

Report on the Senedd Cymru (Member Accountability and Elections) Bill

December 2025



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December 2025



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:
Mike Hedges MS
Welsh Labour



Alun Davies MS
Welsh Labour



Mark Isherwood MS*
Welsh Conservatives



Adam Price MS
Plaid Cymru

* Mark Isherwood MS was not a member of the Committee during the scrutiny of the Bill.

The following Members attended as substitutes during the scrutiny of the Bill.



John Griffiths MS
Welsh Labour



Sam Rowlands MS
Welsh Conservatives

The following Member was also a member of the Committee during the scrutiny of the Bill.



Samuel Kurtz MS**
Welsh Conservatives

** Recused himself from consideration of the Bill.

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1. Introduction

On 3 November 2025, Julie James MS, the Counsel General and Minister for Delivery (the Counsel General), introduced the Senedd Cymru (Member Accountability and Elections) Bill (the Bill)¹, and accompanying Explanatory Memorandum (the EM)².

1. On 21 October 2025, the Business Committee referred the Bill to the Member Accountability Bill Committee and on 4 November 2025 set a deadline of 23 December 2025 for reporting on its general principles.³
2. On 3 November 2025, the Counsel General also issued a Statement of Policy Intent on the powers to make subordinate legislation under the Bill (the Statement of Policy Intent).⁴

Purpose of the Bill

3. The long title to the Bill states that it is a Bill to:

“... provide for the recall of Members of the Senedd; to require the existence of a Standards of Conduct Committee of the Senedd that includes members who are not Members of the Senedd; to authorise the Senedd Commissioner for Standards to conduct investigations on the Commissioner’s initiative; to amend the power of the Welsh Ministers to make provision by order about the conduct of Senedd Cymru elections; and for connected purposes.”⁵

4. In the EM, the Counsel General sets out the purpose of the Bill as follows:

¹ The Senedd Cymru (Member Accountability and Elections) Bill, as introduced

² Welsh Government, Senedd Cymru (Member Accountability and Elections) Bill: Explanatory Memorandum incorporating the Regulatory Impact Assessment and Explanatory Notes, November 2025

³ Business Committee, Timetable for consideration: Senedd Cymru (Member Accountability and Elections) Bill, November 2025

⁴ Welsh Government, Senedd Cymru (Member Accountability and Elections) Bill: Statement of Policy Intent for Subordinate Legislation, 3 November 2025

⁵ The Senedd Cymru (Member Accountability and Elections) Bill, as introduced, page 1

“... to enhance the accountability of Members of the Senedd by strengthening the systems that currently exist that regulate and sanction their behaviour and conduct.”⁶

5. She also states:

“The Bill will enhance the accountability of Members of the Senedd to the electorate, through providing a mechanism to recall an elected Member, removing them from office during their term on the basis of the expressed will of voters in the relevant constituency.”⁷

6. The Bill consists of 25 sections, split into four Parts, and two Schedules:

- Part 1 (sections 1 to 17) introduces a system of recall to Senedd Cymru, where in specified circumstances, a recall poll will be held to determine whether a Member of the Senedd retains their seat or is removed from office.
- Part 2 (sections 18 to 21) contains provisions about the Senedd’s Standards of Conduct Committee including provision that the Senedd is required to have a committee with functions relating to the standards of conduct of Members of the Senedd and that the committee may include lay members. Part 2 also contains provisions which enable the Senedd Commissioner for Standards to carry out an own initiative investigation.
- Part 3 (section 22) contains provisions which amend the power of the Welsh Ministers to make provision by order about the conduct of Senedd Cymru elections, specifically to introduce a prohibition on the making or publishing of false or misleading statements of fact before or during an election for the purpose of affecting the return of any candidate.
- Part 4 (sections 23 to 25) contains provisions that apply to the Bill generally, including provision about the coming into force of the Bill and the short title.

⁶ The EM, paragraph 1

⁷ The EM, paragraph 2

- Schedule 1 makes provision about disqualification from lay membership of the Standards of Conduct Committee and its sub-committees.
- Schedule 2 makes consequential provision relating to Parts 1 and 2 of the Bill.

The Committee's remit

7. 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.

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

- matters relating to the competence of the Senedd, including compatibility with the human rights protected by the European Convention on Human Rights (the Convention rights);
- 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 Senedd 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.

9. We took oral evidence from the Counsel General on 17 November 2025.⁸ Following the evidence session, we wrote to the Counsel General with further questions on 24 November 2025.⁹ The Counsel General responded on 4 December 2025.¹⁰

10. We are aware that evidence submitted to a short consultation exercise undertaken by the Member Accountability Bill Committee, as well as oral evidence taken by that Committee, has raised a range of views and issues. We have not had time to consider all this evidence in detail but highlight some points

⁸ [Legislation, Justice and Constitution Committee](#), 17 November 2025

⁹ [Letter to the Counsel General and Minister for Delivery](#), 24 November 2025

¹⁰ [Letter from the Counsel General and Minister for Delivery](#), 4 December 2025

in our report that are relevant to the role and remit of this Committee in scrutinising the Bill.

Recommendation 1. The Counsel General should respond to the conclusions and recommendations we make in this report at least two working days before the Stage 1 general principles debate takes place.

2. Legislative competence

The Welsh Government is satisfied that the Bill would be within the legislative competence of the Senedd, subject to provisions which require Minister of the Crown consent.

11. 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).

12. In her statement on legislative competence the Llywydd said that, in her view, most of the provisions of the Bill would be within legislative competence, but that:

“Certain provisions within section 4 would not be within legislative competence, to the extent that they impose duties on the courts, as the consent of the relevant UK Minister that is required to impose such duties has not yet been given.”¹¹

13. In the EM, the Counsel General said the provisions of the Bill would be within the legislative competence of the Senedd¹² and confirmed she was confident of this when she appeared before the Committee.¹³

14. In the Equality Impact Assessment, consideration is given to the following articles in the European Convention on Human Rights: Article 6 (Right to fair trial); Article 3, Protocol 1 (Right to free elections/Right to stand for election); and Article 8 (Right to privacy).¹⁴

15. As regards the Minister of the Crown consent required for provisions within section 4 of the Bill to be within the legislative competence of the Senedd, we asked the Counsel General what engagement she had had with the UK Government and when she expected to receive the necessary consents. She told us:

¹¹ [Presiding Officer’s Statement on Legislative Competence](#), 3 November 2025

¹² The EM, page 1

¹³ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [11]

¹⁴ Welsh Government, [Senedd Cymru \(Member Accountability and Elections\) Bill: Equality impact assessment](#), 4 November 2025

*"We've written to the Secretary of State for Wales seeking the consents. We haven't had a response yet, but we asked for it by the end of January. I'll keep the committee updated on the progress."*¹⁵

16. We noted that the EM is silent with regard to human rights and so asked what consideration the Counsel General has given to human rights issues that may arise through an order that is made under section 13 of the 2006 Act, as amended by section 22 of the Bill. In response, the Counsel General told us:

"I made the declaration that confirms the view that all of the provisions are compliant with the human rights duty, and they're all within the legislative competence of the Senedd, and that, of course, means that they're compatible with the convention rights. We're required to make provision under section 13 of the Government of Wales Act 2006 that things would be within the legislative competence of the Senedd, which includes a requirement to ensure provisions are compatible with convention rights. So, those checks and balances have been looked at.

*I will say, though, with this Bill, that one of the things that we've been discussing a number of times alongside the standards committee is that we will have to make sure that, as we go along with the Bill, it stays within competence. I'm very satisfied that it is currently compatible and within competence."*¹⁶

17. When asked why this was the case, the Counsel General said:

*"Because we've had lots of discussions about what the competence of the Senedd is with regard to Welsh elections, and how far away from an election you can go before you're no longer approximate enough to the election for it to be within competence. That's a judgment, so we'll have to be satisfied that we've stayed the right side of that envelope."*¹⁷

¹⁵ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [13]

¹⁶ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [15 to 16]

¹⁷ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [19]

18. In discussing the placing of an offence of making a false statement on the face of the Bill rather than in an order under section 13 of the 2006 Act (as amended by section 22 of the Bill) the Counsel General also said:

“So, I’m very concerned about the competence on this Bill. We’re right on the edge of what we want to do. That doesn’t mean we shouldn’t do it; I’m quite happy to push the envelope, but we need to make sure that we don’t push it so far that the whole thing fails.”¹⁸

19. In her oral statement to Plenary on 4 December 2025, the Counsel General said that there were some competence issues she would need to discuss in committee.¹⁹ Following our evidence session, we asked the Counsel General to expand on what these issues are and she told us:

“Any attempt to legislate in a way that restricts speech – and in this context political speech – will engage Convention rights, in particular Article 10 freedom of expression. Therefore the same competence issues that arise in relation to candidates would arise for Members.

Of equal concern however is the constitutional appropriateness of a government Bill seeking to place restrictions on the speech of Members. Members are held to account through the Code of Conduct and the standards regime more generally.

The Government of Wales Act already provides for some protections in relation to statements and publications of Members in the context of Senedd proceedings. We have not yet had sufficient time to consider what the full consequences, including unintended consequences, of creating an offence in relation to Members’ speech more generally might be.”²⁰

Our view

20. We note the evidence in relation to matters of legislative competence from the Counsel General.

¹⁸ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [123]

¹⁹ Plenary Record of Proceedings, [182 to 183]

²⁰ Letter from the Counsel General, 4 December 2025, response to question 4

21. However, we wish to make an important observation that is relevant to section 22 of the Bill and its amendment of section 13 of the 2006 Act, which we consider later in the report.

22. Any suggestion that a prohibition on the making or publishing of false or misleading statements of fact must be made through a section 13 order under the 2006 Act in order to avoid concerns around competence would not be an accurate one. Any such concerns would arise from the extent and form of the prohibition itself. It does not follow that concerns around competence necessitate the use of a section 13 order as the mechanism to introduce that prohibition. There is no reason that such a prohibition could not be set out on the face of primary legislation, provided the relevant consideration is given as to how that prohibition interacts with the Convention rights.

23. We note the outstanding consent required from the relevant UK Minister and that the Counsel General has requested that such consent is received by the end of January 2026.

Recommendation 2. Subject to recommendation 3, the Counsel General should write to the Committee in the first week of February 2026 providing an update on the position regarding the consent required for section 4 of the Bill.

