

Senedd and Elections (Wales) Bill: Stage 1 Report

June 2019



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Senedd and Elections (Wales) Bill: Stage 1 Report

June 2019



About the Committee

The Committee was established on 15 June 2016. Its remit can be found at:
www.assembly.wales/SeneddCLA

Committee Chair:



Mick Antoniw AM
Welsh Labour
Pontypridd

Current Committee membership:



Suzy Davies AM*
Welsh Conservatives
South Wales West



Carwyn Jones AM
Welsh Labour
Bridgend



Dai Lloyd AM
Plaid Cymru
South Wales West

* The Bill was proposed by the Assembly Commission. As an Assembly Commissioner, Suzy Davies AM therefore absented herself from meetings at which the Bill was discussed.

In accordance with Standing Order 17.48, David Melding AM substituted for Suzy Davies



David Melding AM
Welsh Conservatives
South Wales Central

The following Members were also members of the Committee during this inquiry.



Dawn Bowden AM
Welsh Labour
Merthyr Tydfil and Rhymney



Mandy Jones AM
Brexit Party
North Wales

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Recommendations

Recommendation 1. All Bills relating to significant constitutional issues should be published in draft and accordingly, time should be built into the legislative process to enable this to happen. Page 41

Recommendation 2. Bills should be introduced into the National Assembly that can be reasonably considered to be fully developed at the point of introduction. Page 42

Recommendation 3. If the Bill is passed, on receiving Royal Assent the Assembly Commission should publish a revised version of Annex 9 to the Explanatory Memorandum..... Page 43

Recommendation 4. If the Welsh Government brings forward a Bill that includes provisions to reduce the voting age to 16 for local government elections, it should ensure that its Explanatory Memorandum includes an Annex showing how existing legislation would be amended..... Page 43

Recommendation 5. The National Assembly should agree the general principles of the Bill..... Page 43

Recommendation 6. If, as indicated, the Welsh Government tables amendments to section 2 of the Bill as set out in the Counsel General’s letter to us, of 13 March 2019, then, for the avoidance of doubt, it should ask the UK Government to bring forward an Order in Council under section 109 of the 2006 Act to modify the Assembly’s legislative competence accordingly.Page 59

Recommendation 7. The Llywydd should issue a written statement:

- setting out where responsibilities lie for each aspect of the changes needed to the electoral administration and registration processes;
- addressing the funding concerns expressed by the Association of Electoral Administrators and local government relating to implementing electoral registration reforms;
- setting out the current position on updates needed to Electoral Management Systems and clarifying the cost of the updates.....Page 90

Recommendation 8. The Llywydd should consider the feasibility of amending the Bill to create a duty on local authorities to promote awareness of how looked-after children can register as local government electors..... Page 91

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Recommendation 13. After the 2021 Assembly election, the stakeholder group should undertake a review of the election to collate lessons-learned in order to inform future policy development and guide schools on the most effective way of delivering political and citizenship education as part of both the current and new education curriculums. Page 114

Recommendation 14. The Minister for Education should issue a written statement explaining how citizenship and political education will be delivered in time for the 2021 Assembly election, including the timeframe for any accompanying guidance she intends to issue..... Page 115

Recommendation 15. The Llywydd should issue a written statement at the earliest opportunity detailing the funding being provided by each body contributing to awareness-raising and education in readiness for the 2021 Assembly election..... Page 115

Recommendation 16. The Llywydd should amend the Bill to remove section 27. Page 123

Recommendation 17. In the absence of a stand-alone Bill, the forthcoming local government Bill should include sections setting out the detailed arrangements for oversight of the Electoral Commission in Wales by the National Assembly. Page 123

Recommendation 18. The Llywydd and the Welsh Government should satisfy themselves that Schedule 1A of the 2006 Act, as inserted by section 29 of, and Schedule 2 to, the Bill, is appropriate.....Page 130

Recommendation 19. The Llywydd should amend the Bill to remove section 36.
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1. Introduction

On 12 February 2019, the Llywydd, Elin Jones AM, introduced the Senedd and Elections (Wales) Bill (the Bill)¹ and accompanying Explanatory Memorandum (EM)² and made a statement on the Bill in Plenary the following day³.

1. At its meeting on 15 January 2019, the Assembly's Business Committee agreed to refer the Bill to the Constitutional and Legislative Affairs Committee for consideration of the general principles (Stage 1), in accordance with Standing Order 26.9. The Business Committee agreed that we should report by 28 June 2019.⁴

Terms of reference and our approach

2. Our remit is to carry out the functions of the responsible committee set out in Standing Order 21 (with the exception of Standing Orders 21.8-21.11) and to consider any other constitutional, legislative or governmental matter within or relating to the competence of the National Assembly or the Welsh Ministers, including the quality of legislation.

3. For the purpose of scrutinising the Bill, we agreed the following terms of reference:

“To consider—

- the general principles of the Senedd and Elections (Wales) Bill and whether there is a need for legislation to deliver the Bill's stated policy objectives;
- any potential barriers to the implementation of the provisions and whether the Bill takes account of them;
- whether there are any unintended consequences arising from the Bill;

¹ [Senedd and Elections \(Wales\) Bill](#) on the Assembly website

² [Senedd and Elections \(Wales\) Bill: Explanatory Memorandum](#)

³ Record of Proceedings (RoP), Plenary, 13 February 2019

⁴ Business Committee, [Report on the timetable for consideration of the Senedd and Elections \(Wales\) Bill](#), 13 February 2019

- the financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum);
- the appropriateness of the powers in the Bill for the Welsh Ministers to make subordinate legislation (as set out in chapter 6 of the EM);
- matters relating to the legislative competence of the National Assembly including compatibility with the European Convention on Human Rights;
- the balance between the information contained on the face of the Bill and what is left to subordinate legislation;
- any matter related to the quality of the legislation;
- any other matter related to the constitutional implications of the Bill.”

4. Between 27 February and 12 April 2019, we conducted a public consultation exercise to inform our work. We received 639 responses (of which more than 600 were part of a campaign on the name change), which are published on the National Assembly’s website.⁵ In addition, we heard oral evidence from a number of witnesses. The schedule of oral evidence sessions is published on the National Assembly’s website.⁶

5. As part of our Stage 1 scrutiny of the Bill, the National Assembly for Wales’ Citizen Engagement Team (Citizen Engagement Team) gathered the views of young people across Wales on lowering the minimum voting age in National Assembly elections to 16 and the need for any accompanying political and citizenship education.

6. Views were gathered via an online discussion board called Senedd Dialogue and during focus group sessions with schools and youth groups. The online discussion ran for a six-week period between 21 March and 2 May 2019.⁷ The discussion generated 43 ideas and 47 comments from 42 contributors aged between 13 and 21 years old across all five Assembly regions. Respondents were

⁵ [Senedd and Elections \(Wales\) Bill. consultation responses](#)

⁶ [Senedd and Elections \(Wales\) Bill. schedule of oral evidence](#)

⁷ Senedd Dialogue: [Have your say on political and citizenship education!](#)

predominantly school pupils or college students and included a number of Welsh Youth Parliament Members.

7. The Citizen Engagement Team also interviewed a number of stakeholders, and videos of those interviews are available on the Assembly's website.⁸

8. In our scrutiny role in relation to all Bills, we consider, amongst other things, the approach taken to legislating. In light of the evidence we received and heard, our usual consideration of this issue is included in chapter 4 on the general principles of the Bill. In 2015, our predecessor committee in the Fourth Assembly published its report, *Making Laws in Wales*.⁹ Our consideration of the Bill draws on that work. References in the report to "*Making Laws in Wales* report" should therefore be taken as a reference to the work of our predecessor Committee.

9. We would like to thank all those who have contributed to our work.

Finance Committee's consideration of the Bill

10. The Assembly's Finance Committee took evidence on the financial implications of the Bill and its report is available in the National Assembly's website.¹⁰

⁸ [Senedd and Elections \(Wales\) Bill](#), video interviews

⁹ Constitutional and Legislative Affairs Committee, [Making Laws in Wales](#), 8 October 2015

¹⁰ [Finance Committee's report on the Senedd and Elections \(Wales\) Bill](#)

2. Background

Timeline of events

11. The Bill is part of a reform programme initiated by the Assembly Commission, which also includes increasing the size of the National Assembly and changing the electoral system (subject to securing cross-party support).¹¹

12. In December 2016, the Assembly Commission published a consultation paper on changing the National Assembly's name,¹² which included an annotated draft Bill. It published the results of its consultation in June 2017¹³.

13. In February 2017, the Llywydd announced that the Assembly Commission had established an Expert Panel on Assembly Electoral Reform (Expert Panel) to provide politically impartial advice on the number of Assembly Members, the most suitable electoral system, and the minimum voting age for Assembly elections.¹⁴ This followed the Fifth Assembly Commission's announcement in November 2016¹⁵ that it intended to look into using the National Assembly's new powers under the *Wales Act 2017* to address the capacity of the Assembly (which took account of its predecessor's January 2015 report on *The future of the Assembly: ensuring its capacity to deliver for Wales*)¹⁶.

14. The Expert Panel reported in November 2017¹⁷ and the Assembly Commission undertook a consultation on that report in February 2018¹⁸. In July 2018, the Llywydd, as Chair of the Assembly Commission, issued a written

¹¹ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraphs 5-7. See also information on the Assembly Commission's webpages [Renewing Our Democracy](#)

¹² National Assembly for Wales, Assembly Commission, [Consultation: Changing the name of the National Assembly for Wales](#), December 2016

¹³ National Assembly for Wales, Assembly Commission, [Changing the name of the National Assembly for Wales Consultation results report](#), June 2017

¹⁴ Elin Jones AM (Llywydd), [Expert panel to support work on electoral reform unveiled by Llywydd](#). Written Statement, 1 February 2017

¹⁵ National Assembly for Wales, [Commission agrees its ambitions for the future](#), News item, 14 November 2016

¹⁶ National Assembly for Wales, Assembly Commission, [The Future of the Assembly: ensuring its capacity to deliver for Wales](#), January 2015

¹⁷ [A Parliament that works for Wales. The report of the Expert Panel on Assembly Electoral Reform](#), November 2017

¹⁸ National Assembly for Wales, Assembly Commission consultation, [Creating a Parliament for Wales](#), February 2018

statement¹⁹ and published a summary of the consultation's findings²⁰. A full consultation report was published in October 2018.²¹

The purpose of the Bill

15. The EM states that the Bill is the first part of a two-phase legislative strategy to implement a reform programme, led by the Assembly Commission, to make sure the National Assembly is an accessible, forward-looking institution which serves the people of Wales effectively.²²

16. The purpose of the Bill is to:

- change the name of the institution from the National Assembly for Wales (Cynulliad Cenedlaethol Cymru) to the “Senedd”, and make consequential changes to relevant names, titles and descriptors (Part 2, sections 2 to 9);
- reduce the minimum voting age in National Assembly elections to 16, and implement reform of associated electoral registration arrangements (Part 3, sections 10 to 26 and 28);
- place a duty on the National Assembly to consider the financial and oversight arrangements for the work of the Electoral Commission in relation to devolved Welsh elections and devolved referendums (Part 3, section 27);
- change the law on disqualification from being an Assembly Member (Part 4, sections 29 to 34);
- extend the deadline for the first meeting of the National Assembly after an election (Part 5, section 35);
- introduce a regulation-making power for the Welsh Ministers to implement Law Commission recommendations (Part 5, section 36);

¹⁹ Assembly Commission, Elin Jones AM (Llywydd), [The Commission's Assembly Reform priorities following the outcome of the public consultation. "Creating a Parliament for Wales"](#). Written Statement, 18 July 2018

²⁰ National Assembly for Wales, Assembly Commission, [Consultation on Creating a Parliament for Wales: Summary of the main findings](#), July 2018

²¹ National Assembly for Wales, Assembly Commission, [Creating a Parliament for Wales: Consultation report](#), October 2018

²² Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraphs 5-6

- clarify Assembly Commission powers to charge for goods and services (Part 5, section 37).

3. Legislative competence

The *Wales Act 2017* introduced a reserved powers model of legislative competence for Wales, amending the *Government of Wales Act 2006* (the 2006 Act) to substitute a new section 108A (legislative competence) for the former section 108 and new Schedules 7A (reserved matters) and 7B (general restrictions) for the former Schedule 7.

Legislative competence and human rights

17. The EM states that:

“It is not considered that any provision made by the Bill falls within any of the reservations contained in Schedule 7A.”²³

18. It also considers the extent to which consents are needed from the Secretary of State for Wales (the Secretary of State) and states:

“Sections 12 to 25 of the Bill confer and/or modify various functions of Electoral Registration Officers (EROs). The office of ERO is ‘a reserved authority’ and consent of the Secretary of State was required in order for these provisions to be within the Assembly’s competence. Consent was received for these provisions in February 2019.”²⁴

19. The EM also states that “All of the Bill’s provisions are compatible with the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights)”²⁵ In reaching this view, the EM notes that a number of provisions in the Bill relating to the franchise and disqualification of an Assembly Member might be considered to engage Convention Rights and these matters are examined in chapter 17.²⁶

20. The Llywydd told us:

²³ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 14

²⁴ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 20

²⁵ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 22

²⁶ Senedd and Elections (Wales) Bill: Explanatory Memorandum, chapter 17, Equality Impact Assessment, paragraphs 854-874

“... I’ve taken the view that the Bill is in competence, as it has been introduced, and that view has been concurred by the Deputy Presiding Officer. Minister of Crown consents, of course, were part of the competence issue, and that consent was forthcoming. That issue was around the electoral registration officers.

On the name change and the drafting of the clauses in relation to the name change, the explanatory memorandum itself, as well as the correspondence you’ve referred to from Welsh Government and the Secretary of State, goes into some of the considerations on competence or various ways of drafting that clause, and the Counsel General has outlined a different form of drafting that he considers to be within competence.”²⁷

Our view

- 21.** We note the views of the Llywydd regarding the Bill being within the legislative competence of the National Assembly.
- 22.** Issues concerned with amending the existing drafting of section 2 of the Bill relating to the name change that engage matters of legislative competence were raised in evidence. These are discussed in chapter 5 of the report.

²⁷ CLA Committee, 11 March, RoP [42-43]

4. General principles

Approach to legislating

An Assembly Commission Bill

23. The National Assembly’s Standing Orders allow the Assembly Commission to introduce a Bill relating to the Commission’s functions. The EM states:

“The Commission’s functions are not clearly defined in legislation. It is therefore open to the Assembly to determine the Commission’s functions. The only limitation is that the functions must be lawful. To determine the Assembly’s view and to ensure that the Commission had a firm procedural basis to introduce legislation, the Assembly’s approval for the introduction of a Bill was sought. A plenary motion to allow the Commission to introduce legislation on the issues included in the Senedd and Elections Bill (Wales) was tabled for debate on 10 October 2018 and agreed by the Assembly.”²⁸

24. The Assembly Commission’s Head of Legal Services told us that:

“... the function of the Commission is to, among other things, provide services for the purposes of the Assembly. The purposes of the Assembly are not set out in legislation, so the Assembly has a wide discretion to set its own purposes, provided that those purposes are lawful and, of course, this Bill relates to matters that are within the legislative competence of the Assembly. A motion in the Assembly doesn’t change the powers of the Commission, because a motion in the Assembly could not do that—it would require legislation—but the purpose of the mandate was to be absolutely clear that the Assembly agreed that the bringing forward of this Bill is within its purposes.”²⁹

25. When questioned on the use of an Assembly Commission Bill, the Counsel General said:

“Well, I think elsewhere, clearly, these matters are dealt with by Government Bills typically, as I understand it, so it is novel in that sense for it to be brought forward by the Commission, but I do think we ought to give weight to the factor of building a consensus around areas

²⁸ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 10

²⁹ CLA Committee, 11 March 2019, RoP [8]

where some of these are more politically-charged areas than others, aren't they, for reasons that we perhaps all understand. And I think the Llywydd, if I may say, has a particular role in seeking to build that consensus. So, that, I think, tends to support that route, and I think that's why we find ourselves debating this kind of Bill."³⁰

26. Support for the principle of the Assembly Commission introducing the Bill came from Professor Laura McAllister, the Chair of the Expert Panel³¹; Professor Keith Bush QC³² and Professor Roger Awan-Scully³³.

A more wide-ranging Bill

27. The publication of the Expert Panel's report, *A Parliament that Works for Wales*, was a precursor to the preparation of the Bill. As indicated earlier, the report proposed a wider programme of reform, including an increase in the number of Assembly Members coupled with a change in how they should be elected. We explored, therefore, whether the Bill introduced by the Assembly Commission should have been more ambitious.

28. The Llywydd explained that the Bill could not be a vehicle to increase the number of Assembly Members and their method of election because it was:

“... not clear to me whether there was a working majority or a supermajority of 40 of 60 Members who were keen to move in a particular way, in line with the Laura McAllister recommendations. And I think that some of the political parties are still discussing that within the nature of their political democratic structures.”^{34 35}

29. Professor McAllister told us:

“So, if you're asking me, 'Should more of the expert panel recommendations have been put into a Bill at this stage?' then my

³⁰ CLA Committee, 29 April 2019, RoP [154]

³¹ CLA Committee, 25 March 2019, RoP [123]

³² CLA Committee, 25 March 2019, RoP [150]

³³ CLA Committee, 25 March 2019, RoP [251-2]

³⁴ CLA Committee, 11 March 2019, RoP [12]

³⁵ The *Wales Act 2017* introduced areas of competence for the National Assembly which it defined as “protected subject-matter”, as outlined in the new Section 111A of GOWA 2006. It requires that, if the Presiding Officer, or Deputy Presiding Officer, determines that any provision of the Bill relates to a protected subject-matter, then the Bill is not passed unless the number of Assembly members voting in favour of it at the final stage is at least two-thirds of the total number of Assembly seats.

obvious answer is ‘yes’. But I understand, obviously, the constitutional constraints around ensuring that you can gain a supermajority for any constitutional change, and, of course, these areas have huge political delicacy ... But, from our own point of view, we saw these three areas of size, electoral system reform and votes at 16 as being part of a package of democratic renewal, and I hope that all of it will come to fruition at some point. But, in an ideal world, it would have been good to see these in one Bill together, but I appreciate the reasons why that was unlikely to happen.”³⁶

30. The Electoral Reform Society Cymru, while supporting the Bill and the extension of the franchise to 16 and 17 year olds, expressed disappointment that the other reforms around the National Assembly’s size and its method of election, alongside recommendations about integrated gender quotas, were not included in the Bill.³⁷ It felt it “imperative” that the issue of the size of the National Assembly is not “kicked into the long grass”.³⁸ According to the Society, an “extension of the franchise would lead to an additional number of people on the electoral [roll], meaning more pressure on Assembly Members when they are already under strain”.³⁹

31. The Electoral Reform Society Cymru subsequently said:

“From a political point of view, I think it’s really unlikely that the size and the electoral system issue ... would be agreed in time to pass this Bill, in time for the roll-out of political education, the work that the electoral registration officers need to do to extend the franchise in time for the next election.”⁴⁰

32. When asked if the Bill should have been a comprehensive one covering all elections, Professor Awan-Scully said that “perhaps in principle it would have been better to have a single Bill”.⁴¹ He recognised the political realities of why aspects relating to a greater number of Assembly Members were not included in the Bill⁴² and told us:

³⁶ CLA Committee, 25 March 2019, RoP [110]

³⁷ CLA Committee, 1 April 2019, RoP [4]

³⁸ Written evidence, SE04, Electoral Reform Society Cymru

³⁹ Written evidence, SE04, Electoral Reform Society Cymru

⁴⁰ CLA Committee, 1 April 2019, RoP [20]

⁴¹ CLA Committee, 25 March 2019, RoP [250]

⁴² CLA Committee, 25 March 2019, RoP [271]

“... given the fact that changing the electoral system in quite a fundamental way is quite a difficult thing to do, particularly when you bear in mind that we need a supermajority in the Assembly to achieve this, I do think it makes a great deal of sense—to me, at least—to develop a first Bill to do everything that can be delivered at the moment, and then after a little more time and having developed a consensus, to then try to push through a second Bill dealing with the more difficult and thorny issues.”⁴³

33. When asked whether it would have been better to include all changes (including in relation to local government elections) in the Bill, Professor Bush QC said he had no strong feelings, saying:

“I personally don’t see what the difference is, ultimately, because we’re talking here about changing the law, and the process of making changes to the law doesn’t affect the ultimate outcome.”⁴⁴

A single Bill on reducing the voting age to 16 in National Assembly and local government elections

34. The Llywydd told us:

“... the Welsh Government itself had expressed its intention to introduce legislation that would bring forward votes for 16 and 17-year-olds for local government elections. In terms of that Bill, which will be introduced at some point in the near future by the Welsh Government, then, of course, that legislation is progressing independently of our own legislation, because our legislation requires the support of 40 of the 60 Assembly Members here, in order to have a supermajority for any constitutional legislation of this kind, and, quite understandably, the Welsh Government, in bringing forward local government legislation in more general terms, wishes for that legislation to only—well, I say ‘only’—but to be voted for by a simple majority of the National Assembly.”⁴⁵

35. The Llywydd acknowledged that “there would be some merit ... to having ... the franchise change for 16 and 17-year-olds ... in one piece of legislation” but explained that, as well as the need for a supermajority, another reason for not

⁴³ CLA Committee, 25 March 2019, RoP [250]

⁴⁴ CLA Committee, 25 March 2019, RoP [148]

⁴⁵ CLA Committee, 11 March 2019, RoP [16]

pursuing the local government franchise within the Assembly Commission's Bill was her:

"... feeling that that started, then, to take a piece of legislation in my name, as Member in charge, into Government policy and that it wasn't appropriate for the Llywydd to lead on a policy change for local government election franchise."⁴⁶

36. Nevertheless, she said:

"... anything that we are doing in terms of franchise in this Bill, we are anticipating that Welsh Government are going to do in terms of franchise on 16 and 17-year-olds for local government elections."⁴⁷

37. The Llywydd expanded on the approach adopted, saying:

"Obviously, working towards having one franchise for both Assembly and local government has been—and is—an aspiration of both Welsh Government and myself. I've had no indication from Welsh Government that their Bill, their local government Bill, will not be in place for the 2022 election, and, from my meeting last week with the Minister, she was able to confirm once again that they were working to a timetable that would enable that. Obviously, the history of this Bill has meant that the local government Bill and the relationship to this Bill has changed; it was flipped in terms of timetabling as a result of some of the issues that you've alluded to. Where we had expected our Bill to be linked to the local government franchise and the local government Bill, that was then changed because of the need to timetable the Bills in a way where our Bill would have to go first and the franchise provisions put in this Bill rather than linked from this Bill to a local government Bill. So, on the whole, we are where we are with all of that, but I know that Welsh Government are keen for both sets of elections—2021 and 2022—to have a franchise that includes 16 and 17-year-olds."⁴⁸

38. In a subsequent letter she told us:

"From my perspective, the key requirement for this Bill is to ensure that the Assembly franchise fits the needs of the Assembly's elections. I would hope that matters of consistency, clarity and administrative

⁴⁶ CLA Committee, 7 May 2019, RoP [119]

⁴⁷ CLA Committee, 11 March 2019, RoP [40]

⁴⁸ CLA Committee, 7 May 2019, RoP [176]

convenience are taken into account by Welsh Government in any future legislation relating to the Local Government franchise.

It is already the case that different people are able to vote in UK Parliamentary elections, compared to those who can vote in local government and Assembly elections. So, if there was to be a divergence, the electoral community and electoral systems already have experience of managing differences, usually by marking the electoral registers appropriately.”⁴⁹

39. The Electoral Reform Society Cymru told us that:

“... for us, the ideal situation would be the extension of the franchise for Assembly and local government elections at the same time, and I think that would just be in terms of practicality of registration and making sure that the electoral roll for both elections was up to date. The delay in the local government Bill I think is unfortunate. I don’t think it completely undermines this Bill at all. I think it just makes the situation slightly more complicated for electoral registration officers and will make sure that they have to do two visits and two registration drives.”⁵⁰

40. The Society added:

“In an ideal world, absolutely, there should be a single Bill for the extension of the franchise for both local government and Assembly elections. What makes that difficult is both the timescale that the Assembly Commission and Welsh Government are working to—they are very different—but also the degree to which this Bill needs support in the Chamber. I think it is therefore fair to make sure that the local government situation is dealt with separately, and obviously, that being a more comprehensive Bill also lends itself to being dealt with separately.”⁵¹

41. The Society of Local Authority Chief Executives and Senior Managers (Solace) referred to having two Bills as being “slightly confusing”,⁵² also saying:

“You might wish to question ... why ... we are separating the franchise for the two devolved elections into two different Bills when it’s the same

⁴⁹ Letter from the Llywydd, Senedd and Elections (Wales) Bill, 16 May 2019

⁵⁰ CLA Committee, 1 April 2019, RoP [68]

⁵¹ CLA Committee, 1 April 2019, RoP [72]

⁵² CLA Committee, 1 April 2019, RoP [228]

register. It would be much easier for us administratively, even if there were other local government electoral reforms to come in the later Bill. Question: should they both be combined in this Bill? I would say ‘yes’, because it’s the same register and we’re doing the same change with the same intent for both. I would ask you to consider why that couldn’t be imported into this Bill in good time, which would ease the administrative risks too.”⁵³

42. Solace added:

“... the franchise is the franchise. If there’s popular and political support for it to change for one election, it will be there for the other. I have no reason to believe that the local government Bill wouldn’t follow in good time, but if it didn’t for some reason, wouldn’t it be a travesty if young people were enabled and given power for one key election and then, the following year, weren’t able to exercise it? It’s more for administrative convenience and public certainty, but it also would eliminate that risk too.”⁵⁴

43. The Welsh Local Government Association (WLGA) said it was not immediately clear “why the franchise element of the local government and elections Bill is separate” to the Bill.⁵⁵

44. Professor Awan-Scully felt the use of one Bill would be better ideally,⁵⁶ while a member of the public did not understand why the franchise between local government and National Assembly elections was being split, saying:

“It creates more work for electoral administrators. They’ll need a parliamentary list, local government list and now this weird different list of electors for Assembly elections. With resources tight, things could go wrong. This way of doing things is also untested in the UK – Scotland made franchise changes for LG / SParlliament at the same time.

It confuses voters. A 16 year old could vote in the Assembly election in May 2021. That very same person would not be allowed to vote in a local gov by election that very same day or even within the following year. This is weird and could cause confusion / apathy. I understand another Bill will make changes for LG voters. But what if that Bill fails to pass?

⁵³ CLA Committee, 1 April 2019, RoP [257]

⁵⁴ CLA Committee, 1 April 2019, RoP [260]

⁵⁵ CLA Committee, 1 April 2019, RoP [259]

⁵⁶ CLA Committee, 25 March 2019, RoP [242]

You'd have voters that are different between devolved elections. This seems odd.”⁵⁷

45. The Electoral Commission⁵⁸ thought that:

“... we might see other elements of franchise change included in the local government Bill. We've seen some things in the pre-legislative consultation. From our perspective as a commission, the key thing will be effective public awareness ahead of any election that would explain to people who can and who can't take part in that election, and that doesn't just fall within any mass media work or campaign; it will also fall within political literacy and schools' formal education work as well We would manage it, but, certainly, there's a risk of voter confusion there, and indeed in terms of the divergence of the register.”⁵⁹

46. It also noted:

“Our concern is with confusion, rather than with are there two Bills or how things go through. It's the objective, and, if the objective is the same, then I think we're comfortable with trying to extend that public awareness.”⁶⁰

47. It added that “whilst there are clear risks, ... if you were to have a different franchise in one election to the other election, if that's the will of this place then we will make it work in some way”.⁶¹

48. The Association of Electoral Administrators (AEA) also highlighted the potential risks that might stem from having diverging franchises:

“... divergences between the local government and Assembly franchises would create the potential for confusion, both amongst the electorate and those responsible for administering elections, which in turn could impact on voter engagement.”⁶²

⁵⁷ Written evidence, SE02, anonymous individual

⁵⁸ References to the Electoral Commission are references to contributions made in written evidence and in oral evidence by the Electoral Commissioner for Wales, the Head of the Electoral Commission in Wales or the Chief Executive of the Electoral Commission.

