

Senedd Cymru (Electoral Candidate Lists)

Bill: Stage 1 report

Summary of recommendations

June 2024

Diversity among elected members of a nation's parliament is central to a well-functioning democracy. Bringing together people from all walks of life enriches our work and we support the aspiration for a truly representative Senedd. This Bill is a step towards delivering fully diverse representation by seeking to provide parity in the representation of men and women within the Senedd.

In 2003 the Senedd became the first legislature in the world to achieve that parity. While the proportion of women Members has never fallen below 42 per cent, it is disappointing that, despite the voluntary actions taken by some political parties, equal representation has not consistently been achieved. As we look towards the election of a 96-Member Senedd in 2026, it is right that we think about measures that could contribute to the election of a Senedd that truly reflects the people we serve.

The majority of Committee members are persuaded by the international and academic evidence that legislative quotas are an effective mechanism for increasing levels of women's representation in parliaments, and thus agree with the general principles of the Bill. In doing so, we recognise that the Bill cannot guarantee parity, and will require a commitment from political parties to place women in winnable places on lists in winnable seats. The Bill must also be supplemented by other, non-legislative action to address the barriers that women often face when seeking selection and election to the Senedd.

Significant attention has been drawn to the provision in the Bill to require candidates, as part of the process of being nominated by a political party, to make a statement about whether they are a woman or not a woman. A majority of Committee members are content with the provision and believe it to be a proportionate means of implementing and enforcing compliance with the quota

rules. However, as a Committee, we all agree that it is necessary to protect against abuse of the process by including making a false statement within the corrupt practice offence that applies to the provision of any other false information on a nomination form.

Though there are different views about whether the general principles should be agreed and on other aspects of the Bill, we are united in our concerns about the potential risks that could arise if the uncertainty about the Senedd's legislative competence in relation to this Bill is not resolved prior to the Bill's implementation. If the Bill is passed by the Senedd, we believe that the Counsel General must exercise his power under section 112 of the Government of Wales Act 2006 to refer the Bill to the Supreme Court in order to put any uncertainty beyond doubt.



David Rees MS, Chair, Reform Bill Committee

Introduction

1. This note summarises some of the key issues and recommendations arising from our work. More information about our work, including our full report, is available at www.senedd.wales/SeneddReform.

General principles of the Bill

2. The Member in charge told the Senedd:

“This is the second Bill within a package of reforms whose purpose is to make the Senedd a more effective legislature that is better able to serve the people of Wales.[...] the purpose of this Bill is to strengthen the Senedd by seeking to ensure that it broadly reflects the gender make-up of the population it serves, in particular with regard to the representation of women.”

3. Our role is to consider and report on the general principles of the Bill. In doing so, we have reflected on the views shared with us by the public², public attitudes on the principle of legislative candidate quotas for Senedd elections³, and the academic and expert evidence and advice we have received.

4. As a Committee, we all agree that the Senedd needs to better reflect the people it serves. Bringing together people from all walks of life enriches our work and is central to a well-functioning democracy. While we acknowledge that the Senedd has a higher than average level of women Members in comparison to other parliaments around the world⁴, we all support the aspiration for parity of representation.

5. The majority of Committee members are persuaded by the international and academic evidence that legislative candidate quotas are an effective mechanism for increasing levels of women’s representation in parliaments and agree the Senedd should vote in favour of the general principles of the Bill at Stage 1 to enable it to proceed to the amending stages of the legislative scrutiny process.

¹ Plenary RoP [paras 121 and 123], 12 March 2024

² Responses may be found in full on the [consultation webpage](#).

³ [YouGov survey findings](#), April 2024

⁴ Compared to the [global average level of women's representation](#) as at 1 April 2024 in lower chamber and unicameral national parliaments of 27.0 per cent, and the European regional average of 31.5 per cent.

