

David Rees MS  
Chair  
Reform Bill Committee  
Welsh Parliament

16 October 2023

Dear Chair,

Thank you for your Committee's invitation to take part in an oral evidence session on Thursday 26 October 2023, and for your invitation to provide written evidence ahead of the session. Please find attached my written submission.

I look forward to discussing these matters further with the Committee on 26 October.

Yours sincerely,



Rt Hon Elin Jones MS/AS  
Llywydd

Cc. Mick Antoniw MS, Counsel General



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



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## Annex A: Roles and responsibilities

### The Llywydd

The Llywydd has a range of responsibilities in relation to the legislative process, including (amongst other things) determining whether a Bill falls within the legislative competence of the Senedd, determining questions of scope, and the selection of amendments.

To ensure the Llywydd's impartiality in discharging her functions, the Llywydd does not engage in discussing the merits or otherwise of a Welsh Government Bill and/or its provisions whilst it is before the Senedd for scrutiny.

Given the provisions of the Senedd Cymru (Members and Elections) Bill relate to the Senedd, the Llywydd intends to make observations relating to the Bill's provisions in terms of their practical application and possible effect in the context of the Senedd.

As Chair of the Senedd Commission, and as Chair of the Business Committee, the Llywydd engages fully in discharging these bodies' responsibilities in relation to the Bill.

### The Senedd Commission

The Senedd Commission has four roles in relation to the Welsh Government's Bill.

#### *1. Significant stakeholder*

It is a significant stakeholder, given the implications the Bill has for the Senedd Commission and the bodies it supports. In this role, it has responded to the Welsh Government's request for a best estimate of the cost implications arising for the Senedd Commission from the Bill.

#### *2. Supporting scrutiny*

The Senedd Commission ensures the Senedd receives the same high-level of support for scrutiny of this Bill as it provides for all Welsh Government Bills.

#### *3. Prudently preparing*

The Senedd Commission is prudently preparing for the prospect of Senedd Reform, so that it can respond swiftly to the outcome of the Bill scrutiny process. If the Bill receives Royal Assent, these preparations will intensify to ensure that the Senedd estate and Commission-provided services are ready to respond to the needs of an enlarged Seventh Senedd. This includes supporting the Commission, Business Committee and Independent Remuneration Board in their response.

#### *4. Communicating change*



If the Bill receives Royal Assent, the Senedd Commission is prepared to play its part, alongside the wider electoral community, to communicate the electoral changes that are to be enacted.

### The Business Committee

In addition to performing its routine role in the legislative process, the Business Committee considered a number of recommendations arising from the Special Purpose Committee's Report relating to Senedd Reform and [published](#) its views ahead of the Bill being drafted, to inform Welsh Government.

The Welsh Government has indicated that a number of the provisions in the Bill have been drafted based on the Business Committee's views.



## Annex B: Observations on provisions of the Bill

### Section 3: Frequency of ordinary general elections

The Committee may wish to investigate the impact this provision would have on the interaction between the dates of Senedd elections and the term durations of public officeholders which fall within the remit of the Senedd and are set out in their founding statutes, such as the Auditor General for Wales, and members of the Independent Remuneration Board.

For instance, the Auditor General may hold the post for a maximum of 8 years. Therefore, while Senedd elections are held every five years, there is a natural degree of separation between the appointment of the Auditor General and elections to the Senedd. However, if Senedd elections were held every 4 years, it is possible that this natural degree of separation may be diminished somewhat.

### Section 6: Disqualification from being a Member of the Senedd or a candidate

Without making any comment on the merits of the policy objective behind this provision, it has a possible practical effect in relation to the disqualification of a sitting Member, which the Committee may wish to explore.

Under section 16 of the Government of Wales Act 2006 ("GoWA"), a person is disqualified from being a Member of the Senedd, and from being a candidate to be a Member of the Senedd, if that person falls within any of the categories of persons or offices listed in Schedule 1A to GoWA.

The Bill amends Schedule 1A to additionally disqualify "a person who is not registered in the register of local government electors at an address within a Senedd constituency".

If an Electoral Returning Officer ("ERO") has decided that a person has ceased to be resident at an address, and thus ceased to satisfy the conditions for registration, an ERO must delete the person's entry from the register.

A deletion takes effect when a notice of alteration is published, or a revised electoral register is published, whichever is first.

Generally, notices of alterations to the register are published on the first day of the coming month. However, if that date would fall in less than 14 days, the notice would be published on the first day of the following month.

Once a deletion takes effect, a Member of the Senedd would cease to be registered in the register of local government electors. As such, under the Bill as drafted, they would fall



within the categories of persons listed in Schedule 1A to GoWA, and would be disqualified from being a Member of the Senedd.

