

Report on the Elections and Elected Bodies (Wales) Bill

January 2024



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About the Committee

The Committee was established on 26 May 2021. Its remit can be found at www.senedd.wales/SeneddLJC

Current Committee membership:



Committee Chair:
Huw Irranca-Davies MS
Welsh Labour



Alun Davies MS
Welsh Labour



Samuel Kurtz MS
Welsh Conservatives



Adam Price MS
Plaid Cymru

The following Members attended as substitutes during this inquiry:



James Evans MS
Welsh Conservatives



Peter Fox MS
Welsh Conservatives

Contents

1. Introduction.....	3
Purpose of the Bill	3
The Committee’s remit.....	5
2. Legislative competence.....	7
Our view.....	8
3. General observations.....	9
Consultation on the Bill’s proposals.....	9
Interaction with the Elections Act 2022.....	9
Accessibility of the law on devolved elections.....	11
Delegated powers and the balance between what is on the face of the Bill and what is left to subordinate legislation.....	12
Our view.....	14
4. Specific observations on particular sections and powers to make subordinate legislation.....	17
Sections 1 and 2 (Electoral Management Board of Democracy and Boundary Commission Cymru, and minor and consequential amendments).....	17
Our view.....	18
Section 3 (Duty to register local government electors).....	19
Our view.....	21
Sections 5 to 7 (Pilot regulations: powers, requirements and procedure).....	22
Our view.....	25

Section 8 (Power to change the power to make pilot regulations).....	26
Our view.....	27
Sections 19 and 20 (Electoral reform regulations)	28
Our view.....	32
Section 26 (Survey of councillors and unsuccessful candidates in local elections).....	33
Our view.....	35
Section 27 (Welsh elections information platform).....	35
Our view.....	37
Section 29 (Financial assistance schemes to promote diversity in persons seeking elected office).....	39
Our view.....	40
Section 38 (Code of practice on controls relating to third parties).....	40
Our view.....	42
Sections 41 and 51 (Review period for principal area reviews; Community reviews and implementation)	43
Our view.....	46
Section 61 (Disqualification from being a Member of the Senedd and a community councillor)	47
Our view.....	48
Section 67 (Regulations: restrictions).....	48
Our view.....	49

1. Introduction

On 2 October 2023, Mick Antoniw MS, the Counsel General and Minister for the Constitution (the Counsel General) introduced the Elections and Elected Bodies (Wales) Bill¹ (the Bill), and accompanying Explanatory Memorandum² (the EM).

1. On 26 September 2023, the Business Committee referred the Bill to the Local Government and Housing Committee, and set a deadline of 26 January 2024 for reporting on its general principles.³
2. On 12 October 2023, the Counsel General issued a statement of policy intent for subordinate legislation to be made under the Bill (the statement of policy intent).⁴

Purpose of the Bill

3. On its introduction, the Counsel General stated that the Bill is the next step in the Welsh Government's commitment to modernise and reform devolved elections,⁵ and will “help drive up participation” in those elections.⁶
4. In summary, the Bill proposes to:

¹ Elections and Elected Bodies (Wales) Bill, as introduced, October 2023

² Elections and Elected Bodies (Wales) Bill, Explanatory Memorandum incorporating the Regulatory Impact Assessment and Explanatory Notes, October 2023

³ Business Committee, Timetable for consideration: Elections and Elected Bodies (Wales) Bill, October 2023

⁴ Elections and Elected Bodies (Wales) Bill, Statement of Policy Intent for Subordinate Legislation, October 2023

⁵ The *Wales Act 2017* devolved powers to the Senedd and the Welsh Ministers over local government elections and Senedd elections. Those elections are described as “devolved elections” within this report.

⁶ Welsh Government, Written Statement: Elections and Elected Bodies (Wales) Bill, 2 October 2023

- confer the functions of an Electoral Management Board for Wales (the EMB) on the Local Democracy and Boundary Commission for Wales (the Boundary Commission) which will involve the Boundary Commission establishing the EMB to take responsibility for oversight of the coordination and administration of devolved elections, collaboration with returning officers and electoral registration officers and advising the Welsh Ministers;
- introduce electoral registration without application (sometimes described as automatic voter registration), and the ability to pilot the most appropriate means of achieving this;
- amend and expand the powers of the Welsh Ministers to introduce electoral pilots in respect of all aspects of the electoral process for devolved elections, and, following a successful pilot and a recommendation of the Electoral Commission, make permanent changes to electoral law;
- impose a duty on the Electoral Commission to report on steps taken by returning officers to assist disabled people to vote;
- remove the requirement in the *Local Government and Elections (Wales) Act 2021* (the 2021 Act) to set out the specific wording and format of the local government candidate survey in regulations;
- create a requirement for a voter information platform that can host candidate and voter information for Senedd and ordinary principal council elections;
- impose a duty on the Welsh Ministers to put in place arrangements aimed at improving diversity within Senedd and local government democratic structures, and for individual schemes to be created and tailored to provide support for protected characteristics;
- make changes to the regulation of campaign finance, and enable the Electoral Commission to include such changes in their codes of practice;

- make changes to the timings and requirements of electoral and community arrangements reviews;
- make adjustments to the role, remit and powers of the Boundary Commission, and abolish the Independent Remuneration Panel for Wales and confer its functions on the Boundary Commission;
- provide for the creation of a scheme to enable payments to be made to members of a local authority who stand for election at an ordinary council election but who fail to be re-elected;
- disqualify town and community councillors in Wales from serving as Members of the Senedd, remove the existing grace periods⁷ for principal councillors elected to the Senedd and Members of the Senedd elected as Members of Parliament, and disqualify persons who are not permitted to stand as a candidate or be a member of a district council in Northern Ireland from standing and serving as Members of the Senedd or members of a principal council;
- amend the *Representation of the People Act 1983* (the 1983 Act) to update and modernise the offence of undue influence for local government elections.

The Committee's remit

5. The remit of the Legislation, Justice and Constitution Committee is to carry out the functions of the responsible committee set out in Standing Orders 21 and 26C. The Committee may also consider any matter relating to legislation, devolution, the constitution, justice, and external affairs, within or relating to the competence of the Senedd or the Welsh Ministers, including the quality of legislation.

6. In our scrutiny of Bills introduced into the Senedd, our approach is to consider:

⁷ These provisions are included within sections 17B, 17D, 17E and 17F of the *Government of Wales Act 2006*.

- matters relating to the competence of the Senedd, including compatibility with the human rights protected by the European Convention on Human Rights (the ECHR);
- the balance between the information that is included on the face of the Bill and that which is left to subordinate legislation;
- whether an appropriate legislative procedure has been chosen in relation to the granting of powers to the Welsh Ministers to make subordinate legislation;
- any other matter we consider relevant to the quality of legislation.

7. We took evidence from the Counsel General on 20 November 2023.⁸ Following the evidence session, we wrote to the Counsel General on 28 November 2023 including a series of additional questions in relation to the Bill.⁹ The Counsel General responded on 19 December 2023.¹⁰

⁸ Legislation, Justice and Constitution (LJC) Committee, [20 November 2023, Record of Proceedings](#)

⁹ [Letter to the Counsel General and Minister for the Constitution, 28 November 2023](#)

¹⁰ [Letter from the Counsel General and Minister for the Constitution, 19 December 2023](#)

2. Legislative competence

The Welsh Government is satisfied that the Bill would be within the legislative competence of the Senedd.¹¹

8. We considered the Bill under the reserved powers model of legislative competence, as set out in section 108A of the *Government of Wales Act 2006* (the 2006 Act).

9. In her statement on legislative competence, the Llywydd, the Rt Hon Elin Jones MS, stated that the provisions of the Bill would be within legislative competence.¹²

10. The Counsel General confirmed in oral evidence that he was satisfied the Bill is within the Senedd's legislative competence.¹³ He also told us:

*"We don't consider that there are any significant human rights issues. It does engage with article 10 [of the ECHR], which is to do with the issue of freedom of expression, freedom to communicate, but that is a very qualified right. It's one that has been tested before in the European Court of Human Rights, and so we're satisfied, though, that this is not only necessary, but it's also very much proportionate."*¹⁴

11. The Counsel General elaborated on the Bill's interaction with article 10 of the ECHR, in particular, section 36 in respect of third-party campaign finance:

"It replicates provisions that are in the UK Government's Elections Act 2022 with regard to reserved elections. ... when the ECHR [the European Court of Human Rights] did look at this, they basically considered the issue of third-party expenditure and restrictions on it, or controls over it, to be something that

¹¹ EM, Member's Declaration, page 1

¹² [Presiding Officer's Statement on Legislative Competence: Elections and Elected Bodies \(Wales\) Bill](#), 2 October 2023

¹³ LJC Committee, 20 November 2023, RoP [7]

¹⁴ LJC Committee, 20 November 2023, RoP [35]

was a normal part of the regulation and the conduct and the organisation of elections. So, I think we're confident that it is something that is very much proportionate in terms of the article 10 qualified rights.”¹⁵

12. The Counsel General also told us that he did not consider the Bill's provisions with regard to voter registration without application could engage human rights, as they do not “oblige or require or force” people to register.¹⁶

Our view

13. We note both the Counsel General and the Llywydd's views that the provisions of the Bill would be within the legislative competence of the Senedd.

