

PBMB16 Legislation, Justice and Constitution Committee

Senedd Cymru | Welsh Parliament

Y Pwyllgor Busnes | Business Committee

Adolygiad o'r broses ar gyfer Biliau Cyhoeddus a Biliau Aelod | Review of the Public Bill and Member Bill processes

Ymateb gan: Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad | Evidence from: Legislation, Justice and Constitution Committee

The Rt. Hon Elin Jones MS
Y Llywydd and Chair of the Business Committee

2 May 2025

Annwyl Lywydd

Business Committee review of the Public Bill and Member Bill processes

Thank you for your [letter](#) of 21 January 2025 regarding your [open consultation](#) on the Senedd's processes for the scrutiny of Public Bills and Member Bills. Please accept our apologies that we were not able to meet your original deadline.

The Annex to this letter sets out the Committee's views, supported by examples of issues that have arisen during the Sixth Senedd.

The Committee hopes that this information is helpful to the Business Committee and this important review of the Senedd's scrutiny processes.

Yours sincerely,



Mike Hedges
Chair

The Committee's comments/views on the areas of focus for the initial evidence gathering phase

General observations

1. Overall, as regards legislating for Wales, we are concerned by the evidence we have received from the Welsh Government during our scrutiny and the general trends we have observed in the Sixth Senedd; our concerns in particular are centred on the Welsh Government's general approach to legislating in the context of the devolution settlement.
2. The Counsel General stated, during general scrutiny with the Committee on 9 December 2024, that the Senedd does not "do the detailed legislative scrutiny that you see in other parliaments" [RoP 40]. We do not know what evidence the Welsh Government is relying on in order for its Ministers to make such comments and have written seeking that information. We are awaiting a response.
3. The Counsel General's view, also expressed to us on 9 December 2024, is that the scrutiny and consultation undertaken by Senedd Committees on legislation "is quite frequently just a reiteration of the same consultation that's already been done by the Government" [RoP 40]. We have asked the Counsel General whether she recognises that it is the parliament's responsibility to scrutinise and seek stakeholder views on Government proposed legislation, and have asked her to acknowledge that a government consulting on policy and/or draft legislative proposals is different to the Senedd's responsibility in assessing whether a government has listened to stakeholder's concerns before introducing a Bill to the Senedd. We are awaiting a response.

Time available for Stage 1 scrutiny

4. During the evidence session on 9 December 2024, the Counsel General also made some remarks about the scrutiny of Bills which caused us some concern; if the Counsel General's views are reflected in Standing Orders, this could potentially provide too much power to the executive at the expense of the scrutiny function of the legislature. We discuss some specific examples relevant to this point below.
5. In referring to the Business Committee's discussion on legislative timetables, the Counsel General made reference to "the correct amount of scrutiny" [RoP 16] and went on to mention discussions in the Business Committee and the Future Senedd Committee "about developing better protocols for different types of Bills so that we can have an upfront understanding of what kinds of scrutiny are better suited to what kind of Bill" [RoP 22]. In the context of a review of capacity in the Welsh Government, the Counsel General also spoke of "doing smaller Bills with a much more focused attention on specific issues" before adding "then a conversation, of course, is required with the

Senedd, to make sure that the kind of scrutiny that you have for a shorter, more focused Bill matches that and not the kind of big, omnibus Bills that we've seen and which we've had several of." [RoP 58].

6. As regards the "correct" amount of scrutiny, traditionally the amount of scrutiny time that a Bill is subject to at Stage 1 has varied, usually between 10 and 12 sitting weeks as standard (unless scrutiny is curtailed e.g. on the Environmental Protection (Single-use Plastic Products) (Wales) Bill and Senedd Cymru (Electoral Candidate Lists) Bill). We would regard 12 sitting weeks as an appropriate minimum, and reasonable, period of time to enable a committee to consult, take evidence and report.

Undertaking that task in anything less than 12 sitting weeks is challenging for Committees, and there are risks that a shorter period could be viewed negatively by stakeholders and reduce engagement. Bills covering certain matters could require longer than 12 weeks; in the Scottish Parliament, the Scottish Government's visitor levy Bill was introduced on 24 May 2023 with a date of 19 January 2024 set as the Stage 1 reporting deadline.

7. We regard any suggestion that the time period for Stage 1 scrutiny of a Bill could be reduced, including for "shorter, more focused Bills" as a misunderstanding of the scrutiny process and the practicalities involved, particularly to give stakeholders adequate time to respond. As we indicate above, consultation by a committee is very different from that undertaken by a government and has a different purpose reflecting the different roles and functions of the executive and legislature. As such, Welsh Government consultation is often focused on policy ideas, not always on White Papers and less likely still to be on a draft Bill. Senedd Committees will then consult on an actual legislative proposal (policy content, objectives, delivery mechanisms, structure, delegation of power, accessibility, language, timeframe, etc.) including how the legislation introduced to the Senedd takes account of stakeholder comments submitted to the Welsh Government. Reducing the time available for Stage 1 scrutiny could also potentially lead to a lack of confidence in the legislature in undertaking its role and could also suggest to some that proposals are progressing through the Senedd without sufficient detailed investigation.

