

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

Your ref:
Our ref: PO/RB/TJ

19 January 2016

Dear David

I warmly welcome the publication of the Making Laws report and applaud the Constitutional and Legislative Affairs Committee for its detailed and robust investigation.

I whole-heartedly concur with the report's observation that while the Assembly can be proud of its role as a modern legislature, making changes for the benefit of the people of Wales, there remain challenges to be addressed. Best practice constantly evolves, and we must move with it, in order to deliver an efficient legislative process to deliver on behalf of the people of Wales.

In the following annex, I have responded to those recommendations which have an immediate bearing on the responsibilities of the Assembly Commission. I am pleased to be able to accept all such recommendations.

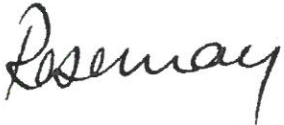
In doing so, I recognise that the Committee's wider recommendations may also have a bearing upon the Assembly Commission. For example, I welcome the Committee's recommendation that the Welsh Government, in collaboration with the Law Commission, should develop a long-term plan for consolidating law in Wales. In recent written evidence to the Law Commission, I commented that I would personally wish to see the Welsh Government committing to a programme

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of either consolidation or codification. Should the Welsh Government accept this recommendation, the Assembly Commission will clearly be a key stakeholder in taking this work forward. Likewise, I anticipate that the Assembly Commission would have a particular interest in the Welsh Government's review of its approach to producing Explanatory Memoranda as well any work to produce a standard terminology database or explore the feasibility of the establishment of a Queen's Printer for Wales..

In conclusion, I would like to thank all those who contributed to the inquiry, and for the Committee's thorough and reflective report.

Yours sincerely



Dame Rosemary Butler AM
Presiding Officer

Responses to specific recommendations

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.

Recommendation 5: We recommend that a financial memorandum is published alongside all draft Bills, containing information about the costs of the current policy and legislative position and the costs after legislation. This recommendation applies to the Welsh Government and Assembly Members given leave to introduce Bills.

Response: Accept (as related to the Assembly Commission)

I welcome the Committee's recommendations on pre-legislative scrutiny. As I commented in my evidence to the Committee, I believe that in a unicameral institution, pre-legislative scrutiny is an extremely valuable element in the legislative process.

Clearly, it is appropriate that decisions on publishing draft Bills and their associated financial memorandums remain the responsibility of individual Assembly Members given leave to proceed.

However, I believe it would be appropriate for the guidance prepared for Assembly Members given leave to proceed with Members' Bill in the Fifth Assembly to incorporate these recommendations as best practice. Notably two Members' Bills given leave to proceed within the Fourth Assembly (the Holiday Caravan Sites (Wales) Bill and Safe Nurse Staffing Levels (Wales) Bill) were published by Members as draft Bills for consultation. Such guidance can therefore highlight, based on these previous experiences, the benefits of publishing a draft Bill as part of the process of developing a Bill.

Recommendation 23: We recommend that the Assembly Commission and the Welsh Government explore the feasibility of putting in place arrangements for the secondment of staff from the Office of the Legislative Counsel to the Assembly Commission.

Response: Accept (as related to the Assembly Commission)

As I noted in oral evidence to the Committee, there is limited capacity in Wales for drafting both legislation and amendments.

Assembly Commission officials have previously explored a broad range of options for improving our capacity to draft amendments, with staff currently undertaking coaching and mentoring from an experienced former Parliamentary Counsel.

As part of this consideration of a broader package of measures to improve capacity, it is reasonable that consideration is given to exploring the feasibility of harnessing expertise from the Office of the Legislative Counsel to assist non-Government Members. This would not necessarily be restricted to the concept of a secondment from the Office of the Legislative Counsel.

However, in considering this matter, it is important to note that staff should not be placed in a position where they could be perceived to have a conflict of interests, and that suitable guarantees of confidentiality and impartiality would be essential.

There would also need to be confidence that the secondment of staff from one organisation to another would not inadvertently erode:

- the limited capacity of the Welsh Government to draft robust amendments and legislation; nor
- the Commission's own developing capacity (by limiting opportunities for the Commission's own lawyers to draft, which are an important element in increasing our developing capacity).

Recommendation 25: we recommend that the Assembly Commission should ensure that it publishes summaries of amending stages of all Bills within an appropriate period of time after the completion of that Stage's proceedings.