14. We also note the Counsel General's comments on the engagement of the Bill's provisions with the articles of the ECHR. However, we believe that such information should have been included within the Bill's EM, to supplement the statement required by Standing Order 26.6(i). A summary of which of a Bill's provisions engage the rights protected by the ECHR, and the steps which have been taken to make that engagement proportionate, would in our view assist Members of the Senedd in their consideration of a Bill. We made similar comments in our report on the Environment (Air Quality and Soundscapes) (Wales) Bill.¹⁷

Conclusion 1. We note the Counsel General's comments on human rights but believe that, as a matter of good practice, an Explanatory Memorandum should always include a commentary on the consideration given to the human rights implications of a Bill.

¹⁵ LJC Committee, 20 November 2023, RoP [37]

¹⁶ LJC Committee, 20 November 2023, RoP [39]

¹⁷ LJC Committee, [Report on the Environment \(Air Quality and Soundscapes\) \(Wales\) Bill](#), July 2023, Conclusion 1

3. General observations

Consultation on the Bill's proposals

15. In July 2017, the Welsh Government issued a consultation on proposals for electoral reform in local government; some of which were implemented by the *Senedd and Elections (Wales) Act 2020* and the 2021 Act.¹⁸

16. In October 2022, the Welsh Government issued another consultation on proposals for electoral administration and reform; most of which form the Bill's provisions.¹⁹

17. Within the EM, the Counsel General states that the Welsh Government did not consult on a draft Bill “because an extensive and constructive programme of engagement and collaboration with stakeholders, which builds on earlier consultations, is taking place and will continue through the life of the Bill.”²⁰

18. The Counsel General further explained to us why a draft Bill was not consulted upon:

“... the Bill itself, in terms of policy areas, is actually very, very narrow, isn't it? It's about automatic registration and the establishment of a statutory electoral mechanism. Much of the rest of it is to do quite technically with the process of administration of elections.”²¹

Interaction with the Elections Act 2022

19. During its passage through the UK Parliament before its enactment, the *Elections Act 2022* (the 2022 Act) was subject to the Senedd's legislative consent process; specifically its provisions in respect of voter intimidation and digital imprints.²² Within the first legislative consent memorandum laid in respect of the

¹⁸ Welsh Government, [Consultation: Electoral reform in local government in Wales](#), July 2017

¹⁹ Welsh Government, [Consultation: Electoral administration and reform White Paper](#), October 2022

²⁰ EM, paragraph 4.12

²¹ LJC Committee, 20 November 2023, RoP [11]

²² Senedd Cymru, Legislative Consent: [Elections Bill](#)

then Elections Bill, the Counsel General stated that some of its proposals “may have merit”.²³ He also said:

“... the case for implementing them for devolved elections, if they align with Welsh Government policies, may be strengthened if doing so would maximise clarity for voters, candidates and administrators. However, rather than making provision via this Bill, we would prefer to consult our stakeholders and bring forward legislation to the Senedd in due course.”²⁴

20. On its introduction, the Counsel General stated that this Bill:

“... builds on provisions relating to digital imprints and disqualification orders in the Elections Act 2022 which the Senedd consented to and now apply to Welsh elections. ... [and] will clarify the offence of undue influence and mirror some rules in the Elections Act 2022 in relation to campaign finance.”²⁵

21. We asked the Counsel General how had the Bill, and the Welsh Government’s policy, been affected by the 2022 Act. He told us:

“We had quite extensive engagement through the interministerial group on elections when the UK Government’s legislation was going through. As you know, the area where there was a lot of disagreement was obviously over the use of ID cards and some of the administrative processes that were there. The position that we came to between the four nations— or, really, the three nations because of the Northern Ireland situation— was that we were going to introduce our own legislation in respect of non-reserved elections, et cetera, and Scotland were, obviously, doing the same thing, and then the UK Government elections, for the Westminster elections, would

²³ Welsh Government, [Legislative Consent Memorandum: Elections Bill](#), 9 September 2021, paragraph 44

²⁴ Welsh Government, [Legislative Consent Memorandum: Elections Bill](#), 9 September 2021, paragraph 44

²⁵ Welsh Government, [Written Statement: Elections and Elected Bodies \(Wales\) Bill](#), 2 October 2023

obviously go in their particular direction. So, we shared that information and we very respectfully disagreed with one another in terms of aspects to it. But what we did have were a number of common areas that we were engaged in, and they were things like undue influence, third party campaign finance and some issues around accessibility with disabled voters. And those have been incorporated into this legislation, so there will actually be a certain degree of consistency around that.

There were some areas— relatively minor areas, but nevertheless significant ones— where there were disagreements in terms of what the competence situation was. There were some concerns over that. So, the areas that that related to were intimidation and digital imprints, and those are ones where consent was then given by the Senedd.”²⁶

22. An official accompanying the Counsel General also told us that there was benefit in having a “level playing field” by incorporating some of the provisions of the 2022 Act into the Bill, “so that campaigners and administrators can have a level of predictability so that people don't fall between the gaps of expectations between a devolved and reserved election.”²⁷

Accessibility of the law on devolved elections

23. In its 2022 consultation, the Welsh Government set out its “long term vision” for devolved elections, which includes consolidating the law in this area.²⁸

24. With respect to the consolidation of the law, the Counsel General told us:

“I think this particular legislation does to some extent make things clearer in terms of Welsh elections, but in the longer term I think this area is ripe for a consolidation Bill”.²⁹

²⁶ LJC Committee, 20 November 2023, RoP [22–23]

²⁷ LJC Committee, 20 November 2023, RoP [28]

²⁸ Welsh Government, Consultation: Electoral administration and reform White Paper, October 2022, Consultation document, Chapter 2

²⁹ LJC Committee, 20 November 2023, RoP [150]

25. The Bill refers to the *Local Government (Democracy) (Wales) Act 2013* (the 2013 Act) as the Democracy and Boundary Commission Cymru etc. Act 2013. It also refers to the Local Democracy and Boundary Commission for Wales as Democracy and Boundary Commission Cymru. These are the names which they will be given should the provisions of the Senedd Cymru (Members and Elections) Bill, as introduced,³⁰ be enacted. The Bill is therefore drafted on the assumption that these provisions should be passed by the Senedd in their current form.

26. On 11 December 2023, the Counsel General shared with us a joint schedule of amendments which the Bill and the Senedd Cymru (Members and Elections) Bill would make to the *Political Parties, Elections and Referendums Act 2000*, the 2006 Act, the 2013 Act and the 2021 Act, should both Bills be enacted in their current form. The Counsel General also confirmed that the schedule will be updated as necessary during the passage of the legislation.³¹

Delegated powers and the balance between what is on the face of the Bill and what is left to subordinate legislation

27. The Bill contains 71 sections, divided into three Parts, and a Schedule of minor and consequential amendments to other legislation.

28. Tables 5.1 and 5.2 of the EM provide a summary of the delegated powers in the Bill, which comprise of:

- 17 powers for the Welsh Ministers to make regulations (but see below);
- 4 powers for the Welsh Ministers to make orders;
- 6 powers for the Welsh Ministers to issue directions;
- 2 powers for the Boundary Commission to issue directions; and
- 1 power for the Boundary Commission to issue guidance.

³⁰ *Senedd Cymru (Members and Elections) Bill*, as introduced, Part 3

³¹ *Letter from the Counsel General and Minister for the Constitution, 11 December 2023: Joint schedule of amendments: Elections and Elected Bodies (Wales) Bill and the Senedd Cymru (Members and Elections) Bill*.

29. The Counsel General subsequently confirmed in written correspondence that reference to a further regulation-making power for the Welsh Ministers had been omitted from the EM.³² The Bill therefore includes 18 such powers.

30. The Counsel General told us that he was content with the balance between what is on the face of the Bill and what is left to subordinate legislation.³³ He elaborated as follows:

“... it is a Bill that has quite a lot of delegated powers in respect of regulations; that, I think, is there because there are quite a number of areas that are really to do with pilots, the process, the organisation of elections, codes of conduct and things like that. Some of the powers in respect of regulations, of course, are more curtailed, particularly in some areas where, I suppose, it relates to the creation of offences and so on. So, I am satisfied, but I do think this is quite different to some of the policy legislation that will often come forward to various committees in the Senedd, because so much of it is quite technical and is quite to do with the organisation and the processes for the running of elections.”³⁴

31. We asked the Counsel General whether he had considered including more information about the nature of electoral pilots on the face of the Bill. He told us:

“... there's a difficulty in trying to define what those pilots, for example, might be, particularly ahead of the 2026 election. ... one of the consequences of the election is that there are then a number of reviews that take place in terms of the assessment, and, depending upon those reviews, there are things that will be learnt in terms of what pilots might be ... What is important is establishing the principles within which, and the process by which, pilots can actually take place to ensure that there are certain protections there and the balance of those is right in terms of scrutiny and accountability of those, particularly where

³² Letter from the Counsel General and Minister for the Constitution, 19 December 2023, response to question 9

³³ LJC Committee, 20 November 2023, RoP [46]

³⁴ LJC Committee, 20 November 2023, RoP [46]

necessary and particularly where more fundamental changes might take place.”³⁵

32. An official accompanying the Counsel General also said:

“... ultimately, the purpose of this is to make the framework clearer for the future of how to go about pilots, how to engage the Senedd in agreeing to those in a way that's slightly clearer than existing legislation in relation to pilots.”³⁶

Our view

33. While we note the Counsel General’s view that the Welsh Government has consulted extensively on the policy intentions of the Bill, we believe that there should be a presumption in favour of holding public consultations on draft versions of bills for introduction to the Senedd. We believe that sharing draft versions of bills for consultation would help to ensure that legislation is likely to be fit for purpose, and would allow for full consideration of draft provisions rather than only their intended purpose.

