

Agenda – Reform Bill Committee

Meeting Venue:	For further information contact:
Committee Room 1, Senedd	Helen Finlayson
Meeting date: Wednesday, 13 March 2024	Committee Clerk 0300 200 6565
Meeting time: 09.30	SeneddReform@senedd.wales

Hybrid

The Committee agreed on 29 February 2024 in accordance with Standing Order 17.42(ix) to exclude the public from item 1 at this meeting.

- 1 Senedd Cymru (Electoral Candidate Lists) Bill: approach to Stage 1 scrutiny**
(09.30 – 10.00) (Pages 1 – 46)
Supporting documents
Paper 1 – Approach to Stage 1 scrutiny
Paper 2 – Legal advice note
- 2 Introductions, apologies, substitutions, and declarations of interest**
(10.00)
- 3 Senedd Cymru (Electoral Candidate Lists) Bill: Evidence session with the Minister for Social Justice and Chief Whip**
(10.00–11.30) (Pages 47 – 88)
Jane Hutt MS, Minister for Social Justice and Chief Whip
Will Whiteley, Deputy Director, Senedd Reform, Welsh Government
Catrin Davies, Head of Diversity Policy, Senedd Reform, Welsh Government
Anna Hind, Senior Lawyer, Legal Services, Welsh Government



Supporting documents

Research brief

Paper 3 – Letter from the Llywydd regarding the Senedd Cymru (Electoral Candidate Lists) Bill – 11 March 2024

[Senedd Cymru \(Electoral Candidate Lists\) Bill](#)

[Explanatory Memorandum](#)

[Written Statement from the Member in charge](#)

[Statement of Policy Intent](#)

4 Papers to note

(11.30)

4.1 Response from the Senedd Commission regarding the Stage 1 Report on the Senedd Cymru (Members and Elections) Bill – 4 March 2024

(Pages 89 – 94)

4.2 Response from the Counsel General and Minister for the Constitution regarding the Stage 1 Report on the Senedd Cymru (Members and Elections) Bill – 5 March 2024

(Pages 95 – 96)

5 Motion under Standing Order 17.42 (ix) to exclude the public from the remainder of the meeting

(11.30)

6 Senedd Cymru (Electoral Candidate Lists) Bill: Consideration of evidence

(11.30–11.45)

Agenda Item 1

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Agenda Item 3

By virtue of paragraph(s) ix of Standing Order 17.42

Document is Restricted



Y Gwir Anrhydeddus Elin Jones AS

Llywydd, Senedd Cymru

Right Honourable Elin Jones MS

Llywydd, Welsh Parliament

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David Rees MS

Chair of the Reform Bill Committee

Huw Irranca-Davies MS

Chair of the Legislation, Justice and Constitution Committee

11 March 2024

Dear David and Huw,

Senedd Cymru (Electoral Candidates Lists) Bill: Statement on legislative competence

In accordance with section 110(3) of the Government of Wales Act 2006 (the 2006 Act) and Standing Order 26.4, I have laid a statement setting out my view on whether or not the provisions of the Senedd Cymru (Electoral Candidate Lists) Bill would be within the Senedd's legislative competence.

It is my view that the provisions of the Bill would not be within the legislative competence of the Senedd. My statement sets out my reasons for reaching that view.

As Members will be aware, while I am required to make a statement setting out my views, the content of my statement does not affect whether or not a Bill may be introduced or complete its passage through the Senedd.

To help inform your Stage 1 scrutiny of the Bill, I enclose a summary of the issues I considered in reaching my view. If you would like further information and advice, the officials supporting the Committee will be pleased to assist.

I am copying this letter to the First Minister, the Minister for Social Justice in her capacity as Member in charge of the Bill, and all Members of the Senedd.

Yours sincerely,

The Rt. Hon. Elin Jones MS

Llywydd

Senedd Cymru (Electoral Candidate Lists) Bill: summary of legislative competence considerations

In coming to the view that the Senedd Cymru (Electoral Candidate Lists) Bill¹ would not be within the legislative competence of the Senedd, I have considered the tests of legislative competence set out in section 108A of the Government of Wales Act 2006. The merits of the policy behind the Bill did not form part of my decision-making process.

