

Agenda – Local Government and Housing Committee

Meeting Venue:

Committee Room 5

Meeting date: 30 November 2023

Meeting time: 09.00

For further information contact:

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(08:45 – 09:00 pre-meeting)

1 Introductions, apologies, substitutions and declarations of interest

2 Elections and Elected Bodies (Wales) Bill– Evidence session 6

(09.00 – 10.00)

(Pages 1 – 47)

Shereen Williams, Chief Executive, Local Democracy and Boundary Commission For Wales

Tom Jenkins, Head of Policy and Programmes, Local Democracy and Boundary Commission For Wales

Break (10.00 – 10.10)

3 Elections and Elected Bodies (Wales) Bill– Evidence session 7

(10.10 – 10.40)

(Pages 48 – 55)

Malcolm Burr, Convener, Electoral Management Board for Scotland

Break (10.40 – 10.50)

4 Elections and Elected Bodies (Wales) Bill– Evidence session 8

(10.50 – 11.20)

(Pages 56 – 59)

Professor Alistair Clark, Professor of Political Science, Newcastle University



Break (11.20 – 11.25)

5 Elections and Elected Bodies (Wales) Bill– Evidence session 9

(11.25 – 11.55)

(Pages 60 – 66)

Dr Jessica Laimann, Policy and Public Affairs Manager, WEN Wales

6 Papers to note

(Page 67)

6.1 Inter–Institutional Relations Agreement – Letter from the Minister for Finance and Local Government

(Page 68)

6.2 P–06–1358 Review the inadequate funding for Schools in Wales – Letter from the Chair of Petitions Committee

(Pages 69 – 70)

6.3 Homelessness – Letter from Public Services Ombudsman for Wales

(Pages 71 – 72)

6.4 Building safety – Letter from the Minister for Climate Change

(Pages 73 – 74)

6.5 Inter–Institutional Relations Agreement – Letter from the First Minister to the Legislation, Justice and Constitution Committee

(Page 75)

7 Motion under Standing Order 17.42(ix) to resolve to exclude the public from the remainder of this meeting, and for item 1 on 7 December

8 Elections and Elected Bodies (Wales) Bill – Consideration of evidence

(11.55 – 12.15)

Break (12.15 – 1.15)

9 Local Government Finance (Wales) Bill – technical briefing from Welsh Government officials

(13.15– 14.15)

(Pages 76 – 99)

Debra Carter, Deputy Director, Local Government Finance Division, Welsh Government

Simon Tew, Bill Manager, Local Government Finance Bill, Welsh Government

Ruth Cornick, Lawyer, Welsh Government

Chris Humphreys, Lawyer, Welsh Government

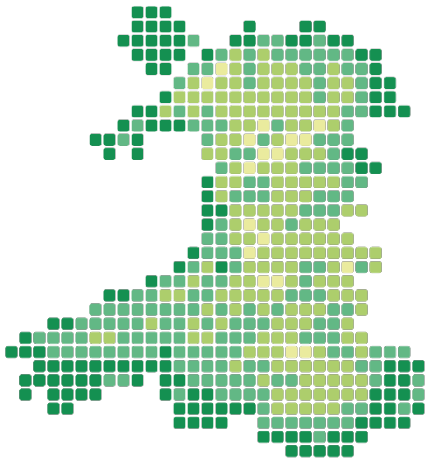
[Local Government Finance \(Wales\) Bill](#)

[Explanatory Memorandum](#)

[Statement of Policy Intent for Subordinate Legislation](#)

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LOCAL DEMOCRACY AND BOUNDARY COMMISSION FOR WALES



Comisiwn Ffiniau a
Democratiaeth Leol
Cymru

Local Democracy and
Boundary Commission
For Wales

ELECTIONS AND ELECTED BODIES (WALES) BILL

**LOCAL GOVERNMENT AND HOUSING COMMITTEE –
STAGE 1 SCRUTINY**

CONSULTATION RESPONSE

NOVEMBER 2023

FOREWORD

This document sets out the response of the Local Democracy and Boundary Commission for Wales (“**the Commission**”) to the Local Government and Housing Committee’s consultation in relation to the Elections and Elected Bodies (Wales) Bill introduced to the Welsh Parliament on 2 October 2023 (“**the Elections Bill**”).

In this document the Commission provides detailed observations in relation to the Bill, including twelve suggestions for amendment.

The Commission welcomes the opportunity to engage in the development of the Bill.

Beverley Smith

Chair

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Mae'r ddogfen hon ar gael yn y Gymraeg.

LOCAL DEMOCRACY AND BOUNDARY COMMISSION FOR WALES

ELECTIONS AND ELECTED BODIES (WALES) BILL – CONSULTATION RESPONSE

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1. ABOUT THE COMMISSION

- 1.1 The Commission is an independent Welsh Government Sponsored Body. The Commission was established in 1974 under the terms of the Local Government Act 1972, and was known at the time as the Local Government Boundary Commission for Wales. The Commission was renamed by section 2 of the Local Government (Democracy) (Wales) Act 2013 (“**the 2013 Act**”).
- 1.2 At present, the Commission’s principal functions are to monitor and review the areas and electoral arrangements relevant to local government in Wales.
- 1.3 For this purpose, the Commission’s powers include reviewing the boundaries of principal council areas in Wales and the electoral arrangements for principal councils. The Commission also has certain powers in relation to reviews of community boundaries and community electoral arrangements, although the principal councils have primary responsibility for these reviews in their respective areas. The Commission’s principal powers and duties are set out in the 2013 Act.
- 1.4 At the time of preparing this response, a separate Bill known as the Senedd Cymru (Members and Elections) Bill (“**the Senedd Bill**”) has been introduced to the Welsh Parliament. The Senedd Bill includes provisions designed to rename the Commission as the Democracy and Boundary Commission Cymru, and to confer on the Commission the additional function of reviewing and determining the boundaries of Senedd constituencies. The Senedd Bill will also rename the 2013 Act as the Democracy and Boundary Commission Cymru etc. Act 2013.

2. DETAILED OBSERVATIONS ON THE BILL

2.1 Part 1 of the Elections Bill includes provision for the establishment by the Commission of the Electoral Management Board (“**the EMB**”), and the conferral on the Commission of functions which are to be carried out by the EMB. Chapter 1 of Part 2 of the Bill amends the existing provisions of the 2013 Act governing (among other things) reviews under that Act of community boundaries, community electoral arrangements and principal area electoral arrangements. The following sections of this document set out the Commission’s detailed observations relating principally to these aspects of the Elections Bill.

Clause 16(3) – Welsh election pilot forums – membership

2.2 Chapter 3 of Part 1 of the Elections Bill provides for the Welsh Ministers to make regulations for the “piloting” of new electoral administration arrangements for limited periods in defined areas (“**Pilot Regulations**”).

2.3 Before Pilot Regulations may be made, the Commission must prepare a report assessing a proposal for the regulations, pursuant to clause 15 of the Bill. Furthermore if the Pilot Regulations will affect the area of more than one principal council (on their own or together with other pilots being carried out at the same

time), the Commission must establish a “Welsh election pilot forum” pursuant to clause 16 of the Bill – which is a “*forum for discussion of issues relating to the pilot or pilots with a view to providing persons implementing the pilot or pilots with information and advice*”.

2.4 Although the functions under clauses 15 and 16 are expressed as functions of the Commission, the Elections Bill provides that they must be exercised by the EMB: see the new proposed section 20E(2) and (3)(b) of the 2013 Act, which would be inserted by clause 1(2) of the Elections Bill. Accordingly it is in fact the EMB which must report on proposals for Pilot Regulations, and must establish a Welsh election pilot forum in the relevant situations.

2.5 Clause 16(3) of the Elections Bill lays down a compulsory list of participants in a Welsh election pilot forum. That list includes, in sub-paragraph (c), “*one or more members of the [Commission] with relevant experience*”.

2.6 The Commission considers that this wording in clause 16(3)(c) ought instead to refer to “*one or more members of the Electoral Management Board with relevant experience*”. This is because the membership of the EMB will be distinct from the membership of the Commission, and the relevant expertise and experience for the purposes of a Welsh election pilot forum will be held by the members of the EMB rather than the members of the Commission.

2.7 This follows from the new proposed section 20F of the 2013 (which would be inserted by clause 1(2) of the Elections Bill), which provides that the EMB’s members will include two members of the Commission and at least four members who are either elections officers (i.e. returning officers or electoral registration officers) or former elections officers. It is those elections officer members who are likely to hold expertise and experience of particular relevance for the purposes of a Welsh election pilot forum.

2.8 The Commission also considers that the mechanism in the new proposed section 20E(2) and (3) of the 2013 Act which confers functions on the EMB (referred to in paragraph 2.4 above) would not, based on its current wording, have the effect that the “*members of the [Commission]*” referred to in clause 16(3)(c) would be deemed to refer to “*members of the EMB*”, who are a distinct group.

2.9 The Commission therefore **suggests that clause 16(3)(c) of the Elections Bill should read as follows** (with proposed new text shown underlined):

“*one or more members of the Electoral Management Board with relevant experience*”.

Clause 45(3) – duty to take into account representations received

2.10 Clause 45 of the Elections Bill amends sections 34 and 35 of the 2013 Act, which regulate the procedure by which a review under Part 3 of the 2013 Act (such

as a review of principal area electoral arrangements or of community boundaries) is carried out.

- 2.11 Section 35 of the 2013 Act currently provides (in broad summary) that when a reviewing body (i.e. the Commission or a principal council) conducts a review under Part 3 of the 2013 Act, the reviewing body must carry out an initial process of consultation and investigation, then publish an initial report containing any proposals for relevant changes (which the Commission refers to as a “Draft Proposals Report”) and consult on the proposals in the report. Thereafter, section 36 of the 2013 Act provides that the reviewing body must “*consider its proposals for change having regard to any representations received*” in response to its Draft Proposals Report, then must prepare a further report containing any recommendations for change (which the Commission refers to as a “Final Recommendations Report”).
- 2.12 Section 35(3) of the 2013 Act regulates the specific practical steps which a reviewing body must take after publishing its Draft Proposals Report. As it is currently worded, clause 45(3)(b) of the Elections Bill would amend section 35(3) by clarifying the requirements for consultation on a Draft Proposals Report (see sub-paragraph (i) of clause 45(3)(b)), by renaming the “period for representations” as the “public consultation period” (see sub-paragraph (ii)), and by specifying that the reviewing body must “*take into account any representations made to it during the public consultation period*” (see sub-paragraph (iii)).
- 2.13 The Commission observes that the amendment made to section 35(3)(e) by clause 45(3)(b)(iii) (which specifies that the reviewing body must take into account representations received) adds nothing new to the 2013 Act, but rather duplicates the requirement already contained in section 36(1) of the 2013 Act that the reviewing body must “*consider its proposals for change having regard to any representations received*”. This duplication would be avoided, and the Elections Bill would be tidier as a result, if clause 45(3)(b)(iii) were removed.
- 2.14 The amendment set out in clause 45(3)(b)(iii) is also arguably out of place, since section 35(3) of the 2013 Act regulates *practical steps* which the reviewing body must take upon publication of its Draft Proposals Report, rather than regulating the reviewing body’s substantive consideration of issues in the review.
- 2.15 The Commission therefore **suggests that clause 45(3)(b)(iii) should be removed from the Elections Bill**, for the principal reason that it duplicates provision already made by section 36(1) of the 2013 Act.