34. We therefore respectfully state that the question of whether to consult on a draft Bill should not involve a subjective assessment of how “narrow” or technical a proposed Bill is deemed to be.

Conclusion 2. We believe that the Welsh Government should have consulted on a draft version of the Bill ahead of its introduction.

35. We also note the Counsel General’s statement that a programme of engagement and collaboration with stakeholders “will continue through the life of the Bill”. We believe it would be prudent for the Counsel General to state whether he anticipates that substantive provisions which introduce new policy will likely emerge from this programme. We request this information to satisfy ourselves, in the interests of good law-making,³⁷ that any information currently

³⁵ LJC Committee, 20 November 2023, RoP [48]

³⁶ LJC Committee, 20 November 2023, RoP [49]

³⁷ Within its report, [Making Laws in Wales](#) (Recommendation 10), the Fourth Assembly Constitutional and Legislative Affairs Committee recommended that the Welsh Government should introduce bills “that can be reasonably considered to be fully developed at the point of introduction”.

consulted upon by the Welsh Government is not likely to result in amendments being tabled by it at stages 2 and/or 3 of the Bill.

Recommendation 1. The Counsel General should state whether the Welsh Government's current programme of engagement and collaboration with stakeholders in respect of the Bill is likely to result in the Welsh Government tabling substantive policy amendments at stages 2 and/or 3.

36. We note the Counsel General's comments around the integration of the Bill's provisions with the provisions of the 2022 Act. In our report on the legislative consent memorandum on the then Elections Bill, we welcomed the Counsel General's view that the Welsh Government would prefer to consult stakeholders in Wales and bring forward its own legislation for scrutiny in the Senedd.³⁸

37. We would therefore like to take the opportunity to again welcome the Welsh Government's decision to seek amendments to the then Elections Bill to remove devolved elections from its provisions, and to bring forward this Bill.

38. We also note the Counsel General's statement that some of the 2022 Act's provisions which apply to England only have been incorporated into the Bill to achieve a "certain degree of consistency". We believe that this is an approach which should be followed where the Welsh Government deems that consistency with UK Parliament legislation is appropriate, instead of recommending that the Senedd should provide consent to the inclusion of devolved provision within UK Parliament legislation.

39. We note, and welcome, the Counsel General's comments on the "extensive engagement" with the UK Government through the interministerial group on elections during the development and passage of the 2022 Act, notwithstanding the areas of disagreement which were encountered.

40. The anticipated passage of both this Bill and the Senedd Cymru (Members and Elections) Bill in quick succession has made the task of scrutiny more complex, and so we are grateful to the Counsel General for sharing a joint schedule of amendments that will be made to existing legislation by both Bills.

³⁸ LJC Committee, [The Welsh Government's Legislative Consent Memorandum on the Elections Bill](#), December 2021, paragraph 44

41. We welcome the Counsel General's commitment to consolidate Welsh electoral law, as since its devolution it has been – and continues to be – subject to extensive reform. We believe that the accessibility of electoral law to a functioning democracy is vital.

42. While we welcomed the Counsel General's positive comments about consolidating electoral law over the longer term within our report on the Senedd Cymru (Members and Elections) Bill,³⁹ we note that, in evidence to the Local Government and Housing Committee in respect of this Bill, the Electoral Commission has called for the Welsh Government to consider the consolidation of devolved electoral law ahead of the 2030 election.⁴⁰ We believe it would therefore be useful to have a clear indication of the priority being given to this exercise within the Welsh Government's overall consolidation programme.

Recommendation 2. The Counsel General should provide an indication of when the Welsh Government intends to introduce a consolidation Bill in respect of Welsh electoral law.

43. We note that the Counsel General is content with the balance between what is on the face of the Bill and what is left to subordinate legislation. We also note the Counsel General's statement that some of the regulation-making powers in the Bill are curtailed, and that it is difficult to define the exact nature of electoral pilots in order to provide more information on the face of the Bill. We however have some reservations about some of these regulation-making powers; they are considered in the next Chapter.

³⁹ LJC Committee, [Report on the Senedd Cymru \(Members and Elections\) Bill](#), January 2024, paragraph 50

⁴⁰ Local Government and Housing Committee, Consultation: Elections and Elected Bodies (Wales) Bill, [EEB.11 – The Electoral Commission](#), page 2

4. Specific observations on particular sections and powers to make subordinate legislation

Sections 1 and 2 (Electoral Management Board of Democracy and Boundary Commission Cymru, and minor and consequential amendments)

44. Section 1 of the Bill inserts a new Part 2A into the 2013 Act. The insertion consists of new sections 20A to 20I, which confer a general function on the Boundary Commission of co-ordinating the administration of Senedd and local elections in Wales, along with any devolved referendums in Wales.

45. Section 20E of the new Part for insertion by the Bill requires the Boundary Commission to establish the EMB, which will solely be responsible for carrying out the Boundary Commission's electoral administration function.

46. Section 20E(3)(c) of the new Part enables the Welsh Ministers by regulations to confer additional functions on the EMB. The statement of policy intent states that this regulation-making power:

*"... is required as Welsh Ministers may need to confer further functions related to electoral administration on the Electoral Management Board in the future. An example of where provisions specified in regulations may add to the functions of the Commission is that it is envisaged the Electoral Management Board would take forward the Welsh Elections Information Platform. Section 27(1) of the Bill will require Welsh Ministers to provide for a Welsh elections information platform and such regulations could confer functions on the Commission (to be exercised by the Electoral Management Board) in relation to that platform."*⁴¹

⁴¹ Statement of policy intent, page 5

47. The statement of policy intent states that the power also provides for “any need in future” for the Welsh Ministers to confer other functions on the EMB.⁴²

48. Section 2 of the Bill introduces minor and consequential amendments to the 2013 Act relating to Chapter 1 of the Bill, which are set out in Part 1 of Schedule 1 to the Bill. Paragraph 1(4)(a) of Schedule 1 replaces section 14(1) of the 2013 Act to prevent the Welsh Ministers from giving a direction to the Boundary Commission in relation to the exercise of its electoral administration function or its functions relating to Senedd constituency boundary reviews.

49. The statement of policy intent states that the purpose of these amendments is to “ensure the independence of the Commission in relation to the exercise of its functions in respect of the Electoral Management Board”.⁴³ The Counsel General confirmed as such in oral evidence.⁴⁴

Our view

50. We note the Counsel General's evidence in respect of sections 1 and 2 of the Bill.

51. We note the justification provided for the creation of a regulation-making power to enable the Welsh Ministers to confer other functions on the EMB, in that this need may arise in the future. We also note the example given, that such a function may be in relation to the Welsh elections information platform (provided by section 27 of the Bill, which we consider later in this Chapter).

52. However, we believe that more information should be provided on the face of the Bill about the types of functions which may be conferred on the EMB by the Welsh Ministers, in order to provide certainty and limitations on the scope of its functions, and to ensure its independence. We believe this is particularly important in light of the emphasis placed by stakeholders, in evidence to the

⁴² Statement of policy intent, page 6

⁴³ Statement of policy intent, page 6

⁴⁴ LJC Committee, 20 November 2023, RoP [84]

Local Government and Housing Committee, on the need for the EMB to be independent.⁴⁵

53. We also believe that including more information on the face of the Bill in this way would also have the effect of limiting the breadth of this regulation-making power, which in our view would be appropriate.

54. Within our recent report on the Infrastructure (Wales) Bill we recommended that the Welsh Government should review that Bill and put more information on its face in respect of the functions it will confer on persons,⁴⁶ and so we make a similar recommendation in respect of this Bill.

Recommendation 3. The Bill should be amended to provide further details about the types of functions which may be conferred on the Electoral Management Board by the Welsh Ministers using the power within section 1 of the Bill.

55. We note that the purpose of the amendments to the 2013 Act within section 2 of the Bill is to ensure the independence of the Boundary Commission, and are content.