⁵⁹ CLA Committee, 29 April 2019, RoP [87]

⁶⁰ CLA Committee, 29 April 2019, RoP [90]

⁶¹ CLA Committee, 29 April 2019, RoP [91]

⁶² Written evidence, SE14, Association of Electoral Administrators

A draft Bill

49. The EM to the Bill explains that it was not considered possible to consult on a draft Bill relating to the votes at 16 provisions:

“It was not possible to include the text of draft provisions in the subsequent consultation seeking views on the Expert Panel’s recommendations, and on other reforms to the Assembly’s electoral and operational arrangements. The timescales involved in developing such provisions would have substantially delayed such consultation, and would have made it unfeasible for the required legislation to be in place for the 2021 Assembly election. Instead, the Commission worked closely with a range of stakeholders to develop this legislation and their views informed the preparation of the Bill’s provisions. This included regular dialogue with political parties throughout the process of developing the Bill and seeking the views of external stakeholders especially those with expertise on electoral matters. In addition to this, individual Assembly Members and the public were kept informed of the Commission’s policy decisions relating to the Bill via regular statements and public announcements.”⁶³

50. When questioned, the Llywydd told us “there was a draft Bill on the name change because there was an early mandate and a decision to legislate on the name change”.⁶⁴ When questioned further on other aspects she said:

“Well, I completely accept that it’s not a perfect piece of timed legislation where everything that could possibly be put into a Bill of constitutional significance is put into the one Bill and there’s a draft Bill in advance of that as well. If we were to do that, I wouldn’t be in front of you now proposing a Bill to change the voting age in time for 2021, in particular.”⁶⁵

51. The Counsel General felt that:

“... in an ideal world, publishing a draft Bill and consulting on that is a good way of engaging stakeholders. I think the substance of the changes that are being proposed in the Bill have been the subject of consultation, have been the subject of extensive reflection by the expert

⁶³ Senedd and Elections (Wales) Bill: Explanatory Memorandum, footnote 25

⁶⁴ CLA Committee, 11 March 2019, RoP [133]

⁶⁵ CLA Committee, 11 March 2019, RoP [137]

panel, and so I feel that has provided the opportunity for people to engage on the substance of the issue.”⁶⁶

52. Professor McAllister said:

“I think the presumption in favour of draft Bills is a good one, but expedience and timing have probably made that more problematic now for this piece of work around votes at 16 ... in an ideal scenario, a draft Bill would have allowed more of these issues to be aired at an earlier stage. I would draw attention to, obviously, our own consultation and our own evidence gathering around this area. The Commission, obviously, then embarked on its own consultation, which was well received, I think, and well responded to.”⁶⁷

Accessibility

53. Save for some of the provisions relating to disqualification and set out in Schedule 2, the approach of the Bill is largely to amend existing legislation, with little that is stand-alone, a point acknowledged by the Assembly Commission’s Head of Legal Services.⁶⁸

54. We asked the Llywydd whether a forthcoming local government Bill, potentially lowering the voting age to 16 for local government elections, would make changes to what the Bill before us is seeking to achieve. She said:

“I don’t think that legislation stands in place for a very long time before, possibly, there are changes made to it. I accept that this may just be a few months, but it’s what it is—that’s how I’d explain the timing on all of this.”⁶⁹

55. The Assembly Commission’s Head of Legal Services noted the complexity of electoral law, also saying that:

“... it’s possible, when the local government Bill comes along, that it will be making further amendments to the legislation that’s being amended by this Bill ...”⁷⁰

⁶⁶ CLA Committee, 29 April 2019, RoP [131]

⁶⁷ CLA Committee, 25 March 2019, RoP [106]

⁶⁸ CLA Committee, 7 May 2019, RoP [183]

⁶⁹ CLA Committee, 7 May 2019, RoP [182]

⁷⁰ CLA Committee, 7 May 2019, RoP [183]

56. He referred to the Counsel General’s comments,⁷¹ who, when asked whether a forthcoming local government Bill would reverse anything in the Bill in terms of lowering the voting age, said:

“Not from a policy point of view. We don’t envisage that the local government legislation would amend the Senedd Bill from a policy point of view. But ... it’s conceivable ... that there might be technical changes that the future legislation may need to make...”⁷²

57. As regards whether there was an opportunity to consolidate electoral law through the Bill, the Assembly Commission’s Head of Legal Services said:

“... clarifying, simplifying, consolidating the law on the elections would be a very welcome thing, but it is huge. There are a huge number of Acts of Parliament and regulations that set out the law in relation to elections ... the Law Commission took four years to produce a report into how that should be reformed. So, it would be a very significant task that would be way beyond the scope of this Bill.”⁷³

58. The Counsel General agreed, saying that consolidation of electoral law would be advantageous and noted that the Bill takes steps in this direction as regards disqualification. However, he added it is “a hugely resource-intensive task, and I think it’s the sort of thing that the Law Commission, classically, would drive, effectively.”⁷⁴

Section 27: Duty to consider reform of oversight of the work of the Electoral Commission

59. Section 27 places a duty on the National Assembly to consider the financial and oversight arrangements for the work of the Electoral Commission in relation to devolved elections and devolved referendums, with a view to making recommendations for the reform of those arrangements. The EM says that this is to ensure “this matter is progressed and that clarity is sought on how the Electoral Commission will interact with the Assembly in future”.⁷⁵

⁷¹ CLA Committee, 7 May 2019, RoP [183]

⁷² CLA Committee, 29 April 2019, RoP [146]

⁷³ CLA Committee, 11 March 2019, RoP [165]

⁷⁴ CLA Committee, 29 April 2019, RoP [163]

⁷⁵ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 220

60. The EM notes that currently the Electoral Commission is funded by and accountable to the UK Parliament,⁷⁶ and adds:

“The devolution of significant responsibilities and powers relating to Welsh devolved elections requires a new relationship between the Assembly and the regulator of those elections, to ensure elections are conducted and regulated in accordance with distinct Welsh priorities.”⁷⁷

61. The EM states:

“Following the passing of the WA 2017, the EC initiated discussions with the Llywydd on making the EC accountable to the Assembly for its work on Welsh devolved elections, and on such work being financed by the Assembly. The EC also held similar discussions with the Scottish Parliament following the passing of the Scotland Act 2016 which provided the Scottish Parliament with competence to legislate on the same aspects of the EC’s arrangements in relation to Scottish devolved elections.”⁷⁸

62. The EM also notes that the Scottish Government intends to introduce legislation on electoral reform in 2019, including making the Electoral Commission accountable to the Scottish Parliament for Scottish devolved elections.⁷⁹

63. The EM sets out the key issues that need to be considered⁸⁰ and adds “Such work could provide an opportunity for further dialogue with stakeholders on how new arrangements could work in practice”.⁸¹ It also says that it could be argued that legislation is not needed to consider the arrangements for the Electoral Commission’s work, but states:

“However, the devolution of such responsibilities requires a new relationship to be forged between the Assembly and the Electoral Commission and it is considered appropriate to legislate to instigate that process.”⁸²

⁷⁶ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 218

⁷⁷ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 219

⁷⁸ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 65

⁷⁹ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 66

⁸⁰ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 220

⁸¹ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 221

⁸² Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 222

64. On introduction of the Bill on 12 February 2019, the Llywydd wrote to us repeating the key issues that need to be considered before saying:

“The Bill therefore places a duty on the Senedd to consider whether the Electoral Commission should be financed by the Assembly for its work in relation to devolved Welsh elections, and become accountable to the Assembly for such work.

This provision is intended primarily to signal a policy intention (during Stage 1 of the Bill) to address the financing and accountability of the Electoral Commission through amendments to the Bill.

If the Assembly recommends support for such a move, I anticipate that amendments would be introduced at Stage 2 to establish arrangements for the Electoral Commission to be financed by, and to be accountable to, the Assembly.

In taking this approach, I have considered possible concerns that Members may have limited opportunity to scrutinise such arrangements. However, I believe that this approach (of using this Bill as a legislative vehicle to introduce such provision) would be a more appropriate use of the Assembly’s time than the alternative approach of including it in a standalone Bill.”⁸³

65. When we noted that potentially having significant amendments at Stage 2 is sub-optimal, the Llywydd replied:

“... I’d agree ... I would have preferred a better synchronicity of timing that would have allowed for policy to have been fully developed before introduction of the Bill. One thing I’d say in my favour is that I have made it clear that we are considering this, so I didn’t allow for your Stage 1 to carry on blissfully unaware that this was being considered, and that it has been part of me writing to you to say that we are exploring these issues, and also to ensure that the scope of the Bill was sufficient to allow for amendments.”⁸⁴

66. On 13 February 2019, the Counsel General wrote to us saying:

“Now that the Assembly has legislative competence in relation to devolved elections and referendums, its financing and accountability

⁸³ Letter from the Llywydd, Senedd and Elections (Wales) Bill, 12 February 2019

⁸⁴ CLA Committee, 11 March 2019, RoP [179]

relationship with the Electoral Commission needs to be placed on a formal footing. We stand ready to work with the Llywydd, as Member in Charge, the Electoral Commission and HM Treasury, in the light of Stage 1 scrutiny, to explore whether amendments could be brought forward to achieve this, which would supersede and replace the current proposed duty in the Bill to consider reform of oversight of the work of the Electoral Commission in relation to devolved Welsh elections and referendums.”⁸⁵

67. When questioned, he acknowledged that the approach was “less than ideal” and told us:

“Clearly, there is agreement at this point that this should be dealt with on the face of the Bill in a way that is transparent and enables scrutiny. So, would it have been preferable for that to be on the original Bill that was introduced? Then, yes. But I think the important thing is to have that transparency on the face of the Bill. Of course, section 27 in a sense anticipates further discussion on this, so it’s not as though the further development, if you like, has come out of the blue. The legislation, in a sense, anticipates change in this area, but as we are today, I think it’s the right thing to do to amend the Bill.”⁸⁶

68. When pressed, the Counsel General acknowledged that “perhaps, it is an unorthodox way of proceeding”⁸⁷ and went on to say:

“... I think the discussion we’re having now with the commission—with both commissions—and the subject of the discussion here in this committee, gives us a way of addressing the matter in this Bill. Section 27 envisages a universe where it’s not addressed in this Bill, the Bill is passed, and there’s a future discussion about how best to take this forward. Well, in a sense, we’ve short-circuited that time frame by bringing forward that discussion so it happens as part of the passage of the Bill.”⁸⁸

69. The Electoral Commission stated that they have been working with the Assembly Commission since June 2017 on the detail of how the Electoral

⁸⁵ Letter from the Counsel General, 13 February 2019

⁸⁶ CLA Committee, 29 April 2019, RoP [228]

⁸⁷ CLA Committee, 29 April 2019, RoP [230]

⁸⁸ CLA Committee, 29 April 2019, RoP [232]

Commission would be accountable to the National Assembly and how it would be funded.⁸⁹

Working with the Welsh Government and others

70. The Assembly Commission has been working with the Welsh Government on the development of the Bill. In a letter to the Chair on 13 February 2019, the Counsel General said that he was “pleased that the Welsh Government has been able to provide assistance to the Llywydd in developing the franchise provisions in the Bill, given the links with our own forthcoming legislation about local government elections”.⁹⁰

71. The Llywydd acknowledged this approach.⁹¹ She noted that:

“... there’s been close collaboration already in that those elements on the franchise were drawn up in collaboration between my officials, both lawyers and policy officials, working with Government officials. Now, in terms of drafting those elements of the Bill that you’re considering today, and in terms of ensuring that there is agreement as to how those elements should be introduced in the legislation so that there could be consistency between the introduction of votes for 16 and 17-year-olds for Assembly elections, and in due time, for local government elections too, there was a memorandum of understanding between ourselves and Government officials working in the local government department. And ... we’re already ... working with the Minister for local government and the education Minister on the development of ... a programme of engagement with young people, a programme that looks at the information provided within schools, as well as information for those who are outwith the school system or are in other areas by the time they get to 16 and 17 years old. And, already, there have been meetings between myself and the relevant Ministers, and there has also been some more formal communication so that we can establish that programme of collaboration between the Commission and the Government on introducing these far-reaching changes to the franchise for 2021, and then, 2022, if changes in local government are also in place.”⁹²

⁸⁹ Written evidence, SE12, Electoral Commission

⁹⁰ Letter from the Counsel General, 13 February 2019

⁹¹ CLA Committee, 11 March 2019, RoP [16]

⁹² CLA Committee, 11 March 2019, RoP [18]

72. The memorandum of understanding was provided by the Llywydd along with copies of her correspondence with Welsh Government Ministers.⁹³ Within this correspondence, a letter from the then First Minister said:

“... in my view the arrangements by which the Senedd and Elections (Wales) Bill has been produced have created significant resource and governance challenges and should not be repeated given the likely scale, subject matter and complexity of the second Bill. You may wish therefore to consider what alternative approaches we might take as and when the potential content of any second Bill becomes clearer.”⁹⁴

73. The Llywydd also acknowledged the close co-operation in developing the Bill with the electoral community, the Electoral Commission and the electoral officers.⁹⁵

74. The Chief Executive and Clerk of the Assembly, when asked about how the memorandum of understanding referred to by the Llywydd has worked, said:

“... my experience of it was pretty positive. It was produced, of course, to relate to one particular policy aspect of this Bill in a particular set of circumstances where a good deal of work had already been undertaken on extending the franchise in the local government elections, and in view of the policy objective to align franchise arrangements across Wales, it wouldn't have been ideal to duplicate all of that work. It wasn't intended as a template for working between our two organisations in general for the future, and it did require some bedding in; I think it's fair to say that.”⁹⁶

75. We also questioned the Counsel General on the way the Bill was developed between the Assembly Commission and the Welsh Government. He confirmed that a request for support came from the Assembly Commission because it “felt the need for additional resource and capability in this area”,⁹⁷ and:

“... because of the coincidence of timing between the ... Welsh Government ... working on franchise provisions in relation to local

⁹³ Letter from the Llywydd, Senedd and Elections (Wales) Bill, 2 April 2019

⁹⁴ Letter from Rt Hon Carwyn Jones AM, the then First Minister, to the Llywydd, 10 December 2018

⁹⁵ CLA Committee, 7 May 2019, RoP [114]

⁹⁶ CLA Committee, 29 April 2019, RoP [365]

⁹⁷ CLA Committee, 29 April 2019, RoP [157]

government, and ... the principal task of this Bill relates to franchise for the Assembly elections.”⁹⁸

76. He went on to say:

“... if this is the beginning of a process, and if there is future legislation, there is absolutely a case to have a sort of lessons-learned approach from how it has worked in practice. I think it’s working well, but there have been challenges in terms of resourcing and the additional governance that goes with having this sort of arrangement in place. So, I think we would need to reflect on that if there was going to be a Bill with a broader scope. This is a significant Bill, but when we come to Bills around the voting system and the number of Members, those are likely to lead to much bigger legislation. So, I think we need to look at that differently, perhaps, in that context.”⁹⁹

77. The Counsel General confirmed that as regards the Bill:

“... the franchise provisions are drafted by Welsh Government lawyers, really reflecting the fact that much of the work had been in hand in relation to the local government franchise, and so that’s been part of the benefit of asking Welsh Government lawyers to engage on that.”¹⁰⁰

78. He acknowledged that amendments to these provisions would be drafted by Welsh Government lawyers, adding that:

“... they’ll provide support to the Llywydd in relation to technical amendments, I envisage, ... You’ll know there are some policy questions on which the Welsh Government has a particular view, for example, in relation to extending the franchise to foreign nationals who have leave to enter and remain. So, there’ll be policy questions that will lead to amendments, potentially, and those I would anticipate being brought forward by the Government. But, in terms of technical amendment, I think that’s most likely to be brought forward by the Llywydd, I would think.”¹⁰¹

⁹⁸ CLA Committee, 29 April 2019, RoP [133]

⁹⁹ CLA Committee, 29 April 2019, RoP [134]

¹⁰⁰ CLA Committee, 29 April 2019, RoP [139]

¹⁰¹ CLA Committee, 29 April 2019, RoP [141]

The Bill as introduced

79. The Llywydd explained how events helped shape the decision to introduce the Bill:

“The Commission has, since the election of the fifth Assembly, put in place a programme of electoral reform and Assembly reform ... There have been a number of prompts ... to this work. First of all ... the election of that fifth Assembly and a new Commission. The second prompt ... was the motion on the floor of the Assembly back in 2016 to rename the Assembly to reflect its status as a national Parliament. And then the Wales Act 2017 provided us with the powers for the very first time in this Assembly to introduce legislation that could reform our own elections ... and also the work initiated in the fourth Assembly to consider reducing the voting age to 16—to extend it to 16 and 17-year-olds. And that’s an element of work that this Commission has been interested in and has further developed and has consulted on...”¹⁰²

80. We received limited evidence on the Bill as a package of legislative proposals. Instead, we tended to receive comments on individual parts of the Bill, which were welcomed to varying degrees by consultees and those who gave oral evidence. The evidence to support the general principles of the Bill for the purposes of the Stage 1 debate is therefore set out in later chapters on each Part of the Bill, rather than in this chapter of the report.

Timing of the Bill

81. The Bill has been introduced with the intention of being in place for the 2021 Assembly elections.¹⁰³

82. The Llywydd told us:

“So, why then introduce this Bill at this time? ... there is clearly a degree of support for the next election of 2021 to see 16 and 17-year-olds have the vote for that Assembly election. In order to do that, working back from that date, then this piece of legislation needed to be introduced now.”¹⁰⁴

¹⁰² CLA Committee, 11 March 2019, RoP [5]

¹⁰³ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraphs 132, 208, 427, and 930

¹⁰⁴ CLA Committee, 11 March 2019, RoP [13]

83. The AEA told us that:

“We ask that the Welsh Assembly ensure that any changes in legislation relating to elections are made well in advance of the polls in which the changes will take effect. In our 2016 report: “Pushed to the absolute limit: 2016 – the electoral year never to forget”, we made the following recommendation:

‘Except in cases of unforeseen emergencies and proportionate to the need, changes to election law should not be applicable to any elections within a six-month period from the date the legislation comes into effect.’

In relation to any proposals to changes relating to electoral registration, we would ask that a minimum of 12 months is given prior to the new provisions coming into force.”¹⁰⁵

84. The Electoral Commission also highlighted the importance of timing (particularly for EROs):

“... the annual canvass process will kick off in the summer of 2020, so we would need the new legislation team to be in place six months ahead of that. So, we’re talking around the end of 2019, beginning of 2020, to ensure that all of that work and more can be done. Obviously, there will be elements of that that we will probably need to kick off ahead of that time. If you’re talking about votes at 16 and all of the work ... —that we’ll need to do leading into votes at 16, we can’t wait until January or February 2020 to kick that work off. But, generally, we would want six months to really get into the meat of preparation and planning work for the canvass in 2020.”¹⁰⁶

85. It stated that it has “already started some of that work on the assumption that 16-year-olds will be within the ambit of this Bill”.¹⁰⁷

86. The Llywydd also noted the importance of the Bill being passed in time to meet the expectation of the electoral community, namely:

¹⁰⁵ Written evidence, SE14, Association of Electoral Administrators

¹⁰⁶ CLA Committee, 29 April 2019, RoP [22]

¹⁰⁷ CLA Committee, 29 April 2019, RoP [8]

“... the certainty of the Bill having passed all its stages to be at least six months prior to the canvass of 2020. Our current timetabling assures us that that is on track for either December or January of 2020.”¹⁰⁸

87. The Llywydd,¹⁰⁹ the Minister for Education¹¹⁰ and Professor McAllister¹¹¹ all made cases for the voting age to be reduced to 16 in time for the 2021 Assembly election and some of the points they make are considered in chapter 6 of the report.

88. The Llywydd also highlighted the desirability of having the voting age lowered for National Assembly elections first, and that this would not be an issue if a forthcoming local government Bill lowering the voting age was not passed in time for the 2022 local government election:

“The Laura McAllister report was quite clear in saying that, if and when 16 and 17-year-olds voting was introduced in Wales, then it should certainly be introduced first for a national election and the higher salience of that election. Therefore, I’d have no reason in my mind as to why, if the local government Bill for whatever reason does not go ahead, this election and our national election could not introduce 16 and 17-year-olds voting a year ahead of the local government election or even six years, as it would end up being, possibly, if there had to be a delay.”¹¹²

Resourcing the Bill

89. A number of funding issues related to the implementation of the Bill were raised directly with us. In addition, we noted that funding issues were raised in correspondence exchanged between the Llywydd and the Welsh Government.

90. The AEA raised concerns about the cost estimates provided within the EM, regarding local authority finance, changing the attainment age, engagement, the Electoral Management System (EMS), and election costs.¹¹³ It said that it has:

¹⁰⁸ CLA Committee, 7 May 2019, RoP [114]

¹⁰⁹ CLA Committee, 7 May 2019, RoP [116-117, 158]

¹¹⁰ CLA Committee, 7 May 2019, RoP [78, 86]

¹¹¹ CLA Committee, 25 March 2019, RoP [71]

¹¹² CLA Committee, 7 May 2019, RoP [180]

¹¹³ Written evidence, SE14, Association of Electoral Administrators

“... significant concerns that local authorities are to be expected to meet the additional costs outlined in the Bill especially at a time when their budgets have been significantly reduced over recent years.”¹¹⁴

91. It also highlighted costs it felt hadn’t been factored into the Bill, including, for example, significant additional costs in registering attainments i.e. 14 and 15-year-olds and Electoral Commission costs for a “separate election campaign specifically for Wales”.¹¹⁵

92. The AEA felt that as regards local authority finance “the additional costs should be fully met by the Welsh Assembly by providing ring-fenced grant funding to each local authority”.¹¹⁶

93. The WLGA felt that “any legislative reform or national Welsh Government policy, for example, should be fully funded”, but said that “the explanatory memorandum suggests that it won’t be funded, but will be accommodated. I think that’s the word—accommodated by local authorities”.¹¹⁷

Balance between what is on the face of the Bill and what is left to subordinate legislation

94. The Bill contains four powers for the Welsh Ministers to make subordinate legislation. The powers are included within sections 14, 18, 25 and 36 of the Bill. The powers to make subordinate legislation and the rationale for the procedures to be applied are summarised in chapter 6 of the EM.¹¹⁸

95. With the exception of the order-making power in section 36 of the Bill, the delegated powers provided by the Bill will take the form of regulations.

96. The Llywydd provided a statement of policy intent for subordinate legislation that may be made under the Bill.¹¹⁹

97. The Llywydd told us:

¹¹⁴ Written evidence, SE14, Association of Electoral Administrators

¹¹⁵ Written evidence, SE14, Association of Electoral Administrators

¹¹⁶ Written evidence, SE14, Association of Electoral Administrators

¹¹⁷ CLA Committee, 1 April 2019, RoP [229]

¹¹⁸ Senedd and Elections (Wales) Bill: Explanatory Memorandum, chapter 6, Table 10

¹¹⁹ The Statement of Policy Intent is included in the Letter from the Llywydd, Senedd and Elections (Wales) Bill, 12 February 2019

“That policy statement is seen to be useful as a statement in time. It doesn’t bind any Welsh Government of today or the next Welsh Government, but it is a clear indication of the policy hope.”¹²⁰

98. She indicated that the policy statement “will have been discussed between Commission officials and Welsh Government officials” in bringing it forward.¹²¹

99. With regards to consultation on future subordinate legislation, the EM states:

“The precise nature of consultation on the subordinate legislation, where it is appropriate to do so, will be decided when the proposals have been formalised.”¹²²

100. The EM goes on to say:

“There are no provisions contained in the Bill to make directions and determinations and to issue guidance with respect to the extension of the franchise.”¹²³

101. The Llywydd highlighted how time constraints influenced the drafting of the Bill, noting that “issues that could have been done by secondary legislation would be on the face of the Bill” to ensure that the electoral community had six months’ certainty to prepare for reducing the voting age to 16 for Assembly elections.¹²⁴

102. The Counsel General also highlighted timing as a reason for amending secondary legislation on the face of the Bill.¹²⁵

103. We also considered whether existing powers under section 13 of the 2006 Act could have been used to deliver some of the Bill’s objectives. The Assembly Commission’s Head of Legal Services told us that:

“Those powers would not be wide enough to expand the franchise to cover 16 and 17-year-olds, for instance.”¹²⁶

¹²⁰ CLA Committee, 11 March 2019, RoP [35]

¹²¹ CLA Committee, 11 March 2019, RoP [37]

¹²² Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 337

¹²³ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 338

¹²⁴ CLA Committee, 11 March 2019, RoP [164]

¹²⁵ CLA Committee, 29 April 2019, RoP [222]

¹²⁶ CLA Committee, 11 March 2019, RoP [32]

Our view

104. The Bill is a wide-ranging piece of legislation. It consists of a number of significant elements, which, while broadly connected constitutionally, are individually distinct.

105. This point is reflected in the nature of the evidence received, which has invariably focused on specific issues rather than the Bill as a whole. We have received fewer submissions than we expected on certain issues, perhaps reflecting the UK's withdrawal from the European Union. Nevertheless, this is disappointing given the fundamental issues raised in the Bill concerning reducing the voting age and disqualification from being an Assembly Member.

106. The Bill draws on some of the work of the Expert Panel and its report proposing a wide programme of Assembly reform. We consider that it would have been too soon to reflect key aspects of that report – relating to the size of the National Assembly and a corresponding change in the method of voting – within the Bill, given the likely complexity of the issues involved. We note that as we were finalising this report, the Llywydd wrote to all Assembly Members to say that the Assembly Commission has decided it is not possible to legislate on other aspects of Assembly reform in the Fifth Assembly.¹²⁷

107. We share the views of those witnesses who indicated that there would have been considerable merit in a single Bill that sought to reduce the voting age to 16 for both National Assembly and local government elections.

108. In our view the arguments for such a Bill were strong. It would have ensured a more coherent delivery of public policy in this area and provided greater certainty and clarity for those who are tasked with managing the electoral process.

109. We note assurances that a local government Bill will be forthcoming in the autumn. Nevertheless, there remains a risk that such a Bill will not come forward. Therefore, should the Senedd and Elections (Wales) Bill be passed, there is a risk that votes at 16 will not apply to local government elections in 2022. This risk would not have arisen with a single Bill.

110. The fact that the franchises for local government and National Assembly elections are linked also provides a strong argument for a single Bill covering a reduction in voting age for both elections. It would have allowed for simpler

¹²⁷ Letter from the Llywydd to Assembly Members, 10 June 2019

amendments to existing electoral law, as shown, for example, in the *Scottish Elections (Reduction of Voting Age) Act 2015*.

111. Instead, and as a consequence of not adopting this approach, some of the amendment provisions used in the Bill to amend existing legislation will need to be unpicked. We note that the policy intention remains the same but the approach does not make for accessible legislation and unnecessarily complicates the statute book.

