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Llywodraeth Cymru
Welsh Government

Mike Hedges MS
Chair
Legislation, Justice and Constitution Committee

10 July 2024

Dear Mike,

Senedd Cymru (Electoral Candidate Lists) Bill

Thank you for the Legislation, Justice and Constitution Committee's Report in relation to the Senedd Cymru (Electoral Candidate Lists) Bill published on 7 June 2024. I wrote to you on 14 June to explain that I was intending to defer the Stage 1 debate to 16 July in order to give due consideration to your report and that of the Reform Bill Committee, and to respond as fully and appropriately as possible ahead of the Stage 1 debate.

Please see my response to the set of recommendations within the report in Annex 1. I have also noted the Committee's conclusions. In responding to the 22 recommendations I have sought to address some of the concerns expressed by the Committee through these conclusions, particularly where these relate to legislative competence, the balance between primary and secondary legislation and the Bill's review provisions.

I am pleased to be in a position to publish my response earlier than that requested by the Committee (Recommendation 1) and trust that this will be helpful to both Committee members and Members of the Senedd participating in the general principles debate.

I would like to express my thanks to the Committee for scrutinising the Bill and its supporting documentation. I look forward to continuing to work with Members as the Bill progresses through the Senedd process.

I am copying this letter to the Chair of the Reform Bill Committee, the Chair of the Finance Committee and all Members of the Senedd for information.

Yours sincerely,

Jane Hutt AS/MS
Y Trefnydd a'r Prif Chwip
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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.

Annex 1

Recommendation	Response
<p>Recommendation 1</p> <p>The Trefnydd should respond to the conclusions and recommendations we make in this report at least two working days before the Stage 1 general principles debate takes place. [page 8]</p>	<p>Accept</p> <p>This recommendation is accepted, and actioned through the response detailed below.</p>
<p>Recommendation 2</p> <p>The Welsh Government must undertake and publish, prior to Stage 4 (Final Stage) of the Senedd’s legislative process, a full risk assessment of the potential for disruption to the 2026 Senedd general election as a consequence of the potential for legal challenges to the Bill. [page 25]</p>	<p>Noted</p> <p>The Legislation, Justice and Constitution Committee and the Reform Bill Committee (in its recommendation 17, in particular) raise concerns about the risk of potential disruption to the outcome of the 2026 Senedd election.</p> <p>In light of the committees’ concerns set out in their Stage 1 reports, I accept that further steps now need to be taken to mitigate risks to the 2026 election.</p> <p>In order to protect the outcome and integrity of the 2026 Senedd election, including implementation of the Senedd Cymru (Members and Elections) Act, the Senedd Cymru (Electoral Candidate Lists) Bill will now be implemented in time for the scheduled 2030 Senedd election. This will ensure that the legislation is implemented in an orderly way and gives time for any potential legal challenges to the legislation to be resolved well in advance of the election.</p> <p>I will be bringing forward an amendment to the Bill to take commencement out of the hands of the Welsh Ministers and ensure that the Bill’s provisions (subject to Royal Assent) are commenced automatically and take effect for the scheduled 2030 Senedd election.</p> <p>I have also responded on this in relation to recommendation 15 and recommendation 17 of the Reform Bill Committee’s report.</p>
<p>Recommendation 3</p> <p>The risk assessment required by recommendation 2 should include the steps the Welsh Government will take to mitigate</p>	<p>Noted</p> <p>Please see my response to recommendation 2 and my detailed response to recommendation 17 of the Reform Bill Committee’s report.</p>