Clause 45(4) – typographical error

- 2.16 Clause 45(4) of the Elections Bill is designed to rename the “period for representations” referred to in section 36(1) of the 2013 Act as the “public consultation period” (mirroring the change made to section 35(3) of the 2013 Act by clause 45(3)(b)(ii) of the Bill, referred to in paragraph 2.12 above).

2.17 However clause 45(4) of the Elections Bill currently refers to the “period of representations”. This appears to be a typographical error. The Commission **suggests that clause 45(4) should read as follows** (with the correction shown underlined):

“In section 36 (reporting on review), in subsection (1), for “period for representations” substitute “public consultation period”.”

Clause 46(2) – communication with mandatory consultees

2.18 Clause 46(2) adds additional bodies to the list of mandatory consultees for the purposes of reviews under Part 3 of the 2013 Act.

2.19 The Commission supports this change. However, in practice, the Commission has encountered difficulty contacting some mandatory consultees, in particular in instances where the Commission’s email communications have gone unacknowledged.

2.20 It would aid the Commission’s carrying out of its functions if mandatory consultees were required to nominate, and provide contact details for, a single point of contact for the purposes of reviews under Part 3 of the 2013 Act.

2.21 The Commission therefore **suggests that an additional provision should be inserted into clause 46 of the Elections Bill, which would amend section 34(3) of the 2013 Act such that its opening text reads as follows** (with amended wording shown underlined):

“For the purposes of a review under this Part, the “mandatory consultees” are the following bodies, any of which shall however cease to be a mandatory consultee for the purposes of the review if it should fail to nominate to the reviewing body upon request, and provide contact details for, an individual to act as single point of contact for the purposes of the review –”.

Clause 48(2) – deadlines for completion of reviews

2.22 Clause 48(2) would insert a new section 36B into the 2013 Act. Section 36B lays down a new system of deadlines for reviews carried out under Part 3 of the 2013 Act, pursuant to which (among other things):

2.22.1 the Commission must “*use its best endeavours*” to complete a principal area electoral arrangements review under section 29 within 12 months;

2.22.2 the Commission must “*use its best endeavours*” to complete a review of seaward boundaries under section 28 within 18 months;

- 2.22.3 the Commission must “*use its best endeavours*” to complete a community boundaries review under section 26 or a community electoral arrangements review under section 32 within 24 months; and
- 2.22.4 a principal council must “*use its best endeavours*” to complete a community boundaries review under section 25 or a community electoral arrangements review under section 31 within 24 months.
- 2.23 Nonetheless the new proposed section 36B(6) would provide that a failure to meet these deadlines does not affect the validity of the review.
- 2.24 The Commission suggests that an obligation to use “best endeavours” to meet the relevant deadline in the course of a review under Part 3 of the 2013 Act may be disruptive and may have unintended consequences. This is because an obligation to use “best endeavours” may require the reviewing body to use all reasonable measures available to it to meet the deadline, and (if challenged) to justify why it has not taken particular steps which may be suggested by others.¹ This could significantly impact on the work of the Commission and other reviewing bodies.
- 2.25 For example, section 35(4) of the 2013 Act (in its current form, as well as in the amended form which would be substituted by clause 45(3)(b)(iv) of the Elections Bill) permits the reviewing body to determine the length of the consultation on its Draft Proposals Report, so long as the consultation period is at least 6 weeks and not more than 12 weeks.² If the reviewing body were to permit a consultation period of *more than the minimum* (i.e. more than 6 weeks), it could be criticised for failing to use *all reasonable measures* to meet the deadline for that review. In this way, the provision in section 35(4) of the 2013 Act which permits the reviewing body to determine the length of the consultation (taking into account, for example, the breadth and complexity of the proposals for change in its Draft Proposals Report) may be deprived of its effect.
- 2.26 Furthermore, by reason of the additional functions introduced by both the Elections Bill and the Senedd Bill, the Commission will in the future be subject to significant additional workload. It might be argued that the obligation to use “best endeavours” to complete a review under Part 3 of the 2013 Act by the deadline requires the Commission to divert resources away from a Senedd constituency boundaries review, depriving the Commission of the ability to determine its own priorities and the appropriate management of its new workload.
- 2.27 The Commission also has the power to carry out community boundaries reviews and community electoral arrangements reviews by agreement with the relevant principal council, pursuant to sections 26 and 32 of the 2013 Act. It might be argued in the future that a decision by the Commission to undertake such a community review had jeopardised its ability to complete a principal area electoral

¹ See for example the judgment of the High Court in *Brooke Homes v Portfolio Property Partners* [2021] EWHC 3015 (Ch) (Hugh Sims QC) at paragraphs 97 to 98 (available at <https://www.bailii.org/ew/cases/EWHC/Ch/2021/3015.html>)

² The term “Draft Proposals Report” in this context is explained in paragraph 2.11 above

arrangements review within the deadline, and thus represented a failure to use “best endeavours” to meet that deadline. This could have a chilling effect on the conduct by the Commission of community reviews, which could in turn have numerous adverse impacts.

2.28 The Commission therefore **suggests that the obligation on the reviewing body to “use its best endeavours” to meet the deadlines in the new proposed section 36B of the 2013 Act** (which will be inserted by clause 48(2) of the Elections Bill) **should be replaced in each instance by an obligation to “endeavour” to meet those deadlines.** That obligation remains likely to influence the reviewing body in its conduct of the review, but in a manner which avoids disrupting the reviewing body’s operations and management of its workload.

Clause 48(2) – erroneous cross-reference

2.29 As outlined above, clause 48(2) would insert (among other things) a new section 36B(4) into the 2013 Act, laying down a time limit for the conduct by the Commission of community reviews.

2.30 The new proposed section 36B(4) currently refers to community reviews conducted by the Commission “*under section 26, 31 or 32*” of the 2013 Act. The Commission suggests that, in this context, the cross-reference to section 31 is included in error: the Commission’s powers to carry out community reviews are conferred only by sections 26 and 32. Section 31(5) of the 2013 Act does make reference to the ability of the Commission to carry out a community electoral arrangements review by agreement with the principal council; however that provision expressly makes clear that any such review by the Commission would be conducted “under section 32”.

2.31 The Commission therefore **suggests that the cross-reference to section 31 in the new proposed section 36B(4) of the 2013 Act (which would be inserted by clause 48(2) of the Elections Bill) is deleted.**

Clause 51(3) – obligation to complete community reviews

2.32 Clause 51(3)(a) of the Elections Bill would insert a new subsection (A1) into section 31 of the 2013 Act, which would require each principal council to “*conduct a review of the electoral arrangements for each community in its area at least once in every [12-year] review period*”.

2.33 The 2013 Act currently places a series of obligations on principal councils for the purpose of ensuring that community areas and electoral arrangements are kept up to date. Principal councils are required:

2.33.1 to monitor the communities in their areas and the electoral arrangements for those communities;

2.33.2 to consider whether those communities or electoral arrangements should be changed;

2.33.3 to carry out reviews in certain circumstances; and

2.33.4 in carrying out these duties, to “*seek to ensure effective and convenient local government*”.³

2.34 In this context, there are two kinds of review which principal councils can carry out: reviews of community boundaries under section 25 of the 2013 Act (known as “community boundaries reviews”) and reviews of the electoral arrangements of communities under section 31 of the 2013 Act (known as “community electoral arrangements reviews”). Both of these types of review together are known as “community reviews”.

2.35 A community boundaries review is a review of the boundaries of one or more communities within the principal council’s area. This may be appropriate for example if new housing developments have made significant differences to the map or to patterns of settlement within an area, if there are anomalies which have not been identified in previous reviews (such as golf courses split across two communities, or areas where a small road or cul-de-sac is ‘split off’ from the rest of a community), or if there are changes to water courses or large landholdings such as farms.

2.36 At the conclusion of a community boundaries review, the principal council may recommend “*such community boundary changes as it considers appropriate*”.⁴ In this context, a “community boundary change” may mean a change to the boundary of an existing community, or the abolition of an existing community and/or the creation of a new community.⁵

2.37 Where a principal council recommends community boundary changes at the conclusion of a community boundaries review, it also has power to recommend certain kinds of further change where the further changes are a *consequence of* the boundary changes. The permitted further changes are:

2.37.1 “*community council changes*”, meaning the dissolution of an existing community council, the establishment of a new community council, or the addition of communities to (or subtraction of communities from) a common community council;⁶ and

2.37.2 “*associated changes to the electoral arrangements*” of one or more of the communities under review or of the principal area.⁷ In this context the “electoral arrangements of a community” refers to the number of members of the community council and any arrangements for the division of the community into wards for the purposes of elections to the community council, while the

³ 2013 Act, section 22(1) to (3)

⁴ 2013 Act, section 25(3)(a)

⁵ 2013 Act, section 23(4)(a)

⁶ 2013 Act, section 23(4)(b)

⁷ 2013 Act, section 25(3)(b)

“electoral arrangements of the principal area” refers to the number of elected members of the principal council and the arrangements for electoral wards.⁸

2.38 In contrast, a *community electoral arrangements review* addresses the arrangements for representation on the community council within a given community. The principal council does not have the power in a community electoral arrangements review to propose changes to the *boundaries* of communities under review, and a review of this kind therefore proceeds on the basis that those boundaries are fixed. A review of this nature may be appropriate in particular where the populations of communities have changed, but the changes do not mean that it is appropriate to change the boundaries of those communities.

2.39 At the conclusion of a community electoral arrangements review, a principal council is entitled to “propose and make” changes to the electoral arrangements for a community under review, as well as consequential changes to the electoral arrangements of the principal area.

2.40 In summary, therefore, in the course of a community *boundaries* review a principal council can examine and recommend changes to the electoral arrangements of a community if that community’s *boundaries* are changed. But the principal council does not have the power in a community boundaries review to change the electoral arrangements for a community the boundaries of which are not changed – for this purpose, it must carry out a separate community electoral arrangements review.

2.41 In contrast, when it carries out a community *electoral arrangements* review the principal council cannot change the boundaries of the community (or communities) under review. This kind of review assumes that the boundaries are fixed. For this reason, it is only likely to be appropriate for the principal council to devote resources to a community *electoral arrangements* review if the principal council considers that the boundaries of the communities to be reviewed are *appropriate*, so that those boundaries will not themselves require review in the near future.

2.42 As a consequence, if a principal council is to conduct a *full* review of the communities in its area, it must conduct a community boundaries review first, *followed by* a community electoral arrangements review for any communities in its area the boundaries of which were *not* changed as a consequence of the boundaries review. The only exception to this need for two reviews would be if the boundaries of *all* communities in the principal council’s area were changed in the course of the boundaries review. The Commission anticipates that this would be a highly exceptional situation.

