



Elin Jones AC, Llywydd

Cynulliad Cenedlaethol Cymru

Elin Jones AM, Presiding Officer

National Assembly for Wales

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Ein cyf: EJ/HG

13 Tachwedd 2019

Annwyl Ddirprwy Lywydd,

Fel y byddwch yn ymwybodol, gosodwyd [Memorandwm Esboniadol i'r Bil Senedd ac Etholiadau \(Cymru\) fel y'i diwygiwyd ar ôl Cyfnod 2](#) ar 5 Tachwedd 2019.

Roedd y Memorandwm Esboniadol diwygiedig yn cynnwys, ar dudalennau 418 i 419, adroddiad Archwilydd Cyffredinol Cymru ynghylch p'un a oedd y taliadau a godwyd ar Gronfa Gyfunol Cymru, fel y darparwyd ar eu cyfer yn y Bil Senedd ac Etholiadau (Cymru), yn briodol.

Ers hynny, mae Archwilydd Cyffredinol Cymru wedi diweddarau ei adroddiad, ac mae wedi'i gynnwys gyda'r ohebiaeth hon.

Caiff y Memorandwm Esboniadol ei ailosod i gynnwys y fersiwn ddiwygiedig hon, a hynny yn dilyn Cyfnod 3. Yn anffodus, nid yw'n bosibl ailosod y Memorandwm Esboniadol cyn Cyfnod 3 yn sgil y gofynion a nodir yn Rheol Sefydlog 26.28.

Anfonaf gopi o'r ohebiaeth hon at yr holl Aelodau Cynulliad ynghyd ag Archwilydd Cyffredinol Cymru.

Yn gywir,

Elin Jones AC
Llywydd

Croesewir gohebiaeth yn Gymraeg neu Saesneg / We welcome correspondence in Welsh or English

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Report of the Auditor General on whether payments from the Welsh Consolidated Fund provided for in the Senedd & Elections (Wales) Bill are appropriate

During stage 2 proceedings on 9 October 2019, the Assembly agreed an amendment to the Bill to enable the Electoral Commission's expenditure attributable to its functions in respect of devolved Welsh elections and referendums to be paid from the Welsh Consolidated Fund. The relevant provision of the amended Bill is section 28, which amends Schedule 1 to the Political Parties, Elections and Referendums Act 2000.

Under Standing Order 26.6 (xi), where a Bill contains any provision charging expenditure on the Fund, the Explanatory Memorandum must incorporate a report of the Auditor General setting out the Auditor General's views on whether the charge is appropriate. In the context of a consolidated fund, the term "charge" has a specific meaning: that sums are payable from the Fund without further authorisation¹. (These charges are also often known as "direct charges"). Standing Order 26.6 (xi) is a safeguard against new legislation providing for such charges inappropriately.

Under the provisions introduced by section 28 of the Bill, the Electoral Commission's estimates will be subject to scrutiny by the Llywydd's Committee and will be authorised by Budget resolution. I therefore do not consider payments made pursuant to those provisions to be charges for the purposes of Standing Order 26.6 (xi).

Nevertheless, as the Chair of the Finance Committee wrote to the Llywydd on 27 June 2019 suggesting discussion of these issues with the Auditor General, I think it is appropriate to set out my views on the appropriateness of the provisions.

¹ Consolidated Fund – Overview, Daniel Greenberg, Westlaw, 2019



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The provision for payment from the Fund introduced by section 28 is without exact precedent in Wales, but I do not consider it problematic. As mentioned above, payments would be authorised by a Budget resolution, though not for the purposes of meeting expenditure of a “relevant person”² as has hitherto been the case with Budget resolutions. Instead, the authorisation would be for the purposes of meeting expenditure payable pursuant to a “relevant enactment”. The Political Parties, Elections and Referendums Act 2000, as amended by the Bill, will be a relevant enactment. Sections 124(1)(b) and 124(2)(b) of the Government of Wales Act 2006 together provide for authorisation of payments in this way.

I consider that section 28’s provision for a new committee, chaired by the Llywydd, to examine the Electoral Commission’s estimates in respect of devolved activities to be a reasonable approach to ensuring appropriate provision for the Electoral Commission’s devolved expenditure in the Budget resolution.

In any event, the sound administration of elections is a critical element of democracy, and I therefore consider that the provision for payment from the Fund introduced by section 28 of the Bill is appropriate.

Adrian Crompton

Auditor General for Wales

November 2019³

² As currently defined by section 124(3) of the Government of Wales Act 2006: the Welsh Ministers, the First Minister and the Counsel General, the Assembly Commission, the Wales Audit Office and the Public Services Ombudsman for Wales

³ Welsh translation pending