

# Response to the Special Purpose Committee on Senedd Reform's report – Reforming our Senedd: A stronger voice for the people of Wales

December 2022

On 30 May 2022, the Special Purpose Committee on Senedd Reform published its report, Reforming our Senedd: A stronger voice for the people of Wales.

This report considers four of the recommendations made by the Special Purpose Committee which are relevant to the procedural role of the Business Committee. The recommendations relate to the:

- Size of the Welsh Government;
- Number of Deputy Presiding Officers;
- Number of Senedd Commissioners; and
- Consequences of a Member changing their political party.



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## Background

1. Noting Business Committee's intention to consider the 4 relevant recommendations of the Special Purpose Committee report, the Welsh Government asked us to conclude our consideration during November 2022 in order to inform the Welsh Government's preparation of relevant legislation. We agreed to call for evidence on these issues during October. This call closed on 1 November. We also specifically invited views from:
  - The Llywydd and Deputy Presiding Officer;
  - The Senedd Commission; and
  - The Welsh Government.
2. To facilitate cross-party discussion, Members and political groups within the Senedd were also invited to express their views.
3. A summary of the responses is set out in Annex 1. Individual responses to the call for evidence can be accessed [here](#).

## Our conclusions

4. We considered the relevant issues arising from the Special Purpose Committee's recommendations at meetings on 15, 22 and 29 November 2022. In light of the views and evidence received, we believe that the Welsh Government, in preparing relevant legislation, should take account of our following conclusions:
  - We believe that it would be reasonable for an increase in the Senedd's membership, from 60 to 96 Members, to be accompanied by an increase in the maximum number of Welsh Ministers which may be appointed, from 12 to 17. We also consider that it would be reasonable for the legislation to include a mechanism which would enable the Welsh Government to propose further increasing this limit to a maximum of 19 by way of secondary legislation, in order to future proof the legislation for the devolution of further powers, or other circumstances where an increase is considered to be merited. Such an increase should be subject to an affirmative (majority) vote of the Senedd.

- We consider that it would be reasonable for an increase in the Senedd's membership to be accompanied by an increase in the maximum permissible number of Deputy Presiding Officers, from 1 to 2. If only one Deputy Presiding Officer is elected, the current arrangements, which ensure political balance, should be maintained. In the event that a second Deputy Presiding Officer is elected, provision should be made in the legislation to ensure that:
  - a) where practicable, the additional Deputy Presiding Officer should not belong to the same political group as either the other Deputy Presiding Officer or the Presiding Officer; and
  - b) not all Presiding Officers are members of a political group with an executive role/non-executive role. Following a legislative change, the existing Standing Order related to executive/non-executive balance (6.12) will also need to be reviewed by the Senedd.

Section 25(9) of the Government of Wales Act 2006 provides that a two thirds majority of the Senedd may resolve to disapply the requirement that the Presiding Officer and Deputy Presiding Officer must not belong to the same political group, and must not both belong to a political group with an executive role. We believe this provision should be maintained for any new provisions which relate to the political balance of the offices of Presiding Officer and Deputy Presiding Officer.

- The Welsh Government should explore changing the legislative titles of 'Presiding Officer' and 'Deputy Presiding Officer' to provide for the following bilingual titles in the Government of Wales Act: 'Llywydd/ Speaker' and 'Dirpwy Lywydd/ Deputy Speaker'. Such provision should only be included in the reform legislation if the Welsh Government has confidence that they are within the Senedd's legislative competence and would not risk a referral of the Bill to the Supreme Court.
- No provision should be included in the reform legislation which alters the current size or composition of the Senedd Commission.
- The reform legislation should not include provisions which result in consequences for a Member of the Senedd who changes their political party or group, or becomes independent, between Senedd elections.

## Size of the Welsh Government

5. The Special Purpose Committee recommended that:

*“...the Business Committee and the Welsh Government consider how cross-party consideration can be facilitated on the question of whether any increase in the size of the Welsh Government would be appropriate, balanced against the need for enhanced scrutiny. This consideration should then inform the development of legislation to provide for a Senedd of 96 Members.” (Recommendation 4)*

6. Explaining its recommendation, the Special Purpose Committee recognised that the Welsh Government may wish to make a case for an increase in its size to accompany the increase in the number of Senedd Members, but indicated that “any such proposal would need to be carefully considered, proportionate and subject to detailed legislative scrutiny”. It stated “this should not be a decision for government alone, because any increase in its size will mean a corresponding decrease in the Senedd’s capacity for delivering scrutiny”. On that basis, it called on the Welsh Government and the Business Committee to facilitate cross-party consideration of this question.

