote awareness of how looked-after children can register to vote. It has given consideration to whether the Bill should be amended as recommended by the Committee.

The Social Services and Well-Being (Wales) Act 2014 outlines that the principal duty of local authorities in relation to looked-after children is that “*a local authority looking after any child must safeguard and promote the child’s well-being*”. The definition of ‘well-being’ includes “*securing rights and entitlements*”. Therefore, local authorities have an existing duty to consider *securing rights and entitlements* which would include their right to vote.

Consequently, the Commission considers there to be no need for such a duty to be included in this Bill, and to include such a duty could lead to confusion. The Llywydd has discussed this issue with the Counsel General and he is of the same view.

Section 145 (Ministerial power to issue codes) of that Act gives the Welsh Ministers powers to issue Codes setting out requirements and/or guidance. **A Code** in relation to looked-after children was issued in 2015.

Recommendation 9. *The Llywydd should, during the Stage 1 debate, provide an assurance that advice from the Information Commissioner’s Office has been received and duly considered in the drafting of the Bill.*

Disagree

No specific advice from the Information Commissioner’s Office was received or considered during the drafting of the Bill.

Data protection was a primary concern in the preparation of the Bill. There are specific provisions in Part 3 of the Bill which seek to protect the information of people under the age of 16. Sections 23 to 25 (protection of information and prohibitions on disclosure) place prohibitions on the disclosure of information about young people for purposes other than those set out in the Bill (which include, for example, disclosure of the information to the young person themselves or for the purposes of registering young people or conducting an election).



The provisions contained in the Bill closely mirror those of the Scottish Elections (Reduction of Voting Age) Act 2015. That Act has been in effect since 2015, and the Assembly Commission is not aware that any significant data protection issues have arisen.

In light of the Committee's recommendation, the Llywydd has written to the Information Commissioner to seek additional assurance that the Bill's provisions on data protection are as robust as they need to be. The Assembly Commission will consider whether any advice received in response requires any amendments to be brought forward, and will provide a further update to the Committee.

Recommendation 11. *The Llywydd should publish, at the earliest opportunity, the membership and terms of reference for the stakeholder group, including the key milestones and timeframes for delivery.*

This is a matter for the Welsh Government, not the Llywydd.

The Welsh Government has established a Democratic Renewal Group to support the work associated with the extension of the franchise. It met for the first time on 2 July 2019. The Commission agrees that details of the membership and terms of reference of this stakeholder group should be published at the earliest opportunity. The Llywydd has discussed this recommendation with the Counsel General, who agrees that this is a matter for the Welsh Government.

The Counsel General will respond to this recommendation.

Recommendation 15. *The Llywydd should issue a written statement at the earliest opportunity detailing the funding being provided by each body contributing to awareness-raising and education in readiness for the 2021 Assembly election.*

Agree in principle

The Bill's Regulatory Impact Assessment sets out the costs of awareness-raising to be provided by the Assembly Commission (£150,000), local authorities (£866,200) and the Electoral Commission (£75,900).

In addition, in a letter to the Llywydd dated 30 January 2019 from the Minister for Education and Minister for Housing and Local Government, the costs to the Welsh Government of communication and education campaigns related to extending the franchise were estimated to be between £895,000 and £945,000 over three years,



commencing in 2019/20. In subsequent discussions the Welsh Government have indicated that this sum comprises:

- £600,000 towards the production of resources for schools;
- £215,000 to £265,000 towards a communications campaign on registration and encouraging people to vote; and
- £80,000 towards research to inform the communication campaign.

The Welsh Government's figures do not distinguish between costs related to raising awareness of franchise changes for local government elections and for Assembly elections. Some of these activities will focus on raising awareness of the voting age for both Assembly and local government elections, rather than focusing on one election or the other.

The Llywydd has discussed this matter with the Counsel General. He noted during the Stage 1 debate on 10 July 2019 that whilst it is not possible for him to split the Government's awareness-raising costs between both elections, he will endeavour to provide further information to the Assembly on this matter.

Recommendation 16. *The Llywydd should amend the Bill to remove section 27 (financing and accountability of the Electoral Commission).*

Recommendation 17. *In the absence of a stand-alone Bill, the forthcoming local government Bill should include sections setting out the detailed arrangements for oversight of the Electoral Commission in this issue Wales by the National Assembly.*

Disagree

If there were another suitable legislative vehicle in which the financing and accountability of the Electoral Commission could be considered in time for the 2021 Assembly elections, the Commission's preference would be to amend the Senedd and Elections (Wales) Bill to remove section 27.

Consideration has been given to addressing through a stand-alone Bill. However, this approach would not make the most efficient use of the Assembly's limited time for legislative scrutiny, during a potentially demanding legislative period. In addition, the timescales involved in addressing this issue in a stand-alone Bill would make it more challenging to make the Electoral Commission accountable to, and financed by the Assembly for its role in delivering the 2021 Assembly election.



The Counsel General has indicated that Welsh Government is not minded to develop a stand-alone Bill on this matter. He has also noted that it would not be appropriate for Welsh Government to include provisions relating to the financing and accountability of the Electoral Commission in the Local Government Bill, which is expected to be introduced in autumn 2019.

The Counsel General has stated that he anticipates tabling amendments during Stage 2 of the Senedd and Elections (Wales) Bill. It is likely that this will, in practice, require the removal of section 27 and its replacement with alternative provisions.

The Counsel General has indicated that further information on his proposed amendments will be provided after the summer recess. He also indicated during the Plenary debate on 10 July that the Welsh Government will not table a financial resolution until those further details have been provided.

Recommendation 18. *The Llywydd and the Welsh Government should satisfy themselves that Schedule 1A of the 2006 Act, as inserted by section 29 (disqualification from Membership of the Senedd) of, and Schedule 2 to, the Bill, is appropriate.*

Agree

The Assembly Commission is considering these parts of the Bill and the Llywydd will discuss with the Counsel General any specific recommendations for change being considered by Welsh Government. Particular attention will be given to the specific offices identified by the Committee during Stage 1, with a view to determining whether to bring forward amendments in due course.

Recommendation 19. *The Llywydd should amend the Bill to remove section 36 (implementation of recommendations made by the Law Commission).*

Agree

Evidence raised during Stage 1 has been supportive of the principle of reforming electoral law based on proposals from the Law Commission. However, the Assembly Commission appreciates concerns raised by both the Committee and the Counsel General regarding the appropriateness of addressing this issue through use of subordinate legislation making powers.

As such, the Llywydd has tabled amendments to remove section 36 and paragraph 1(4)(b) (amendments 1 and 3 tabled on 19 July 2019). The Llywydd would expect to see, in due



course, the Welsh Government pursue the Counsel General's preferred approach of addressing Law Commission recommendations through an expedited primary legislation procedure.

