



Our ref: MA-L/FM/0218/15

David Melding AM
Chair - Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

3rd December 2015

Dear David

The Welsh Government thanks the Committee for its report, *Making Laws in Wales* and welcomes the opportunity to respond to the recommendations. Our full response is attached to this letter.

In our response, we make reference to ongoing work to review the existing approach to managing the Government's legislative programme in preparation for the Fifth Assembly. This work is intended to build on a number of changes that have already been made to the Welsh Government's processes during the Fourth Assembly. As you will note from the response, there is a significant amount of overlap between the Committee's recommendations and work in progress as part of our review. We take comfort from this, as in many respects it is clear the Committee shares our vision of how the Government's approach to its legislative programme should continue to develop and improve. Key aspects which are central to this include:

- Comprehensive policy development at an early stage for all legislative proposals,
- Early identification and consideration of financial implications;
- Effective stakeholder engagement throughout the legislative process.

Whilst the Welsh Government does not agree with some of the comments made on Government Bills in the report, we of course recognise the importance of all these key aspects and have been happy to consider how we can continue to improve our approach to them. The planning and management of the Government's Legislative Programme must be as robust as possible for the next term.

To this end, we have identified what we believe are some key considerations to take into account on the size and management of the next Welsh Government's Legislative Programme, namely that:

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

English Enquiry Line 0300 0603300
Llinell Ymholiadau Cymraeg 0300 0604400
YP.PrifWeinidog@cymru.gsi.gov.uk • ps.firstminister@wales.gsi.gov.uk

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.

- The Welsh Government should normally introduce no more than 5 or 6 Bills each year, with no Government Bills scheduled for introduction in the final year, i.e. after 30 April 2020;
- The Welsh Government should move to an annual legislative statement and maintain a rolling planning cycle for its Legislative Programme;
- Legislative proposals will continue to be prioritised in the context of the Legislative Programme as a whole – being mindful of how the overall Legislative Programme may affect our delivery partners and the private sector;
- The internal approach to pre-introduction assessment of Bills, ahead of formal Ministerial agreement to introduce, should be refined and strengthened where possible.

Of the 19 recommendations in this report which are wholly or partly for the Welsh Government, we have been able to accept 17 of these in whole, in principle or in part.

I should note that the Welsh Government response does not provide substantive comments at this stage to individual recommendations relating to other organisations, most notably those for the Assembly's Business Committee. However, I would like to highlight that these recommendations may have a significant cumulative impact on the length of the legislative process, on Assembly Members' time and Government Plenary time, and on available resources at a time of financial constraint. We would, therefore, want to consider proposed changes to Standing Orders as a whole.

Again, I thank the Committee for this helpful report. I would also like to take this opportunity to acknowledge the significant contributions of the Committee to scrutinising the legislation considered by the Assembly this term, and to pay tribute to the work of Ministers, Members, and officials (both in Government and in the Assembly Commission) in taking forward primary legislation during this Assembly.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Carwyn Jones', written in a cursive style.

CARWYN JONES

Written Response by the Welsh Government to the report of the Constitutional and Legislative Affairs Committee entitled Making Laws in Wales

3 December 2015

Detailed responses to the report's recommendations are set out below:

Recommendation 1

The Committee recommends that the Welsh Government:

- (i) undertakes a thorough review and overhaul of its processes for the development and internal co-ordination of its legislative programme;
- (ii) ensures that effective strategic planning, monitoring, delivery and quality control mechanisms are in place to ensure fully thought through and complete Bills are introduced for scrutiny by the Assembly;
- (iii) publishes the revised governance framework for its legislative programme including the lines of accountability and decision-making processes for the preparation and sign-off of its Bills.

Response: Accept in part

The Welsh Government is already in the process of reviewing its approach to managing the Government legislative programme in readiness for the Fifth Assembly. This work is being undertaken in part to evaluate a number of changes that have already been made to the Welsh Government's processes during the Fourth Assembly. Whilst we do not believe that a complete overhaul is needed, we are seeking to ensure that the planning and management of the legislative programme is as robust as possible. Final decisions on the management of the Government legislative programme in the Fifth Assembly, and publication of information relating to it, are for the next Welsh Government. Once completed changes to the process will be reflected in the Welsh Government's Legislation Handbook for Assembly Bills, which will be published. The Welsh Government's processes will continue to be monitored by its Legislative Programme Board and any changes made will subsequently be reflected in the published Handbook.

Financial Implications – This work is being taken forward within existing budgets.