112. We note the Llywydd's reasons for not following the single Bill approach that we believe would have been appropriate. However, as Solace told us, the "franchise is the franchise". We do not consider that it would have been problematic to have required a supermajority for reducing votes to 16 in both National Assembly and local government elections. This would have ensured that reducing the voting age to 16 was the key policy issue to determine, rather than whether it should apply in relation to National Assembly and / or local government elections.

113. Our view is also influenced by the fact that the Welsh Government has significant responsibility for policy matters and funding related to devolved electoral matters, led on drafting Part 3 of the Bill about elections and will also lead on amendments to those provisions.

114. In the circumstances, a better approach may therefore have been to pursue an Assembly Commission Bill on matters relating to the name change, disqualification and the internal operation of the Assembly, with a Welsh Government Bill on reducing the voting age to 16 for National Assembly and local government elections (with other local government matters included in a separate Bill).

115. We believe that this view should be taken account of as part of any lessons learned exercise on the Bill, particularly in anticipation of a second Assembly reform Bill in the Sixth Assembly.

116. The *Making Laws in Wales* report stated:

"In our view, draft Bills should be laid before the Assembly. They will enable formal scrutiny by a committee and provide an opportunity for

Assembly Members to consider, take advice, offer comments and prepare for effective scrutiny of the Bill as introduced.”¹²⁸

“Recommendation 3: We recommend 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.”¹²⁹

117. We note and welcome that Part 1 of the Bill was published in draft. However, we believe that a full Bill should have been published in draft given its significance not only to reducing the voting age to 16 but also to matters relating to disqualification from being an Assembly Member.

118. We note the arguments put forward surrounding a lack of time for publishing a draft Bill but we are not persuaded by this view. Our predecessor Committee’s report on disqualification was published in 2014 and the Assembly Commission started looking at votes at 16 in the Fourth Assembly. We appreciate that, in the meantime, there has been an Expert Panel on wider Assembly reform but the need for a draft Bill could have been factored into the planning of the legislation. We make this point because we have concerns that elements of the legislation are being rushed, and as *Making Laws in Wales* said, “rushed legislation is rarely good legislation”.¹³⁰

119. In our view, a draft Bill would have been a useful vehicle to promote and test the major changes taking place, as well as enabling matters of concern to be highlighted earlier in the process, including any related to the preparations needed for such a significant change to the voting age.

120. In reaching this view, we also wish to emphasise that there is a difference between a Member in charge consulting on policy objectives in advance of a proposed law being introduced, and a committee consulting on specific provisions within a Bill (in draft or following introduction) that aim to deliver those policy objectives. Consultations on policy objectives should not therefore be viewed as a substitute for the use of a draft Bill or the Stage 1 legislative process.

¹²⁸ Constitutional and Legislative Affairs Committee, *Making Laws in Wales*, October 2015, paragraph 74

¹²⁹ Constitutional and Legislative Affairs Committee, *Making Laws in Wales*, October 2015, recommendation 3

¹³⁰ Constitutional and Legislative Affairs Committee, *Making Laws in Wales*, October 2015, paragraph 72

121. In light of our concerns about the lack of a draft Bill and given the possibility of a future Bill on further Assembly reform, we make the following recommendation.

Recommendation 1. All Bills relating to significant constitutional issues should be published in draft and accordingly, time should be built into the legislative process to enable this to happen.

122. On its introduction, section 27 of the Bill provided that the National Assembly must consider the financial and oversight arrangements for the work of the Electoral Commission in relation to devolved Welsh elections and referendums, with a view to making recommendations for reform of those arrangements (to which the Electoral Commission would be required to formally respond). The EM accompanying the Bill provided more detail about how this section could be implemented, with costs identified.

123. However, on the same day as the Bill was introduced, the Llywydd wrote to us indicating that this approach would not be followed, a position also acknowledged by the Counsel General in a letter the following day.

124. It would therefore appear that section 27 was introduced for the sole purpose of allowing significant policy to be added to the Bill at Stages 2 or Stage 3 but without the scrutiny associated with Stage 1. This is disappointing.

125. The *Making Laws in Wales* report recommended that the Welsh Government should introduce Bills “that can be reasonably considered to be fully developed at the point of introduction”. It said:

“In our view, the process of amending Bills at Stages 2 and 3 should be used as a means to debate and suggest improvements to a Bill that has been introduced. It should not be used (except in exceptional circumstances or to deliver a committee recommendation made at Stage 1) to introduce large and significant amounts of legislative text that were, for whatever reason, not ready or unavailable at the time the Bill was introduced.

Recommendation 10: We recommend that the Welsh Government must introduce Bills that can be reasonably considered to be fully developed at the point of introduction.”¹³¹

¹³¹ Constitutional and Legislative Affairs Committee, *Making Laws in Wales*, October 2015, paragraph 114

126. We note the Llywydd's view that the approach adopted would be better than a stand-alone Bill relating to the section 27 provisions because it would be a more appropriate use of Assembly time. Respectfully, we disagree, particularly as in this instance, this means avoiding Stage 1 scrutiny for important provisions on complex issues. As a result, such provisions would be subject to less scrutiny and less engagement with all stakeholders affected by the changes, than other provisions in the Bill.

127. We also note that discussions have been progressing since June 2017 with Electoral Commission on these provisions.

128. Making law should follow a disciplined process to ensure that citizens are subject to laws that have been thoroughly considered during their preparation and subject to appropriate scrutiny. As part of this process, how the Bill is drafted matters as much as the policy intention; it is the former that gives effect to the latter and it is the way this is achieved that requires full and proper scrutiny.

129. The way that provisions related to the reform and oversight of the Electoral Commission have unfolded is not welcome. In our view, the approach to law-making that it advocates is deficient.

130. We hope that the approach adopted in relation to section 27 of this Bill is not followed in relation to the introduction of any future provisions within a Bill, be that by the Welsh Government, the Assembly Commission, an Assembly Committee or a backbench Member. We therefore take this opportunity to repeat the recommendation included in *Making Laws in Wales*.

Recommendation 2. Bills should be introduced into the National Assembly that can be reasonably considered to be fully developed at the point of introduction.

131. Our comments regarding the approach to legislating reflect views set out in the *Making Laws in Wales* report, which we have sought to take account of when reporting on Bills in the Fifth Assembly.

132. The Bill is one that mainly seeks to amend existing legislation, although as we highlight earlier, that existing legislation may be changed further and in different ways by a future local government Bill.

133. Nevertheless, we accept that given the complexity and volume of existing electoral law, a consolidated Bill in this field would have been difficult to achieve at this time.

134. We welcome the clarity of new Schedule 1A to the 2006 Act (as introduced by section 29 of, and Schedule 2 to, the Bill), which lists in one place the categories of person and holders of office disqualified from standing as a candidate for, and being a Member of, the National Assembly.

135. We also welcome Annex 9 to the EM which shows how existing legislation would be amended by the Bill. This is an invaluable aid to reading the Bill.

Recommendation 3. If the Bill is passed, on receiving Royal Assent the Assembly Commission should publish a revised version of Annex 9 to the Explanatory Memorandum.

Recommendation 4. If the Welsh Government brings forward a Bill that includes provisions to reduce the voting age to 16 for local government elections, it should ensure that its Explanatory Memorandum includes an Annex showing how existing legislation would be amended.

136. We are content with the balance between what is contained on the face of the Bill and what is left to subordinate legislation. We are also content with the procedures to be applied to regulation making powers contained in sections 14, 18 and 25 of the Bill. We comment separately on the order-making power in section 36 in chapter 8 of this report.

137. We have highlighted in this chapter some of the funding concerns raised by organisations who are directly involved in ensuring that reducing the voting age to 16 is implemented effectively. We draw these to the attention of the Assembly Commission and the Welsh Government and comment on specific matters in chapter 6 of the report. We also note that the Finance Committee has looked in greater detail at the costs of implementing the Bill.

138. We note that, although it is unusual for staff in the Assembly Commission and Welsh Government to work together on policy development, the approach to the Bill has for various reasons necessitated such working. In light of the evidence we heard, we consider that a review of the working arrangements should be part of any lessons learned exercise undertaken.

139. Notwithstanding our concerns about the approach to legislating, we are content for the Bill to proceed to Stage 2 consideration. As indicated in paragraph 80, the evidence on which we base this view is set out in the following chapters.

Recommendation 5. The National Assembly should agree the general principles of the Bill.

140. We also wish to take this opportunity to highlight and commend the EM prepared by the Assembly Commission. The information it contains is thorough and relevant, with reasons for decisions clearly explained.

141. We note from the evidence received that there remain differences of opinion between the Assembly Commission and the Welsh Government regarding in particular the drafting of Parts 2 and 4 of the Bill, as well as the inclusion of section 36 in Part 5.

142. We consider these matters and individual sections of the Bill in later chapters and, in so doing, set out how we believe the legislation can be improved and delivered effectively.

5. Part 2 – Name of the National Assembly for Wales

Part 2 of the Bill makes provision to change the name of the National Assembly for Wales to the “Senedd” and to make associated changes.

143. Section 2(1) re-names the National Assembly for Wales as the “Senedd”, while section 2(2) provides that the “Senedd” may also be known as the Welsh Parliament.

144. In order to give effect to the name change, the Bill makes many changes to the 2006 Act. To avoid congesting the Bill with technical changes to the 2006 Act and other legislation, section 9 of the Bill (Amendments to existing legislation) introduces Schedule 1, which lists those changes. Paragraphs 7, 8 and 9 of Schedule 1 make the changes to section 1 of the 2006 Act dealing with the change of name.

145. The Bill proposes that Acts of the National Assembly for Wales will become known as “Acts of the Senedd” or “Deddfau’r Senedd” (section 3), while Members of the National Assembly for Wales will become known as “Members of the Senedd” or “Aelodau’r Senedd” (section 4).

146. Under sections 5 to 8 of the Bill related bodies and persons, such as the Assembly Commission, the Clerk of the Assembly, the Remuneration Board and the Commissioner for Standards, will also be renamed.

Approach to changing the name

147. According to the EM, the Bill renames the National Assembly to “Senedd” “to better reflect the evolution of its constitutional status and its responsibilities as a national parliament that it is today”.¹³²

148. The Explanatory Memorandum goes on to explain

“Changing the name of the Assembly presents a valuable opportunity to raise awareness of the role and functions of both the legislature and

¹³² Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 31

the government amongst the people of Wales, and to encourage engagement in the democratic process.”¹³³

149. The Assembly Commission believes that the changes in the powers of the Assembly since 1999 “have created a blurred picture about where power and accountability in Wales now lies”.¹³⁴ The EM states that evidence gathered by the Assembly Commission over the last Assembly term indicates that:

- the people of Wales do not currently fully grasp the role and the powers of the National Assembly for Wales;
- the name of the National Assembly for Wales is considered to contribute to this uncertainty.¹³⁵

150. The EM notes that an Assembly Commission consultation on the name of the National Assembly was published in December 2016 and that 61 percent of respondents agreed with the statement, “The National Assembly for Wales should change its name”.¹³⁶ With regards to the consultation question on which name would best describe the role and responsibilities of the Assembly, respondents answered as follows:

- 73 per cent considered that a bilingual name consisting of “Welsh Parliament” and “Senedd Cymru” would positively describe the role and responsibilities of the National Assembly for Wales;
- 69 per cent considered that a bilingual name consisting of “Parliament of Wales” and “Senedd Cymru” would positively describe the role and responsibilities of the National Assembly for Wales;
- 53 per cent considered that a monolingual name consisting of “Senedd” would positively describe the role and responsibilities of the National Assembly for Wales;
- 38 per cent considered that a bilingual name consisting of “National Assembly for Wales” and “Cynulliad Cenedlaethol Cymru” would positively describe the role and responsibilities of the National Assembly for Wales.¹³⁷

¹³³ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 33

¹³⁴ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 35

¹³⁵ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 36

¹³⁶ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraphs 279 and 283

¹³⁷ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 284

151. After considering the responses to the consultation exercise, the Assembly Commission announced in June 2017 that it had agreed to legislate to change the name of the Assembly to “Welsh Parliament / Senedd Cymru”.¹³⁸

152. The EM notes that during a debate about the proposed Bill on 10 October 2018, “a number of Assembly Members advocated that the Assembly should be renamed as the ‘Senedd’”.¹³⁹ It goes on to say:

“Following this public debate, engagement between the Llywydd (as the Chair of the Assembly Commission) and individual Assembly Members and party groups took place. It emerged that the monolingual name ‘Senedd’ carried more support amongst Assembly Members than any of the other names considered, including Welsh Parliament / Senedd Cymru.”¹⁴⁰

153. The Llywydd informed Assembly Members of her decision in November 2018:

“Commissioners discussed the options and agreed that I would determine the name and descriptors for inclusion in the Bill on introduction, as Member in Charge of the Bill. You will be aware that to be passed, the Bill will require the support of at least 40 Members. I therefore intend to include in the Bill on introduction the name for the institution and the descriptors for Members that reflect the majority view of political groups in the Assembly at this time. I have decided therefore that the name change introduced in the Bill should be the monolingual name ‘Senedd’ and that Members will be referred to as ‘Aelodau’r Senedd / Members of the Senedd’.”¹⁴¹

154. In adopting the name, “Senedd”, the EM notes that:

“It may be argued that the adoption of a Welsh term (i.e. Senedd) as a new name for the Assembly does not reflect the equal status of both the Assembly’s official languages. However, the requirement to reflect the equal status of both languages does not require both languages to be treated in exactly the same way ... It is considered that the adoption of a Welsh term as a new name for the Assembly, for use in both of the

¹³⁸ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 109

¹³⁹ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 110

¹⁴⁰ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 111

¹⁴¹ Letter from the Llywydd to Assembly Members, 12 November 2018

Assembly's official languages, will help achieve greater parity of status for both languages over time, in terms of their use and profile."¹⁴²

155. The acronyms of the new titles of Assembly Members would be abbreviated to "MS" (Member of the Senedd) and "AS" (Aelod o'r Senedd). The EM notes that there is a risk that the Welsh acronym "could be confused with the same acronym for Aelod Seneddol which means Member of Parliament in Welsh".¹⁴³

156. The Bill does not change the term "Assembly" where it first appears in section 1(1) of the 2006 Act to "Senedd". The EM notes that leaving the word "Assembly" in is "less than ideal",¹⁴⁴ but reflects the default position under the 2006 Act, namely that the Assembly cannot amend the 2006 Act itself, subject to some express exceptions.¹⁴⁵ It also states that the reasons for the approach adopted are set out in detail at Annex 4 to the EM¹⁴⁶ but adds:

"Given this position, intergovernmental guidance could potentially address how legislative drafting should be approached to provide clarity on how the term 'Senedd' and 'Welsh Parliament' should be used in law."¹⁴⁷

157. According to the EM:

"It is anticipated that 'Welsh Parliament' will also be used alongside the name 'Senedd' on signage and other types of public information to help to ensure public understanding of the meaning of the new name."¹⁴⁸

158. The EM highlights that a range of actions will follow the legal change of the Assembly's name, including "promotion and awareness-raising of the new name".¹⁴⁹

¹⁴² Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 909

¹⁴³ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 125

¹⁴⁴ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 117

¹⁴⁵ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 119 and Annex 4

¹⁴⁶ Senedd and Elections (Wales) Bill: Explanatory Memorandum, Annex 4: Rationale for drafting approach on the name change leaving out some references to "Assembly" in the Government of Wales Act 2006

¹⁴⁷ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraphs 119-120

¹⁴⁸ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 122

¹⁴⁹ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 134

The choice of name

159. In terms of the impact of changing the name, the Llywydd told us:

“I do believe that the name change and consigning the name ‘National Assembly’ into the first 20 years of our history, and changing it, ... will be of assistance ... in explaining to the people of Wales the difference between their Government and their Parliament.”¹⁵⁰

160. The Llywydd explained how the name “Senedd” came to be chosen¹⁵¹ and the reason for the decision to include this monolingual name in the Bill:

“I always have to consider the majority available to pass a Measure of this kind, namely ... 40 of the 60 Assembly Members ... I went through a process of consulting with the political parties and with individual Members back in the autumn to see where the highest percentages of support were, and in my view, at that point, it was the Welsh name ‘Senedd’ that was generally favoured as the formal name of the institution, whilst also accepting that the term ‘Welsh Parliament’ would be the translation of ‘Senedd’.”¹⁵²

161. She acknowledged that the chosen name is “not wholly opposed, but against the grain” of the public consultation but said:

“I had to keep in the forefront of my mind the need to gain a supermajority for this legislation, and that was the driving factor in persuading me to introduce this piece of legislation with the monolingual name but with the accompanying descriptor of ‘Welsh Parliament’ there for all to use...”¹⁵³

162. The Llywydd also considered that “it’s a matter of simplicity, to a certain extent” that the name “Senedd” should be shared between the institution and the building and felt it did not matter.¹⁵⁴ She also indicated that the lack of a territorial indicator attached to “Senedd” would not be a source of confusion, particularly

¹⁵⁰ CLA Committee, 11 March 2019, RoP [26]

¹⁵¹ CLA Committee, 11 March 2019, RoP [80]

¹⁵² CLA Committee, 11 March 2019, RoP [81]

¹⁵³ CLA Committee, 11 March 2019, RoP [89]

¹⁵⁴ CLA Committee, 11 March 2019, RoP [78]

given the lack of misunderstanding when using “Prif Weinidog”, which could be First Minister of Wales as well as the Prime Minister of the UK.¹⁵⁵

163. She re-iterated her position in our final evidence session on the Bill:

“I remain of the opinion that we should rename the National Assembly ‘Senedd’ and that the proper description in English would be ‘Welsh Parliament’. That’s what I believe is the best way of securing the supermajority required in the National Assembly in support of that.”¹⁵⁶

164. In commenting on the chosen name, the Electoral Reform Society Cymru said:

“I think that there’s an opportunity in the renaming of the Assembly to use it as a hook to communicate what the Assembly as an institution does, what kind of devolved areas it covers.”¹⁵⁷

before adding:

“I think that the consultation response showed that there was varied support for different topics, and I think, ideally, consultations should always look at what the public and people who’ve responded to that think. But I think there are other reasons for pursuing ‘Senedd’ as a name, and I don’t think that the consultation showed that there was necessarily that much opposition to that.”¹⁵⁸

165. Support for the use of “Senedd” also came from the Welsh Language Commissioner. He referred to a previous response to the Assembly Commission consultation on changing the name of the National Assembly, noting:

“... it was argued that creating an English form of the word was unnecessary. It was stated that the practice of using Welsh only names in some aspects of Welsh political life was already well established. The advantages of using a singular Welsh form as the Assembly’s name was also referred to, including that doing so would raise the status of the Welsh language.”¹⁵⁹

¹⁵⁵ CLA Committee, 7 May 2019, RoP [125]

¹⁵⁶ CLA Committee, 7 May 2019, RoP [123]

¹⁵⁷ CLA Committee, 1 April 2019, RoP [29]

¹⁵⁸ CLA Committee, 1 April 2019, RoP [31]

¹⁵⁹ Written Evidence, SE11, Welsh Language Commissioner

166. He also noted that “in sections 3 to 8 of Part 2 of the Bill that only the word ‘Senedd’ rather than ‘Parliament’ will be used in a number of new titles that will come into existence as part of changing the Assembly’s name” and concluded by saying:

“I therefore encourage you to use the Bill to prescribe the Welsh only name ‘Senedd’ and dispense with the proposal of also using the alternative name ‘Welsh Parliament’.”¹⁶⁰

167. Cymdeithas yr Iaith Gymraeg also supported the use of “Senedd”. It said it believes that our national democratic body should have a monolingual Welsh name, namely the “Senedd”.¹⁶¹

168. We also heard from more than 600 members of the public who supported the use of “Senedd”, saying that:

“Many refer to the institution as the ‘Senedd’ already, in both languages. The term “Welsh Parliament” is barely used at all at the moment – introducing it now as some kind of de facto official name would be a step backwards and can only create confusion. Everyone will come to understand ‘Senedd’ very soon if that is the only name.”¹⁶²

169. We were also told by another member of the public that:

“There is a linguistic convention that the name of Parliament is not translated ... Wales, should embrace this convention and give itself a globally unique name, for a globally unique nation. ... As such Senedd should be the official, and only, name for the Welsh Parliament.”¹⁶³

170. Professor Bush QC stated that there is no legal reason why the name of the National Assembly needs to change. He said that the current name performs “the function of providing a clear and unambiguous name for the organisation”.¹⁶⁴ However, he noted his strong preference for the name “Senedd Cymru” instead of “Senedd” only.¹⁶⁵ According to Professor Bush QC, references to the “Senedd” in

¹⁶⁰ Written evidence, SE11, Welsh Language Commissioner

¹⁶¹ Written evidence, SE13, Cymdeithas yr Iaith Gymraeg

¹⁶² Written evidence, SE15, 605 individuals

¹⁶³ Written evidence, SE06, an individual

¹⁶⁴ Written evidence, SE03, Professor Keith Bush QC

¹⁶⁵ Written evidence, SE03, Professor Keith Bush QC

Welsh are currently taken to be references to the Westminster parliament and that practice is likely to continue:

“It will often be necessary, in practice, to refer in Welsh, both orally and in writing, to ‘Senedd Cymru’. If ‘Senedd Cymru’ becomes, in reality, the usual way of referring to the institution, at least in one language, clarity and consistency would be strengthened if that were also its legal name.”¹⁶⁶

171. He noted that:

“... within federal or quasi-federal systems, where legislatures operate side by side but at different levels, the normal practice is to use terminology which distinguishes clearly between them.”¹⁶⁷

172. Professor Bush QC also sought to highlight competing reasons for changing the name:

“I think there are tensions here, I must say, between on the one hand the aim, which as I understand it is the primary aim of this part of the Bill, which is to improve understanding of the role of this institution, and on the other hand the other aim of enhancing and underlining the status of the Welsh language. Clearly, to allocate a monolingual Welsh name to an institution isn’t the easiest thing for everybody in our society to understand ... over a period of time, everybody in Wales, if this is the outcome, would understand the function.

... But if on the other hand the aim is to immediately boost understanding by adopting a name in both languages that is as close as possible to the names that are commonly, if not predominantly, used in Commonwealth countries for legislatures, then clearly you wouldn’t go for a Welsh-only name.”¹⁶⁸

173. A member of the public responded to our consultation stating:

“I support ‘Senedd Cymru’, an appropriate, respectful name with gravitas, that clearly signposts our way ahead as a nation.”¹⁶⁹

¹⁶⁶ Written evidence, SE03, Professor Keith Bush QC

¹⁶⁷ Written evidence, SE03, Professor Keith Bush QC

¹⁶⁸ CLA Committee, 25 March 2019, RoP [156]

¹⁶⁹ Written evidence, SE21, an individual

174. The Welsh Government, in indicating its preference for a change of name, also referred to the importance of having a geographical indicator:

“Although we recognise that the name of our parliament is a matter for the Assembly as a whole to decide, we consider that “Senedd Cymru” and “Welsh Parliament” would have the advantage over “Senedd” that they would address our second concern about territorial connection as the Scottish Parliament and the Dáil Éireann do.”¹⁷⁰

The drafting of section 2 of the Bill

175. In our consideration of the National Assembly’s name change we considered how the new name is to be legally constructed.

176. Section 2 of the Bill says:

(1) The Assembly for Wales constituted by the 2006 Act is to be known as the “Senedd”.

(2) The Senedd may also be known as the Welsh Parliament.

177. In his letter to us on the 13 February 2019, the Counsel General said about the drafting of section 2:

“The Welsh Government is concerned that this change could add to, rather than reduce, the confusion which already exists about the names of our institutions, which is extremely important given that the proposed amendments are to our key constitutional statute. We are also concerned that the use of ‘Senedd’ alone without any other indication of its territorial connection to Wales may give rise to accessibility issues.

Our preference would be to amend s1(1) of GoWA to avoid the risk of confusion, so that it would read:

‘(1) There is to be a parliament for Wales to be known as [x].’¹⁷¹

178. The Counsel General expanded on his concerns when he said:

“The proposed amendment to section 1 of the Government of Wales Act would read, effectively, ‘There is to be an Assembly for Wales to be

¹⁷⁰ Letter from the Counsel General, 13 February 2019

¹⁷¹ Letter from the Counsel General, 13 February 2019

known as the Senedd, and the Senedd may also be known as the Welsh Parliament.’ So, effectively, that stipulates in one of our key constitutional statues three different names, three different terms, for the same institution, and I think whatever one’s view is of the legal analysis—and, plainly, there are different perspectives on that—everyone, I think, would accept that that isn’t the most accessible and straightforward way to describe the institution. And since a fundamental part of the process was to ensure public understanding of what we do, we should set great store by achieving accessibility in relation to that. There is also a separate question about the drafting of the legislation, which both amends the Government of Wales Act and then creates a separate set of standalone provisions describing the institution, and I’m not clear why that’s an advantage. That seems to me to increase the complexity rather than decrease it, without adding any particular benefit.”¹⁷²

179. The Counsel General explained that in his view the approach he advocates would be within the National Assembly’s legislative competence. He said:

“I am confident of that. That point, as the committee will know, has been the subject of discussion between the Government and the Commission, and the Commission has taken a different view, but I note that the Secretary of State’s view as well is that this would be within the Assembly’s competence.”¹⁷³

180. The Counsel General was referring to a letter from the Secretary of State to the Llywydd on 6 February 2019, which said:

“I note your intention to change the term ‘Assembly’ to ‘Parliament’, which is something I support. I am advised that the Assembly does not have legislative competence under paragraph 7(2) of Schedule 7B to use the Government of Wales Act 2006 to make this change. However, the Assembly plans to use its powers to make consequential or incidental provision set out in paragraph 7(4) of this Schedule.