Quota rules

- 6.** Under the Senedd Cymru (Members and Elections) Bill, there will be 16 Senedd constituencies and political parties will be able to put forward a list of up to eight candidates per constituency. This Bill introduces three key quota rules that political parties will have to comply with when they choose their candidates:
- **The minimum threshold:** if there are two or more candidates on a political party's list in a constituency, at least half of those candidates must be women.
 - **The vertical rule:** unless they are the last candidate on the list, a candidate who is not a woman must be immediately followed on the list by a candidate who is a woman.
 - **The horizontal rule:** if a party submits lists in two or more constituencies, the first candidate on the list in at least half of those constituencies must be a woman.
- 7.** The rules do not apply to candidates who are standing as individuals i.e. who are not on a political party's list.
- 8.** The Bill also gives the Welsh Ministers powers to make provision in secondary legislation for the effect on compliance with the quota rules if a candidate is removed from the list after its submission (for example if the candidate dies or chooses to withdraw).
- 9.** We recognise that the quota rules cannot guarantee parity, and will require commitment from parties to place women in winnable places on lists in winnable seats. But, the majority of Committee members are persuaded that the minimum threshold proposed in the Bill, coupled with its vertical and horizontal placement criteria, presents the best opportunity to deliver parity of representation in the Senedd.
- 10.** We want greater clarity about the processes that will apply for assessing compliance with the quota rules if a candidate dies or withdraws, and to see provision in place that requires that any Senedd seat that becomes vacant between elections is filled by a candidate who made the same statement on whether they are a woman or not as the outgoing Member.

Enforcement and compliance

11. The Bill makes provision for the creation of a National Nominations Compliance Officer ('NNCO'), and for the steps the NNCO may or must take if a party's candidate lists do not comply with the horizontal rule. This may include provision on how lists that are to be reordered are to be selected, requiring or enabling Constituency Returning Officers ('CROs') to reorder selected lists, and/or requiring or enabling CROs to hold that candidates no longer stand nominated (if the selected list contains only one candidate and that candidate is not a woman).

12. We are content with the proposed system of enforcement and sanctions for non-compliance outlined in the Bill, recognising that it provides a strong mechanism which follows international best practice. Given the significant role of the NNCO in the enforcement of candidate quotas, we believe it would be remiss not to formally designate a deputy NNCO who can undertake this crucial role with the same legitimacy, credibility and expertise, if needed, and we want to see the Bill amended in this regard. We also want further clarity on the performance standards (and associated offences) that will apply to the NNCO.

Statement on whether a candidate is a woman or not a woman

13. The Bill requires the Welsh Ministers to make provision in secondary legislation that requires candidates, as part of the process of being nominated by a political party, to state whether they are a woman or not a woman. It also allows the Welsh Ministers to make provision about who may inspect such statements. The Bill does not include a definition of the term 'woman' for the purposes of candidate statements.

14. Many of those who responded to our consultation had concerns about the Welsh Government's use of the terms 'sex' and 'gender' in the Explanatory Memorandum that accompanies the Bill.⁵

15. CROs do not have powers to investigate the facts set out in a nomination paper. The powers of returning officers are limited to checking that the nomination paper is in proper form and is correct on its face. An election petition could be brought against a candidate that did not provide accurate information in their nomination papers.

⁵ Welsh Government, [Senedd Cymru \(Electoral Candidate Lists\) Bill: Explanatory Memorandum incorporating the Regulatory Impact Assessment and Explanatory Notes](#)

16. The Welsh Government’s policy intention is that making a “false gender statement” will not be part of the corrupt practice offence that applies if candidates provide false statements about other information such as their name and address.⁶

17. The provision in new section 7D(2) requiring a person, as part of the process of being nominated by a political party as a candidate, to state whether they are a woman or not a woman has drawn significant attention to the Bill. We recognise the strength of feeling and have carefully considered all views shared with us. The majority of Committee members are content with the provision and believe it to be a proportionate means of implementing and enforcing compliance with the quota rules.

18. The majority of Committee members agree that electoral administrators should accept the statement provided by candidates at face value, in line the existing practice for candidate nomination papers.

19. We all believe it is both necessary and proportionate to include making a false statement under new section 7D(2) within the corrupt practice offence that applies to the provision of any other false information on a nomination form.

Review of operation and effect of the Act

20. The Bill proposes the Presiding Officer after the first election at which the Bill is implemented must table a motion to propose the establishment of a Senedd committee to review the operation and effect of the relevant primary and secondary legislative provisions.

21. We agree that the operation and effect of the quota provisions should be subject to robust review after the first election at which they come into force. To inform this review, we believe a duty should be placed on Welsh Ministers to collect and publish data about the diversity of candidates and elected Members for the first election at which the candidate quotas are implemented.

22. Notwithstanding our strong support for the principle of legislation being subject to post-legislative review and scrutiny to ensure that it is operating as intended, we consider this provision to be constitutionally problematic and legally unnecessary. We call on the Member in charge to remove section 2 from the Bill.