24. We note the comments made by the Counsel General about human rights and the information set out in the equality impact assessment.

25. However, the EM accompanying the Bill is silent as to the content of the assessment undertaken on the issue of human rights. As we have concluded in numerous previous reports,²¹ our longstanding preference is for an assessment of a Bill's engagement with the rights protected by the European Convention on Human Rights to be included as a matter of course within the accompanying EM, and that assessment should also set out any steps that have been taken to make that engagement proportionate. Doing so would set out more clearly how the Welsh Government has ensured that consideration of the Convention rights has informed the development of the Bill.

Conclusion 1. We note the Counsel General's comments in respect of the Bill's impact on the Convention rights but believe that, as a matter of good practice, an

²¹ See, for example: conclusion 1 of our [Report on the Building Safety \(Wales\) Bill](#), conclusion 1 of our [Report on the Environment \(Principles, Governance and Biodiversity Targets\) \(Wales\) Bill](#); conclusion 1 of our [Report on the Homelessness and Social Housing Allocation \(Wales\) Bill](#); conclusion 1 of our [Report on the Bus Services \(Wales\) Bill](#).

Explanatory Memorandum should always include a commentary on the consideration given to such implications.

3. General observations

Need for, and background to, the Bill

26. In Chapter 3 of the EM, the Counsel General explains the background and context to the Bill. In so doing, she provides information about the outcome of the scrutiny of the Senedd Cymru (Members and Elections) Bill²² and the reports of the Standards of Conduct Committee about individual Member accountability,²³ which included matters relating to recall²⁴ and deception.²⁵

Consultation by the Member Accountability Bill Committee

27. Evidence gathered by the Member Accountability Bill Committee as part of a consultation exercise²⁶ has questioned how the Bill will operate in practice, and its workability. These include matters related to the recall system²⁷ and in particular the inter-relationship with the closed list electoral system now in place for Senedd elections,²⁸ and matters related to section 22 of the Bill concerning conduct at Senedd elections in relation to the making or publishing of false or misleading statements of fact.²⁹

28. There has also been support for the broad intention of the Bill, for example in terms of “strengthening the foundations of democratic accountability, public trust and integrity in Welsh political life”³⁰ and “improved transparency and trust in the government, the democratic process, elected Members”, as well as “increasing trust in the Senedd.”³¹

²² EM, paragraphs 8 to 13

²³ EM, paragraphs 14 to 18 and 77 to 84

²⁴ Standards of Conduct Committee, Individual Member Accountability: Recall, January 2025

²⁵ Standards of Conduct Committee, Individual Member Accountability: Deliberate deception, February 2025

²⁶ Member Accountability Bill Committee, Senedd Cymru (Member Accountability and Elections) Bill – public consultation, November 2025

²⁷ MAB07 The Electoral Reform Society Cymru

²⁸ MAB013 Keith Bush KC (Honoris Causa)

²⁹ MAB01 Professor Jeremy Horder, London School of Economics

³⁰ MAB05 Crynwyr Cymru - Quakers in Wales

³¹ MAB06 Un Llais Cymru/One Voice Wales

Balance between what is on the face of the Bill and what is to be achieved by subordinate legislation

29. The Bill contains four powers for the Welsh Ministers to make subordinate legislation. The powers are:

- to make regulations about the conduct of recall polls (section 11);
- to make an order under new subsection (2A) of section 13 of the 2006 Act to make provision prohibiting the making or publishing of false or misleading statements of fact before or during an election for the purpose of affecting the return of any candidate (section 22);
- to make consequential, transitional etc. provision (section 23); and
- to make an order appointing the day on which Part 1 of the Bill comes into force (section 24).

30. Some respondents to the Member Accountability Bill Committee's consultation exercise questioned the balance between what is on the face of the Bill and what is to be achieved by subordinate legislation.

31. Transparency International UK in their evidence stated:

*"Additionally, whilst we welcome the intention of the reforms, overall, we find the draft Bill places far too much of the detail of the proposals to be dealt with into secondary legislation. Often referred to as 'Henry VIII clauses', these powers grant sweeping powers to Welsh Ministers to add detail to the bones of the draft Bill at some later date, risking a lower level of parliamentary scrutiny. We suggest this undermines the policy objectives of the Bill which is meant to enhance accountability. It also risks prompting further decline in public trust in politics and political institutions. Finally, without further detail, prospective members of the Senedd will not know what they are signing up for in running for election in May 2026. Any subsequent party-political capture of the process of passing secondary legislation could have dramatic and unforeseen consequences."*³²

³² MAB11 Transparency International UK

32. Professor Alistair Clark also raised concerns, stating:

*"I would suggest that too much has been left to be done either by regulations or future guidance. I would recommend that a better balance be struck, with more detail contained in primary legislation."*³³

33. Chapter 4 of our report highlights evidence provided in relation to sections 11 and 22 of the Bill.

Timing and implementation

34. In the EM, the Counsel General refers to comments made by the Welsh Government about the challenges of bringing this legislation forward in the time available. In so doing, she highlights the ambitious timetable recommended by the Standards of Conduct Committee in its report on recall³⁴ and correspondence to that Committee from Huw Irranca-Davies MS, Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, in which he said:

*"A balance needs to be struck between maximising the time available to properly develop legislation in what is an area with limited precedent and ensuring that the Senedd has the necessary time to scrutinise and improve that legislation."*³⁵

35. The Counsel General also refers to the comments of the Welsh Government in response to the Standards of Conduct Committee's report on recall that:

*"... whereas this time frame should allow for primary legislation to be put in place, albeit at pace, it would not allow for the subsequent development and passage of either secondary legislation or any Committee guidelines that would be needed before the system was fully implemented (...) full implementation will need to be taken forward at pace during the Seventh Senedd."*³⁶

36. As regards consultation on the legislation, the Counsel General states in the EM:

³³ MAB04 Professor Alistair Clark

³⁴ EM, paragraph 131

³⁵ EM, paragraph 17

³⁶ EM, paragraph 35

*"In the timescale available, and in order to introduce a Bill in the final year of the Senedd term, around 9 months after the Committee reports were published, it was not possible for the Welsh Government to undertake its own open public consultation on the proposed policy choices to be given effect through the Senedd Cymru (Member Accountability and Elections) Bill or on a draft Bill."*³⁷

37. We asked the Counsel General if a reason for not putting information on the face of the Bill concerned issues of timing, noting the likelihood that the Senedd will have to decide whether to pass the Bill in the last week of this Senedd. The Counsel General responded by saying:

"Indeed. So, Royal Assent will be after the Senedd rises for the Easter recess; I think probably before dissolution, which I believe is on 7 April. But, anyway, after the Senedd rises. And if it's referred at all, it will fail, therefore, because it will go out beyond the limit of the Senedd. (...) There would be no opportunity to correct it. So, if it falls, the next Senedd would have to start again, effectively. We're very keen that that doesn't happen, so we are perhaps being hyper cautious about it, because we want to make sure that it isn't referred and that it's inside the envelope for competence.

But you're not wrong either that we think that this is really complicated and requires quite a lot of consideration with stakeholders and others. Lots of civic society should be engaged in this, and so on, and it will give the next Senedd the opportunity to do that, and the standards committee in particular. We also think that the guidance needs to be looked at very specifically as well. So, it's got two parts to it, really.

(...) Frankly, if we were doing this as a year 1 Bill, we might be a little bit more willing to push that envelope because we would be able to do something to correct it, but at this point we aren't. So, as you rightly say, if we manage to stay within the pretty tight envelope for this Bill, we would be doing the Stage 4 on

³⁷ EM, paragraph 132. The Committee reports referred to are those of the Standards of Conduct Committee in relation to recall and deliberate deception, which were published in January and February 2025.

the last sitting day—the last Government sitting day of the Senedd, the Tuesday of that last week.”³⁸

38. We also asked the Counsel General whether the Welsh Government has had enough time to think through all the necessary issues such that no unintended consequences will arise from the legislation. She replied:

“... the Bill sets out to enable the system of recall to happen and to strengthen the existing standards regime, and we’ve tried very hard to make sure that the provisions set out in the Bill minimise the risk of unintended consequences, and that’s why we’ve got a power in section 11 for the Welsh Ministers to make provision about the conduct of recall polls and the consequential and transitional power in section 23 you’ve already mentioned. They’re precisely to ensure we have safeguards against any unintended consequences arising from the way that the legislation has been developed.”³⁹

39. The Counsel General noted in the context of answering questions on section 23 of the Bill that the Bill had been “developed at some pace”.⁴⁰

40. In terms of when the Bill would be fully operational, the Counsel General explained:

“So, the necessary regulations will be developed and agreed, we hope, early in the seventh Senedd. We’re working on making sure that whoever the incoming Government is will be able to do that. We’ll need to do that—the next Government will need to do that—in time to allow electoral administrators to prepare for delivery of the next election, and, obviously, it will not be wholly within the gift of the incoming Welsh Ministers; we will also make sure that the standards of conduct committee have to carry out a set of things that they need to do in order to make sure that this happens as well.”⁴¹

³⁸ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [156 to 158]

³⁹ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [194]

⁴⁰ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [180]

⁴¹ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [192]

41. A number of respondents to the Member Accountability Bill Committee consultation exercise raised broad concerns about the speed with which the Bill has been brought forward.

