

Local Government and Housing Committee consultation on the Elections and Elected Bodies (Wales) 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 Elections and Elected Bodies (Wales) 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.

If the Bill is passed into law, we will work with the Welsh Government, electoral administrators, campaigners and voters to ensure that everyone involved in elections understands and is prepared for the changes being introduced. We will produce guidance for electoral administrators and provide support for campaigners to comply with the law, and will work to ensure that voters understand any changes, both from this Bill and wider Senedd reform legislation.

Background to the Bill and key areas

The Welsh Government's [White Paper on Electoral Administration and Reform](#), published in 2022, proposed a number of changes that we have previously called for. These included plans to establish an Electoral Management Board for Wales, explore options for modernising electoral registration processes through automatic registration, and take steps to consolidate and simplify Welsh electoral law.

The White Paper also considered the challenges that diverging rules for reserved and devolved elections in Wales could present in the future, particularly given the changes introduced by the Elections Act 2022 that will apply to UK parliamentary and Police and Crime Commissioner elections in Wales, but not to Senedd or local government elections. The White Paper sets out the Welsh Government's position that, in areas where there is a policy alignment, it would seek to maintain as much consistency in the rules for reserved and devolved elections as possible.

The Elections and Elected Bodies (Wales) Bill is a significant milestone in delivering some of these changes. It will take forward provisions to pilot the automatic registration of electors and will establish an Electoral Management Board for Wales, who will carry out the functions currently exercised by the Wales Electoral Coordination Board. It will align the rules for devolved and reserved elections in several important areas, including campaign finance and how disabled people can be supported to vote independently. These are positive changes, and we will work with the Welsh Government and the electoral community to implement them effectively.

Consolidating electoral law

This Bill, alongside the two pieces of primary legislation to deliver Senedd reform and any associated secondary legislation, will substantially increase the body of devolved electoral law in Wales. The Welsh Government should consider the steps it will take to realise its ambition, as set out in the White Paper, to modernise electoral law in Wales.

The Welsh Government has indicated that the first step in this process will be to replace the National Assembly for Wales (Representation of the People) Order 2007 with a more modern and accessible Conduct Order, and we look forward to supporting this work. The Welsh Government's focus should then turn to the wider consolidation of devolved electoral law ahead of the 2030 election, in line with the principles set out in the White Paper, the Legislation (Wales) Act 2019, and the recommendations of the UK's law commissions that are widely supported by the electoral community.

Implementation of reforms

The Welsh Government will need to ensure that electoral administrators are properly supported and resourced to deliver these reforms. Implementation of this Bill is likely to run in parallel with Senedd reform legislation and ongoing work to deliver Elections Act provisions for reserved elections, and many administrators in Wales have raised concerns about their capacity to deliver these multi-layered changes within an already complex environment. The Welsh Government must ensure these changes are properly resourced, and that effective planning and communication with electoral administrators takes place throughout, via forums such as the Wales Electoral Coordination Board, the Wales Electoral Practitioners Working Group and any future Electoral Management Board. We will also play an important role in supporting electoral administrators through the provision of guidance and support.

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. 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 the changes being introduced.

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

Part 1: Electoral administration and registration

Chapter 1: Co-ordination of electoral administration

Electoral Management Board of Democracy and Boundary Commission Cymru

The Wales Electoral Coordination Board (WECB) has played an important role since 2017 in bringing together stakeholders to coordinate electoral activity. It has provided a platform for discussion and helped to ensure consistency in the delivery of elections. It has been able to establish and implement schemes such as the Returning Officer (RO) mentoring programme and the Glossary of Bilingual Electoral Terms.

We have previously called for the WECB to be placed on a statutory footing and given appropriate resources in order to build on this work. Once established, the proposed Electoral Management Board (EMB) will be able to play a strengthened role in bringing together electoral administrators and ensuring consistency in the delivery of all-Wales electoral events.

We have provided some comments below on specific aspects of the provisions.

Independence of the EMB

As the explanatory memorandum outlines, the EMB will be established as part of the Democracy and Boundary Commission Cymru (DBCC). The Bill inserts new sections 20A to 20I into the Democracy and Boundary Commission Cymru etc. Act 2013 (“the 2013 Act”), conferring a general function of co-ordinating the administration of Welsh elections and referendums onto the DBCC. New section 20E sets out that the DBCC must establish an Electoral Management Board, and that the DBCC’s functions under sections 20A to 20D must only be exercised by this Board.

Whilst we understand the rationale behind this approach, it will be critically important to ensure that the EMB remains operationally independent from both the Welsh Government and the DBCC to ensure continuing confidence in the democratic process.

