

Mick Antoniw AS/MS
Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: CG/PO/378/2023

David Rees MS
Chair, Reform Bill Committee

08 November 2023

Dear David,

Thank you for your letter of 16 October 2023 detailing a number of follow-up questions pertaining to my attendance of the Committee's meeting of 5 October 2023, as part of your consideration of the general principles of the Senedd Cymru (Members and Elections) Bill.

I have detailed my answers to these questions in an annex to this letter.

Yours sincerely,

A handwritten signature in blue ink, reading "Mick Antoniw". The signature is written in a cursive style and is underlined with a single horizontal line.

Mick Antoniw AS/MS
Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution

Annex: Responses to follow up questions after oral evidence session on 5 October 2023

Political support for the proposals

- 1) Could you clarify when you became aware of the letter sent by the First Minister and the then leader of Plaid Cymru to the Special Purpose Committee on 10 May 2022.**

For clarity, during the Committee's evidence session, I had not appreciated that when reference was made to a "letter" being sent to the Special Purpose Committee, this was intended to mean the Joint Position Statement on Senedd Reform,¹ which was the result of discussions between the First Minister and the Leader of Plaid Cymru, as part of the Co-operation Agreement.

I am clearly aware of the Joint Position Statement on Senedd Reform and am aware that in addition to being published it was also sent to the chair of the cross-party Special Purpose Committee on Senedd Reform. It was designed to support the committee's work.

- 2) What information are you able to provide about the evidence underpinning the May 2022 joint position statement, how its conclusions were reached, or the influence it had on the recommendations made by the Special Purpose Committee.**

The Joint Position Statement took account of the range of evidence gathered over the last twenty years, including the reports of *The Commission on the Powers and Electoral Arrangements of the National Assembly for Wales (the Richard Commission)*, *A Parliament that works for Wales: The report of the Expert Panel on Assembly Electoral Reform* and *Senedd reform: The next steps (the Committee on Senedd Electoral Reform)*.

The Statement also took account of motions passed in the Welsh Labour and Plaid Cymru Conferences in Spring 2022.

As Members will appreciate, I was not a member of the Special Purpose Committee, and so am not in a position to comment on the influence the Joint Position Statement may or may not have had on its recommendations. However, I note that the Special Purpose Committee's Chair, in his foreword to the Special Purpose Committee's report, commented that "An announcement by the Cooperation Agreement parties on 10 May 2022 also informed this Committee's discussions, though the decisions detailed in this report were ours to take."²

¹ Welsh Government and Plaid Cymru, *Joint Position Statement on Senedd Reform*, 10 May 2022, <https://www.gov.wales/a-way-forward-for-senedd-reform>

² Special Purpose Committee on Senedd Reform, *Reforming our Senedd: A stronger voice for the people of Wales*, May 2022, Chair's Foreword, Page 7, <https://senedd.wales/media/5mta1oyk/cr-ld15130-e.pdf>

3) On this basis, what approach will you take to considering any recommendations made by this Committee, or other Senedd committees, that call for you to bring forward amendments to the Bill.

The Welsh Government would certainly wish to take account of committees' recommendations in considering amendments, and will be open to any views, evidence and recommendations that Committees receive or make during scrutiny.

However, as I'm sure Members will appreciate, it may not always be possible to bring forward amendments to give effect to committees' recommendations for a variety of reasons. For example, the government will need to consider a recommendation's legal and practical implications when formulating its response.

As a purely illustrative example, the Senedd's Business Committee previously concluded in its December 2022 report that the Welsh Government should explore changing the legislative titles of "Presiding Officer" and "Deputy Presiding Officer" to provide for "Llywydd/ Speaker" and "Dirpwy Lywydd/ Deputy Speaker" in the Government of Wales Act 2006. The Committee also stated that such provision should only be included if the Welsh Government had full confidence that they were within the Senedd's legislative competence.³

The Trefnydd subsequently wrote to the Business Committee on 21 June 2023 to advise that the Welsh Government had concluded that it could not state that it would have full confidence that such changes would be within the Senedd's legislative competence. As a result, the Bill does not address this issue.

By contrast, the Bill does implement a number of other conclusions previously reached by the Business Committee, including providing the Senedd with the flexibility to appoint an additional Deputy Presiding Officer,⁴ increasing the legislative limit on the number of Welsh Ministers and providing a power for a further increase in this legislative limit.⁵

4) What approach will you take to engaging with Cooperation Agreement partners and other political parties within the Senedd during the legislative scrutiny process to (i) assess whether the proposals in the Bill as introduced continue to command a supermajority, and (ii) assess whether any alternatives recommended by Senedd committees or put forward as amendments by Members of the Senedd could command a supermajority.

During the development of the Bill, the Welsh Government engaged regularly with Cooperation Agreement partners. I also personally spoke with Members of other

³ Business Committee, *Response to the Special Purpose Committee on Senedd Reform's report – Reforming our Senedd: A stronger voice for the people of Wales*, December 2022, Conclusion 3, <https://senedd.wales/media/e0vdos5w/cr-ld15530-e.pdf>

⁴ Business Committee, *Response to the Special Purpose Committee on Senedd Reform's report – Reforming our Senedd: A stronger voice for the people of Wales*, December 2022, Conclusion 2, <https://senedd.wales/media/e0vdos5w/cr-ld15530-e.pdf>

⁵ Business Committee, *Response to the Special Purpose Committee on Senedd Reform's report – Reforming our Senedd: A stronger voice for the people of Wales*, December 2022, Conclusion 1, <https://senedd.wales/media/e0vdos5w/cr-ld15530-e.pdf>

political parties on the development of the legislation. I am grateful to such Members for this constructive dialogue and anticipate that this engagement will continue during the Senedd's scrutiny of the legislation.

