

Y Comisiwn Etholiadol The Electoral Commission

Evidence to the Equality, Local Government and Communities Committee: Local Government and Elections (Wales) Bill

December 2019

1. This response sets out the Electoral Commission's views on the Local Government and Elections (Wales) Bill. We have responded to the provisions in this Bill that are directly relevant to our work, and have also highlighted aspects of electoral law reform that we have previously recommended which do not appear in the Bill.
2. We have previously set out our views on many of the issues that have now been included in the Bill in our [response](#) to the Welsh Government consultation on Local Government Electoral Reform in October 2017.
3. We continue to recommend that all legislation should be clear at least six months before it is required to be implemented or complied with. This includes both this Bill and any secondary legislation that is subsequently required to specify the detail of how any provisions will work in practice. The timetable for this legislation will therefore need careful consideration given those provisions which are expected to be in place ahead of the local government elections in Wales in May 2022.
4. The introduction of this Bill takes place in the context of a wider electoral reform agenda in Wales with changes about to be enacted for the National Assembly for Wales/Senedd elections. We expect that Welsh Government will continue to work closely with the Assembly Commission to ensure that any reforms to electoral arrangements for local government elections in Wales are not made in isolation but take into account this wider context.
5. The provisions in this Bill address a number of concerns that we have highlighted in recent years about the delivery of elections. This is welcome. Nevertheless, electoral law remains fragmented and outdated. We strongly support the recommendations made by the UK's Law Commissions which aim to consolidate, simplify and modernise the many existing sources of electoral law. Further to this Bill, we urge Welsh Government to take their recommendations forward and to consolidate and wherever possible simplify the rules for National Assembly and local government elections.

Key points

- All primary and secondary legislation needed to change the franchise for the local government elections scheduled for May 2022 should be clear six months before Electoral Registration Officers are due to begin annual canvass activities in summer 2021 to enable all those who are newly eligible to vote to be able to register and participate in the elections.
- Welsh Government should commit to providing adequate resources to Returning Officers, Electoral Registration Officers and local authorities to ensure that any changes to the electoral process as a result of the provisions in the Bill can be implemented in the best interests of voters.
- Any divergence in the franchise for different sets of elections, using the Parliamentary register and the Local Government register will introduce the possibility of confusion for voters, candidates and campaigners, as well as administrative challenges.
- Similarly, a potential divergence in the electoral system across Wales for local government elections could cause significant confusion among voters and any public awareness work to address this will be challenging.
- The Wales Electoral Coordination Board should be consulted on any proposals relating to electoral matters included in the Bill and should play a full part in the effective implementation of any new changes.

Extension of right to vote in local government elections

6. We provided a detailed response on the proposed extension to the franchise in our responses to consultations in [April 2017](#) and in [October 2017](#). In these we made clear that the Commission does not take a view on the principle of extending the franchise. This is because the Commission believes it is for the Welsh Government and, ultimately, the National Assembly for Wales to decide on the franchise for local government elections in Wales.
7. However, as we explained, there are a number of practical implications which would need to be considered if a change to the franchise was introduced to include votes for 16 and 17 year olds and qualifying foreign citizens:
 - Welsh Government should ensure that all primary and secondary legislation is clear six months before EROs are due to begin annual canvass activities in July 2021 (i.e. by January 2021). This would enable all those who are newly eligible to vote to register and participate in the 2022 local government elections in Wales.
 - We will then need to update our advice and guidance for EROs in advance of the annual canvass in 2021 and for Returning Officers (ROs) ahead of the election in 2022, to reflect any changes to the franchise.

- We would also need to allow time for user testing of forms so that they are finalised and available for EROs to use six months before the election.
 - Welsh Government should make sure that any changes are adequately resourced to ensure that they can be implemented effectively and efficiently in the best interests of voters in Wales.
8. The proposed franchise changes would mean that the electoral register for Welsh elections would be very different to the register for Parliamentary elections. This could present challenges for voters who may not understand why they can vote in some elections and not others and to electoral administrators in administering two separate registers.
 9. The Commission stands ready to work with the Welsh Government and the wider electoral community to ensure a smooth transition if the franchise is changed. We have experience in supporting franchise changes from Scotland and would be happy to discuss further the approach we took to encourage registration among 14 to 17 year olds and how we could apply this learning to Wales.