8. It is unclear what the Counsel General means when she refers to "different types of Bill". The only categorisation of Bills reflected in Standing Orders are public (SO26) (including government, government emergency, committee, member, and commission) private (SO26A), hybrid (SO26B), and consolidation (SO26C).

9. The notion of a Welsh Government proposed public Bill being categorised according to how much scrutiny the Welsh Government believes the Bill should have would represent a conflict of interest. The amount of scrutiny a Bill receives is not a matter for the Welsh Government and attempting to judge that by the size of a Bill would be difficult and potentially counterintuitive. It is only by undertaking detailed scrutiny, taking account of the views of stakeholders, that it is possible for Committees to get a full understanding of the nature and implications of a Bill.

10. Welsh Government proposals for some timetables for Stage 1 scrutiny have misjudged the time needed for Senedd Committees to undertake meaningful scrutiny.

11. In our view, the Business Committee could consider including in Standing Orders a minimum period of 12 sitting weeks for Stage 1 scrutiny of all Bills. Twelve sitting weeks would allow for around 4-6 weeks to consult and to take evidence, for a report to be drafted, discussed and agreed, and translated. If the Welsh Government considers there would be merit in making a reduction to that 12 sitting week period (or a Senedd Member, such as, for example, the Chair of a Committee), that could be achieved by motion and a resolution of the Senedd (with the appropriate changes to Standing Orders).

Framework Bills

12. We are also concerned with the Welsh Government's use of skeleton/framework Bills; Bills which do not include enough detail on the face of the Bill and therefore delegate extensive powers to the Welsh Ministers, tilting the balance of power too much away from the Senedd as the legislature and towards the Welsh Government as the executive. Such is our concern that we commissioned external independent research. The stark finding in Professor Richard Whitaker's report that there has been a significantly higher proportion of framework legislation in the first three years of the Sixth Senedd (43% of all Bills) compared to the Scottish Parliament (10%) and UK Parliament (9%) during a similar period is not data we welcome nor is it data that should be overlooked.

13. The Welsh Government's response to question 1 of the Committee's follow-up letter to the session on 9 December 2024 also comments on framework Bills. It states that it believes Bills should be short and "less cluttered by detail"; it does not however indicate what is meant by "detail" and consequently does not address where significant policy matters should sit within the legislation (a key issue of concern for the Committee) but acknowledges the benefits to the Welsh Government of using secondary rather than primary legislation. We do not share the Welsh Government's perspective or believe this approach is appropriate.

14. During Stage 2 proceedings of the Legislation (Procedure, Publication and Repeals) (Wales) Bill in March, consideration was given to amendments that sought to change aspects of the scrutiny process for statutory instruments, in response in part to the use of framework Bills. While we believe any review of the scrutiny of subordinate legislation may be more appropriate for the next Senedd and require a separate committee inquiry, we thought there would be merit in drawing this matter to your attention.

Incomplete Bills on introduction

15. We also wish to highlight problems with Bills that do not always appear complete on introduction. During the evidence session on 9 December 2024, the Counsel General noted that the Welsh Government would be bringing forward amendments early in the scrutiny process and ahead

of Stage 2 in relation to the Visitor Accommodation (Register and Levy) Etc. (Wales) Bill, suggesting that the Bill was introduced incomplete, a conclusion we drew in our Stage 1 report having taken evidence from the Cabinet Secretary. A complete Bill on introduction would have provided an opportunity for meaningful scrutiny earlier in the process.

Committee Bills

16. We have noted that to date very few Committee proposed Bills have been introduced. This may be a reflection of the dual function of Committees that was introduced at the start of the 4th Senedd, namely to undertake policy and legislative scrutiny. However, we believe that there should be more opportunity for Committees to bring forward legislation in a Senedd with 96 Members. It is our understanding that the Standing Orders for the scrutiny of Committee Bills in the Third Assembly were predicated on there being separate legislative and policy scrutiny committees that were put in place at that time. The only changes that have since been made to those Standing Orders are the removal of some Standing Orders by resolution of the Senedd following a report by the Business Committee.

17. The Business Committee may wish to consider whether there needs to be a more definitive process in Standing Orders for the scrutiny of Committee Bills or whether Standing Order 16 is sufficient to create a committee for the purposes of Stage 1 and Stage 2 scrutiny of a Committee Bill.

Mirror Bills

18. We believe consideration should also be given to whether new procedures could be introduced to accommodate the use of 'mirror' Bills, where the Senedd and the UK Parliament could legislate separately, but in parallel, on the same matter to improve the level of Senedd scrutiny compared to the use of a UK Parliament Bill and the legislative consent process.

19. We have raised frequently the issue of legislating in parallel in our scrutiny of legislative consent memoranda (see our reports for example on memoranda related to UK Bills on water and mental health) but also in an evidence session with the then Counsel General in July 2023.