In this case, I support the change on the basis it can be argued that it is incidental to the Assembly’s change of name rather than consequential

¹⁷² CLA Committee, 29 April 2019, RoP [170]

¹⁷³ CLA Committee, 29 April 2019, RoP [177]

and would be grateful if you could confirm whether you share this view.”¹⁷⁴

181. In response, the Llywydd said:

“... the Bill (as introduced) will not change the term ‘Assembly’ (where it first appears in Section 1(1) of GOWA) to ‘Parliament’. Rather the Bill will provide that the Assembly for Wales (as GOWA describes the institution) is to be known as the Senedd, and that the Senedd may also be known as the Welsh Parliament.”¹⁷⁵

182. With regards to the drafting approach favoured by the Welsh Government, the Llywydd told us that “there’s definitely an attraction to that way of describing that clause”.¹⁷⁶ However she explained that she had erred on the side of caution, noting advice she received on legislative competence.¹⁷⁷

183. She subsequently went on to say:

“I do understand the appeal of the form of words suggested by the Government, because there is a certain simplicity to it and a certain clarity to the form of words suggested. But for me, of course, the competence in relation to the exact wording was important as I came to a final decision on what should be included within the Bill.”¹⁷⁸

184. The Assembly Commission’s Head of Legal Services explained the reasons for the phrasing used in the Bill:

“... in section 1 of the Government of Wales Act, our position is that there are two propositions: one is that there is to be an institution that is an Assembly, and the other is that it has a name that, at the moment, is ‘National Assembly for Wales’ or ‘Cynulliad Cenedlaethol Cymru’. The argument that is put as to why the words

‘There is to be an Assembly for Wales’

may be amended is because it is said that that is consequential on changing the name of the institution. If it were consequential on changing the name of the institution, then we would agree with that

¹⁷⁴ Letter to the Llywydd from Rt Hon. Alun Cairns MP, Secretary of State for Wales, 6 February 2019

¹⁷⁵ Letter from the Llywydd to the Secretary of State for Wales, 12 February 2019

¹⁷⁶ CLA Committee, 11 March 2019, RoP [45]

¹⁷⁷ CLA Committee, 11 March 2019, RoP [46]

¹⁷⁸ CLA Committee, 7 May 2019, RoP [129]

proposition, but we say that it's not. We say that in 2006, Parliament passed an Act that set out two propositions, one, that there would be an Assembly, and the second that it would have a particular name, and that the first 12 words of section 1 are beyond the competence of the Assembly to change."¹⁷⁹

185. He explained that “the UK Parliament has given the Assembly the power to change the name, but not the reference to the institution as an Assembly”.¹⁸⁰ While accepting that the terms “assembly” and “parliament” are often used interchangeably,¹⁸¹ he noted that the UK Parliament could have changed the Assembly’s competence on this issue during the passage of the *Wales Act 2017* but did not. He added:

“We maintain the position that the arguments around consequential and incidental don’t apply.”¹⁸²

186. The Llywydd also said:

“... the clause as it currently reads in the Bill tabled states that there will be a National Assembly, but it is clear that the name of that Assembly will be ‘Senedd’, and that the descriptor in English would be ‘Welsh Parliament’. Now, one thing that’s always been of slight concern to me, in drafting it in that way, was that the term ‘National Assembly’ would remain in English, and the word ‘Senedd’ would be used in Welsh. So, in placing ‘Welsh Parliament’ on the face of the Bill, then that does confirm that ‘Welsh Parliament’ is the name in English, if anyone chooses to use the name in English, but that ‘Senedd’ is the name.”¹⁸³

187. Professor Bush QC considered that if “Senedd Cymru” is adopted, he does not see any practical need to authorise the official use of the alternative term “Welsh Parliament”. He said that doing so “would weaken the effect of stressing the position of the Welsh language as the historic national language, if that is the predominant aim of the change of name”. However, he believed that:

“... if there is a strong feeling that a monolingual Welsh name should not be adopted then it would be more logical to simply adopt a bilingual

¹⁷⁹ CLA Committee, 7 May 2019, RoP [131-133]

¹⁸⁰ CLA Committee, 11 March 2019, RoP [52]

¹⁸¹ CLA Committee, 11 March 2019, RoP [59-60]

¹⁸² CLA Committee, 11 March 2019, RoP [60-62]

¹⁸³ CLA Committee, 7 May 2019, RoP [135]

name, with ‘Senedd Cymru’ and ‘Welsh Parliament’ being used consistently in the two languages.”¹⁸⁴

188. When questioned on this issue he said:

“I think there is a bit of ambiguity about saying that you may refer to it as the Welsh Parliament. People do refer to this institution by all kinds of names, it seems to me, and if what you’re saying is that, in practical terms, people might call it ‘Welsh Parliament’, then I don’t think you need to say that. And it might also introduce some uncertainty among people as to what the legal status of the English name was. So, if you were producing a contract or some kind of legal document that referred to this institution, would you be entitled to refer to it as the ‘Welsh Parliament’? So, my feeling is that there should be a clean decision—either for a Welsh-only name, as a legal name, or equivalent, equal, English and Welsh names.”¹⁸⁵

189. Cymdeithas yr Iaith Gymraeg felt that section 2(2) of the Bill establishes a de-facto bilingual name and should be removed. It considered that the validation of an English language name would undermine the normalisation of the use of the Welsh language and create confusion on a legal and practical level. It also considered that including an English language term for the logo, signage, or domain names, would also create a de-facto bilingual name, in contrast with the stated intention of having a monolingual name.¹⁸⁶

190. It also noted that if a consensus were to be reached that it was lawful to change that initial wording, its preferred option at this stage would be to introduce the following amendment:

“Bydd deddfwrfa genedlaethol i Gymru i’w galw’n ‘Senedd’.”

“There is to be a national legislature for Wales to be known as the ‘Senedd’.”¹⁸⁷

Our view

191. We note from the evidence received that there are a range of views on what the new name for the National Assembly should be, with advocates for single

¹⁸⁴ Written evidence, SE03, Professor Keith Bush QC

¹⁸⁵ CLA Committee, 25 March 2019, RoP [159]

¹⁸⁶ Written evidence, SE13, Cymdeithas yr Iaith Gymraeg

¹⁸⁷ Written evidence, SE13, Cymdeithas yr Iaith Gymraeg

monolingual names of “Senedd” or “Senedd Cymru”, or a bilingual name of “Senedd Cymru / Welsh Parliament”.

192. We believe that the choice of name for the institution must be a decision taken by the National Assembly as a whole and we have not therefore come to a view on a preferred name.

193. What we have sought to do in this report is set out some of the views we received and heard in support of each option to assist Assembly Members in coming to their decision. Alongside this evidence, we would draw attention to the EM accompanying the Bill, which highlights a range of relevant information including the work of the Expert Panel, the Assembly Commission’s own consultation exercise and Annex 4 on the rationale for the drafting approach to section 2 adopted by the Assembly Commission.

194. We have considered the issue raised by the Welsh Government concerning the way in which the changes to section 1(1) of the 2006 Act are drafted and its suggested alternative approach.

195. The question revolves around whether the National Assembly has the legislative competence to amend the first 12 words in section 1(1) of the 2006 Act, namely that “There is to be an Assembly for Wales to be known as”. As currently drafted, the Bill does not amend these first 12 words, while the Welsh Government’s alternative approach does propose amending them.

196. We note the views set out in Annex 4 of the EM and by the Assembly Commission’s Head of Legal Services, namely that changing the first 12 words of section 1(1) is outside of the National Assembly’s legislative competence.

197. We find it frustrating that, although it is possible to change the name of the “Assembly” to “Parliament”, the existing restriction in terms of legislative competence leads to clunky and inelegant drafting, and potentially confusion.

198. We have noted the Counsel General’s view that the current Secretary of State agrees that the Welsh Government’s proposed wording is within the National Assembly’s legislative competence, but we are not clear from the Secretary of State’s letter, and the Llywydd’s response, that this is the case. However, even if the Counsel General’s view is correct, a future Secretary of State may hold a different view.

199. Either way, the amendment suggested by the Counsel General carries the risk of challenge and referral to the Supreme Court in accordance with section 112 of the 2006 Act by the Attorney General or, for example, an application for a

judicial review by a private citizen. Any such challenge could potentially delay the Bill and reduce the chances of votes at 16 being in place for the 2021 Assembly election.

200. If the Welsh Government decides to proceed with proposing to amend the first 12 words of section 1(1) of the 2006 Act, we believe that, for the avoidance of doubt and to reduce the risk of challenge, the Welsh Government should seek agreement from the UK Government to the making of an Order in Council under section 109 of the 2006 Act to modify the Assembly's legislative competence accordingly.

Recommendation 6. If, as indicated, the Welsh Government tables amendments to section 2 of the Bill as set out in the Counsel General's letter to us of 13 March 2019, then, for the avoidance of doubt, it should ask the UK Government to bring forward an Order in Council under section 109 of the 2006 Act to modify the Assembly's legislative competence accordingly.

201. In reaching this view we are aware that consideration is being given to a section 109 Order¹⁸⁸ and such a change could, if necessary, be included within that piece of legislation.

202. In relation to the reasons for changing the name of the National Assembly, emphasis was placed on the opportunity it provides of raising awareness of the role and functions of both the legislature and the government. The Assembly Commission should therefore ensure that whatever name is chosen for our institution, the opportunity is taken to explain clearly its role and functions (and those of the Welsh Government), which will help facilitate and encourage engagement in the democratic process.

¹⁸⁸ Letter from the Counsel General, 9 April 2019

6. Part 3 – Elections

Part 3 of the Bill makes provision for lowering the voting age at Assembly elections. Part 3 contains amendments to the 2006 Act and to existing electoral law, in particular the *Representation of the People Act 1983* and the Representation of the People (England and Wales) Regulations 2001.

Brief summary of key electoral law relevant to the Bill

Representation of the People Act 1983 ---

203. The Representation of the People Act 1983 (the 1983 Act) contains provisions that concern the franchise for, conduct of, and proceedings relating to elections to the UK Parliament as well as to local government elections in Great Britain.

204. The 1983 Act details who may vote as an elector in UK parliamentary elections in section 1, while section 2 details those persons who may vote as an elector in a local government election.

205. Section 4 of the 1983 Act sets out the persons who are entitled to be registered as a parliamentary or local government elector. In order to vote in elections or referendums, an eligible person needs to be on the electoral register. Section 9 of the 1983 Act states that:

“Each registration officer shall maintain—

(a) a register of parliamentary electors for each constituency or part of a constituency in the area for which he acts; and

(b) a register of local government electors for the local government areas or parts of local government areas included in the area for which he acts.”

206. The electoral register is a list of the names and addresses of everyone who is able and registered to vote (or soon to become entitled to vote) and is held and maintained by the ERO for each local authority in Wales. EROs have a duty to compile the electoral register and ensure that it is as up to date as possible.

The Representation of the People (England and Wales) Regulations 2001

207. The Representation of the People (England and Wales) Regulations 2001 (the 2001 Regulations) provide much of the operational detail on the electoral registration system for parliamentary and local government elections. Areas covered by the 2001 Regulations include service and overseas electors' declarations, the process of registration as an elector, proxy voting and voting by post.

The Government of Wales Act 2006

208. Section 12 of the 2006 Act provides that the persons currently entitled to vote in National Assembly elections are those who would be entitled to vote as electors at a local government election in Wales and are on the local government register at an address within the relevant Assembly constituency.

The National Assembly for Wales (Representation of the People) Order 2007

209. The National Assembly for Wales (Representation of the People) Order 2007 (the 2007 Order) makes detailed provision about the conduct of National Assembly elections, including provision about voting and voters.

Legislative changes to electoral law proposed by the Bill

210. Section 10 of the Bill enable persons aged 16 and 17 years to vote at National Assembly elections on or after 5 April 2021 by amending section 12(1)(a) of the 2006 Act.

211. Section 12(1)(b) of the 2006 Act provides that the persons entitled to vote at National Assembly elections must also be registered in the register of local government electors (required to be kept pursuant to the 1983 Act). Section 11 of the Bill therefore amends section 4 of the 1983 Act so that the age at which a person is entitled to be registered as a local government elector in Wales is changed from age 18 or over to age 16 or over.

212. Section 13 amends provisions dealing with invitations to register in the 1983 Act and the 2001 Regulations to include provision about persons under the age of 16. Section 14 provides the Welsh Ministers with the power to make regulations about invitations to apply to be registered as a local government elector in Wales.

213. Section 15 makes a number of amendments to the 2001 Regulations in relation to applications for registration of local government electors in Wales,

while section 16 also amends the 2001 Regulations but in relation to reviews of entitlement to registration for those under the age of 16.

214. Section 17 adds to the list, in regulation 31J of the 2001 Regulations, of persons who may attest an application for anonymous registration made by a person under the age of 16 in relation to the registration of local government electors in Wales.

215. Section 18 amends section 7B of the 1983 Act in relation to the registration of local government electors in Wales. Section 7B sets out the circumstances under which a person is permitted to make a declaration of local connection. Section 18(2) allow persons under the age of 18 to make a declaration of local connection where they are being looked after by a local authority or are being kept in secure accommodation specified in regulations made by the Welsh Ministers.

216. Section 19 amends the 1983 Act to allows for those under 18 to be considered for a service qualification / declaration in their own right, allowing them to be registered as an elector based overseas. Those electors may then vote by reference to their home or previous address, instead of the address to which they are living with parent(s) or guardian(s) posted on service. Sections 20 and 21 make additional provision in relation to service declarations by amending the 2001 Regulations.

217. Section 22 amends section 9 of the 1983 Act. The amendment provides that, where the register of parliamentary electors and the register of local government electors are combined and includes an entry for a person aged 16 or 17 who is registered only as a local government elector, the entry must give the date on which the person will reach the age of 18.

218. Sections 23 to 25 contain provisions setting out the arrangements for the protection of information about people who are under the age of 16. Section 25 includes a power for the Welsh Ministers to make regulations about the disclosure and protection of such information.

219. Section 26 makes amendments to the 2007 Order and in particular, inserts a definition of “voting age” as meaning 16 years of age or over and amends the definition of “qualifying Commonwealth citizen” for the purposes of voting in National Assembly elections.

Extension of right to vote

Extension of right to vote to 16 and 17 year old persons in Senedd elections

220. The EM says that there are number of arguments in favour of enabling 16 and 17 year olds to vote in National Assembly elections. These include:

- strengthening democratic accountability, by enabling a wider section of the community to have a direct role in National Assembly elections;
- enabling increased engagement in voting over the longer-term (on the basis that an earlier experience of voting could lead to individuals maintaining their engagement);
- it being anomalous for the voting age of National Assembly elections not to be lowered to 16, if the Welsh Government decides to legislate to reduce the voting age for local government elections in Wales.¹⁸⁹

221. The EM also notes the Expert Panel conclusion that extending the franchise to 16 and 17 year olds with effect from 2021 would be a powerful way to raise political awareness and participation among young people.¹⁹⁰ It also highlights the factors taken into account by the Expert Panel in reaching its views, which included for example, international comparisons, the age thresholds of other legal rights and responsibilities and the impact on political participation.¹⁹¹

222. Chapter 17 of the EM sets out an equality impact assessment for the Bill, which includes consideration of reducing the voting age to 16.

223. The EM also includes a summary of voting ages elsewhere in the UK and an analysis of arguments against lowering the minimum voting age.¹⁹²

224. In its consultation exercise following the Expert Panel's report, the Assembly Commission consultation found that 59 per cent of respondents considered that the voting age should be reduced to 16, with 39 per cent against (see Table below).¹⁹³ The EM also details the results of a consultation exercise with secondary school age young people in 2014 by the then Presiding Officer in which 53 per

¹⁸⁹ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 140

¹⁹⁰ Senedd and Elections (Wales) Bill, Explanatory Memorandum, paragraph 46

¹⁹¹ Senedd and Elections (Wales) Bill, Explanatory Memorandum, paragraph 47

¹⁹² Senedd and Elections (Wales) Bill, Explanatory Memorandum, Annexes 2 and 3 respectively.

¹⁹³ Senedd and Elections (Wales) Bill, Explanatory Memorandum, paragraph 49 and section 5.3.

cent of 10,375 respondents were in favour of lowering the voting age and 29 per cent were against.¹⁹⁴

Table: Assembly Commission consultation exercise, Creating a Parliament for Wales (2018): analysis of responses on what the minimum voting age should be

Answer	Under 18s		Over 18s		Overall	
16	100	81 per cent	810	57 per cent	910	59 per cent
18	20	18 per cent	570	41 per cent	590	39 per cent
Don't know	0	1 per cent	30	2 per cent	30	2 per cent

Source, EM Table 4. Note, some numbers rounded to nearest 10

225. In response to our consultation exercise and in our engagement with young people, there was a generally positive response to reducing the voting age in National Assembly elections to 16 years old.

226. The Children's Commissioner for Wales supported lowering the voting age, saying:

“Young people aged 16 and 17 are able to live independently, to consent to sexual relationships and to work and pay taxes. Extending the voting franchise in Wales will strengthen the accountability of politicians to young people in those age groups.”¹⁹⁵

227. Professor David Egan also supported the extension of the franchise:

“I see no reason at all why we shouldn't have faith in our young people in Wales after the age of 16. I think it's completely consistent with the aspirations of this Assembly and the Welsh Government in terms of the United Nations convention on human rights. That's always been a very strong part of what post-devolution Wales has been about.”¹⁹⁶

228. Solace expressed its support for lowering the voting age:

“The first thing is that I completely support and am an advocate for the change of the franchise and it's very capable of being introduced in time for your next elections.”¹⁹⁷

¹⁹⁴ Senedd and Elections (Wales) Bill, Explanatory Memorandum, chapter 5, section 5.1

¹⁹⁵ Written evidence, SE07, Children's Commissioner for Wales

¹⁹⁶ CLA Committee, 1 April 2019, RoP [148]

¹⁹⁷ CLA Committee, 1 April 2019, RoP [226]

229. The Electoral Reform Society Cymru described the extension of the voting age as “a key opportunity for reinvigorating our democracy and engaging young people at a critical time in their life”¹⁹⁸ and said that:

“... there is real scope for engaging a new demographic in Welsh politics and also, essentially, the main argument for me is that they’re a captive audience. Sixteen and 17-year-olds are in school, able to receive political education, whereas 18-year-olds, as we’ve seen, are quite unlikely to engage, and it’s a really bad time in their life when they’re off to university, starting their career journey.”¹⁹⁹

230. It added:

“I don’t think we would necessarily make an argument that much around entitlement, but I think, looking at the point that young people are at at 16—and they do have rights to do other things at 16 and there isn’t one age where everyone gets the right to be an adult. I think it isn’t necessarily about that entitlement argument; it is about trying to make sure that we are doing politics better and that young people are more engaged in it, rather than the entitlement argument.”²⁰⁰

231. Professor McAllister made a similar point. She reflected on the Expert Panel’s view that lowering the age was not about:

“... a juncture at which an individual acquired the rights and responsibilities of being an adult. Instead ... this was an opportunity for a programme of much greater democratic engagement and citizenship, and that we felt the logistical opportunities to engage with young people at 16 were stronger than they were at 18.”²⁰¹

232. The “Lowering the voting age across the UK” project research team said that its research:

“... indicates that 18 remains the age where the vast majority of rights associated with adulthood coalesce and are realised, and that there is a general upward trajectory in ages of responsibility.”²⁰²

¹⁹⁸ Written evidence, SE04, Electoral Reform Society Cymru

¹⁹⁹ CLA Committee, 1 April 2019, RoP [36]

²⁰⁰ CLA Committee, 1 April 2019, RoP [89]

²⁰¹ CLA Committee, 25 March 2019, RoP [78]

²⁰² Written evidence, SE09, “Lowering the Voting Age across the UK” project research team

233. It went on to say:

“We agree with the conclusion of the Expert Panel that there is no single age at which a young person takes on all the responsibilities and rights of an adult citizen. Moreover, this issue, as they noted in their final report, should not on its own determine whether the voting age should be lowered or not. Our research indicates however that it is important that newly enfranchised voters might understand the importance of the vote within a wider context of their transitions to adulthood – and not a definitive marker of adulthood itself.”²⁰³

234. As part of its evidence, the “Lowering the voting age across the UK” project research team recommended that “Enfranchised 16 and 17-year-olds should be encouraged to feel their membership of the electorate is both legitimate and valued by older voters and those seeking to democratically represent them”.²⁰⁴

235. Professor Awan-Scully told us that:

“If there’s a case for votes at 16, I think the expert panel makes it extremely well. It hasn’t wholly shifted me from my position of neutrality on this issue, I think, just as some of the contrary evidence you’ve received hasn’t shifted me to an anti position either. I remain one of the agnostics on this issue.”²⁰⁵

236. He did express two concerns, relating to inconsistency between different ages of voting eligibility for different types of elections (as in Scotland) and also:

“... given, particularly, for instance, recent evidence on the strong—indeed, increased—divergences in voting preferences by age group, I suspect that this change is likely to become deeply partisan. And, on the whole, I think partisan politics should be fought within the rules not about the rules.”²⁰⁶

237. Professor Philip Cowley also expressed his reservations:

“The general case against votes at 16 is clear: to give the vote to 16 year olds runs counter to the age at which we generally (and increasingly)

²⁰³ Written evidence, SE09, “Lowering the Voting Age across the UK” project research team

²⁰⁴ Written evidence, SE09, “Lowering the Voting Age across the UK” project research team

²⁰⁵ CLA Committee, 25 March 2019, RoP [227]

²⁰⁶ CLA Committee, 25 March 2019, RoP [225]

treat people as adults; it does so for no obvious advantage and despite there being no great public demand for the reform.

Overall, and despite some variability, there are relatively few rights acquired prior to 18 ... Almost none of the rights acquired before 18 are comparators to voting. Jury service is perhaps the most obvious comparison – involving civic duty and participation – and yet there is no great desire for us to be judged by 16 year olds.

Even more significantly, and yet ignored entirely by the expert panel for some reason, is the direction of travel in recent years. Many age restrictions have changed in recent years, and in almost all cases this has resulted in raising the age at which we allow people to do things.

In other words, if anything the variability in the ages at which people acquire rights and responsibilities has been diminishing over time, and is increasingly converging at 18.²⁰⁷

Engagement with young people

238. Through our engagement work on Senedd Dialogue, we heard arguments in favour of reducing the voting age to 16. For example, we were told:

“Lowering the voting age would ensure that young people get a say in their future. Although I strongly believe that doing so would be beneficial, schools would have to teach non-biased politics so that young people can make a choice and consider all outcomes.”

and:

“You can get a job at 16, you start paying taxes on that income, why shouldn’t you have a say on how that tax money is spent?”

239. Support was not however universal, with one young person saying that 16 year olds should not be allowed to vote with the reasons cited being “Not mature enough; are not educated on politics; can be told who to vote for by parents and other adults”.

240. On 4 April 2019, our Citizen Engagement Team and David Melding AM visited Ysgol Gyfun Gymraeg Bro Edern in Cardiff. Eleven Year 10 pupils attended a discussion, including one Member of the Welsh Youth Parliament. Overall, there

²⁰⁷ Written evidence, SE01, Professor Philip Cowley

was a consensus in favour of lowering the voting age to 16, although there were a few concerns, primarily that it should be accompanied by education.

241. They noted that the outcome of elections, and what older people vote for, has an impact on young people. They also commented that if 16 and 17 year olds could vote, the political agenda would change to include issues that were important to them, including mental health and the funding of youth groups and services.

242. They generally agreed that in the absence of appropriate education, young people will turn to social media for information which can be incorrect and misleading. They therefore expressed caution about the influence of social media.

243. The practical issue of being able to get to the polling station was also discussed, in particular regarding accessibility in rural areas. Similar issues were raised in the EM.²⁰⁸

244. In addition, the Citizen Engagement and Education and Youth Engagement Teams from the Assembly Commission ran focus group discussions with five schools and youth groups involving 68 young people aged between 11 and 23 years old.

245. Most participants agreed that the insight of young people is important, but if the vote was lowered to 16, appropriate, non-biased political and citizenship education would be essential. Participants explained that the level of political knowledge amongst 16 year olds is variable, noting that maturity and age are not interchangeable.

246. Whilst some participants initially held the view that the voting age for National Assembly elections should not be lowered on the basis that many young people do not understand politics, the majority changed their view if political and citizenship education was taught at an early age.

247. Most participants also explained that introducing political and citizenship education could spark greater interest amongst young people, who will not only be more likely to vote, but more likely to cast an informed vote:

“If it’s done really well (delivering political and citizenship education), it will benefit the country and not just us as 16 year olds.”

²⁰⁸ Senedd and Elections (Wales) Bill: Explanatory Memorandum, chapter 24 (Rural Proofing Impact Assessment)

The drafting of the provisions

248. The Bill has been drafted by reference to the local government electoral register to which entitlement to vote in Assembly elections is linked by virtue of section 12 of the 2006 Act. In light of this approach, and that the Bill relates solely to extending the franchise for National Assembly elections, we explored whether it would have been sensible to create a new category of Assembly register within section 2 of the 1983 Act. The Counsel General said this had been considered:

“The starting point is that the Assembly’s franchise is linked to entitlement to vote and register on the local government register ... if one were to wish to have a different kind of franchise for the Assembly than for local government, there might be some force, or more force, in the argument for having a separate Assembly franchise separately recorded ... But since the policy objective—certainly of the Government in this regard— ... is to have as little as possible in terms of difference between those two franchises, I think having a separate Assembly franchise wouldn’t serve a particular practical purpose and would, I think, in those circumstances, be duplicative.”²⁰⁹

249. He acknowledged that it is “conceivable, obviously, that we will end up with different franchises for the Assembly and for local government at the end of the process” because of questions surrounding foreign nationals and prisoner voting but that existing arrangements for marking the local government register could also work for such differences.²¹⁰

250. The Assembly Commission’s Head of Strategic Transformation told us that officials “did consider with the Llywydd whether it was appropriate to create a separate Assembly register, it was felt that that would be more complex for electoral administrators to administer”.²¹¹ She highlighted the Llywydd’s view that it was important “to make sure that the arrangements are as joined-up as possible for both electoral registration processes so that it is easier for the administrators to manage and deliver smoothly and effectively”.²¹²

²⁰⁹ CLA Committee, 29 April 2019, RoP [143]

²¹⁰ CLA Committee, 29 April 2019, RoP [144]

²¹¹ CLA Committee, 7 May 2019, RoP [187]

²¹² CLA Committee, 7 May 2019, RoP [194]

251. The Electoral Commission also highlighted the difficulty of using more than one electoral register for National Assembly and local elections.²¹³

Impact on voter turnout and behaviour

252. The EM drew attention to the impact of lowering the voting age on voter turnout,²¹⁴ and we considered these issues as part of our scrutiny.

253. The Llywydd said:

“So, if you vote once, you are more likely to vote later. It’s when you haven’t voted those first times that you are less likely to vote later on in life.”²¹⁵

254. Professor Awan-Scully made the following observations:

“... if people don’t vote in the first election for which they’re eligible to vote, then they actually become progressively less likely to participate in future elections, and these effects carry on for people into their 30s and even their 40s.

I think the argument has been made by a number of scholars that, actually, 18 is a particularly bad time to make people first eligible to vote ... So, there’s a hope that 16 and 17-year-olds voting might, in the long term, have some sort of positive impact on voter turnout. In the short term, it will probably lead to a very modest decline.”²¹⁶

255. The Electoral Reform Society Cymru suggested that turnout for 16 and 17 year olds will grow over multiple elections:

“I think we’ve been, obviously, very celebratory of the turnout for 16 and 17-year-olds in the Scottish referendum, but I think maybe the more relevant comparator is the Scottish local elections, which also follow the trend of having higher turnouts of 16 and 17-year-olds, above 18 to 24-year-olds. I think it’s a very, very different situation here, and it wouldn’t necessary follow that we’re going to have a higher turnout for 16 and 17-year-olds. I think the extension of the franchise here is probably more of a process than an event, to borrow an often-used phrase in Welsh

²¹³ CLA Committee, 29 April 2019, RoP [87]

²¹⁴ Senedd and Elections (Wales) Bill: Explanatory Memorandum, chapters 10, 17 and Annex 2

²¹⁵ CLA Committee, 7 May 2019, RoP [163]

²¹⁶ CLA Committee, 25 March 2019, RoP [245-246]

politics. But I think it's an opportunity to do something differently, engage a new demographic, and I think slowly over the course of multiple elections, we will start to see more 16 and 17-year-olds being engaged."²¹⁷

256. According to Professor Cowley, "there is lots of academic research demonstrating that people can be mobilised to vote if resources – time and money – are spent doing so". He said:

"What would the turnout of 18-24 year olds (for example) be if they too had information 'tailored specifically for this age group'?"

As the expert panel notes, the evidence from those countries where resources have not been allocated to artificially raise the turnout of 16 and 17 year olds is that they do not vote in greater numbers, and seem less informed.

While voter education and mobilisation programmes may be positive in general, if young voters are ready to vote, then we should not need to allocate specific resources to mobilise them. That we do indicates that they are not ready."²¹⁸

257. With regards to the high turnout in Scotland's independence referendum Professor Cowley made the following observations:

"... the Scottish referendum of 2014 was an extraordinary political event: a (supposed) once-in-a-generation vote, of high salience, with a long campaign, in which political consciousness was raised amongst all age groups. It produced an extraordinary turnout of 85%, a figure which would have been marginally higher still had 16 and 17 year olds not been given the vote.

