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Cynulliad Cenedlaethol Cymru

Elin Jones AM, Presiding Officer

National Assembly for Wales

Llyr Gruffydd AM
Chair of the Finance Committee
National Assembly for Wales
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Our ref: EJ/HG

07 May 2019

Dear Llyr,

Senedd and Elections (Wales) Bill

Thank you for your letter of 17 April 2019, and the opportunity to provide evidence to you on the Senedd and Elections (Wales) Bill at your meeting of 4 April 2019. In your correspondence, you asked if I could clarify a comment made during the session that the Assembly Commission does not have “the ability to legislate” for direct payment to the Electoral Commission from the Welsh Consolidated Fund. You asked whether the capacity referred to was a matter of legislative competence specifically in relation to the Assembly Commission legislating, or some other restriction.

The issue here relates to the Assembly’s legislative competence.

The provisions relating to the Welsh Consolidated Fund (WCF) are set out in Part 5 of the Government of Wales Act 2006 (GoWA). Section 124 deals with payments out of the WCF and in subsection (3) specifies the relevant persons to whom sums may be paid out of the WCF as:

- “(a) the Welsh Ministers, the First Minister and the Counsel General,
- (b) the Assembly Commission,
- (c) the Wales Audit Office, and
- (d) the Public Services Ombudsman for Wales.”

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Thus, the GoWA expressly allows direct payment out of the WCF for the Wales Audit Office and the Public Services Ombudsman for Wales.

The Assembly does not have the competence to add bodies or office-holders to that list, as section 124 of the GoWA is one of the provisions which cannot be modified, within competence, by virtue of paragraph 7 of Schedule 7B to the GoWA.

This is the issue to which I – and my official Anna Daniel – referred to during the committee’s meeting.

I am exploring the options by which the portion of the Electoral Commission’s budget which relates to devolved elections in Wales could potentially be funded and the legal and constitutional issues associated with these options.

Section 124 does allow other payments to be made out of the WCF, if they are for “meeting expenditure payable pursuant to a relevant enactment”. A relevant enactment is an enactment which provides for payment out of the WCF. Therefore such a provision could, in principle, be included in the Senedd and Elections (Wales) Bill, by way of amendment.

However, the Electoral Commission is a “reserved authority” under Schedule 7B of GoWA and the Assembly is subject to a number of constraints in how it can affect reserved authorities, unless the UK Government consents to such (paragraphs 8–10). The Electoral Commission is an exception from some of those constraints, but an Act of the Assembly would nevertheless need UK Government consent in order to modify its ‘constitution..., including modifications relating to its assets and liabilities, and its funding and receipts’.

Not all provisions relating to funding would fall foul of the restriction. For example, a provision that permitted the Assembly Commission to make payments to the Electoral Commission (beyond existing powers in paragraph 5 of Schedule 2 to GoWA relating to the promotion of awareness of the election system and devolved government) would not – in itself – modify the Electoral Commission’s constitution. Thus, the provision would be within competence, because it was about “financing” the Electoral Commission; and it would not need the consent of the UK Government, because it did not affect the Commission’s constitution.



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However, provision that entitled the Electoral Commission to receive funding directly from the WCF would almost certainly be interpreted as affecting its constitution, and so as needing consent.

The Assembly may, of course, agree other amendments which would modify the constitution of the Electoral Commission.

Discussions regarding the matter are continuing between my officials, the Electoral Commission and the Welsh Government. I anticipate that amendments to the Bill will be informed by those discussions and the deliberations of your Committee and others. I would very much welcome your consideration of this matter.

Yours sincerely,

Elin Jones AM

Llywydd

cc Mick Antoniw AM, Chair of the Constitutional and Legislative Affairs Committee