I anticipate that all Members will likewise wish to consider whether alternative approaches being considered for recommendations by Senedd Committees, or amendments put forward by individual Members, will enable the Bill to be passed by a supermajority.

Public support for the proposals

5) What steps the Welsh Government is taking to assess public support for the proposals in the Bill.

Members will recall that I previously responded to a number of questions on 5 October related to public support for the Bill, including outlining that a commitment to Senedd reform was part of the manifestos of Welsh Labour, Plaid Cymru and the Welsh Liberal Democrats in the 2021 Senedd elections.

In developing the legislation the Welsh Government also considered a wealth of information on the public and stakeholders' views on Senedd Reform, expressed in a series of consultations undertaken over the last twenty years, through multiple commissions, panels and committees. For example, the Explanatory Memorandum to the Bill notes that a majority of the 1,830 responses to a question in the Senedd Commission's 2018 consultation, [Creating a Parliament for Wales](#), were in favour of increasing the number of Members the Senedd.

6) What preparations the Welsh Government is making to work with partners to raise public awareness and understanding of the new electoral arrangements it is proposing be implemented for 2026.

The Welsh Government has had dialogue, and anticipates working, with a range of partners to raise public awareness and understanding of the new electoral arrangements. For example, the Electoral Commission is responsible for raising awareness and providing guidance in relation to electoral changes as an independent body.

The Elections and Elected Bodies Bill also provides for the establishment and operation of the Welsh elections information platform, which would provide electors with up-to-date information about elections, including Senedd and local government elections in Wales.

It is also worth noting that, as was said during the scrutiny session, the Senedd Commission also has the power to promote public awareness of the current or any pending system for the election of Members of the Senedd.

The Elections and Elected Bodies (Wales) Bill

7) An overview of the areas of interaction and interdependency between the Senedd Cymru (Members and Elections) Bill and the Elections and Elected Bodies (Wales) Bill.

The two Bills have a limited number of direct interactions.

The Elections and Elected Bodies (Wales) Bill has been drafted on the assumption of the Senedd Cymru (Members and Elections) Bill having received Royal Assent. For example, the Senedd Cymru (Members and Elections) Bill renames the Local Government (Democracy) (Wales) Act 2013 as the "Democracy and Boundary Commission Cymru etc. Act 2013" and the Local Democracy and Boundary Commission Wales as the Democracy and Boundary Commission Cymru. The Elections and Elected Bodies (Wales) Act consequently refers to the 2013 Act and Commission by their revised names. Were the Senedd Cymru (Members and Elections) Bill to not receive Royal Assent, consideration would need to be given to a number of technical amendments associated with the Elections and Elected Bodies (Wales) Bill. Technical amendments would likewise be necessary if the passing of the Senedd Cymru (Members and Elections) Bill was delayed.

The Regulatory Impact Assessment to the Elections and Elected Bodies (Wales) Bill also sets out that it is based on the assumption of the Senedd Cymru (Members and Elections) Bill having received Royal Assent. This was to avoid certain financial costs being double-counted.

The Senedd Cymru (Members and Elections) Bill is functionally independent of the Elections and Elected Bodies (Wales) Bill. However, it does anticipate the latter Bill. In particular, it makes provision to increase the maximum number of Democracy and Boundary Commission Cymru Commissioners allowable from five to nine. This increase anticipates not only the increase in workload for the DBCC in respect of Senedd boundary review work, but also anticipates workload arising from the transfer of the functions of the Independent Remuneration Panel via the Elections and Elected Bodies (Wales) Bill. Consideration was given to the two Bills separately providing for increases in the number of Commissioners, but this would have been impractical. Moreover, this is a maximum rather than minimum number of Commissioners, so in the event that the Elections and Elected Bodies (Wales) Bill were not to pass, there would not be a requirement for all the additional Commissioners to be appointed. In the event that the Senedd Cymru (Members and Elections) Bill were not to be passed consideration would need to be given to an increase in the number of Commissioners to account for workload arising from the transfer of the functions of the Independent Remuneration Panel via the Elections and Elected Bodies (Wales) Bill.

The Elections and Elected Bodies (Wales) Bill also provides for measures which are complimentary but not integral to the reforms effected by the Senedd Cymru (Members and Elections) Bill. For example, it includes a duty on Welsh Ministers to put in place arrangements for an online voter information platform, thereby providing for a website that can host candidate and voter information for Senedd and ordinary

principal council elections as a minimum. It also makes legislative changes which are relevant to Senedd elections, such as the disqualification of town and community councillors in Wales from serving as Members of the Senedd and the removal of the existing “grace period” for principal councillors elected to the Senedd and Members of the Senedd elected as Members of Parliament.

The Elections and Elected Bodies (Wales) Bill also places a duty on the Welsh Ministers to put in place arrangements aimed at improving diversity within Senedd and Local Government democratic structures, and for individual schemes to be created and tailored to provide support for individuals with a range of protected characteristics. This is aligned with our overarching objective through Senedd reform of ensuring the Senedd is representative of the people it is here to serve and the provisions in the Senedd Cymru Bill that provide a pathway for job-sharing are an important part of the overall suite of interventions intended to make elected office more accessible to everyone.

8) Your views on the potential impact of the introduction of three Bills that amend and reform electoral reform in quick succession, and whether this could present risks to the clarity and accessibility of the law (for example if one or more of the Bills were not passed, or as a result of the scope and scale of the changes to be implemented).