7. Currently, the Government of Wales Act 2006 makes provision for the First Minister, with approval of His Majesty, to appoint:

- Welsh Ministers from among the Members;<sup>1</sup>
- Deputy Welsh Ministers from among the Members, to assist the First Minister, a Welsh Minister or the Counsel General in the exercise of their functions.<sup>2</sup>

8. The Act also places a limit of 12 on the total number of Ministers and Deputy Ministers (excluding the First Minister and the Counsel General).<sup>3</sup> This means that no more than 14 or approximately 1 in 4 (23.3%) Members of the Senedd can be a member of the Government.

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<sup>1</sup> **Government of Wales Act 2006**, section 48.

<sup>2</sup> **Government of Wales Act 2006**, section 50.

<sup>3</sup> **Government of Wales Act 2006, section 51.**

9. A number of different views were expressed on the size of the Welsh Government in the evidence we received. The Senedd Labour Party proposed that the limit on the number of Welsh Ministers should be increased to 16. The Senedd Plaid Cymru Group proposed that the limit should be increased to 19 and that the threshold should be approved by a vote in the Senedd, subject to a simple majority.
10. The Welsh Government considered that the number of Ministers should be increased from 12, but with a legal limit to a specific number in the range of 16-19 stated in primary legislation.
11. Laura McAllister and Paul Silk's joint response stated that there is no evidence to support a rationale for an increase in the size of the Welsh Government.

## Our view

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12. We believe that, in a future 96 Member Senedd, an increase to the maximum limit on the number of Welsh Ministers which may be appointed is justified. Given the changes to the political landscape, including the devolution of further powers that has already occurred and the additional responsibilities placed on the Government by the UK's withdrawal from the EU, it would not be prudent to limit the size of the Government to its present level.
13. However, we are also conscious that the primary purpose of any increase to the Senedd's overall membership should be to increase the Senedd's scrutiny capacity. For this reason we believe that controls on the numbers of Ministers which may be appointed remain necessary. We consider that retaining an increased limit in legislation would allow the Government flexibility to appoint additional Ministers, as required, whilst also preventing this from detracting disproportionately from increases to the Senedd's scrutiny capacity.
14. In our discussions a number of different views were expressed on what the maximum number of Welsh Ministers should be. We have concluded, by a majority, that an increase from 12 (the current level) to 17 would be appropriate. These numbers do not include the First Minister and Counsel General, who also form part of the Government's overall number.
15. An increase from a maximum of 12 to 17 would constitute a 42% increase in the number of Welsh Ministers. This would represent a less than pro rata increase when compared to the overall increase in the number of

Members (which is proposed to increase by 60%). This increase would expand the absolute size of the Welsh Government whilst reducing it as a proportion of the total size of the Senedd. A majority of our membership believe this would provide an appropriate increase to the number of Welsh Ministers, and would address concerns about the impact of any increase on the Senedd's capacity to scrutinise. Darren Millar, representing the Welsh Conservatives, and the Llywydd both expressed a view that the maximum number of Welsh Ministers should be set at 16.

16. In order to future proof for the devolution of further powers, or otherwise circumstances whereby an increase is considered to be merited, we also believe a mechanism should be established to enable the Welsh Government to propose a further increase to the maximum number of Welsh Ministers, beyond 17. It is our view that such a proposal should be made by way of secondary legislation subject to an affirmative vote of the Senedd, and should not bring the number of Welsh Ministers beyond an 'absolute maximum' of 19. A majority of our membership consider that such a vote should be passed on a simple majority, whilst Darren Millar stated that it should require the support of two-thirds of Members voting. Any proposed increase, once agreed by the Senedd, should be permanent.

**Conclusion 1:** We believe that it would be reasonable for an increase in the Senedd's membership, from 60 to 96 Members, to be accompanied by an increase in the maximum number of Welsh Ministers which may be appointed, from 12 to 17. We also consider that it would be reasonable for the legislation to include a mechanism which would enable the Welsh Government to propose further increasing this limit to a maximum of 19 by way of secondary legislation, in order to future proof the legislation for the devolution of further powers, or other circumstances where an increase is considered to be merited. Such an increase should be subject to an affirmative (majority) vote of the Senedd.