Recommendation 2

The Committee recommends that the Welsh Government should:

- (i) adopt more robust policy development criteria based around those highlighted by the Law Commission;
- (ii) commit to providing earlier and appropriate consultation periods to ensure that a sufficient period is allowed to reflect the complexity and scope of each piece of proposed legislation and the need for representative consultees to seek the views of stakeholders;
- (iii) commit to explaining clearly to stakeholders how their feedback has influenced its legislative proposals, including the reasons why their views are or are not being reflected in legislative proposals;

(iv) incorporate points (i) to (iii) above into internal guidance for use across all Welsh Government departments as an integral tool for developing legislative proposals.

Response: Accept in part

The Welsh Government's approach to policy development is already consistent with the principles outlined by the Law Commission. Similarly, as a part of our approach to policy development, we consider whether legislation is necessary and, if so, in what form. Similarly the Welsh Government has committed to consulting on legislation at Green Paper, White Paper or Draft Bill stage. Following consultation the Welsh Government will consider consultation responses, and before or when we introduce a Bill we will set out how we have taken account of the views expressed.

The Welsh Government will continue to consider how it can consult as effectively as possible on each legislative proposal.

Financial Implications – There are no new financial implications for responding to this recommendation.

Recommendation 3

The Committee recommends that there should be a presumption in favour of publishing draft Bills. This recommendation applies to the Welsh Government and Assembly Members given leave to introduce Bills.

Response: Reject

The Welsh Government seeks to ensure that consultation takes place at a time when it will enable an effective and meaningful dialogue with stakeholders. Consulting on a draft Bill can be an effective way of engaging with stakeholders. However, there are other effective ways of consulting which may be more appropriate, depending on the specific legislative proposals.

Financial Implications – None.

Recommendation 4

The Committee recommends that the Business Committee should prepare proposals to amend Standing Order 26.6 to require Explanatory Memoranda to:

- (i) state whether a Bill was published as a draft in full or in part, and if in part, which parts;
- (ii) a detailed synopsis of how a Bill introduced has been amended from a draft Bill, and the reasons for any changes adopted;
- (iii) the reasons, if relevant, for not publishing a Bill in draft.

Response: Noted

The Welsh Government notes the recommendation for the Business Committee and will consider proposed changes to Standing Orders when these are brought forward to the Committee.

Recommendation 5

The Committee recommends that a financial memorandum is published alongside all draft Bills, containing information about the costs of the current policy and legislative position and the costs after legislation. This recommendation applies to the Welsh Government and Assembly Members given leave to introduce Bills.

Response: Accept

The Welsh Government accepts that there are benefits to be gained from publishing an initial assessment of likely benefits and impacts (both financial and wider) alongside draft Bills. The appropriate structure and content of the assessment will be considered as part of the preparation for the next Legislative Programme.

Financial Implications – The financial implications will be considered as part of the preparation for the next Legislative Programme.

Recommendation 6

The Committee recommends that the Welsh Government:

- (i) reviews its approach to the balance it adopts between what is contained on the face of a Bill and what is left to subordinate legislation;
- (ii) publishes the outcome of that review, including the principles that it will apply to the future drafting of Bills to ensure that an appropriate balance is struck.

Response: Accept in part

The Welsh Government gives careful consideration to the balance between primary and subordinate legislation. We will review the factors which have been taken into account in light of the Committee's findings, including whether the development of a set of principles would be appropriate. The Welsh Government will publish the outcome of that Review.

Financial Implications – The review will be delivered within existing budgets. The Welsh Government's response to this review, once completed, will need to consider the resource implications.

Recommendation 7

The Committee recommends that the Welsh Government considers the available techniques for making the delegation of powers more acceptable, including the expression on the face of the Bill of the purposes of, and constraints on, delegated powers.

Response: Accept in part

The Welsh Government already gives consideration to expressing the purposes of, and constraints on, delegated powers in primary legislation. However, we will review our approach to this as part of the review committed to in our response to Recommendation 6.

Financial Implications – The review will be delivered within existing budgets. The Welsh Government’s response to this review, once completed, will need to consider the resource implications.

Recommendation 8

The Committee recommends that powers to make supplemental or consequential provision should not be included routinely in Bills, and should be reserved for cases where there are special reasons why the Welsh Government needs to deal with minor or consequential issues through delegated legislation. Such reasons must be clearly set out in the Explanatory Memorandum.

Response: Accept in part

The Welsh Government will review its approach as part of the review committed to in our response to recommendation 6. The Welsh Government agrees that the reasons for such provisions included in any Bill should be clearly set out in the Explanatory Memorandum.