It seems unwise to draw too many lessons from such an extraordinary event and then apply them to normal, run-of-the-mill elections with lower salience. I hope it is not seen as controversial to note that an election to the National Assembly may not have quite the same buzz about it, and may therefore not have the same effect."²¹⁹

²¹⁷ CLA Committee, 1 April 2019, RoP [38]

²¹⁸ Written evidence, SE01, Professor Philip Cowley

²¹⁹ Written evidence, SE01, Professor Philip Cowley

Extending the vote to foreign nationals

258. The EM explained the decision not to extend the franchise to foreign nationals in the Bill:

“... for the purpose of introducing the Bill, the Assembly Commission has determined that there is not currently a clear political consensus on this issue due to the complexity of the finely balanced arguments around it. In the absence of such a consensus, it is not appropriate for a cross-party body to make changes to the law. For this reason, the Bill maintains a legal status quo on this matter: i.e. that non-EU and non-Commonwealth residents would not be able to vote in Assembly elections. By default, this approach must also be extended to 16- and 17-year old non-EU and non-Commonwealth residents, because it would be wholly inappropriate for 16- and 17-year olds to be enfranchised with the vote, and then have this right removed at 18.”²²⁰

259. The equality impact assessment in chapter 17 of the EM includes consideration of this issue.

260. The Counsel General, in a letter to us on 13 February 2019, said:

“Our policy position is that the franchise for Assembly elections should be consistent with that we intend to extend for local government elections. To that end, we would wish to see this Bill include within the franchise foreign nationals who are legally resident in Wales.”²²¹

261. On being asked if the Welsh Government intended to bring forward amendments at Stage 2 to allow foreign nationals who are legal residents in Wales to vote, the Counsel General told us “We do hope to do that. We think that that’s an important part of being a welcoming nation and an inclusive nation”.²²²

262. The Llywydd noted that the Welsh Government is considering giving foreign nationals resident in Wales the vote for local government elections and acknowledged that, as a result, there could be some discrepancy between National Assembly and local government elections,²²³ a point also acknowledged

²²⁰ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 809

²²¹ Letter from the Counsel General, 13 February 2019

²²² CLA Committee, 29 April 2019, RoP [218]

²²³ CLA Committee, 11 March 2019, RoP [145]

by the Counsel General²²⁴. She explained “it didn’t feel to me that there was a mandate for this inclusion in the legislation” and added:

“It is quite a significant constitutional change to change an electoral system to one based currently on citizenship to one based on residency. I didn’t believe, or wasn’t led to believe, that there was a clear supermajority in favour of such a change. It was influential on my thinking on including it or not in this piece of legislation.”²²⁵

263. According to the AEA as regards voting rights for qualifying foreign nationals (and prisoners):

“... there needs to be a consistent approach in Wales for both Assembly and local government elections to avoid both voter and electoral administrator confusion.”²²⁶

Extending the vote to prisoners

264. The EM explains that:

“Successive judgments of the European Court of Human Rights have found the United Kingdom to be in breach of Article 3 of Protocol 1 because no prisoner sentenced to a term of imprisonment can vote whilst in prison. The leading case is *Hirst v UK (No.2)* in 2005. Whilst states have a wide margin of appreciation in this area, it is the blanket nature of the ban that is objected to.

In November 2017, the UK Government announced its intention to give prisoners released on temporary licence or on home detention curfew the right to vote in all elections in the UK. It will also, in future, be made clearer on sentencing that imprisonment involves losing the right to vote.

The UK Government’s approach has been endorsed as a proportionate response by the Council of Europe, which is responsible for overseeing the implementation of judgments from the European Court of Human Rights.

²²⁴ CLA Committee, 29 April 2019, RoP [144]

²²⁵ CLA Committee, 11 March 2019, RoP [145-146]

²²⁶ Written evidence, SE14, Association of Electoral Administrators

It is anticipated that the new administrative arrangements enabling more prisoners to vote will be in place before the first elections under the Bill take place.”²²⁷

265. The EM clarifies that:

“... the Senedd and Elections (Wales) Bill does not seek to address the issue of prisoner voting, including voting by youth offenders. Instead, on 6 September 2018 the Llywydd wrote to the Equality, Local Government and Communities Committee to indicate that she would strongly welcome the Committee undertaking an inquiry to examine the principle of whether prisoners – including youth offenders – should be allowed to vote in Assembly elections. It is anticipated that the Committee’s analysis of this issue will provide a substantive evidence basis with which to address the legal, ethical, democratic, practical and human rights issues relating to prisoner voting – including youth offender voting and thereby determine the potential for addressing this matter in future legislation.”²²⁸

266. The equality impact assessment in chapter 17 of the EM includes consideration of the issue of prisoner voting.

267. As noted in the EM to the Bill, in a statement on 18 July 2018, the Llywydd said on prisoner voting:

“... the Commission believes that the right approach in the first instance is to invite the Equality, Local Government and Communities Committee to consider holding an inquiry to examine the issue of whether prisoners from Wales should be allowed to vote in elections to the National Assembly.”²²⁹

268. She highlighted that the Equality, Local Government and Communities Committee was considering the issue of prisoner voting.²³⁰

269. The Assembly Commission’s Head of Legal Services explained the background to the issue²³¹ and said:

²²⁷ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraphs 858-861

²²⁸ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 814

²²⁹ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 88

²³⁰ CLA Committee, 11 March 2019, RoP [148]

²³¹ CLA Committee, 11 March 2016, RoP [150-156]

“... it’s not because of the Bill that the Assembly would be in breach of its obligations; it’s because it now has the competence and has an ongoing duty to consider the issue, which, as the Llywydd has said, has been referred to a committee of the Assembly to consider. So, it’s not the Bill in itself that raises this issue, but, of course, it does shine a spotlight on it.”²³²

270. The Counsel General, in his letter to us on 13 February 2019, said:

“... we support the principle of prisoner voting and look forward to receiving the report of the Equality, Local Government and Communities Committee to further inform our thinking on this.”²³³

271. He added when questioned:

“... we will wait to see what emanates from the committee’s findings, and then, as a Government, we’ll consider how we want to deal with that issue. But the principle is clear from our point of view.”²³⁴

272. Professor Bush QC noted that the “UK Parliament’s approach to votes for prisoners is in total disobedience to the European convention on human rights, as has been repeatedly made clear by the courts” and thought that:

“... from a legal point of view, it clearly would be highly desirable if the Assembly were to act as I think it probably is required, in any event, to act—in accordance with convention rights. Now, having said that, of course, it’s a complex issue, because what the European Court has said is not that all prisoners must have rights, but that there should be a proper, reasoned examination of the question.”²³⁵

273. He considered that this meant that this issue has to be properly considered to satisfy the requirements of the court judgements.²³⁶

274. The Youth Justice Board for England and Wales did not agree that the extension of the franchise should exclude children that are in custody, saying:

“Children in contact with the YJS [Youth Justice System] are, by the nature of their involvement and circumstances, vulnerable and can face

²³² CLA Committee, 11 March 2016, RoP [156]

²³³ Letter from the Counsel General, 13 February 2019

²³⁴ CLA Committee, 29 April 2019, RoP [220]

²³⁵ CLA Committee, 25 March 2019, RoP [176]

²³⁶ CLA Committee, 25 March 2019, RoP [172-178]

multiple barriers to equality of opportunity. These barriers should be identified and removed. Children should be provided with additional assistance to take full advantage of what they are entitled to so they can contribute to the decisions that affect them.”²³⁷

275. In the Board’s view:

“The YJB supports the Senedd and Elections Bill principal to extend the franchise to children who are 16 and 17 years. [H]owever, there should be no distinction made between children in custody and any other children. The YJB believes equal opportunity should apply to children in the YJS. It is clear from a rights-based approach that there is no distinction between children, regardless of where they reside (community or custody).

Providing children in the YJS with a right to vote and an opportunity to have a say in shaping the services in their community could be a powerful tool in helping shift a child’s identity from pro criminal to pro social and help children lead safe and crime-free lives while making positive contributions to society.”²³⁸

276. The Children’s Commissioner for Wales took a different view, telling us:

“I also understand the reasons for excluding young offenders from the voting franchise, on the basis that anyone serving a sentence beyond the age of 17 would then ‘lose’ the right to vote and have that privilege withdrawn. This appears logical to me and it would seemingly be more damaging and disempowering to have the vote withdrawn than to have the rules for existing elections mirrored from a younger age. Should the right to vote for adult prisoners change I would expect consideration of similar voting rights to be introduced for young offenders”²³⁹

277. The Llywydd told us she shared the view of the Children’s Commissioner for Wales.²⁴⁰ On balance, she indicated she would rather wait to resolve “the issue of the entirety of people who do not have the voting rights as prisoners”.²⁴¹

²³⁷ Written evidence, SE08, Youth Justice Board

²³⁸ Written evidence, SE08, Youth Justice Board

²³⁹ Written evidence, SE07, Children’s Commissioner for Wales

²⁴⁰ CLA Committee, 7 May 2019 [204]

²⁴¹ CLA Committee, 7 May 2019, RoP [205-208]

Our view

278. We strongly believe that voting and taking part in the democratic process is at the heart of a healthy, functioning society.

279. We note that the majority of the evidence received, where consultees have expressed a view on this issue, is in favour of reducing the voting age to 16 for National Assembly elections. We support this view.

280. We note the evidence suggesting that 16 years old is a better age than 18 years old to encourage engagement with the democratic process for the first time. We also note that there is no single identifiable point at which the roles and responsibilities of adulthood are acquired.

281. The evidence we heard suggests that voting in the first available election is more likely to lead to voting in elections in future years.

282. We believe that reducing the voting age to 16 provides an opportunity to deliver a society that is more engaged with the democratic process over the longer term and should therefore be welcomed. We also believe that reducing the voting age to 16 will require adequate awareness-raising and educational support to ensure this opportunity is utilised. We discuss this issue later in this chapter.

283. We note the intention of the Counsel General to table amendments to the Bill to extend voting rights to include foreign nationals. Our report highlights some of the evidence we received and heard on this issue.

284. We note the comments by the Llywydd and the Counsel General about not including prisoner voting within the Bill on introduction. We also note their views that, in essence, a report from the Equality, Local Government and Communities Committee on this subject would help inform thinking on the broad policy issue including human rights law implications. We have also highlighted some of the evidence we received and heard on this issue.

285. We note that the Equalities, Local Government and Communities Committee published its report, *Voting Rights for Prisoners*, on 11 June 2019. The publication of the report does not, of course, equate to Stage 1 scrutiny of a Bill containing specific provisions on prisoner voting that give effect to policy intentions.

286. Extending voting rights to foreign nationals and prisoners represents a significant change to the electoral franchise. The legislative provisions that would

be required to deliver such a change should, in line with good practice on law-making, be included in a Bill on introduction.

287. Given that provisions extending the franchise to foreign nationals and / or prisoners were not included on the face of the Bill as introduced, we are not in a position to form a definitive view on these matters.

Electoral Registration

288. This section of the report considers how the Bill makes changes to the process for registering local government electors in Wales to enable persons aged 16 and 17 to vote in National Assembly elections. It includes provisions that relate to the annual canvass and the protection of young people's information.

289. The majority of the evidence we received and heard about electoral registration concerned the practical implications of implementing the changes, rather than the specific provisions of the Bill. As such, most of the sections below deal with these areas, although they do overlap given the relationship between them.

The registration process

290. We received many views about issues that need to be considered in relation to the registration process.

291. The Electoral Commission noted that the Bill requires it “to develop registration forms that account for legislative changes relating to 16 and 17 year olds” and that this would “require sufficient time for user-testing, translation, design and production, as well as for obtaining Ministerial sign-off”. It added that it “would welcome the opportunity to discuss the process for designing the amended forms with Assembly Commission officials as soon as possible”.²⁴²

292. The Electoral Commission also highlighted a number of other issues that needed consideration. It indicated the need for EROs “to find alternative ways of communicating information about how to register to 14- and 15-year-olds”.²⁴³ It also noted that the system of electoral registration in Scotland is different, with local authorities not playing a central role.²⁴⁴ The Electoral Commission added that it would be:

²⁴² Written evidence, SE12, Electoral Commission

²⁴³ Written evidence, SE12, Electoral Commission

²⁴⁴ CLA Committee, 29 April 2019, RoP [69-70]

“... beneficial to have statutory co-ordination in Wales. There are advantages in collaboration, but there are also disadvantages in the sense that local government isn’t at the heart of the system in the same way. It’s something that we should look at.”²⁴⁵

293. It also thought, as regards the registration of 16 and 17 year olds, that:

“... it will be a slower burn here in Wales, inevitably; it would be difficult to imagine you’re going to get a massive first hit at registration in the same way as happened in Scotland.”²⁴⁶

294. In terms of implementing the changes arising from the Bill, the AEA highlighted its:

“... concerns around particularly the extension of franchise and the changes are to make sure that the resources are there for my colleagues to be able to spend the necessary time and local resource on actually identifying those who aren’t registered and give them the opportunity to register and dealing with the changes that come up from that sort of area.”²⁴⁷

295. The AEA also said that it is essential that the Bill makes statutory provision for relevant data to be “supplied to the relevant electoral registration officer on a regular basis in a suitable format”,²⁴⁸ as a means “of trying to take the burden off registration officers of trying to find individuals”.²⁴⁹

296. The Electoral Reform Society Cymru said there should be a “clear and effective plan” around “reaching potential attainers, ensuring they join the register, and to give them the information they need to become voters”. In its view, this would “best be delivered in conjunction between the Assembly and Welsh Government” given the plans to also extend the franchise for local government elections.²⁵⁰

297. The Llywydd, in her letter to us of 16 May 2019, stated:

²⁴⁵ CLA Committee, 29 April 2019, RoP [72]

²⁴⁶ CLA Committee, 29 April 2019, RoP [74]

²⁴⁷ CLA Committee, 29 April 2019, RoP [12]

²⁴⁸ Written evidence, SE12, Association of Electoral Administrators

²⁴⁹ CLA Committee, 29 April 2019, RoP [52]

²⁵⁰ Written evidence, SE04, Electoral Reform Society Cymru

“The administration of elections, including the design of registration forms, is a matter for the Electoral Commission and local authorities. They will receive advice and support from the Welsh Government.”

while acknowledging that the Electoral Commission in its evidence was reflecting its intention of keeping Assembly Commission officials informed of developments.²⁵¹

298. The Llywydd’s letter added:

“The Assembly Commission is not responsible for the operation of electoral registration, and it would therefore not be responsible for any costs relating to electoral registration processes or management systems. Assembly Commission officials will not be involved in the scoping, commissioning or monitoring of the registration process or systems. Rather, this would be a matter for the Welsh Government and local authorities to resolve.

I discussed this issue when I met with the Minister for Housing and Local Government, Julie James AM, on 30 April 2019: she agreed that this was a matter for Welsh Government.”²⁵²

Annual canvas and canvas reform

299. In preparation for the annual canvass that will take place in 2020, the Bill includes provisions so that young people may be included in that process. The changes include:

- removing a requirement for a registration officer to carry out house to house enquiries in relation to the registration of a person under the age of 16 (section 12(1));
- permitting 14 year olds and 15 year olds who will turn 16 during the period the register is in force to register to vote as an attainer (section 12(2)(a));²⁵³

²⁵¹ Letter from the Llywydd, Senedd and Elections (Wales) Bill, 16 May 2019

²⁵² Letter from the Llywydd, Senedd and Elections (Wales) Bill, 16 May 2019

²⁵³ Section 12(2) of the Bill amends regulation 32ZA of the Representation of the People (England and Wales) Regulations 2001 so that the annual canvass form for local government electors must include the full name, nationality and date of birth of any person(s) aged 14 and 15 living at the address. According to the explanatory notes to the Bill, this provision “allows the registration officer,

- prohibiting the printing of the date of birth of a person under the age of 16 on the annual canvas form (section 12(2)(b)).

300. Options for canvas reform are being explored between the UK, Welsh and Scottish Governments with an intention to implement the changes for the 2020 canvas. The related consultation exercise described the reforms as being:

“... intended to enable local authority Electoral Registration Officers (EROs) to target their resources more effectively. The proposals include using data matching (using both national and local data) at the start of the canvass to identify those properties where it is likely that the occupiers remain the same. Where this is the case, EROs will be able to run a lighter-touch canvass. The proposals aim to reduce confusion and inconvenience for citizens and allow EROs to operate more efficiently.”²⁵⁴

301. The AEA told us that “the UK Government’s funding for registration will be reduced in 2020 as a result of the savings arising from the introduction of Canvass Reform”²⁵⁵ and questioned the lack of any consideration given to canvass reform in the EM, telling us that:

“... if EROs in Wales cannot fully implement Canvass Reform and achieve the full savings because of the need to register 16 and 17-year olds, along with 14 and 15-year old attainers, the proposed savings will not be achieved in Wales. As a result, not only do the additional costs of registering 14 to 17-year olds need to be considered but also the financial impact of Canvass Reform not being implemented fully in Wales.”²⁵⁶

302. The AEA also questioned whether the full cost savings of canvass reform would be realised by Welsh local authorities because “there may well be a greater need to canvass properties that may well not have had a change” to ensure that new younger voters are not missed because, as part of canvass reform, they would “not necessarily be flagged on the database that’s being checked against”.²⁵⁷

for the purposes of an election for membership of the Senedd, to include on the register of local government electors those people who will be aged 16 by the time of the next Senedd election”.

²⁵⁴ Cabinet Office, consultation website: [Proposals for the reform of the annual canvass](#), 5 October 2018

²⁵⁵ Written evidence, SE14, Association of Electoral Administrators

²⁵⁶ Written evidence, SE14, Association of Electoral Administrators

²⁵⁷ CLA Committee, 29 April 2019, RoP [34]

303. On canvas reform, the Counsel General told us:

“Obviously, we want that to be implemented in time for the next elections, which essentially means, effectively, commencing that in June or July 2020. I should say that it is obviously desirable to make sure that the next elections operate on the basis of a reformed canvass, but should that for some reason not be possible, the two things are actually separate. So, the current legislation can operate on either the base of the current canvass or a reformed canvass. And this Bill isn’t required to give effect to the canvass reforms; they will operate under statutory instrument under separate primary legislation. The proposal is that we’re working currently on an SI that would enable us to give effect to that reformed canvass in a way that is consistent across the UK and that that can happen in time for us to hit the deadline in the summer of next year for that canvass to be commenced.”²⁵⁸

Electoral Management Systems

304. Each local authority contracts a software company to provide the software for the electoral register, the EMS.²⁵⁹ According to the EM:

“The 22 local authorities work with three software companies, all of which would need to introduce changes to their software necessary for registration officers to meet the new responsibilities introduced by this Bill. The updating of the EMS systems would incur a one-off cost to local authorities which would be accommodated by local authorities.”²⁶⁰

305. The EM notes that exact costs are not available but estimates that “the costs associated with updating the EMS software would be a maximum of £636,300” (based on the Scottish Elections (Reduction of Voting Age) Bill).²⁶¹

306. The AEA said that the National Assembly “should scope, commission, oversee, monitor and pay each EMS supplier directly for the software changes”,²⁶² expressing concern as to whether the EMS suppliers have been contacted:

“... to discuss the extent of the software changes required and timescales for development, testing and software release to ensure

²⁵⁸ CLA Committee, 29 April 2019, RoP [204]

²⁵⁹ Senedd and Elections (Wales) Bill: Explanatory Memorandum 539

²⁶⁰ Senedd and Elections (Wales) Bill: Explanatory Memorandum 539

²⁶¹ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraphs 539-542

²⁶² Written evidence, SE14, Association of Electoral Administrators

there is sufficient time to implement the changes especially as we are aware their workload already involves significant work to prepare for Canvass Reform over the same timeframe.”²⁶³

307. When questioned, it emphasised the resource needed to allow them:

“... to do their jobs quite correctly for the electorate and for those who are being elected, and, secondly, to make sure that a co-ordinated approach is taken so that across the whole of Wales it is actually the same access to the system being provided to every single elector.”²⁶⁴

308. The AEA emphasised the need for a co-ordinated approach for each of the systems “to be able to deliver exactly what it is that’s required”.²⁶⁵

309. Solace indicated that they had not yet formally approached the Welsh Government about funding for the Bill, but said discussions would initially need to consider:

“... the software transitional costs for the franchise, which are quite significant, and that’s the sort of change that’s best dealt with nationally, collectively, with the software franchise providers.”²⁶⁶

310. The Electoral Commission suggested that the Wales Electoral Coordination Board may have a part to play in supporting changes to the EMS.²⁶⁷

311. The Clerk and Chief Executive of the Assembly told us:

“In terms of software changes, I think the point that the AEA was making, and having spoken to their officers, was more one about consistency as opposed to allocating responsibility to the Assembly Commission as opposed to the Welsh Government or vice versa. So, I would expect that to be a Welsh Government activity as opposed to an Assembly Commission one.”²⁶⁸

312. This point was also emphasised by the Llywydd:

²⁶³ Written evidence, SE14, Association of Electoral Administrators

²⁶⁴ CLA Committee, 29 April 2019, RoP [13]

²⁶⁵ CLA Committee, 29 April 2019, RoP [30]

²⁶⁶ CLA Committee, 1 April 2019, RoP [239]

²⁶⁷ Written evidence, SE12, Electoral Commission

²⁶⁸ CLA Committee, 29 April 2019, RoP [344]

“The Assembly Commission is not responsible for the operation of electoral registration, and it would therefore not be responsible for any costs relating to electoral registration processes or management systems. Assembly Commission officials will not be involved in the scoping, commissioning or monitoring of the registration process or systems. Rather, this would be a matter for the Welsh Government and local authorities to resolve.”²⁶⁹

313. Officials accompanying the Counsel General said that “the changes needed to the electoral management system” are “around £3,800 per local authority”.²⁷⁰ The Counsel General suggested that, as a burden on local authorities, such costs would be considered as part of the usual budgeting discussions.²⁷¹

Administrative reforms

314. We also heard support for administrative reforms in order to lessen the burden on those tasked with registering younger voters, as well as to help ensure a higher rate of registration.

315. The Electoral Reform Society Cymru recommended that measures relating to block registration in schools and colleges should be considered:

“... we’re massively supportive of block registration and other methods such as automatic registration to really ensure that our electoral roll is a lot more complete and up-to-date than it currently is. In terms of it working in practice, I think electoral registration officers visiting schools and doing, kind of, registration drives is probably a very good thing. Also, 16 and 17-year-olds will be applying for things like national insurance cards. I think that’s an opportunity to drive registration as well.”²⁷²

316. It felt that these issues should be legislated for:

“Measures to ensure block registration in schools and colleges should also be considered in legislation in order to maximise the chances of ensuring a high turnout for younger voters.”²⁷³

²⁶⁹ Letter from the Llywydd, Senedd and Elections (Wales) Bill, 16 May 2019

²⁷⁰ CLA Committee, 29 April 2019, RoP [200]

²⁷¹ CLA Committee, 29 April 2019, RoP [202]

²⁷² CLA Committee, 1 April 2019, RoP [66]

²⁷³ Written evidence, SE04, Electoral Reform Society Cymru

317. The AEA told us:

“At the start of the initial Welsh Assembly proposals, there was mention that the education lists could be used to register on block from the education records, including consideration of automatic registration in Wales – we would ask whether this has been given any further consideration?”²⁷⁴

318. When questioned, the AEA said that it does not “necessarily have a view in terms of block registration”, but noted the benefits of EROs being provided with information to register individuals, adding:

“... the crucial bit is about working with the educational establishments, working with departments of education—those types of organisations—to make sure that the data that is being held is shared with registration officers to be able to allow them to do their statutory processes.”²⁷⁵

319. The Electoral Commission told us that, in terms of block registration and automatic registration “we as a commission would welcome these new initiatives at reform and different ways of getting individuals, especially certain groups, perhaps, involved and integrated into the democratic process”.²⁷⁶

320. Solace also referred to a vision for the future, saying:

“... we need to think more about what’s the vision for elections and elections participation—around franchise, access, freedom to vote, possible digital administration, even digital voting by the voter in the future ... in the absence of digitisation as an option, we are well behind—we’re still very Victorian in our legislation and in our practice around elections, which is one of the barriers to people participating, because they see it as quite antiquated. That’s the feedback we get, particularly from younger people.”²⁷⁷

321. While the Llywydd recognised potential benefits,²⁷⁸ she stated that:

“... the issue around the mechanics and the operation of registration or how elections take place for that matter—I haven’t seen it as being part

²⁷⁴ Written evidence, SE14, Association of Electoral Administrators

²⁷⁵ CLA Committee, 29 April 2019, RoP [36]

²⁷⁶ CLA Committee, 29 April 2019, RoP [38]

²⁷⁷ CLA Committee, 29 April 2019, RoP [286]

²⁷⁸ CLA Committee, 7 May 2019, RoP [220]

of the development of this Bill particularly. They are issues that I am aware that the Welsh Government and the Electoral Commission and others are currently looking at.”²⁷⁹

322. She re-iterated this position in correspondence:

“Modernising electoral administration is a matter for Welsh Government to lead, not the Assembly Commission, and so the Assembly Commission has not specifically discussed digital administration, nor does it have a view on the roll out of any such developments for Assembly elections ...

These will be matters for the Welsh Ministers to decide as powers are devolved to them. The Welsh Ministers will, of course, be held to account by the Assembly in relation to their decisions on these matters.”²⁸⁰

Looked-after children

323. Section 18 of the Bill, by amending section 7B of the 1983 Act, enables young people, under the age of 18 and who are looked after, to register to vote at the place in Wales where they may have a local connection.

324. The Children’s Commissioner for Wales welcomed the proposals, highlighting that some young people feel a connection with the area in which they are looked after:

“I also welcome the proposals for a child in local authority care to be able to register to vote in the area to which they feel they have a local connection, which could be where they are living as opposed to where they were originally brought up. Young people that are living ‘out of county’ have frequently expressed to me that they want to feel part of the community in which they live, and they may often have very little connection to the area where they were born, particularly if they have been in local authority care from a young age. These proposals provide that flexibility for the young person.”²⁸¹

325. The Llywydd told us that:

²⁷⁹ CLA Committee, 7 May 2019, RoP [220]

²⁸⁰ Letter from the Llywydd, Senedd and Elections (Wales) Bill, 16 May 2019

²⁸¹ Written evidence, SE07, Children’s Commissioner for Wales

“It was an important point of principle for me that looked-after children, if they were placed out of county or out of country, even, were able to establish and have the vote in the area with which they had a connection. So, we’ve sought to put the mechanism for allowing that to happen in the Bill.”²⁸²

326. The Assembly Commission’s Head of Strategic Transformation added that:

“... the Welsh Government will have to work with the electoral returning officers, registration officers and social services departments, really, to ensure the arrangements are as comprehensive as possible to enable children in the care of local authorities to vote in relation to the area where they feel they have the connection with. So, that’s something that they’ll need to work together on to implement.”²⁸³

327. In a subsequent letter the Llywydd told us:

“For clarity, there will be a number of pieces of information that an applicant making a declaration will have to provide (outlined in section 7B of the 1983 Act, as amended by the Senedd and Elections (Wales) Bill)). This system is based upon a regime already in place, which currently allows people without a home to make a declaration of local connection.”²⁸⁴

328. The Electoral Commission suggested a duty on local authorities to promote awareness for looked-after children:

“In Scotland, local authorities have a duty to promote awareness of how to register as local government electors for children that are “looked after” by that council (who can be up to the age of 18) and to provide assistance to help such young people to register. To do this, EROs need to engage actively with other departments and staff in local authorities and other bodies with responsibilities of care. We would encourage a similar requirement for EROs in Wales.”²⁸⁵

²⁸² CLA Committee, 7 May 2019, RoP [197]

²⁸³ CLA Committee, 7 May 2019, RoP [198]

²⁸⁴ Letter from the Llywydd, Senedd and Elections (Wales) Bill, 16 May 2019

²⁸⁵ Written evidence, SE12, Electoral Commission

Protection of information about young people

329. Sections 23 to 25 of the Bill contain provisions setting out the arrangements for the protection of information about people who are under the age of 16.