Several of the new sections inserted into the 2013 Act by the Bill will help to ensure this independence, notably new sections 20E (functions delegated to the EMB) and Section 20F (membership of the EMB). However, risks remain in relation to how stakeholders and the wider public may perceive the EMB’s level of independence under this model, including the fact that it will be set up as part of a Welsh Government sponsored body. The Welsh Government should take every opportunity in legislation, guidance, and any

external communications around the Elections and Elected Bodies (Wales) Bill, to clearly demonstrate how the independence of the EMB will be protected. This could include consideration of whether the EMB should be formally accountable to a Senedd committee such as the Llywydd's Committee.

Related to considerations around the EMB's independence, there is a potential inconsistency in the Bill's drafting which the Committee may wish to explore further with the Welsh Government. New section 20E(4) would enable the EMB to exercise the 'conducive and incidental' powers that are set out in Section 12 of the 2013 Act. The latter wording in new section 20E(4), however, provides that these incidental or conducive powers may also be exercised by the DBCC in relation to the functions delegated to the EMB. As new section 20E(2) explicitly provides that the functions delegated to the EMB can only be exercised by the EMB itself, it is not immediately clear how or why the DBCC would be able to use these 'conducive and incidental' powers in relation to the EMB's delegated functions.

Overlap with Electoral Commission functions

The explanatory memorandum for the Bill sets out the Welsh Government's intention that the role of the EMB will be complementary to the work of the Electoral Commission and will not overlap with any of our existing responsibilities. This is an important principle. Our existing statutory functions (specified in the Political Parties, Elections and Referendums Act 2000) include the provision of guidance to ROs and Electoral Registration Officers (EROs), advice to Welsh ministers and the Senedd, and voter information and awareness-raising. We will work with the Welsh Government and the EMB itself, both in the planning stages and once it has been established, to ensure that its work does not overlap with our own and that the roles and responsibilities of the EMB and other groups and organisations are set out clearly.

Membership

New section 20F of the 2013 Act, as amended by the Bill, relates to the membership of the EMB. It sets out that the EMB should consist of:

- A chair, who must be both a member of the DBCC and a former elections officer
- One other member of the DBCC
- At least four members who are either current or former elections officers, with one of these to serve as deputy chair

We have previously said that the chair of the EMB will need to have significant electoral administration experience, at a senior level, to ensure credibility within the electoral community in Wales. The requirement for the chair to be a former Returning Officer or Electoral Registration Officer will go some way towards ensuring this.

The requirement for at least four other members who are current or former elections officers is also important, and should help to ensure a level of experience and expertise within the core membership of the EMB. Our view is that as much of the membership as possible should be drawn from current elections officers rather than former ones, to help ensure a live understanding and experience of delivering elections in Wales. In terms of wider membership beyond the requirements set out in law, the current membership of the WECEB consists of the Chair, five lead regional Returning Officers, and up to four representatives from the Association of Electoral Administrators, Wales. Although

ultimately a matter for the new EMB, this membership structure has worked well for the WECB.

Several stakeholders are also invited to attend the WECB in an advisory capacity, including the Electoral Commission, Welsh Government, Senedd Commission, the Welsh Local Government Association and the UK Government's Department for Levelling Up, Housing and Communities. This approach has worked well to date, allowing for a range of stakeholders to be involved in discussions, and we would recommend that these organisations continue to attend meetings of the EMB in an advisory capacity. New section 20(H)(4) would allow for non-members to attend meetings in this way.

Directions to Returning Officers and Electoral Registration Officers

New sections 20B and 20C of the 2013 Act, as amended by the Bill, would allow the EMB to issue directions to ROs and EROs about their duties in relation to devolved elections and referendums in Wales. New section 20D would require the EMB to consult the Electoral Commission before giving a direction of this nature.

These provisions would help to ensure consistency in the delivery of devolved elections. They would bring Wales in line with the current position in Scotland, where the EMB's power to issue directions to ROs and EROs has helped to ensure a level of consistency – for example, in dispatch dates for postal votes and poll cards and the colour of ballot papers. The requirement for the EMB to consult us before giving a direction to an RO or ERO is also consistent with the existing model in Scotland, where it has worked well and has helped to ensure that any directions are not inconsistent with our existing guidance or framework of performance standards for ROs and EROs.

Chapter 2: Electoral registration without applications

The need to modernise electoral registration

There is an urgent need to reform electoral registration in the UK. Our [most recent research](#) on the accuracy and completeness of the December 2022 electoral registers suggests there could be 400,000 people in Wales who are either not correctly registered or have inaccuracies in their local government register entries. We have consistently found that some specific groups of people are significantly less likely to be correctly registered, particularly young people, people who live in private rented accommodation, and those who have recently changed address.