Financial Implications – The review will be delivered within existing budgets. The Welsh Government’s response to this review, once completed, will need to consider the resource implications.

Recommendation 9

The Committee recommends that the Welsh Government commits to improving the quality of legislation it introduces by:

- (i) adopting the principles advocated by the Law Commission and highlighted in paragraph 113 of this report;
- (ii) involving the Office of the Legislative Counsel as early in the policy development process as practicable in each case.

Response: Accept in part

In terms of the first three suggestions to improve the quality of legislation which were outlined by the Law Commission, the Welsh Government recognises the importance of “*ensuring that instructions to counsel are comprehensive and clear and reflect fully thought out and agreed policy*”; of “*having departments work closely with drafters to ensure that Bills are clear, concise, consistent, unambiguous, and easily intelligible, keeping technical terminology to a minimum*”, and of “*minimising the need for government to table its own amendments to a Bill after it has entered the legislative process*”, as well as the Committee’s recommendation to involve “the Office of the Legislative Counsel as early in the policy development process as practicable”. As part of reviewing how the Welsh Government plans and manages its legislative programme, as outlined at Recommendation 1, we are aiming to ensure that our internal processes support these suggestions as far as is possible.

In terms of the Law Commission’s suggestions of “*making greater use of Keeling Schedules (as part of the Explanatory Notes) to clarify changes that a bill makes to previous enactments*” and “*providing for the clear repeal of any existing enactments that are superseded by the bill*”, the Welsh Government

will need to consider these further in the light of the Law Commission's final report on the form and accessibility of the law in Wales. However, it is important to note that Keeling-type Schedules are only of benefit if substantial substantive amendments are being made to pre-existing legislation, something that the Welsh Government avoids doing where practicable.

Financial Implications – Work to review the planning and management of the Welsh Government's legislative programme is being undertaken within existing budgets.

Any financial implications for the Welsh Government in light of the Law Commission report will need to be considered in our response to that report.

Recommendation 10

The Committee recommends that the Welsh Government must introduce Bills that can be reasonably considered to be fully developed at the point of introduction.

Response: Accept in part

The Welsh Government agrees that Bills at introduction should be fully developed, and the work we are undertaking to review the planning and management of the Government's legislative programme referred to in our response to Recommendation 1 should help strengthen the rigour of the system supporting the development of Bills. However, we do not accept some of the comments on Fourth Assembly Government Bills in this respect. There are many reasons why Bills change during scrutiny, and this is an important part of the democratic process.

Financial Implications – Work to review the planning and management of the Welsh Government's legislative programme is being undertaken within existing budgets.

Recommendation 11

The Committee recommends that the Welsh Government, in collaboration with the Law Commission, develops a long-term plan for consolidating law in Wales.

Response: Accept in part

The Welsh Government will consider this recommendation in conjunction with the final report from the Law Commission on the form and accessibility of the law in Wales – taking into account also the resource implications.

Financial Implications – Any financial implications for the Welsh Government will need to be considered in our response to that report.

Recommendation 12

The Committee recommends that the Business Committee commits to preparing a Standing Order on consolidation Bills, ideally in time for the Fifth Assembly. The aim of the Standing Order should be to provide expedited

passage for Bills which are certified by Legislative Counsel as not involving any substantive change of law.

Response: Noted

The Welsh Government notes the recommendation for the Business Committee and will consider proposed changes to Standing Orders when these are brought forward to the Committee. We hope, however, that account will be taken of the Law Commission's report on the form and accessibility of the law in Wales when framing new Standing Orders.

Recommendation 13

The Committee recommends that the Business Committee explores the scope for a simplified procedure for law reform Bills implementing Law Commission reports.

Response: Noted

The Welsh Government notes the recommendation for the Business Committee and will consider proposed changes to Standing Orders when these are brought forward to the Committee.

Recommendation 14

The Committee recommends that the Law Commission takes account of the views of stakeholders who have contributed to our inquiry as part of their project on the form and accessibility of the law applicable in Wales.

Response: Noted

This recommendation is for the Law Commission to consider.

Recommendation 15

The Committee recommends that the Welsh Government leads on the production of a standard terminology database, working closely with the Welsh Language Commissioner.

Response: Accept in principle

The Welsh Government already has a standard terminology database (TermCymru) which is freely available to all on-line. The Welsh Language Commissioner is aware of TermCymru and is in discussions with the Welsh Government and other strategic funders and stakeholders about the co-ordination of terminology management in Wales.

Financial Implications – No new financial implications.