2.43 The Commission’s general policy is that the interests of effective and convenient local government are best served where local government electoral boundaries are coherent, in the sense that principal council electoral ward boundaries correspond with the boundaries of communities and community wards. The Commission’s general policy is therefore that communities form the “building blocks” of principal council electoral wards.

⁸ 2013 Act, sections 29(9) and 31(7)

2.44 Accordingly it is useful if the principal council has recently completed a full review of the communities in its area before the Commission commences a principal area electoral review in the same area – so that the community boundaries (and also community electoral arrangements) which will form the Commission’s “building blocks” for the purposes of the principal area electoral review are appropriate and up-to-date.

2.45 Given this background, the Commission suggests that the Elections Bill should be modified in three respects.

2.46 First, each principal council should be obliged to conduct a review of the boundaries of each community in its area under section 25 of the 2013 Act at least once in every review period. Clause 51 should be supplemented in order to introduce an amendment to section 25 of the 2013 Act to this effect. This is because communities form the “building blocks” for the Commission’s principal area electoral reviews under section 29 of the 2013 Act, and it is in the public interest that community boundaries are regularly reviewed and updated.

2.47 Second, the obligation on a principal council to review the electoral arrangements for each community in its area at least once in every review period (which would be created by the new proposed section 31(A1) of the 2013 Act, to be inserted by Clause 51(3)(a) of the Elections Bill) **should be subject to an exception for communities in respect of which:**

2.47.1 the principal council has recommended changes to the boundaries of that community in a review under section 25 completed during the same review period; and

2.47.2 in the course of that review under section 25, the principal council has either:

2.47.2.1 recommended consequential changes to the electoral arrangements of that community; or

2.47.2.2 recorded its conclusion in its final report that no change is required to the electoral arrangements of the community.

2.48 This exception is designed to avoid situations in which the principal council has already reviewed the electoral arrangements for a community in the course of a boundaries review under section 25, but becomes obliged to re-consider the same matters in a review under section 31 during the same review period. The Commission considers that this is likely to be highly wasteful of resources.

2.49 Third, the obligations on principal councils to complete reviews under section 25 and section 31 should be subject to express provisos that they can be satisfied if the review is instead completed by the Commission by agreement with the principal council, pursuant to section 26 or section 32 of the 2013 Act. Without those provisos, the mechanisms in section 26 and 32 for the Commission to complete a review in place of the principal council seem likely to be deprived of much of their effect in practice.

Clause 51(3) – new 12-year review cycle for community reviews

- 2.50 Clause 51(3)(a) of the Elections Bill would also insert a new subsection (A2) into section 31 of the 2013 Act, which would provide that the review period during which a principal council must carry out an electoral arrangements review for each community in its area will be 12 years *beginning with the day on which clause 51 of the Bill becomes law*, and each subsequent period of 12 years.
- 2.51 The *duration* of this review period is the same as the duration of the new extended review period during which the Commission will be required to carry out a review of the electoral arrangements for each principal area in Wales – see clause 41(2)(a) of the Elections Bill (which would amend section 29(3) of the 2013 Act) together with section 29(1) of the 2013 Act. However the *starting date* for the 12-year review period applying to principal councils will not be the same as the starting date for the 12-year review period applying to the Commission – since the Commission’s 12-year review period will run from the earlier date of 30 September 2023 (and each 12-year period thereafter).⁹
- 2.52 In its January 2023 response to the *Electoral Administration and Reform White Paper* which preceded the Elections Bill, the Commission suggested that:
- 2.52.1 if a principal council is to be required to carry out a community boundaries review and a community electoral arrangements review within a given period, then that period should be *the same* period during which the Commission is required to carry out its principal area electoral review in the same area;
- 2.52.2 the duration of the review period should be extended to 12 years rather than the current 10, in order that there is enough time; and
- 2.52.3 the review periods should be organised in a way which recognises and responds to workload challenges. If *all* principal councils are subject to the same review period, then the Commission is unlikely to be able to carry out *any* principal area electoral reviews during the first half of the review period, and is likely to have to carry out *all* its principal area electoral reviews during the second half of the period – with obvious consequences for the Commission’s management of its personnel, expertise and workload. This problem could be mitigated by “staggering” the review periods for different groups of principal areas, although this would render the legislation more complex.
- 2.53 The Commission welcomes the provisions in the Elections Bill which would extend the review periods for both the Commission and the principal councils to 12 years. The Commission also again acknowledges that the “staggered” system which it has previously proposed may introduce significant complexity into the 2013 Act.
- 2.54 However the Commission suggests that, if all principal councils are to be subject to the same 12-year review period, then the 12-year review periods

⁹ See clause 41(2)(a) of the Elections Bill

applying to principal councils and to the Commission should be *the same*, and therefore *should start on the same date*. In short, this is because review periods which run from different dates will likely mean that there are “dead” periods at the start and/or end of each review period during which no action can be taken. This in turn is likely to mean that the available time during the review period for compliance with each reviewing body’s obligation to undertake reviews is in fact less than 12 years, with knock-on effects for the reviewing bodies’ workloads and abilities to manage their resources. This is explained in the following paragraphs.

2.55 As noted above, the Commission considers that it is in the interests of effective and convenient local government for local government electoral boundaries to be coherent, in the sense that principal council electoral ward boundaries correspond with the boundaries of communities and community wards. The Commission’s general policy is therefore that communities form the “building blocks” of principal council electoral wards.¹⁰

2.56 As a consequence, it is useful if the principal council has recently completed community reviews in its area before the Commission commences a principal area electoral review in the same area – so that the community boundaries (and also community electoral arrangements) which will form the Commission’s “building blocks” for the purposes of the principal area electoral review are appropriate and up-to-date.

2.57 Furthermore, if the Commission finds during a principal area electoral review that new electoral ward boundaries may be appropriate, the Commission will also consider exercising its power to recommend changes to community boundaries, community councils and community electoral arrangements which are a *consequence of* changes to the electoral arrangements of the principal area.¹¹ In this way, principal area electoral reviews can result in changes to community arrangements in the same area.

2.58 Accordingly the Commission’s general policy is to wait until a principal council has completed its community reviews before the Commission commences its principal area electoral review in that council’s area, in order that the community arrangements which inform the Commission’s review are up-to-date and are not changed due to actions of the principal council during the course of the Commission’s review.

2.59 Similarly it is likely to be most efficient if a principal council refrains from commencing its community reviews until after the Commission has completed a principal area electoral review in the council’s area. Otherwise there will be a risk that the principal council’s work may be wasted, if the principal council conducts a community review on the basis of arrangements which are subsequently changed as a result of a review conducted by the Commission.

2.60 Furthermore, at the end of any review conducted under the 2013 Act the implementing authority (which receives the final report in the review) will generally

¹⁰ Above, paragraph 2.43

¹¹ See section 29(7)(b) of the 2013 Act

have a choice as to whether to make an Order which implements the outcome of the review. In the Commission's view, therefore:

2.60.1 if a principal council is conducting (or has recently completed) a community review in its area, ideally the Commission will not commence a principal area electoral review in the same area until the implementing authority (which in some instances will be the Commission itself) has taken its implementation decision in relation to the principal council's community review. Otherwise the Commission will commence its principal area electoral review in circumstances where the community arrangements, which form the "building blocks" of electoral reviews, may be uncertain; and

2.60.2 if the Commission is conducting (or has recently completed) a principal area electoral review in an area, ideally the principal council will not commence a community review in the same area until the implementing authority has decided whether to implement the recommendations made in the Commission's final recommendations report. This is for similar reasons, given that the Commission has power in a principal area electoral review to recommend consequential changes to community arrangements.¹²

2.61 In summary, therefore, the Commission considers that it should not start a principal area electoral review unless any community reviews in the same area have been completed and implemented. Similarly the principal council should not start a community review in its area unless any principal area electoral review that the Commission is conducting (or will soon conduct) has been completed and implemented.

2.62 As noted in the Commission's response to the *Electoral Administration and Reform White Paper*, if the same 12-year review period applies to all principal councils and to the Commission, it is likely that during approximately the first half of that 12-year period the principal councils will conduct their community reviews, and during approximately the second half of the period the Commission will conduct its principal area electoral reviews.¹³ This is likely to present obvious challenges in the Commission's management of its personnel, expertise and workload.

2.63 However, as noted above, the current wording of the Elections Bill is likely to entail that the Commission's 12-year review period starts in the region of 6 to 12 months *before* the start of the 12-year review period for principal councils. On this basis, the Commission is unlikely to commence its principal area electoral reviews in the period before the 12-year review period for principal councils *starts*, nor in approximately the first half of the 12-year review period for principal councils, since during that time the community arrangements will not have been updated. Thus the Commission is likely to commence its principal area electoral reviews *later than* halfway through its own 12-month review period, leaving *less time* for the Commission to complete those reviews. Furthermore, once the Commission's

¹² See above, paragraph 2.57

¹³ The Commission notes in this regard the deadline of 24 months for each community review, as provided for in the new proposed section 36B(5) of the 2013 Act, to be inserted by clause 48(2) of the Elections Bill

reviews are completed and implemented, the principal councils may be forced to wait before commencing a new round of community reviews, as their own new review period may not yet have begun.

- 2.64 In this way, there may be “dead periods” at the start and end of each review cycle during which no action can be taken, which would involve an inefficient loss of time.
- 2.65 The Commission **suggests that the 12-year review periods for principal councils and for the Commission should commence on the same date**, in order to avoid these potential “dead periods”. This change could be achieved by amending clause 51(3)(a) to provide that the first 12-year review period for principal councils commences on 30 September 2023, mirroring the provision in clause 41(2)(a)(i) for the Commission’s review period. Alternatively (since this change would limit the available time in the first such review period for principal councils), clause 41(2)(a)(i) could instead be amended such that the 12-year review period for the Commission commences on the day on which clause 51 of the Bill enters into force, mirroring the provision currently in clause 51(3)(a) for principal councils.

Clause 55 – transitional provisions

- 2.66 Chapter 1 of Part 2 of the Elections Bill contains clauses 40 to 55, which principally amend Part 3 of the 2013 Act. Chapter 1 of Part 2 will come into force 2 months after the Elections Bill receives Royal Assent – see clause 70(2)(a).
- 2.67 Clause 55(1) of the Bill provides that reviews under Part 3 of the 2013 Act which are ongoing at the time when Chapter 1 of Part 2 of the Bill comes into force are to be completed as if the changes in the Elections Bill had not been made. Clause 55(2) provides that, for the purposes of those ongoing reviews, Part 3 of the 2013 Act and any related subordinate legislation is to continue in effect as it currently stands.
- 2.68 The Commission confirms that it is currently carrying out a number of community boundary reviews by agreement with the relevant principal council under section 26. The Commission is also aware that other community reviews are currently being conducted by principal councils.
- 2.69 It currently appears likely that most of these ongoing reviews will be completed *after* Chapter 1 of Part 2 of the Bill becomes law. These reviews will therefore be completed once the first 12-month review period for principal councils has commenced (see above, paragraph 2.50). However, by reason of clause 55(1) and (2), they will not count towards fulfilment of the obligation on principal councils to conduct reviews during the 12-month review period (which the Commission suggests should include an obligation to conduct community *boundary* reviews under section 25 of the 2013 Act, as set out in paragraph 2.46 above).
- 2.70 The Commission suggests that **clause 55(1) and (2) of the Elections Bill should be modified such that any community reviews which are ongoing when Chapter 1 of Part 2 enters into force will be conducted under the**

unamended version of the 2013 Act, but will count towards fulfilment of any obligation on a principal council to complete a community review during the first 12-year review period. This is to avoid possible situations in which a principal council completes a review during the first review period but is then required to repeat the review during the same period for the sole reason that the review was commenced before Chapter 1 of Part 2 came into force. The Commission suggests that such situations would be wasteful of resources.