330. The Assembly Commission's Head of Legal Services explained how the Bill protects the personal data of 14 and 15 year olds:

“... information will need to be gathered as to those from the age of 14 upwards, so that electoral registration officers can be aware of when those individuals turn 16, in order to ensure that they are sent a polling card. But for those 14 and 15-year-olds, only the electoral registration officer will know their date of birth. It won't be printed on the register that's available to the public or, indeed, political parties or candidates.”²⁸⁶

331. He also drew attention to provisions relating to the ability to obtain information from educational records rather than young people themselves, as well as safeguards not specifically related to data protection. These included the absence of a requirement for electoral registration officers to carry out house-to-house enquiries if an invitation to register is not returned and the ability of the Welsh Ministers to make regulations to change, if necessary, the forms that are sent out to people inviting them to register to vote.²⁸⁷

332. The Electoral Commission told us that it is:

“... very, very conscious of the sensitivity of this subject, because there will be young people of 15 whose data will be entered and whose data has got to be kept confidential. So, how to achieve that is really of great importance...”²⁸⁸

333. It noted it “has to be done really carefully and well and within existing data protection law and child protection law” and:

“... will take the relevant statutory bodies working together: of course, the electoral community, across local authorities, child protection responsibilities, statutory responsibilities and social services, and across, obviously, the Information Commissioner's Office as well ... I don't think it requires any specific or complex electoral legislation because,

²⁸⁶ CLA Committee, 11 March 2019, RoP [142]

²⁸⁷ CLA Committee, 11 March 2019, RoP [143]

²⁸⁸ CLA Committee, 29 April 2019, RoP [40]

actually, the law is there already ... it is more about practice and making sure that, for returning officers, electoral administrators, there's very, very clear guidance. And political parties as well, obviously, to make sure they don't put their foot wrong either and use the registers."²⁸⁹

334. It requested "confirmation that the Assembly Commission has sought advice from the Information Commissioner's Office to ensure the practical arrangements proposed relating to lowering the voting age reflect appropriate data protection standards".²⁹⁰

335. The Children's Commissioner for Wales said that:

"Protections such as not publishing the dates of birth for under 16s and to make the unauthorised disclosure of information a criminal offence are in my view proportionate to that aim of child protection and protection of privacy, as this is not necessary in order for them to participate in election processes."²⁹¹

336. The AEA sought to provide reassurance about existing practices:

"... there's already an awful lot of personal data held by registration officers. Now, this is obviously another level in terms of having 14 and 15-year-olds' data as well. There wouldn't be a concern with sharing that data for the responsibilities the registration officer has to run the actual electoral register, so long as the correct mechanisms for ensuring that that data is secure and is only used for the purpose it's required for are there ... There are already records, national insurance numbers, dates of birth held by registration officers—it's just ensuring that the responsibility is very clear on those officers and that the data that's held is secure."²⁹²

Our view

337. Most of the evidence we received and heard tended to focus on the practicalities of implementing the Bill, rather than the specific provisions included in the Bill to facilitate change to the electoral registration process.

²⁸⁹ CLA Committee, 29 April 2019, RoP [78]

²⁹⁰ Written evidence, SE12, Electoral Commission

²⁹¹ Written evidence, SE07, Children's Commissioner for Wales

²⁹² CLA Committee, 29 April 2019, RoP [54]

338. There remain a lot of related issues to be addressed in a relatively short space of time that will be essential to ensure the smooth running of the annual canvas and registration more broadly.

339. The administrative arrangements enabling 16 and 17 year olds to vote in the 2021 Assembly election need to function efficiently to ensure the voter experience of the newly enfranchised is not a negative one. This is particularly important given the evidence we heard that voting in the first election for which a person is eligible to vote can affect their future propensity to vote.

340. In reaching this view, we recognise that this applies equally to other first-time voters in the 18-24 age range who will have recently been added to the electoral roll.

341. The evidence we heard highlights that the levers for ensuring that the electoral administration and registration process is fit for purpose for the 2021 Assembly election rest with the Welsh Government, local authorities, the Electoral Commission in Wales and other electoral organisations.

342. What became clear to us is the need for clarity around who is leading and co-ordinating the successful delivery of the changes needed to ensure the newly enfranchised are registered and able to exercise their right to vote in 2021.

343. Also, we heard concerns around funding from those at the sharp end of delivering the reforms.

344. We note a potential discrepancy between the costs associated with updating the EMS, with the EM quoting a maximum figure of £636,000 and the Welsh Government suggesting a figure of £3,800 per local authority (a total of £83,600).

Recommendation 7. The Llywydd should issue a written statement:

- setting out where responsibilities lie for each aspect of the changes needed to the electoral administration and registration processes;
- addressing the funding concerns expressed by the Association of Electoral Administrators and local government relating to implementing electoral registration reforms;
- setting out the current position on updates needed to Electoral Management Systems and clarifying the cost of the updates.

345. We are broadly content with the way in which the legislation provides for the registration of young people to vote but make the following recommendations related to the Bill's provisions.

346. There remains a particular concern around the registration of looked-after children who may be less easily registered.

Recommendation 8. The Llywydd should consider the feasibility of amending the Bill to create a duty on local authorities to promote awareness of how looked-after children can register as local government electors.

347. We agree with the Electoral Commission on the importance of protecting young people's data, particularly when dealing with the data of 14-and-15-year-olds.

Recommendation 9. The Llywydd should, during the Stage 1 debate, provide an assurance that advice from the Information Commissioner's Office has been received and duly considered in the drafting of the Bill.

348. Longer term, we see merit in the modernisation of the registration process as a means of increasing democratic engagement.

Recommendation 10. The Welsh Government should consider exploring the modernisation of the electoral registration process, including automatic and / or block registration of 16-year-olds and the digitisation of the process.

Awareness-raising and education

349. According to the EM:

"The Expert Panel also considered that any lowering of the minimum voting age should be accompanied by appropriate, effective and non-partisan political and citizenship education. The panel considered that such education should be part of a broader range of actions taken by the Assembly, the Welsh Government and others to increase youth engagement and political participation.

The Bill does not specifically address this need for education. However, it is anticipated that the change in voting age will be accompanied by ongoing political education and public information campaigns that are aimed at promoting awareness of the change in voting age."²⁹³

²⁹³ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraphs 51-52

350. While the Bill contains no specific provisions on awareness-raising or education, during our scrutiny of the Bill, we considered the extent and role that awareness-raising and education should play in supporting the proposed reduction in the voting age to 16.

351. We heard much evidence on the importance of both to a successful extension of the franchise. A lot of this evidence did not make the distinction between awareness-raising, more technical education on registering and voting, and a broader civic education. While we have therefore considered the evidence in broad themes to aid clarity, there are clearly overlaps between them.

The need for awareness-raising and education

352. According to the EM:

“The Assembly Commission believes that awareness raising is important to support the legislative changes. The Assembly Commission and Welsh Government have therefore been involved in discussions on working collaboratively on awareness raising and developing a range of resources to support this.

The Welsh Government’s intention is to undertake a three year campaign which will encompass both the Assembly and local government elections. This will include the extension of the local government franchise to include foreign nationals, in addition to 16- and 17-year olds.”²⁹⁴

353. The Llywydd highlighted the distinction between promoting votes at 16 and the need for education around democratic engagement:

“I listened to a presentation by the Electoral Commission from Scotland, where they said ... ‘Don’t do your promotional work too early. Young people will engage with it right towards the end. Starting to do things too early is of limited benefit in terms of promotion.’ That’s probably not true of education, of course, and what you can do within schools on democratic engagement.”²⁹⁵

354. Professor Ellen Hazelkorn highlighted the need to pair lowering the voting age with education:

²⁹⁴ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraphs 554-555

²⁹⁵ CLA Committee, 11 March 2019, RoP [101]

“I think that, if you want to consider lowering the voting age to 16, you shouldn’t do it without an education that underpins it. Now, how— ‘education’ is a very broad, generic term.”²⁹⁶

355. The “Lowering the Voting Age across the UK” project research team noted that its research “showed that the level of support for ‘vote[s] at 16’ among young people is strongly related to their level of political interest”. It noted a potential danger that:

“... lowering the voting age to 16 in isolation may actually increase ‘the engagement gap’ by empowering already empowered young people while doing little to address these underlying inequalities.”²⁹⁷

356. As a result, it recommended that:

“The implementation of ‘Votes at 16’ must be accompanied by measures and substantial efforts to ensure more disadvantaged and less engaged groups are specifically encouraged to turnout. While political education is vital, this also required a broader shift in political culture regarding political parties’ engagement with young people from differing backgrounds.”²⁹⁸

357. The “Lowering the voting age across the UK” project research team also recommended that:

“Consideration should be given to the first cohorts of newly-enfranchised voters in Wales who will not have opportunities to engage with or benefit from the planned introduction of political education initiatives.”²⁹⁹

358. The Electoral Reform Society Cymru considered that:

“... the extension of the vote in itself doesn’t guarantee deeper engagement. The key to a successful extension of the franchise is the potential it gives us to reach first time voters with the information they need and thereby create a positive habit of voting, which can last a lifetime”

²⁹⁶ CLA Committee, 1 April 2019, RoP [158]

²⁹⁷ Written evidence, SE09, ‘Lowering the Voting Age across the UK’ project research team

²⁹⁸ Written evidence, SE09, ‘Lowering the Voting Age across the UK’ project research team

²⁹⁹ Written evidence, SE09, ‘Lowering the Voting Age across the UK’ project research team

before adding that:

“Improving citizenship education will play a vital role in ensuring we see the full benefits of votes at 16. A more informed electorate means a better public debate.”³⁰⁰

Engagement with young people

359. Many of the young people we heard from through the work of our engagement teams highlighted the importance of education to accompany reducing the voting age to 16 for National Assembly elections.

360. The pupils from Ysgol Gyfun Gymraeg Bro Edern told us that if political education was delivered well, it would benefit the country as a whole.

361. They considered that they needed to understand the role of political parties and what their manifestos mean in general elections.

362. There was a concern about politics being taught in schools and the potential for bias. As a result, it was suggested that lessons could take place outside of school for them to be taught the facts and not opinions.

363. They welcomed the idea of having a range of politicians from different parties coming to talk to them, a view also expressed as part of Senedd Dialogue.

364. In terms of having political education as part of the curriculum, some thought that it should not be a permanent subject as none of the subjects they are currently taught should be replaced. There were suggestions put forward for having a short course delivered over a week or lessons one day each term.

365. They were concerned about political education being included in the Welsh Baccalaureate, because they did not think that it is an issue they should be graded on as they would be under pressure to do well.

366. The idea of an online digital course was raised but not everybody agreed, as it was thought more important to have a face-to-face discussion with others. There was an agreement that the lessons should be engaging, interactive and include activities like mock elections.

³⁰⁰ Written evidence, SE04, Electoral Reform Society Cymru

367. Our Senedd Dialogue session also highlighted the importance of education alongside reducing the voting age to 16, with many suggesting that improvements were needed. Comments made included:

“Political education is definitely the right way of getting people to vote but there also needs to be education on how they actually vote.”

“Personally schools and college are not doing enough to provide Welsh politics as an issue to talk about. As a result of this many young people at the age of 16 don’t know enough information. I’m all for voting at 16 but politics needs to be taught in schools first for the young people to get a better understanding on how the Assembly works.”

“I know for a fact that me and my peers have not been educated anywhere close enough to the point where we can make an informed vote.”³⁰¹

Is there time to deliver for the 2021 Assembly election?

368. The time available for awareness-raising and education before the 2021 Assembly election is relatively limited.

369. The Llywydd acknowledged a key test will be whether younger voters are sufficiently informed by the poll date:

“I think the test for us is to make sure that the 16 and 17-year-olds in 2021 will be sufficiently informed of their new right and also sufficiently informed of the context within which they need to make a political choice.”³⁰²

370. Professor Ellen Hazelkorn, in answering whether there is enough time to prepare for 16 and 17 year olds voting in 2021, told us:

“If you have the educational underpinnings set up to do so, but I probably would suggest caution if you didn’t ... I think you would need to be prepared as opposed to just, in fairness, throwing people in at the deep end.”³⁰³

371. NAHT Cymru supported going ahead for 2021 suggesting that:

³⁰¹ Senedd Dialogue: [Have your say on political and citizenship education!](#)

³⁰² CLA Committee, 7 May 2019, RoP [161]

³⁰³ CLA Committee, 1 April 2019, RoP [186]

“... if we agree with the principle about it, part of me wonders whether you just go ahead with that if it’s in principle the right thing to do. It almost incentivises schools to then start doing some work on that.”³⁰⁴

372. It acknowledged that 2021 is a short time away but suggested changing the system takes time, and:

“If you wait until we’re completely ready, it may delay it too long and you’ve kind of missed the opportunity, potentially, to pick up on some of the things ... that mean that young people are, maybe, keen to be involved.”³⁰⁵

373. NAHT Cymru also spoke about the balance between going ahead in 2021 and building turnout up over time:

“And the question is: the reality about trying to get everything in place prior to that legislation coming in—do you balance that against the fact that, in principle, it should still go ahead and actually have it almost like a build-up over a certain amount of time if we don’t get the huge numbers of 16 and 17-year-olds engaging from the outset?”³⁰⁶

374. The Llywydd indicated that having a one or two year lead-in is probably sufficient for the practical elements of the change to voting age at 16 but that a bigger piece of work is needed to “better engage and inform young people in Wales as to the democratic structures and opportunities that they have”.³⁰⁷

375. She re-iterated this view subsequently, saying:

“Now, it’s clear that there is a natural link between extending the franchise to 16 and 17-year-olds with the civic education available more generally, but I would say that one isn’t entirely reliant on the other. Civic education doesn’t have to be perfectly in place in order to ensure that 16 and 17-year-olds are able to vote, because the same argument could be made for 18 and 19-year-olds at that point, and they already have the vote, of course. So, yes, it’s clearly desirable to see broader civic education as part of the curriculum, but the work that we are going to put in train will run hand-in-hand with that, but will also add to that in order to ensure that, for the purpose of introducing this Bill, we

³⁰⁴ CLA Committee, 1 April 2019, RoP [332]

³⁰⁵ CLA Committee, 1 April 2019, RoP [332]

³⁰⁶ CLA Committee, 1 April 2019, RoP [319]

³⁰⁷ CLA Committee, 11 March 2019, RoP [120]

contribute substantially towards the promotion of the awareness of young people of their new right to vote at 16 and 17, but also to explain the broader civic, political context in which that decision will be made.”³⁰⁸

376. Professor McAllister told us why the Expert Panel had not suggested education before legislation:

“The reason that we didn’t suggest that there needed to be events ordered in that way—first the political education and then the legislation—was that I think you can procrastinate around ‘when’ for quite a long time: the point of intervention.”³⁰⁹

377. She also told us:

“The two things are helpful together, but I think there is still a strong argument to go ahead with votes at 16 in the 2021 elections, as long as there is a clear picture of how improved citizenship education would be instituted subsequently ... This is about enhancing the democratic experience; it’s not about suggesting that 16 to 18-year-olds won’t be able to vote without that in place. That’s like suggesting that people over 60 wouldn’t be able to vote unless somebody explained the process to them. So, I think it could still happen, but enhancing it and improving it would come about through the education that we discussed.”³¹⁰

378. The Minister for Education said that she saw “no reason, from an education perspective, to postpone enfranchising our 16 and 17-year-olds” for the 2021 election.³¹¹

The current level of educational support

379. We heard from many witnesses that the current level of education support is inadequate.

³⁰⁸ CLA Committee, 7 May 2019, RoP [154]

³⁰⁹ CLA Committee, 25 March 2019, RoP [90]

³¹⁰ CLA Committee, 25 March 2019, RoP [141]

³¹¹ CLA Committee, 7 May 2019, RoP [86]

380. When we asked about the Assembly Commission’s consultation exercise with young people showing only 53 per cent in favour of lowering the voting age to 16, the Llywydd told us:

“My own experience of that... is that young people feel that they are not well-enough versed in what voting means and in the role that they have as part of wider democratic engagement.”³¹²

381. The Electoral Reform Society Cymru made the following comments about the current state of political education:

“At the moment, I think political education is relatively poor and, as a general population, I think we’re relatively disengaged in devolved politics, in particular. So, political education, for me, and the extension of the franchise, is an opportunity to do things differently, and it’s an opportunity to ensure that this generation of young people, who will then become voters when they’re 18, 30, 50, will be much more informed than the current population.”³¹³

382. Its evidence for this view came from its Our Voices Heard project:

“... where we went to 11 schools across Wales and engaged with 200 year 9 students, who will be the first cohort to vote at 16. They reported to us that they didn’t receive a lot of political education; it was very ad hoc. Mostly, it’s those who go through the Welsh baccalaureate or choose to take A-level politics further along the line, and it’s not rolled out for general young people’s consumption.”³¹⁴

383. Professor Egan also spoke about the current levels of civic education:

“So, where we are is that effectively we don’t teach our young people up to the age of 16 any kind of civics, any kind of political democracy.”³¹⁵

384. However, the Minister for Education told us that:

“Within the current curriculum, there are a number of opportunities for children and young people to engage in the subject of politics, above and beyond those who have the opportunity to take a formal

³¹² CLA Committee, 11 March 2019, RoP [115]

³¹³ CLA Committee, 1 April 2019, RoP [40]

³¹⁴ CLA Committee, 1 April 2019, RoP [42]

³¹⁵ CLA Committee, 1 April 2019, RoP [158]

qualification in that subject area. They broadly fall into two strands under the current personal and social education part of our humanities curriculum. There are opportunities there, and also it informs a very important part of our Welsh baccalaureate qualification.”³¹⁶

385. She referred to excellent practice in schools and a plethora of online resources available through Hwb, an online learning platform. She added that young people are engaging in the subject through their personal and social education lessons or as part of their Welsh baccalaureate.³¹⁷ In terms of the Welsh baccalaureate, she told us:

“It creates that space and it gives permission and a timetable slot for these issues to be explored by teachers. It ensures that there is that opportunity across all schools to do it and to ensure that there is an entitlement for all children to engage in this programme, and, of course, at an advanced level there are opportunities for children to develop even deeper understanding and deeper knowledge and skills and the space to explore, and I think that’s really important.”³¹⁸

386. When asked about the challenges of engaging young people at 14 to 16 years old in the current curriculum to learn about active citizenship, the Minister for Education told us:

“I think what we will have to do is build upon what we’ve already got. It’s important to recognise that the current baccalaureate qualification that is undertaken and completed at the age of 16 for most children does already provide lots and lots of opportunities. So, I don’t think it is an insurmountable leap ...

But it doesn’t have to be the job of the PSE teacher alone. I think there are ample opportunities in many, many areas to explore these subjects. That’s true in the current curriculum, but will be even more so in our new curriculum, where the traditional edges of subjects are broken down.”³¹⁹

387. The Minister for Education acknowledged the variability of provision for citizenship education between schools:

³¹⁶ CLA Committee, 7 May 2019, RoP [5]

³¹⁷ CLA Committee, 7 May 2019, RoP [15]

³¹⁸ CLA Committee, 7 May 2019, RoP [51]

³¹⁹ CLA Committee, 7 May 2019, RoP [27]

“... I believe that the experience that children have is a mixed one, and I think there will be some children when asked who perhaps would tell a very, very different story, and that, in some ways, is a microcosm of the challenge of Welsh education, which is to ensure that we have consistently good practice in all of our schools all of the time.”³²⁰

388. When asked what would be different, should the Bill become law, in terms of political and civic education and engagement, compared to what exists at the moment, the Minister for Education said:

“... when a nation changes its legislation, it sends a message, doesn't it? So, it might enact certain things, but it sets the context—it sets a social context ... I believe, in the current and in the future curriculum, there is space to deliver these issues. But the passing of this legislation will add to that imperative, because those children will be exercising those rights. And I think it just changes the nature of the conversation, it changes the context in which some of those lessons are being delivered.”³²¹

389. As regards whether space existed in the curriculum to deliver the education needed, NAHT Cymru did highlight the risk of overloading it:

“But just in terms of generally with the curriculum, I'd say there's potential for it being overloaded to the point where this is the kind of area that might get squeezed out in some schools.”³²²

Education in the longer-term and the new curriculum

390. A number of witnesses discussed the need for longer-term changes to the education of younger people.

391. Professor McAllister highlighted the need for a more expansive education programme:

“You can look at schools and colleges as either a captive audience or a huge opportunity for promoting a different, more engaged citizen in the future, and we definitely came down in the latter camp, in that if we were to introduce votes at 16, we say very clearly that that should be aligned with a much more expansive programme of political and civic

³²⁰ CLA Committee, 7 May 2019, RoP [11]

³²¹ CLA Committee, 7 May 2019, RoP [98]

³²² CLA Committee, 1 April 2019, RoP [306]

education. And I think that that requires quite a lot of investment, actually, in both time and resource, for it to be done effectively. But, I think, if the two things go hand-in-hand, then for me, 16 gives an opportunity to start a young person on the democratic journey with the right tools to be able to be a constant voter rather than an occasional voter, which I think we know young people have tended to be up until now.”³²³

392. In terms of what kind of profile citizenship and political education should take, Professor McAllister said:

“We don’t think it should purely be the mechanics of how you vote, the practical considerations about going to a polling station and casting your vote, nor should it be just about electoral systems because, obviously, we use various different electoral systems in Wales and elsewhere. We think it should be about how to evaluate political offers, so to speak. So, in lots of European countries, evaluating manifesto commitments can be incorporated into the curriculum ... So, this could be quite expansive ... quite radical ... in terms of democratic renewal ... we know that we have ... a problem with democratic engagement, some would say a crisis. If we’re going to address that seriously, then it seems to me doing something through schools and with the youngest age population is probably the most advantageous way of going about it.”³²⁴

393. Professor McAllister also noted that, in terms of the Expert Panel’s recommendation on citizenship and political education, aligning it with an assertion about better provision being needed was a way of saying: “This could be a benefit to everybody in the franchise, not just to young people”.³²⁵

394. She went on to acknowledge that:

“... in terms of what we were asked to do—to make a conclusion over the appropriateness of lowering the voting age to 16 and 17—this seemed to us to give an opportunity to kick start something, which, as you rightly say ... should be present more widely and more consistently anyway.

³²³ CLA Committee, 25 March 2019, RoP [75]

³²⁴ CLA Committee, 25 March 2019, RoP [82]

³²⁵ CLA Committee, 25 March 2019, RoP [95]

But, I guess, given it isn't, and given it isn't expansive enough, this is an opportunity to do so."³²⁶

395. The Llywydd also emphasised the importance of more general citizenship education³²⁷ and, when asked about the particular nature of education provision, noted support for the points made by Professor McAllister:

“Our outreach and education workers already do work with young people ... The advice to us from them is exactly what Laura McAllister said to you: yes, the mechanics of voting, taking the box to show how the actual vote happens on paper is interesting and useful to young people, but the real engagement comes from identifying issues and political philosophy and what leads to the political decision that you make in deciding who to vote for. So, that has to be constructed as part of all of this. It's already in operation.”³²⁸

396. The Electoral Reform Society Cymru highlighted that what was effective in Scotland was:

“... the rolling out of opportunities to debate and discuss current affairs, and that's definitely what we heard through the Our Voices Heard project. The young people ... were suggesting things like space to debate in form time, experience of how to run a campaign, and being able to look at current affairs and discuss them. Also, developing the analytical skills needed to dissect what is fake news and what's good social media content to follow.”³²⁹

397. As regards the new curriculum, the Minister for Education acknowledged the need for consistency in the messages children received in relation to political and citizenship education.³³⁰ NAHT Cymru liked the flexibility the new curriculum provided but recognised the “need to balance that against the consistency of what you'd expect in terms of a core experience, a core activity that you'd want all children in all schools to have access to”.³³¹

³²⁶ CLA Committee, 25 March 2019, RoP [96]

³²⁷ CLA Committee, 7 May 2019, RoP [142]

³²⁸ CLA Committee, 7 May 2019, RoP [144]

³²⁹ CLA Committee, 1 April 2019, RoP [42]

³³⁰ CLA Committee, 7 May 2019, RoP [43]

³³¹ CLA Committee, 1 April 2019, RoP [308]

Raising awareness outside of the education system

398. Clearly there is a role for the education system in helping prepare young people to vote at the age of 16.

399. The Llywydd discussed engaging those who are less usually involved:

“It’s always a challenge, of course, to ensure that particular groups or particular schools, even, who have less desire or less capacity to be part of the democratic process—that we, as the Commission, in our education work, and also everyone else, should be working harder or working differently in order to ensure that people who are usually less involved in the democratic process are engaged and given more guidance as to how they can also participate too.”³³²

400. The Minister for Education discussed the responsibilities falling not just on the education system:

“So, it cannot be the job of education alone to ensure that people go to the polling station; it has to be the responsibility of other people. What is my job and what I regard the job of the education system to be is to ensure that children and young people will have had the opportunity—either in school, in college, in the youth service, in informal education—to avail themselves of the skills and knowledge that they need so that they can participate. But I just think we will fail if we think it’s only down to teachers and lecturers to make this happen.”³³³

401. NAHT Cymru also told us of the need for engagement to go beyond the curriculum:

“... if you leave it just to schools to pick those things up, then we’re missing opportunities. One thing I think that young people seem to operate in particularly now is in a social media type world, a world where they take their information much, much more widely than the traditional avenues that we did as youngsters.”³³⁴

³³² CLA Committee, 7 May 2019, RoP [152]

³³³ CLA Committee, 7 May 2019, RoP [60]

³³⁴ CLA Committee, 1 April 2019, RoP [321]

402. The Electoral Commission also highlighted the need to focus on those not in formal education.³³⁵

Resourcing of awareness-raising and education

403. The EM to the Bill states that the costs associated with promotion and awareness raising of the changes to the franchise would be £150,000 for the Assembly Commission.³³⁶

404. In a letter from the Minister for Housing and Local Government and the Minister for Education to the Llywydd on 30 January 2019, it was stated that the estimated cost for producing educational material for delivery in schools and elsewhere would be around £895,000-£945,000 over three years. The letter also said that the Ministers would be grateful if the Llywydd could take the matter of financial contribution from the Assembly Commission under consideration.³³⁷

405. We were told by the Assembly Commission's Head of Strategic Transformation:

“... the Llywydd has replied to the Minister to explain that the Assembly Commission set aside £150,000 within its budget, which will be directed in a way that's consistent with the overall aims and objectives of the campaign, but not as a direct contribution to the Welsh Government for those costs that they've identified. I think those are being resourced by Welsh Government itself.”³³⁸

406. The Assembly Commission's Director of Finance explained that in respect of the £150,000:

“... the money that we receive as a Commission comes straight from the Welsh consolidated fund, so it wouldn't be suitable for us to transfer that money straight to the Government. So, we would spend that money, but jointly with the Government and the Electoral Commission ...”³³⁹

³³⁵ CLA Committee, 29 April 2019, RoP [60]

³³⁶ Senedd and Elections (Wales) Bill: Explanatory Memorandum, Table 25, pages 144-145

³³⁷ Letter from the Minister for Housing and Local Government and the Minister for Education to the Llywydd, 30 January 2019

³³⁸ CLA Committee, 7 May 2019, RoP [173]

³³⁹ CLA Committee, 29 April 2019, RoP [351]

407. NAHT Cymru told us that “it will be critical that schools are provided with the resources and professional learning for staff on an ongoing basis”.³⁴⁰ It said it:

“... is the funding issues that are hitting schools at the moment are creating challenges in their ability to deliver policy that they even agree with, that they feel strongly that should be in place. They’re worried that actually some of that is being diluted because of the resource they have open to them.”³⁴¹

408. It spoke of the challenges ahead:

“So, you’re talking about not just the resource to deliver but also the scale that you’ve got to deliver over time, and, as a head, trying to look at how you manage that over a timetable that is, frankly, ambitious, is challenging, and however you might feel how important this might be, you have to assess the school’s ability to bring this into play for young people particularly.”³⁴²

409. As regards professional learning, NAHT Cymru added:

“So, to add on top of that something specific about professional learning to deliver what we’re talking about in this legislation, we’d have to think really carefully about the ability to deliver that in time, I think.”³⁴³

410. The Minister for Education explained that funding to the amount of £600,000³⁴⁴ had been identified:

“... specifically for education to invest in resources and professional learning. That’s above and beyond professional learning money that is being made available for the introduction of the new curriculum on its own.”³⁴⁵

³⁴⁰ Written evidence, SE05, NAHT Cymru

³⁴¹ CLA Committee, 1 April 2019, RoP [312]

³⁴² CLA Committee, 1 April 2019, RoP [315]

³⁴³ CLA Committee, 1 April 2019, RoP [316]

³⁴⁴ CLA Committee, 7 May 2019, RoP [70]

³⁴⁵ CLA Committee, 7 May 2019, RoP [64]

411. She indicated it could be used for “filling any gaps with regard to resources”, professional learning³⁴⁶ and “specifically to support the work, findings and outcomes from the stakeholder group”³⁴⁷.