42. Professor Alistair Clark recommended that the legislation should be paused and reintroduced by the next Welsh Government after the May 2026 election. In so doing, he noted that it is more important to get the provisions right than to have “rushed and problematic” legislation on the statute book in advance of the May 2026 election.⁴²

43. Keith Bush KC, a former chief legal adviser to the National Assembly for Wales, said:

“The laudability of the Bill’s aims, however, cannot justify bad legislation, and in the author’s opinion, taking this Bill forward would create a complex system that would involve significant costs but would not achieve those aims. Indeed, there is a risk that it would make Members of the Senedd appear less accountable to the public.”⁴³

44. The Member Accountability Bill Committee raised issues about the timetable within which it has been asked to discharge its duties,⁴⁴ highlighting concerns it has received in evidence about the pace at which the legislation has been developed.⁴⁵

45. In an evidence session with the Member Accountability Bill Committee, the Counsel General also said that:

“... this is a very unusual Bill, which the committee will already be very aware of. The Government is enabling a series of things that the Commission needs to put in place—the parliamentary authorities—and the Government is very keen not to appear to be telling the parliamentary authorities how to manage their business or run their proceedings. So, there are a large number of things in the Bill that are effectively Aunt Sallys, if you like, so a place to start the conversation, or they’re permissive, and we anticipate that the committee might want to make them

⁴² MAB04 Professor Alistair Clark

⁴³ MAB13, Keith Bush KC (Honoris Causa)

⁴⁴ Letter from the Member Accountability Bill Committee to the Business Committee, 26 November 2025

⁴⁵ MAB04 Professor Alistair Clark; MAB11 Transparency International UK

*mandatory or anything else. But the Government is largely neutral on this. This is not a policy Bill; it's not something where the Government is pushing a particular point of view."*⁴⁶

46. She also told them that:

*"Well, we're up against a time frame here, of course. The Bill might well have benefited from pre-consultation, but this, as you know, is part of an agreement with a number of other parties in the Senedd, and so the Government has done what it was asked to do."*⁴⁷

47. In terms of timing, she subsequently said "the timetable for this Bill is necessarily constrained, because it's a year 5 Bill."⁴⁸

Our view

48. Our role is to consider the Bill as introduced against the matters relevant to our remit and so our focus is generally narrower in scope than the committee formally designated as the responsible committee for Stage 1 scrutiny. It is on that basis that we make our remarks below.

49. This is a Bill of considerable constitutional significance and importance. Its overarching aim of improving public confidence and trust in the conduct of elected representatives, and therefore the democratic process, is welcome.

50. However, for a Bill of this nature, significantly more time should have been made available for Stage 1 scrutiny by Senedd committees, particularly when its subject matter relates to public trust and confidence in the democratic process.

51. We would, for example, have liked more time to consider consultation responses to the Member Accountability Bill Committee given the importance and complexity of the issues contained in the Bill. The constraints of the Stage 1 scrutiny timetable have prevented that from happening.

52. In a recent letter to the Llywydd, we raised concerns about the curtailed time available for Stage 1 scrutiny of Year 5 Bills. We recognise that some flexibility may be needed in exceptional circumstances. However, we concluded that "Curtailed scrutiny timeframes can result in legislation that has not been fully tested by

⁴⁶ Member Accountability Bill Committee, 2 December 2025, RoP [10]

⁴⁷ Member Accountability Bill Committee, 2 December 2025, RoP, [18]

⁴⁸ Member Accountability Bill Committee, 2 December 2025, RoP, [38]

legislators and stakeholders and, as a consequence, may not deliver the intended outcomes or be fully effective for Welsh citizens.”⁴⁹ A period of at least 12 weeks (and probably significantly more) should have been made available for the scrutiny of this Bill.

53. We believe that the main reason for curtailed scrutiny of the Bill was the late date of its introduction by the Welsh Government.

54. Based on what we have been able to take account of in the time available, we are uncomfortable with the Welsh Government’s approach to this legislation. In seeking to proceed quickly it has brought forward some provisions that it has not fully thought through and that risks breaching what we consider to be principles of good law-making. In his evidence, Keith Bush KC said that the laudability of the Bill’s aims cannot justify bad legislation and we share that view. A laudable aim should be translated into legislation that delivers that aim effectively; simply having legislation on the statute book, irrespective of its quality or effectiveness, to promote that aim would not be responsible and risks being counterproductive.

55. We believe that the subject matter of the Bill would make it a prime candidate for pre-legislative scrutiny by means of consultation on a draft Bill. We note the Counsel General’s acknowledgement of this point and also the significant time challenges she and the Welsh Government generally have referred to. However, the main driver should always be to deliver the highest quality legislation possible and that objective should not be forfeited because of a lack of available time.

56. We note the comments of the Counsel General that the Welsh Government sees itself as enabling provisions to be put in place that the Senedd requires and that, as such, this Bill is “a place to start the conversation”. We have concerns with this approach to legislating. In principle, a Bill should be fully formed on introduction, based on comprehensive policy development and public consultation. The Senedd scrutiny process aims to examine whether the legislation delivers on its objectives and enables Members of the Senedd to suggest improvements to ensure the best outcomes for citizens. It is difficult to most effectively perform that scrutiny function when elements of the Bill have not been fully developed.

57. We are concerned that the Welsh Government does not appear to have undertaken sufficient development work on some of the provisions in the Bill,

⁴⁹ Letter to the Business Committee, 14 November 2025

particularly around section 22 (which forms Part 3 of the Bill). Instead, it is delegating this work to a future government by means of secondary legislation. We consider this approach to be constitutionally inappropriate because it concerns matters such as the creation of a new criminal offence that should be provided for in primary legislation. We discuss this matter further in the next chapter of this report.

58. We also note that some respondents to the consultation exercise undertaken by the Member Accountability Bill Committee expressed concern that the balance between what is on the face of the Bill and what is left to secondary legislation is inappropriate. We share those concerns and comment separately on the delegated powers in the next chapter of this report. In particular, we are concerned that section 11 and section 22 (as we have already indicated) delegate power excessively and inappropriately to the Welsh Ministers.

59. In addition, we wish to re-iterate a point that we make frequently in our reports and which is particularly relevant to sections 11 and 22 of the Bill. The scrutiny procedures associated with any secondary legislation are significantly less robust than those associated with primary legislation, not least because they do not allow for Members of the Senedd to propose amendments and challenge or seek improvements to individual provisions. Approval of subordinate legislation on a “take it or leave it” basis is a very different proposition than having the opportunity to consider the text of Bill at the four stages of the Senedd’s legislative process. That important distinction should not be underestimated or dismissed as being of little consequence.

60. We note the Counsel General’s view that the Welsh Government should not be telling the Senedd how to conduct its business. We agree with that view given the Welsh Government’s accountability to the Senedd and welcome those comments. However, that view does not appear to have been translated into the drafting of section 18 of the Bill. We comment further on this issue in the next chapter of this report.

61. Overall, we are concerned with the approach taken by the Welsh Government on the development of key aspects of the Bill, and at some of the approaches to legislating the Bill adopts.

62. Ultimately, it was the Welsh Government who decided on the content of the Bill and the timing of its introduction.

63. It is therefore regrettable that, for a Bill of such constitutional importance aiming to improve public trust and confidence in the democratic process, there

has been limited public consultation with civic society on its proposals and insufficient time made available for public engagement to occur through the Senedd's legislative process.

64. We believe that, should the general principles of the Bill be agreed at Stage 1, the Bill will need to be substantially amended in order to mitigate some of our concerns and to bring it closer in line with established constitutional principles. We therefore consider some ways in which we believe the Bill could be improved in the next chapter of this report.

4. Specific observations on particular Parts and sections of the Bill

Part 1 – Recall of Members of the Senedd

Background

66. Part 1 of the Bill makes provision to introduce a system of recall to the Senedd where, in specified circumstances, a recall poll will be held to determine whether a Member of the Senedd retains their seat or is removed from office. According to the EM, the purpose of these provisions is to enhance the accountability of Members of the Senedd.⁵⁰

67. Section 1 provides an overview of Part 1. Section 2 (How a Member of the Senedd becomes subject to a recall poll) provides for the ‘trigger events’ which lead to a member becoming subject to a recall poll. There are two trigger events:

- Trigger event A: That a Member of the Senedd, after becoming a Member, has been convicted in the UK of an offence for which the member is sentenced or ordered to be imprisoned or detained (section 2(2)).
- Trigger event B: That the Senedd resolves to submit the Member to a recall poll following a report from the Standards of Conduct Committee recommending submission of the Member to a recall poll (section 2(4)).

68. Section 3 (Trigger event A: meaning of key terms) clarifies the meaning of key terms used in section 2. Section 4 (Trigger event A: courts to notify the Presiding Officer) places requirements on a court in England and Wales, that imposes a sentence or order for imprisonment on a Member of the Senedd within the meaning of section 2(2) (as clarified by section 3), to notify the Presiding Officer of that sentence or order.

69. Section 5 (Trigger event B: recall guidance) provides that the Standards of Conduct Committee (see section 18) may issue guidance about the matters to be taken into account when considering whether to recommend submitting a Member to a recall poll under trigger event B. Section 5(2) restricts the Standards of Conduct Committee from recommending that a Member be submitted to a recall poll unless recall guidance has been issued. Under section 5(3), the

⁵⁰ EM, Annex 1 - Explanatory Notes, paragraph 3

Committee is required to have regard to the recall guidance before recommending that a Member be submitted to a recall poll.

70. Section 5(4) requires the Standards of Conduct Committee, before issuing guidance, to carry out a public consultation on a draft version. Following this public consultation, section 5(7) requires the Committee (if it wishes to proceed) to lay a copy of the draft (with or without modification) before the Senedd. It can then only be issued if the draft has been approved by a resolution of the Senedd where the number of votes cast in favour of the resolution is at least two-thirds of the total number of votes cast, as required in section 5(7).

71. Section 6 (Presiding Officer's duty to fix date for recall poll and give notice of trigger event) and section 7 (Public notice of recall poll) concern the date of the recall poll and the obligation placed on a constituency returning officer to give public notice of that poll.

72. Section 8 (Early termination of a recall poll) provides for situations in which a recall poll can be terminated early. These are:

- early termination event A: the Presiding Officer has proposed a day for the holding of a poll at an extraordinary general election in accordance with section 5(1) of the 2006 Act (section 8(2));
- early termination event B: the Member of the Senedd has vacated their seat (section 8(3));
- early termination event C: where trigger event A has occurred, the conviction, sentence or order in question is overturned on appeal (section 8(4)).

73. Section 11 enables the Welsh Ministers to make regulations subject to the Senedd approval procedure to provide further detail about recall polls. Under section 11(1), the Welsh Ministers may by regulations make:

- provision about the conduct of a recall poll (section 11(1)(a));
- provision about the questioning of a recall poll and the consequences of irregularities (section 11(1)(b));
- further provision about the giving, sending, delivery or receipt of notices or other documents under the Bill (section 11(1)(c)).

74. Section 11(3) provides that the Welsh Ministers may, when making regulations under subsection (1):

- apply or incorporate, with or without modifications or exceptions, any provision made by or under—
 - (i) the Representation of the People Acts (section 11(3)(a)(i));
 - (ii) an order made under section 13 of the 2006 Act (section 11(3)(a)(ii));
 - (iii) the *Political Parties, Elections and Referendums Act 2000* (section 11(3)(a)(iii));
- create criminal offences (see section 11(3)(c));
- amend, modify, repeal or revoke any enactment (including an enactment contained in the Bill if enacted)(section 11(3)(f)).