The three Bills have been developed with the intention of being harmonious, but at the same time each of those reforms is internally coherent. The development of the Bills has been informed by collaboration, transparency and an integrated approach between three Bill Teams within the Welsh Government.

We are taking a pragmatic approach to the package of reforms with the aim of ensuring that those reforms provided for can be implemented in time for 2026. For example, it is likely that the Llywydd will decide, as required by section 111A of GoWA that the matters addressed by the Senedd Cymru (Members and Elections) Bill should be subject to a two-thirds majority in order to pass, reflecting that they relate to protected subject matters within the meaning of that section. It would have been disproportionate to require the provisions of the Elections and Elected Bodies (Wales) Bill to also be subject to this requirement, as they address relatively straightforward matters of electoral administration.

At the same time we hold an ambition to consolidate the statute book for Wales where we can, to deliver an accessible, bilingual legislative framework.

We are taking a range of steps to consolidate electoral law in Wales for devolved elections, as part of our longer-term goal of modernising electoral law.

In particular, the National Assembly for Wales (Representation of the People) Order 2007, (“the Conduct Order”) sets out the detailed rules for the conduct of elections to Senedd Cymru. It sets out the way in which the election and the election campaign are conducted, including provisions for legal challenge to the election.

The Conduct Order has been reviewed and amended before each Senedd election. It was originally made and subsequently amended by the Secretary of State, before

the function of making the Order was transferred to the Welsh Ministers by the Wales Act 2017.

We will consult on and remake a bi-lingual consolidated Conduct Order ahead of the 2026 Senedd Elections. In the processes of remaking the Order, we will reflect the changes arising from all three Bills, subject to them receiving Royal Assent, to ultimately achieve a consolidated, accessible, bilingual framework.

Number of Deputy Presiding Officers

9) Whether the approach taken in the Bill risks creating a hierarchy between the Deputy Presiding Officer elected under 25(1)(b) of GOWA 2006 and any DPO elected under new section 25(1A) to be inserted by section 4 of the Bill.

The Bill does not create a hierarchy between the two Deputy Presiding Officers. Other than the timing and length of their appointments, the legislative functions, duties, powers and other requirements that are currently stated in GoWA for the Deputy Presiding Officer would also apply to any additional Deputy Presiding Officer.

The Bill's Explanatory Memorandum sets out that in developing this legislation, consideration was given to a circumstance where two Deputy Presiding Officers did not agree on how the Llywydd's functions were to be exercised, and whether legislation should provide a resolution to such a scenario (for example, by establishing one of the Deputy Presiding Officers as having authority in such circumstances).

However, this would be an arbitrary determination of hierarchy. Moreover, no mechanism for resolving such a circumstance has been identified in the legislation underpinning the appointment of deputies in the other UK Parliaments. As such, the Bill does not create a hierarchy between the two Deputy Presiding Officers.

10) Whether the Welsh Government gave any consideration to arrangements in other legislatures for the election of additional DPOs. For example, the Scottish Parliament has the flexibility to elect one or more DPOs, and the House of Commons has provision in place both for a hierarchy of Deputy Speakers and to ensure that the cohort of Speaker and Deputy Speakers includes at least one man and at least one woman.

The Bill gives effect to the recommendation of the Senedd's Business Committee in its December 2022 report.

The Business Committee's recommendation followed a public consultation, in which the Committee received a range of evidence on this matter. Some consultees expressed caution about increasing the number of Deputy Presiding Officers- for example, Professor Laura McAllister and Paul Silk stated that they did not believe that additional Deputy Presiding Officers were required. Other consultees were supportive, considering that in a future 96 Member Senedd, it was feasible that the

demands on the Senedd's Presiding Officer and Deputy Presiding Officer would increase significantly.

The Business Committee therefore recommended that:

“it would be reasonable for an increase in the Senedd’s membership to be accompanied by an increase in the maximum permissible number of Deputy Presiding Officers... from 1 to 2.”⁶

In developing the legislation to give effect to this recommendation, the Welsh Government took account of the legislation underpinning the appointment of deputies in the other UK Parliaments, as noted in the Bill's Explanatory Memorandum.⁷ However, our primary intention was to give effect to the recommendation of the Senedd's Business Committee.

11) Whether having an additional DPO could have an impact on the political balance of a future Senedd.

The Business Committee's report considered the potential impact of an additional Deputy Presiding Officer on the Senedd's political balance and stipulated certain restrictions upon the eligibility of candidates for election to become the additional Deputy Presiding Officer. These are addressed through the insertion of a new subsection, (7A), into section 25 of GoWA 2006.

Size of the Welsh Government

12) What the rationale is for providing in new section 51(4) of GOWA 2006 (as inserted by section 5 of the Bill) that the power to increase the limit on the number of Welsh Ministers under new section 51(3) may not be used to reduce the maximum number of Welsh Ministers.

The power provides for an increase in the maximum limit upon Welsh Ministers. Consequently, in practice a First Minister would be free to choose not to appoint to that maximum limit, without need for further legislation.

