

# Reform Bill Committee consultation on Senedd Cymru (Members and Elections) Bill – Electoral Commission response

November 2023

## Introduction

The Electoral Commission is the independent body which oversees elections and regulates political finance in the UK. We work to promote public confidence in the democratic process and ensure its integrity by:

- enabling the delivery of free and fair elections and referendums, focusing on the needs of electors and addressing the changing environment to ensure every vote remains secure and accessible
- regulating political finance – taking proactive steps to increase transparency, ensure compliance and pursue breaches
- using our expertise to make and advocate for changes to our democracy, aiming to improve fairness, transparency and efficiency

The Commission was set up in 2000 and reports to the Welsh, Scottish and UK parliaments.

## Response overview

This response sets out our views on the Senedd Cymru (Members and Elections) Bill. We have responded to the provisions that are directly relevant to our work – there are some aspects which do not fall within our remit and where this is the case we have not commented.

We are committed to working with the Welsh Government, Senedd Commission and the electoral community in Wales to ensure that these reforms are delivered successfully ahead of the 2026 election. This will include producing guidance for electoral administrators, providing support for campaigners to comply with the law and enforcing the law if they don't, and running a public awareness campaign to ensure that voters understand the changes being introduced and know how to cast their vote.

We recommend that all legislation should be in place as early as possible – at least six months before it is required to be implemented or complied with by campaigners or

electoral administrators. This is a well-established principle of effective electoral administration that is widely supported by the electoral community. This should include primary legislation and any subsequent secondary legislation – in particular the significant changes to the National Assembly for Wales (Representation of the People) Order 2007 that will be needed ahead of the election. Ensuring that all legislation is clear as early as possible will allow sufficient time for us to prepare the required guidance and codes of practice, and for the electoral community to plan and prepare for implementation of the new system.

The Welsh Government will also need to ensure that electoral administrators are properly supported to deliver these reforms, including ensuring that any changes that are required to electoral management software systems are developed and resourced. Implementation of this Bill is likely to run in parallel with implementation of the Elections and Elected Bodies (Wales) Bill, expected legislation to introduce candidate gender quotas at Senedd elections, and ongoing work to deliver Elections Act 2022 provisions for reserved elections. Many electoral administrators in Wales have raised concerns about their capacity to deliver these multi-layered changes within an already complex environment, and the Welsh Government must ensure effective planning and communication with electoral administrators throughout, via forums such as the Wales Electoral Coordination Board, the Wales Electoral Practitioners Working Group and any future Electoral Management Board.

Finally, the Welsh Government must take steps to reform the increasingly complex legal framework underpinning the UK's electoral systems. The [2022 White Paper on Electoral Administration and Reform](#) set out an ambition to consolidate and increase the accessibility of devolved electoral law in Wales – something we have previously called for. The Welsh Government has indicated that the first step towards achieving this will be developing a more modern and accessible Conduct Order ahead of the 2026 election, and we will work to support these changes. The Welsh Government's focus should then turn to the wider consolidation of devolved electoral law.

We have set out some specific comments below on relevant clauses of the Bill.

## Part 1: The Senedd and Welsh Ministers

### Frequency of ordinary general elections

Clause 3 of the Bill would return the ordinary frequency of Senedd general elections to four-year cycles. The Welsh Government has indicated that these provisions have been included due to the repeal of the Fixed Term Parliaments Act 2011 (FTPA) in 2022, and the fact that Senedd terms were originally moved to five years in order to avoid a Senedd election and a UK parliamentary general election being held on the same day.

We do not take a view on the appropriate term lengths for elected representatives – this is ultimately a matter for the Senedd. However, we would like to draw the Committee's attention to an important technical point arising from the return to four-year Senedd terms.

As part of its [2022 White Paper on Electoral Administration and Reform](#), the Welsh Government sought views on whether principal and town and community councils should revert to four-year terms. This has not been included in the recent Elections and Elected

Bodies (Wales) Bill and does not appear to be something that the Welsh Government is currently planning to take forward.

If term lengths for principal and town and community councils do remain at five years, we would eventually reach a position in 2042 where a Senedd election and local elections would be due to take place on the same day. Section 37ZA of the Representation of the People Act 1983 prevents this from being able to happen, and in these circumstances Welsh ministers would be required to change the year of the local government elections by statutory instrument. The Welsh Government should consider clarifying its position in relation to holding Senedd and local elections in the same year.

### **Disqualification from being a Member of the Senedd or a candidate**

Clause 6 would add a new disqualification criterion to Schedule 1A of the Government of Wales Act 2006, that someone who is not registered as a local government elector at an address in Wales would be unable to stand as a candidate or serve as a Member of the Senedd.