There is little evidence to suggest that this situation will significantly improve without major changes to the current electoral registration system, and we continue to recommend that governments across the UK explore potential reforms in this area in greater detail. As part of our recent report on the accuracy and completeness of electoral registers, we highlighted several [case studies](#) showing how electoral registration could be modernised, ranging from automatic registration to forms of integrated or assisted registration where voters would still need to provide some information themselves. We also made a series of recommendations, including that:

- The UK, Scottish and Welsh governments should pass legislation creating clear legal gateways for government departments and public sector bodies to share data on potentially eligible individuals with EROs.

- There should be a consistent approach between governments, to ensure that any changes are developed and delivered in a way which makes it as straightforward as possible for EROs and data source organisations.
- The UK Government should develop the existing Individual Electoral Registration (IER) digital service to support secure and efficient data sharing between data source organisations and EROs and their electoral management software systems.

Duty to register local government electors without an application

The Elections and Elected Bodies (Wales) Bill would introduce a new requirement on EROs to automatically register individuals on the local government register where they are satisfied they are entitled to be registered. The ERO would be required to issue a notice of registration to each eligible elector, who would then have 45 days to respond if they were eligible to be registered anonymously or did not wish to be registered automatically. At the end of the 45-day period, the ERO would be required to add them to the register.

Automatic registration of voters is common around the world, and could help to improve levels of completeness – particularly among under-registered groups. More recent international comparative research has shown that automatic registration can also have a positive impact on accuracy. However, there are also a range of considerations for the Welsh Government as it takes these provisions forward. These include:

- The datasets, or combination of datasets, that would be available to EROs for the purposes of registering electors without an application, and whether these would provide sufficient information to allow an ERO to register a person. Any data used as the basis for automatic voter registration will need to be trustworthy, current, and complete enough to verify a person’s eligibility to be registered.
- The challenges involved in making these changes for the local government register without equivalent changes to the parliamentary register, particularly in relation to communication with voters and ensuring they understand which elections they have been registered to vote in.
- Knowing when somebody is already on the register.
- The technical infrastructure required to support these reforms.

The Welsh Government has said that it will work with local authorities to design and pilot models of automatic registration, with an independent evaluation of any pilots carried out by the Electoral Commission, before commencing these provisions. This will be critically important in ensuring that any system is workable and realistically deliverable by electoral administrators before being rolled out more widely. We will continue to work closely with the Welsh Government and the wider electoral community to support this area of reform.

Communication with voters

As these provisions are taken forward and work begins to develop automatic registration pilots with local authorities, careful consideration will need to be given to how this policy is communicated to the public by the Welsh Government.

For example, the explanatory memorandum for the Bill states, in relation to the new duty on EROs to register eligible local government electors, that *“this will mean that citizens won’t have to apply to register to vote in either Senedd or local elections”*. Although this may be the long-term intention behind these provisions, it is not yet clear how any system

would work in practice, and there are likely to be people who will be unable to be automatically registered under the new duty due to the ERO not having sufficient data to be satisfied that the person is entitled to be registered. The Welsh Government must ensure that this is clearly communicated to the public as these provisions are taken forward.

There is a separate risk that a voter receiving a notice of registration under these provisions may not understand that they would still need to go through the Individual Electoral Registration (IER) application process in order to be registered to vote for UK parliamentary and Police and Crime Commissioner elections. As a minimum, this will need to be clearly stated on the notice of registration sent by the ERO.

Anonymous electors

The Welsh Government will need to carefully consider and address the risk that someone who is eligible to register anonymously misses or does not receive the notice from the ERO and their name is added to the register after the 45 days.

The notice of registration from the ERO will need to clearly and prominently state when the 45-day period will expire in order to allow people to take timely action, for example to make an application for an anonymous entry or to inform the ERO that they do not wish to be registered.

Removal of open register

We have [previously recommended](#) that the open register should no longer be compiled or made available for sale, and instead used only for electoral purposes and a limited range of statutory security and crime-prevention purposes.

As the Welsh Government takes forward its proposals to remove the open register for devolved elections in Wales, it will need to carefully consider how it can ensure voters understand that the open register will still exist for the parliamentary register and that they would still need to take action in order to opt out of this.