However, I would welcome the views of Members on this issue. Members may note that the inclusion of this power followed the recommendation of the Senedd's Business Committee December 2022 report, which concluded, following a public consultation, that:

“... it would be reasonable for the legislation to include a mechanism which would enable the Welsh Government to propose further increasing this limit to a maximum of 19 by way of secondary legislation, in order to future proof the legislation for the devolution of further powers, or other

⁶ Business Committee, Response to the Special Purpose Committee on Senedd Reform's report – Reforming our Senedd: A stronger voice for the people of Wales, Conclusion 2, <https://senedd.wales/media/e0vdos5w/cr-ld15530-e.pdf>

⁷ For example, Welsh Government, Explanatory Memorandum to the Senedd Cymru (Members and Elections) Bill, Paragraph 97, [pri-ld16037-em-e.pdf \(senedd.wales\)](https://senedd.wales/pri-ld16037-em-e.pdf).

circumstances where an increase is considered to be merited. Such an increase should be subject to an affirmative (majority) vote of the Senedd.”⁸

The report also states that:

“A majority of our membership consider that such a vote should be passed on a simple majority, whilst Darren Millar MS stated that it should require the support of two-thirds of Members voting. Any proposed increase, once agreed by the Senedd, should be permanent.”⁹

13) How the Welsh Government sees the use of the power working in practice should a First Minister wish to raise the maximum number of Welsh Ministers, for example to accommodate new powers being devolved to the Senedd, to respond to events, or to reflect coalition arrangements.

The delegated power in section 5 is intended to build in an element of future-proofing, allowing the Welsh Ministers to increase further by regulations the upper limit on the number of Ministers able to hold office at any time (up to a maximum of 19 Ministers, in addition to the First Minister and Counsel General).

The power will be subject to the Welsh Government and Senedd’s normal procedures and processes for the development and making of a Statutory Instrument that is subject to the affirmative procedure.

For example, Standing Order 27.7 stipulates that a motion cannot be tabled on the Senedd’s approval of a Statutory Instrument subject to the affirmative procedure until it has been reported on by the relevant committee or otherwise 20 days have elapsed.

As set out in the Statement of Policy Intent, the Welsh Government has no expectation to immediately utilise this power to increase the existing maximum. It would be necessary for a future Welsh Government to justify why circumstances necessitated that the limit on Welsh Ministers needs to be increased beyond 17.

Increasing the frequency of Senedd elections

14) Please provide further information about the evidence base for your decision to include provision within the Bill to increase the frequency of Senedd elections from every five years to every four years.

Senedd terms were originally four years in length. The change to five years was implemented through UK Government legislation in response to the Fixed Term Parliaments Act 2011, to prevent a clash from occurring every 20 years.

⁸ Business Committee, Response to the Special Purpose Committee on Senedd Reform’s report – Reforming our Senedd: A stronger voice for the people of Wales, Conclusion 1, <https://senedd.wales/media/e0vdos5w/cr-ld15530-e.pdf>

⁹ Business Committee, Response to the Special Purpose Committee on Senedd Reform’s report – Reforming our Senedd: A stronger voice for the people of Wales, Paragraph 16. <https://senedd.wales/media/e0vdos5w/cr-ld15530-e.pdf>

Following the repeal of the Fixed Term Parliaments Act last year, the position in relation to UK Parliamentary elections is effectively the same as it was pre-2011. On the basis that Senedd terms were lengthened specifically to avoid clashes with UK elections, it appears logical to consider the scheduling of Senedd elections also reverting to the pre-2011 position.

In this deliberation, the Welsh Government gave particular consideration to the factors of democratic renewal, voter fatigue and providing a sufficient amount of time for an administration to implement its agenda.

The Welsh Government concluded that four-year terms most appropriately balance these factors. The written evidence recently submitted to the Committee by Professor Alan Renwick¹⁰ noted that – whilst a five-year term is acceptable - a four-year term probably provides better balance between the need for government to be able to plan ahead and the need for voters to have their say.

15) Please outline any Equality Impact Assessment that has been undertaken in relation to this provision, in particular any consideration of whether the proposal could have a differential impact on the basis of age as to whether people may be more or less likely to stand for election to the Senedd as a result of a change in the frequency of Senedd elections.

Welsh Government's Integrated Impact Assessment included an Equality Impact Assessment. The Impact Assessment noted that the change in term lengths was not considered to have a differential impact upon people with protected characteristics (including age), as described in the Equality Act 2010. A decrease in the time between Senedd elections will provide more frequent opportunities for people to stand for the Senedd generally.

16) What discussions or engagement have taken place to date or are planned with local government representatives about the potential impact of increasing the frequency of Senedd elections. This should include any discussions or engagement about (i) the impact of administering more frequent Senedd elections, (ii) the impact of every fifth Senedd election coinciding with every fourth local government election (absent of any change in the frequency of local elections), and (iii) whether there should be any change to the frequency of local government elections in Wales.

There has been regular engagement between Welsh Government Officials, the Local Democracy and Boundary Commission for Wales, and local government representatives including Returning Officers on a range of issues associated with the Bill.

¹⁰ Alan Renwick, RBC(6)- 04-23, [Paper 1 - Written evidence Professor Alan Renwick.pdf \(senedd.wales\)](#)

That has included consideration of the feasibility of effecting the changes, and the financial impact of change. The Regulatory Impact Assessment that is included within the Explanatory Memorandum is based on a 4-year electoral cycle from 2026, but a comprehensive assessment of the costs/savings associated with administering the elections are not set out at this stage, as a number of necessary variables – such as the pairing of constituencies – are not yet known.

There are no plans to change the frequency of local government elections in Wales, and it is expected that (barring any unexpected changes to schedules) the next time that a Senedd election would coincide with a local government election will be in 2042, providing a significant period of time in which to determine the most appropriate response.

Requirement for candidates and Members to be registered to vote at an address in Wales

17) Could you provide more information about the nature of the potential “legal challenges” you referred to during the evidence session.

The factors taken into account when a court determines whether a person is “resident” in an area (for the purposes of registration) are set out in the Representation of the People Act 1983. These factors have been on the statute book for a considerable amount of time.