Response: Accept

I note the Committee's positive comments regarding the Assembly's Research Service producing summaries of successful amendments at Stage 2 proceedings, and- where appropriate- after other amending stages. I agree that summaries should routinely be published following amending stages, to increase the accessibility of the Assembly's proceedings to a wider audience.

Recommendation 27: We recommend that committees aim to:

(i) incorporate consideration of post-legislative scrutiny into their planning of the scrutiny of individual Bills referred to them by the Business Committee;

(ii) re-visit their proposed approach after Stage 4 has been completed, taking into account issues raised during scrutiny.

Response: Accept (as related to the Assembly Commission)

The Committee's recommendation on post legislative scrutiny is pertinent, and its report helpfully highlights the value of the Health and Social Care Committee's post-legislative scrutiny of the Mental Health (Wales) Measure 2010. As a new parliamentary body, it is particularly important that we determine whether previously passed legislation has delivered its intended benefits, and what lessons we can learn from such.

Clearly it is appropriate that individual committees decide the level and nature of post-legislative scrutiny that they wish to undertake. I concur with the report's observation that in developing legacy reports and papers, Assembly committees may wish to identify Acts that might particularly benefit from post legislative scrutiny in the Fifth Assembly.

I also consider it reasonable that guidance for committees determining their approach to legislation in the Fifth Assembly should incorporate this recommendation as best practice.

Recommendation 28: We recommend that the Welsh Government and Assembly Commission review their approaches to public engagement on the legislative process and publish the outcome of their respective reviews in readiness for the Fifth Assembly.

Response: Accept (as related to the Assembly Commission)

As I commented in oral evidence to the Committee, I am firmly of the opinion that the people of Wales must have opportunity to engage in the legislative process. The laws passed by the Assembly are about the people of Wales, and if they cannot have their say on them, the laws will not be fit for purpose at the end.

In light of the Committee's recommendation, Assembly officials have already met with Welsh Government colleagues to scope opportunities for our legislative engagement activity to better complement each other, or perhaps co-ordinate our efforts in this regard. We are currently implementing a comprehensive programme of website improvements which will make access to the law and its development easier to understand and follow. We plan to increase and further improve the opportunities for the public to engage with the lawmaking process in time for the Fifth Assembly. A report outlining the review's conclusions and recommendations will be published by May 2016.

This is not to say that the Assembly Commission has not already sought to improve its approach to public engagement. As part of its drive to develop more efficient and effective ways of working, the Assembly Commission has facilitated ongoing internal processes for sharing and reviewing good practice, including

that related to public engagement on the legislative process. As a result, Communications officials now regularly present committee Members with options for engaging the public in their consideration of Bills as a matter of course. Proposals are always tailored to the policy specifics of the Bill, Members' appetite to hear from specific audiences, and how best to communicate with them which is usually a mix of both online and face to face engagement. Good examples of this work include:

- the use of vignettes (scenarios) during focus groups with the gypsy traveler community as part of the Communities, Equalities and Local Government committee's consideration of the Housing (Wales) Bill; and
- legislation workshops in advance of the introduction of the Gender-based Violence, Domestic Abuse and Sexual Violence (Wales) Bill to inform and inspire relevant stakeholders to get involved with the process.

A constraint on our ability to engage a greater number of people in this work is the amount of time available for committees to consider legislation. A ten week timescale for a committee's consideration of the general principles of a Bill can leave as little as three weeks for it to plan for, engage and analyse public opinion about what can be complex and intimidating subject matters. An extended period for stage 1 consideration, coupled with an appreciation of the impact the timing of introduction (e.g. establishing the Christmas recess as the window for public engagement with the principles of the Human Transplantation (Wales) Bill) can have on public engagement, could be beneficial.

Recommendation 29: We recommend that the Assembly Commission works closely with the National Archives and the Welsh Government to improve the accessibility of Welsh legislative texts. As part of this process, the Assembly Commission should report to this Committee on the action it is seeking to take before the end of the Fourth Assembly.

Response: Accept (as related to the Assembly Commission)

I wholeheartedly agree with the Committee's comments that accessibility of law is a key issue for everyone involved in its production. As I commented in evidence to the Committee, and in my response to the Law Commission's consultation on the form and accessibility of the law applicable to Wales, it is an essential pillar of democracy that citizens can understand the laws to which they are subject. I anticipate that the Law Commission's forthcoming report may have an important bearing on improving the accessibility of legislative texts.