Clause 70 – entry into force of Part 1 of the Bill

2.71 Clause 70(1)(a) of the Elections Bill provides that Chapter 3 of Part 1 will enter into force on the day after the Bill receives Royal Assent.

2.72 Chapter 3 of Part 1 lays down provisions for Pilot Regulations, and includes new functions for the Commission – most importantly to review proposals for Pilot Regulations under clause 15, and to establish Welsh election pilot forums in some circumstances under clause 16.¹⁴

2.73 As noted above, although these are functions of the Commission, the Elections Bill provides that they must be exercised by the EMB: see the new proposed section 20E(2) and (3)(b) of the 2013 Act, which would be inserted by clause 1(2) of the Elections Bill. Accordingly it is in fact the EMB which must report on proposals for Pilot Regulations, and must establish a Welsh election pilot forum in the relevant situations. This is, in turn, because the relevant expertise and experience for these purposes will be held by the members of the EMB rather than the members of the Commission.¹⁵

2.74 The provisions of the Elections Bill which would create the EMB (new section 20E(1) of the 2013 Act) and confer functions on it (new section 20E(2) and (3)) are inserted by clause 1(2) of the Bill, which is contained in Chapter 1 of Part 1. Under clause 70(3) of the Bill, those provisions will *not* be brought into force automatically upon Royal Assent, but rather by an Order made by the Welsh Ministers.

2.75 It follows that, by reason of the current wording of clause 70, functions will be conferred on the Commission under Chapter 3 of Part 1 from the day after Royal Assent, which are intended to be functions of the EMB (and require the expertise and experience of the members of the EMB), but will be conferred on the Commission before the EMB is established. Unless the Welsh Ministers swiftly make an Order bringing clause 1(2) of the Bill into force, the Commission may be called upon to review proposals for Pilot Regulations and/or to establish Welsh election pilot forums before the EMB is created, or at least before the members of the EMB have been appointed and the EMB has become operational.

2.76 The Commission therefore **suggests that clause 70 is amended in order that clause 1(2) of the Bill is brought into force no later than Chapter 3 of Part 1 of the Bill.**

¹⁴ See above, paragraph 2.3

¹⁵ See above, paragraphs 2.4 to 2.7

3. SUMMARY – SUGGESTED AMENDMENTS OF THE BILL

3.1 First, the Commission suggests that **clause 16(3)(c) of the Elections Bill should read as follows** (with proposed new text shown underlined):

“one or more members of the Electoral Management Board with relevant experience”.

3.2 Second, the Commission suggests that **clause 45(3)(b)(iii) should be removed from the Elections Bill**, for the principal reason that it duplicates provision already made by section 36(1) of the 2013 Act.

3.3 Third, the Commission suggests that **clause 45(4) should read as follows** (with the typographical correction shown underlined):

“In section 36 (reporting on review), in subsection (1), for “period for representations” substitute “public consultation period”.”

3.4 Fourth, the Commission suggests that **an additional provision should be inserted into clause 46 of the Elections Bill, which would amend section 34(3) of the 2013 Act such that its opening text reads as follows** (with amended wording shown underlined):

“For the purposes of a review under this Part, the “mandatory consultees” are the following bodies, any of which shall however cease to be a mandatory consultee for the purposes of the review if it should fail to nominate to the reviewing body upon request, and provide contact details for, an individual to act as single point of contact for the purposes of the review –”.

3.5 Fifth, the Commission suggests that **the obligation on the reviewing body to “use its best endeavours” to meet the deadlines in the new proposed section 36B of the 2013 Act** (which will be inserted by clause 48(2) of the Elections Bill) **should be replaced in each instance by an obligation to “endeavour” to meet those deadlines.**

3.6 Sixth, the Commission suggests that **the cross-reference to section 31 in the new proposed section 36B(4) of the 2013 Act (which would be inserted by clause 48(2) of the Elections Bill) is deleted** on the grounds that it appears to be included in error.

3.7 Seventh, the Commission suggests that **each principal council should be obliged to conduct a review of the *boundaries* of each community in its area under section 25 of the 2013 Act at least once in every review period.** Clause 51 should be supplemented in order to introduce an amendment to section 25 of the 2013 Act to this effect.

3.8 Eighth, the Commission suggests that **the obligation on a principal council to review the electoral arrangements for each community in its area at least**

once in every review period (which would be created by the new proposed section 31(A1) of the 2013 Act, to be inserted by Clause 51(3)(a) of the Elections Bill) **should be subject to an exception for communities in respect of which:**

- 3.8.1 **the principal council has recommended changes to the boundaries of that community in a review under section 25 completed during the same review period; and**
- 3.8.2 **in the course of that review under section 25, the principal council has either:**
 - 3.8.2.1 **recommended consequential changes to the electoral arrangements of that community; or**
 - 3.8.2.2 **recorded its conclusion in its final report that no change is required to the electoral arrangements of the community.**
- 3.9 Ninth, the Commission suggests that **any obligations on principal councils to complete reviews under section 25 and section 31 of the 2013 Act should be subject to express provisos that they can be satisfied if the review is instead completed by the Commission by agreement with the principal council, pursuant to section 26 or section 32 of the 2013 Act.**
- 3.10 Tenth, the Commission suggests that **the 12-year review periods for principal councils and for the Commission should commence on the same date**, and to this end:
 - 3.10.1 clause 51(3)(a) should be amended to provide that the first 12-year review period for principal councils commences on 30 September 2023, mirroring the provision in clause 41(2)(a)(i) for the Commission's review period; or
 - 3.10.2 alternatively clause 41(2)(a)(i) should be amended such that the 12-year review period for the Commission commences on the day on which clause 51 of the Bill enters into force, mirroring the provision currently in clause 51(3)(a) for principal councils.
- 3.11 Eleventh, the Commission suggests that **clause 55(1) and (2) should be modified such that any community reviews which are ongoing when Chapter 1 of Part 2 of the Elections Bill enters into force will be *conducted under the unamended version of the 2013 Act*, but *will count towards* fulfilment of any obligation on a principal council to complete a community review during the first 12-year review period.**
- 3.12 Twelfth, the Commission suggests that **clause 70 is amended in order that clause 1(2) of the Bill is brought into force no later than Chapter 3 of Part 1 of the Bill**, since otherwise the Bill will create functions for the Electoral Management Board before the Board is brought into existence.

1.1.1

THE ELECTORAL MANAGEMENT BOARD FOR SCOTLAND (EMB)

Written evidence presented to

**The Local Government and Housing Committee of Senedd Cymru
in their consideration of the**

Elections and Elected Bodies (Wales) Bill



10 November 2023

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Background - The Reform Bill Committee of Senedd Cymru

1. The [Elections and Elected Bodies \(Wales\) Bill](#) has been referred to the Local Government and Housing Committee for Stage 1 scrutiny of the general principles of the Bill.
2. Terms of reference for the committee's consideration of the Bill have been set and these include:
 - The general principles of the Elections and Elected Bodies (Wales) Bill and whether there is a need for legislation to deliver the Bill's stated policy objectives (see below for further information about the Bill).
 - Any potential barriers to the implementation of the Bill's provisions, and whether the Bill and accompanying Explanatory Memorandum and Regulatory Impact Assessment take adequate account of them.
 - Whether there are any unintended consequences arising from the Bill.
 - The Welsh Government's assessment of the financial and other impacts of the Bill as set out in Part 2 of the Explanatory Memorandum.
 - The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Part 1: Chapter 5 of the Explanatory Memorandum).
 - Matters relating to the competence of the Senedd including compatibility with the European Convention on Human Rights.
 - The balance between the information contained on the face of the Bill and what is left to subordinate legislation.
 - Any matter related to the quality of the legislation.
 - Any other matter related to the constitutional or other implications of the Bill.

Evidence from the Electoral Management Board for Scotland

3. As the Bill contains the provisions to establish an Electoral Management Board for Wales, the Electoral Management Board for Scotland (EMB) has been asked to contribute to the Committee's work by taking part in an oral evidence session on Thursday 30 November 2023.
4. The Committee has asked the EMB to provide comment on several subject areas relevant to the Bill. Comments from the EMB are presented below. The EMB is happy to provide this written evidence for consideration by the Committee and will be pleased to expand on any element of it each in discussion with the Committee or subsequently in writing.
5. The EMB for Scotland has been requested specifically to address:
 - The accountability of the EMB, including how it is accountable to the Scottish Parliament (whether there are any specific processes etc);
 - What was the set-up in Scotland before the creation of the EMB, and how did that merge into the current arrangements;
 - Have there been any issues with the EMB and the independence of Returning Officers managing elections in line with local need; and
 - The annual report says that the EMB has assisted in the coordination of the UK elections as well, so it would be useful to know to what extent that happens and how that works/how it developed.

6. The EMB is an independent body which supports Returning Officers (ROs) and Electoral Registration Officers (EROs) in Scotland. It is independent of both the UK and Scottish Governments and accountable to the Scottish Parliament. As such it is generally inappropriate for the Board to comment on matters of policy with respect to electoral administration, these being the remit of elected governments.
7. However the EMB will offer comments on the practical implications of policies that are being considered or are being implemented. Such comments will include consideration of the impact on the delivery of elections by ROs and EROs. The EMB is always particularly concerned with ensuring that the interests of the voter are kept at the centre of all election planning and delivery; comments may particularly reflect that concern.

The accountability of the EMB, including how it is accountable to the Scottish Parliament (whether there are any specific processes etc)

8. While the EMB was created by statute in 2011 it had existed in the form of an interim board since 2008, a voluntary group of ROs and EROs and their advisers with input from the Electoral Commission and Governments who were working to support electoral administration following problems with the delivery of the combined Scottish Parliament and Scottish Local Government Elections in 2007.
9. An [independent review](#) of the Scottish Parliamentary and local government elections on 3 May 2007 was undertaken by the Canadian election expert Ron Gould which made a number of recommendations including the decoupling of elections to ensure that each received a parity of esteem and publicity, and the need to ensure that legal changes governing elections were in place at least 6 months ahead of any poll to allow adequate time for planning and implementation. These recommendations were implemented.
10. The Gould Report also proposed the creation of a Chief Returning Officer for Scotland. While this recommendation was not implemented, the creation of the EMB in many ways responded to the problems that he identified which prompted that recommendation in that he saw a need for a single point of contact for the oversight of elections and for a vehicle for the promotion and development of best practice. The 2007 Gould report is important background to understand the formal establishment of the EMB.
11. The EMB was formally created by the [Local Electoral Administration \(Scotland\) Act 2011](#). The Act defines the general function of the Board which is to provide a forum for co-ordinating the administration of local government elections in Scotland. This was amended by the Scottish Elections (Reform) Act 2020 which expanded the remit of the Board to cover Scottish Parliamentary elections.
12. The 2011 Act also defines the membership of the Board and provides for the Convener of the Board to be appointed by Scottish Ministers. Members of the Board are Returning Officers, Depute Returning Officers and Electoral Registration Officers, appointed by the Convener.
13. In terms of its accountability, Section 8 of the 2011 Act sets out the reporting requirements of the Board. The Board provides an Annual Report on the performance of its functions to the Scottish Parliament as soon as practicable after the end of the financial year. The Scottish Parliament also exercises oversight of the EMB in that it will routinely request that the Board provides evidence to its

Committees following elections allowing them to scrutinise the delivery of elections and the work of the Board.