In order to be registered on the register of local government electors at an address, an Electoral Registration Officer must be satisfied – amongst other eligibility criteria such as being of voting age - that a person is resident at that address. Therefore, a registration requirement – by definition – gives effect to a residency requirement.

A requirement to be registered to vote ensures that the nature and scope of the requirement is clear to potential candidates, to members, and ultimately any Court that is called upon to interpret the provision. A person is either on such a register, or they are not. Ensuring that these provisions are unambiguous reduces the risk of misinterpretation by candidate, Members and therefore mitigates the risk of legal challenge.

18) In reaching your decisions on the provisions in the Bill, what consideration did you give to section 79 of the Local Government Act 1972, which provides that a person may only be qualified to be elected to serve on a local authority in England and Wales if they have a connection to the local authority area, and that such a connection may be established in a number of ways including, among others: electoral registration, land or property ownership, employment, or residence.

Consideration was given to a range of options for giving effect to a residency requirement, including the development of a bespoke model, and the qualification provisions that exist for Local Government elections.

It is appropriate that candidates seeking to become Members of the Senedd should have a substantial and tangible stake in Welsh democracy. Requiring that they be

registered to vote – and therefore resident – in Wales would help achieve such a link.

Valid arguments can indeed be made that a “substantial” and “tangible” stake can be demonstrated by other means than simply residency – for example employment. However, it is also appropriate that in order for a person to participate in a Senedd election as a candidate, that person should be eligible to participate in that election as an elector. Employment in Wales (for example) does not entitle a person to vote in a Senedd election. Ultimately, a registration requirement provides a clear and objective standard by which residency – or otherwise – can be assessed.

19) Has the Welsh Government considered whether the absence of any ‘grace period’ or other mechanism to enable a candidate on a party’s list to reestablish their residency within a reasonable period should a vacancy arise between ordinary general elections which they would otherwise be qualified to fill could dissuade people from putting their names forward for selection or from agreeing to be nominated if selected lower down on parties’ lists.

An individual who was not returned from a party’s list at a general election, and who was then called upon to fill a vacancy, would be disqualified from being a Member of the Senedd if that individual was no longer registered to vote at an address in Wales.

Such a person, however, would have made that decision to remove themselves from the register in the knowledge of the fact that doing so would effectively preclude them from filling any vacancy. Unless an individual was already planning on moving away from Wales at the time of their candidacy, there is no reason why such a requirement would dissuade a person from seeking nomination for candidacy.

In order for an individual to be “deleted” from an electoral register without a review taking place (which would require the Electoral Registration Officer (ERO) to attempt to contact the elector in question), a very specific set of criteria must be met.¹¹ These include – for example - the ERO having received notification that the elector has applied to be registered elsewhere, having received notification of the elector’s death, and receiving information from at least two sources that supports a determination that a person is no longer entitled to be registered. It is therefore unlikely that an elector would be removed from a register unknowingly.

Furthermore, we would need to be mindful that any “grace period” could introduce uncertainty into the system, as a non-registered member making use of such a period may be unable to secure residency within that period and could therefore trigger a further vacancy.

20) In the absence of any public consultation prior to the inclusion of this provision in the Bill, what discussions or engagement does the Welsh Government plan to undertake (and with whom) in respect of this

¹¹ Electoral Commission, *Making deletions from the register without a review*, October 2023, <https://www.electoralcommission.org.uk/running-electoral-registration-wales/managing-amendments-reviews-objections-and-deletions-throughout-year/making-deletions-register-without-a-review>

requirement, how it would operate in practice, and whether it could give rise to any unintended consequences.

The residency requirement – which underpins part of the criteria needed to become registered to vote – is one that is already well established in electoral law. Welsh Government has held initial discussions with Returning Officers and electoral administrators as to how such a requirement could form part of the nomination process.

The detail of how registration will be given effect in respect of candidacy at nomination will be set out in the Conduct Order, which will be subject to public consultation. We will continue to engage with partners regarding implementation and operation of this requirement throughout the Bill process and after introduction.

Electoral system

21)The rationale for reducing the maximum length of parties' candidate lists from the current 12 (for 4 seats in each region) to 8 (for 6 seats in each new constituency), and what assessment has the Welsh Government made of the potential impact on the ability to fill vacant seats arising between ordinary general elections, especially given the proposed new residency requirement.

Whilst the current regional system allows for 12 candidates to be nominated for four seats, it is not the case that parties fill those lists – for example, in the most recent Senedd regional elections, no party submitted more than 10 candidates in any region, and most submitted eight or fewer.

In addition, the current system allows a candidate to stand nominated for a party in both a constituency, and on that party's regional list (for the region in which that constituency is situated). If that candidate is returned at the constituency election, then they are removed from the regional list. As this scenario is not possible under the new system, there is no requirement for the system to include longer lists as a counterbalancing measure.

However, the rate of vacancies that have occurred in respect of Senedd seats to date is low. Between 1999 and 2021, a total of 14 vacancies arose – an average of 2 vacancies every 3 years. All of those vacancies were filled, including those that arose in respect of regional list seats.

Applying that factor to a Senedd with a four year term and 96 members would indicate between 4 and 5 total expected vacancies across a term. Each party can stand up to 8 candidates on a constituency list, which provides a significant level of resilience in terms of filling vacancies.

22)Why the Bill does not include express provision that the names of candidates on parties' lists will be included on ballot papers (in line with the recommendation of the Special Purpose Committee), and whether any consideration has been given to amending the Bill in this respect.

GoWA 2006 does not currently specify what information should be set out on ballot papers. This legislation follows that precedent.