412. In terms of delivering professional learning in time for the delivery of this Bill, she said:

“I from the centre cannot make judgments ... Professional learning money will be made available, and it is for headteachers, who understand the professional learning needs of their staff, to develop professional learning plans for their staff. So, I am confident that there is the financial resource there that will allow schools to engage in this process.”³⁴⁸

Working together and the stakeholder group

413. We heard a range of evidence from witnesses on the need and intention for different stakeholders to work together to shape the implementation of the Bill, particularly around awareness-raising and education.

414. The Counsel General, in his letter of 13 February 2019, stated that the Welsh Government is:

“... working with the Assembly Commission to consider what arrangements will be necessary to ensure extension of the franchise for devolved elections is successful. These will include research, communication and educational material. We anticipate the need to establish a Welsh Government External Board of advisors to help with this work, and the Commission will be key partners in helping us to shape this work.”³⁴⁹

415. The Counsel General spoke of the need for educational materials to be ready for September 2020 and noted the work underway to achieve that objective.³⁵⁰

416. The Llywydd, in a letter to the Minister for Housing and Local Government, and the Minister for Education, discussed the make-up of the stakeholder board:

³⁴⁶ CLA Committee, 7 May 2019, RoP [66]

³⁴⁷ CLA Committee, 7 May 2019, RoP [68]

³⁴⁸ CLA Committee, 7 May 2019, RoP [72]

³⁴⁹ Letter from the Counsel General, 13 February 2019

³⁵⁰ CLA Committee, 29 April 2019, RoP [189]

“You asked for my suggestions for the stakeholder board.

I would suggest that this should include public sector organisations which represent the electoral community and young people, including

- The Electoral Commission
- Wales Electoral Coordination Board
- The Association of Electoral Registration Officers
- The Welsh Local Government Association
- The Children’s Commissioner

I would also suggest that the involvement, in an advisory capacity, of other stakeholders from the electoral and youth sector. These might include the Electoral Reform Society Cymru, Bite the Ballot, the Future Generations Commissioner and representatives of youth organisations on the Welsh Youth Parliament Steering group.

I would suggest that our officials meet to discuss the detail of these proposals and explore further the kind of support you would expect from Assembly Commission officials for the Welsh Government Board in order for the External Board to be established as quickly as possible.”³⁵¹

417. The Llywydd also said:

“As you will be aware, the timetable is tight with a registration campaign required in 2020, and I am keen for there to be materials for schools available in September of this year. Commission officials are ready to work swiftly with Government officials to ensure this work is delivered effectively.”³⁵²

418. She stressed the importance of the need to undertake work on engagement “well in advance” of the election³⁵³ and also highlighted relevant resources for schools put together by the Assembly Commission and currently available on the

³⁵¹ Letter from the Llywydd to the Minister for Housing and Local Government, and the Minister for Education, 8 March 2019

³⁵² Letter from the Llywydd to the Minister for Housing and Local Government, and the Minister for Education, 8 March 2019

³⁵³ CLA Committee, 7 May 2019, RoP [117]

Hwb platform.³⁵⁴ The Llywydd acknowledged that information was also needed “for those who are outwith the school system or are in other areas by the time they get to 16 and 17 years old”.³⁵⁵

419. The Electoral Reform Society Cymru supported such collaboration:

“... it’s imperative that the Assembly Commission and the Welsh Government, particularly the education Minister and the local government Minister, are really working together on this to really develop those political education recommendations, and we hope to see that moving forward.”³⁵⁶

420. Similarly, the Electoral Commission spoke of the need to bring groups together “to work out who needs to do what and when”.³⁵⁷

421. A Welsh Government official accompanying the Counsel General explained the make-up and role of the stakeholder group, highlighting the importance of avoiding duplication and consistent messaging. She also noted that:

“... part of the role of this group will be to oversee the output of the research we’ve just commissioned into what goes into the materials both for schools and a wider communication campaign, because we want to take the opportunity of the extension of the franchise to try and interest other people in democracy who perhaps don’t vote as well. We would like turnout to be greater overall, and the focus on 16 and 17-year-olds gives us the opportunity to do some more work in that area.”³⁵⁸

422. The Chief Executive and Clerk of the Assembly noted the stakeholder group’s role, saying:

“... we will be planning campaigns on a joint basis to ensure that we avoid duplication, and where we develop materials for schools and so on, we will ensure that we do that in a way that is co-ordinated to create one large campaign...”

³⁵⁴ CLA Committee, 11 March 2019, RoP [118] and 7 May 2019, RoP [116]

³⁵⁵ CLA Committee, 11 March 2019, RoP [18]

³⁵⁶ CLA Committee, 1 April 2019, RoP [96]

³⁵⁷ CLA Committee, 29 April 2019, RoP [65]

³⁵⁸ CLA Committee, 29 April 2019, RoP [194]

... it is within the terms of operation of the Commission to be doing engagement work and ambassadorial work with regard to constituents and prospective voters. So, our education team does have a great deal of engagement experience, and particularly expertise in working with schools and young people, and indeed children. And so we're aware of the particular challenges in reaching those groups, and we very much hope that we'll be able to provide a great deal of expertise in that engagement work going forward."³⁵⁹

423. The Llywydd told us that the external board of advisors will “meet for the first time this side of the summer”.³⁶⁰ She explained that the research being commissioned by the Welsh Government would involve focus groups with young people and other newly enfranchised electors to ascertain how best to provide information.³⁶¹ She also told us that while the research is due to be published in January 2020, interim findings and reports will start to inform the development of educational and engagement resources and awareness-raising campaign.³⁶²

424. The Minister for Education indicated that the stakeholder group would also look at “the practicalities of ensuring that newly enfranchised voters actually find their way onto the electoral roll”³⁶³, with work also being undertaken into “how we engage children who are not in formal education, employment or training”³⁶⁴.

A duty in the Bill related to awareness-raising and education

425. When asked about having a statutory duty on the face of the Bill in relation to civic education, the Llywydd said:

“Well, from my discussions to date with the Welsh Government, they don't favour having a statutory duty on the face of the Bill, and I agree that that would be inappropriate. Referring back once again to the fact that it is appropriate for the Llywydd, as the Member in charge of this Bill, to be involved with policy and legislation that relates to constitutional matters, related to our elections for this Senedd, but it's another issue for a Bill of this kind to place a duty on Government to formulate policy on education in any way whatsoever. So, I don't think

³⁵⁹ CLA Committee, 29 April 2019, RoP [352-353]

³⁶⁰ CLA Committee, 7 May 2019, RoP [139]

³⁶¹ CLA Committee, 7 May 2019, RoP [139]

³⁶² Letter from the Llywydd, Senedd and Elections (Wales) Bill, 16 May 2019

³⁶³ CLA Committee, 7 May 2019, RoP [91]

³⁶⁴ CLA Committee, 7 May 2019, RoP [21]

that this Bill and this work needs that duty placed on Government to do this.”³⁶⁵

426. The Counsel General told us:

“There isn’t a plan to make political education mandatory in the curriculum, but you’ll know that there’s a different approach to curriculum going forward, but I think there is a significant opportunity, given the focus, as I mentioned briefly earlier, in relation to one of the outcomes being informed, engaged citizens, to find a range of ways to make sure that we are able to achieve that—the best way of achieving it.”³⁶⁶

427. When asked whether there should be a duty on the Bill to facilitate political and citizenship education Professor McAllister said:

“I think, in terms of the remit of the Bill, from our point of view, clearly, it would have been preferable to have seen a commitment to move in the direction of citizenship and political education, but I understand there is a degree of overlap, obviously, with executive responsibilities in that regard, and the origins of this Bill, having come from the Llywydd and the Commission, might have made that difficult. But I think whatever happens in amendments further down the line, there needs, in my opinion, to be a very strong, aligned commitment to improving the curriculum and extra-curricular engagement with young people around politics and civic education.”³⁶⁷

428. Professor Ellen Hazelkorn indicated that there were risks associated with not putting education provision on the face of the Bill:

“... I think there are things that you might consider in terms of the legislation as to make it mandatory. I think if it’s not, then there are issues where some schools do it better than others. Some are more well resourced. You end up with the more elite, upper socioeconomically advantaged becoming more advantaged and others not, because it’s not well resourced, it’s not seen as something that’s part and parcel.”³⁶⁸

³⁶⁵ CLA Committee, 7 May 2019, RoP [152]

³⁶⁶ CLA Committee, 29 April 2019, RoP [211]

³⁶⁷ CLA Committee, 25 March 2019, RoP [81]

³⁶⁸ CLA Committee, 1 April 2019, RoP [156]

429. Professor Egan supported the need for a legal duty in the Bill for the Welsh Government to ensure political and citizenship education is properly addressed.³⁶⁹

430. However, we received a lot of evidence that was sceptical of including a duty.

431. The WLGA told us:

“... I think it’s important to stress that it is probably not necessary to include it on the face of the Bill, a duty around the curriculum or civic education in schools, because the curriculum reforms will be introducing it...”³⁷⁰

432. The Children’s Commissioner for Wales told us:

“I wouldn’t necessarily expect political education to be included on the face of the Bill, particularly given the forthcoming changes planned to the contents and structure of the curriculum in Wales, but I am pleased to see this commitment being formally restated within the Bill documents.”³⁷¹

433. Solace explained that:

“We have duties and performance standards as electoral registration officers and returning officers to promote registration, to promote awareness of elections and to promote participation in elections. I think, between a number of organisations, we have huge reach with young people, particularly through the youth service that we have.”³⁷²

434. When we probed further about including an awareness duty in the Bill, Solace made the following observation:

“What does a duty do when it’s something so generalistic as to promote awareness? We’re trying to ignite enthusiasm for all of us to promote and give access. Of course there should be ongoing curriculum reform ... You could argue that having too much reliance on the curriculum actually makes it feel a little more educational and instructive, away from the real life of somebody wanting to take part in the community ...

³⁶⁹ CLA Committee, 1 April 2019, RoP [157-158]

³⁷⁰ CLA Committee, 1 April 2019, RoP [248]

³⁷¹ Written evidence, SE07, Children’s Commissioner for Wales

³⁷² CLA Committee, 1 April 2019, paragraph 246

I would question that putting a duty will add value. I'd rather be more imaginative."³⁷³

435. NAHT Cymru felt wary of adding a duty to the Bill and thought that "some kind of statutory guidance or some kind of document like that, which explains the practical application of what we are looking to encourage ... would be of more use to schools than the legislation".³⁷⁴

436. As regards the need for guidance to be issued to schools, the Minister for Education said:

"We will actively consider that. We will actively consider whether there will be the need for additional guidance. And I don't rule that out. And if the stakeholder groups feel that that would be necessary, that is something that we would actively engage in."³⁷⁵

437. As already indicated, the Minister for Education also told us that the legislation in itself would help:

"... the passing of this legislation will add to that imperative, because those children will be exercising those rights. And I think it just changes the nature of the conversation, it changes the context in which some of those lessons are being delivered."³⁷⁶

438. The Electoral Commission noted its duty to raise awareness under existing legislation:

"The commission, under the Political Parties, Elections and Referendums Act 2000, has a current legislative duty to raise awareness and promote public awareness, which it takes very seriously."³⁷⁷

Our view

439. Despite the Bill containing no provisions relating to education, we received a significant volume of evidence concerning this issue in relation to lowering the voting age to 16 for National Assembly elections.

³⁷³ CLA Committee, 1 April 2019, RoP [251]

³⁷⁴ CLA Committee, 1 April 2019, RoP [349]

³⁷⁵ CLA Committee, 7 May 2019, RoP [101]

³⁷⁶ CLA Committee, 7 May 2019, RoP [98]

³⁷⁷ CLA Committee, 29 April 2019, RoP [61]

440. We are convinced of the need for adequate education and awareness-raising for the proper implementation of the Bill. For that reason, we are concerned at the apparent lack of a coherent action plan.

441. While there was an acknowledgement that everyone is working together to a broadly understood objective, we are unclear as to who is leading on this work, and who has responsibility for specific areas, in readiness for the 2021 Assembly election.

442. In our view, the Llywydd, the Counsel General and the Minister for Education were not sufficiently clear about their plans for awareness-raising and education.

443. We believe the issues that need to be considered, should the Bill become law, can be categorised into the following areas:

- work to promote the ability of 16 and 17 year olds to vote in the 2021 Assembly election and the voting process to be followed;
- the educational work needed in schools and elsewhere to facilitate knowledge and understanding of the democratic process in order to help young people come to an informed choice when exercising their vote in the 2021 Assembly election;
- a longer term programme of education for future elections (split between the old curriculum and the new curriculum as necessary).

444. Our focus is primarily on the action which needs to be taken in the run up to the 2021 Assembly election, covering the first two of these areas, but we also feel that this work represents an important opportunity to improve political and citizenship education generally in Wales and for all age groups.

445. The available time before the 2021 Assembly election for both awareness-raising and education is clearly challenging, and the evidence we received on the current provision of political and citizenship education in schools as well as the capacity for the current curriculum to absorb the required changes was varied and inconclusive. This is an area which would benefit from greater clarity.

446. If 16 and 17 year olds are to exercise their right to vote in 2021, then a clear, co-ordinated, timetabled and costed plan for awareness-raising and education is needed as a matter of urgency.

447. We recognise that there is work underway to formally co-ordinate activity through a stakeholder group. While this collaboration is welcome, we are

surprised that it was not established in parallel with the preparation for the Bill and has yet to meet.

448. We remain unclear as to the stakeholder group's make-up, responsibilities, and operational timeframe. The evidence suggests that this group will have considerable influence on programmes of awareness-raising and education, from the creation of materials, to the allocation of resources, to decisions potentially around the issuing of guidance to schools.

449. Given the potential influence the stakeholder group may have, we would welcome clarity from the Llywydd and Welsh Government as to its make-up, defined role and responsibilities, the resources allocated to it, and its expected outputs.

Recommendation 11. The Llywydd should publish, at the earliest opportunity, the membership and terms of reference for the stakeholder group, including the key milestones and timeframes for delivery.

Recommendation 12. The stakeholder group should prepare an action plan for the co-ordination of all work related to the preparation of awareness-raising and educational materials for the 2021 Assembly election, identifying clearly lines of accountability, as well as responsibility for preparing each particular work stream.

450. In our view this material could potentially include information about:

- the act of registering to vote;
- the act of voting, either in a polling station or through postal votes;
- the voting system in the National Assembly;
- neutral information about politics, political parties and political philosophies;
- manifestos including how to access and evaluate them;
- how to analyse and evaluate political information for accuracy, particularly when using social media.

Recommendation 13. After the 2021 Assembly election, the stakeholder group should undertake a review of the election to collate lessons-learned in order to inform future policy development and guide schools on the most effective way

of delivering political and citizenship education as part of both the current and new education curriculums.

451. We agree with the Llywydd and the Welsh Government that the Bill should not include duties in relation to educational matters. We do consider, however, that guidance is necessary to ensure sufficient and consistent educational provision across Wales and welcome the Minister for Education's commitment to consider this matter further, following advice from the stakeholder group.

Recommendation 14. The Minister for Education should issue a written statement explaining how citizenship and political education will be delivered in time for the 2021 Assembly election, including the timeframe for any accompanying guidance she intends to issue.

452. We note from the evidence that some £900,000 has been earmarked for awareness-raising and education in relation to lowering the voting age by the Welsh Government and Assembly Commission. However, the Welsh Government has committed £600,000 and the Assembly Commission £150,000. We are not clear who is responsible for the apparent funding shortfall.

453. We have noted that the EM also identifies costs of awareness raising for local authorities and the Electoral Commission.

Recommendation 15. The Llywydd should issue a written statement at the earliest opportunity detailing the funding being provided by each body contributing to awareness-raising and education in readiness for the 2021 Assembly election.

Oversight of administration of elections

Duty to consider reform of oversight of the work of the Electoral Commission

454. We considered section 27 as drafted in the Bill and sought to explore, in light of the views of the Assembly Commission and the Welsh Government, how they intend to amend this section.

455. The EM states that:

“Whilst it is considered appropriate that the Bill requires the Assembly to consider how the Electoral Commission's functions should operate in relation to Wales, it is not considered appropriate to dictate how this exercise should be carried out. Rather the Bill specifies that the Senedd

may make provision within its Standing Orders on how the duty should be carried out. The Bill provides that any such provisions made within the Standing Orders can delegate functions to the Presiding Officer, a committee or sub-committee of the Assembly.”³⁷⁸

456. The EM notes the Scottish Government’s intention to introduce legislation on electoral reform in 2019, including allowing the Scottish corporate body to finance the Electoral Commission’s work relating to Scottish devolved elections and to make it accountable to the Scottish Parliament for such work.³⁷⁹

457. In her letter to us of 12 February 2019, the Llywydd indicated areas that require further consideration, including:

- the cost to the Electoral Commission of regulating Welsh devolved elections and referendums;
- the funding of such costs by the National Assembly;
- how the funds required to cover such costs would be transferred from Westminster to the National Assembly;
- the arrangements by which the National Assembly would hold the Electoral Commission to account for its work on devolved Welsh elections;
- how such scrutiny arrangements would work alongside scrutiny of the Electoral Commission by the UK Parliament.³⁸⁰

458. The Llywydd told us that her working assumption is that section 27 of the Bill “will be amended to give greater clarity on the accountability and oversight arrangements for the Electoral Commission”.³⁸¹ The Assembly Commission’s Head of Strategic Transformation provided an indication of the changes that would be needed:

“It will require amendments to the Political Parties, Elections and Referendums Act 2000, the Act which currently sets out the arrangements for the accountability of the Electoral Commission, and the role of the Speaker’s Committee on the Electoral Commission and how it’s funded ... in terms of how much detail goes onto the face of the

³⁷⁸ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 22

³⁷⁹ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 66

³⁸⁰ Letter from the Llywydd, Senedd and Election (Wales) Bill, 12 February 2019

³⁸¹ CLA Committee, 11 March 2019, RoP [177]

Bill, about how the procedures of the Assembly may work and how the budget and the estimates are laid and to which committee that goes to, then there is clearly some flexibility as to how much of those provisions could go into Standing Orders in future, if the Bill is amended significantly at Stage 2. But those are issues that we still need to explore.”³⁸²

459. The Llywydd subsequently told us that policy discussions were continuing with the Welsh Government and that:

“... the amendments that we would put forward, would be for a committee within the Assembly to be chaired by the Llywydd or the Deputy Presiding Officer. I think it’s an issue that we will give some more thought on, on whether the membership of that committee should be on the face of the Bill or whether the membership of the committee should be in Standing Orders. I tend to favour it being in Standing Orders, in order to allow for circumstances that can be changed via Standing Orders. The membership of that committee could have a combination that currently looks like the Speaker’s Committee, which includes members of the Government—it could include members of the Government—ex-officio members of this Assembly, who may well be committee Chairs, and named in their capacity as committee Chairs, and also to think about political party representation.”³⁸³

460. The Llywydd also said:

“I understand that it’s not—. The best way to have proposed legislation is to propose it in this way, but we had to consider at one point whether financial and accountability arrangements would be within the local government Bill or within our Bill. It was finally decided and agreed between the Welsh Government and myself that it would be within this Bill ... There is good a synchronicity in the fact that we are now having the powers to undertake changes to our Assembly elections—this Bill provides for some changes to be undertaken—then the Electoral Commission will be responsible for the holding of those elections in 2021, and it feels right that they should, by 2021, be accountable to this

³⁸² CLA Committee, 11 March 2019, RoP [181]

³⁸³ CLA Committee, 7 May 2019, RoP [227]

Assembly for that purpose. And therefore that's why we are still considering bringing forward amendments to enact that in Stage 2."³⁸⁴

461. The Llywydd indicated that the amendments to section 27 were "not wholly necessary" for the 2021 Assembly election, but added:

"... it feels appropriate that the Electoral Commission is accountable to us here as an Assembly on the operation of that first election including the 16 and 17-year-old franchise in 2021."³⁸⁵

462. In a subsequent letter she told us:

"The Electoral Commission will remain one corporate body and I understand it intends to retain one pan-UK corporate plan. The split accountability and financing arrangements would be unusual, with part of its funding being agreed by the Speaker's Committee, the Scottish Parliament (provided they legislate as expected in Scotland) and the Assembly.

My officials are discussing with the Electoral Commission the need to provide clarity in its budget plans and estimates about which elements relate to devolved Welsh elections and which relate to UK activities."³⁸⁶

463. When we questioned the Counsel General, he told us:

"Well, a fundamental constitutional principle, I think, is that it's unsatisfactory for Welsh Ministers to have executive competence over elections without the Assembly having legislative oversight of those arrangements through a direct relationship to the Electoral Commission, so we're in discussion currently both with the Electoral Commission and the Assembly Commission about how that amendment might look. But I think there's broad agreement that it's needed so that a direct relationship can be established with the institution."³⁸⁷

464. He acknowledged that discussions were taking place between the Welsh Government, the Assembly Commission and the Electoral Commission about

³⁸⁴ CLA Committee, 7 May 2019, RoP [226]

³⁸⁵ CLA Committee, 7 May 2019, RoP [236]

³⁸⁶ Letter from the Llywydd, Senedd and Elections (Wales) Bill, 16 May 2019

³⁸⁷ CLA Committee, 29 April 2019, RoP [226]

amendments³⁸⁸ and noted that they were having “ongoing discussions. They’ve been going on for some time”.³⁸⁹

465. We asked whether it would be possible to see potential amendments before the end of Stage 1. An official accompanying the Counsel General told us:

“... the process is continuing and we haven’t looked in detail at the drafting yet, it may be challenging to get fully formed provisions during Stage 1. That’s my feeling at the moment.”³⁹⁰

466. The Llywydd acknowledged that the Counsel General would lead on tabling amendments to section 27, adding:

“I will be discussing with him issues relating to these amendments, including the timescales within which they might be made available to the Committee.”³⁹¹

467. The Electoral Commission told us:

“The accountability of the commission should be to the Assembly Commission and to a committee made up of all political parties, rather than the accountability of the electoral system to a Government or to a Minister. I think we’re absolutely firm on that—that that is the proper procedure, just as, at the moment, we are answerable to the Speaker’s Committee...”³⁹²

468. According to the Electoral Commission:

“Previous discussions with the Assembly Commission have indicated that there are some current arrangements in place that might be utilised for the Electoral Commission to report to the National Assembly for Wales. These include the current panel of Assembly Commissioners establishing a separate ‘Llywydd’s Committee’ – a model similar to the Speaker’s Committee on the Electoral Commission in the UK Parliament.

Functions of this body would include:

³⁸⁸ CLA Committee, 29 April 2019, RoP [226 and 234]

³⁸⁹ CLA Committee, 29 April 2019, RoP [234]

³⁹⁰ CLA Committee, 29 April 2019, RoP [240]

³⁹¹ Letter from the Llywydd, Senedd and Election (Wales) Bill, 16 May 2019

³⁹² CLA Committee, 29 April 2019, RoP [9]

- General oversight of how the Electoral Commission exercises its functions derived from that legislature;
- Reviewing the Commission’s annual estimate of resources required for delivery of functions carried out under its legislative responsibility;
- Requiring the Commission to provide an annual report to facilitate scrutiny of the Commission’s activities;
- Receiving reports from the Wales Audit Office.”³⁹³

469. It told us that it had been working with the Assembly Commission since June 2017 on the detail of how the Electoral Commission would be accountable to the National Assembly and how it would be funded.³⁹⁴ When questioned, the Electoral Commission told us:

“We’re pleased that the clauses as they stand are included in the legislation. We’ve been working very closely with the Llywydd and her officials and with the Welsh Government, over almost two years now, to ensure that the changes that are in the parliamentary legislation, the Wales Act, are included in this legislation.”³⁹⁵

470. In its view “these responsibilities are all transferred to the Assembly by 2021 for Assembly elections”³⁹⁶ and thought “it would be strange, very odd, if all these changes went through for elections in Wales but ... accountability of the commission in Wales for those elections remained with the committee in Westminster”.³⁹⁷

471. Professor McAllister felt that:

“... it’s right and proper that the Electoral Commission comes under the remit of this institution. I think, probably, more work needs to be done about how that would be operationalised and how it would be funded and how you as an institution would ensure that there is proper oversight of its activities, but, in principle, I think it’s the right one.”³⁹⁸

³⁹³ Written evidence, SE12, Electoral Commission

³⁹⁴ Written evidence, SE12, Electoral Commission

³⁹⁵ CLA Committee, 29 April 2019, RoP [101]

³⁹⁶ CLA Committee, 29 April 2019, RoP [102]

³⁹⁷ CLA Committee, 29 April 2019, RoP [103]

³⁹⁸ CLA Committee, 25 March 2019, RoP [125]

472. Support for the Electoral Commission being accountable to the National Assembly also came from SOLACE.³⁹⁹

473. Professor Bush QC noted that:

“... the legal purist in me would say this is placing a duty on yourself, which really is not a useful exercise, but, of course, the purpose of legislation is whatever the legislature wants to make it, and, as I understand it, the purpose of this is to reinforce the requirement for the Assembly to look into this matter and come up with some detailed suggestions.”⁴⁰⁰

474. He added that he was “totally in agreement with the principle behind that provision” but a lot of work was needed,⁴⁰¹ saying:

“... it does seem to me that it’s not something you can rush, that, until you’ve examined the complexity of it, you don’t really know how much time it’s going to take. But I think that we’re talking about, first of all, something fundamental to democracy—confidence in elections and so on—and it’s something that needs to be developed, I think, in detail, in a way that everybody’s comfortable with, not least of all the Electoral Commission ... the aim, as I say, is totally laudable ... but I’m just a little bit concerned that this is a bit of a shortcut, really, to what needs to be done.”⁴⁰²

475. We asked the Chief Executive and Clerk of the Assembly about the cost implications of amendments to section 27. She said:

“It’s a little difficult to talk theoretically about this without knowing what the proposals are that would come forward. Certainly, we would envisage, at the point where proposals do come forward, they would be accompanied by robust financial information that we would do our best to provide. In terms of those amendments, obviously there are two kinds of costs. There are costs of funding the Electoral Commission’s activities and then there are costs relating to the oversight and scrutiny of the Electoral Commission’s activities and facilitating the oversight of the Electoral Commission’s work. I understand that there are discussions ongoing between the Welsh Government, the Electoral

³⁹⁹ CLA Committee, 1 April 2019, RoP [278]

⁴⁰⁰ CLA Committee, 25 March 2019, RoP [182]

⁴⁰¹ CLA Committee, 25 March 2019, RoP [182]

⁴⁰² CLA Committee, 25 March 2019, RoP [210]

Commission and the Treasury with regard to the possibility of transferring money to the Welsh consolidated fund to pay for the former, to pay for the work itself..."⁴⁰³

476. On 13 June 2019, the Llywydd wrote to us providing more information about the proposed policy direction relating to the financing and accountability of the Electoral Commission in relation to devolved elections in Wales.⁴⁰⁴ The Counsel General also wrote to us on the same issue on 25 June 2019.⁴⁰⁵

Our view

477. We agree with the Llywydd, the Counsel General and the Electoral Commission that, as a matter of principle, the Electoral Commission in Wales should be accountable to the National Assembly.