## The number of Deputy Presiding Officers

17. The Special Purpose Committee recommended that:

*"...consideration is given to the question of whether the Senedd should have flexibility through its Standing Orders to elect more Deputy Presiding Officers should it so wish. This consideration should then inform the development of*

*legislation to provide for a Senedd of 96 Members.”*  
*(Recommendation 5)*

18. The Special Purpose Committee expressed the view that “it should be for the Senedd to determine how to best make use of the additional capacity [they] have recommended” and that an “argument could be made that the Senedd should have flexibility through its Standing Orders to elect more Deputy Presiding Officers (DPOs) should it so wish (and any criteria relating to the party to which they may come from)”.
19. Currently, the Senedd is required by Section 25(1)(b) of GoWA to elect one, and only one, Deputy Presiding Officer. The Wales Act 2017 brought sections 25(1)(b) and 25(2) to (15) of GoWA within the Senedd's legislative competence, meaning that they can now be amended or repealed by a Senedd Bill.
20. In their evidence, the Senedd Labour Group stated that they do not, in principle, object to an increase in the number of DPOs. The Senedd Plaid Cymru Group on the other hand stated that one DPO would be sufficient in the next Senedd.
21. The joint response of the Llywydd and DPO stated that increases in law-making powers and taxation powers has made business more complex to navigate. Their view was that a larger Senedd may be required to meet more often and/or for longer plenary sessions, subsequently bringing an even greater demand on the Llywydd and DPO's time.
22. The Llywydd and DPO proposed amendments to the existing legislation in order to remove the restriction which permits only one DPO. To ensure that the principle of flexibility is maintained, they propose amending legislation to allow for “at least one” DPO.
23. They also proposed that, should a change be made, Sections 25(7-9) of GoWA should be revised to ensure that the Presiding Officer and all Deputies should not belong to the same political group, nor should they all belong to political groups with an executive or non-executive role.
24. Lee Waters MS proposed that the number of DPOs should be a matter for the Senedd through Standing Orders, whereas Laura McAllister and Paul Silk, in their joint response, stated that they do not believe that additional DPOs are required to fulfil the genuine and evidenced objectives of enlargement of the Senedd.



## Our view

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25. We believe that, in a future 96 Member Senedd, it is feasible that the demands on the Senedd's Presiding Officer and Deputy Presiding Officer will increase significantly. A future Senedd may, for instance, choose to hold more plenary sessions or sessions which are longer in duration. The evidence provided by the Llywydd and DPO also highlighted that the complexity of the constitutional landscape and the other demands of both roles, for example, in relation to law-making and taxation powers and to represent the Senedd at internal and external visits and events, have also increased since the original limit was set.
26. In considering this issue we have again noted that the primary purpose of the Senedd's enlargement is to increase its scrutiny capacity. As a result, we believe the Senedd should be afforded the flexibility to appoint one additional Deputy Presiding Officer, increasing the number of Deputy Presiding Officers which may be elected from one to two.
27. Given the Senedd's current arrangement, whereby the Presiding Officer and Deputy Presiding Officer must not be members of the same political group, and must not both be a member of a group with an executive role/non-executive role, we have considered the issue of how this political balance may be maintained in the event that there are three officers, as opposed to the current two.
28. We believe that, if the Senedd chooses to elect two Deputy Presiding Officers, provision should be made to ensure that not all officers may be members of a political group with an executive role/non-executive role. We also believe that, where practicable, the additional Deputy Presiding Officer should not be a member of the same political group as either the other Deputy Presiding Officer or the Presiding Officer. Section 25(9) of the Government of Wales Act 2006 provides that a two thirds majority of the Senedd may resolve to disapply the requirement that the Presiding Officer and Deputy Presiding Officer must not belong to the same political group, and must not both belong to a political group with an executive role. This provision should be maintained.
29. If only one Deputy Presiding Officer is elected, the current arrangements which ensure political balance should be maintained.

**Conclusion 2:** We consider that it would be reasonable for an increase in the Senedd's membership to be accompanied by an increase in the maximum permissible number of Deputy Presiding Officers, should be increased from 1 to 2. If only one Deputy Presiding Officer is elected, the current arrangements, which ensure political balance, should be maintained. In the event that a second Deputy Presiding Officer is elected, provision should be made in the legislation to ensure that:

- a) where practicable, the additional Deputy Presiding Officer should not belong to the same political group as either the other Deputy Presiding Officer or the Presiding Officer; and
- b) not all Presiding Officers are members of a political group with an executive role/non-executive role. Following a legislative change, the existing Standing Order (6.12) related to executive/non-executive balance (6.12) will also need to be reviewed by the Senedd.