Rules setting out what information needs to be set out on the Ballot Paper – and the design of the Ballot paper itself – will be set out in secondary legislation, as in previous elections. It is not therefore considered necessary to provide for this on the face of the Bill.

It is our intention to retain the element of the current system, whereby the list of candidates will be presented to the electorate on the ballot paper – in the order in which they are to fill the seats won by that party – allowing voters to make an informed decision.

Democracy and Boundary Commission Cymru (“DBCC”)

23) Whether any additional commissioners will need to be appointed to enable the DBCC to undertake its ‘pairing’ review of Senedd constituencies ahead of the 2026 election.

It will be for the DBCC to determine its needs having given consideration to its workload in the round. Initial discussions with the current secretariat of the Local Democracy and Boundary Commission for Wales suggest that the comparatively straightforward and streamlined pairing nature of the 2026 review would – in itself – mean that the Commission could potentially undertake the review with the existing complement of Commissioners. However, the workload of the DBCC will also include the additional functions conferred by the Elections and Elected Bodies (Wales) Bill and the Commission will need to take account of these in its business planning.

Consequently, the legislation provides for an increase in the maximum number of Commissioners to nine, which reflects the anticipated increased workload for the Commission in the longer term, which, in addition to the need for full Senedd boundary reviews, will also arise from the transfer of the functions of the Independent Remuneration Panel and establishment of the Electoral Management Board, via the Elections and Elected Bodies (Wales) Bill.

However, this is a maximum number of Commissioners, and not a target. Any increase in the actual number of Commissioners will be subject to requirement, and a robust public appointment procedure.

24) Could you outline the appointment process that will apply to DBCC commissioners, including whether the Welsh Government has considered (and/or discussed with the Senedd) whether the process for appointing the Chair of the DBCC should include a pre-appointment hearing with a Senedd committee.

Commissioners (including the Chair) of the Local Democracy and Boundary Commission for Wales are appointed through a rigorous public appointments process which follow the Code of Practice for Public Appointments. This will continue

following the repurposing of the DBCC and the conferral of functions relating to Senedd Boundary reviews.

The Public Appointments Commissioner provides independent assurance that public appointments are made in line with the Code.

Boundaries for the 2026 election

25) Whether the process outlined in Schedule 1 to the Bill will provide sufficient opportunities for the public and interested stakeholders to engage in the boundary review process given the curtailed consultation periods for which the Bill provides.

The timetable for the 2026 review as set out in the legislation includes two consultation periods of four weeks.

This is a more limited consultation in comparison to three periods of eight, six and four weeks respectively for the review in advance of the 2030 election, and subsequent elections.

Given the comparatively limited scope of the review in advance of the 2026 election – in that the Commission is only making pairing choices between existing UK Parliament constituencies, rather than drawing wholly new ones – this is considered sufficient to allow the public and other stakeholders to engage with the process.

26) What assessment has the Welsh Government made of the impact of the difference between the UK electoral franchise (on which the UK Parliamentary boundaries are based) and the local government electoral franchises (on which Senedd elections take place) on the equality or otherwise of representation across the 16 paired constituencies for 2026.

The 32 UK Parliament constituencies will already be within 95%-105% of the UK Parliamentary electoral quota, as a result of the rules for the 2023 UK Parliamentary boundary review (with the exception of Ynys Môn).

Any pairing choice for the 2026 review will inevitably be close to the UK electoral quota, and therefore in practice the Senedd constituencies for 2026 will be very similar in electorate size (the exception to this will be the constituency pairing which includes Ynys Môn).

The boundary review undertaken in advance of the 2030 Senedd election will be based on the Senedd franchise (at a more recent date), and as such it is not possible to specify exactly the difference between the two franchises and therefore the impact on equality of representation.

However, even if there are some divergencies in the sizes of the resulting Senedd constituencies for 2026- as a result of the different franchises for the Senedd and UK Parliament- they are likely to be significantly less divergent than those of the existing 40 Senedd constituencies, because these boundaries have effectively been ossified.

27) Whether the Welsh Government will provide a definition of “contiguous” to support the DBCC’s pairing considerations.

The policy intent for the 2026 review is that the parliamentary constituencies to be paired must share a land border, with the exception of Ynys Mon which of course has no land border.

For the Ynys Mon parliamentary constituency, the intent is that it should be paired with a neighbouring constituency. The word contiguous is used with the purpose of giving effect to that policy intent.

The rules provided for in Schedule 1 to the Bill leave the actual pairings for all 16 constituencies to the discretion of the DBCC.

Had the government intended that Ynys Mon should only be paired with a specified constituency, the legislation would have provided specifically for that.

It will of course be for the DBCC as an independent body, to determine the meaning and application of the rules which apply to the 2026 review.

28) Whether the Welsh Government intends to provide any further definition or guidance on which matters the DBCC should consider to be “local ties” when conducting its pairing review. For example, the EM suggests the Welsh language will be a local tie, but this is not included in the Bill

It will be for the DBCC as an independent body, to determine the meaning and application of the rules which apply to the Senedd reviews.

It is not intended that the legislation prescribe further detail about the meaning of the ‘rules’ including what the Commission should consider as “local ties” in advance of the review as this would limit the discretion of the DBCC.

The Explanatory Memorandum notes that – as an example only - the Local Democracy and Boundary Commission has considered Welsh Language as a local tie as part of a previous Local Government review.

That example is not intended to indicate that the DBCC would necessarily adopt the same approach in respect of a Senedd boundary review.

Future boundary reviews

29) The rationale for setting the electoral quota for ongoing reviews of the Senedd’s boundaries at $\pm 10\%$.