14. The independence of the Board is a fundamental principle reflecting the independence of ROs and EROs who are accountable only to the courts for the delivery of elections and not to any political oversight or input. ROs and EROs must necessarily be independent of political control in order to preserve the integrity of elections ensuring that it is the interests of the voter that are paramount and not the interests of any candidate, party or elected politician. The EMB as a body made up of and supporting ROs and EROs maintains and preserves that same independence. Its accountability to Parliament is to report on its work and to justify how its funds have been spent to the pursuit of its aims.

What was the set-up in Scotland before the creation of the EMB, and how did that merge into the current arrangements

15. Before the establishment of the EMB there was generally no formal coordination of electoral activity in Scotland. ROs and Regional ROs developed their own approaches that could differ from each other in multiple ways. There was no coordinated approach to voter-facing elements of the election and no consistency of approach in areas where there was liberty as to how elements of the election should be delivered. There was no clear point of contact for suppliers or Governments in terms of the delivery of elections.
16. As noted above the EMB was established in Scotland by the [Local Electoral Administration \(Scotland\) Act 2011](#), an Act which formalised a Board that had been operating informally as an interim Board since 2008. This interim Board was brought together by the Returning Officer for the City of Edinburgh in reaction to the issues identified by the Gould Report into the 2007 combined elections in Scotland. The purpose of the interim Board, which flowed into the formal remit of the EMB itself, was to support ROs and EROs, to promote best practice among them and to be a single point of contact for key suppliers such as printers. These purposes very much addressed issues identified by Gould and the problems experienced in the 2007 elections.
17. The Interim EMB included representatives from the key professional bodies working on the delivery of elections: SOLACE (the Society of Local Authority Chief Executives) Scotland, the Association of Electoral Administrators (AEA), the Electoral Registration Committee of the Scottish Assessors Association (SAA) and the Society of Local Authority Lawyers & Administrators in Scotland (SOLAR). Advice was provided by the Electoral Commission and Governments were invited to attend Board meetings. Previously these bodies had all engaged with Governments and suppliers over years to promote the interests of their members and of the voter, but the Interim EMB was designed to coordinate that work, to strengthen their voice and to promote consistency. It was also intended to bring a stronger focus onto the interests of the voter.

Have there been any issues with the EMB and the independence of Returning Officers managing elections in line with local need?

18. The Board's objective, principles and approach are discussed in the background paragraphs below. With respect to the overall approach there is an effort to operate through a progression of consensus where possible, guidance where helpful and direction if necessary. The Board has the privilege of supporting a close and

mutually supportive community of electoral professionals in Scotland which makes consensus a valid and practical approach. The concern to protect the independence of the RO also means that the Convener will only intervene where necessary in promotion of best practice and to support the RO and ERO and will avoid interference to take away the local autonomy and role of the RO.

19. There have therefore been no issues where EMB Directions have been at odds with the approach of a local RO. EMB Directions are only made following consultation and generally are a result of consensus so have been well received and often are a defence that an RO can use if challenged locally on their decisions, with the RO able to reference an EMB Direction.
20. Most of the Directions cover voter-facing elements of the election where consistency of approach offers benefits to the voter and to candidates and campaigners. For example, a consistent date of dispatch for postal votes allows a coordinated public awareness campaign to support the election with which campaigners and candidates can also align their efforts. On occasion where there was a risk of overcrowded polling places, for example during the 'COVID elections' of 2021 and 2022, the EMB fixed proposed limits on the numbers of voters to be allocated to each station. This was to prevent queues and to protect the capacity of buildings. These limits were generally accepted by ROs and where an RO thought it inappropriate for a building they could apply for an exemption, providing evidence, that was always granted.

The annual report says that the EMB has assisted in the coordination of the UK elections as well, so it would be useful to know to what extent that happens and how that works/how it developed.

21. The Convener of the EMB has a power of direction over ROs and EROs with respect to Scottish Parliament and Local Government Elections. Directions are filed on the EMB website, including those covering the [Scottish Local Government Elections in May 2022](#) and those covering the [Scottish Parliament Elections in 2021](#) (with a [further set](#) issued later). Directions are generally issued at least 6 months ahead of the poll to allow sufficient time for ROs and EROs to plan around them and implement whatever changes may be needed in process.
22. The Interim Board that preceded the EMB had no formal powers to instruct ROs or EROs to take particular actions. However in 2009 the interim EMB did support the Regional Returning Officer (RRO) for the European Parliament elections in Scotland. The RRO used his power of direction to make a number of directions for ROs and EROs to promote consistency and support contingency. These included for example a consistent date for the dispatch of poll cards and postal votes and a consistent approach to ballot paper design and numbering.
23. This approach was well received by ROs and EROs and the Convener of the Interim Board similarly made a series of recommendations to ROs and EROs for the following year's 2010 UK Parliamentary General Election, again to promote consistency and support a degree of contingency planning.
24. The Convener of the EMB was appointed as Chief Counting Officer for the 2014 Scottish Independence Referendum and in that role also had power to direct Counting Officers and EROs. Again in 2014 and 2019 the Convener had the role of Regional Returning Officer for the European Parliament election for the Electoral Region of Scotland again having a power of direction. Across all of these electoral events the template of there being directions or recommendations issued to ensure a

national consistency of approach became an accepted and expected feature of the delivery of elections.

25. The Convener has therefore issued recommendations to ROs and EROs regarding the delivery of UK Parliamentary Elections in 2015, 2017 and 2019. These address the same issues as the Directions that are routinely issued for the elections for which the Convener does have a power of direction. Recommendations are posted on the EMB website including for example the [2015 recommendations](#).
26. As noted, these are expected, appreciated and accepted with ROs and EROs happy to work to a national standard and structure which gives them comfort and clarity around their role.

Background – The Electoral Management Board for Scotland

27. The Electoral Management Board for Scotland (EMB) was established by the Local Electoral Administration (Scotland) Act 2011. This Act gave the Board “the general function of co-ordinating the administration of local government elections in Scotland.” The Scottish Elections (Reform) Act 2020 extended the remit of the Board to cover elections to the Scottish Parliament.
28. The EMB is independent of both Scottish and UK Governments and political parties and is accountable to the Scottish Parliament. The Convener is appointed by Ministers and leads a Board consisting of Returning Officers, their Deputies and Electoral Registration Officers.
29. Advisors include the professional associations: the Association of Electoral Administrators (AEA), the Electoral Registration Committee of the Scottish Assessors Association (SAA), the Elections Working Group of the Society of Local Authority Lawyers & Administrators in Scotland (SOLAR), and Scottish and UK Governments, and the Electoral Commission.
30. The EMB’s prime focus is ensuring that the interests of the voter are kept at the centre of all election planning and administration. The work of the EMB assumes the close community of electoral professionals in Scotland and accordingly the Board seeks to operate by consensus rather than formal direction, wherever possible. However, the Convener does have a power to issue directions to Returning Officers and Electoral Registration Officers in relation to their duties around Scottish Parliament and Local Government elections as required, and this power has been exercised in recent elections with the consent and wish of the electoral community.
31. The EMB has assisted in the coordination of the work of ROs and EROs in the delivery of European Parliamentary Elections, UK Parliamentary General Elections, Scottish Parliament Elections, Scottish Local Government Elections and UK and Scottish Referendums. Where the Convener does not have a legal power of direction the Board has made recommendations to achieve consistency and support adequate contingency planning across the country. Since its creation, the EMB has had an increasingly important role in promoting a consistent delivery approach, acting as a single point of contact for stakeholders and providing a source of professional expertise and support to the electoral community.

The EMB’s Role

32. The EMB’s “general function of co-ordinating the administration of local government and Scottish Parliament elections” involves two specific roles:
 - (a) assisting local authorities and other persons in carrying out their functions in relation to local government elections; and
 - (b) promoting best practice in local government elections by providing information, advice or training (or otherwise).
33. The over-riding goal is to ensure that the interests of the voter are kept at the centre of all election planning, delivery and administration.

Our Objective

34. With respect to specific electoral events this function translates into a single clear objective: "...to deliver a result that will be trusted as accurate." The currency of elections is trust. Confidence in the result is fundamental to the democratic process and is predicated on confidence in all stages of the process of planning and delivering an electoral event.

Our Principles

35. The EMB shapes its work around four key principles:

- Accessibility - there should be no barriers to any voter taking part;
- Consistency - voters should have the same experience wherever they are in Scotland;
- Efficiency - electoral events will be administered efficiently; and
- Integrity - electoral events will produce results that are accepted as accurate.

Our Approach

36. The Board has the privilege of supporting a close and mutually supportive community of electoral professionals in Scotland. The preferred approach is always to operate through a progression of consensus where possible, guidance where helpful and direction if necessary.

Prof. Alistair Clark,
Professor of Political Science,
Newcastle University, UK.

7th November 2023

Written Evidence to the Senedd Local Government and Housing Committee Stage 1 Scrutiny of the Elections and Elected Bodies (Wales) Bill 2023.

Introduction

1. My expertise is in electoral systems, integrity and administration, with numerous published research articles and reports on these themes. I write in a personal capacity (<http://www.ncl.ac.uk/gps/staff/profile/alistairclark.html#background>).

Summary

2. The Bill represents an important set of proposals to reform electoral administration and aspects of the electoral process in Wales. These seek to modernise existing processes while introducing new responsibilities and structures. Wales has been at the forefront of such reforms in GB and, implemented effectively, this could provide an example for the rest of GB about how such reforms might work.

3. The Bill's main principles, aims and measures are welcome and to be supported. In this written evidence, I outline some issues which the Committee may wish to consider about the overall quality of the legislation and issues which arise from this so that they might be explored with the Welsh government during Stage 1 scrutiny of the Bill.

Electoral Management Board

4. The Bill provides legislation to establish a Welsh Electoral Management Board. This is a welcome move. Scotland has had such a body, in both non-statutory and now statutory form, for its local and now parliamentary elections for well over a decade. Research has shown that Scottish election administration has performed at a higher level than its equivalents across the rest of Great Britain since the EMB's establishment, even from its earliest non-statutory form.¹ It has provided a focus, advice, leadership and direction to electoral administrators. A similar body in Wales should provide similar leadership. A Welsh EMB should benefit positively the conduct of elections in Wales.

