

Julie James AS/MS
Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government



Llywodraeth Cymru
Welsh Government

Mick Antoniw MS
Chair, Legislation, Justice and Constitution Committee
Senedd Cymru
Cardiff
CF99 1SN

By e-mail to: SeneddLJC@senedd.wales

3 February 2021

Dear Mick,

I was pleased to give evidence to the Committee on Monday, 1 February. I am extremely grateful to the Members of the Committee and Senedd Commission officials who produced, in little over 24 hours, such a thorough and comprehensive report on the Welsh Elections (Coronavirus) Bill enabling me to respond to the recommendations before the Senedd in the Stage 1 debate.

As I said in the debate, I am pleased to accept the majority of the Committee's recommendations. The Government's response to each recommendation is set out in the accompanying schedule and we will lay this letter and the response in the Senedd.

Yours sincerely

Julie James AS/MS
Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@gov.Wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

**Welsh Government response to the
Legislation, Justice and Constitution Committee report on the Welsh Elections (Coronavirus) Bill**

	Recommendation:	Welsh Government Response
1	<i>The Minister should publish the Welsh Government's assessment of the impact of the Bill's provisions on human rights as soon as possible and no later than 5 February 2021.</i>	<p>We reject this recommendation.</p> <p>The Welsh Government does not publish its assessments of compatibility with human rights legislation. But we are satisfied that the Bill is within competence and does not breach the Human Rights Act.</p>
2	<i>The Bill should be amended to expressly time limit the contingency measures set out in the Bill, in particular, to provide that the provisions which relate to the 2021 Election cease to apply on the day following the first meeting of the new Senedd.</i>	<p>We reject this recommendation.</p> <p>To the extent that the Bill requires time limits they are already built into the text.</p>
3	<i>The Bill should be amended to remove "or appropriate" from section 5(1).</i>	<p>We reject this recommendation.</p> <p>In the current circumstances of the pandemic, we want to maintain the flexibility that "appropriate" affords, and we draw to Members' attention that the same wording appears in the equivalent Act of the Scottish Parliament.</p>
4	<i>The Bill should be amended so that the First Minister must consult the Electoral Commission, the Chief Medical Officer, and such other persons considered to be appropriate, before exercising the power in section 5(1) of the Bill.</i>	<p>We accept this recommendation in part.</p> <p>We will bring forward an amendment to require the First Minister to consult the Welsh Government's Chief Medical Officer. The Electoral Commission is already under a duty in the Bill to provide advice. The Welsh Government is in continuous dialogue with partners about the</p>

		<p>election, but we do not want to create any ambiguity about who must be consulted and so will not include a general duty to consult other persons.</p>
<p>5</p>	<p><i>The Minister should clarify during the Stage 1 debate the implications of the drafting of sections 5(2), 5(3), 5(4) and 5(6) of the Bill by confirming our understanding as set out in paragraph 65 and addressing each of the questions in paragraph 66.</i></p>	<p>We accept this recommendation.</p> <p>The Committee's understanding as set out in paragraph 65 of the report is broadly correct. The Llywydd does have discretion to propose a date. However, it is the Llywydd who fixes the date, but only if the date is agreed by a supermajority.</p> <p>In response to the Committee's questions:</p> <p>The Bill does not make provision for whether or not a motion can be amended. Such provision could be made in Standing Orders, and we have initiated a discussion with Business Committee about the procedures which may be appropriate. In the absence of specific provision in Standing Orders, tabling and selection of amendments would be a matter for the Llywydd.</p> <p>If the Senedd does not vote in favour of a date proposed by the Llywydd, the Llywydd can in principle propose an alternative date. Again, provision about this could be made in Standing Orders. Proposing a new date would not require a fresh proposal by the First Minister. The First Minister's power relates to proposing that the election be postponed, not to the date.</p> <p>The Llywydd cannot fix a date for a postponed election under section 5 other than one expressly approved by a supermajority of the Senedd.</p>

6	<i>Section 6 of the Bill should be amended to include a requirement that the Llywydd make a statement confirming the day fixed for the holding of the poll and explaining why it was necessary to vary the date previously fixed under section 5.</i>	<p>We accept this recommendation.</p> <p>Although there is no equivalent requirement in the power under section 4 of the Government of Wales Act 2006 (GoWA), we will bring forward an amendment to give effect to this, and thus improve transparency in these unprecedented circumstances.</p>
7	<i>The Minister should explain to Members during the course of the Stage 1 debate what measures are to be put in place to specifically provide for the form, manner of preparation and publication of the royal proclamation under section 6 of the Bill, to ensure that the Llywydd is able to fully exercise the power under section 6.</i>	<p>We accept this recommendation.</p> <p>A section 116 Order has been prepared – the Senedd Cymru (Letters Patent and Proclamations) Order 2021 – which is due to be made by Her Majesty in Council on 10 February. The Order includes a form of wording for a proclamation under Section 4(2) and 5(4) of GoWA. We propose that the form of wording can be used as a precedent / template for a proclamation under section 6 of the Bill. We would arrange for the proclamation to be published in the Gazettes. And we would of course work with the Llywydd to draw the attention of everyone involved in the election to a change in the date immediately. We are working with Buckingham Palace on this.</p>
8	<i>The Bill should be amended so that where the regulation making power in section 8 is used to amend primary legislation, the made affirmative procedure should apply.</i>	<p>We accept this recommendation.</p> <p>We will bring forward an amendment to this effect.</p>
9	<i>The Bill should be amended so that regulations made under section 12 that amend primary legislation are subject to the made affirmative procedure.</i>	<p>We accept this recommendation.</p> <p>We will bring forward an amendment to this effect.</p>
10	<i>The Minister should confirm to Members during the course of the Stage 1 debate what type of amendments the Welsh Government may</i>	<p>We accept this recommendation.</p>

	<i>introduce at Stage 2 in respect of contingency arrangements for postal voting.</i>	The type of amendments under consideration at present relate to adjustments to how postal vote applications are processed to minimise rejection of such applications.
11	<i>The Minister should confirm to Members during the course of the Stage 1 debate how and when the Welsh Government may introduce contingency arrangements for early voting.</i>	We accept this recommendation. We intend to table an amendment at Stage 2 which would confer a power on the Welsh Ministers to provide for additional voting days in the week before polling day for the Senedd election, if the poll is postponed and as long as the poll is not combined with the Police and Crime Commissioner elections.

Julie James MS
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