Assembly Commission officials are discussing with The National Archives (TNA) potential ways in which the Assembly Commission could support efforts to update the information contained on the legislation.gov.uk website. This website, hosted



by TNA, is the official web-accessible database of the statute law of the United Kingdom (including legislation passed by the National Assembly for Wales). Being a free-to-access site it has a vital role in enabling the public to access the laws which affect them. Bringing its contents up to date with the effects of legislation will enable the public to more readily find and look up the laws to which they are subject.

Officials are also discussing with the Welsh Government how the Assembly Commission could potentially support the future development of the www.law.gov.wales website, a collaboration between the Welsh Government and Westlaw UK which aims to provide explanatory narrative and commentary on all areas of law devolved to Wales. Improvements to the navigability of the Assembly website, www.assembly.wales, are also planned.

This financial year, the Assembly Commission is investing in an upgrade for the legislation software which will enable the publication of more searchable and machine readable) versions of legislative documents (including lists, Bills and Acts), which will be more accessible for a broader range of external stakeholders.

Recommendation 32: We recommend that the Assembly Commission invests resources in capturing data relevant to the operation and function of scrutiny in the Assembly as a means of facilitating the decision-making process and ensuring the efficient use of time and resources in the delivery of services to Assembly Members.

Response: Accept

I agree with the Committee's comments that robust data is an important feature in informed decision making.

In light of the Committee's report, Assembly Commission officials have conducted a retrospective data analysis, which enables information to be provided on a number of specific issues raised in the Committee's report, including "the number of Bills subject to post-legislative scrutiny; the amount of available time used by committees and the amount of time used by committees for policy and legislation scrutiny."¹

Post legislative scrutiny has been conducted in this Assembly by Committees on:

- The Learning and Skills (Wales) Measure 2009;
- The Mental Health (Wales) Measure 2010;
- The Active Travel (Wales) Act 2013;
- The Control of Horses (Wales) Act 2014;
- The National Health Service Finance (Wales) Act 2014.

¹ Constitutional and Legislative Affairs Committee, Making Laws in Wales, October 2015, Paragraph 391.

In terms of the **amount of time used by Committees**, a retrospective analysis of Committee agendas between September 2014 and August 2015 identified that between September 2014 and August 2015 that 78.37% of Committee meeting 'slots' in the working week were used for formal or informal business. This was based on the available 'slots' being Monday afternoon, Tuesday morning, Wednesday afternoon, Thursday morning and Thursday afternoon.²

The same analysis of Committee agendas found that the total **split of time between policy scrutiny and scrutiny of Government legislation** was approximately 2 hours of policy scrutiny for every 1 hour of legislative scrutiny during this period.³ The same analysis also identified considerable variation between Committees on the balance of policy scrutiny to legislation scrutiny. Some committees (for example, the Enterprise and Business Committee) had no legislation to consider during this period. Others had to schedule significantly more time for consideration of legislation than policy (for example, the Communities, Equalities and Local Government Committee had a ratio of 1 hour policy scrutiny for every 2.7 hours of legislation scrutiny).

Assembly Commission officials will also consider how our systems can best capture information on a day-to-day basis during the Fifth Assembly, to minimise the need for retrospective analysis or sampling.

Recommendation 33: We recommend that the Welsh Government works closely with the legislation software supplier and the Assembly Commission to ensure it finds a solution to the problems it has identified.

Response: Accept (in relation the Assembly Commission)

Assembly Commission officials will continue to work with the Welsh Government to find solutions to the problems it has identified.

The two parties recently established a Legislation Software User Group, with the purpose of both sharing good practice and providing a forum for discussing

² 308 of 393 possible 'slots' were used, Formal or informal business that occurred outside a Committee's scheduled slots were not considered in this analysis. Formal meetings that did not take place due to industrial action were treated as slots unused. Slots were also treated as unused if a Committee chose not to meet because it was doing business later that week (i.e. outside the scheduled slots).

³ This is based on 25 142 minutes of agenda time having been scheduled for policy scrutiny gathering, compared to 12 317 minutes for scrutiny of government legislation (these minutes include scheduled meeting time used for the purpose of gathering informal evidence). This provides a comparative ratio of 2.04124:1. A further 1808 minutes of agenda time were scheduled for scrutiny of non-government legislation. When non-government legislation is included, the ratio becomes 1.77996:1.

issues and problems as they arise. A first meeting of this Group took place on 20 October 2015.

Discussions are also underway between the two parties to agree a Memorandum of Understanding, which sets out the arrangements and actions each has voluntarily agreed to abide by, and implement, in relation to the on-going use of the existing legislation software.