5. There are three main issues to raise with regard to establishing a Welsh EMB. Firstly, the Scottish EMB benefits from being independent of other actors – government, Electoral Commission, Boundary Commission etc. This is not the case with the proposed Welsh EMB. Its powers are to be delegated from the Democracy and Boundary Commission Cymru. Even if the EMB is intended to be a Statutory Committee of that Democracy and Boundary Commission Cymru, this is not the same as being independent. If a conflict of interest develops between the two bodies, it is unclear how that may be resolved and which would have precedence under the current Bill. I already have some reservations about the potential for confusion between the Electoral Commission and the Democracy and

¹ Clark, A. (2015) 'Public Administration and the Integrity of the Electoral Process in British Elections', *Public Administration*, 93, (1), pp86-102; Justin Fisher, Yohanna Sällberg (2020) Electoral integrity–The winner takes it all? Evidence from three British general elections', *British Journal of Politics & International Relations*, 22(3), pp404-420.

Boundary Commission Cymru (see my written evidence and recommendation on this to the current Reform Bill Committee on the Senedd Cymru (Members and Elections) Bill).²

6. Independence of electoral management boards is generally seen as international best practice in this field to deliver impartial, free and fair elections. I would therefore recommend strongly that the Welsh EMB's functions are clearly set out in legislation, and that it be an entirely independent body with statutory functional and operational independence from any other body in the electoral sphere including the new Democracy and Boundary Commission Cymru. This would avoid any conflict, ambiguity or conflict about purpose. It is notable and regrettable that EMB independence has not been considered (Explanatory Notes, pp.81-82). While there should certainly be oversight and accountability to the Senedd, independence would lead to a clearer delineation of responsibilities and ability to understand performance of the new EMB separate from that of the Democracy and Boundary Commission Cymru.

7. Secondly, the power of direction from the Chair of the EMB in Scotland developed gradually. Even in its advisory form, their recommendations proved helpful in providing consistency and focus where necessary to electoral administrators and registration officers. The power of direction has undoubtedly helped further improve consistency and clarify the Chair's decisions since. It is therefore welcome to see that the power of direction has been incorporated into this Welsh Bill. Having power of direction from the Welsh EMB's establishment will avoid any ambiguity as to decisions and responsibilities.

8. Thirdly, sufficient resources have been a key issue throughout the history of the Scottish EMB, with several councils, particularly Edinburgh, providing support and secondment. It is therefore necessary to ensure that its Welsh equivalent will be adequately resourced, in terms of finance, equipment and personnel. On this point, the Bill's Explanatory Notes (pp.83-86) are frustratingly opaque. I would therefore suggest that the Committee explore with the Welsh government the actual running costs and resourcing for the EMB, including under the circumstance where this was independent of any Democracy and Boundary Commission.

Electoral Registration

9. I have argued elsewhere, along with my colleague Prof. Toby James (UEA), for the introduction of automatic electoral registration.³ This would remove one barrier to participation, and help with the completeness of electoral registers. It is therefore welcome to see the Bill contain measures around the automatic registration of electors. This will be innovative in Britain, and provide an important example for the other constituent parts of the UK.

10. There will be a couple of challenges in implementing automatic registration. Firstly, while this will help with completeness of registers, maintaining their accuracy will remain a challenge as people move address, or pass away for instance. This will presumably need revision of practices around maintaining the register. There would seem to be some potential for duplication given different electoral law around registration for UK parliamentary elections.⁴ For example, would canvasses need to be conducted more regularly, or some alternate procedure introduced? Additional data mining would seem necessary in this regard, and it seems the idea is to run this alongside an Annual Canvass. I would suggest that the Committee explore the practicalities of these issues with the Welsh government.

² See my paragraph 30 in that evidence.

³ Toby S. James, Bite the Ballot and Alistair Clark (2019) *Missing Millions Still Missing: A Vision for Electoral Modernisation in the UK*. London: All Party Parliamentary Group on Democratic Participation.

⁴ i.e. the Electoral Registration and Administration Act 2013.

11. Secondly, it is unclear how an ERO will satisfy themselves that a person is entitled to be registered in the electoral register (Chapter 3, (2)). Presumably this would be through a combination of age and residency from various sources, as per the recent changes in Wales to the franchise around age and resident voting. This might be clearer in the legislation however, although this presumably will be established in guidance.

12. The intention to remove the open register by regulations is a welcome move, both for privacy and data protection reasons as set out in the Bill's explanatory notes, and also for the purposes of protecting potentially vulnerable electors. Such a reform could helpfully provide a model for the implementation of this necessary reform elsewhere in GB. It seems strange to delay implementation of this objective given the current legislation before the Senedd. I would suggest that these regulations be implemented at the earliest opportunity. The Committee may wish to explore why such a power has not been written into the current bill.

Voter Information and Accessibility

13. As with automatic registration, I have argued elsewhere with colleagues for the necessity of developing and implementing voter information services.⁵ It is therefore pleasing to see such a measure contained in Section 27 of the Bill.

14. Three points should be borne in mind as this develops. Firstly, there is a clear need to ensure that the material posted to this website or resource is seen as independent. It is not evident from the legislation or explanatory notes which organisation would be tasked with managing this platform. This is crucial. Ownership of the resource should be clear, both in the legislation, and on any resource developed. I would strongly recommend that this is run by a body independent of the Welsh government, to avoid any potential inference of electoral bias.

15. Secondly, and relatedly, the material posted to this website should be sufficiently different from that which is posted to other bodies' websites or might be found elsewhere (i.e. Electoral Commission, Senedd etc), even if it might draw upon some of that material. It ought to be focused very clearly on what voters need to know to be able to cast their vote. In addition to information about candidates and constituencies, for example, it might usefully also include information on polling stations, and other practical aspects. It ought to highlight prominently any applicable deadlines, such as for postal or proxy votes.

16. Thirdly, as this develops, it will need rigorous testing to ensure it becomes a trustworthy 'go to' resource for electors. While political parties and candidates are obviously stakeholders, it must be the needs and interests of voters which are paramount in the information published and tested. Voters' groups, including those for traditionally excluded or from low participation groups, should be involved in testing any new resource, as should academics and other experts.

17. With regard to the candidate survey, the overall aims of this survey are welcome and important. The Bill's explanatory notes highlight the low response rate for the survey, while also noting that the form and questions for the survey are set out in regulations by ministers. Survey implementation and design is a complex task. This is not best practice in survey implementation. It is therefore welcome to see this power weakened in the Bill to 'may give a direction'.

18. While survey fatigue is a real issue, there is likely to be scope for this survey to be designed and implemented by an external contractor, if it is not already (e.g. University research unit, consultancy

⁵ Toby S. James, Bite the Ballot and Alistair Clark (2019) *Missing Millions Still Missing: A Vision for Electoral Modernisation in the UK*. London: All Party Parliamentary Group on Democratic Participation.

etc). While this would have a cost attached, it may also mean that any contractor has incentives to maximise response rates.

Electoral Pilots

19. Wales has been at the forefront, with Scotland, of pioneering reforms in electoral policy and administration. Increased powers to conduct electoral pilots are therefore welcome. This will enable potential innovations to be tested. A non-exclusive list of potential issues where pilots may be conducted is included in the explanatory notes, (para 3.46).

20. I note the power for Welsh ministers to compel pilots. Compulsion should be used sparingly and as a last resort, however. The Committee should reassure itself on the circumstances under which such compulsion would be used. As I have mentioned above, there is a constant need for the introduction of potential electoral reforms and pilots to be seen as free from potential bias. Compulsion by government risks complaints and perceptions of such bias. Electoral reforms and their pilots which proceed through institutional consensus and cross-party agreement tend to be more effective and lasting.

21. In practical terms, and however a pilot is arrived at, it is necessary that evaluation of any pilots be seen as independent to avoid any such accusations of electoral bias. With this in mind, the Committee might therefore wish to explore with the Welsh government the desirability of including the facility of tendering for independent academic evaluations, alongside those conducted by the Electoral Commission or other contractors, of any pilots that are conducted under this legislation.

Legislative Process

22. The Bill leaves quite a lot to the discretion of Welsh ministers via secondary legislation. It is important that the Senedd retains oversight however. The Explanatory Notes (Table 5.1) summarise the procedures to be used in these cases. While I have no specific points to raise here, the Committee might wish to satisfy itself that the procedures indicated are appropriate. The affirmative procedure for instance would seem to confer more of a role for the Senedd, and would seem to be preferable as the default option given the importance of electoral law, particularly where primary legislation is to be amended.

23. Innovation in electoral policy in Wales has led to a proliferation of Acts in this area. To only mention three current Bills, these include the current Bill before the Committee, the Senedd Cymru (Members and Elections) Bill before the Reform Bill Committee, and the forthcoming electoral quotas Bill. Electoral law was already notoriously complex and difficult to understand quickly and easily. For the sake of clarity, it might be worth the Committee exploring whether a Consolidation Act would be beneficial for Welsh electoral law once passage of these current bills is complete. The Law Commission has recommended just such a consolidation at UK level, although this has not yet been acted upon.⁶

⁶ <https://lawcom.gov.uk/project/electoral-law/> [7/11/2023].

Consultation on the Elections and Elected Bodies (Wales) Bill by the Local Government and Housing Committee

November 2023

About the Women's Equality Network (WEN) Wales: Our vision is of a Wales free from gender discrimination where all women and men have equal authority and opportunity to shape society and their own lives. We work with our vibrant coalition of organisational and individual members to transform society. Our work sits under three pillars. We will Connect, Campaign and Champion women so our vision is realised.

Introduction

We are pleased to provide evidence to support the scrutiny of the Elections and Elected Bodies (Wales) Bill. We have responded to multiple Senedd and Welsh Government consultations over the past five years relating to the matters of equal and diverse representation in the context of Senedd and electoral reform.

The Elections and Elected Bodies (Wales) Bill is a comprehensive piece of legislation and some of the areas that it covers fall outside our remit. In our response below, we therefore focus specifically on matters relating to Section 26 (Survey of councillors and unsuccessful candidates in local elections), Sections 28 (Services to promote diversity in persons seeking elected office) and Section 29 (Financial assistance schemes to promote diversity in persons seeking elected office).

Key messages

- 1. Provisions to provide for increased flexibility of the candidate survey to reflect evolving language and information needs are welcome but need to be balanced against the need for robust data. The survey should include questions around candidates' experience of harassment and abuse to provide sorely needed evidence on one of the major barriers to elected office. We are concerned that the Bill does not include any provisions relating to addressing harassment and abuse.**
- 2. We welcome the overarching duty to put in place services to promote diversity, but the list should include services relating to caring responsibilities and to dealing with harassment and abuse. The overarching duty needs to be accompanied with clear commitments, timelines and monitoring arrangements.**
- 3. Provisions that put financial assistance for disabled people on a statutory footing are laudable, but the lack of provisions on financial assistance for care-related expenses present a major omission of this Bill.**

Detailed response

1. Candidates' survey

Section 26 removes the requirement to set out the wording and format of the Local Government Candidates' Survey questions in regulations. This is intended to provide flexibility for the survey to reflect evolving language and changing information requirements around

equality and diversity policies. Section 26 also provides flexibility for Local Authorities to include additional questions relating to local initiatives, without altering the core set of questions directed by Welsh Ministers.