A 10% variance is considered appropriate as it allows for balance and flexibility for the DBCC to consider factors other than the quota, whilst also maintaining a level of parity of representation between electors in different constituencies.

30) Whether there is any tension between the requirement in new section 49C(1) of the 2013 Act (as inserted by Schedule 2 to the Bill) to equalise the size of Senedd constituencies, and the requirements in new section 49C(2)(b) to minimise the amount of change to Senedd constituencies and have regard to the inconvenience of making changes.

The requirement for the Commission to ensure that all constituencies have an electorate within +/- 10% of the electoral quota is an absolute. In taking into account the inconvenience of changes to existing boundaries, the DBCC must always comply with the allowable variance.

What a variance of +/- 10% does allow, is a greater level of flexibility for the DBCC to take into account existing Senedd boundaries, whilst remaining compliant with the allowable variance, as compared to a +/- 5% variance, and also maintaining a level of parity of representation between electors in different constituencies.

31) Whether such tension may be particularly acute in the first 'full' review under new Part 3A of the 2013 Act on the basis that the review that takes place between 2025 and 2028 will be based on a different franchise from the 2023 UK Parliamentary review, and will need to take account of potentially significant changes to the constituency containing Ynys Môn

Any pairing choice for the 2026 review will inevitably be close to the UK electoral quota (given the rules of the 2023 UK Parliamentary boundary review), and therefore in practice the Senedd constituencies for 2026 will be very similar in electorate size (with the exception of the constituency pairing which includes Ynys Môn).

In terms of Ynys Môn, we do not know which UK Parliamentary constituency Ynys Môn will be paired with to create a new Senedd constituency in advance of the 2026 Senedd election. The review in advance of the 2030 election will be based on the Senedd franchise (at a more recent date), and as such it is not possible to specify exactly the degree of change required to ensure that the Senedd constituency that includes Ynys Môn would be within the tolerable variance from the electoral quota.

As part of the subsequent review to take place ahead of the 2030 election, the +/- 10% variance from the electoral quota allows for flexibility for the DBCC to consider other factors, such as the requirement to seek to minimise the amount of change to Senedd constituencies, including Ynys Môn. The management of these sort of tensions is typical in boundary reviews.

Review of provisions

32)The rationale behind the requirement in section 19 for the Llywydd to propose the establishment of a Senedd committee to undertake a review of the operation and effect of the Welsh Government’s legislation, rather than placing a requirement on the Welsh Government to undertake such a review.

Whilst this is a Welsh Government Bill, its core purpose is to give legislative effect to the recommendations of the Special Purpose Committee on Senedd Reform, whose recommendations were endorsed by the Senedd.

Therefore, whilst consideration was given to placing a reporting duty on Welsh Ministers, the government determined that it is more appropriate that any review of the operation and effect of the Act is undertaken by the Senedd.

The Bill provides a mechanism by which the Senedd could choose to establish a committee to undertake this work. A committee when established and constituted would usually reflect the political balance of the Senedd, therefore the approach would provide for cross-party consideration of the operation and effect of the Act. However, the Senedd is not bound to this approach and could choose an alternative approach if it so wished.

33)Whether it is appropriate for the Welsh Government to require in legislation that the Llywydd should propose the establishment of a Senedd committee to undertake an inquiry into the “extent to which the elements of a healthy democracy are present in Wales”, and for the Welsh Government to propose in the EM what such an inquiry might consider.

The role of Llywydd, as distinct from the Senedd itself, does have various functions imposed on it in legislation.

Requiring the Llywydd to propose a motion was considered the most appropriate way to ensure these important issues are considered by the next Senedd if it so chooses, but it remains a matter for the next Senedd to itself determine whether and how to undertake that consideration. This approach has been adopted precisely to avoid legislation which binds the Senedd itself.

We have considered that the committee may also wish to consider the extent to which the elements of a healthy democracy are present in Wales. The Explanatory Memorandum sets out that this may include:

- The awareness and understanding of devolved Welsh government and elections;
- An assessment of turnout levels and an exploration of proposals for how this may be increased;
- Support for members and parties to undertake their Senedd roles; and
- The infrastructure in place to support a strong Welsh democracy.

However, the examples set out in the Explanatory Memorandum are illustrative and in no way bind the committee to consider those specific matters. If established, the Senedd Committee could consider any Senedd reform issue that it considers relevant.

The legislation only requires the Llywydd to table a motion to establish the Committee – the Senedd will maintain its autonomy and it will be for the Senedd, subject to usual procedure, to determine whether or not to support that motion.

Diversity provisions

34) Could you outline the rationale for the Welsh Government’s intention to issue guidance to political parties on diversity and inclusion strategies, rather than including provision relating to these matters in the Bill.

We believe we can deliver on the intent behind the Special Purpose Committee’s recommendation, without the need for explicit provision in the Bill. We can achieve the aim of the recommendation effectively by producing guidance to provide political parties with the tools they need to develop Diversity and Inclusion Strategies.

We will work with our partners in this area to develop guidance that will include ideas on practical actions and activities that parties can take to attract and retain candidates from a range of underrepresented groups, not just for Senedd elections, but in respect of all devolved elections in Wales.

Financial implications

35) Why does the EM not include financial estimates for alternative proposals, particularly for those provisions that are not based on the recommendations of the Special Purpose Committee.

The Welsh Government’s intention was to implement the recommendations of the Special Purpose Committee’s report, and this has formed the basis of the Bill and its Regulatory Impact Assessment (RIA).

Three additional relevant policy issues were identified subsequent to the Special Purpose Committee’s report (residency, term lengths and review mechanism), which were considered appropriate for the legislation to also address.