Evidence

Section 4 – Trigger event A: courts to notify the Presiding Officer

75. We sought further clarity on section 4 of the Bill, and why, in relation to trigger event A, the Presiding Officer will only be notified of a conviction where it occurs in a court in England or Wales but not if it takes place in Scotland or Northern Ireland.

76. The Counsel General told us that it is a “powers” issue,⁵¹ adding that:

“What we’d expect, of course, is that the guidance would say that a Member is under a duty to report such a conviction, and that not reporting the conviction would then also trigger a series of sanctions. So, there are ways of doing it.”⁵²

77. The Counsel General added that “the duty to take action is immediately engaged as soon as the Llywydd is aware”⁵³ and “We just don’t have any method of applying the duty to courts in Scotland or Northern Ireland that we’ve been able to come up with.”⁵⁴

⁵¹ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [37]

⁵² Legislation, Justice and Constitution Committee, 17 November 2025, RoP [37]

⁵³ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [43]

⁵⁴ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [45]

Section 5 – Trigger event B: recall guidance

78. We asked the Counsel General why the Bill does not require the Standards of Conduct Committee to issue guidance. She replied that the Welsh Government felt very strongly that it should not be telling the “Commission” how to manage or conduct its business, and that accordingly the Bill had been drafted to be permissive.⁵⁵

79. We also noted the requirement in section 5(7) of the Bill that a two-thirds majority is required when voting on a motion to seek approval for this guidance to be issued by the Standards of Conduct Committee. We suggested this was unusual and asked why it was necessary. The Counsel General replied:

“So, there are a range of reasons, one of them is just pragmatic: it requires a change in Standing Orders. Standing Orders require a two-thirds majority to change them, so it just holds it in line with the changes required. But also, I think it’s a pretty serious sanction. It shouldn’t be subject to political interference. It should have the majority of Senedd Members behind it, if that’s the route we’re taking.”⁵⁶

80. We pursued this point by noting that it was the guidance being considered rather than the sanction itself, to which the Counsel General responded:

“Yes, but the guidance is what sets out the criteria by which this would happen. (...) I’m quite happy to entertain a discussion with the committee about whether it’s right or not, but we’ve started from the point of view that the whole thing is in the two-thirds majority place.”⁵⁷

81. Transparency International UK noted in its evidence to the Member Accountability Bill Committee that section 5 of the Bill “provides no detail on what ‘recall guidance’ might consist of” and that consideration could be given to including some basic principles in primary legislation, for instance that sanctions guidelines should be graduated to reflect the seriousness of the breach, or that a defined period of suspension should trigger a recall poll.⁵⁸

⁵⁵ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [23 and 25]

⁵⁶ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [27]

⁵⁷ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [35]

⁵⁸ MAB11 Transparency International UK

Section 8 – Early termination of a recall poll

82. As regards section 8 of the Bill and early termination event C about the overturning of a conviction, sentence or order on appeal, we asked whether a recall poll within three months of the Presiding Officer giving notice of a Member being subject to a recall poll (see sections 6(3) and 6(4) of the Bill) was sufficient for the appeal to have been completed. The Counsel General told us:

“Well, no, it isn’t. We think that it’s very unlikely that an appeal would ever have been completed within three months, but we don’t think that’s a reason not to legislate in case it was. We also think that the likelihood is that it won’t be concluded, and actually some criminal cases are taking so long at the moment it might not be concluded within the term of the Senedd. But we don’t see that that’s a reason not to have a provision where, if it is concluded quickly, you can take the outcome into account. So, that’s the thinking there. Again, I’m happy to engage with the committee about other ways of doing it. What we don’t want to have is a situation where it doesn’t happen until all appeal routes are exhausted, because, frankly, that would probably mean it would never happen.”⁵⁹

83. In terms of alternative mechanisms or means of achieving the same result, the Counsel General indicated the Welsh Government has given consideration to such matters, saying:

“We’ve been round and round on this, to be perfectly honest with you. But I think in the end, because of the length of time that most criminal appeals take, you’d have to take the view that waiting for the appeals process to be exhausted would effectively mean that you hardly ever managed to do it. And if somebody does manage to clear their name, they’re obviously free to stand again anyway.”⁶⁰

84. The Counsel General explained that the three-month period was chosen:

“Just because we think that’s the length of time that makes a difference to the process, if you like. Again, I’m not wedded to three months. If you want to argue with me it should be four or

⁵⁹ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [50]

⁶⁰ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [59]

two, then I'm more than happy to have that conversation, but it's an amount of time that we think it might happen in that amount of time, in which case you should take account of it. But if not, then we shouldn't. It's just trying to be pragmatic, isn't it?"⁶¹

85. An official accompanying the Counsel General added:

"... I think the three-month window is the usual window in which you set a date for, say, a by-election as well. So, it's also to allow time for the electoral administrators to run the recall poll as well."⁶²

86. Evidence to the Member Accountability Bill Committee raised concerns about a Member having only three months in which to make an appeal before a recall poll is triggered. Issues raised included matters of fairness⁶³ and comparisons with the position in the House of Commons (and a Scottish Bill⁶⁴), where a recall poll cannot be triggered (or is proposed not to be triggered) until all appeal mechanisms have been exhausted.⁶⁵

87. In his evidence to the Member Accountability Bill Committee, Daniel Greenberg CB, the Parliamentary Commissioner for Standards, highlighted a point about mixing the standards regime of the Senedd and external legal processes and statute law. He said:

"... if there is going to be judicial involvement, you must make sure that there is an appropriate opportunity for that involvement to take place in a way that doesn't come in and retrospectively nullify something that you've done. So, you have to ensure that any legal challenges, legal appeals, legal processes take place at an appropriate point in the overall timeline to provide finality and clarity."⁶⁶

Section 11 – Regulations about recall polls

88. The Statement of Policy Intent describes the regulation-making power in section 11 as “a broad power to make subordinate legislation about the conduct of

⁶¹ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [61]

⁶² Legislation, Justice and Constitution Committee, 17 November 2025, RoP [62]

⁶³ MAB12 Public and Commercial Services Union

⁶⁴ Scottish Parliament (Recall and Removal of Members) Bill

⁶⁵ MAB10 Paul Evans and Sir Paul Silk; MAB13, Keith Bush KC (Honoris Causa)

⁶⁶ Member Accountability Committee, 25 November 2025, RoP [28]

recall polls”, similar to the power contained in section 13 of the 2006 Act “which provides Ministers with a broad power to make provision in respect of the conduct of Senedd elections.”⁶⁷

89. We asked the Counsel General why the power to make regulations in section 11 was permissive rather than a duty. She told us:

*“It’s a convention that you give Ministers the widest flexibility possible in the exercise of their powers. It’s a convention. You shouldn’t assume that that means that Welsh Ministers would decide not to make regulations at all, because the thing can’t function unless they make the regulations, but it is a convention. And again, I’m happy to discuss with the committee whether or not that is something you want to stick to.”*⁶⁸

90. In the EM, the Counsel General states:

“The Welsh Government’s assessment of the impacts of this legislation on the justice system is that it has no or negligible potential impact.

*This conclusion has been reached on the basis that the legislation does not create or expand any existing criminal offences, but alternatively the legislation includes measures which will allow the Welsh Ministers to bring forward regulations that will largely extend or apply the existing criminal (electoral) offences set out in The Senedd Cymru (Representation of the People) Order 2025 for the purpose of Senedd general elections, to a recall poll.”*⁶⁹

91. In terms of section 11(3), we asked the Counsel General what criminal offences she currently envisaged being created under this provision and why none of that detail is included on the face of the Bill. In response she said:

“We’d be looking to replicate. So, rather than have to do research across a large number of different pieces of legislation, we’d be looking to replicate some of the existing offences that exist. And then, obviously, we’ve had the long discussion, (...) as

⁶⁷ Statement of Policy Intent, page 5

⁶⁸ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [66]

⁶⁹ EM, paragraphs 235 to 236

*you know, about the deliberate deception offence. So, we'd be looking to look at consistency between the two systems. If you think of the conduct Order and the way that a normal election is run, you'd be looking to duplicate that for a recall poll. So, you'd have the same set of rules and regulations around how that poll is conducted, because it's obviously going to be an election. It would look like a by-election to all intents and purposes. So, you'd want them to be consistent. Some offences won't be relevant. The one around nominations isn't relevant, just as an example. So, we'll have to do the work to go through what is and isn't relevant for a recall poll."*⁷⁰

92. The Counsel General said that the criminal offences created would be limited, namely, to be relevant to the purpose of section 11.⁷¹

93. In their evidence to the Member Accountability Bill Committee, Paul Evans (a former senior parliamentary official in the House of Commons) and Sir Paul Silk (a former Clerk of the National Assembly for Wales) note that section 11 of the Bill "allows considerable discretion to the Welsh Ministers about the conduct of recall polls", adding:

*"... the Bill could be improved by making specific provisions: in particular; for shorter period for recall polls to be open, for less discretion about number of voting stations, for more convenient opening hours, and for consideration to people who have difficulty getting to polling stations. Giving discretionary powers to returning officers over the conduct of a political event is undesirable, and can even lead to accusations of bias, as in the North Antrim recall petition in 2018."*⁷²

94. Transparency International UK also note the wide-ranging power given to the Welsh Ministers in section 11, suggesting that consideration is given to adding more extensive consultation and scrutiny procedures to the face of the Bill.⁷³

Our view

95. As regards section 4 of the Bill, we are concerned that it introduces a two-tier system for notifying the Presiding Officer of a conviction. We do not believe this is

⁷⁰ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [72]

⁷¹ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [73 to 74]

⁷² MAB10 Paul Evans and Sir Paul Silk

⁷³ MAB11 Transparency International UK

appropriate and believe that the effect of trigger event A occurring should be the same regardless of where in the United Kingdom a conviction takes place. In effect, we believe that the approach taken if a Member was convicted in a court in Scotland or Northern Ireland should be no different to what would happen were they convicted in a court in England or Wales.

Recommendation 3. The Counsel General should table an amendment to remove section 4 from the Bill.