Section 25(9) of the Government of Wales Act 2006 provides that a two thirds majority of the Senedd may resolve to disapply the requirement that the Presiding Officer and Deputy Presiding Officer must not belong to the same political group, and must not both belong to a political group with an executive role. We believe this provision should be maintained for any new provisions which relate to the political balance of the offices of Presiding Officer and Deputy Presiding Officer.

30. In light of the evidence received from the Llywydd and Deputy Presiding Officer, we have also given consideration to the titles "Presiding Officer" and "Deputy Presiding Officer", as they exist in legislation. We believe the proposed reforms present a suitable opportunity to change these titles to better reflect the Senedd's parliamentary status. For this reason, a majority of our membership believes that the Government of Wales Act 2006 should be amended to change the English titles from "Presiding Officer" to "Speaker" and from "Deputy Presiding Officer" to "Deputy Speaker". We also believe that the Welsh titles "Llywydd" and "Dirprwy Lywydd" should be established in primary legislation, to the extent that this is within the Senedd's competence.

31. Sian Gwenllian for Plaid Cymru and Jane Dodds, representing the Welsh Liberal Democrats, expressed the view that only the Welsh titles "Llywydd" and "Dirprwy Lywydd" should be used in the legislation.

32. In reaching this conclusion, we note that the Government should determine whether any such changes are within the legislative competence of the Senedd before they are included in a Bill.

**Conclusion 3:** The Welsh Government should explore changing the legislative titles of “Presiding Officer” and “Deputy Presiding Officer” to provide for the following bilingual titles in the Government of Wales Act: “Llywydd/ Speaker” and “Dirpwy Lywydd/ Deputy Speaker”. Such provision should only be included in the reform legislation if the Welsh Government has full confidence that they are within the Senedd’s legislative competence.

## The number of Senedd Commissioners

33. The Special Purpose Committee recommended that:

*“...consideration is given to the question of whether the Senedd should have flexibility through its Standing Orders to elect more than four Members of the Senedd Commission should it so wish. This consideration should then inform the development of legislation to provide for a Senedd of 96 Members.” (Recommendation 6)*

34. Explaining its recommendation, the Special Purpose Committee said:

*“We believe that it should be for the Senedd to determine how to best make use of the additional capacity we have recommended. An argument can be made that the Senedd should have flexibility through its Standing Orders to appoint additional Members of the Senedd Commission, should it so wish.”*

35. The Senedd Commission is the body corporate established under section 27 of GoWA, with the function of providing to the Senedd, or ensuring that the Senedd is provided with, the property, staff and services required for the Senedd’s purposes. It is established as a permanent body, in order to be able to enter into contracts. It does not cease at dissolution of the Senedd.

36. Under section 27(2) of GoWA, the members of the Senedd Commission are to be the Llywydd and four other Members of the Senedd.

37. Section 27(4) of GoWA requires that the Standing Orders provide that, so far as is reasonably practicable, not more than one member of the Commission (other than the Llywydd) should belong to any one political group. The driving principle being to seek to ensure, where possible, representation across parties.
38. Section 27(3) of GoWA leaves provision for the appointment of the four other members of the Commission to Standing Orders.
39. Although Labour Members expressed a range of views on the number of Senedd Commissioners, the Senedd Labour Party chose not to make a specific proposal.
40. The Senedd Plaid Cymru Group did not propose an increase in the number of Senedd Commissioners, although they stated that there should be at least one Commissioner from each political group and that this can be decided through changes to the Standing Orders, at a later date.
41. The Senedd Commission's view was that, as Senedd reform is not anticipated to change the statutory functions of the Commission, there was no need for additional capacity in order for it to carry out its functions effectively at present. However, the Commission stated that as the Senedd evolves, there may be a need to revisit the capacity of the Commission. The Senedd Commission does not envisage any additional capacity requirements necessitating more than one additional member, to make a Commission of six, inclusive of the Llywydd. Therefore they suggest that there may be merit in granting the Senedd flexibility through its Standing Orders to determine the appropriate number of Commissioners.
42. The Senedd Commission also did not see a need to alter provisions under section 27(4) of the GoWA which allows some flexibility in stating that the Commission must comprise one member of each political group (in addition to the Llywydd) as far as is "reasonably practicable."