The Explanatory Memorandum sets out where different options were considered in relation to these policy areas - for example, an alternate option of how to deliver on the policy intention of a residency requirement. These different options would not have given rise to significantly different financial implications and the RIA therefore does not include costs for these options.

In addition, the implementation mechanism for some of the proposals would be through the Conduct Order and further consideration of the associated cost estimates for those will accompany such legislation at that time.

36)What assurance can you give that the figures in the EM are robust and an accurate reflection of the potential cost of the proposals.

The Explanatory Memorandum's Regulatory Impact Assessment (RIA) contains the best estimate of costs and savings based on the information available at the time and based on evidence provided by the Senedd Commission, Local Authorities, the Local Democracy and Boundary Commission and the Electoral Commission, as well as the Welsh Government's own estimates.

The estimates were developed through robust dialogue over a number of months with partners and departments across the Welsh Government to ensure that costs were provided in a consistent manner and to aid understanding of the composition of data. Partners had their own mechanisms for the assessment and agreement of estimated costs and savings, and provided assurance to Welsh Government by explaining their approach to doing so where the government did not have a direct role.

In developing the estimates a number of assumptions on likely scenarios were developed to base the cost calculations on. These are outlined within the RIA and provide a range of potential costs in which the actual costs could reasonably be assumed to fall.

As set out in detail in the RIA, it was not possible at this time to cost certain areas with any reasonable degree of accuracy as there are unknown factors or decisions which are yet to be taken which could impact on estimates (for example the review to pair constituencies ahead of the 2026 Senedd election, and decisions taken by a new Senedd and Welsh Government after the 2026 election) and further information and decisions would be required in order to consider the cost implications. However in line with the requirement in Standing Orders we have provided the best available estimates of costs.

37)The EM notes that some costs have not been estimated on the basis that they are subject to decisions to be taken by the Seventh Senedd and the Welsh Government in place after 2026. Are you able to provide a ballpark estimate for these unknown additional costs that could come as a result of the Bill's implementation.

As set out in the RIA, there are a number of areas where it has not been possible to definitively estimate costs and savings at this stage as further information and decisions are required in order to consider the cost implications.

The unknown factors which, when subsequent decisions have been taken, could impact on the estimates (both in terms of costs or savings) include:

- the pairing arrangements for constituencies;
- decisions taken (post-election) by the Senedd and First Minister, for example, on the number of Committees, Welsh Ministers etc.); and

- future budgetary decisions and changes to ways of working which are not as a direct result of the legislation.

It is important to note that these decisions may render savings as well as costs. For example, once the actual pairing of constituencies is known on which the 2026 election will be conducted, local authorities will be able to take decisions on a range of issues such as the location of polling stations as well as the size and location of count venues. This may give rise to additional costs or savings, but the scale of these cannot be predicted at this stage.

Mechanism to recall Members of the Senedd

38)What consideration has the Welsh Government given to issues relating to mechanisms to enable constituents to recall Members of the Senedd, including, for example, the extent of public and political support for such provisions, and how such provisions could be incorporated within the Welsh Government’s proposed closed list proportional representation electoral system.

There are significant challenges in implementing a recall petition process in a proportional list electoral system. Some of these challenges were identified in a consultation undertaken on a Private Members Bill proposal in Scotland for implementing a recall petition system in respect of the Scottish Parliament’s regional list seats, which could not establish “how the member, and other candidates seeking election to their seat could compete in any form of by-election.”¹²

However, we will, of course, be open to any views, evidence and recommendations that Committees receive or make during scrutiny.

Resourcing and funding for opposition party policy development

39)What consideration has the Welsh Government given to developing proposals to support policy development by political parties in opposition in Wales.

The Welsh Government has given limited consideration to this issue. The Explanatory Notes to the Bill note that a Committee reviewing the operation and effect of Parts 1 and 2 of the Bill could consider a range of Senedd Reform matters that it considers relevant, such as “Support for members and parties to undertake their Senedd roles.”¹³

It may also be noted that the legislative framework is only one component in a wider consideration of supporting policy development by political parties in opposition in Wales, reflected by recent comments by Senedd Commission officials that:

¹² Removal from Office and Recall (Members of the Scottish Parliament) Bill- Consultation by Graham Simpson MSP, Member for Central Scotland [final-consultation-document-signed-off-by-gs.pdf \(parliament.scot\)](#), page 27

¹³ Welsh Government, Explanatory Memorandum to the Senedd Cymru (Members and Elections) Bill, Explanatory Notes, para 41.

“this is part of the planning work for how the new Senedd will operate in terms of support from Commission staff, in terms of funding from the remuneration board and so on, and discussions are starting now between the Commission and the remuneration board on this. And also at the moment, the remuneration board is involved with a programme of work, and part of that is to review the PPSA [Political Parties Support Allowance], for example. So, negotiations are starting now with the remuneration board and Members in their groups, and their staff and so on, but this is all part of the framework—you asked about the work programme—so, the Senedd reform programme, which is something that co-ordinates the work that all of those decision makers would do—so, the Commission, the Business Committee, the Chairs' forum and the remuneration board—so that they can work together. Although they're making independent decisions, they can have an overview of each other's timetables and they're all working to the same assumptions initially in terms of costs. And in terms of development then, they can work jointly, so that all pieces of the jigsaw fit together. So, as the Llywydd said, this is the start of the process, and until the Bill is agreed as an Act, then some of these things won't commence until that time, but it is all timetabled for the work programme.”¹⁴

¹⁴ Record of Proceedings (RoP), Reform Bill Committee, 25 October 2023, Para 186, <https://record.senedd.wales/Committee/13775>