

# **Senedd and Elections (Wales) Bill**

## Further scrutiny of the financial implications

September 2019

### 1. Introduction

1. The Finance Committee (the Committee) held evidence sessions on 25 September 2019 to consider the Counsel General's draft amendments to the Senedd and Elections (Wales) Bill (the Bill) in relation to funding and accountability of the Electoral Commission.
2. The current Committee membership is available to view on the Committee's webpage. Mark Reckless AM took part in the public evidence sessions on 25 September 2019. However, Mark Reckless excused himself from the Committee's private deliberations on the evidence and has not contributed to the Committee's report.

### 2. Background

3. The Bill and Explanatory Memorandum (EM) were introduced by the Llywydd, Elin Jones AM, the Member in Charge on 12 February 2019.
4. In June 2019, the Committee published its report on the Financial implications of the Senedd and Elections (Wales) Bill.
5. The Committee found that the Bill, as introduced, did not contain sufficient financial information in relation to the Electoral Commission arrangements and recommended:

“Recommendation 13. The Committee recommends that in relation to changes to the oversight and funding arrangements of the Electoral Commission that prior to Stage 2 proceeding, draft amendments and their cost implications should be provided, to allow the Finance Committee an opportunity to fully scrutinise them before a Committee of the Whole Assembly is required to dispose of amendments.”

**6.** During the Stage 1 debate on 10 July 2019, the Counsel General confirmed that he accepted recommendation 13. He said, “I have decided to delay moving the financial resolution for the Bill” until the Committee has an opportunity to consider the proposed amendments in relation to the oversight and funding arrangements for the Electoral Commission.<sup>1</sup>

**7.** Following the debate, the Committee wrote to the Llywydd and Counsel General on 17 July 2019, requesting they attend a meeting of the Committee to ensure the new provisions regarding the Electoral Commission receive sufficient scrutiny.

**8.** In advance of his appearance, the Counsel General wrote to the Committee on 20 September 2019, setting out his intentions with regard to the Electoral Commission provisions in the Bill and providing draft amendments. The letter said:

“My overall policy objective in respect of the Electoral Commission (the EC) is that now elections to the Assembly and to local government in Wales have been devolved, the EC’s work in relation to those devolved Welsh elections should be funded through devolved mechanisms and it should be accountable to the Assembly.”

### 3. Funding and oversight of the Electoral Commission

**9.** Currently, the Electoral Commission is accountable to the UK Parliament, specifically the Speaker’s Committee, which has general oversight of the Electoral Commission’s work. The Electoral Commission also receives its funding from the UK Parliament, following scrutiny by the Speaker’s Committee, rather than through HM Treasury.

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<sup>1</sup> Plenary Record of Proceedings (RoP), paragraph 342, 10 July 2019

**10.** On 13 June the Llywydd wrote to the Constitutional and Legislative Affairs Committee setting out that funding the Electoral Commission directly via the Welsh Consolidated Fund (WCF), with accountability via a Llywydd's Committee, was her preferred option.

**11.** In the Counsel General's letter of 20 September 2019, he stated:

“The EC needs to be funded for devolved Welsh elections from out of the Welsh Consolidated Fund (the WCF). However, the core financial provisions in the Government of Wales Act 2006 (GoWA) (particularly sections 124 and 125) are predicated on an assumption that a body which is directly funded out of the WCF should not also be directly funded out of the UK Consolidated Fund (“the UKCF”). So bodies which are directly funded from the WCF are accountable only to the Assembly, and bodies directly funded from the UK Consolidated Fund are accountable to the UK Parliament.”

**12.** The Counsel General's letter outlined four options the Welsh Government had explored to achieve a new funding and accountability model for the Electoral Commission:

- Option 1: Adding the EC to list of relevant persons at section 124(3) of GoWA;
- Option 2: Making provision in the Political Parties, Elections and Referendums Act 2000 (“PPERA”) allowing funding for the EC to be a direct charge on the WCF under section 124(1)(a) of GoWA;
- Option 3: Making provision in PERA to make it a relevant enactment for the purposes of section 124(2)(b) of GoWA, to enable payment to be made to the EC out of the WCF;
- Option 4: The EC is paid via a body already listed as a relevant person in section 124(3) of GoWA.

**13.** The letter states that given the difficulties associated with options 1-3, “we have decided to pursue” option 4. The letter continued:

“Given its role in relation to elections to the legislature, it would not be constitutionally appropriate for the Welsh Ministers (the executive) to do so; the only other appropriate body already listed in section 124(3) of GoWA would be the Assembly Commission.

This approach is consistent with what is being proposed for Scotland, where responsibility for the funding of the EC in respect of devolved Scottish elections will be given to the Scottish Parliamentary Corporate Body (the SPCB), which is the Scottish equivalent to the Assembly Commission. (We do acknowledge, though, that unlike the Assembly Commission, the SPCB is an established route for funding arms-length bodies.)”

**14.** The Counsel General’s letter states that, under this option, the existing budget, scrutiny and audit framework which applies to the Assembly Commission would apply to the funding of the Electoral Commission. Therefore, this would allow the Assembly to make provision as to the detail of the scrutiny arrangements and budget process within the Assembly’s Standing Orders.