Section 3 (Duty to register local government electors)

56. Section 3(1) of the Bill omits section 18 of the 2021 Act, which contains provision regarding registration of local government electors without application that has not been brought into force. The EM states that section 18 of the 2021 Act has been reviewed “with the aim of ensuring consistency of approach across Wales and the security of electors that may be vulnerable.”⁴⁷

57. Section 3(2) inserts a new section (section 9ZA) into the 1983 Act to require each electoral registration officer in Wales to add eligible electors to the local government register in Wales where the officer is satisfied that the person is

⁴⁵ Local Government and Housing Committee, Consultation: Elections and Elected Bodies (Wales) Bill, [EEB.02 – Professor Alistair Clark](#); [EEB.04 – Wales Electoral Coordination Board](#); [EEB.11 – The Electoral Commission](#)

⁴⁶ LJC Committee, [Report on the Infrastructure \(Wales\) Bill](#), November 2023, Recommendation 3

⁴⁷ EM, paragraph 3.31

entitled to be registered. An elector would therefore not be required to make an application to register to vote in devolved elections.

58. The new section to be inserted into the 1983 Act also requires each electoral register officer to notify a person which they intend to register to vote, and provides that person with a period of 45 days to respond with any concerns or objections. If no such concerns or objections are raised, that person will be added to the register. However, if a person objects to being added, or wishes to make an application for anonymous registration, the electoral register officer will be required to stop the automatic registration process and follow the existing process, which will continue to be used for non-devolved elections, provided by section 9E of the 1983 Act.

59. The EM states that because the registration process will be automatic, “and to add additional safeguards for young and vulnerable electors”, the Welsh Government will be removing the open electoral register⁴⁸ in Wales for devolved elections.⁴⁹ The Counsel General has confirmed that the Welsh Ministers intend to make regulations under section 53 of the 1983 Act to remove the open register for devolved elections following the Bill receiving Royal Assent.⁵⁰

60. We asked the Counsel General to further explain why the Bill proposes to amend the 2021 Act in this way. He told us that section 18 of the 2021 Act:

“... was a very narrow piece of legislation. It gave a power to do something, but it didn't have any detail in terms of how that might be operated. What this Bill actually does is just put more flesh on the bones of that. It actually gives a lot more detail in terms of, for example, how auto-registration would take place. So, the section 18 was basically just giving a power that, yes, you can auto-register, but it doesn't have the detail that we have here in terms of automatic registration, the 45-days notice. What I think this Bill does is give much greater clarity and also

⁴⁸ The open register, also described as the edited register, largely contains the same information as the full register used by registration officers; however is not used for elections or referendums. It can be sold to any person, organisation, or company for a wide range of purposes.

⁴⁹ EM, paragraph 3.33

⁵⁰ [Letter from the Counsel General to the Chair of the Local Government and Housing Committee, 15 November 2023](#)

further information about the safeguarding aspects of the Bill as well, none of which were in the 2021 legislation.”⁵¹

61. The Bill, by virtue of section 5(4), allows for pilots to be run in connection with the provisions within section 3. We asked the Counsel General whether he had considered making the ability to bring section 3 into force conditional (for example, no earlier than the conclusion of at least one relevant pilot) and, if so, why had he not pursued this approach. He told us in response:

“While I believe piloting automatic registration will result in the best possible system for the elector, I do not believe that the Bill should include a provision which specifically prevents the commencement of section 3 before the pilots have been completed. I have made a commitment to pilot automatic registration before commencing section 3 and will ensure that these pilots go ahead with a full and proper evaluation before rolling out the system. Therefore, such a restriction would not only be unnecessary given my commitment, but it would be predicated on the completion of a process rather than a thorough evaluation that will inform the implementation of automatic registration.”⁵²

Our view

62. We note the reasons provided by the Counsel General for the inclusion of the provisions within section 3 of the Bill, and welcome the inclusion of further detail to replace the insertion made into the 1983 Act by the 2021 Act, by virtue of the addition of new section 9ZA by this Bill.

63. We note the Counsel General’s commitment to remove the open register for devolved elections following the Bill receiving Royal Assent, in order to add additional safeguards for young and vulnerable electors.

64. We also acknowledge the Counsel General’s commitment to pilot electoral registration without application before bringing section 3 of the Bill into force.

⁵¹ LJC Committee, 20 November 2023, RoP [87]

⁵² Letter from the Counsel General and Minister for the Constitution, 19 December 2023, response to question 3

However, we believe that further certainty should be provided on the face of the Bill to ensure that a successful pilot has first been completed, to help ensure the effective implementation of the provision and its associated safeguards.

65. We note the Counsel General's view that such an approach would be unnecessary and "predicated on the completion of a process rather than a thorough evaluation". However it is unclear to us why the inclusion of this restriction would preclude the Welsh Government from completing a thorough evaluation of a pilot before bringing section 3 into force.

Recommendation 4. The Bill should be amended to provide that section 3 may only be brought into force following the completion of a pilot under section 5(4) of the Bill.

Sections 5 to 7 (Pilot regulations: powers, requirements and procedure)

66. Section 5 of the Bill enables the Welsh Ministers to make regulations for electoral pilots (pilot regulations) to take place in connection with a series of matters, including the registration of electors in Wales for Welsh elections, the timing, location, and methods of voting, and the counting of votes.

67. Section 6 of the Bill sets out the requirements to be placed on the Welsh Ministers when making pilot regulations under section 5. Subsection (2) places prohibitions on the Welsh Ministers' use of this power; however these prohibitions do not apply to any pilot regulations made in the 12 months following the Bill receiving Royal Assent where the regulations are for the purpose of testing the arrangements relating to electoral registration without application (provided for by section 3 of the Bill).

68. Section 6(2)(a) prohibits the Welsh Ministers from making pilot regulations which apply to a principal council unless that principal council has consented to the pilot. However, section 6(2)(b) enables the Welsh Ministers to make such regulations without a principal council's consent provided they have had regard to any recommendations made by the EMB on whether the regulations should be made without consent.

69. The EM states that the provision within section 6(2)(a):

“... means that Welsh Ministers could direct local authorities to undertake pilots, helping to ensure suitable types of innovations could be piloted in a varied mix of local authority areas. This could provide valuable evidence to inform future electoral reform. In these circumstances the Welsh Ministers will be required to consult the EMB and set out the reasons for compelling the pilot before taking forward the necessary legislation.”⁵³

70. We asked the Counsel General to outline the circumstances in which the Welsh Government envisages this power to be used. He told us:

“I think it's something that we wouldn't envisage happening regularly. It might be, for example, if they wanted to have a pilot that was an all-Wales pilot. What you wouldn't want is for it not to become an all-Wales pilot because one local authority didn't agree. Or it might be, if you look now at the Senedd constituencies, where you may have several local authorities within that, it's just basically to ensure that that can happen on an all-constituency basis. So, it's a power that I would expect probably never to be used, or very rarely to be used— 'in extremis', I think, would be the legal phrase. But it's there just in case it became necessary to do so, to facilitate being able to actually hold these comprehensive pilots.”⁵⁴

71. Section 7 of the Bill provides that pilot regulations may be made by the negative procedure, except where they meet the following criteria, where they must be made by the affirmative procedure:

- regulations applying to the area of a principal council (or any part of it) and the council has not given its consent;

⁵³ EM, paragraph 3.51

⁵⁴ LJC Committee, 20 November 2023, RoP [96]

- regulations for a Welsh election pilot falling within section 5(4) of the Bill; or
- regulations creating, or widening the scope of, a criminal offence.

72. We asked whether this section, in particular section 7(5), allows the Welsh Ministers to modify primary legislation by regulations – therefore providing a Henry VIII power⁵⁵ to the Welsh Ministers. The Counsel General confirmed to us that this was the case,⁵⁶ and an official accompanying him elaborated further:

“... you could amend primary legislation using these pilot powers and it would be subject to the negative procedure, if it didn't otherwise fall within any of those categories in subsection 4. But I think the point the CG [the Counsel General] makes about the broader scrutiny and accountability process that would happen prior to those regulations being made is an important one, because it would involve the EMB and the Electoral Commission, who would be considering the proposals.”⁵⁷

73. We questioned the Counsel General on the appropriateness of the application of the negative procedure to the power within section 7(5). In response, he told us:

“If you look at categories (a), (b) and (c) of ... [section 7(4)], both with auto-registration for a council that hasn't given consent, or for creating or widening the scope of a criminal offence ... there are certain criteria in which it shifts from being negative to a very specific affirmative process, and, again, in terms of the laying of the statutory instrument and any specific recommendations that would come from the commission itself to enable that to happen.”⁵⁸

⁵⁵ A Henry VIII power is a power to amend primary legislation by subordinate legislation.

⁵⁶ LJC Committee, 20 November 2023, RoP [101]

⁵⁷ LJC Committee, 20 November 2023, RoP [102]

⁵⁸ LJC Committee, 20 November 2023, RoP [104]

Our view

74. We note the Counsel General's evidence in respect of sections 5 to 7 of the Bill.

75. We also note the justification provided by the Counsel General for the provision within section 6(2)(b) of the Bill which allows a pilot to be undertaken without a principal council's consent. However, it appears to us that the requirement in the Bill for the Welsh Ministers to only have "had regard" to the recommendations made by the EMB on whether pilot regulations should be made without consent would permit them to reject those recommendations, and to subsequently proceed to make pilot regulations without consent.