96. We recognise the Counsel General's comments that the Welsh Government should not be telling the Senedd how to conduct its business, and accordingly that the Bill has been drafted to be permissive in terms of the issuing of guidance by the Standards of Conduct Committee. We acknowledge this point and our usual view would be that the legislation should not bind the conduct of a future Senedd. However, in this particular instance, given that the guidance is crucial to the operation of the recall system to be put in place by the Bill and would help strengthen public confidence and trust in the democratic process, we believe that it necessitates an obligation to be placed on the production of the guidance within a specified timeframe.

Recommendation 4. An amendment should be tabled to section 5(1) of the Bill to place a duty on the Standards of Conduct Committee to produce recall guidance within a specified timeframe.

97. We are not persuaded by the Counsel General's arguments for requiring a two-thirds majority on a motion to approve the guidance as required by section 5(7)(b). In our view such a high bar could enable the guidance to be blocked by a minority of Members of the Senedd. In our view the guidance should be approved by resolution of the Senedd on the basis of a majority voting in favour.

Recommendation 5. The Counsel General should table an amendment to remove section 5(7)(b) from the Bill.

98. As regards section 8 of the Bill, we believe that, as in the House of Commons, natural justice should be allowed to take its course. As such, we believe the Bill should be amended such that a recall poll cannot be triggered until any appeals made by the Member against the relevant conviction have been determined or otherwise disposed of.

Recommendation 6. The Counsel General should table an amendment or amendments to the Bill to require that a recall poll may not be triggered until any appeals made by the Member against the relevant conviction have been determined or otherwise disposed of.

99. Section 11 of the Bill is essential to the operation of the recall system in the Bill. The regulation-making power in the section is a broad power and we have a number of concerns with it, which we detail below.

100. We note the comments of the Counsel General that the permissive nature of the regulation-making power is as a result of convention. However, we also note that later in our session, the Counsel General said on a similar matter “we’ve seen what happens when conventions aren’t put into statute and a Government decides not to abide by them.”⁷⁴

101. Given that a recall poll cannot be held without these regulations being made, we believe that there is benefit to making it a duty for the Welsh Ministers to make regulations about the matters referred to in section 11(1) of the Bill within a specified timeframe.

Recommendation 7. The Counsel General should table an amendment to the Bill to require the Welsh Ministers to make regulations under section 11(1) within a specified timeframe.

102. We note that section 11(3)(a) of the Bill enables regulations to apply or incorporate, with or without modifications or exceptions, any provision made by or under various Acts, including section 13 of the 2006 Act. Section 22 of the Bill amends section 13 of the 2006 Act.

Recommendation 8. The Counsel General should explain what the amendment of section 13 of the 2006 Act by section 22 of the Bill would enable regulations under section 11(1) to include that would not be possible if section 22 did not form part the Bill.

103. As matters currently stand, an order under section 13 of the 2006 Act, making use of the powers as a consequence of section 22 of the Bill, could only apply to the conduct of elections. Should such an order be made in the future, it is unclear to us whether the prohibition of making or publishing of false or misleading statements of fact could then be applied to recall polls by virtue of the power in section 11(3)(a)(ii) of the Bill.

Recommendation 9. The Counsel General should state whether the power contained in section 11(3)(a)(ii) of the Bill could be used to apply the prohibition of the making or publishing of false or misleading statements of fact to recall polls and whether that is the intention.

⁷⁴ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [81]

104. We note that section 11(3)(c) of the Bill permits the creation of new criminal offences by means of regulations. We do not feel this is appropriate. Criminal offences should appear on the face of the Bill.

105. Our view on this matter is consistent with other parliamentary practitioners who have expressed views on legislative practice. In a recent report on its legislative standards, the House of Lords Constitution Committee noted that “Delegated legislation should not be used to create new criminal offences – this is generally constitutionally unacceptable”.⁷⁵ In his evidence to the Member Accountability Bill Committee, The Rt Hon. the Lord Thomas of Cwmgiedd also makes reference to the strong view in the UK Parliament that criminal offences should be placed in primary legislation.⁷⁶

Recommendation 10. The Counsel General should table an amendment to the Bill to include on its face any new criminal offences that would apply in relation to recall polls.

Recommendation 11. If the intention is not to create new criminal offences the Counsel General should table an amendment to section 11 of the Bill to limit the offences referred to in section 11(3)(c) to criminal offences that already exist in legislation.

Recommendation 12. If the Counsel General rejects recommendations 10 and 11, she should provide a detailed explanation of why she believes it is not possible to place new criminal offences on the face of the Bill in respect of recall polls.

106. A key purpose of the Bill is to improve public trust in the democratic process. This being the case we believe there would be merit in requiring regulations under section 11(1) to be subject to public consultation, in addition to consultation with the Electoral Commission.

Recommendation 13. The Counsel General should table an amendment to the Bill to make it a requirement for there to be a public consultation before making regulations under section 11.

⁷⁵ House of Lords Legislative standards of the Constitution Committee: 2017-2024, 6 May 2025, number 44

⁷⁶ MAB019 Lord Thomas of Cwmgiedd

Part 2 – Standards of Conduct of Members of the Senedd

Background

107. Section 18 of the Bill amends section 28 of the 2006 Act to allow the Senedd to appoint individuals who are not Members of the Senedd to sit on the Standards of Conduct Committee and any sub-committee of that Committee. Those individuals will be known as ‘lay members’.

108. Section 18 also inserts new sections 30A and 30B and a new Schedule 1B into the 2006 Act.

109. New section 30A of the 2006 Act requires that the Senedd must have a Standards of Conduct Committee that has functions relating to the standards of conduct of Members of the Senedd as specified in Standing Orders. It also provides for additional functions of that Committee to be specified in Standing Orders.

110. New section 30A(3) provides that the number of members of the Committee is to be specified in Standing Orders, and that this may include lay members. Further provision about what Standing Orders may include about the Standards of Conduct Committee is set out in subsections (5) and (6). The Explanatory Notes to the Bill state:

“In particular subsection (5) provides that the Senedd’s Standing Orders may make provision: that lay members may be excluded from proceedings of the Standards of Conduct Committee, or of a sub-committee of that Committee, it is for the Senedd to decide the circumstances in which that should happen; what the membership of any sub-committee(s) of the Standards of Conduct Committee should be and that this may include members who are not members of the Committee; provision for members of any sub-committee to be appointed other than by the Committee itself, which allows for a different process for appointment of members and for the Standing Orders to set out that process; that any sub-committee of the Standards of Conduct Committee which is set up for the purposes of carrying out reviews of or appeals against Committee or sub-committee proceedings relating to the conduct of Members of the Senedd can be made up entirely of lay members this includes that if the Senedd so decides there need only be one lay member on such a sub-committee. These

provisions enable the Senedd to establish an appeals mechanism for appeals against the decision of the Committee in relation to proceedings about the conduct of a Member of the Senedd.

The decision whether to appoint lay members or not is a matter for the Senedd to decide but, if such a decision is taken, subsection (6) sets out provisions that Standing Orders must and may make in relation to the participation and voting rights of lay members (...).⁷⁷

111. New section 30A(8) specifies the office holders who are not permitted to be members of the Standards of Conduct Committee or a sub-committee of that Committee.

112. New section 30B of the 2006 Act makes provision about lay members of the Standards of Conduct Committee, including how they are to be recruited and appointed, and the circumstances in which they can cease to hold office. Subsection (1) places a restriction on Standing Orders from providing for there to be more lay members of the Committee than members who are Members of the Senedd. Subsections (2), (3) and (4) provide for lay members to be appointed by resolution of the Senedd by a motion tabled with the consent of the Presiding Officer. It also states that the person put forward for nomination in the motion must have been selected on the basis of fair and open competition.

113. New section 30B(5) provides that the maximum fixed term of an appointment of a lay member cannot exceed six years but can end after the date of the next Senedd election, meaning that an appointment can continue into a further Senedd term. New section 30B(7) restricts a lay member from serving more than two terms of office (whether or not these are consecutive).

114. New Schedule 1B to the 2006 Act is introduced via Schedule 1 to the Bill (as introduced by section 18) and sets out the categories of person (Part 1 of the Schedule) and offices (Part 2 of the Schedule) that would disqualify an individual from appointment as a lay member of the Standards of Conduct Committee.

Evidence

115. We asked the Counsel General why the Bill places the Standards of Conduct Committee on a statutory footing. The Counsel General replied:

⁷⁷ EM, Annex 1 Explanatory Notes, paragraphs 41 and 42

“Again, because for this all to work you absolutely need to have the committee. It doesn’t currently require there to be a committee. I agree it’s hard to imagine a Senedd that wouldn’t establish a standards committee, but this marks a real change in the regime, and it doesn’t function unless there’s a committee. So, you have to put all of the things in place so that no Commission could decide not to do that. That’s why it’s doing that. It’s trying to make a coherent legal framework within which the system would sit.”⁷⁸

116. She added:

“... just speaking very personally and not on behalf of the Government for a moment, we’ve seen what happens when conventions aren’t put into statute and a Government decides not to abide by them. (...) it seems we have an opportunity to put it beyond doubt, so we’ve decided to try and take it.”⁷⁹

117. A government official accompanying the Counsel General said:

“Also just to add, section 28 of the Government of Wales Act prevents non-Members of the Senedd sitting on committees, so there did need to be a legislative change in order to enable that into this circumstance.”⁸⁰

118. The Bill provides that a former Member of the Senedd cannot be appointed as a lay member of the Standards of Conduct Committee within two years of them ceasing to be a Member (paragraphs 4 and 5 of new Schedule 1B to the 2006 Act). We asked the Counsel General to explain the rationale for this approach, particularly given that the House of Commons has a complete prohibition on former MPs being appointed as lay members of its equivalent committee. Addressing this point, the Counsel General said:

“It’s a place to start, if I’m honest. That’s what the [standards] commissioner looks like currently as well. I personally think the lay members and the commissioner should be subject to the same prohibition, whatever that is, and we should change it, whatever we change it to, to the same. And I think it’s a matter for the parliamentary committees and the Commission to do

⁷⁸ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [76]

⁷⁹ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [81]

⁸⁰ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [82]

that. But this is the beginning of a legislative process, it's the beginning of a conversation.”⁸¹