<p>the likelihood of legal challenges to the Bill to ensure that:</p> <ul style="list-style-type: none"> i. the legislation is in force in good time for the 2026 Senedd general election to take place; ii. the integrity of the election process and the ensuing results in the 2026 Senedd general election are not placed in jeopardy. [page 25] 	
<p>Recommendation 4</p> <p>In the event that, following the UK general election on 4 July 2024, the Welsh Government holds discussions at the earliest available opportunity with the UK Government about whether the Bill is within the Senedd’s legislative competence, the Trefnydd must issue a statement notifying the Senedd of the outcome of the discussions. [page 25]</p>	<p>Noted</p> <p>On 22 April, the First Minister wrote to the then Secretary of State for Wales indicating that he would be content “for officials to meet to discuss the Bill at an appropriate time in the future, after the Committees have completed their Stage 1 scrutiny of the Bill”.</p> <p>As Member in Charge of the Bill, I am of the view, as stated in the Explanatory Memorandum and during Senedd scrutiny, that the Senedd Cymru (Electoral Candidate Lists) Bill is within the Senedd’s legislative competence.</p> <p>The committee will also wish to note my response to recommendation 5, and recommendation 18 of the Reform Bill Committee.</p>
<p>Recommendation 5</p> <p>The Welsh Government should work with the UK Government following the 2024 UK general election to deliver an Order in Council under section 109 of the Government of Wales Act 2006 to ensure and put beyond doubt that the Senedd has the power to make the Bill as currently drafted. [page 25]</p>	<p>Noted</p> <p>As Member in Charge of the Bill, I am of the view, as stated in the Explanatory Memorandum and during scrutiny, that the Senedd Cymru (Electoral Candidate Lists) Bill is within the Senedd’s legislative competence.</p> <p>I will consider this recommendation further as the Bill progresses.</p> <p>However, I have been advised that, even if a section 109 Order were pursued, it cannot put the question of competence beyond doubt. Only the ruling of the Supreme Court on a question of competence can put the matter beyond doubt and only in relation to the provisions which are the subject of the reference.</p>

<p>Recommendation 6</p> <p>The Welsh Government should issue a statement notifying the Senedd of any discussions that take place with the UK Government following the 2024 UK general election about such a section 109 Order in Council under the Government of Wales Act 2006. [page 25]</p>	<p>Noted</p> <p>As Member in Charge of the Bill, I am of the view, as stated in the Explanatory Memorandum and during scrutiny that the Senedd Cymru (Electoral Candidate Lists) Bill is within the Senedd’s legislative competence.</p> <p>The Committee will wish to note my response to recommendations 4 and 5. If relevant, I will consider this recommendation further.</p>
<p>Recommendation 7</p> <p>A motion that the Bill be passed at Stage 4 (Final Stage) of the Senedd’s legislative process should not be debated unless the Welsh Government has issued a statement setting out whether the Welsh and UK Governments have reached agreement on whether they believe the Bill is within, or will be brought within, the Senedd’s legislative competence (including by means of amendments to the Government of Wales Act 2006). If agreement has not been reached, the reasons for that disagreement must be clearly stated. [page 25]</p>	<p>Noted</p> <p>As Member in Charge of the Bill, I am of the view as stated in the Explanatory Memorandum and during scrutiny that the Senedd Cymru (Electoral Candidate Lists) Bill is within the Senedd’s legislative competence.</p> <p>As set out in relation to recommendation 5, a change to the devolution settlement by way of either a section 109 Order or an Act of Parliament cannot put the matter of competence beyond doubt.</p>
<p>Recommendation 8</p> <p>The Welsh Government must take full and appropriate action to minimise the risk of disruption to the 2026 Senedd general election caused by potential legal challenges to the Bill, including (if necessary) by means of the Counsel General referring the Bill to the Supreme Court using his powers under section 112 of the Government of Wales Act 2006. [page 26]</p>	<p>Accept in part</p> <p>Having considered the Stage 1 reports, I accept that further steps should now be taken to mitigate risks to the 2026 election. My more detailed responses to recommendations 2 and 3, and to recommendation 17 of the Reform Bill Committee’s report are relevant.</p> <p>This recommendation concerns a function of the Counsel General which is exercised independently of government and is only exercisable after the Bill has passed.</p>
<p>Recommendation 9</p> <p>The Welsh Government should work with the UK Government following the 2024 UK general election to expand the list of “devolution issues” in Schedule 9 to the Government of Wales Act 2006 that can be referred to the Supreme Court, so that proposed Senedd Bills can be referred to</p>	<p>Noted</p> <p>I will consider this recommendation further.</p> <p>Whilst the Welsh Government may wish to pursue this course of action following the UK general election, it would have implications for the devolution settlement more broadly, which are outside the remit of this Bill.</p>