**15.** The Counsel General’s letter goes on to discuss the transfer of funding to be made into the WCF to cover the cost of funding the Electoral Commission’s work in relation to devolved Welsh elections and referendums. It confirms discussions are ongoing with HM Treasury, and that the mechanism for determining the value of the transfer has yet to be agreed.

**16.** If the total costs prove to be higher than the value of the transfer, the Counsel General states that the shortfall would need to be met from existing Welsh resources. The Electoral Commission has submitted estimates to the Assembly Commission suggesting that costs of administering devolved elections would be between £500,000 and £1.6 million per year over the 2018-19 to 2022-23 period.

**17.** On 25 September 2019, the Committee took evidence from:

- Counsel General, Jeremy Miles AM; and
- Member in Charge, Llywydd, Elin Jones AM, and Manon Antoniazzi, Chief Executive and Clerk of the National Assembly for Wales, in her role as Accounting Officer of the Assembly Commission.

## 4. Evidence and Committee view

### Financial information

**18.** The Committee is disappointed that the Counsel General’s draft amendments in relation to funding and accountability of the Electoral Commission were not accompanied by detailed financial information, specifically relating to the cost impact of the amendments. The Counsel General agreed to

provide further information prior to the Financial Resolution motion being moved on 1 October 2019.

**19.** During evidence, the Counsel General said that in relation to the amendments to fund and hold the Electoral Commission to account, the majority of the expenditure would fall to the Assembly Commission in terms of scrutiny of approximately £39,000 over five years as detailed within the Regulatory Impact Assessment (as introduced).

**20.** The Counsel General confirmed that discussions were ongoing with HM Treasury regarding the transfer of funding for the Electoral Commission in relation to devolved Welsh elections and referendums.

**21.** The Committee is concerned that if the value of the transfer to the WCF to cover the cost of funding the Electoral Commission's work in relation to devolved Welsh elections and referendums is insufficient, the shortfall may need to be met from existing Welsh resources.

**Conclusion 1.** The Committee welcomes the Counsel General's commitment to provide additional financial information prior to moving the Financial Resolution, but is disappointed this was not available for the scrutiny session.

**Conclusion 2.** The Committee is broadly content with the financial implications of the draft amendments, based on the assurances given by the Counsel General that costs are unlikely to be significantly different to those highlighted in the Regulatory Impact Assessment.

**Recommendation 1.** The Committee recommends the Counsel General gives a commitment to ensuring the mechanism for determining the value of transfer to be made into the Welsh Consolidated Fund to cover the cost of funding the Electoral Commission's work in relation to devolved Welsh elections and referendums, will not lead to insufficient funds being transferred to Wales.

## Legislative Competence

**22.** In regard to the preferred option of the Counsel General to fund the Electoral Commission via the Assembly Commission's budget (option 4) and the Llywydd's preferred option to fund it directly out of the WCF (option 3), the Committee notes the evidence received suggests that both options are viable.

**23.** During evidence, the Counsel General indicated that there were legislative competence issues in respect of the Llywydd's preferred option (3). However, the Committee notes the Counsel General's letter of 20 September 2019 does not

specify why this option would be outside of the Assembly's legislative competence. The Committee believes the Counsel General should therefore provide further information to support this view.

**Recommendation 2.** The Committee recommends the Counsel General provides the Assembly with an explanation as to why he is of the view that option 3 (as set out in his letter of 20 September 2019) to fund the Electoral Commission directly out of the Welsh Consolidated Fund is not within the Assembly's legislative competence. Option 3 is the Committee's preferred option, and the Counsel General will need to persuade the Committee that option 3 is out of competence and unworkable for that reason.

## Audit and Accountability

**24.** Both panels confirmed that the Wales Audit Office has not raised any issues with either proposed approach. However, due to the time constraints the Committee has been unable to confirm the view of the Auditor General for Wales on the appropriateness of the two funding models, particularly the accountability arrangements.

**25.** The Committee acknowledges the Counsel General's approach is comparable with what is being proposed for Scotland, where responsibility for funding of the Electoral Commission in respect of devolved Scottish elections will be given to the Scottish Parliamentary Corporate Body ("the SPCB"). However, the SPCB is an established route for funding arms-length bodies, unlike the Assembly Commission.

**26.** Furthermore, the Assembly's Standing Orders state the Assembly Commission's budget must be laid by 1 October in each financial year. During evidence it was noted that the Electoral Commission's timescales for budget preparation would not easily align with those of the Assembly Commission.

**27.** In considering the Llywydd's preferred approach, the Committee believes that directly funding the Electoral Commission out of the WCF would provide for clarity around accountability. The Committee favours this approach, together with the establishment of a "Llywydd's Committee" that is non-partisan, and believes strongly that such a committee should have representation from the Finance Committee, as suggested by the Llywydd during the Stage 1 debate.

**Conclusion 3.** The Committee is concerned about the timing and practical issues that make the option of funding the Electoral Commission through the Assembly Commission's budget more challenging in Wales.

**Conclusion 4.** The Committee is also concerned that under the Counsel General's preferred approach the Chief Executive of the Assembly Commission would become the accounting officer for the proportion of the Electoral Commission's budget relating to Wales. The Committee considers this approach does not provide for clear lines of accountability.