119. She continued:

“For what it’s worth, as a personal thing, not speaking as the Counsel General, I think it should be a permanent disqualification, because I think you would permanently be thought of as being in whatever camp you’d been in when you were elected. And that’s just a personal view; it’s not a Government view. But I can see, if you’re trying to overcome cynicism and so on, the idea that that person is now non-aligned and independent is difficult.”⁸²

120. However, the Counsel General also noted that there “are lots of systems in place where two- or five-year qualifications are in place.”⁸³

121. When we suggested a four-year prohibition, the Counsel General acknowledged that an argument could be made for a number of different time periods, adding:

“As I keep expressing, my own very personal view is it should be permanently disqualified. If you’ve been an elected Member of the Senedd, you shouldn’t be allowed to be a lay member of one of its committees, because, frankly, I don’t think you’d ever be regarded as lay by anyone. But it’s for the Commission and its committees—you—to suggest back to us what your view is. Again, it’s one of these where I don’t particularly think the Government should be imposing a view.”⁸⁴

122. New sections 30B(5)(a) and 30B(7) of the 2006 Act provide that lay members can be appointed for a fixed-term of up to six years and cannot serve more than two terms of office. We sought an explanation for the six-year terms proposed, particularly given that a Senedd will last four years. The Counsel General told us that appointees would not have to be appointed for the maximum term and a six-year term allowed for some experience across elections, while also highlighting

⁸¹ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [86]

⁸² Legislation, Justice and Constitution Committee, 17 November 2025, RoP [87]

⁸³ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [88]

⁸⁴ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [92]

the benefits of a rolling programme of appointees with expertise and the flexibility it provides.⁸⁵

123. We suggested to the Counsel General that the term used for ‘disqualification’ in the Welsh text of section 18(4) of the Bill (“datgymhwyso”) is incorrect. An official accompanying the Counsel General agreed and indicated that, subject to the Counsel General’s approval, an appropriate amendment would be tabled.⁸⁶

124. There was support amongst respondents to the Member Accountability Bill Committee’s consultation exercise for placing the Standards of Conduct Committee on a statutory footing.⁸⁷

125. In her written submission, the Llywydd questioned why the Bill provides that certain officer holders (including the Presiding Officer and Deputy Presiding Officer) are not permitted to be members of the Committee. She says that unless there are “specific and justifiable” reasons for matters relating to committee membership to be provided for in legislation, the Senedd should be able to decide on such matters itself. The Llywydd also queried why it is necessary for there to be a legal requirement for a Standards of Conduct Committee, preferring the approach adopted in the *National Assembly for Wales Commissioner for Standards Measure 2009*.⁸⁸

126. In making some general observations, the Llywydd noted that the Standards of Conduct Committee recommended⁸⁹ that section 28 of the 2006 Act is amended to allow the Senedd to appoint lay members to the Standards of Conduct Committee. She also expressed concern at the approach to lay members taken in the Bill, noting that the Bill seeks to prescribe what the Senedd must include in its Standing Orders, through legislation, before stating:

“That a parliament should be free to govern itself, free from external influence, is an important principle. Any provisions currently included in the Bill, which limit the Senedd’s discretion to decide its own procedures, should be given careful consideration by the Committee and, potentially, be recommended to be removed.

⁸⁵ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [94 to 101]

⁸⁶ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [183]

⁸⁷ MAB10 Paul Evans and Sir Paul Silk; MAB11 Transparency International UK

⁸⁸ MAB14 Rt. Hon. Elin Jones, Llywydd, Welsh Parliament

⁸⁹ Standards of Conduct Committee, Individual Member Accountability: Deliberate deception, February 2025, recommendation 2

The Committee may therefore wish to consider the basis on which the Bill is seeking to amend the Government of Wales Act 2006 beyond what is necessary to deliver what the Standards of Conduct Committee has recommended.”⁹⁰

127. The Chief Executive and Clerk of the Senedd, Manon Antoniazzi, noted that a Standards of Conduct Committee has been established in every Assembly and Senedd and Standing Orders already require one to be proposed by the Business Committee.⁹¹

128. Similarly, Douglas Bain CBE TD, the Senedd Commissioner for Standards, noted that the Senedd has always had a Standards of Conduct Committee. He added that his only concern was that “by putting it in statute it removes the opportunity to easily change the provisions if anything is found in need of change”.⁹²

129. In its report on deliberate deception, the Standards of Conduct Committee set out its view that the introduction of recall as a sanction may necessitate the need for the Senedd to re-introduce an appeals mechanism in relation to a decision of that Committee (albeit through a legislative means).⁹³

130. Evidence to the Member Accountability Bill Committee has also supported the idea of an appeals mechanism as part of the Senedd’s standards landscape should this Bill’s provisions on recall be agreed.⁹⁴ It heard from the Chair of the House of Commons Committee on Standards, Alberto Costa MP about the Independent Expert Panel established in the House of Commons. This panel, established by standing orders, is made up of independent experts that, amongst other functions, hears appeals from MPs against decisions of the Committee on Standards. It is operationally independent, with no role for MPs or lay members of the Committee on Standards in its decisions. Alberto Costa MP also set out his view of the importance of an appeals process being seen as independent from the Senedd’s Standards of Conduct Committee.⁹⁵

⁹⁰ [MAB14 Rt. Hon. Elin Jones, Llywydd, Welsh Parliament](#)

⁹¹ [MAB09 Chief Executive and Clerk of the Senedd, Senedd Cymru](#)

⁹² Member Accountability Bill Committee, 11 November 2025, RoP [114]

⁹³ Standards of Conduct Committee, Individual Member Accountability: Deliberate deception, February 2025, paragraph 201

⁹⁴ [MAB02 Dr Ben Stanford](#)

⁹⁵ Member Accountability Bill Committee, 27 November 2025, RoP [95 to 97]

131. In addition, the Senedd’s Standards of Conduct Committee has said that its intention is to consider how an appeals mechanism could work in practice in future in the Senedd and to bring forward proposals for the Senedd to agree.⁹⁶

Our view

132. We note that, in our questioning about the issuing of recall guidance by the Standards of Conduct Committee, the Counsel General told us that the Welsh Government felt very strongly that it should not be telling the Senedd how to manage or conduct its business. We also note that, during her evidence to the Member Accountability Bill Committee, the Counsel General emphasised this point when she indicated that an executive telling its parliamentary authority how to run its affairs “is not a good look for any democracy.”⁹⁷ We share that view.

133. However, this view that the Welsh Government should not tell the Senedd how to conduct its business does not appear to us to have been applied to the drafting of section 18 of the Bill, which is overly prescriptive of how the Senedd should approach matters relating to Senedd committees and what it should include in its own Standing Orders.

134. We also note, as an observation, that the drafting is significantly more prescriptive in section 18 in the way in which it seeks to control how the Senedd operates than it is in sections 11 and 22, which delegate powers to the Welsh Ministers.

135. As evidence to the Member Accountability Bill Committee notes, provision requiring there to be a Standards of Conduct Committee is already contained in the Senedd’s Standing Orders (Standing Order 22).

136. We also note that the Standards of Conduct Committee did not recommend the approach adopted in section 18 of the Bill and referred only to the need for lay members. We recognise that legislative provision is required to enable non-Members of the Senedd to be members of the Standards of Conduct Committee (or a sub-committee of that Committee) but that other matters relating to the appointment of lay members can be dealt with through the Senedd’s Standing Orders.

137. For example, in relation to the decisions of the Standards of Conduct Committee, we note that different mechanisms for an appeals process other than

⁹⁶ Standards of Conduct Committee, Individual Member Accountability: Deliberate deception, February 2025, paragraph 201

⁹⁷ Member Accountability Bill Committee, 2 December 2025, RoP [37]

a sub-committee were suggested in evidence to the Member Accountability Bill Committee. We also note the intention of the Standards of Conduct Committee to complete further work on this issue. These issues highlight the need for further consideration by the Senedd itself on how the details of the standards landscape should work in the Seventh Senedd and the need for flexibility to be provided to enable decisions to be taken. The drafting of section 18 of the Bill restricts that flexibility for the Senedd and is inappropriate.

138. We therefore share the concerns of the Llywydd regarding the approach to section 18. That said, we do recognise there may be merit for reasons of public perception in placing in primary legislation a requirement for there to be a committee responsible for standards of conduct of Members of the Senedd.

Recommendation 14. The Counsel General should table amendments to section 18 of the Bill such that it only makes provision for:

- there to be a committee with responsibility for standards of conduct of Senedd Members;
- non-Members of the Senedd to be appointed to the Standards of Conduct Committee (or a sub-committee of that Committee).

139. In making recommendation 14, we wish to emphasise that it is critical for the Senedd to put processes in place for the appointment of lay members and a mechanism for appeals as soon as possible in the Seventh Senedd through its Standing Orders.

140. We note that there is agreement that the Welsh text of section 18(4) of the Bill requires an amendment to provide linguistic equivalence.

Recommendation 15. Subject to recommendation 14, the Counsel General should ensure the equivalence of the English and Welsh texts of the Bill.

Part 3 – Conduct of Senedd Cymru Elections

Background

141. Section 13 of the 2006 Act provides a power for the Welsh Ministers to make provision about Senedd elections. This includes making provision about the conduct of elections, the questioning of an election of a Member and the consequences of irregularities, and the return of a Member otherwise than at an election. Orders made under section 13 of the 2006 Act relating to the conduct of

elections are often referred to as conduct orders and this terminology will be used as appropriate in this part of the report.

142. In July 2025, the Welsh Ministers made, under section 13 of the 2006 Act, the Senedd Cymru (Representation of the People) Order 2025,⁹⁸ which contains much of the detail about the conduct of Senedd elections. The 2025 conduct order consolidated and remade previous such conduct orders bilingually for the first time, taking into account changes made by the *Senedd Cymru (Members and Elections) Act 2024*⁹⁹ and the *Elections and Elected Bodies (Wales) Act 2024*.¹⁰⁰

143. Section 22 of the Bill amends section 13 of the 2006 Act. The amendment at section 22(3) inserts new subsections (2A) and (2B) into section 13 of that Act.

144. New subsection (2A) places a duty on the Welsh Ministers to make provision about the conduct of Senedd elections, namely “prohibiting the making or publishing of false or misleading statements of fact before or during an election for the purpose of affecting the return of any candidate.” New subsection (2B) states that this may include provision:

- about what is or is not a “statement of fact”;
- prohibiting false statements only, or both false and misleading statements;
- specifying the period in which any prohibition has effect;
- prohibiting false or misleading statements of fact relating to matters specified in the order or matters generally;
- prohibiting false or misleading statements of fact made or published by persons or categories of person specified in the order or any person;
- prohibiting the making or publishing of false or misleading statements knowingly or recklessly; and
- specifying exemptions or exceptions to any prohibition.