Chapter 3: Welsh elections piloting and reform

Welsh election pilots

Chapter 3 of the Bill introduces significant new powers to allow for the piloting of electoral innovations at devolved elections in Wales, expanding on the existing provisions around pilot schemes in the Representation of the People Act 2000. Pilots will now be able to be proposed by Welsh Ministers, local authorities and Electoral Registration Officers, and may relate to a wider range of electoral matters than under the 2000 Act. This will allow the Welsh Government to proceed with plans to pilot the automatic registration of local government electors, for example, before introducing any changes more widely.

Any pilots that are taken forward by the Welsh Government should be carefully designed, with clear and realistic objectives, to ensure they can provide robust evidence to support future policy decisions.

Evaluation of pilot regulations

Clause 18 sets out a specific duty on the Electoral Commission to prepare a report on the operation of pilot regulations and to send this to Welsh Ministers and relevant Returning

Officers/Electoral Registration Officers. Clause 6(1)(b) requires Welsh Ministers, when making pilot regulations, to specify by when we must send our report. The Welsh Government should consult us before specifying this date in order to ensure that it takes into account the time that will be required for the relevant data to be captured, reported to us and analysed before we publish our report.

Welsh Ministers' power to compel pilots

Whilst it would be beneficial for future electoral pilots to include a range of local authorities from both urban and rural areas and of different sizes, the Welsh Government will also need to consider the adverse effect that directing a local authority to hold a pilot without their consent could potentially have – for example, if there were significant capacity gaps in a local authority's electoral services team or there was a new or relatively inexperienced Returning Officer in place.

Early planning and communication with local authorities about the Welsh Government's plans, as well as assurances that they will be provided with sufficient resource to support the delivery of the pilots, may help to increase take up and reduce the likelihood that Welsh Ministers would need to use this power.

Chapter 4: Accessibility and diversity – Welsh elections

Assistance for disabled voters

Everyone should be able to register and cast their vote without facing barriers. While there have been significant improvements in recent years, we know there is still more to be done to improve the voting experience for disabled people. At the 2022 local elections, [our research](#) found that nearly all voters (97%) found the ballot paper easy to fill in, and three in four (74%) found it very easy, but this figure was lower amongst disabled voters or those with a health issue (67%).

Changes introduced by the Elections Act 2022

For reserved elections in Wales, the Elections Act replaced the specific requirement to provide a tactile voting device in polling stations with a broader duty on Returning Officers to provide such equipment as is reasonable to enable, or make it easier for, disabled people to vote independently and in secret at the polling station. It also placed a duty on the Electoral Commission to produce guidance to assist ROs and to [consult on this guidance](#), and for ROs to have regard to this guidance.

This new duty should increase flexibility around the type of equipment and support that can be made available at the polling station, as well as speeding up the process of providing additional support when opportunities or gaps are identified – for instance in response to developments in assistive technology. We have produced guidance and examples of good practice to support ROs in meeting their new duties, and are working alongside partner organisations to communicate these changes to voters.

Equivalent provisions for devolved elections

The explanatory memorandum outlines the Welsh Government's plans to align the rules for devolved elections in this area with the changes introduced by the Elections Act. Achieving consistency in the rules between reserved and devolved elections in this area will make it easier for people to understand the support they can expect when voting, and less complex for electoral administrators to deliver.

The Bill itself will introduce a duty on the Electoral Commission to report on the steps taken by ROs to assist disabled people at Senedd and local government elections in Wales. To facilitate this, it will also extend our formal election reporting duties to include ordinary local government elections in Wales. We already report on local government elections as a matter of course, but these provisions will formalise this.

The broader duty on ROs to support disabled voters, as well as the requirement for the Commission to issue guidance to assist ROs in meeting this duty, will be introduced via secondary legislation. The explanatory memorandum does not state whether the Commission would be required to consult on this guidance. Given that we have already consulted widely with stakeholders, including the electoral community and disability organisations in Wales, on the guidance that will apply to UK parliamentary elections and Police and Crime Commissioner elections in Wales, our view is that ROs in Wales should be required to have regard to this guidance for both devolved and reserved elections. This would help to ensure consistency in the provision of support for voters.

We note that, as part of the Regulatory Impact Assessment for the Bill, the Welsh Government indicates that it will provide funding to support ROs with implementing this change, and that an estimate of costs will be produced as part of the development of secondary legislation. Appropriate funding will be vital to ensuring that ROs are able to provide the required equipment and support in practice.

Welsh elections information platform

In our response to the White Paper on Electoral Administration and Reform, we highlighted that any online voter information platform for Wales will need to be developed in a way that complements rather than duplicates our existing statutory duties around voter information. This remains our view, and we will work with the Welsh Government and others to ensure that any platform that is developed under these provisions does not cut across or duplicate the work we already do to provide information to voters.