20. Legislating in parallel would also have been an option in circumstances where we have called for the Welsh Government to introduce primary legislation instead of using UK bills to legislate in a devolved area. For example, we stated that the Welsh Government should have "worked towards introducing a Bill to the Senedd that made use of the bilingual provisions that had been included, as amendments, to the UK Government's Renters (Reform) Bill", as opposed to using the legislative consent process for the Renters' Rights Bill that followed subsequently.

21. We have seen a similar process used in regards to secondary legislation. For example, the UK, Welsh and Scottish governments introduced separate secondary legislation to implement a ban on single-use vapes with aligned scope and timescales. This facilitated the full scrutiny procedures in each legislature, whilst enabling work towards a coordinated policy goal.

22. There are also examples in other parts of the world of separate legislatures coordinating primary legislation, such as the Federal Parliament of Canada and the Newfoundland and Labrador House of Assembly, which both passed Acts to implement an agreement on offshore petroleum resource management and revenue sharing.

Other matters

23. We believe there would also be merit in considering the following issues:

- a. Standing Order 26.11 enables the Government to schedule Stage 1 debates on the general principles of Bills six working days after the relevant Senedd Committees have reported. This inevitably means that, in the majority of cases, the Welsh Government is unable to respond to committee recommendations in advance of the debate. This is not satisfactory and does not assist Members of the Senedd who have not sat on those Committees but who are expected to vote on the Bill's general principles. **We believe that Standing Orders could be amended to increase the number of working days referred to in Standing Order 26.11 or alternatively to provide that a Stage 1 debate may not take place until the government has responded to Stage 1 reports prepared by Committees.**
- b. There has been a consistent issue in the Sixth Senedd with explanatory memoranda to Welsh Government proposed Bills lacking information about human rights considerations. **We believe that Standing Order 26.6 covering what must be included in an explanatory memorandum should be amended to require a summary of the human rights implications of a Bill (based on the relevant impact assessments undertaken).**
- c. The Committee proposed to the Business Committee in December 2023 that explanatory memoranda should include information about the potential impact of the *United Kingdom Internal Market Act 2020* on the effectiveness of the Bills introduced to the Senedd (see also a further correspondence with the Business Committee in February 2024). **We remain of that view and that Standing Order 26.6 should be amended accordingly.**
- d. Standing Order 26.72 as currently drafted presents a number of difficulties within the short period of time within which Stage 2 proceedings must take place; **the Standing Order and its interplay with other requirements of Standing Order 26 would benefit from a review.** As you will be aware, in order for all amendments tabled at Stage 2 of the Legislation (Procedure, Publication and Repeals) (Wales) Bill to be considered, a decision on the need for a financial resolution, and the Senedd's agreement to that resolution, was required with very little notice ahead of scheduled proceedings on those amendments. A further difficulty is that no threshold is provided for what is deemed a significant increase in expenditure for the purposes of the Standing Order.

The Committee's comments/views on the areas of focus for the initial evidence gathering phase

24. The Committee has previously written to the Business Committee on a number of occasions, commenting on the Senedd's procedures and processes enabling Members of the Senedd to put forward legislative proposals.

25. On 10 May 2022, following its consideration of the Welsh Government's Legislative Consent Memorandum on the British Sign Language Bill, the Committee highlighted that, in the absence of the Welsh Government introducing primary legislation on the use of British Sign Language, backbench Members had submitted proposals for Member Bills on the subject. The Committee expressed disappointment at the fact that an opportunity for a backbench Member to introduce legislation on this important subject had not arisen, despite there being widespread support over many Seneddau for the introduction of such a Bill. The Committee used this as an example as to why the Business Committee should consider a review of the procedure for Member Bills. The Llywydd, as Chair of the Business Committee, responded on 26 May 2022 stating that the Business Committee would consider the potential for reviewing the selection process for Member Bills.

26. On 24 February 2023, and following the Committee's evidence session with Peter Fox MS as Member in charge of the Food (Wales) Bill, the Committee wrote to the Business Committee again seeking an update on when the Business Committee is likely to begin reviewing the selection process. On 16 May 2023, following the laying of the Committee's report on the Food (Wales) Bill, the Committee wrote again to the Business Committee drawing its attention to recommendation 1 in the Committee's report, which stated: "As part of its review of the Member Bill procedure, the Business Committee should explore the feasibility of introducing a more transparent process for engagement between the Welsh Government, its officials and Members of the Senedd who have secured leave to proceed to introduce a Member Bill." The Llywydd replied on 10 March 2023, confirming that a potential review of the Member Bill procedure remained an area of interest on the Business Committee's procedural work programme, but that it needed to consider the prioritisation of its work on a range of procedural matters.

27. On 31 May 2023, the Llywydd wrote to the Committee confirming that the Business Committee had noted recommendation 1 in the Committee's report on the Food (Wales) Bill, and that it would consider advice during the summer term on the feasibility of considering the selection process for Member Bills in isolation, or whether this should be done as part of a full review.

28. Given the Committee's sustained interest in the Member Bill process, we welcome the Business Committee's review. While we wish to highlight the matters we have raised in our previous

correspondence, we believe there would be merit in considering whether a process similar to that used in the Scottish Parliament would be more appropriate.