Duty to promote awareness and provide assistance

10. We welcome the duty in the Bill for principal councils to promote awareness among young people about the new arrangements for registering to vote in local government elections in Wales. However, consideration should be given to apply this duty to EROs instead of, or as well as, the principal council.
11. This is because, the ERO is appointed by the county or county borough council and has an independent statutory role under Section 9A of the Representation of the People Act 1983 (RPA) to take all necessary steps to comply with their duty to maintain the electoral register, and to ensure, as far as is reasonably practicable, that all those eligible are registered in it.
12. We run public awareness campaigns ahead of each set of elections to encourage voter registration. If the franchise is extended we would undertake targeted public awareness activities aimed specifically at these new electors informing them that they are eligible to vote and how they can register.
13. We intend to run two campaigns – one around the annual canvass in 2021 and another in advance of the election in 2022.
14. We are currently working with Welsh Government and other organisations such as the Assembly Commission and Electoral Reform Society, to create potential new educational resources for delivery by schools aimed at young people which would be used as part of our awareness work.

Voting systems for elections to principal councils

The introduction of two different voting systems

15. As set out in our previous [response](#), decisions about which voting system(s) should be used for local government elections in Wales is a significant constitutional issue and is a matter for Welsh Government.

16. However, allowing local authorities to decide which electoral system to use in their own area could increase the risk of voter confusion, particularly in relation to voter understanding of how to cast their vote, as well as raising administrative risks and challenges - for example, in terms of introducing new procedures for managing the count and providing adequate training for staff.
17. This type of divergence would also raise significant challenges for candidates, agents, parties and other campaigners.
18. If this type of change were to be implemented, the Commission itself would be required to:
 - publish two sets of guidance for electoral administrators in Wales so that ROs know how to run a local government election under both first past the post (FPTP) and the Single Transferable Vote (STV) system
 - publish two sets of advice and guidance for political parties, candidates and agents and non-party campaigners, one for each voting system
 - potentially run separate public awareness campaigns ahead of scheduled local government elections, one focussing on a FPTP system and another on STV
19. Managing an effective public awareness campaign in Wales ahead of one set of local government elections which implements two different electoral systems is likely to be a major challenge. Ensuring voters only saw or heard or were able to identify the information that is relevant to their voting system would be problematic, even with targeted digital advertising. The risk of voter confusion would therefore be high.
20. If different voting systems were used for local government elections across Wales, this would make national planning and consistency very challenging.
21. There is strong support in Wales for consistency and co-operation in the interest of delivering efficient and trusted electoral processes. The Wales Electoral Coordination Board was established to encourage consistency in the management of elections and electoral registration across Wales. Welsh Government officials are formal advisors to the Board and Ministers have also attended meetings.
22. We recommended in 2017 that the Welsh Government should consider how the role of the Board could be developed in the medium to long term to support Welsh Government's overarching electoral modernisation programme. This might include, for example, considering if the Board should become a statutory group, as is the case in Scotland.

Resolutions to exercise the power to change the voting **system**

23. We welcome Section 9 of the Bill which would ensure sufficient time – at least 17 months – for the Electoral Commission, ROs and campaigners to prepare, and to inform voters, about any change in voting system ahead of future elections.

Initial review by the Local Democracy and Boundary Commission

24. Paragraph 4(1) of Schedule 1 to the Bill would give Welsh Ministers the power to direct when the Local Democracy and Boundary Commission should submit their

final review report. When considering a date for this report, Welsh Ministers should ensure that it allows sufficient time for any Order setting out any new ward arrangements to be made so that electoral administrators can complete the annual canvass and publish the revised register of electors reflecting the new boundaries in the year before the first elections at which those boundaries would apply.

Rules about the conduct of local elections in Wales

25. Welsh Ministers should be required to consult the Electoral Commission on regulations containing rules made under the new Section 36A of the Representation of the People Act 1983 (RPA) in the same way that they would be required to for rules under the current Section 36 of the RPA. This will enable us to provide the Assembly/Senedd with independent, expert advice on the workability of the legislation.

Electoral cycles

Extension of power to change ordinary day of local elections in Wales

26. Section 17 of the Bill would introduce a new power for Welsh Ministers to change the ordinary day of local government elections in Wales by amending Section 37ZA of the RPA.
27. Section 37ZA currently constrains the power for Welsh Ministers to change the day of local elections in Wales by requiring that the Order to change the date is made no later than 1 February in the year before the year it is due to take effect. There is no similar time constraint in the new power that would be added by Section 17 of this Bill. This could mean that the date of a local election is changed at short notice, which could have a negative impact on voters, campaigners and electoral administrators.
28. The Bill should include a similar time constraint to that in section 37ZA to allow sufficient time for candidates, parties and electoral administrators to plan for the election.
29. Section 37ZA, as amended by the Bill, sets out that Welsh Ministers are required to consult 'such other persons' as they consider appropriate before making an Order to change the day of the local government election. This should be extended to specifically include the Electoral Commission, to ensure that Ministers and the Assembly/Senedd have access to independent expert advice about the potential implications of any change.