145. Section 22(4) of the Bill inserts new subsection (4A) into section 13 of the 2006 Act to provide that an order under section 13 may confer a power or duty on

⁹⁸ [Senedd Cymru \(Representation of the People\) Order 2025](#)

⁹⁹ [Senedd Cymru \(Members and Elections\) Act 2024](#)

¹⁰⁰ [Elections and Elected Bodies \(Wales\) Act 2024](#)

any person (including a power or duty to make subordinate legislation) and create criminal offences.

146. The Statement of Policy Intent accompanying the Bill says that “the creation of a potential offence in respect of deliberate deception by candidates is a novel proposition”. It states that the Welsh Government has not had time to undertake the comprehensive and necessary engagement with the police, the Crown Prosecution Service or the Ministry of Justice in order to develop an offence.¹⁰¹

147. A discrepancy appears in the Bill in the wording between new sections (2A) and (2B) to be inserted in section 13 of the 2006 Act by section 22(3) of the Bill. New subsection (2A) provides for false or misleading statements to be prohibited by an order under section 13 of the 2006 Act whereas the list of indicative matters that could be covered by an order in subsection 2(B) states that false or false and misleading statements could be included within a prohibition. For the purposes of this report, we use the wording set out in the new subsection 13(2A).

Evidence

148. As regards the power in section 22 to make provision prohibiting the making or publishing of false or misleading statements of fact, we asked if the creation of this offence as drafted in the Bill was for reasons of legislative competence. The Counsel General said:

“Yes. We have to make sure that it’s in relation to Senedd elections, not just a general offence.”¹⁰²

149. When we suggested that the offence should be clearly defined and written on the face of the Bill, the Counsel General told us:

“What we’re trying to do is create a coherent set of offences that govern elections. This is not the only thing that governs elections, and normally they’d be set out in the conduct Order. What we’re trying to do is enable the next conduct Order to include all of the things that are relevant to the conduct of an election, including all of the criminal provisions. (...) It’s not impossible to do it separately, but you end up with having to look things up in two separate places and so on, which we don’t think is at all optimal. (...) We have a system in which we wish to have enforceability as well. (...) So, having it as a

¹⁰¹ Statement of Policy Intent, page 6

¹⁰² Legislation, Justice and Constitution Committee, 17 November 2025, RoP [104]

coherent conduct Order, we think, is a far better way of going about it."¹⁰³

150. In pursuing this point that the offence should be on the face of the Bill, the Counsel General said this was not her point of view¹⁰⁴ because she thought:

"... that you've got to give consideration to what the whole conduct Order looks like and—

(...)

*—the range of offences therein, and the new offence, and make sure that they sit carefully together. (...) So, taking one bit of it and putting it on the face of the Bill, I don't personally think works."*¹⁰⁵

151. We asked the Counsel General if it is the case that the offence set out in new section 13(2A) that may occur during the period of an election is one that is going to be defined at a future date. In response the Counsel General said:

*"So, what it is, it's a duty, and the duty comes into force two months after Royal Assent, and therefore whoever the next Government is must have executed that duty by the end."*¹⁰⁶

152. The Counsel General advised that:

*"It's in section 13(2A). It's got to be included in all future Orders made under section 13. So, it has to have been satisfied by the next election, basically."*¹⁰⁷

153. When we suggested that the Senedd is being asked to put on the statute book a duty to create an offence that is not defined, the Counsel General told us:

*"It's for the next Government and the parliamentary authorities to define that offence."*¹⁰⁸

154. She added:

¹⁰³ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [106]

¹⁰⁴ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [108]

¹⁰⁵ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [110 to 112]

¹⁰⁶ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [114]

¹⁰⁷ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [116]

¹⁰⁸ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [118]

“... what we’re saying is you would have a standards of conduct committee that would look at the guidance, and the guidance would be produced in that way; it would be passed under Standing Orders, the Standing Orders would take account of the terminology that was being proposed. So, you’ve got a set of things that you need to happen for this to happen.

There’s a real risk, if we do it now—and it would be relatively arbitrary, how would we do that—that it would be challengeable, and take us outside competence. So, I’m very concerned about the competence on this Bill. We’re right on the edge of what we want to do. That doesn’t mean we shouldn’t do it; I’m quite happy to push the envelope, but we need to make sure that we don’t push it so far that the whole thing fails. So, that’s part of it as well. We’re trying to insulate the Bill from that risk, a little bit, but then, on the other hand, we’re also trying to make sure that the next Government does do it. So, they’re obliged to do it; it’s not a thing that they could do if they felt like it.”¹⁰⁹

155. We sought clarification through correspondence about the exact timescale within which the Welsh Ministers must make the provision referred to in new section 13(2A) and whether or not a further section 13 order under the 2006 Act must be made by the next Senedd election in 2030. The Counsel General said:

“I do not believe that it is appropriate to set an arbitrary timescale for the exercise of this duty. As I have set out, it is essential that careful and detailed consideration is given to the development of any offence, to ensure that it specifically addresses the statements we are looking to prohibit. What the duty ensures is that the next government will be required to consider this issue and take steps to satisfy the duty.

Once new sub-section 13(2A) is enacted and has come into force, which will be after the 2026 election, the Welsh Ministers will be subject to the duty. Although there is no deadline for compliance with the duty, I consider it will be incumbent upon the Welsh Ministers to have made provision to satisfy the duty

¹⁰⁹ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [122 to 123]

before the next election when any provision made under section 13(2A) would have effect.

Whilst there is no specific legislative requirement to update the Conduct Order prior to each election, the Conduct Order has been revised or remade in advance of every scheduled Senedd election held to date. I believe it is inconceivable that this would not continue to be the case given the critical role the Order plays in enabling an election to be run.

The provision that must be made is provision “of the kind that must be made under 13(1)(a)” i.e. provision about the conduct of elections for Members of the Senedd so the provision that must be made under that sub-section must have a connection to the conduct of elections and it is for this reason I consider the next election is the point by which the duty will need to have been discharged.”¹¹⁰

156. During questioning in the Member Accountability Bill Committee, the Counsel General indicated that it would be possible but not probable that a Bill containing the subject matter of section 22 of this Bill could be introduced into the Seventh Senedd and implemented by 2030.¹¹¹

157. We asked the Counsel General what constitutes a “false statement of fact”. She answered:

“So, that is one of the big problems, isn’t it? It’s a false statement of fact that’s deliberately deceptive. So, you have to have known that it’s a false statement of fact, and it has to be the sort of fact that you’re not easily able to correct. It’s actually quite hard to find such a statement.”¹¹²

158. She added:

“I do think it’s very problematic that we have a system of democratic debate that is open to a whole series of statements of opinion, which are designed, in my opinion, to mislead, but which when dissected are actually not statements of fact.

¹¹⁰ Letter from the Counsel General, 4 December 2025, response to question 1

¹¹¹ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [123 to 138]

¹¹² Legislation, Justice and Constitution Committee, 17 November 2025, RoP [125]

*People are entitled to an opinion not based on any facts. That's the reality of the world we seem to be living in."*¹¹³

159. The Explanatory Notes to the Bill set out the changes to be made to section 13 of the 2006 Act by section 22, including as a consequence of section 22(3) inserting new subsections (2A) and (2B).¹¹⁴ The Explanatory Notes also state:

*"Sub-section 22(4) adds a "For the avoidance of doubt" clarificatory provision relating to the creation of criminal offences, and subdelegation in orders made under section 13 (with a connected omission at sub-paragraph 22(2) of the Bill). The effect of these amendments is to clarify what the scope of the power is and always has been."*¹¹⁵

160. We asked the Counsel General what the final sentence of this paragraph is referring to. She told us:

*"So, again, what we're trying to do is we're trying to make sure that the new provision doesn't alter the scope of the existing provision, so we don't inadvertently narrow the scope of the existing provision by attempting to put another one in that complements or widens it, as you say. So, we just have to make absolutely certain that we haven't done that. The point about it is that we're making cumulative law."*¹¹⁶

161. As regards the specific provision to insert new subsection (4A) into section 13 of the 2006 Act by section 22(4), we asked the Counsel General what types of criminal offences the new provision could create. She responded by saying:

*"So, it's just a clarification. It's for what the lawyers always say is for the purposes of avoiding doubt. It's clarifying that this is within the power. So, we've always interpreted it like this. We're just putting it beyond doubt. So, it's literally for the avoidance of doubt."*¹¹⁷

162. We probed some of these issues further in correspondence. We noted that the Bill does not contain a definition of what constitutes a "false statement of fact" or a "misleading statement of fact", which are crucial to the formulation of the

¹¹³ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [131]

¹¹⁴ EM, Annex 1 – Explanatory Notes, paragraph 61

¹¹⁵ EM, Annex 1 – Explanatory Notes, paragraph 61

¹¹⁶ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [154]

¹¹⁷ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [168]

proposed offence. We asked the Counsel General whether it is desirable to have those terms on the face of the Bill without being defined. She told us:

“The duty in section 13, as amended by section 22 of the Act should be read in conjunction with new sub-section (2B) which sets out a list of the type of provision that may be made when making provision to satisfy the duty in (2A). This illustrative list provides for a wide range of options as to the components of any offence.

The precise nature of any offence of deception is novel and complex and therefore requires careful consideration.

Any attempt to precisely define the nature of what is to be prohibited prior to concluding that careful consideration runs the same risk of the Bill being challenged on competence grounds as if we placed the offence itself on the face of the Bill; a risk we are seeking to insulate this Bill from. As I have already stated, I am satisfied that the duty can be exercised in a way that does not unlawfully interfere with Convention rights however more work needs to be done to determine the exact formulation of an offence that meets the policy objective while remaining within competence.”¹¹⁸

163. She also provided more information about the nature of the work that would need to be undertaken in relation to the creation of an offence.¹¹⁹

164. Evidence submitted to the Member Accountability Bill Committee raises issues and concerns with section 22 of the Bill.