<p>the Supreme Court at an early stage. [page 27]</p>	
<p>Recommendation 10</p> <p>The Trefnydd should table an amendment to the Bill setting out the functions of a national nominations compliance officer as a consequence of new section 7C of the Government of Wales Act 2006 (as inserted by section 1 of the Bill). [page 47]</p>	<p>Accept in principle (subject to further consideration)</p> <p>Please see the response to recommendation 14, regarding the balance the Bill strikes between what is in the Bill and what is left to subordinate legislation.</p> <p>Regarding this recommendation, I am considering further whether it is feasible and appropriate to bring forward an amendment providing more detail in the Bill related to the functions of the National Nominations Compliance Officer.</p>
<p>Recommendation 11</p> <p>The Trefnydd should table an amendment to the Bill setting out the functions of a constituency returning officer in relation to new section 7C of the Government of Wales Act 2006 (as inserted by section 1 of the Bill). [page 47]</p>	<p>Accept in principle (subject to further consideration)</p> <p>Please see the response to recommendation 14, regarding the balance the Bill strikes between what is in the Bill and what is left to subordinate legislation.</p> <p>Regarding this recommendation, I am considering further whether it is feasible and appropriate to bring forward an amendment providing more detail in the Bill related to the functions of a Constituency Returning Officer in ensuring compliance with section 7B.</p>
<p>Recommendation 12</p> <p>The Trefnydd should table an amendment to the Bill to provide more information related to candidate statements and how will they operate. [page 47]</p>	<p>Reject</p> <p>Please see the response to recommendation 14, regarding the balance the Bill strikes between what is in the Bill and what is left to subordinate legislation.</p> <p>Regarding this particular recommendation, I note that the Bill already provides for the terms of the candidate statement, which is whether the candidate is “a woman” or “not a woman”.</p> <p>Operational or administrative matters, such as where in the nomination papers the statement is to be made and any further details to be on the form containing the statement will be provided for in the subordinate legislation.</p>

	<p>These are matters that are appropriately dealt with in subordinate legislation. It may be desirable for them to align with other matters that are provided for in the subordinate legislation and for there to be flexibility to change them in future.</p>
<p>Recommendation 13</p> <p>The Trefnydd should table an amendment to the Bill to set out more information about how the provisions of the Bill will be enforced, including but not limited to section 7B of the Government of Wales Act 2006 (as inserted by section 1 of the Bill). [page 48]</p>	<p>Accept in principle (subject to further consideration)</p> <p>Please see the response to recommendation 14, regarding the balance the Bill strikes between what is in the Bill and what is left to subordinate legislation.</p> <p>Regarding this recommendation, I am considering further whether it is feasible and appropriate to bring forward an amendment providing more detail about the enforcement of section 7B.</p>
<p>Recommendation 14</p> <p>In considering our recommendations 10 to 13, the Trefnydd should take account of the Statement of Policy Intent for Subordinate Legislation and consider what detail from the information it includes about how the provisions in the Bill will operate, would be more appropriate to include on the face of the Bill. [page 48]</p>	<p>Accept in principle (subject to further consideration)</p> <p>The balance struck by the Bill between what is provided for on its face and what is left to be dealt with under subordinate legislation reflects:</p> <ul style="list-style-type: none"> • the existing balance between the primary and subordinate legislation for Senedd elections provided for in the Government of Wales Act 2006 (including as it is amended by the Senedd Cymru (Members and Elections) Act 2024). • that it is appropriate that there is flexibility to change, by way of subordinate legislation, details of the nominations process and other detailed provisions related to the quota rules. For example, this could be to align with wider changes to the conduct of elections, which are given effect through subordinate legislation. <p>As I said during Stage 1 scrutiny, there are practical barriers to putting more detail on the face of the Bill. For example, the functions of Constituency Returning Officers and the National Nominations Compliance officer related to the quota rules are to be integrated within the nominations process and their functions as part of it. Under the Government of Wales</p>