My view is based on the legal tests and the legal advice I have received on those tests. Ultimately, of course, the question of whether any Senedd Bill is within the legislative competence of the Senedd can only be definitively answered by the Supreme Court.

The reserved matter of equal opportunities

As regards my view that the Bill relates to the reserved matter of equal opportunities, I have applied the “relates to” test as set out in section 108A(2)(c) of the 2006 Act and as applied by the Supreme Court in a number of devolution cases.

I considered the purpose and effect of the Bill. While I accept the Bill has the devolved purpose of making the Senedd a more effective legislature, in my view the Bill also has the reserved purpose of equal opportunities.

“Equal opportunities” is a reserved matter in Schedule 7A to the 2006 Act and includes the prevention, elimination or regulation of discrimination between persons on grounds of sex.

From reading the Bill and the Explanatory Memorandum, I concluded that the Bill:

- (a) seeks to address disadvantages and barriers that women face during the candidate selection process;
- (b) will require political parties to treat a man (who would otherwise be more likely to be selected for a place on the list that must be allocated to a woman) less favourably than a woman, because of the man’s sex.

Having considered the purpose and effect of the Bill, I concluded that the Bill has more than a “loose or consequential”² connection with the prevention, elimination or regulation of discrimination between persons on the grounds of sex. In other words, in my view, the Bill relates to the reserved matter of equal opportunities and would not be within the legislative competence of the Senedd.

¹ Section 1 of the Bill is the core of the Bill. Therefore, the focus of my competence analysis was section 1. However, because all other sections of the Bill rely directly on section 1, once I came to the view that section 1 was not within legislative competence, it inevitably followed that the whole Bill was not within legislative competence.

² The “loose or consequential” test as applied by the Supreme Court in numerous devolution cases, including: [Martin v. Most](#) [2010] UKSC 10; [Imperial Tobacco Limited \(Appellant\) v. The Lord Advocate \(Respondent\) \(Scotland\)](#) [2012] UKSC 61; [AGRICULTURAL SECTOR \(WALES\) BILL - Reference by the Attorney General for England and Wales](#) [2014] UKSC 43.

I have considered the exceptions to the equal opportunities reservation in Schedule 7A to the 2006 Act, and concluded that none of them is relevant in this case.

Modifying the law on reserved matters, namely the Equality Act 2010

As regards my view that the Bill modifies the law on reserved matters, I have considered the test set out in section 108A(2)(d) of the 2006 Act and the relevant case law of the Supreme Court.

Schedule 7B to the 2006 Act places a number of restrictions on the legislative competence of the Senedd. This includes paragraph 1 of Schedule 7B, which places a restriction on modifying the law on reserved matters.

In my view, the Bill modifies section 104 of the Equality Act 2010, which forms part of the law on reserved matters.

Section 104 of the 2010 Act makes special provision for political parties by permitting them (voluntarily) to adopt discriminatory selection arrangements in order to address under-representation in their candidate selection processes. Therefore, section 104 **permits** political parties to address under-representation, but does not **require** them to do so.

The Bill, however, requires political parties to address under-representation: it requires at least half of candidates on lists submitted by political parties to be women, and it requires that the first or only candidate on at least half of those lists be a woman. In the context of Senedd elections, in my view, the Bill effectively turns the voluntary power to address under-representation in section 104 into a duty to address under-representation.

I have concluded that such a change amounts to a modification of section 104. Even though the Bill does not amend the text of section 104, the Bill is in conflict with section 104, which is a modification of the law on reserved matters.

In reaching this conclusion, I have considered the Supreme Court's explanation of the meaning of "modify".³ I have also considered the "ancillary" carve-out in paragraph 2 of Schedule 7B, which I do not consider to be relevant in this case.

In my view, the Bill modifies the law on reserved matters and would not be within the legislative competence of the Senedd.