It is not yet clear how any enforcement of this new disqualification would work in practice, including whether Returning Officers (ROs) would be required to check if and where candidates are registered to vote, and at what point in the process this would take place. If checks were required, this would represent a deviation from the long-established common law approach of ROs taking nomination forms at face value.

There are further questions around the requirement for elected Members of the Senedd to remain on the local government register at an address in Wales in order to avoid becoming disqualified. These include how this ongoing disqualification criterion would be enforced and who would be responsible for doing so, although we expect this would be for the Senedd itself to monitor and enforce.

We will work with the Welsh Government as the Bill progresses through the Senedd to ensure that ROs are clear on what their responsibilities will be under these provisions.

### **Review of possible job-sharing arrangements**

Clause 7 of the Bill would require the Llywydd, shortly after the next Senedd election takes place, to table a motion establishing a Senedd committee to carry out a review of possible job-sharing of relevant offices. This would include considering whether people should be able to jointly hold office as a Member of the Senedd.

If a motion tabled under clause 7 of the Bill is approved by the next Senedd, and a committee is established to consider these issues in greater detail, we will provide evidence and insight as required to help inform this work.

If the law were to be amended in the future to allow candidates to stand for election under a job-sharing arrangement, legislation relating to the form of nomination papers and the ballot paper would need to be amended. Consideration would also need to be given to a range of technical issues, including how this would work alongside the closed party list system and what would happen if one elected member in a job-sharing arrangement decided to stand down, became disqualified, or sought to change parties.

## Part 2: Voting System at Senedd General Elections and Allocation of Seats

### Voting system

Decisions about which voting system should be used for different elections are significant constitutional issues, and are matters for governments and parliaments, not for the Electoral Commission. Our role will be to ensure that voters understand the electoral system used so they can cast their vote in the way they intend, and that appropriate administrative planning is undertaken by ROs.

The introduction of any new electoral system poses potential risks around voter confusion, particularly in ensuring that people understand how to cast their vote as they intend. The electoral system proposed in the Bill would be familiar to those people who have previously voted in an election for the European Parliament in Wales. However, we would still expect to run an awareness campaign to inform voters about the change to the electoral system, alongside our usual campaign to encourage people in Wales to register to vote.

## Part 4: Senedd Constituency Boundary Reviews

### Senedd constituency boundary reviews

Part 4 of the Bill, along with Schedules 1 and 2, make provision for Senedd constituency boundary reviews to be carried out by the Democracy and Boundary Commission Cymru.

Schedule 1 covers the pairing exercise, to be known as the 2026 boundary review, that the Democracy and Boundary Commission Cymru will be required to carry out in order to create 16 Senedd constituencies using the 32 UK parliamentary constituencies in Wales. It sets out that the Commission must publish its final report on the 2026 boundary review, and send this to Welsh ministers, by 1 April 2025. Welsh ministers would then be required to lay the report before the Senedd and make regulations giving effect to the determinations in the report as soon as reasonably practicable.

These provisions will be important in ensuring there is sufficient time for electoral administrators, parties and campaigners to prepare for the election with certainty over what the constituency boundaries will be. If the regulations giving effect to the final report were to be delayed into the summer of 2025, this would risk leaving electoral administrators and political parties with insufficient time to plan and prepare for the election. It could also cause issues for Electoral Registration Officers in publishing their electoral registers in December 2025.

We also note that Schedule 2 of the Bill, which covers the boundary review process for general elections held after 1 April 2030, includes a requirement for the Democracy and Boundary Commission Cymru to:

- Seek to minimise the amount of change to the Senedd constituencies that exist on the review date, and
- Have regard to the inconveniences caused by making changes to the Senedd constituencies.

Given that there will already be significant changes to Senedd constituencies between the 2021 and 2026 elections, further changes between the 2026 and 2030 elections could present a risk of voter confusion, complexity for electoral administrators, challenges for parties adjusting accounting units to new constituencies, and difficulties for campaigners in managing their communications with voters. The above requirements should help to mitigate these risks.

## Part 5: Review of Operation of Act etc. and General Provisions

Clause 19 of the Bill would provide for a Senedd committee to be established after the 2026 election in order to carry out a review of:

- the operation and effect of the provisions of Parts 1 and 2 of the Bill
- the extent to which the elements of a healthy democracy are present in Wales

It will be important to monitor the implementation of these new arrangements to ensure they are working as originally intended. We have a statutory duty to report on the administration of Senedd elections, and will publish a post-poll report in 2026 as part of this duty. This report will include evidence and analysis of the experiences of voters, campaigners and electoral administrators at the election. We will use this evidence, as well as any other insights we have on the implementation of Senedd reform, to support the work that will be taken forward under these provisions.