	<p>Act 2006, that process falls to be provided for in the subordinate legislation.</p> <p>However, I acknowledge the Committee's concerns regarding what is left to be provided for in the subordinate legislation. As a result, I am considering further what details it may be feasible and appropriate to provide for on the face of the Bill in some way. In undertaking this work, I have considered recommendations 10 to 13 and the details set out in the Statement of Policy Intent and is still considering recommendations 10, 11 and 13 (see the responses to those recommendations).</p>
<p>Recommendation 15</p> <p>The risk assessment we refer to in recommendations 2 and 3 should include an assessment of the risk of challenge to an Order to be made under section 13 of the Government of Wales Act 2006 in order to implement provisions of the Bill should it be enacted. [page 48]</p>	<p>Noted</p> <p>As Member in Charge of the Bill, I recognise the concerns which have been raised during Stage 1 scrutiny relating to the potential for disruption to the 2026 election as a result of the risk of legal challenges to both the primary and subordinate legislation.</p> <p>Earlier reports on Senedd reform have identified potential risks and challenges associated with seeking to legislate to introduce gender quotas for Senedd elections. The Welsh Government responded to this by bringing forward these measures in a separate Bill, and in planning for an amending Order under section 13 of the Government of Wales Act 2006.</p> <p>In light of the Stage 1 reports, I accept that further steps now need to be taken to mitigate risks to the 2026 election.</p> <p>In order to protect the outcome and integrity of the 2026 Senedd election, the Senedd Cymru (Electoral Candidate Lists) Bill will be implemented in time for the scheduled 2030 Senedd election. I will be bringing forward an amendment to the Bill to take commencement out of the hands of the Welsh Ministers and ensure that the Bill's provisions (subject to Royal Assent) are commenced automatically and take effect for that 2030 Senedd election.</p> <p>See also my response to recommendations 2 and 3, and recommendation 17 of the Reform Bill Committee.</p>

<p>Recommendation 16</p> <p>The Trefnydd should provide more detailed information about why definitions of ‘a woman’ and ‘not a woman’ have not been included in the Bill. [page 48]</p>	<p>Reject</p> <p>As explained during Stage 1 scrutiny, but for reference I have repeated here, a definition of ‘woman’ is not included in the Bill. The Bill is not about defining ‘a woman’ and it is not about gender recognition. The Bill’s purpose is to make the Senedd more effective, which will be achieved through aiming to ensure there is greater gender balance of its Members.</p> <p>It is not unusual for legislation to use the term ‘woman’ without a definition.</p> <p>It will be for individual candidates to be responsible for completing the statement, just as they are in respect of other information provided on their nomination forms.</p> <p>Political parties and candidates will have an interest in ensuring that accurate statements are made during the nominations process, as otherwise they run the risk of reputational damage and/or legal challenge.</p>
<p>Recommendation 17</p> <p>The Trefnydd and Counsel General should provide details of the timetable for consultation and making of an Order under section 13 of the Government of Wales Act 2006 required to implement the Senedd Cymru (Electoral Candidate Lists) Bill. [page 49]</p>	<p>Accept</p> <p>My response to recommendation 15 explains my intention to implement the legislation in time for the scheduled 2030 election. The consultation on the Order under section 13 of the Government of Wales Act 2006 to implement quota rules can only take place once the Bill has passed and the settled provisions and powers for the subordinate legislation are known. At the appropriate juncture, I will provide details of the timetable for the subordinate legislation.</p>
<p>Recommendation 18</p> <p>The Counsel General should explain what steps he will take to ensure that a consolidated, accessible version of Orders made under section 13 of the Government of Wales Act 2006 governing the conduct of the 2026 Senedd general election is available to candidates. [page 49]</p>	<p>Accept in principle</p> <p>This recommendation is directed at the Counsel General. The Counsel General and I have agreed to continue to keep political parties informed of progress in relation to any Orders under section 13 of the Government of Wales Act 2006, through the Senedd Political Parties Panel convened by the Electoral Commission. The Electoral Commission are responsible for producing guidance for candidates and</p>