If passed by the Senedd, then, as in the case for all Bills, the Bill will enter into a four week period of intimation. During this period, the Counsel General and the Attorney General may refer the question of whether the Bill, or any provision of the Bill, would be within the Senedd's legislative competence to the Supreme Court for decision, in accordance with section 112 of the 2006 Act. Similarly, the Secretary of State for Wales may intervene by making an order prohibiting the Clerk of the Senedd from submitting

³ **THE UK WITHDRAWAL FROM THE EUROPEAN UNION (LEGAL CONTINUITY) (SCOTLAND) BILL - A Reference by the Attorney General and the Advocate General for Scotland (Scotland) [2018] UKSC 64, paragraph 51.**

the Bill for Royal Assent if he or she has reasonable grounds to believe that certain conditions apply (set out in section 114 of the 2006 Act).

Agenda Item 4.1

Senedd Cymru
Welsh Parliament
Senedd Commission

David Rees MS
Chair of the Reform Bill Committee

4 March 2024

Dear David,

Senedd Cymru (Members and Elections) Bill: Senedd Commission response to recommendation 2 of the Reform Bill Committee

In recommendation 2 of your Stage 1 report on the Senedd Cymru (Members and Elections) Bill, you requested the Senedd Commission write to you in advance of Stage 2 proceedings, to outline what the differences in the financial estimates would be if the estimates had been based on the 2023-24 Determination rather than the 2022-23 Determination

The Senedd Commission committed to providing these adjusted estimates in its response dated 26 January 2024.

Please find enclosed with this letter the requested information.

Kind regards,





Elin Jones MS
Llywydd and Chair of the Senedd Commission



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



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Revised costs – Based on 2023-24 Determination on Members’ Pay and Allowancesⁱ

Table 1: Summary of Members and Support Staff salary costs

		2024-25	2025-26	2026-27	2027-28	2028-29	2029-30	2030-31	2031-32
Members’ Salaries	Ongoing	-	-	£3,322,000	£3,322,000	£3,322,000	£3,322,000	£3,322,000	£3,322,000
	Transitional	-	-	-	-	-	-	-	-
Support Staff	Ongoing	-	-	£5,356,700	£5,356,700	£5,356,700	£5,356,700	£5,356,700	£5,356,700
	Transitional	-	-	-	-	-	-	-	-
Total		£0	£0	£8,678,700	£8,678,700	£8,678,700	£8,678,700	£8,678,700	£8,678,700

Table 2: Summary of additional costs for office holders (2024/25 – 2028/29)

		2024-25		2025-26		2026-27		2027-28	
		Low	High	Low	High	Low	High	Low	High
Deputy Presiding Officer salaries	Ongoing	-	-	-	-	-	£30,700	-	£30,700
	Transitional	-	-	-	-	-	-	-	-
Minister salaries	Ongoing	-	-	-	-	-	£263,100	-	£263,100
	Transitional	-	-	-	-	-	-	-	-
Committee Chair salaries	Ongoing	-	-	-	-	£19,000	£57,000	£19,000	£57,000
	Transitional	-	-	-	-	-	-	-	-
Political Group Leader salaries	Ongoing	-	-	-	-	£22,000	£44,000	£22,000	£44,000
	Transitional	-	-	-	-	-	-	-	-

Business Committee Members	Ongoing	-	-	-	-	£12,700	£25,300	£12,700	£25,300
	Transitional	-	-	-	-	-	-	-	-
Member allowances and office costs	Ongoing	-	-	-	-	£1,102,000	£1,102,000	£922,000	£922,000
	Transitional	-	-	-	-	-	-	-	-
Residential Accommodation	Ongoing	-	-	-	-	£286,600	£286,600	£286,600	£286,600
	Transitional	-	-	-	-	-	-	-	-
Members Travel	Ongoing	-	-	-	-	£150,000	£150,000	£150,000	£150,000
	Transitional	-	-	-	-	-	-	-	-
Support for political parties	Ongoing	-	-	-	-	£653,800	£653,800	£653,800	£653,800
	Transitional	-	-	-	-	-	-	-	-
Subtotal		£0	£0	£0	£0	£2,246,100	£2,612,500	£2,066,100	£2,432,500