A person may appeal to the County Court against a decision to remove them from the register. Appeals must be made within 14 calendar days beginning from the date of the decision to remove them from the register (rather than the date the deletion takes effect).

The effect of an appeal is unclear. In particular, it is unclear whether an appeal has the effect of suspending deletion from the register until it has been considered by the County Court.

On the basis of the Electoral Commission's [guidance](#), this does not seem to be the case. The guidance only considers appeals from the perspective of a person who has already been deleted from the register. This suggests that a successful appeal would lead to a person being reinstated to the register, but would not have the effect of suspending their deletion in the first place.

It is therefore foreseeable that a Member's qualification status may be uncertain between an ERO's determination, and the outcome of any outstanding appeal. However, this may not make any practical difference given the effect of disqualification.

Under section 18(3) of GoWA, the effect of disqualification is that the person ceases to be a Member of the Senedd so that the person's seat is vacant. Even if they are reinstated to the register, on appeal, by that stage they will already have ceased to be a Member and the seat will be filled by someone else.

The Bill does not allow for reinstatement to the Senedd in these circumstances.

As previously determined, the Llywydd is content that this provision, as drafted, falls within the legislative competence of the Senedd. However, in considering this provision, the Committee may wish to give particular focus to any Human Rights implications. For example, under Article 3, Protocol 1 of the European Convention on Human Rights, individuals generally have a right to stand for election.

It may be helpful also for the Committee to note the background to the changes that the Senedd and Elections Wales Act 2020 introduced in the Government of Wales Act on disqualification of a Member of the Senedd. These changes were introduced in response to the Fourth Assembly's Constitutional and Legislative Affairs Committee's report on disqualification in July 2014. The Committee recommended a set of principles to underpin disqualification from membership of the Assembly, as it was then named.

The Government of Wales Act now distinguishes between the circumstances that are a bar to candidature for the Senedd and those offices that are a bar to membership of the



Senedd but not to candidature. The latter are those that could give rise to a conflict of interest with membership of the Senedd, but where the conflicting office can be resigned before taking the oath, or making the affirmation, of allegiance.

Special provision is made in relation to members of the House of Lords. Members of the House of Lords will not be disqualified if they obtain leave of absence from it. The Act provides that the exemption from disqualification applies if, within 8 days of being elected, they apply for leave of absence from that House and provide a copy of the application to the Clerk of the Senedd. The exemption does not rely on the Member having obtained leave of absence, rather than for those who have applied for leave of absence, in case of delay in the process of granting an application for leave of absence.

Section 7: Review of possible job-sharing of offices relating to the Senedd and Section 19: Review of operation of Act etc. after 2026 general election

Without offering a view on the merits of these provisions, it can be observed that placing a statutory duty on a Llywydd, with a view to seeking a future Senedd's consent to establishing a Senedd Committee is unusual.

It is noted that the provisions in sections 7 and 19 do not necessarily lead to any action other than the Llywydd tabling a motion i.e. the Seventh Senedd will decide whether the remaining actions described in the provision are to be progressed or not.

The Reform Bill Committee might wish to consider:

- whether this is the most appropriate means of achieving the Welsh Government's policy objective underpinning these provisions;
- whether it is appropriate for the Executive to propose the placing of a duty on any office holder of a future Senedd in relation to the establishment of Senedd committees, in particular when they relate to the consideration of policy matters or post-legislative scrutiny of Welsh Government legislation;
- the effect of the potential establishment of two Senedd committees on the Business Committee's function in deciding the Seventh Senedd committee structure and timetables and how, if agreed, it would impact the aim of increasing the Seventh Senedd's committee scrutiny capacity;
- the prescriptive nature of the provision in relation to its task, the timing of the proposed review under section 19, and the timescale within which it must be completed.

The following further observations can be made in relation to section 19:



- If the Seventh Senedd were to reject the motion that the Llywydd is required to table to initiate a review, then there is no requirement for a review to take place at all.
- Examples from other electoral legislation place a duty on the executive (Welsh Ministers in a Welsh context) to review their electoral reform legislation.
- The Electoral Commission has a duty to report on Senedd Elections and can be asked by Welsh Ministers to report on other matters relating to devolved Welsh elections within specified timeframes.



## Annex C: Relevant work of the Business Committee and Senedd Commission

### **The Senedd Commission's role/contributions during the Bill development phase**

In December 2022 the Senedd Commission was asked by the First Minister to provide core information relating to financial implications on the Senedd Commission of the Welsh Government's proposals for Senedd reform.

Following this request, the Commission developed and agreed a set of common assumptions, based on two scenarios, from which estimates could be developed; the common assumptions were developed in consultation with the Business Committee and the Independent Remuneration Board, given that they related to matters which fell within their respective remits and functions, as well as the Commission's functions.