	<p>agents on the rules for the election, enabling a more user-friendly engagement with the election rules.</p>
<p>Recommendation 19</p> <p>The Trefnydd must publish for consultation all Orders in draft format which are to be made under section 13 of the Government of Wales Act 2006 in readiness for the 2026 Senedd general election. [page 50]</p>	<p>Accept</p> <p>The Welsh Government will shortly begin the extensive consultation process on the main Order being made under section 13 of the Government of Wales Act 2006 in readiness for the 2026 Senedd general election. This includes statutory consultation with the Electoral Commission, and a public consultation later in the autumn.</p> <p>With specific reference to the Senedd Cymru (Electoral Candidate Lists) Bill, the Explanatory Memorandum accompanying the Bill states that “The Welsh Government will also undertake a public consultation on the Order that will be made under section 13 of GoWA ... which will provide the statutory basis for the 2026 election. This Order will implement many of the detailed aspects necessary to enforce the proposals, which are summarised in the Statement of Policy Intent that accompanies the Bill.”</p> <p>Although the intention is now to implement for the scheduled 2030 election, the Welsh Government remains committed to consulting publicly on the draft Order.</p>
<p>Recommendation 20</p> <p>In light of conclusion 7, the Trefnydd should consider whether section 2 is appropriate for inclusion in the Bill. [page 50]</p>	<p>Reject</p> <p>Section 2 of the Bill imposes a duty on the Presiding Officer to table a motion within a specific timescale proposing a review of the effect and operation of the Act.</p> <p>It is not unprecedented for duties to be placed on a Presiding Officer. An example of such a duty can be found in section 110(3) of the Government of Wales Act 2006 where a duty is placed on the Presiding Officer to make a decision on whether or not a Bill is within the Senedd’s legislative competence, and to state that decision.</p> <p>In accordance with Standing Order 12.22, the motion may be amended by any</p>

	<p>Member. The motion may also be rejected, resulting in no further action.</p> <p>On this basis, and considering the freedom which remains for the Senedd to determine how it responds to any such motion, it is not considered that the provisions in section 2 constrain the freedom of action of a future Parliament.</p> <p>As the Bill emanated from the recommendations of the Special Purpose Committee on Senedd Reform, it is appropriate that the Senedd is responsible for post-legislative review of the operation and effect of the legislation. Section 2 provides a mechanism for the Senedd to undertake such a review.</p> <p>Please also see my response to recommendations made by the Reform Bill Committee on section 2 of the Bill (recommendations 11, 12 and 13).</p>
<p>Recommendation 21</p> <p>The Trefnydd should state whether, in her view, the enabling powers in the Bill and/or the powers in section 13 of the Government of Wales Act 2006 as amended by the Bill, could be used to define ‘a woman’ or ‘not a woman’. [page 53]</p>	<p>Accept</p> <p>The Bill does not give any power for the meaning of ‘a woman’ within the Bill to be provided for in an order under section 13 of the Government of Wales Act 2006 or in any other subordinate legislation.</p>
<p>Recommendation 22</p> <p>The Trefnydd should state whether, in her view, defining ‘a woman’ or ‘not a woman’ would be within the legislative competence of the Senedd. [page 53]</p>	<p>Noted</p> <p>Competence for any provision can only be assessed against the precise terms of the proposed provision. Without that, it is neither possible nor relevant for me to give a view.</p>