165. In his evidence, Professor Jeremy Horder notes that the requirement on the Welsh Ministers in the Bill to prohibit false or misleading statements “runs counter to the permissive character of Section 13 of GoWA which generally empowers Ministers to take action on the conduct of elections” but does not require them to take specific steps.¹²⁰

¹¹⁸ Letter from the Counsel General, 4 December 2025, response to question 2

¹¹⁹ Letter from the Counsel General, 4 December 2025, response to questions 3 and 5

¹²⁰ MAB01 Professor Jeremy Horder

166. He also notes that in “an ideal world” the Bill would empower the Welsh Ministers to “take such steps” as are “reasonable and proportionate to discourage and prevent” the making or publishing of false or misleading statements of fact.¹²¹

167. In addition, Professor Horder states that:

“Any extension in the Bill that criminalises misleading – as well as false – statements about candidates themselves (or their politics) will enter into new and difficult territory, not least because whether a statement is adjudged to be ‘misleading’ necessarily involves a value judgement and not just empirical evidence, in relation to what may be highly contested issues.”¹²²

168. Transparency International UK expresses concern that:

“... Part 3 would place a power with Welsh Ministers to introduce a wide range of possible provisions under secondary legislation without full understanding of the implications of these provisions.

This does not provide any clarity as to what might be an offence under this section, what the sanctions might be or how accountability will be provided (...)

We would suggest that this detail should not be something that could be decided in secondary legislation and should instead be open to wide consultation and tested with the public.”¹²³

169. Jonathan Elystan Rees KC and Alexander Greenwood, representatives of the Criminal Bar Association, said that the creation of a criminal offence as proposed “is properly a matter for primary not secondary legislation”.¹²⁴ They re-iterated their view in oral evidence to the Member Accountability Bill Committee that a serious criminal offence of this nature ought to be set out in primary legislation and also said it should be subject to a full justice impact assessment. Jonathan Elystan Rees KC said:

“We understand why that’s been done, but, for my part, (.....), because an allegation that somebody has deliberately tried to interfere with the outcome of an election to Senedd Cymru by

¹²¹ MAB01 Professor Jeremy Horder

¹²² MAB01 Professor Jeremy Horder

¹²³ MAB11 Transparency International UK

¹²⁴ MAB18 Jonathan Elystan Rees KC and Alexander Greenwood

use of false statements or representations is such a serious matter—it's inherently a serious matter—it is something that ordinarily we would suggest ought to be dealt with by way of primary legislation, with the accompanying scrutiny that is due to primary legislation, rather than being a matter for Welsh Ministers to create by way of regulation. Obviously, I understand that there is a degree of scrutiny that is required in the making of secondary legislation, but to mark the importance of such a serious alleged offence, it ought to be dealt with, we would suggest, by an Act of the Senedd.”¹²⁵

170. In relation to a justice impact assessment Jonathan Elystan Rees KC said he:

“... would also expect there to be a full justice impact assessment. It's part of our thinking that because this is an interesting and also serious proposal for a new provision of criminal law in Wales, that it ought to be dealt with by way of primary legislation, it ought to have proper consultation and scrutiny, and it ought to have a proper justice impact assessment.

The proposal at the moment of simply creating a duty upon the Welsh Ministers to act on the Bill, requiring a prohibition to be created, means that, in fact, at this stage at least, there is no justice impact assessment on the consequence of imposing that duty. And there will be a consequence, there will be an effect, because you're not proposing at the moment simply to draw to the Welsh Ministers' attention that they have the power to do this. The Bill actually says, 'The Minister must do this', and we understand from the justice impact assessment for the rest of the Bill that it's very clear that the Welsh Government at least understands that that provision in the Bill requires them to create a prohibition via a new criminal offence. It actually says that. So, there is a justice impact that will flow from the present proposal, but no such impact assessment has been done. I understand the reason why; it's because it's very difficult to carry out an impact assessment on a criminal offence—a serious criminal offence—that we don't actually know the terms of.”¹²⁶

¹²⁵ Member Accountability Bill Committee, 27 November 2025, RoP [130]

¹²⁶ Member Accountability Bill Committee, 27 November 2025, RoP [146 to 147]

171. They set out their views on possible ways in which such an offence could be set out in primary legislation but said they would expect any proposals to be subject to extensive consultation.¹²⁷

172. Elkan Abrahamson points out a lack of clarity about what an order under section 13 of the 2006 Act, as amended by section 22 of the Bill, could cover. New section 13(2A) says Welsh Ministers must make an order prohibiting the making or publishing of false or misleading statements but new section 13(2B) says a provision required by new section 13(2A) may include prohibiting false statements only or both false and misleading statements.¹²⁸

173. Elkan Abrahamson also says that “statement of fact” need not be defined in the Bill as further consultation is to take place and also provides reasoning as to why what is false and misleading should also not be defined on the face of the Bill.¹²⁹

Our view

174. The issues of electoral integrity and the protection of democratic election processes are without doubt a serious and significant issue. We note the support of the Standards of Conduct Committee and stakeholders for action to be taken to ensure that misinformation cannot be used in a way which undermines the democratic electoral processes used to elect Members of the Senedd.

175. Section 22 of this Bill as drafted seeks to address this matter by providing an exceptionally broad power for the Welsh Ministers to create in the future a new criminal offence of the making or publishing of false or misleading statements of fact before or during an election via secondary legislation (an order made under section 13 of the 2006 Act) with no definition on the scope of any offence or to who and how it would apply.

176. The Welsh Government has been unable to assess the justice or human rights impact of this potential provision as it does not yet know what the scope or effect of any offence would be. As we have already highlighted in our consideration of section 11, this breaches fundamental and long-standing constitutional principles that new criminal offences should not be set out in secondary legislation. This is particularly relevant as little is set out about the scope of any offence on the face of the Bill.

¹²⁷ MAB18 Jonathan Elystan Rees KC and Alexander Greenwood

¹²⁸ [MAB16 Elkan Abrahamson](#)

¹²⁹ [MAB16 Elkan Abrahamson](#)

177. Such is the breadth of this power as drafted that it is not possible for us to assess fully to what ends it could be used by a future government. However, how such a power could be used is an important consideration, because it is the scope of the power that determines future use, not the original intention of the government proposing it.

178. As section 22 of the Bill is currently drafted, a future government would not be required to comply with the duty to introduce an order under section 13 of the 2006 Act within any set timescale. Furthermore, a future government could limit an offence by drawing it so narrowly as to relate only to specific matters or specific categories of people as indicated in new section 13(2B). Alternatively, a future government intent on limiting debate during an election period could draw the offence so broadly as to seriously hinder full and proper democratic discourse during an election campaign. Orders under section 13 of the 2006 Act are not amendable nor subject to consultation requirements save with the Electoral Commission.

179. We are deeply disappointed therefore that further work was not undertaken in the time the Welsh Government had to develop this Bill, particularly given the extensive work that had already been undertaken by the Standards of Conduct Committee on this matter. This has placed the Senedd (and this Committee) in an invidious position: with regards to Part 3 of the Bill, it is being asked to make a choice in the Bill as drafted between protecting fundamental constitutional principles and good law-making on the one hand and supporting action on an issue of critical importance but using flawed legislation on the other.

Conclusion 2. It is regrettable that further development work was not completed by the Welsh Government prior to the Bill's introduction, in particular to ensure that provisions setting out the new criminal offence were fully developed.

Conclusion 3. As a matter of constitutional principle, new criminal offences should only be created in primary legislation following consultation and engagement with the relevant judicial and policy stakeholders.

180. This Committee has an essential role to play in helping to ensure that law made by the Senedd is good law, namely that it is: effective, enforceable, accessible, protects citizens' rights and respects fundamental constitutional and legislative principles.

181. In our view section 22 of the Bill as drafted breaches several of these principles and should be reconsidered by the Counsel General.

Conclusion 4. A new criminal offence prohibiting the making or publishing of false or misleading statements of fact before or during an election should not be made via secondary legislation.

Recommendation 16. We recommend that the Counsel General tables an amendment to remove section 22 from the Bill and instead sets the prohibition on the making or publishing of false or misleading statements of fact before or during a Senedd election on the face of the Bill by amendment at Stage 2 proceedings.

Conclusion 5. It is important that the creation of the new offence to be introduced by the Bill is accompanied by the necessary consultation and engagement with the relevant parts of the criminal justice system.

Recommendation 17. We recommend that in drafting an amendment to place the prohibition on the face of the Bill the Welsh Government must:

- consult the police, the Crown Prosecution Service, the Ministry of Justice, and other relevant stakeholders, and make a statement setting out the responses received from these organisations and summarising the outcomes of any consultation undertaken alongside amendments tabled; and
- complete and publish a human rights impact assessment and a justice impact assessment on the new provisions in a revised Explanatory Memorandum.

182. In making recommendation 17, we are making the assumption that some of the relevant work will already have been undertaken by the Welsh Government.

Recommendation 18. If the Counsel General does not accept recommendations 16 and 17, a majority of the Committee believe that section 22 should be removed from the Bill.

183. However, Adam Price MS believes that if recommendations 16 and 17 are not accepted by the Counsel General, section 22 should remain in the Bill and be amended to further define the scope of the power it contains.

Part 4 – General

184. Section 23 provides a power for the Welsh Ministers to make provision by regulations for certain purposes connected with the Bill, including the amendment of other primary and secondary legislation (including an enactment

contained in this Bill). Where the power is used to amend, repeal or modify primary legislation, the relevant regulations are subject to the Senedd approval procedure.

185. As regards to why this Henry VIII power is appropriate and necessary, the Counsel General said:

“So, Schedule 2 contains an extensive range of minor and consequential provisions, including all of those currently identified as necessary to primary legislation. We’ve tried our very, very best to identify all of them, but the power enables a savings and transitional provisions type regulation to be made, and it’s drafted in similar terms to the consequential powers in most Bills. It can only be used to give full effect to the Bill as enacted, so it doesn’t give us wider powers to do that, so it’s to carry out any missed—if you like—provisions, consequential amendments and so on.”¹³⁰

186. The Counsel General noted that the Bill had been “developed at some pace” and that with her duty to ensure the accessibility of Welsh law, section 23 “is a way of making sure that we haven’t made any errors that can’t be corrected later.”¹³¹

Our view

187. We note the comments of the Counsel General regarding the regulation-making power in section 23 of the Bill.

¹³⁰ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [154]

¹³¹ Legislation, Justice and Constitution Committee, 17 November 2025, RoP [180]