In relation to Senedd Commission staff cost and non-staff cost estimates, information was collated from each Service area. These were collectively reviewed by the Leadership Team and Executive Board. In parallel, Determination cost estimates were modelled across the two scenarios, based on the 2022-23 Determination.

The Senedd Commission considered and agreed the cost estimates and sent them to the Welsh Government at the end of March 2023. Following this submission, there was an on-going dialogue between the Welsh Government officials developing the RIA and Senedd Commission officials who had led on gathering the cost estimates, to ensure that the Welsh Government had understood the cost estimates presented to the level of detail required for their RIA.

During this phase, and at the Welsh Government's request, costs were reprofiled to reflect four-year Senedd terms and to adjust the Senedd Commission's cost estimates to conform with the Welsh Government's RIA methodology.

The final figures that were to be used in the RIA were communicated to the Commission in writing by the First Minister in August 2023 prior to the introduction of the Bill.

### **Relevant work of the Business Committee**

The Business Committee's current procedural work programme includes a proposal for it to consider whether changes to Standing Orders should be made to facilitate job-sharing between Members in particular roles, such as the role of committee chair. This was raised in a recommendation made by the Special Purpose Committee on Senedd Reform. The Business Committee currently intends to commence work on this matter in early 2024.





The Business Committee also intends to begin to consider the options for work which will be necessary, subject to the Bill proceeding, to review Standing Orders, other procedures, the structure of Senedd business and related guidance ahead of the 2026 election.

### **Preparations being made by the Senedd Commission**

Without pre-empting the Senedd's decision on whether the Bill proceeds, the Senedd Commission has had to begin preparing for the possibility of Senedd Reform, else it would not be in a position to deliver the significant changes it will be required to deliver (if the Bill is passed) in time for the 2026 Senedd Election.

Given the scale of the change, the Executive Board has retained overall control of the portfolio of work required to prepare for Senedd Reform. To support it with its work, the Executive Board has established two programmes.

The **Senedd Reform Programme** has been established to coordinate provision of support and advice to enable the Senedd Commission, the Business Committee, the Independent Remuneration Board, Chairs' Forum, and the Llywydd to deliver the work required of them to prepare for parliamentary business in the Seventh Senedd, in clear sight of each other's work whilst respecting each body's independence.

The Senedd Reform Programme will coordinate Senedd Commission-provided support and advice to ensure:

- all necessary procedural preparations can be made to enable the Seventh Senedd to operate following the 2026 Senedd elections;
- the Independent Remuneration Board can deliver its Determination for the Seventh Senedd in accordance with its strategic work programme;
- the Senedd Commission can respond to any issues it may wish to respond to before, and/or during, the passage of the Senedd Reform Bill;
- the Senedd Commission can deliver Senedd Business services that have the capacity, capability, and planned flexibility to respond to the requirements of the Seventh Senedd; and
- the Seventh Senedd can take informed decisions on the configuration of its parliamentary business from the outset of its term.

The **Ways of Working Programme** is a programme with a remit wider than just Senedd Reform-related projects, but which has the Siambr 2026 and Tŷ Hywel 2026 projects within its responsibilities (i.e. the projects established to deliver the capital works required to accommodate an increase in the number of Members of the Senedd on the Senedd estate).



The Senedd Commission's Audit and Risk Assurance Committee has a standing agenda item on Senedd Reform.

Given the interdependencies that exist between the Senedd Commission's role in preparing for the Welsh Government's Senedd Reform proposals, and the Welsh Government's responsibility for implementing its legislation, particularly the electoral arrangements that need to be in place ahead of the 2026 Senedd Election, a Senedd Commission – Welsh Government Joint Assurance Board has been established at officials-level to share appropriate information and assist with respective risk-management processes.

The Senedd Commission is a member of the Welsh Government's Senedd Electoral Reform Delivery Board. This is the Welsh Government's officials-level forum for engaging with key stakeholders affected by the Bill.

### **The Senedd Commission's role in educating and engaging the public about current and/or pending systems for the election of Members of the Senedd**

The Senedd Commission has developed early, high-level plans to educate and engage the public on the changes proposed in the Members and Elections Bill. Work will continue to develop these plans as the Bill progresses.

The primary target audience will be the politically less engaged with a focus on first time voters (14-20 year olds), ethnic minority groups, low socio-economic areas and areas of low turnout.

A priority is to work in partnership with key groups and stakeholders, for example Welsh Government and the Electoral Commission. Work to make these connections is already underway and will ensure each other's work is complementing rather than duplicating, seeking to collaborate where appropriate.

Upon the passing of the legislation, if this occurs, the Commission's Communications and Engagement teams will reflect the Senedd Reform changes and incorporate relevant activities in its election campaign planning, education services including updating its educational resources, its public engagement activities on the Senedd estate and off-site and media engagement.