76. In light of this, and in light of concerns submitted to the Local Government and Housing Committee about the inclusion of this provision in the Bill,⁵⁹ we believe that the Bill should require the Welsh Ministers to explain to the Senedd a decision to make pilot regulations without a principal council's consent.

Recommendation 5. The Bill should be amended to provide that the Welsh Ministers, at the time of laying pilot regulations in the Senedd which are to be made without a principal council's consent, must also lay a statement to explain the decision to proceed without that consent being obtained.

77. We note that pilot regulations will be subject to the affirmative procedure if they meet the criteria set by section 7(4). We also acknowledge that pilot regulations will be subject to consideration by the EMB and the Electoral Commission. However, we believe that the Senedd also has an important role to play in the scrutiny of such regulations. Therefore, in the case of regulations which make changes to primary legislation, we believe it is imperative that the Senedd should have an enhanced role, and, without regard to specific criteria, such regulations should be subject to the affirmative procedure.

Recommendation 6. The Bill should be amended to provide that regulations made under section 5 which amend primary legislation will be subject to the affirmative procedure.

⁵⁹ Local Government and Housing Committee, Consultation: Elections and Elected Bodies (Wales) Bill, [EEB.04 – Wales Electoral Coordination Board](#)

Section 8 (Power to change the power to make pilot regulations)

78. Section 8 of the Bill enables the Welsh Ministers, through regulations, to add further electoral matters to the list in section 5(3) in respect of which pilot schemes can be undertaken, or to remove or amend matters that have been added previously using this power.

79. The statement of policy intent states that this power will “provide flexibility” to the Welsh Ministers. It also states that the power cannot be used to amend the list to enable pilots to be undertaken in connection with the voting system for elections to the Senedd, or to a principal council or a community council.⁶⁰

80. We asked the Counsel General to confirm whether this power could be used to widen the existing delegation of power from the Senedd to the Welsh Government, and if so, to justify this approach. He told us that this was “something that was looked at quite closely” and that the power was drafted in this way to enable the Welsh Ministers to amend the list in section 5(3) to make electoral pilots more effective.⁶¹ An official accompanying him elaborated further:

“Section 5(3) has sought to define some of those areas where piloting might happen in the future. The purpose of that power in section 8(1) is to add further matters to that list in the future, if there was the policy intention. If a new idea came out to pilot, then there would be the option to add to that list in the future. But, of course, those regulations would be subject to the affirmative procedure.”⁶²

81. The official also confirmed to us that the power could not be used to widen criminal offences.⁶³

82. We asked the Counsel General to provide further clarity on the type of circumstances in which this power may be used. He told us:

“This power is to allow issues not currently considered by the Welsh Government or the Senedd to be possibly piloted in the

⁶⁰ Statement of policy intent, page 9

⁶¹ LJC Committee, 20 November 2023, RoP [106]

⁶² LJC Committee, 20 November 2023, RoP [108]

⁶³ LJC Committee, 20 November 2023, RoP [110]

future, subject to the scrutiny and evaluation processes set out in the Bill. Regulations may only be made under section 8(1) following the approval of the Senedd. However, this power cannot be used to change the voting system for returning Senedd Members, members of a principal council, or members of a community council.”⁶⁴

Our view

83. We note that the stated purpose of section 8 of the Bill is to provide flexibility to the Welsh Ministers.

84. While we acknowledge that the Counsel General has given consideration to the drafting of the power within this section, we do not believe it is constitutionally appropriate for the Welsh Ministers to hold a power which can amend powers delegated to them by the Senedd. We raised similar concerns in respect of provisions to the same effect within the Welsh Tax Acts etc. (Power to Modify) Bill.⁶⁵ Our 2021/22 Annual Report also drew attention to our concerns about this issue. We said we would continue to monitor future Welsh Government Bills, and should similar powers be included in them, we would draw this matter to the attention of the Senedd.⁶⁶

85. Therefore, as a matter of principle, we believe that any changes to the delegation of powers by the Senedd to the Welsh Ministers should be brought forward within primary legislation to be scrutinised fully, and approved by the Senedd. Should the Welsh Government or the Senedd identify new issues to be piloted in the future, we believe it is constitutionally appropriate that they should be introduced within a Bill introduced to the Senedd.

Recommendation 7. The Bill should be amended to leave out section 8.

⁶⁴ Letter from the Counsel General and Minister for the Constitution, 19 December 2023, response to question 4

⁶⁵ Legislation, Justice and Constitution Committee, [Report on the Welsh Tax Acts etc. Power to Modify\) Bill](#), April 2022, paragraphs 245–246; Recommendation 11

⁶⁶ LJC Committee, [Annual Report 2021/22](#), October 2022, paragraph 63

Sections 19 and 20 (Electoral reform regulations)

86. Section 19 of the Bill enables the Welsh Ministers to introduce permanent changes similar to those trialled in a pilot scheme by way of electoral reform regulations.

87. Section 20 of the Bill sets out the Senedd procedure that must be followed when making such regulations. It provides for additional and enhanced scrutiny steps to be undertaken, which includes the requirement of a Senedd committee to consider the regulations and their implications. The section also provides the Senedd with a longer period in which to consider the regulations and their implications. In addition, when the regulations are laid, the Welsh Ministers are required to also lay a copy of the Electoral Commission's evaluation of the related pilot regulations.

88. In respect of section 20, the EM states:

“Where reform regulations;

i. modify primary legislation;

ii. create or widen the scope of a criminal offence; or

iii. create or amend a power to legislate,

they will be subject to the affirmative procedure (section 20(3) and (4)), but the Senedd or a committee of the Senedd reporting on the regulations can resolve, within 30 days of the draft regulations being laid, that an enhanced affirmative should apply to such regulations (section 20(13)). This enhanced affirmative procedure requires the Welsh Ministers to have regard to any representations; any resolutions of the Senedd; and any recommendations of a committee of the Senedd charged with reporting on the draft regulations, made within 60 days of the regulations being laid. The Welsh Ministers may only make the regulations (without material changes) if the Senedd approves them after the 60 day period expires. If after the 60 day period the Welsh Ministers wish to proceed with the draft regulations, but with material changes, the revised draft

regulations must be laid before the Senedd together with a statement summarising the changes, for approval by the Senedd.

For all other statutory instruments containing reform regulations an enhanced negative procedure will apply (section 20(5)). This requires the Welsh Ministers, where they consider the negative procedure to be appropriate, to make a statement to that effect and to lay a draft of the regulations before the Senedd together with a memorandum setting out their statement and the reasons for their opinion. The Welsh Ministers may only proceed to make the regulations by way of the negative procedure if a relevant Senedd Committee makes a recommendation as to the appropriate procedure, or 14 days pass from the laying of the draft regulations and no recommendation is received from the committee.

It is considered that both of these procedures are appropriate as they provide for additional Senedd scrutiny reflecting the nature of the reform regulations.”⁶⁷

89. Section 19(5) provides that electoral reform regulations may create, remove or modify offences. However, section 19(6) provides that such regulations must not create an offence that is punishable (or modify an offence so that it becomes punishable):

- on conviction on indictment, with imprisonment for a term exceeding one year;
- on summary conviction, with imprisonment for a term exceeding the applicable limit for a summary offence or an either way offence (as the case may be) under section 224(1A) of the Sentencing Code (as it has effect from time to time).

⁶⁷ EM, pages 45–49, column 6

90. Section 19(7) provides that electoral reform regulations may confer, remove or modify a power to make subordinate legislation. When asked to justify this provision, the Counsel General told us:

“The power there is limited to the powers of the pilot and its scope, but it would be subject to the superaffirmative process, and I think that is set out in section 20 of the legislation. There’s a whole series of conditions that are set there as to how that might actually happen. So, I think that protection is built in to the legislation itself.”⁶⁸

91. An official accompanying the Counsel General also said in respect of this power:

“... this kind of power and the scope of the power reflects the state of electoral law. There’s a significant volume of electoral law that is in secondary legislation already. Just to give an example, we spoke earlier about section 53 of the Representation of the People Act 1983— that’s the power that’s used to make provision about how registration should be operated. Accompanying that power is a very prescriptive Schedule, setting out how the power can be operated. It’s foreseeable that there could be a pilot and, as a result of that pilot, we need to make amendments to that power. That’s the reason why it’s there, and it just reflects the state of electoral law.”⁶⁹

92. We also asked the Counsel General to explain why such changes to electoral law should be introduced through regulations rather than through primary legislation. He told us:

“... it’s the flexibility of change that needs to take place from time to time. What is important is not so much the ability to make the changes but what the checks and balances are on the exercise of those particular powers. As I’ve said already, those are

⁶⁸ LJC Committee, 20 November 2023, RoP [112]

⁶⁹ LJC Committee, 20 November 2023, RoP [113]

very well specified within section 20 of the Bill. It not only provides condition but also sets the time period and also a duty on Welsh Government Ministers to have regard to, for example, the scrutiny process and the recommendations that are made.”⁷⁰