Recommendation 16

The Committee recommends that the Welsh Government, working closely with the Welsh Language Commissioner:

- (i) puts in place a long term plan for increasing the proportion of Bills that are co-drafted in English and Welsh;
- (ii) identifies criteria for prioritising resources for dual-language drafting to ensure allocation to the Bills most likely to benefit.

Response: Reject

While co-drafting may have benefits in some cases, it is not necessarily an appropriate and efficient model for preparing most Bills. High quality bilingual legislation can be developed in a number of ways, and different ways can be adopted in different circumstances. Regardless of internal processes, the Welsh Government will continue to work to ensure that Government Bills are introduced in high-quality English and Welsh versions.

Financial Implications – No new financial implications.

Recommendation 17

The Committee recommends that the Counsel General works towards producing a separate Welsh interpretation Act and keeps this Committee updated with progress and developments on this work.

Response: Accept in part

The Welsh Government will consider this recommendation in conjunction with the final report from the Law Commission on the form and accessibility of the law in Wales. Further consultation in the normal way would also be required if a Bill was proposed.

Financial Implications – Any financial implications for the Welsh Government will need to be considered in our response to that report.

Recommendation 18

The Committee recommends that the Welsh Government should review its approach to Explanatory Memoranda and publish the outcome of that review in readiness for the Fifth Assembly.

Response: Accept in part

A formal review of the approach to Explanatory Memoranda would be premature at this stage given the recommendations elsewhere in this report for Business Committee to consider amending Standing Orders in respect of accompanying documentation. However, the Welsh Government will consider how its approach to Explanatory Memoranda can be improved ahead of the next Assembly Term. As referred to in the Welsh Government's evidence, work has already begun to consider how best to improve our approach to Explanatory Notes.

Financial Implications – This consideration will form part of existing work to review the planning and management of the legislative programme. As such it will be taken forward within existing budgets.

Recommendation 19

The Committee recommends that the Business Committee reviews the requirements of Standing Order 26.6 before the Fifth Assembly and in particular considers:

- (i) including a requirement that the Member in charge signposts where precisely in the Explanatory Memorandum the Standing Order requirements can be found (for example, by means of an appropriate index);
- (ii) the suggestions made by the Auditor General for Wales about how Standing Order 26.6(vi) could be improved to provide clearer financial information;
- (iii) including a requirement that the Member in charge of a Bill explains how they have taken account of the human rights convention in preparing the Bill;
- (iv) including a requirement that the Member in charge of a Bill provides a table of derivations.

Response: Noted

The Welsh Government notes the recommendation for the Business Committee and will consider proposed changes to Standing Orders when these are brought forward to the Committee.

Recommendation 20

The Committee recommends that the Business Committee prepares proposals to amend the Assembly's Standing Orders to require Keeling Schedules to accompany a Bill on introduction (where it proposes to amend existing primary legislation).

Response: Noted

The Welsh Government notes the recommendation for the Business Committee and will consider proposed changes to Standing Orders when these are brought forward to the Committee.

Recommendation 21

The Committee recommends that the Business Committee, following an appropriate period of time in the Fifth Assembly, reviews the need for a minimum period to be included in Standing Orders for the scrutiny of Bills at Stage 1.

Response: Noted

The Welsh Government notes the recommendation for the Business Committee and will consider proposed changes to Standing Orders when these are brought forward to the Committee.

Recommendation 22

The Committee recommends that, given that the Assembly is a unicameral legislature, the Business Committee prepares proposals to amend the Assembly's Standing Orders to provide a compulsory Report Stage for the scrutiny of every Bill, unless the Assembly, by resolution on a two-thirds majority, decides otherwise.

Response: Noted

The Welsh Government notes the recommendation for the Business Committee and will consider proposed changes to Standing Orders when these are brought forward to the Committee.

Recommendation 23

The Committee recommends that the Assembly Commission and the Welsh Government explore the feasibility of putting in place arrangements for the secondment of staff from the Office of the Legislative Counsel to the Assembly Commission.

Response: Accept in part

The Welsh Government is willing to explore this as a possibility, although consideration will need to be given as to whether there is available capacity in the Office of the Legislative Counsel.

Financial Implications – A number of the Committee’s recommendations, if adopted by the Assembly, could have significant resource implications for the Office of the Legislative Counsel. These resource implications would need to be considered together. If any members of staff were seconded, costs would fall to the Assembly Commission; however this would lead to a reduction in the overall staff resource available in the Office of the Legislative Counsel.