The Explanatory Memorandum states that future changes to the wording will be informed by a stakeholder group including local government, representatives of equality groups and other interested parties. We welcome the commitment to involve representatives of equality groups in this process to help ensure the survey reflects evolving language and information needs.

To facilitate effective monitoring of candidate diversity across different local authorities and over time, care must be taken to balance the need for flexibility with the need for robust data. We expect that future reviews of the survey questions and format will also be informed by relevant research and data expertise.

Women and people from other underrepresented groups frequently report that harassment and abuse present a major barrier to elected office. The consultation on the [Electoral Administration and Reform White Paper](#) asked whether questions should be included in the survey about candidates' experiences of abuse and harassment. The [Summary of Responses](#) to the White Paper consultation noted strong support for the proposal, with nearly 70% agreeing that such data should be collected as part of the survey.

Our [response](#) highlighted the importance of robust evidence to understand the magnitude, form, severity and impact of abuse and the need to collect this alongside diversity data to better understand the experience of candidates with different and intersecting characteristics. We therefore supported the proposal to integrate questions on harassment and abuse in the candidate survey, as long as all due precautions were being taken to safeguard this sensitive information and ensure full anonymity.

Despite wide support for the proposal, the subject of candidates' experiences of abuse and harassment does not feature in Section 26 or the Explanatory Memorandum. We are concerned that this presents a missed opportunity to establish a sorely needed evidence base on candidates experience of harassment and abuse, which is a major barrier to elected office. It is also a missed opportunity to signal the importance and seriousness with which harassment and abuse of candidates are considered.

More broadly, we are concerned that the Bill does not include any provisions relating to addressing candidate harassment and abuse. While the [Electoral Administration and Reform White Paper](#) explored a range of measures to mitigate harassment and abuse, the subject is entirely absent from the Bill and Explanatory Memorandum.

2. Services to promote diversity in persons seeking elected office

Section 28 of the Bill creates an overarching statutory duty for Welsh Ministers to put in place services to promote diversity within the Senedd and local government by providing target support or services to people from underrepresented groups. It sets out a list of services that may be provided, which consists of:

- Information
- Advice
- Training
- Coaching and mentoring
- Work experience

- Equipment
- Assistance with tasks

We welcome the establishment of an overarching duty to promote diversity and agree that the services listed in Section 28 will be helpful in removing barriers to elected office. However, the list above does not present an exhaustive package of the services that the Welsh Government should be providing to address barriers to elected office. Services to address some of the biggest barriers to elected office are missing from the list, most notably support for dealing with harassment and abuse and support with for candidates with caring responsibilities. While Section s28(8)(a) allows for further services to be added to the list by regulations, there is no guarantee that any specific services will be added.

In addition, the provisions under Section 28 do not prescribe which of the listed services have to be provided, when they must be provided or how the effectiveness of the delivered services will be monitored. Given the upcoming expansion of the Senedd, and the historically slow progress on diverse representation at all levels of government, timely and effective implementation of a wide range of measures before the next elections is critical.

3. Financial assistance schemes to promote diversity in persons seeking elected office

Financial assistance to support disabled candidates

Section 29 of the Bill requires Welsh Ministers to provide for a scheme of financial assistance to support disabled candidates with impairment related costs that are a barrier to their participation in politics. A pilot Access to Elected Office Fund has been successfully delivered for the 2021 Senedd elections and the 2022 Local Government elections under the coordination of Disability Wales. Having responded to previous Senedd consultations around this, we greatly welcome the fact that the Bill puts financial assistance schemes for disabled people on a statutory footing and thereby provides certainty to disabled candidates. We also welcome that the Bill's provision intends to take account of the experience from the pilot fund. We recommend that the details of any future schemes should be developed in close consultation and co-production with disabled people's organisations and that the scheme should seek to be accessible to candidates with a wide range of support needs, including candidates who experience additional barriers associated with other protected characteristics.

Financial assistance to support candidates with other protected characteristics

The Welsh Government's Programme for Government includes a commitment to expand the Access to Office Fund to candidates with other protected characteristics. We were delighted to see this commitment, which is something WEN, with the support of seventeen other organisations and academics, has called for in our [Manifesto for Closing the Gap on Gender Inequality in Wales](#). The Welsh Government has further explored this subject in commissioned research and as part of the Electoral Administration and Reform White Paper, however the Bill contains no provisions that would give effect to this commitment.

The Explanatory Memorandum provides further context around the decision to not expand the Access to Elected Office fund in the Bill. It states that "the response to the White Paper consultation and research commissioned by the Welsh Ministers raised concerns about how criteria could be framed to expand the existing fund to other groups." The Explanatory Memorandum suggests that these concerns have to do with the fact that candidates with other

protected characteristics experience a range of different barriers and needs, and not all of these are mostly appropriately targeted by providing financial assistance. The document concludes that the broader policy objective behind the commitment to expand the Access to Elected Office Fund requires a different approach, namely the overarching duty to provide services to promote candidate diversity in Section 28.

We agree that the barriers and needs of underrepresented groups are complex, and that some can potentially be better addressed with non-financial means such as mentoring and support. However, there are certain barriers – most notably those relating to a candidates' caring responsibilities – which are in relevant respects similar to impairment-related barriers and therefore constitute an obvious target for a financial assistance scheme.

Caring responsibilities role as a major barrier to equal representation

Research clearly shows that women in Wales continue to carry the brunt of caring responsibilities. Our [Feminist Scorecard 2022](#) found that 86% of single parents in Wales are mothers and 63% of mothers in two parent households say they are solely or mainly responsible for childcare (compared with just 17% of fathers). Lack of childcare is one of the most frequently cited barriers to women's employment, resulting in lower economic participation and curtailing women's career options. Women also make up approximately 60% of unpaid carers in Wales, who increasingly have to step in to fill gaps in social care provisions.

Research shows that the unequal share of caring responsibilities, combined with a lack of support and sometimes outright discrimination, constitutes a major barrier to women accessing elected office, which is reflected in the fact that significantly fewer female than male MPs have dependent children.¹ Recognition of this fact has led some parties to instigate support schemes for candidates with care-related expenses [in the UK](#) and [internationally](#). While initiatives at the individual party level are to be welcomed, they are only available to a very limited number of candidates and not best placed to address an issue of such scope. Support schemes at the level of individual parties also risk discouraging parties from selecting candidates with caring responsibilities due to the additional costs involved.²

The fact that caring responsibilities constitute a major barrier to women's equal representation in elected office, especially for single mothers and women who are socio-economically disadvantaged, means efforts to support candidates with care-related expenses need to be at the forefront of any initiative to improve diversity within the Senedd and local government. At Senedd level, this is all the more pressing given the forthcoming legislation to introduce gender quotas for the 2026 elections.

Parallels between impairment-related expense and care-related expenses

The Explanatory Memorandum states that the reason to focus the existing financial assistance provisions on disabled people is that "there are identifiable and practical ways in which financial assistance can support individuals in a tangible way to put them on a level playing field with non-disabled candidates." We agree that the existing scheme has the benefit of operating with costs that are comparatively easily identified and linked in a direct and tangible way to the purpose of levelling the playing field between disabled and non-disabled

¹ Murray R. 2023. It's a rich man's world: how class and glass ceilings intersect for UK parliamentary candidates. *Int. Political Sci. Rev.* 44(1):13–26.

<https://journals.sagepub.com/doi/pdf/10.1177/01925121211040025>

² Ibid.

candidates. This would potentially be more difficult to achieve, for instance, with a financial assistance scheme that seeks to target wider socio-economic disadvantage. However, the document fails to recognise that a financial assistance scheme to support candidates with care-related expenses would operate within very similar parameters. Care-related expenses, such as the costs of paying for a childminder or a personal assistant, are clearly identifiable costs that can be linked in a direct and tangible way to the purpose of levelling the playing field between candidates who have caring responsibilities and candidates who do not have caring responsibilities.

The parallels between impairment-related costs and care-related costs are affirmed by the fact that the [Independent Remuneration Board of the Senedd](#) as well as the [Independent Remuneration Panel for Wales](#) (IRPW) already provide support in both circumstances. Elected members of the Senedd and Local Government may claim for expenses that arise as a result of health conditions or impairments in order to enable them to perform their duties as elected members. They may also claim the reimbursement of costs for the care of their children or adult dependants, where such care is required to enable them to perform their duties as elected members.

Given that the determinations of both remuneration bodies have deemed it appropriate to facilitate support for elected members for impairment-related expenses *and* care-related expenses, it is surprising that the Welsh Government's research and consultation has not arrived at the same conclusion in terms of the support that is deemed appropriate for those seeking elected office.

Evidence in the Welsh Government's White Paper and commissioned research

As mentioned above, the Bill's Explanatory Memorandum states that concerns were raised in the White Paper consultation and commissioned research about "how criteria could be framed to expand the existing fund to other groups". While the commissioned research notes some general concerns about a wider expansion to other protected characteristics, neither document sets out any clear concerns or objections to expanding financial assistance to care-related expenses.

The Welsh Government's [consultation](#) on the Electoral Administration and Reform White Paper asked several questions around the Access to Elected Office Fund. In our [response](#), WEN Wales specifically called for the Fund to be expanded to cover the costs associated with a candidate's caring responsibilities for children and adults. The [Summary of Responses](#) to the White Paper consultation provides little detail of respondent's views of expanding the Access to Elected Office Fund beyond noting that there were a variety of views and that some respondents agreed that Fund should be expanded to support other underrepresented groups.

Research commissioned by the Welsh Government explores the potential expansion of the Fund further, as part of wider research project that develops a theory of change on [removing barriers to elected office for people with protected characteristics](#). The research acknowledges caring responsibilities as a frequently cited barrier to elected office and finds that:

"Provision to cover caring costs and other support for carers would assist elected members with caring responsibilities in carrying out their role. Noted to disproportionately affect female and elderly candidates, participants suggested a caring allowance be made available for candidates with dependents. This, it was proposed, would be provided to candidates

irrespective of PCs, to ensure that all individuals with dependents were able to participate equally.”

Notably, the research does not identify any concerns that specifically pertain to extending the Fund to care-related expenses other than a reference that “councillors are reportedly discouraged to claim on expenses such as care allowance.” It is evident that the most effective way to deal with such reports is to clearly communicate the rationale behind the allowance and work with local government to build a culture where members are encouraged to claim the expenses that they are rightly entitled to. In no way do these reports cast doubt on the principle of providing elected members with assistance for care-related expenses, or indeed on the proposal to extent such provisions to candidates with caring responsibilities.

The same is evident in the Welsh Government’s [Review of the Access to Elected Office Fund pilot](#). The review found that “stakeholders felt that more consideration could be given to candidate’s financial circumstances, pregnancy, and caring responsibilities,” with one panel member noting that expanding the fund to include caring responsibilities would be a “natural and straightforward next step.”