93. Section 20(18) provides that electoral reform regulations are made in the terms of draft regulations or revised draft regulations if they contain “no material changes” to their provisions. We asked the Counsel General to explain the intended meaning of this phrase. He told us:

“Material changes are ultimately going to be determined by the Welsh Ministers. I suppose, turning the question round, the question is what are immaterial changes. Material changes would be things that change the substance of a recommendation. An immaterial change would be whether there's a comma there, the word 'the' or 'and' or something like that— something that doesn't actually change the substance of that. That's something that happens quite commonly where we have consequential changes or inconsequential changes. Ultimately, were there any dispute on that, the ultimate mechanism for determining that would be, I suppose, interpretation by judicial review.”⁷¹

94. We also asked the Counsel General to justify the absence of a requirement within section 20 of the Bill for the Welsh Ministers to explain why a Senedd committee’s recommendation may not be accepted. In response, he told us:

“I don't think it's normal to have this within the legislation. What happens when a committee makes recommendations is there is a Government response to that. It's a response on which Ministers are scrutinised both in committee and on the floor of the Senedd itself, and practice has always been that a response is given to either accept recommendations or to say why certain recommendations might not be accepted, and what the

⁷⁰ LJC Committee, 20 November 2023, RoP [116]

⁷¹ LJC Committee, 20 November 2023, RoP [129]

reasons for that are. So, I don't think it was considered necessary to do that, because that process is not only well established, but because there are other mechanisms to follow that through in terms of scrutiny, rather than to put that on the face of the legislation.”⁷²

Our view

95. We note the Counsel General's evidence in respect of sections 19 and 20 of the Bill.

96. We would normally be of the view that permanent changes to electoral law should be made by primary legislation. However, on this occasion, we consider that the framework provided by the Bill – in that a proposal in subordinate legislation must have first been subject to a pilot exercise deemed to be successful by the Electoral Commission – in general provides for sufficient Senedd scrutiny of secondary legislation that has been informed by evidence gathering and which has itself been approved by an independent body tasked with ensuring the integrity of the democratic process in the UK.

97. We also acknowledge that the requirements of section 20 provide for enhanced Senedd scrutiny procedures for electoral reform regulations.

98. However, we believe it would be appropriate for some additional restrictions to be placed on the exercise of the Welsh Ministers' powers to introduce electoral reform regulations.

99. First, while we acknowledge that section 19(6) provides restrictions on the types of criminal offences which may be created or modified by electoral reform regulations, we do not believe it is appropriate that that such regulations should create or modify any criminal offences on a permanent basis; primary legislation should be the appropriate means to introduce such changes.

Recommendation 8. The Bill should be amended to provide that electoral reform regulations made using the power in section 19 may not create, remove or modify any criminal offences.

⁷² LJC Committee, 20 November 2023, RoP [127]

100. Secondly, as we have stated in respect of section 8 of the Bill, we believe that any changes to the delegation of powers by the Senedd to the Welsh Ministers should be brought forward within primary legislation to be scrutinised and approved by the Senedd. We believe that this is of particular importance where such changes are to be made on a permanent basis.

Recommendation 9. The Bill should be amended to provide that electoral reform regulations may not confer, remove or modify power to make subordinate legislation.

101. Finally, while we note the Counsel General's view that it is not normal practice for legislation to require the Welsh Ministers to explain why a recommendation by a Senedd committee is not accepted, we believe that, in the case of electoral reform regulations, a higher degree of accountability should be placed on the Welsh Ministers to justify any decision which goes against a committee recommendation.

102. We therefore believe that the Bill should require the Welsh Ministers to lay a statement to explain why a Senedd committee's recommendation in respect of draft electoral reform regulations is not accepted.

Recommendation 10. The Bill should be amended to require the Welsh Ministers, where they decide not to accept in full or in part a Senedd committee's recommendation in respect of draft electoral reform regulations, to lay a statement to explain their decision.

Section 26 (Survey of councillors and unsuccessful candidates in local elections)

103. Section 26 of the Bill amends section 1 of the *Local Government (Wales) Measure 2011* (the 2011 Measure), which requires a local authority to monitor the equality and diversity of candidates in ordinary elections to principal and town and community councils. Section 1(3) of the 2011 Measure requires the form of the survey and the questions to be set out in regulations. The Bill removes that requirement, and enables the Welsh Ministers to set out the form of the survey and the questions in a direction to local authorities. Subsection (4) requires the Welsh Ministers to publish such a direction.

104. Within the EM the Counsel General sets out the background to the candidate survey.⁷³ The statement of policy intent states that, as a result of the proposed change to be introduced by section 26, “it will be easier to change aspects of the survey as diversity and equality policies develop.”⁷⁴

105. The Counsel General explained to us why the Bill seeks to change the power in the 2011 Measure:

“Section 1 of the Measure currently requires the questions and format of the survey to be set out in regulations. In reality, this has meant that any changes to the survey, either in terms of presentation or the questions included, has entailed using Welsh Ministers’ regulation-making powers. This has attracted criticism about the flexibility to amend the surveys in a timely fashion and the disproportionate legislative approach which has had to be adopted in each case.

The approach proposed through the Bill is to remove this requirement and enable a more flexible and agile approach to the consideration and decisions about the survey contents and format. This approach has been welcomed by partners, especially as the scope of the survey set out in the Measure will remain as at present.

The Bill provides for future surveys to comprise two parts. The first part will be a core set of questions which will apply to all local authorities in Wales, allowing important comparisons to be made from responses across all parts of Wales. The second part would be at the discretion of returning officers, which can reflect the local context and priorities.”⁷⁵

⁷³ EM, paragraphs 3.61–3.70

⁷⁴ Statement of policy intent, page 13

⁷⁵ Letter from the Counsel General and Minister for the Constitution, 19 December 2023, response to question 5

Our view

106. We note the Counsel General's justification for changing the Welsh Ministers' regulation-making power in the 2011 Measure to a direction-making power.

Section 27 (Welsh elections information platform)

107. Section 27 of the Bill requires the Welsh Ministers, by regulations, to set up and maintain a Welsh elections information platform that provides up-to-date information about devolved elections. It also enables (but does not require) the Welsh Ministers to make regulations about information that should be available on the platform in relation to community council and mayoral elections in Wales, including the publication of candidate statements.

108. The EM states that the Welsh Ministers “may decide who is the best organisation to provide for such a platform”.⁷⁶ The statement of policy intent states:

“... it is envisaged the Electoral Management Board would take forward the Welsh Elections Information Platform. Section 27(1) of the Bill will require Welsh Ministers to provide for a Welsh elections information platform and such regulations could confer functions on the Commission (to be exercised by the Electoral Management Board) in relation to that platform.”⁷⁷

109. We therefore asked the Counsel General to explain why, if the Welsh Government envisaged the EMB would take forward the platform, it did not provide for such on the fact of the Bill. He told us:

“... the intention is that the electoral management board will be the body. Whether that is the case in the long term, it depends what lessons you learn first on, whether there might be other options in terms of that platform being organised on an all-Wales scale, and whether the EMB might be the appropriate body. At the moment, there's no reason to think that it wouldn't

⁷⁶ EM, page 50, column 4

⁷⁷ Statement of policy intent, page 5

be, but there is that flexibility in terms of what might happen in the future, what recommendations might come from the post-electoral scrutiny.”⁷⁸

110. The Counsel General also said that the Bill does not provide this detail as:

“... you just don't know what the recommendations might be for the future or what the recommendations or what the views might be from the electoral management board. They might come up with proposals themselves. So, basically, there's nothing in mind as far— . The only thing we have in mind at the moment is that the electoral management board that is being created is being created, and that is one of its very specific purposes, but there might be opportunities. There might be a better way of doing things, so it's just to build in that possibility and that flexibility.”⁷⁹

111. In correspondence, the Counsel General reiterated his view:

“We consider that the EMB is likely to be the natural host for the platform, however, the EMB has not yet been established and so we should bear in mind the possibility of the EMB not being able to host the platform, or of a better alternative being identified. Given the host will be specified in the regulations made under section 27, hosting will inevitably be for the Senedd to take into account when it considers those regulations.

The Bill has been drafted to make clear that the Welsh Ministers would be responsible for ensuring the sustainability of any platform. There is scope for the host of the platform to be revisited in the future, taking into account the fast-moving technological environment, the opportunity to learn lessons from experience, and the views of the EMB itself once established. The provisions therefore provide flexibility for the

⁷⁸ LJC Committee, 20 November 2023, RoP [69]

⁷⁹ LJC Committee, 20 November 2023, RoP [93]

future, in particular lessons from evaluations of elections, while ensuring that a platform is provided.”⁸⁰

112. Section 27(4) provides that regulations under subsection (1) may make provision conferring functions on persons or categories of person specified in the regulations. We asked the Counsel General to clarify which functions are envisaged to be conferred in this way, and to explain why those functions are not included on the face of the Bill. He told us in response:

“The detailed rules underpinning the Welsh elections information platform will be set out in regulations made under section 27. Although the Government’s intention is that the Welsh Ministers should be ultimately responsible for ensuring the platform is established, the involvement of other stakeholders will be crucial in ensuring the platform operates fully. The purpose of section 27(4) reflects that situation: in addition to being used to specify the operational host of the platform, it may also be necessary embed elements of the platform into existing elements of the electoral process. The balance between what is on the face of the Bill and will be in regulations ensures flexibility to take account of the fast-moving legal and technological context, with the appropriate scrutiny in place. The balanced approach has been specifically welcomed by civil society organisations.”⁸¹

Our view

113. We acknowledge the Counsel General’s statement that the Welsh Ministers will be ultimately responsible for ensuring the Welsh elections information platform is established.