## Our view

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43. We do not believe that the proposed reforms necessitate an increase to the number of Senedd Commissioners. We have therefore concluded that no provision should be made in the reform legislation which would alter the current composition of the Senedd Commission.

**Conclusion 4:** No provision should be included in the reform legislation which alters the current size or composition of the Senedd Commission.

## Consequences of a Member changing their political party

44. The Special Purpose Committee recommended that:

*“...the Senedd’s Business Committee gives consideration to the consequences of a Member changing their political party if elected through a closed proportional list system.”*

*(Recommendation 10)*

45. The Committee stated in its report:

*“We recognise that an argument can be made that under a closed proportional list system, an elected Member, having been elected on a party list, should not then be able to switch party outside of an election. A counter-argument can be made that the electorate may reasonably expect their representatives to exercise judgment on their behalf: which may include leaving or changing party if the representative believes this to be in the electorate’s interest.”*

46. In the Senedd, as in all UK legislatures, there is no law which requires an elected Member to relinquish their seat if they switch party, either voluntarily or involuntarily within a parliamentary term. The only formal disincentives that limit the ability of Members to form a new political group in certain circumstances exist through the Senedd’s Standing Orders.

47. The Welsh Government is proposing to change the electoral system so that all Members are elected via a closed party list system. It can be argued that this would weaken the view that Members are elected through a personal mandate and to strengthen the view that Members are elected primarily as representatives of their party.

48. It is worth noting that a switch to a closed party list system with no system of by-elections will mean that a Member would be unable to resign their seat and seek re-election in that seat “on a point of principle”.

49. At the core of this debate is the question of seat ownership, and whether “people” or “parties” are central to the electoral system.

50. In their evidence, both the Senedd Labour Party and Senedd Plaid Cymru Group recognised the complexity of this issue, and the importance of striking the right balance between voters getting the party they voted for, and ensuring that Members can still express independent views which might be out of step with their parties' stance.
51. Both parties expressed reservations about any system in which Members would be prevented from leaving a political group, or where leaving a political group would result in them losing their seat in the Senedd.
52. They proposed that Members should be able to leave their political groups without losing their seats. However, those Members should face restrictions on joining a different political group from that to which they were elected, in effect, allowing Members to sit as independents. This could be achieved through changes to Standing Orders, and would not necessarily require legislation.
53. The Senedd Plaid Cymru Group also believed that mechanisms and provisions should be in place to ensure that if a Member ceases to be a Member of the Senedd, through the creation of a casual vacancy, they should be replaced by the next candidate on the party list. They stated that consideration should be given to maintaining at least 50/50 gender balance.
54. The Welsh Government view was that whilst Senedd members should be able to resign from their political group and sit as an independent without losing their seat, there was a case for limitations on them joining or creating a different political group. It further believed that consideration should be given as to whether Standing Orders should be the vehicle through which any such restrictions could be achieved.
55. In responses from individual Members, Lee Waters MS acknowledged the complexity of the issue and the need to make a balanced judgement and stated that it is for a Government to command a majority, or build a coalition, to get its business through - and that includes its own backbenchers. If candidates are listed on the ballot paper as well as their party they can still claim a personal mandate.
56. Jane Dodds MS stated that under the closed list system it would be illogical for Members who change parties to retain their seats, and that in those circumstances they have lost their mandate and should be replaced by the next-placed candidate on the party list.

57. Both Members stated that the Government must also give careful consideration to legal issues such as the rights to freedom of political expression can raise in the event of a Member leaving a party. Jane Dodds MS also believes that provisions should be in place to ensure that if a Member ceases to be a Member of the Senedd, through the creation of a casual vacancy, they should be replaced by the next candidate on the party list. Consideration should be given to maintaining at least 50/50 gender balance.

## Our view

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58. Having carefully considered both sides of this debate, we do not believe that Senedd reform legislation should set out consequences for a Member of the Senedd who changes their political party or group, or becomes independent, between Senedd elections. We have agreed to give further consideration to Standing Orders relating to group membership when reviewing Standing Orders ahead of the next Senedd.

**Conclusion 5:** The reform legislation should not include provisions which result in consequences for a Member of the Senedd who changes their political party or group, or becomes independent, between Senedd election.