In other words, while the White Paper consultation, the commissioned research and the review of the pilot Fund each received evidence *in favour* of expanding financial assistance schemes to cover care-related expenses, none of these documents contain any substantial concerns or objections against doing so.

The potential to support candidates with care-related expenses through provisions under Section 28

In view of such overwhelming evidence in favour of providing financial assistance for candidates with caring responsibilities, and the lack of specific provisions around this in the Bill, we have considered the possibility of providing such assistance under the provisions relating to an overarching duty to promote candidate diversity within Section 28.

While s28(7)(a)-(b) provide some scope to broaden out financial assistance beyond disabled candidates, the Bill provides no clear legislative pathway towards introducing financial assistance schemes for care-related expenses. In the current form of the Bill, the financial assistance under s28(7)(a)-(b) can only be provided in relation to the services listed under s28(5), namely information, advice, training, coaching and mentoring, work experience, equipment, and assistance with tasks. While it may be possible to interpret “assistance with task” to cover care-related services like childcare, this could be considered a stretch. This option therefore carries a significant amount of uncertainty and risk.

Section s28(8)(a) states that the Welsh Ministers may add further services to the list in s28(5) by regulations. This means that there is an option to mitigate this risk at a later point by specifically including care-related services within Section 28. In conjunction with s28(7)(a)-(b), this would then provide scope to expand financial assistance to care-related expenses. However, there is no guarantee that care-related services will be added to the list. In addition, while the provisions for disabled candidates in Section 29 contain a *duty* to provide financial assistance, the provisions in Section 28 only contain a *power* to provide financial assistance. Even if list of services was expanded to include care-related services, without an accompanying duty, there is no certainty that financial assistance for care-related expenses will be provided.

Summary

The impact of unequal caring responsibilities, the parallels with impairment-related expenses and the review of the evidence provided by the Welsh Government all suggest that expanding the Access to Elected Office Fund to care-related expenses is an obvious next step in the Welsh Government's commitment to removing barriers to elected office. It is therefore surprising and disappointing that the Elections and Elected Bodies (Wales) Bill contains no provisions to facilitate financial assistance for care-related expenses, and even lacks a clear pathway as to how this can be achieved in the future.

4. Conclusion

We broadly welcome the proposed provisions relating to the candidate survey, the duty to promote diversity and the duty to provide financial assistance for disabled candidates and believe that they have the potential to help remove barriers to elected office. However, we are deeply concerned about the lack of provisions that seek to address what we see as the main barriers to women's fair representation: harassment and abuse and unequal caring responsibilities. We therefore recommend:

- (1) A commitment to include questions on candidates' experience of harassment and abuse in the candidate survey, subject to suitable safeguards;
- (2) The establishment of clear commitments, timelines and monitoring arrangements relating to the duty to promote diversity;
- (3) An amendment to Section 28 that clearly set out a power to provide financial assistance for care-related expenses;
- (4) An amendment to Section 29 that would allow for the duty to provide financial assistance to be expanded to care-related expenses;
- (5) The establishment of a pilot scheme for supporting candidates with care-related expenses, which should be available to candidates standing in the 2026 Senedd elections and the 2027 local government elections;
- (6) The urgent prioritisation of legislative and non-legislative measures to mitigate the harassment and abuse of candidates.

WEN Wales would like to thank the Local Government and Housing Committee for the opportunity to contribute to their inquiry.

If you have any further comments or queries, please get in touch.

Dr Jessica Laimann, Policy & Public Affairs Manager
jessica@wenwales.org.uk

Agenda Item 6

Local Government and Housing Committee

30 November 2023 – papers to note cover sheet

Paper no.	Issue	From	Action point
Paper 5	Inter-Institutional Relations Agreement	Minister for Finance and Local Government	To note
Paper 6	P-06-1358 Review the inadequate funding for Schools in Wales	Chair of Petitions Committee	To note
Paper 7	Homelessness	Public Services Ombudsman for Wales	To note
Paper 8	Building safety	Minister for Climate Change	To note
Paper 9	Inter-Institutional Relations Agreement	First Minister to Legislation, Justice and Constitution Committee	To note



Llywodraeth Cymru
Welsh Government

John Griffiths MS
Chair
Local Government and Housing Committee
Senedd Cymru
SeneddHousing@senedd.wales

21 November 2023

Dear John,

Inter-Institutional Relations Agreement: Inter-ministerial Group (IMG) for Housing, Local Government and Communities

I am writing in accordance with the inter-institutional relations agreement to notify you of a meeting of the IMG for Housing, Local Government and Communities, which will take place on the 13 December 2023.

The virtual meeting will be hosted by the Scottish Government. The meeting agenda will include substantive items on supply of affordable housing and building safety. As lead Minister for this IMG I have asked the Minister for Climate Change to attend the meeting, as the agenda items fall within her portfolio.

An update will be provided after the meeting.

Yours sincerely,

Rebecca Evans AS/MS
Y Gweinidog Cyllid a Llywodraeth Leol
Minister for Finance and Local Government

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

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CF99 1SN

Correspondence.Rebecca.Evans@gov.wales
Gohebiaeth.Rebecca.Evans@llyw.cymru

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.

John Griffiths MS

Chair

Local Government and Housing Committee

Tŷ Hywel

Cardiff Bay

CF99 1SN

22 November 2023

Dear John

Evidence session for Petition P-06-1358 Review the inadequate funding for Schools in Wales

The Petitions Committee took evidence regarding the above petition at our meeting on 13 November 2023. This was an informative and concerning session which highlighted the increasingly difficult financial situation faced by schools across Wales.

We heard from governors and head teachers, who shared the challenges they are facing when trying to deliver their statutory responsibilities while facing real-terms budget cuts, plus increasing additional learning and health needs among their pupils.

With policy committees about to start the budget scrutiny cycle, we thought that the best thing we could do as a Petitions Committee would be to share this session with those committees about to take a closer look at education funding. We believe that the evidence we received would be invaluable for your committee.

We appreciated the wealth of knowledge and expertise shared by the panel who raised a number of concerning issues. These included:

- concerns about the current funding model for schools and the inequity of funding between schools;
- the number of schools setting deficit budgets with more predicted to do so next year;
- the inability to offer permanent contracts to teaching support staff;
- reducing support for children with additional learning needs;
- the negative impact on subjects offered or school activities; and
- a significant impact on the health and wellbeing of school staff and governors.

Further information about the petition, including related correspondence, is available on our website at: <https://business.senedd.wales/ielssueDetails.aspx?Ild=41888&Opt=3>

If you have any queries, please contact the Committee clerking team at the e-mail address below, or on 0300 200 6454. I would be grateful if you could send your response by e-mail to the clerking team at petitions@senedd.wales.

Yours sincerely

A handwritten signature in black ink that reads "Jack Sargeant". The signature is written in a cursive style with a long horizontal line extending from the end of the name.

Jack Sargeant MS
Chair


Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.




Our ref: 202101323/SJ/SW

Ask for: Sarah Jones

 01656 644238

Date: 13 November 2023

 Owninitiative
@ombudsman.wales

PRIVATE & CONFIDENTIAL

John Griffiths MS
Chair
Local Government and Housing Committee
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

By email only
John.Griffiths@senedd.wales

Dear Mr Griffiths

Homelessness Reviewed: Revisited

I understand that the Local Government and Housing Committee considered my predecessor, Nick Bennett's first 'Own Initiative' investigation report, [Homelessness Reviewed: an open door to positive change](#). I also understand that the Committee held an evidence session with Mr Bennett.

Since the publication of Homelessness Reviewed: an open door to positive change, my office has been monitoring its impact and the progress made in homelessness services across Wales. As such, I would like to share with you and the Committee a copy of my follow-up report, Homelessness Reviewed: Revisited for information.

I was pleased to note that the Investigated Authorities complied with the recommendations made and I'm also pleased to note the progress being made by Welsh Government in improving homelessness provision.

If you would like to discuss any aspect of the work conducted, please do not hesitate to contact me.

Yours sincerely

MM. Morris.

Michelle Morris
Public Services Ombudsman for Wales

Enc. Draft follow-up report

Our ref JJ/PO/396/2023

John Griffiths MS
Chair, Local Government and Housing Committee
Welsh Parliament
Cardiff Bay
CF99 1SN
SeneddHousing@senedd.wales

23 November 2023

Dear John,

Thank you for the opportunity to address Committee members on 09 November 2023 and provide an update on progress of the Welsh Building Safety Programme.

During the session I updated members on the proposed changes to the Leaseholder Support Scheme, which includes plans to expand opportunities for applicants to access help. I also asked for member's support in publicising this scheme.

I would be very grateful if members could distribute the attached flyer in their constituencies, urging any leaseholders in financial difficulty to complete our eligibility checker, to see if they can access help through the Leaseholder Support Scheme.

I also wanted to ensure all members are aware there are regular updates on the Welsh Building Safety Programme, including any formal announcements that have been made in the Senedd, available via our Newsletter.

To receive the newsletter, you will need to subscribe by clicking the link [here](#) and registering your interest.

If you would like to subscribe to the Welsh version please subscribe [here](#).

Once registered you will receive regular updates from the Building Safety Programme.

Yours sincerely



Julie James AS/MS
Minister for Climate Change

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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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.



Llywodraeth Cymru
Welsh Government

Leaseholder Support Scheme

The Leaseholder Support Scheme is designed to help people who are in, or facing, significant financial hardship as a direct result of possible fire safety issues affecting their medium or high-rise property. It first opened for applications in June 2022.

The scheme is free and is designed to offer leaseholders advice and solutions to their current financial concerns.

The first step is to complete the **scheme eligibility checker** where you can check if you might be eligible for the scheme.

If you think you're eligible to apply, then the next step is to make an application. The completion of any part of this application process will not affect your credit score in any way.

Paper, accessible, and Welsh language documents are available. You can also receive help to complete them from our dedicated team.

If you would like more information about the Leaseholder Support Scheme, or would like support in making an application please contact: **applications@leaseholdersupportscheme.wales**

Please visit **www.gov.wales/leaseholder-support-scheme** for further information.

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Llywodraeth Cymru
Welsh Government

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru

SeneddLJC@senedd.wales

23 November 2023

Dear Chair

Inter-Institutional Relations Agreement: 40th British-Irish Council Summit

I am writing in accordance with the inter-institutional relations agreement to notify you of the 40th Summit meeting of the British-Irish Council, which will take place this week and is being hosted by the Government of Ireland.

I will be attending the summit in person. As well as the usual opportunity for a general update on issues, the theme of the Summit is 'Transforming Children's Lives: Tackling Child Poverty and Improving Wellbeing'

A communiqué will be agreed by the Council at the Summit detailing the discussions held, and I will write to share these with you. I will also update the Senedd with a written statement in due course.

I have also copied this letter to the Climate Change, Environment, and Infrastructure Committee, the Local Government and Housing Committee, the Culture, Communications, Welsh Language, Sport, and International Relations Committee, and the Equality and Social Justice Committee.

Yours sincerely

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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.

Agenda Item 9

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

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