⁶ Welsh Government, [Senedd Cymru \(Electoral Candidate Lists\) Bill: justice impact assessment](#) [accessed on 5 May 2024]

This is our preferred outcome. But, if she does not do so, we have recommended amendments that could partly mitigate our concerns.

Implementation of the Act

23. We heard evidence about a range of implementation issues, including the implementation timetable, the election timetable, the need for awareness-raising, and the financial implications.

24. We recognise that the implementation timetable is challenging, and encourage the Welsh Government to work closely with electoral partners as it develops the secondary legislation. We call on the Welsh Government to consider the impact of changes in the election timetable on people in different socioeconomic circumstances. We have some concerns about the approach taken to assessing the financial implications of this Bill within the wider package of reforms, and ask the Member in charge to provide greater clarity.

Legislative competence

25. Under the reserved powers model of legislative competence a provision in a Senedd Bill will be within the Senedd's legislative competence unless certain restrictions apply. Determining this requires the application of a series of tests. The most relevant tests for our scrutiny are:

- No provision of the Bill must relate to a reserved matter.
- No provision of the Bill must modify (or give the power to modify) the law on reserved matters.
- Each provision of the Bill must be compatible with the Convention rights set out in the Human Rights Act 1998.

26. Assessing whether or not provisions are within the Senedd's legislative competence is not always straightforward, and we have heard different and conflicting views on whether the Senedd has the legislative competence to pass this Bill.

27. It is not our role to determine whether or not the Bill is within the Senedd's legislative competence, or prescribe the extent to which Members of the Senedd should consider the lack of consensus on the issue of legislative competence to be a relevant factor in the Senedd's decisions on whether to agree the general principles of the Bill at Stage 1 or pass the Bill at Stage 4.

28. The Supreme Court is the only body that can definitively answer the question of whether or not a provision is within the Senedd's legislative competence. And, a referral to the Supreme Court on this question may only be made once a Bill has been passed.

29. We are all concerned about the potential risks that could arise if the uncertainty about legislative competence is not resolved prior to the Bill receiving Royal Assent and being implemented.

30. We call on the Member in charge to work with the Llywydd and key partners to develop and publish a clear pathway for identifying, managing and mitigating any risks to the 2026 Senedd election. Furthermore, we call on the Member in charge to discuss with the UK Government the mechanisms through which the question of whether the Bill would be within the Senedd's legislative competence may be put beyond doubt, including any potential use of an Order in Council under section 109 of the Government of Wales Act 2006 or an Act of the UK Parliament with the objective of avoiding prolonged legal debate and ensuring that any uncertainty is resolved in advance of the 2026 Senedd election. We also call on the Counsel General, if the Bill is passed by the Senedd, to exercise his power under section 112 of the Government of Wales Act 2006 to refer the Bill to the Supreme Court and request that the matter is considered, if possible, within an expedited timescale.

Addressing barriers: a 'quota-plus' approach

31. Our scrutiny focused on the Bill, and the candidate quotas it would introduce. But, a major theme in the evidence has been that quotas alone would not be sufficient to address the barriers facing women who may be considering putting themselves forward for selection or election, or remaining in elected offices. There was consensus around the need for complementary, non-legislative action i.e. a 'quota-plus approach'.

32. Our report explores a range of issues, including:

- The diversity of women.
- The Senedd's culture, ways of working and facilities.
- Political parties' culture, structures and ways of working.
- Financial barriers and support.
- Harassment and abuse.

- Job-sharing.
- Mentoring and training.
- Data about the diversity of candidates and Members.

33. We are united in our view that action is needed to address barriers to women's selection and election. We want to see such actions developed and designed in ways that respect and reflect women's intersectional identities, and the disproportionate effects experienced by women from some communities or with some characteristics.

34. Our recommendations call for:

- Engagement and consultation with diversity organisations as part of the Senedd Commission's development of the Senedd estate, and the commissioning of a gender sensitive audit of the Senedd.
- The Welsh Government to commission research on the best ways to provide financial support for women candidates from underrepresented groups, and to do so in sufficient time to enable potential candidates to make informed decisions about whether to put themselves forward for selection or election.
- Work to ensure that the right guidance and support is in place for candidates and Members who may experience harassment and abuse.
- Further representations to be made to the UK Government in relation to legislative requirements for the collection and publication of candidate and Member diversity data, and clarity from the Welsh Government about the duty it plans to place on the Welsh Ministers to provide statutory guidance to political parties about collecting and publishing such data.