Table 3: Summary of additional costs for office holders (2029/30 – 2032-33)

		2028-29		2029-30		2030-2031		2031-32	
		Low	High	Low	High	Low	High	Low	High
Deputy Presiding Officer salaries	Ongoing	-	£30,700	-	£30,700	-	£30,700	-	£30,700
	Transitional	-	-	-	-	-	-	-	-
Minister salaries	Ongoing	-	£263,100	-	£263,100	-	£263,100	-	£263,100
	Transitional	-	-	-	-	-	-	-	-
Committee Chair salaries	Ongoing	£19,000	£57,000	£19,000	£57,000	£19,000	£57,000	£19,000	£57,000
	Transitional	-	-	-	-	-	-	-	-

Political Group Leader salaries	Ongoing	£22,000	£44,000	£22,000	£44,000	£22,000	£44,000	£22,000	£44,000
	Transitional	-	-	-	-	-	-	-	-
Business Committee Members	Ongoing	£12,700	£25,300	£12,700	£25,300	£12,700	£25,300	£12,700	£25,300
	Transitional	-	-	-	-	-	-	-	-
Member allowances and office costs	Ongoing	£922,000	£922,000	£922,000	£922,000	£922,000	£922,000	£922,000	£922,000
	Transitional	-	-	-	-	-	-	-	-
Residential Accommodation	Ongoing	£286,600	£286,600	£286,600	£286,600	£286,600	£286,600	£286,600	£286,600
	Transitional	-	-	-	-	-	-	-	-
Members Travel	Ongoing	£150,000	£150,000	£150,000	£150,000	£150,000	£150,000	£150,000	£150,000
	Transitional	-	-	-	-	-	-	-	-
Support for political parties	Ongoing	£653,800	£653,800	£653,800	£653,800	£653,800	£653,800	£653,800	£653,800
	Transitional	-	-	-	-	-	-	-	-
Subtotal		£2,066,100	£2,432,500	£2,066,100	£2,432,500	£2,066,100	£2,432,500	£2,066,100	£2,432,500

Table 4: Cost comparison – Members and Support Staff salary costs

	2024-25	2025-26	2026-27	2027-28	2028-29	2029-30	2030-31	2031-32
Determination 2022-23	-	-	£8,139,800	£8,139,800	£8,139,800	£8,139,800	£8,139,800	£8,139,800
Determination 2023-24	-	-	£8,678,700	£8,678,700	£8,678,700	£8,678,700	£8,678,700	£8,678,700
Total increase	£0	£0	£538,900	£538,900	£538,900	£538,900	£538,900	£538,900

Table 5: Cost comparison – Additional costs for office holders (2024/25 – 2028/29)

	2024-25		2025-26		2026-27		2027-28	
	Low	High	Low	High	Low	High	Low	High
Determination 2022-23	-	-	-	-	£2,109,100	£2,451,600	£1,929,100	£2,271,600
Determination 2023-24	-	-	-	-	£2,246,100	£2,612,500	£2,066,100	£2,432,500
Total increase	£0	£0	£0	£0	£137,000	£160,900	£137,000	£160,900

Table 6: Cost comparison – Additional costs for office holders (2029/30 – 2031/32)

	2028-29		2029-30		2030-31		2031-32	
	Low	High	Low	High	Low	High	Low	High
Determination 2022-23	£1,929,100	£2,271,600	£1,929,100	£2,271,600	£1,929,100	£2,271,600	£1,929,100	£2,271,600
Determination 2023-24	£2,066,100	£2,432,500	£2,066,100	£2,432,500	£2,066,100	£2,432,500	£2,066,100	£2,432,500
Total increase	£137,000	£160,900	£137,000	£160,900	£137,000	£160,900	£137,000	£160,900

ⁱ In addition to updating for the 2023/24 Determination rates to calculate salaries and allowances in these tables, the revised figures also reflect changes to the Employer National Insurance Rate and Employer National Insurance Threshold, which was reversed from 15.05% to 13.8%, and reduced to £9,100 respectively.