Although the provisions set out in clause 27 are generally quite broad, with much being left to future regulations being made by Welsh Ministers, clause 27(4)(b) specifies the publication of candidate statements as a potential function to be carried out by the information platform. This is consistent with proposals previously set out by the Welsh Government in the 2022 and 2017 white papers.

Publishing candidate statements online could help to increase the visibility of candidates for some voters. At the 2022 local elections in Wales, [our research](#) found that over a quarter of people (28%) said it was fairly or very difficult to obtain information on candidates. 45% of voters said they had enough information on candidates to make an informed decision when voting.

There will be several practical issues to consider, particularly given the significant number of candidate statements that would need to be hosted ahead of ordinary principal council elections. These include:

- The logistics involved in processing hundreds of candidate statements in a relatively short timeframe, as well as checking the veracity and content (e.g. offensive language) of any statements. As previously discussed as part of the development of the draft Rules for the 2021 local elections, this is not a role that should be carried out by Returning Officers due to the significant administrative burdens involved. We have previously suggested that the new Electoral

Management Board would be an obvious candidate to host a Welsh elections information platform and manage the provision of online candidate statements.

- Ensuring the accessibility of the elections information platform and that all information is available bilingually and in a range of accessible formats, including paper versions if required.
- Any potential level playing field implications of not having candidate statements available online from all candidates in a given election.

Access to Elected Office Fund

The decision to establish the Access to Elected Office Fund on a permanent basis, following the piloting of the fund in 2021 and 2022, should help to improve the accessibility of standing for election in Wales.

As the Welsh Government takes forward these provisions ahead of the next scheduled devolved elections in 2026 and 2027, it should consider how it can raise awareness of the fund among potential candidates and political parties. In our survey of candidates following the 2022 local elections, less than a third of respondents (29%) were aware of an Access to Elected Office Fund being in place. In our response to last year's White Paper, we recommended that the Welsh Government take appropriate steps to increase awareness of the fund ahead of the 2026 and 2027 elections, and we were pleased to see that the Committee's recent ['Diversity in Local Government'](#) report includes a similar recommendation.

The Bill would also allow for services or financial assistance to be provided to support candidates with other protected characteristics or socio-economic circumstances, via a new overarching duty on Welsh Ministers to put in place arrangements to promote diversity within the Senedd and local government in Wales.

The Welsh Government would need to consider what changes, if any, might be needed to relevant spending rules to ensure that any services or financial assistance provided under these wider provisions would not count against a candidate's spending limits. As the explanatory memorandum notes, similar changes have already been made for costs relating to a candidate's disability to ensure that funding provided through the Access to Elected Office Fund does not count towards a candidate's spending limits. Consideration will also need to be given to how any services or financial assistance provided under these provisions might interact with existing controls on donations to candidates.

Chapter 5: Campaign finance

Campaign finance laws for devolved elections

These provisions will bring several campaign finance laws for devolved elections in line with the equivalent changes for reserved elections that were introduced by the Elections Act 2022. This will include laws relating to notional expenditure, third party campaigners, and who is authorised make payments on behalf of a campaign.

Maintaining consistency across different types of election in this way should make it easier for campaigners to comply with the law across both reserved and devolved elections. As with the changes for reserved elections that have been introduced by the Elections Act, we will continue to provide guidance to help the regulated community understand and comply with the law. This will include producing a code of practice for non-party

campaigners as part of the changes that clause 38 of the Bill will make to the Political Parties, Elections and Referendums Act 2000. We will also continue to monitor the impact and implications of these changes, at both reserved and devolved elections.

Part 2: Elected bodies and their members

Chapter 3: Disqualification and undue influence

Undue influence

In our response to last year's White Paper on Electoral Administration and Reform, we were supportive of the Welsh Government's plans to update the definition of the offence of undue influence in line with the changes introduced by the Elections Act 2022.

Clarifying the offence of undue influence in this way will provide voters with more meaningful protection against exploitation and make clear what is and is not acceptable behaviour. It will also make it simpler for the police to act when allegations of undue influence are made.

We will update our guidance for electoral administrators and polling station staff to set out what is and what is not allowed at polling stations. We will also update our [Code of Conduct for campaigners](#) on what they should consider when campaigning outside polling stations, and will continue to run [public awareness campaigns](#) so that voters understand how to protect their vote from undue influence.

As the explanatory memorandum notes, the provisions within the Bill itself will only apply to the definition of the offence for local government elections in Wales. The definition for Senedd elections is currently set out in the National Assembly for Wales (Representation of the People) Order 2007, and we note the Welsh Government's plans to make an equivalent change for Senedd elections when it remakes the Conduct Order ahead of 2026.