114. However, we believe that where primary legislation provides that an entity must be established, it should also state who will be responsible for it to be maintained beyond that point. We believe this to be of particular importance

⁸⁰ Letter from the Counsel General and Minister for the Constitution, 19 December 2023, response to question 2

⁸¹ Letter from the Counsel General and Minister for the Constitution, 19 December 2023, response to question 6

where the purpose of that entity – in this case the Welsh elections information platform – is to host information in an independent way. Furthermore, since the host of the platform may be expected to publish candidate statements, we believe that the independence of, and the perception of the independence of, that body will be crucial if a situation arises where it refuses to publish a candidate's statement.

115. We note Counsel General's statement that the question of who will host the platform "will inevitably be for the Senedd to take into account" when considering regulations made under section 27. However, the Senedd will in fact only be faced with a binary choice of whether or not to approve the Welsh Ministers' proposed host within those regulations; they will not be able to seek to amend that proposal as they are able to during the consideration of a Bill.

116. We note that the Welsh Government considers the EMB to be the natural host for the platform; however it also considers there should be scope provided in the Bill for the host to be revisited in the future.

117. It does not however appear that the Welsh Government has currently identified an alternative host; we therefore believe that the Bill should provide certainty on its face as to which body will be responsible for the maintenance of the platform, whether that be the EMB or an alternative body.

Recommendation 11. The Bill should be amended to specify which body will be responsible for maintaining the Welsh elections information platform.

118. We note the Counsel General's justification for not including further detail on the face of the Bill in respect of the functions which may be conferred on persons or categories of person by regulations made under section 27. However we believe that the Bill should specify the functions which may be conferred, as the provision as currently drafted is broad. Should the Bill not be amended in this way, we believe that the Welsh Government should publish a further statement of policy intent for regulations to be made under section 27, which should include detail on the anticipated functions which may be conferred.

Recommendation 12. The Bill should be amended to specify the functions which may be conferred on persons or categories of person specified in regulations made under section 27 of the Bill.

Recommendation 13. If recommendation 12 is not accepted, the Welsh Government should, in advance of the first day of Stage 2 of the Bill, publish a statement of policy intent to outline the functions which may be conferred on persons or categories of person specified in regulations made under section 27 of the Bill.

Section 29 (Financial assistance schemes to promote diversity in persons seeking elected office)

119. Section 29 of the Bill enables the Welsh Ministers, by regulations, to provide for financial assistance schemes to help candidates in a Welsh election having specified characteristics or specified circumstances overcome barriers to their participation in the election connected to those characteristics or circumstances. In the case of candidates who are disabled, subsection (2) expressly requires the Welsh Ministers to provide for such a scheme of financial assistance.

120. Section 29(8) provides that regulations under the section may, amongst other things, confer functions on a person.

121. We asked the Counsel General in written correspondence to clarify which functions are envisaged to be conferred on persons by regulations made under section 29(8), and to clarify why those functions are not included on the face of the Bill. He told us in response:

“Section 29 of the Bill provides for financial assistance schemes to be made available to groups of people prescribed in regulations who are seeking to stand for elected office. One such scheme (section 29(2)) will be for disabled people, building on the pilot Access to Elected Office Fund. Section 29(1) enables other such schemes to be put in place by Welsh Ministers when evidence identifies barriers of additional costs that are experienced by individuals of a particular group of underrepresented persons which prevent them from standing for elected office.

Section 29(8) provides for Welsh Ministers to set out the detailed arrangements for each separate financial assistance scheme including those who are to administer the scheme, the

components of the scheme and the reporting arrangements required for the purpose of audit. As individual schemes will target different barriers to participation it is appropriate the details are set out in regulations rather than on the face of the Bill. This will enable greater flexibility to ensure the details of each scheme underpins its purpose and enables actions to be taken to address the barriers identified.”⁸²

Our view

122. We note the evidence provided by the Counsel General in respect of section 29 of the Bill.

123. We note the Counsel General’s justification for not including further detail on the face of the Bill in respect of the functions which may be conferred on persons by regulations made under section 29.

124. However we believe that, as such regulations will relate to financial assistance and the spending of public funds, the Welsh Government should publish a further statement of policy intent for regulations to be made under section 29, which should include detail on the anticipated functions which may be conferred on persons by regulations made under that section.

Recommendation 14. The Welsh Government should, in advance of the first day of Stage 2 of the Bill, publish a statement of policy intent to outline the functions which may be conferred on persons within regulations made under section 29 of the Bill.

Section 38 (Code of practice on controls relating to third parties)

125. Section 38(2) of the Bill inserts a new subsection (1A) into section 100A of the *Political Parties, Elections and Referendums Act 2000* (the 2000 Act), to require the Electoral Commission to prepare a code of practice on controlled expenditure by third parties during a period before a devolved Welsh election when spending limits and rules apply (a Welsh devolved regulated period).

⁸² Letter from the Counsel General and Minister for the Constitution, 19 December 2023, response to question 7

126. Section 38(4) inserts a new section 100C into the 2000 Act which sets out the process the Electoral Commission must follow when preparing the code of practice, which includes them consulting with the Llywydd's Committee and the Legislation, Justice and Constitution Committee, and any other persons the Electoral Commission considers appropriate.

127. Subsections (11) and (12) of the new inserted section 100C of the 2000 Act provides that:

- if the name of the Legislation, Justice and Constitution Committee is changed, the reference to that Committee is to be read as a reference to the Committee by its new name;
- if the functions of the Legislation, Justice and Constitution Committee at the passing of the Bill with respect to electoral matters (or functions corresponding substantially to such matters) become functions of a different committee of Senedd Cymru, the reference to that Committee is to be read as a reference to the committee which for the time being has those functions.

128. We asked the Counsel General to explain the appropriateness of consultation with this Committee and the Llywydd's Committee. He told us:

"... it's just the importance of the regulations themselves in respect of third-party financing, and so on, and if there were to be changes to a code of practice, then it's the way in which that is actually considered and the status that it's given."⁸³

129. An official accompanying the Counsel General also set out the rationale underpinning this provision:

"The Llywydd's Committee is a committee that's already mentioned in legislation. We have the Senedd and Elections (Wales) Act 2020, which also places a particular role on the Llywydd's Committee, so we see that there's some sort of precedent there. But also, the other point to note is that these provisions replicate existing provisions that the UK Government

⁸³ LJC Committee, 20 November 2023, RoP [135]

introduced to the Elections Act 2022, and they also made the decision to name the Speaker's Committee and, I think, the Levelling Up, Housing and Communities Committee in the Houses of Parliament to scrutinise it. So, what we sought to do there was basically mirror existing practice, and also the corresponding provisions that would apply to reserved elections.”⁸⁴

Our view

130. We note the Counsel General’s evidence in respect of section 38 of the Bill.

131. We believe that statutory consultation with Senedd committees is to be welcomed. However, it would appear novel to us that this Committee – a non-statutory committee, unlike the Llywydd’s Committee – should be referred to as a statutory consultee within primary legislation.

132. We note that section 38 includes provision to ensure this Committee is consulted should it change its name, or should its “functions with respect to electoral matters (or functions corresponding substantially to such matters)”⁸⁵ become the functions of another Senedd committee.

133. However, in light of the fact that the Senedd has not expressly included such a matter, or a corresponding matter, within the remit of this Committee,⁸⁶ it is unclear to us which Committee will be consulted in a future Senedd should it decide not to establish a Committee with this name, or not to include electoral matters (or functions corresponding substantially to such matters) within the remit of any committee.

134. We therefore believe that the wording within section 38 of the Bill should be amended to provide certainty as to which Senedd committees must be consulted.

⁸⁴ LJC Committee, 20 November 2023, RoP [136]

⁸⁵ New section 100C(3)(b) of the 2000 Act, to be inserted by section 38(4) of the Bill.

⁸⁶ Plenary, [23 June 2021, Record of Proceedings](#)

Recommendation 15. The Bill should be amended to replace references to the Legislation, Justice and Constitution Committee with references to “appropriate Senedd committees”, or similar such wording, to provide certainty in law.

Sections 41 and 51 (Review period for principal area reviews; Community reviews and implementation)

135. Section 41 of the Bill amends section 29(3) of the 2013 Act to change the length of a cycle of the Boundary Commission’s reviews of the electoral arrangements for each principal area, from 10 to 12 years. Subsection (2)(b) enables the Welsh Ministers, by regulations subject to the negative procedure, to amend section 29(3) of the 2013 Act. This regulation-making power is therefore a Henry VIII power.