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref CG/PO/69/2024
Ein cyf/Our ref CG/PO/69/2024

5 March 2024

Dear Member of the Senedd

Response to recommendations made by the Reform Bill Committee in their Stage 1 report on the Senedd Cymru (Members and Elections) Bill

In advance of the Stage 2 proceedings on the Senedd Cymru (Members and Elections) Bill (SC(ME)B) later this week, I want to take this opportunity to provide an update on the Welsh Government's approach to a small number of recommendations that the Reform Bill Committee set out in its Stage 1 report.

Recommendation 38. *The Member in charge should bring forward amendments at Stage 2 to section 6 of the Bill to provide an appropriate grace period for a Member to appeal their removal from the register of electors at an address in Wales to prevent them being unseated as a result of their accidental removal from the register.*

In noting this recommendation, I committed to giving further consideration as to any further safeguards or assurances that can be provided. Having done so, I am satisfied that there are robust safeguards and procedures that an Electoral Registration Officer (ERO) must follow before any individual can be removed from a register. The situations where an individual can be removed from a register without a review being undertaken are restricted, and include, for example, where an ERO has received confirmation to their satisfaction that a person registered on a register of local government electors has died. In other situations, an ERO has to undertake a review, and whilst there are different types of review, all require the ERO to contact the elector in question as part of the review.

Electoral law already provides for an appeals process, via the ERO to the County Court. Whilst I considered whether delaying disqualification until such appeal routes had been exhausted, the length of time that such a process would take could lead to a situation where such an appeal had not been resolved before the end of a Senedd term. In the event that the appeal was then unsuccessful, the policy intent behind this disqualification requirement will have been frustrated.

Therefore, I do not intend to make an amendment to this Bill in response to recommendation 38, as I believe the safeguards that are already in place are robust enough to give effect to the policy intent behind this recommendation in all but extremely rare

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

circumstances. The issues created by attempting to legislate to remove all risk of erroneous removal, in my view, outweigh the very small residual risk left by not legislating in this area. In addition, I have asked my officials to continue to work with EROs to identify any further practical safeguards that can be considered.

Recommendation 39. *The Member in charge should bring forward amendments at Stage 2 to provide a mechanism for a reserve candidate who would otherwise be eligible to take up a vacancy arising during a Senedd term to become registered in the register of local government electors at an address within a Senedd constituency. The mechanism should include provision for a reasonable time period within which the prospective Member would be required to meet the qualification.*

In accepting this recommendation in principle, I committed to exploring options to address the issue that underpins this recommendation. Having done so, I am content that the most appropriate approach is to include provision whilst making a new order under section 13 of the Government of Wales Act 2006 to replace the National Assembly for Wales (Representation of the People) Order 2007 (“the Conduct Order”) before the 2026 Senedd election. The Conduct Order currently sets out that where a regional vacancy occurs, the Returning Officer has such a period as they deem reasonable to consider whether attempts to contact a prospective member have been successful, or whether certain notices advising that the prospective member cannot take up the vacancy have been received. Once that period of time has elapsed, the Returning Officer moves to the next prospective member on the list.

The Government intends to make similar provision in respect of vacancies in the new constituency regime in the new Conduct Order, which will be subject to consultation. However, rather than leaving the matter to the discretion of each Returning Officer, the new Conduct Order will seek to standardise the period of time that a Returning Officer must afford a prospective member before moving to the next prospective member on the relevant list. Such a time period would allow an individual who had not been returned at a general election, and who had subsequently been removed from a register of local government electors in a Senedd constituency, an opportunity to meet the registration criteria, and become so registered, in order to take up the vacancy.

Therefore, I do not intend to make any amendment to the SC(ME) Bill, given that the new Conduct Order will give effect to the policy intent behind this recommendation.

Yours sincerely,



Mick Antoniw AS/MS

Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution