

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Materion Cyfansoddiadol a
Deddfwriaethol
Bil Senedd ac Etholiadau (Cymru)

National Assembly for Wales
Constitutional and Legislative Affairs
Committee
Senedd and Elections (Wales) Bill

CLA(5) SE03
Ymateb gan Keith Bush CF

Evidence from Keith Bush QC

Introduction

1. The author is an Honorary Professor in the school of law at Swansea University¹. He specialises in public law subjects and welcomes the opportunity to contribute to stage 1 consideration of the Senedd and Elections (Wales) Bill. Below is a summary of his comments on the legal and constitutional aspects of the Bill's provisions. He can expand on them if the Committee wishes him to do so.

Name of the National Assembly for Wales

2. There is no legal reason why the name of the National Assembly for Wales need change. The current name performs the function of providing a clear and unambiguous name for the organisation. But it is accepted that there are other reasons which may justify a change in the name, namely:
 - To underline the difference in structure and functions between the present institution and the corporate body, with executive functions only (the "Assembly"), established by the Government of Wales Act 1998;
 - To improve public understanding of the nature and work of the institution which is now (since the Government of Wales Act 2006 came into force) a legislative body similar, in nature, to the Westminster Parliament and the Scottish Parliament;

¹ See Appendix 2 for more information about the author.

- To reflect, through the new name, the enhanced status of the Welsh language in a devolved Wales.
3. It must be recognised that the three objectives above are not necessarily entirely consistent with each other. Nearly everyone in Wales and beyond understands the nature of a "Parliament". That name corresponds with the names of bodies exercising similar functions at United Kingdom level, in Scotland and in other countries within the Commonwealth. But "Senedd" is a word for "Parliament" in a language which only about one in five of the population of Wales currently understands.
 4. Of course, use of the name "Senedd" as the usual way of referring to the institution, in both languages, would become familiar with time. By now there is no reason to believe that the non Irish-speaking population of Ireland has any trouble in understanding the nature and function of the "Oireachtas".
 5. **But the author does not believe that the adoption of the name "Senedd", on its own, is sensible in the case of Wales. He strongly believes that the name should be "Senedd Cymru".**
 6. Even in the case of Ireland, the official names (under the Irish Constitution) of the two houses of the Oireachtas are "Dáil Éireann" and "Seanad Éireann". That is despite the fact that there is only one legislature acting in the republic of Ireland and that a completely different Irish word, "Parlaimint", is used for the Westminster, Holyrood and Strasbourg / Brussels parliaments.
 7. And within federal or quasi-federal systems, where legislatures operate side by side but at different levels, the normal practice is to use terminology which distinguishes clearly between them. This can be on the basis of using totally different terms. In Canada there is a Canadian Parliament but an Ontario Legislative Assembly and an Assemblée Nationale du Québec. In Germany there is the Deutsche Bundestag but the Bayerischer Landtag. Or the same name may be used but qualified so as to refer specifically to the geographic

jurisdiction of the legislature. In Australia there is an Australian Parliament and a Queensland Parliament, a Tasmanian Parliament, and so on.

8. In the case of the United Kingdom the need to adapt the use of the term "Senedd" when referring to a different institution from the Westminster Parliament is reinforced by the fact that the Westminster parliament was the only one (apart from the period of the Northern Ireland Parliament between 1922 and 1972) which existed within the state prior to 1999. References to the "Senedd" in Welsh are naturally taken, at present, to be references to the Westminster parliament. That parliament is, of course, still the only parliament for England. The practice of referring, in the media and in legal, administrative and commercial documents, to the parliament of the United Kingdom as "y Senedd" is likely to continue. It will often be necessary, in practice, to refer in Welsh, both orally and in writing, to "Senedd Cymru". If "Senedd Cymru" becomes, in reality, the usual way of referring to the institution, at least in one language, clarity and consistency would be strengthened if that were also its legal name.
9. On the other hand, the author does not see any *practical* need, if "Senedd Cymru" is adopted, to authorise the official use of the alternative term "Welsh Parliament". No doubt there will be frequent informal references in the media and so on to "Senedd Cymru (the Welsh parliament)". But to give legal status to the name "English Parliament" would weaken the effect of stressing the position of the Welsh language as the historic national language, if that is the predominant aim of the change of name. If there is a strong feeling that a monolingual Welsh name should not be adopted then it would be more logical to simply adopt a bilingual name, with "Senedd Cymru" and "Welsh Parliament" being used consistently in the two languages. The author stresses, however, that the use of "Oireachtas", "Dáil Éireann" and "Seanad Éireann" (or "Taoiseach" for first Minister) does not seem to cause any practical problems in Ireland.

10. Naturally, "y Senedd" or "the Senedd" would continue to be used, in practice, in many contexts, just as "the Parliament" is used in the context of the internal procedures of the Scottish Parliament. For example, the standing orders of that parliament begin by stating that the Scottish Parliament was established by the Scotland Act 1998 but then go on to refer only to "the Parliament".
11. Indeed, there would be no need to use the full expression "Senedd Cymru" in the Government of Wales Act 2006, once the new name of the body has been established (see schedule 2 below). The Act currently starts by identifying the full name of the institution ("National Assembly for Wales / Cynulliad Cenedlaethol Cymru") but then refers only to "the Assembly".
12. If "Senedd Cymru" were to be adopted, the names of the offices, bodies and enactments which include the name of the institution would naturally follow the same pattern:
 - Deddfau Senedd Cymru / Acts of Senedd Cymru;
 - Aelodau Senedd Cymru (ASC) / Members of Senedd Cymru (MSC);
 - Clerc Senedd Cymru / Clerk of Senedd Cymru;
 - Comisiwn Senedd Cymru / Senedd Cymru Commission;
 - Bwrdd Taliadau Senedd Cymru / Senedd Cymru Remuneration Board;
 - Comisiydd Safonau Senedd Cymru / Senedd Cymru Commissioner for Standards.
13. Part 2 of the Bill currently takes the form of stand-alone legislative provisions rather than amendments to the Government of Wales Act 2006, even though the latter approach has been taken in relation to the miscellaneous amendments made by Schedule 1 of the Bill in order to change the many references in the 2006 Act to "Assembly" and so on.
14. The author feels that it would be better, instead, to amend section 1(1) of the Government of Wales Act 2006 to read:

“(1) There is to be an Assembly for Wales to be known as Senedd Cymru (referred to in this Act as “the Senedd”).”

(This amendment would come into force at the end of the current Assembly.)

15. Examples of how other provisions in the 2006 Act would change are given in Appendix 1 to this paper.
16. There is also a need, in the interests of clarity and effectiveness, to amend section 150A of the Government of Wales Act 2006, which deals with the effect of changing the names of the National Assembly for Wales, the Commission and Assembly Acts. Subsection (1) could be repealed entirely while retaining subsection (2) but changing it to "... is to be read as, or including, a reference to the Senedd Cymru, the Senedd Cymru Commission or to an Act of Senedd Cymru (as the case may be). "

Elections

17. Lowering the voting age for Senedd Cymru from 18 to 16 is a matter of policy and the author does not wish to comment on it.

Disqualification

18. The author supports the changes to the disqualification regime proposed by Part 4 of the Bill. They reflect evidence he gave to the Fourth Assembly's Constitutional and Legislative Affairs Committee in 2014.
19. It is proposed that a list of offices be maintained that, for constitutional reasons, are fundamentally inconsistent with being a Member, and therefore disqualify from being a candidate (while other posts permit a person to stand as a candidate but require that person to relinquish the post if elected).
20. This arrangement is sensible and logical. But care will need to be taken to ensure consistency in the allocation of offices. It is noted, for example, that the post of President of Welsh Tribunals does currently not appear in the first list, although it is one that is constitutionally incompatible with being a Member.

Miscellaneous

21. Timing of the first meeting

The author agrees that the period between an election and the first meeting of the Senedd should be not more than fourteen days instead of seven days. There needs to be sufficient time for the parties to discuss, amongst each other, who is to form a government and, consequently, who should hold the posts of Presiding Officer and Deputy Presiding Officer.

22. Power of the Welsh Ministers to make provision about elections

The breadth of the extra powers that would be granted to the Welsh Ministers by section 36 seems to go beyond that which would normally be regarded as constitutionally desirable. Important changes to the law, especially in relation to electoral law, should be open to full legislative scrutiny. Legislative procedures can be simpler, of course, in the case of technical amendments recommended by the Law Commission but control over them should, ultimately, remain in the hands of the legislature.

23. The Senedd Commission

Section 37 will remove any doubt about the legal basis of activities which, of course, already take place to some extent and thereby free the Commission to develop these activities, within sensible boundaries, as necessary.

Keith Bush QC

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APPENDIX 1

Examples of how other provisions in the 2006 Act would change in accordance with the author's proposal:

□ Section 1(3):

“(3) Members of Senedd Cymru (referred to in this Act as “Senedd Members”)....”

□ Section 26(1):

“(1) The Senedd Commission must appoint a person to be Clerk of Senedd Cymru or Clerc Senedd Cymru (referred to in this Act as “the clerk”)”

□ Section 27(1):

“(1) There is to be a body corporate to be known as the Senedd Cymru Commission or Comisiwn Senedd Cymru.

□ Section 107:

“The Senedd may make laws, to be known as Acts of Senedd Cymru or Deddfau Senedd Cymru (referred to in this Act as “Acts of the Senedd.”).

□ Section 1(2):

“(2) The Senedd is to consist of –

(a) one member for each Senedd constituency (referred to in this Act as “Senedd constituency members”), and

(b) members for each Senedd Assembly electoral region (referred to in this Act as “Senedd regional members”).

APPENDIX 2

Keith Bush QC LLM (London) is a barrister and Honorary Professor in the Hillary Rodham Clinton School of Law at Swansea University. He is also President of the Welsh Language Tribunal, a member of the Law Commission's Advisory Committee for Wales, a member of the committee of Public Law Wales and the Treasurer of the Legal Wales Foundation.

After working as a barrister in Cardiff for over 20 years, he joined the Welsh Government's legal service in 1999, where he became legislative counsel, leading the legal team who worked on a number of Bills relating to Wales, including the one that became the Government of Wales Act 2006. From 2007 until 2012, he was Chief Legal Adviser to the National Assembly for Wales.

He has contributed to the *Statute Law Review*, the *Cambrian Law Review*, *Wales Legal Journal*, *Journal of the Welsh Legal History Society* and the *New Law Journal* and regularly lectures on public law issues in English and Welsh. He has been Module Director for two innovative undergraduate modules at Swansea University on Legislation and on the Law of Multi-level Governance as well as contributing to the teaching of public law in Welsh and English. He is author of a Welsh language work on public law- '*Sylfeini'r Gyfraith Gyhoeddus*' commissioned by Bangor University and the Coleg Cymraeg Cenedlaethol. His teaching and research interests include the law of devolution, federal and quasi-federal states and non-territorial constitutional structures and the legal rights of linguistic and cultural groups