478. We consider that such arrangements should have been included in the Bill on its introduction rather than the approach now being suggested of tabling amendments to do so at Stage 2.

479. The evidence we heard regarding possible amendments to section 27 and the nature of those amendments highlights the significance of the legislation needed to make the Electoral Commission in Wales accountable to the National Assembly.

480. It is clear from the evidence we heard that making the Electoral Commission in Wales accountable to the Assembly involves a considerable amount of policy development and that these matters are likely to be incredibly complex. In addition, matters related to funding the change in accountability need to be considered and agreed. This probably explains why work on the amendments anticipated to deliver these policy changes has not yet progressed significantly.

481. We note that an equivalent process to make the Electoral Commission in Scotland accountable to the Scottish Parliament is being undertaken in Scotland by the Scottish Government.

482. The evidence we took also highlights our concerns about the approach to legislating in respect of section 27. It has the feel of legislation that is being rushed and the reasons for doing so are not, in our view, compelling.

⁴⁰³ CLA Committee, 29 April 2019, RoP [322]

⁴⁰⁴ Letter from the Llywydd, Financing and accountability of the Electoral Commission, 13 June 2019

⁴⁰⁵ Letter from the Counsel General, 25 June 2019

483. We do acknowledge that it would be constitutionally preferable to have arrangements in place prior to the 2021 Assembly election.

484. In the circumstances, we consider that provisions setting out the detailed arrangements for oversight of the Electoral Commission in Wales by the National Assembly should be included in the forthcoming local government Bill. This would allow for full scrutiny of those provisions during a Stage 1 process, allowing engagement with stakeholders on the detail of the provisions and not just the policy intent.

Recommendation 16. The Llywydd should amend the Bill to remove section 27.

Recommendation 17. In the absence of a stand-alone Bill, the forthcoming local government Bill should include sections setting out the detailed arrangements for oversight of the Electoral Commission in Wales by the National Assembly.

7. Part 4 – Disqualification

Part 4 of the Bill makes changes to the law on disqualification from being an Assembly Member. It draws on a report by our predecessor Committee in the Fourth Assembly, which was prepared in the light of two Members elected to the National Assembly being found to be disqualified because they were members of public bodies to which serving Members were not permitted to belong.⁴⁰⁶

485. In 2014 our predecessor Committee in the Fourth Assembly published a report on disqualification from membership of the National Assembly, making 21 recommendations.⁴⁰⁷ The report followed correspondence from the then First Minister.⁴⁰⁸ The EM notes:

“Reflecting that it was a majority view amongst respondents who expressed a firm view on this question, the Bill includes provisions to implement the recommendations of the Fourth Assembly’s Constitutional and Legislative Affairs Committee in relation to disqualification from being an Assembly Member.”⁴⁰⁹

486. Part 4 of the Bill makes specific changes to the legislation on disqualification from being an Assembly Member, the current framework for which is set out in sections 16 to 19 of the 2006 Act.⁴¹⁰ In particular, section 16(1) of the 2006 Act lists some of the persons disqualified from being an Assembly Member. Other persons disqualified are identified by reference to other legislation or are included within other pieces of legislation.

487. In addition, Disqualification Orders made under the 2006 Act set out long lists of offices disqualified from sitting as an Assembly Member.

⁴⁰⁶ Background and policy context for the changes is contained in chapter 4, section 4.4 of the EM

⁴⁰⁷ Constitutional and Legislative Affairs Committee, Inquiry into the Disqualification from Membership of the National Assembly for Wales, July 2014

⁴⁰⁸ Letter from Rt Hon Carwyn Jones AM. First Minister to Dame Rosemary Butler, Presiding Officer, Disqualification from membership of the National Assembly for Wales, 27 January 2014

⁴⁰⁹ Senedd and Elections (Wales) Bill, Explanatory Memorandum, paragraphs 62

⁴¹⁰ Summarised in Annex 1: The Legislative context of the Bill, pages 290-291 of the EM

488. As matters currently stand, under The National Assembly for Wales (Representation of the People) Order 2007, disqualifications are applied at the point a candidate is nominated for election.

489. Section 29(2) of the Bill:

- disqualifies Members of the House of Lords from membership of the Assembly by adding them to the list contained in section 16(1) of the 2006 Act (subject to section 31 which inserts a new section 17C into the 2006 Act and provides that disqualification does not apply if leave of absence is obtained from the House of Lords);
- with section 29(6) and Schedule 2, includes within new Schedule 1A to the 2006 Act, a full list of all persons or office holders disqualified from being a member of the National Assembly or a candidate in an election to be a member of the National Assembly;⁴¹¹
- removes the holders of the offices of the Auditor General and the Public Services Ombudsman for Wales from section 16(1) of the 2006 Act and includes them within new Schedule 1A to the 2006 Act so they are treated on the same basis as other publicly appointed offices in Wales;
- removes members of Assembly staff from section 16(1) of the 2006 Act (although the Clerk of the National Assembly is included within new Schedule 1A to the 2006 Act).

490. Section 29(3) of the Bill establishes two distinct categories of disqualifications by inserting two subsections (1A) and (1B) into section 16 of the 2006 Act. These provisions provide that:

- one category takes effect on nomination (i.e. disqualifications from standing for election to the Assembly);
- the other takes effect on taking the oath or affirmation of allegiance (i.e. disqualifications from being an Assembly Member).

491. Section 29(4) removes subsections (2) to (4) from section 16(1). These relate respectively to disqualifications from being a member of, or sitting and voting in, the House of Commons (other than disqualifications under the House of Commons Disqualification Act 1975), disqualification of offenders and the

⁴¹¹ A summary of new Schedule 1A is set out in paragraphs 107-113 of the Explanatory Notes to the Bill (page 285 of the EM).

disqualification of lords-lieutenant, lieutenants and high sheriffs. These disqualifications are instead set out more fully in the new Schedule 1A.

492. Sections 30, 32 and 33 of the Bill amend sections 17, 18 and 19 of the 2006 Act respectively, while section 34 makes consequential amendments.

Consideration of the changes proposed

493. The EM indicates that the changes:

“... should remove some barriers to standing for elections and enable more people to stand for election because they will not have to give up their employment to do so. The aim is that this lessening of a barrier to standing for office may lead to a potential increase in diversity of representation as well as to a more effective process.”⁴¹²

494. The Llywydd emphasised the intention of the Bill as allowing “more people to stand for election because they wouldn’t have to resign their post before standing”⁴¹³ and to “provide the clarity ... that wasn’t there in 2011”.⁴¹⁴ She clarified how these provisions would work in later correspondence with us.⁴¹⁵

495. The Counsel General told us that the principle of the change “to distinguish the two kinds of disqualification⁴¹⁶ is right, following on from his letter to us which stated:

“The Welsh Government fully supports the policy intention of clarifying which persons/offices are disqualified from membership, and which are disqualified from candidacy. We are undertaking detailed analysis of these provisions to satisfy ourselves that they eliminate complexity as far as possible, and that we are comfortable with the policy rationale for any changes to eligibility from existing law.”⁴¹⁷

496. The Counsel General also said:

“The principle ought to be that one should maximise the range of people capable of standing for election, but consistent with some

⁴¹² Senedd and Elections (Wales) Bill, Explanatory Memorandum, paragraphs 62-63

⁴¹³ CLA Committee, 11 March 2019, RoP [190]

⁴¹⁴ CLA Committee, 11 March 2019, RoP [188]

⁴¹⁵ Letter from the Llywydd, Senedd and Elections (Wales) Bill, 16 May 2019

⁴¹⁶ CLA Committee, 29 April 2019, RoP [259]

⁴¹⁷ Letter from the Counsel General to the Chair, 13 February 2019

conflicts, and we have to be clear about how we address those. That means that some people should not be entitled to stand for election—for example, judges and so on—because of the political dimension to that.”⁴¹⁸

497. He confirmed that from the Welsh Government’s perspective there is “work to be done in relation to this part of the Bill”.⁴¹⁹

498. Professor Awan-Scully agreed with the principle, as far as possible, of not restricting those who stand as candidates:

“What’s proposed, I think, is a very modest move in that direction, and I think, except for some of the extremely important offices they mentioned, in general, I think, where there’s a potential conflict of interest, that mostly comes at the point of election rather than necessarily just of standing. We should not, in general, be making it harder for people to become candidates for political office, including an institution like this. Doing so is a public service and, frankly, it’s something we need more of and not less.”⁴²⁰

499. Professor Bush QC was supportive of the changes being proposed, saying “these provisions do put right the thing that I think needed to be put right”.⁴²¹ However, he stated that “the detail needs to be looked at”⁴²² and that “care will need to be taken to ensure consistency in the allocation of offices” that are listed for constitutional reasons as inconsistent with being an Assembly Member.⁴²³ He noted for example:

“... that the post of President of Welsh Tribunals does currently not appear in the first list, although it is one that is constitutionally incompatible with being a Member.”⁴²⁴

500. We asked Professor Bush QC about the possibility of taking the oath and automatically resigning from any disqualifying office as a result, a position that the Bill does not adopt. He said:

⁴¹⁸ CLA Committee, 29 April 2019, RoP [256]

⁴¹⁹ CLA Committee, 29 April 2019, RoP [259]

⁴²⁰ CLA Committee, 25 March 2019, RoP [261]

⁴²¹ CLA Committee, 25 March 2019, RoP [188]

⁴²² CLA Committee, 25 March 2019, RoP [188]

⁴²³ Written evidence, SE03, Professor Keith Bush QC

⁴²⁴ Written evidence, SE03, Professor Keith Bush QC

“... I think it would be an added refinement to say that if you hold one of these offices then you automatically cease to hold it if you take the oath as an Assembly Member. That certainly would be an alternative and, of course, you don’t eliminate the risk of an inadvertent disqualification entirely by the new arrangements, because it does place an onus on a candidate who is elected to know whether they’re going to have to resign or not from a particular office before they take the oath. And I think many people would say this is not really much of a burden to place on people...”⁴²⁵

501. When asked, the Assembly Commission’s Head of Legal Services explained why the Bill did not include a provision such that a person is deemed to have automatically resigned any disqualifying offices upon taking the oath:

“There is a legislative competence issue there though, because some of the disqualifying offices don’t fall within the remit of the Assembly. So, the Assembly could not legislate as to when an individual ceases to hold a particular office. So, to legislate for that for some and not others would lead to a possibly slightly more confusing picture than exists at the moment.”⁴²⁶

502. The Electoral Commission welcomed the approach in relation to the point at which a person is disqualified, but stated that:

“It is important these changes are clearly stated in law so that potential candidates wanting to stand for election can find out easily if they might be disqualified. It is also important that they are communicated six months before the deadline for nominations so any changes can be understood.”⁴²⁷

503. The WLGA felt that the Bill would make things clearer saying:

“It streamlines it and makes it clearer for people involved in the process and avoids the previous issues experienced.”⁴²⁸

504. It also considered that:

⁴²⁵ CLA Committee, 25 March 2019, RoP [198]

⁴²⁶ CLA Committee, 11 March 2019, RoP [195]

⁴²⁷ Written evidence, SE12, Electoral Commission

⁴²⁸ CLA Committee, 1 April 2019, RoP [267]

“... the WLGA agreed that councillors should be disqualified—not disqualified, but prohibited from being Assembly Members as well. I think the period was that they should resign within 12 months of being elected to another role. So the WLGA’s position is that the two roles should be separated in terms of clarity and transparency for the public, to avoid confusion, but also because the role of Assembly Members and councillors requires a significant amount of time dedicated to specific issues—obviously national issues, typically, within this institution, but more local community issues in authorities. So, our view is that the two roles should be separated.”⁴²⁹

505. The Electoral Reform Society Cymru felt that double-jobbing adds an extra strain for existing Assembly Members⁴³⁰, and explained:

“... we in principle don’t have any objections to double-jobbing, and I don’t think we’ve necessarily seen any particular issues. I wouldn’t want to pinpoint any particular individuals who currently do. I just think it’s important to consider the capacity of the Assembly in an argument around whether it is feasible for Assembly Members to do two roles.”⁴³¹

506. We also received evidence from a member of the public about civil servants’ eligibility to stand:

“As I understand it, civil servants are banned from running to be AMs. Wales has a huge number of civil servants. Imagine Swansea and the DVLA – all prevented from being AMs because they are civil servants. Surely it’s fairer to allow civil servants to run for office but only for them to quit IF they are elected. Can this be added to the Bill?”⁴³²

Our view

507. We welcome the proposals to implement recommendations from our predecessor Committee, especially in relation to the point at which candidates are disqualified.

⁴²⁹ CLA Committee, 1 April 2019, RoP [270]

⁴³⁰ Written evidence, SE04, Electoral Reform Society Cymru

⁴³¹ CLA Committee, 1 April 2019, RoP [23]

⁴³² Written evidence, SE02, anonymous individual

508. We feel it is an important principle not to restrict those who may stand for election beyond what is necessary. We accept, however, that there are offices which are incompatible with standing for election.

509. We therefore welcome the distinction between those who are disqualified from standing for election, and those who are eligible to stand, but whose offices are incompatible with sitting as an Assembly Member.

510. We further welcome the added clarity and improved accessibility the Bill brings to disqualification of membership from the National Assembly.

511. We agree with witnesses who suggested that Schedule 2 to the Bill requires careful consideration. In particular, we note that the Welsh Government is undertaking further work in this area.

Recommendation 18. The Llywydd and the Welsh Government should satisfy themselves that Schedule 1A of the 2006 Act, as inserted by section 29 of, and Schedule 2 to, the Bill, is appropriate.

512. In reaching these views, we highlight the fact that a draft Bill would have helped ensure that Schedule 2 was fit for purpose, with the added benefit of enabling discussion with the relevant groups affected.

8. Part 5 – Miscellaneous

Part 5 of the Bill contains various amendments to the 2006 Act. It extends the deadline for the first meeting of the National Assembly after an election, confers powers on the Welsh Ministers to make regulations giving effect to Law Commission recommendations on electoral law, and clarifies the Assembly Commission’s ability to charge for providing goods and services.

513. Part 5 contains three sections. Two of these sections, relating to the meetings of the National Assembly and the powers of the Assembly Commission, are matters specifically relevant to the internal operation of the Assembly. We received minimal evidence on these sections.

514. A third section provides the Welsh Ministers with order-making powers to make provisions about elections in order to implement Law Commission recommendations.

Meetings of the Senedd

Timing of first meeting

515. Currently, the 2006 Act requires that the first meeting of the National Assembly must take place within seven days of a National Assembly election.

516. Further, the 2006 Act and Standing Orders place restrictions on which Assembly Members may be elected to the offices of Presiding Officer and Deputy Presiding Officer. The EM states:

“In practice, when read together, sections 25(7), (8) and (9) of the GOWA 2006 and SOs 6.12–14 mean that, unless the Assembly resolves to disapply the criteria at the relevant point (either at the start of an Assembly or during an Assembly term if circumstances change):

- the Llywydd and Deputy Presiding Officer must belong to different political groups;
- one of them must belong to a political group which has an executive role;

- the other must belong to a political group which does not have an executive role.”⁴³³

517. The EM indicates that these may not be knowable within the seven-day deadline:

“Section 47 of the GOWA 2006 requires the Assembly to nominate a First Minister within 28 days of an ordinary or extraordinary election. It may not, therefore, be clear at the point at which the Assembly must elect a Llywydd and Deputy Presiding Officer which political groups will have, or will not have, executive roles in the new Assembly term.”⁴³⁴

518. Section 35 of the Bill proposes to increase this time limit to 14 days. According to the EM, this would provide greater flexibility⁴³⁵ and extend:

“... the opportunities for discussions and negotiations between political parties after an election. This is particularly important for proportional electoral systems such as that in use in the Assembly, which may be considered less likely to produce majority one-party governments, and where such discussions and negotiations may have a substantial political impact for years to come.”⁴³⁶

519. The proposal was supported by a majority of respondents to the Assembly Commission’s 2018 consultation exercise.⁴³⁷

520. Professor Awan-Scully welcomed this change:

“I think allowing just a little bit more breathing space after the election, particularly in the likelihood—you know, we’ve never yet had an Assembly election that has resulted in an absolute one-party majority. Who knows where we’ll be by 2021, but it’s quite likely that we may be in similar territories, and it’s reasonable to allow the parties a little bit of time.”⁴³⁸

521. Professor Bush QC agreed that:

⁴³³ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 248

⁴³⁴ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 251

⁴³⁵ Senedd and Elections (Wales) Bill: Explanatory Memorandum, paragraph 254

⁴³⁶ Senedd and Elections (Wales) Bill, Explanatory Memorandum, paragraph 74

⁴³⁷ Senedd and Elections (Wales) Bill, Explanatory Memorandum, paragraph 76

⁴³⁸ CLA Committee, 25 March 2019, RoP [272]

“... the period between an election and the first meeting of the Senedd should be not more than fourteen days instead of seven days. There needs to be sufficient time for the parties to discuss, amongst each other, who is to form a government and, consequently, who should hold the posts of Presiding Officer and Deputy Presiding Officer.”⁴³⁹

Our view

522. We recognise that with the current time-limit of 7 days, forming a government and selecting a Presiding Officer and Deputy Presiding Officer can prove challenging.

523. We therefore agree with the proposal in section 35 to extend the timeframe within which the new Assembly must hold its first meeting from seven to fourteen days.

Implementation of Law Commission proposals

Power of the Welsh Ministers to make provision about elections etc

524. Section 36 amends section 13 of the 2006 Act (Power of the Welsh Ministers to make provisions about elections) to add new subsections 1A - 1C which will enable Welsh Ministers to make regulations (subject to the affirmative procedure) to give effect to changes to electoral law recommended by the Law Commission for England and Wales. According to the EM, the purpose of the power is to develop consistency between the law applicable to National Assembly elections and local government elections. Regulations under section 13 (1A) will enable the Welsh Ministers to make provision about local government elections in addition to elections to the National Assembly.⁴⁴⁰

525. The electoral law reform project originated in the Law Commission for England and Wales' Eleventh Programme of Law Reform. Its scope, determined in 2012, extends to electoral administration law, offences and legal challenges. An interim report was published in February 2016.⁴⁴¹ The purpose of the recommendations was to simplify the administrative arrangements relating to elections and to standardise those arrangements across the four parts of the UK (unless there is good reason for taking a different approach, for example in

⁴³⁹ Written evidence, SE03, Professor Keith Bush QC

⁴⁴⁰ Senedd and Elections (Wales) Bill: Explanatory Memorandum, Part 4: Explanatory Notes, paragraph 115

⁴⁴¹ Law Commission of England and Wales, Scottish Law Commission and Northern Ireland Law Commission, [Electoral law: and interim report](#), February 2016

relation to language provisions in Wales or because of differing electoral systems).⁴⁴²

526. The EM notes that the Assembly Commission’s consultation exercise asked whether legislation to reform the National Assembly’s electoral arrangements should implement Law Commission recommendations about the conduct and administration of elections.⁴⁴³ Reflecting the majority in favour, the EM states that the:

“Bill enables the Welsh Ministers to make orders to ensure that elections in Wales are administered in a way that is compliant with the recommendations for electoral administration made by the Law Commission.

This provision has been drafted so as to ensure that

- the power may only be used to give effect to recommendations of the Law Commission in relation to the rationalisation of electoral law; and
- the power will be subject to the affirmative procedure.”⁴⁴⁴

527. The Llywydd felt the Bill was a suitable vehicle to confer such powers:

“... when and if there are recommendations for reform on administrative arrangements, the powers are with Welsh Ministers to put those into effect. And this was seen at the time of introduction as a reasonable way of introducing this into primary legislation.”⁴⁴⁵

528. The Electoral Commission welcomed the inclusion of section 36:

“... we certainly welcome in the Bill that you’ve added a provision that actually picks up the Law Commission recommendations we’re looking at in due course. We think that’s key for well-run elections across the UK, but certainly in Wales. It is essential, at some point and at some point soon, that those reforms are picked up and looked at, otherwise, the burden—you know, at some stage it topples over and it becomes

⁴⁴² Senedd and Elections (Wales) Bill, Explanatory Memorandum, paragraph 633

⁴⁴³ Senedd and Elections (Wales) Bill, Explanatory Memorandum, paragraph 68

⁴⁴⁴ Senedd and Elections (Wales) Bill, Explanatory Memorandum, paragraphs 70-71

⁴⁴⁵ CLA Committee, 11 March 2019, RoP [202]

impossible to run elections well. So, we think that is absolutely imminent now.”⁴⁴⁶

529. Capital Law generally supported the inclusion of section 36. Despite some reservations, it was reassured by intended protections in place.⁴⁴⁷

530. However, in his letter of 13 February 2019, following the introduction of the Bill, the Counsel General told us he did “not believe it is appropriate to take forward Law Commission recommendations, or to create an expectation about them, in this way...”.⁴⁴⁸ He added that “Law Commission recommendations for reform of electoral law or any law should, if these are supported by the Welsh Government, generally be introduced using primary legislation under expedited procedures”.⁴⁴⁹

531. The Counsel General confirmed that the Law Commission recommendations:

“... should be matters that are dealt with through the Assembly, perhaps on the basis of some kind of different procedure, but essentially those should be matters for primary law-making powers and consideration in the usual way.”⁴⁵⁰

532. He also confirmed his intention to table amendments to remove these provisions at Stage 2, saying “That’s the intention. That’s what I would like to see”.⁴⁵¹

533. Professor Bush QC was concerned that “the breadth of the extra powers that would be granted to the Welsh Ministers by section 36 seems to go beyond that which would normally be regarded as constitutionally desirable”. He said that “important changes to the law, especially in relation to electoral law, should be open to full legislative scrutiny”.⁴⁵²

534. Capital Law agreed with this point, highlighting it as one of their reservations:

“... we share the concerns of Keith Bush QC of the apparent carte blanche right for Ministers to make these orders – query whether any

⁴⁴⁶ CLA Committee, 29 April 2019, RoP [50]

⁴⁴⁷ Written evidence, SE10, Capital Law

⁴⁴⁸ Letter from the Counsel General to the Chair, 13 February 2019

⁴⁴⁹ Letter from the Counsel General to the Chair, 13 February 2019

⁴⁵⁰ CLA Committee, 29 April 2019, RoP [128]

⁴⁵¹ CLA Committee, 29 April 2019, RoP [267]

⁴⁵² Written evidence, SE03, Professor Keith Bush QC

important changes to electoral law (beyond those which are merely technical/ administrative) should be open to full legislative scrutiny?”⁴⁵³

535. Another of Capital Law’s potential reservations was that the powers may be redundant “given that Ministers do have, in theory, an existing similar power (under the Government of Wales Act 2006) to implement any Commission recommendations”, although they tended to agree with comments in the EM about the benefits of section 36.⁴⁵⁴

536. The AEA said that section 36 would “introduce further complexity into already complex electoral legislation which has the potential to create both voter and administrator confusion and increase risk”.⁴⁵⁵

537. Professor Awan-Scully said that ideally, UK-wide legislation would be enacted to implement a great deal of the 2016 Law Commission report, which highlighted inconsistencies between different parts of the UK and told us that “it is not immediately obvious how ... giving powers to Ministers in one territory in the UK to implement some of that takes you a very great way along the sort of roads that the law commissions were talking about”.⁴⁵⁶

Our view

538. We note concerns raised by some witnesses relating to section 36 powers.

539. We share the concern of the Counsel General with respect to the undesirability of conferring powers on the Welsh Ministers as provided for in section 36.

540. We have consistently cautioned against the use of subordinate legislation to implement significant policy changes.

Recommendation 19. The Llywydd should amend the Bill to remove section 36.

Powers of the Senedd Commission

Senedd Commission

541. The EM noted that section 37 of the Bill clarifies that the Assembly Commission can charge for the provision of services (as well as goods) not in

⁴⁵³ Written evidence, SE10, Capital Law

⁴⁵⁴ Written evidence, SE10, Capital Law

⁴⁵⁵ Written evidence, SE14, Association of Electoral Administrators

⁴⁵⁶ CLA Committee, 25 March 2019, RoP [266-267]

connection with the discharge of its functions.⁴⁵⁷ It states that clarification is needed because existing provisions in the 2006 Act are:

“... ambiguous, as they refer to the sale of goods and the provision (rather than sale) of services. Consequently, it is unclear whether the Assembly is able to charge for services which are not in connection with the discharge of its functions, for example filming on the Assembly estate.”⁴⁵⁸

542. According to Professor Bush QC, section 27 will “remove any doubt about the legal basis of activities which ... already take place to some extent and thereby free the Commission to develop these activities”. However, he notes that this should be “within sensible boundaries, as necessary”.⁴⁵⁹ He clarified that by sensible boundaries he meant:

“... a boundary needs to be put between the things that are appropriate and the things that are not ... The things that are appropriate don’t have to be very closely and directly connected with the work of the Assembly, it seems to me, provided that they don’t undermine the work of the Assembly and they help to contribute towards the cost of maintaining the institution and thereby take the burden, to some extent, off the taxpayer.”⁴⁶⁰

Our view

543. We support the clarification of law generally, and therefore welcome the clarification section 37 provides to paragraph 4 of Schedule 2 to the 2006 Act in relation to the Assembly Commission’s ability to charge for the provision of goods and services.

⁴⁵⁷ Senedd and Elections (Wales) Bill, Explanatory Memorandum, paragraph 82

⁴⁵⁸ Senedd and Elections (Wales) Bill, Explanatory Memorandum, paragraph 80

⁴⁵⁹ Written evidence, SE03, Professor Keith Bush QC

⁴⁶⁰ CLA Committee, 25 March 2019, RoP [208]