



**Elin Jones AC, Llywydd**

Cynulliad Cenedlaethol Cymru

**Elin Jones AM, Presiding Officer**

National Assembly for Wales

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

Your ref:

Our ref: EJ/HF

27 November 2018

Dear Mick

### **Assembly reform: legislative competence**

As you know, the Assembly Commission is leading work on behalf of the institution to explore how powers devolved in the Wales Act 2017 over the Assembly's electoral arrangements might be used to make our legislature more effective, accessible and diverse, should the required degree of political consensus for electoral reform emerge. This includes consideration of the Assembly's legislative competence. I am writing to update you on my correspondence with the Secretary of State for Wales in respect of these matters.

As I announced in a Written Statement to the Assembly in July 2018, I am confident from conversations to date, and from the response to the Assembly Commission's Creating a Parliament for Wales public consultation, that there is sufficient support for the Expert Panel's recommendation that there should be an increase in the number of Assembly Members. However, there is not yet consensus among political parties on the voting system that should be used to elect that larger institution. It is clear that more time is needed for discussions to

**Cynulliad Cenedlaethol Cymru**

Bae Caerdydd, Caerdydd, CF99 1NA

Llywydd@cynulliad.cymru

www.cynulliad.cymru

0300 200 7403

**National Assembly for Wales**

Cardiff Bay, Cardiff, CF99 1NA

Llywydd@assembly.wales

www.assembly.wales

0300 200 7403



**Elin Jones AC, Llywydd**

Cynulliad Cenedlaethol Cymru

**Elin Jones AM, Presiding Officer**

National Assembly for Wales

take place on how Members should be elected and the approach to be taken to improve diversity of representation in Wales.

While these discussions take place, the Assembly Commission is exploring how the recommendations made by the Expert Panel for the reform of the Assembly's electoral arrangements might be taken forward, should political consensus emerge. This includes the Panel's recommendations for measures to improve diversity of representation.

As you will be aware, the Wales Office intends to bring forward a Section 109 Order this autumn, primarily to address issues arising in relation to Brexit. Assembly Commission officials have had initial conversations with Wales Office officials as to whether this Order, or a subsequent Section 109 Order, could offer a suitable legislative vehicle to clarify the Assembly's legislative competence as it relates to matters within the scope of the Assembly reform work.

One such issue is whether the reservation of equal opportunities inadvertently constrains the Assembly legislative competence in relation to electoral matters. I enclose a copy of a letter to the Secretary of State for Wales in respect of this matter. Clarification of the Assembly's competence in this regard by means of a Section 109 Order would give full expression to the devolution of legislative competence over the Assembly's electoral arrangements. Such clarification would ensure that the Assembly itself is able to determine if and how it wishes to respond to the Expert Panel's recommendations.

If you would like to discuss this matter, I would be happy to do so.

Yours sincerely

Elin Jones

Llywydd



**Elin Jones AC, Llywydd**

Cynulliad Cenedlaethol Cymru

**Elin Jones AM, Presiding Officer**

National Assembly for Wales

The Rt Hon Alun Cairns MP  
Secretary of State for Wales

27 November 2018

Dear Alun

### **Equal opportunities and the Assembly's electoral arrangements**

With effect from 1 April 2018, the Wales Act 2017 devolved power to the Assembly over its own elections. You will be aware that I am leading proposals to reform the Assembly and its electoral arrangements, which includes consideration of diversity of representation.

I have received advice that the reservation of 'Equal opportunities' may inadvertently constrain the Assembly's capacity to legislate in relation to electoral matters. I would therefore welcome your views on the mechanism by which the Assembly's legislative competence in this respect might be clarified, and the timescales for such clarification.

The Expert Panel on Assembly Electoral Reform recommended in December 2017 that the Assembly should have between 80 and 90 Members. Increasing the size of the legislature requires reform of the way in which Members are elected. The Panel recommended that this reform should include measures to support and encourage the election of a legislature which more closely reflects the diversity of the people and communities it serves. Such measures might include, for example, the integration of candidate gender quotas into the electoral system or the introduction of legislative requirements for political parties to publish anonymised data on the diversity of their candidates.

Should the Assembly Commission decide to legislate in relation to the above, it will need to explore how the relevant recommendations might be taken forward.

Paragraph 187 of Schedule 7A of the Government of Wales Act 2006 reserves "Equal opportunities", although the reservation does include a number of

#### **Cynulliad Cenedlaethol Cymru**

Bae Caerdydd, Caerdydd, CF99 1NA

Llywydd@cynulliad.cymru

www.cynulliad.cymru

0300 200 7403

#### **National Assembly for Wales**

Cardiff Bay, Cardiff, CF99 1NA

Llywydd@assembly.wales

www.assembly.wales

0300 200 7403



**Elin Jones AC, Llywydd**

Cynulliad Cenedlaethol Cymru

**Elin Jones AM, Presiding Officer**

National Assembly for Wales

exceptions. The definition of ‘equal opportunities’ in paragraph 187 is: “the prevention, elimination or regulation of discrimination”. The purpose of any legislation introduced by the Assembly Commission to implement the Expert Panel’s recommendations would be to achieve greater diversity of representation by improving the gender balance among electoral candidates. This would not engage the functions specified in the definition of ‘equal opportunities’ in paragraph 187.

It is clear, therefore, that having regard to the ‘purpose and effect’ test, a respectable argument can be advanced that seeking to achieve a gender-balanced Assembly is not reserved. However, there is currently no explicit exception for Assembly elections. Clarifying the equal opportunities reservation by means of a Section 109 order would place this matter beyond doubt, and would give full expression to the devolution of legislative competence over the Assembly’s electoral arrangements. Such clarification would ensure that the Assembly itself is able to determine if and how it wishes to respond to the Expert Panel’s recommendations.

I welcome the way in which your officials have been willing to engage with Assembly Commission officials in initial discussion of these matters. I look forward to hearing your views, including the timescales within which any Section 109 Order might be brought forward in order to inform cross-party discussions on electoral reform.

Yours sincerely

Elin Jones

Llywydd

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

cc The Rt Hon Carwyn Jones AM, First Minister