Recommendation 24

The Committee recommends that further work is undertaken by the Business Committee to inform consideration of amending Standing Orders to require that all amendments tabled to a Bill (including Welsh Government amendments) are accompanied by text that explains their purpose and effect.

Response: Noted

The Welsh Government notes the recommendation for the Business Committee and will consider proposed changes to Standing Orders when these are brought forward to the Committee. The Welsh Government has already made available information on the purpose and intended effect of its amendments both in this Assembly term and the previous one.

Recommendation 25

The Committee recommends that the Assembly Commission should ensure that it publishes summaries of amending Stages of all Bills within an appropriate period of time after the completion of that Stage’s proceedings.

Response: Noted

This recommendation is for the Assembly Commission to consider.

Recommendation 26

The Committee recommends that the Business Committee reviews the adequacy of the procedure that permits the by-passing of Stage 1 scrutiny and the procedure that allows the use of Welsh Government Emergency Bills. In particular it should consider:

- (i) a requirement for the Business Committee to publish the reasons for its decision under Standing Order 26.9 to permit a Bill to bypass Stage 1 scrutiny in committee, within 2 working days of making that decision;
- (ii) a requirement that, in tabling a motion proposing that a government Bill be treated as a government Emergency Bill under Standing Order 26.95, the

Member in charge must lay a statement explaining why it should be treated as such and the costs and other consequences of not doing so.

Response: Noted

The Welsh Government notes the recommendation for the Business Committee and will consider proposed changes to Standing Orders when these are brought forward to the Committee.

Recommendation 27

The Committee recommends that committees aim to:

- (i) incorporate consideration of post-legislative scrutiny into their planning of the scrutiny of individual Bills referred to them by the Business Committee;
- (ii) re-visit their proposed approach after Stage 4 has been completed, taking into account issues raised during scrutiny.

Response: Noted

This recommendation is for Assembly Committees to consider.

Recommendation 28

The Committee recommends that the Welsh Government and Assembly Commission review their approaches to public engagement on the legislative process and publish the outcome of their respective reviews in readiness for the Fifth Assembly.

Response: Accept

The Welsh Government is willing to work with the Assembly Commission to consider how best to engage with the public and stakeholders on the legislative process.

Financial Implications – Work to consider this will be met within existing budgets.

Recommendation 29

The Committee recommends that the Assembly Commission works closely with the National Archives and the Welsh Government to improve the accessibility of Welsh legislative texts. As part of this process, the Assembly Commission should report to this Committee on the action it is seeking to take before the end of the Fourth Assembly.

Response: Accept in part

The Welsh Government is already working with the National Archives to improve the accessibility of Welsh legislative texts. Responsibility for publication and access sits with the executive (in this case the National Archives), rather than the legislature, once a Bill has been passed.

Financial Implications – This work is being taken forward within existing budgets.

Recommendation 30

The Committee recommends that the Business Committee reviews the process for Member Bills taking account of the evidence we have received from Assembly Members and their suggestions for improving the process.

Response: Noted

The Welsh Government notes the recommendation for the Business Committee and will consider proposed changes to Standing Orders when these are brought forward to the Committee.

Recommendation 31

The Committee recommends that the Business Committee in considering the committee structure to be adopted in the Fifth Assembly should:

- (i) consider a range of options identifying the pros and cons of each;
- (ii) take account of the practical experiences of Assembly committees;
- (iii) publish a report of its deliberations including its final recommendation.

Response: Noted

The Welsh Government notes the recommendation for the Business Committee and will consider proposed changes to Standing Orders when these are brought forward to the Committee.

Recommendation 32

The Committee recommends that the Assembly Commission invests resources in capturing data relevant to the operation and function of scrutiny in the Assembly as a means of facilitating the decision-making process and ensuring the efficient use of time and resources in the delivery of services to Assembly Members.

Response: Noted

This recommendation is for the Assembly Commission to consider.

Recommendation 33

The Committee recommends that the Welsh Government works closely with the legislation software supplier and the Assembly Commission to ensure it finds a solution to the problems it has identified.

Response: Accept in part

The Welsh Government will continue to seek a solution to the current problems with legislation software.

Financial Implications – The costs are not yet known, as this will depend on the solution identified.

Recommendation 34

The Committee recommends that the Welsh Government fully explores the practicalities and feasibility of the establishment of a Queen's Printer for Wales.

Response: Accept

This is something that is already under consideration and will be more fully explored.

Financial Implications – Discussions will be conducted within existing budgets. Financial implications will be considered at the stage when any decision is taken.

Carwyn Jones AM
First Minister of Wales