136. The statement of policy intent justifies the application of the negative procedure to this Henry VIII power as changing the length of a review period is deemed to be:

“... a technical detail which may be needed in the event of disruption to a review programme. Examples of situations which would trigger the use of this power includes a public health emergency, a change in the date for local government election or to provide greater synergy the review periods of both principal area and community arrangements.”⁸⁷

137. The Counsel General provided the following explanation to us for why the power is not subject to the affirmative procedure:

“While officials have worked closely with the Local Democracy and Boundary Commission for Wales (the Commission) to ensure the timescales for conducting reviews as introduced in the Bill are realistic, this provision provides Welsh Ministers with the flexibility required to amend the review period (if necessary) in light of the Commission’s experiences in completing electoral arrangement reviews after the Bill receives Royal Assent.

⁸⁷ Statement of policy intent, page 20

The ability of Welsh Ministers to use this narrow provision to amend primary legislation is limited to amending the review period. This power to make regulations does not substantively affect the provisions of the Local Government Democracy (Wales) Act 2013, and the subject-matter of the power is a relatively minor detail in the overall legislative scheme for conducting electoral arrangement reviews. There is already precedent for Welsh Ministers to alter the review period applying to the Commission by making regulations which are subject to the negative procedure – see sections 138(6) and 174(6) of the Local Government and Elections (Wales) Act 2021 – and we therefore consider the use of the negative procedure to be appropriate and proportionate.”⁸⁸

138. Section 51 of the Bill amends section 22 of the 2013 Act to require a county or county borough council to publish an annual report on the performance of its functions under Part 3 of the 2013 Act and section 76 of the *Local Government Act 1972* (the 1972 Act) in respect of keeping its community arrangements under review.

139. Section 51(3)(a) inserts new subsections into the 1972 Act to clarify the duty of a county or county borough council to conduct a review of the electoral arrangements for each community once in every review period. The review period is to be 12 years, and the subsection also provides that the Welsh Ministers may by regulations amend the length of this period. This regulation-making power is again, therefore, a Henry VIII power.

140. Similarly to the justification provided for the drafting of the Henry VIII power under section 41, the statement of policy intent states in respect of the power within section 51(3)(a):

“Changing the review period and re-setting the start date of a review period is a technical detail which may be needed in the event of disruption to a review programme. Examples of situations which would trigger the use of this power include a

⁸⁸ Letter from the Counsel General and Minister for the Constitution, 19 December 2023, response to question 8

public health emergency, a change in the date for local government election or to provide greater synergy between the review periods for both principal area and community arrangements.”⁸⁹

141. The Counsel General provided further information to us on this power, its envisaged use, and the reasons why the negative procedure is deemed to be appropriate for regulations to be made under it:

“Section 51 enables Welsh Ministers to amend the review period for the conduct of community electoral arrangement reviews. It is a similar provision to that set out in section 41 of the Bill and ensures consistency of approach between the different types of review. ...

The ability of the Welsh Ministers to use this narrow provision to amend primary legislation is limited to amending the review period. This power to make regulations does not substantially affect the provisions of the Local Government Democracy (Wales) Act 2013, and the subject-matter of the power is a relatively minor detail in the overall legislative scheme for conducting community electoral arrangement reviews. There is already precedent for Welsh Ministers to alter the review period applying to the Commission by making regulations which are subject to the negative procedure – see sections 138(6) and 174(6) of the Local Government and Elections (Wales) Act 2021.

The intention is that the negative procedure will also apply to changes to the review period, as it applies to the Commission, in regulations made by the Welsh Ministers under section 41 of the Bill. Accordingly, we consider that the use of the negative procedure to make changes to the review period for community electoral arrangement reviews under section 51 of the Bill is also appropriate and proportionate, as to do otherwise would create an anomaly where the review period for the Commission could be revised using the negative procedure and

⁸⁹ Statement of policy intent, page 20

that for principal councils would be required to use the affirmative procedure. The effect of that would be to require a more detailed regulatory making procedure to change the review period for community electoral arrangement reviews than would be required for principal area electoral arrangement reviews.”⁹⁰

Our view

142. We note the Counsel General’s evidence in respect of sections 41 and 51 of the Bill.

143. We consider that regulations which make changes to primary legislation should be subject to the affirmative procedure.

144. While we note the Counsel General’s suggestion that a precedent has been set by the 2021 Act, we also note that the Welsh Government’s own internal guidance suggests the application of the affirmative procedure to regulations which make changes to primary legislation.⁹¹

145. We also acknowledge the importance of a consistency of approach between sections 41 and 51 of the Bill.

146. As such, we believe that the affirmative procedure is the appropriate procedure for regulations to be made under both sections 41 and 51 of the Bill.

Recommendation 16. The Bill should be amended to provide that regulations made under sections 41 and 51 of the Bill are to be subject to the affirmative procedure.

⁹⁰ Letter from the Counsel General and Minister for the Constitution, 19 December 2023, response to question 9

⁹¹ Welsh Government, [Welsh Government guidelines on subordinate legislation: draft affirmative or negative assembly procedure](#), April 2012

Section 61 (Disqualification from being a Member of the Senedd and a community councillor)

147. Section 61 of the Bill amends the 2006 Act to disqualify town and community councillors in Wales from serving as Members of the Senedd, and removes the grace periods for the following (also provided for by the Act):

- principal councillors elected to the Senedd;
- Members of the Senedd elected to principal councils; and
- Members of the Senedd elected as Members of the House of Commons.

148. The Senedd Cymru (Members and Elections) Bill, which is currently subject to scrutiny, also includes provision in respect of disqualification from being a Member of the Senedd based on a person's residency.⁹²

149. We therefore asked the Counsel General, in the interests of the accessibility of the law, to clarify the reasons for the inclusion of provisions within section 61 of the Bill, instead of within the Senedd Cymru (Members and Elections) Bill. He told us in response:

"In the course of developing and preparing the Senedd Cymru (Members and Elections) Bill, the Welsh Government, and their Co-operation Agreement partners in Plaid Cymru, considered a number of policies that related to the Special Purpose Committee's original recommendations, but which were not themselves specific recommendations of the committee. This included the disqualification related to residency. The disqualification provisions in the Elections and Elected Bodies (Wales) Bill are part of a package of reforms which were consulted on as part of a white paper (Consultation on the electoral administration and reform White Paper). Such reforms also have specific implications for Local Authorities and Town

⁹² Senedd Cymru (Members and Elections) Bill, as introduced, section 6

and Community Councils. This did not include a disqualification related to residency.

Accordingly, it was considered more appropriate for these disqualifications to be addressed separately, through the two Bills. Both Bills achieve their individual policies by way of amendment to the existing disqualification regime in the Government of Wales Act 2006. This will mean that, if the Bills are enacted, there will still be a single disqualification regime ensuring that the legislation remains accessible.”⁹³

Our view

150. We note the Counsel General’s justification for including provisions in respect of disqualification within both this Bill and the Senedd Cymru (Members and Elections) Bill.

151. We also acknowledge that both sets of provisions will be accessible, once enacted, within the 2006 Act. However, as we have stated within our other reports on bills introduced to the Senedd,⁹⁴ it takes some time for existing legislation on publicly accessible websites to be updated with newly enacted amendments. In the meantime, users of legislation are required to either rely on paid subscription services to view such updates, or to cross-refer to several items of legislation.

Section 67 (Regulations: restrictions)

152. Section 67 provides that regulations made under the Bill may not include provision that would require the consent of the appropriate Minister under paragraphs 8(1)(a) or (c), 10 or 11 of Schedule 7B to the 2006 Act if the provision were included in an Act of Senedd Cymru. It also provides that regulations made under the Bill may not either include provision that would require consultation of the appropriate Minister under paragraph 11(2) of Schedule 7B to that Act if the provision were included in an Act of Senedd Cymru.

⁹³ Letter from the Counsel General and Minister for the Constitution, 19 December 2023, response to question 10

⁹⁴ See, for example, paragraph 70 of our [report on the Health Service Procurement \(Wales\) Bill](#), and paragraph 62 of our report on the Senedd Cymru (Members and Elections) Bill.

153. The Counsel General told us that the purpose of this section is to provide clarity.⁹⁵ An official accompanying him provided further detail about the approach taken:

“... because those restrictions that are described in section 67, they're of a fundamentally different character to the other restrictions that are in that Schedule. You'll see from looking at that Schedule that some things are ruled out completely. The difficulty with those particular paragraphs is that they concern consent or consultation, and it isn't possible to establish from looking at a Bill normally whether consent has been given or consultation has happened. So, what we've sought to do there is simply make it clearer. We thought it was desirable to ensure that the Bill made clear what can and can't be done in terms of the regulation-making powers.”⁹⁶

Our view

154. We welcome the clarity provided by section 67 of the Bill.

⁹⁵ LJC Committee, 20 November 2023, RoP [145]

⁹⁶ LJC Committee, 20 November 2023, RoP [146]