Registration of local government electors

Registration of local government electors without an application

30. We welcome the inclusion in the Bill of provisions that would allow EROs to register a local government elector without an application, if they are satisfied that they are entitled to be registered. Reforms of this nature could help improve levels of completeness among some of the specific under-registered groups (for example,

young people) identified in our recently published [study of the accuracy and completeness of the electoral registers](#) .

31. Earlier this year we published the findings from a series of feasibility studies we conducted exploring how electoral registration reforms could be delivered, to help inform the debate about registration reform. These studies looked at the potential for giving EROs access to data from other public service providers; integration of electoral registration into other public service transactions; and automatic or more automated forms of registration. Importantly, the work we conducted found that most of the reforms were feasible from a technical perspective and could be implemented without radically altering the structure of the electoral registration system in the UK.
32. We expect the practical details of how a system of automatic registration would work in Wales to be set out in secondary legislation and look forward to working with Welsh Government and EROs to ensure that the proposals are workable and will help to improve accuracy and completeness. Important factors to consider in developing any scheme will include:
 - the challenges and issues involved in making these changes for the local government register without equivalent changes to the parliamentary register;
 - knowing when someone is already on the register;
 - whether the chosen dataset would provide sufficient information to register a person automatically, or if a combination of datasets might be necessary; and
 - the technical infrastructure required to support the reforms.
33. We stand ready to further explore these and other relevant issues with Welsh Ministers and Welsh Government officials, building on the work we have already completed on automatic registration.

Database of electoral registration information

Regulations to provide for a database of electoral registration information

34. Section 18 of the Bill would give Welsh Ministers a power to establish an all-Wales database of electoral registration information. We understand that the purpose of this would be to enable the piloting and development of further reforms to the electoral process, and to improve the efficiency of information sharing between EROs and ROs.
35. As part of our feasibility studies on electoral registration modernisation we considered whether a centralised register, or system of joined-up electoral registers, would offer any additional benefits for electoral registration or electoral reform more broadly.
36. We concluded that a greater degree of centralisation could offer real benefits, particularly in terms of simplifying the infrastructure needed to support reform. In addition, the combination of unique identifiers and some form of joined-up registers allowing EROs to compare information about entries across a number of registers could reduce the risk of some electors voting more than once at a relevant election.

37. Reforms along these lines could also enable us to know how many people are actually registered twice (legally) and additionally provide the potential basis for any move towards different ways of voting in the future.
38. However, we also noted that these potential benefits need to be balanced against the implications of further centralisation on the structure of electoral registration in the UK, including the potential loss of local knowledge about under-registered groups; and the security risks around the management of personal data.
39. We welcome further modernisation of electoral registration, and these benefits and potential risks will need to be considered and appropriately addressed as Welsh Government develops detailed proposals. We stand ready to work with Welsh Government should it decide to take this forward and would expect to be consulted before any regulations are made.

Qualification for membership of a local authority

40. We note that the Bill amends the eligibility criteria for candidates at local government elections to allow a citizen of any country to stand for election, subject to other existing criteria, such as age and residence.
41. We welcome the proposed provision in the Bill that provides that council officers and employees, other than those holding politically restricted posts, will be entitled to stand for election to their own council.
42. This reflects the approach that we recommended in our 2015 report "[Standing for Election](#)", that the law in England, Wales and Northern Ireland be changed to make a clear distinction between offices or employment which would prevent someone from standing for election, and those which would prevent someone from holding office if elected.
43. It is important that potential candidates wanting to stand for election can find out easily if they might be disqualified.
44. We continue to recommend that all legislation should be clear at least six months before it is required to be implemented or complied with by campaigners, ROs and EROs.
45. We will amend our guidance for candidates and agents (and the equivalent guidance for EROs and ROs), and make available the nomination forms which are prescribed in legislation, including the consent to nomination declaration.

Election pilot schemes

Welsh Ministers' discretion to introduce election pilot scheme

46. We welcome the initiative being taken by the Welsh Government to provide for election pilot schemes that would test options for changing local government electoral processes in Wales.
47. The Bill should include a duty for the Electoral Commission to evaluate any pilot scheme run at a local government election in Wales, in line with the equivalent duty

for pilot schemes at local elections in England or Scotland. This will enable an independent and evidence based assessment of the success or otherwise of the scheme in facilitating and encouraging voting.

48. The Welsh Government should ensure that any pilot schemes are rigorously designed to ensure they are capable of providing robust evidence to support any future changes to the current electoral system in Wales. Welsh Ministers should be required to consult the Commission about the design of any pilot scheme and the framework for evaluation.

Guidance about election pilot schemes

49. Section 27 of the Bill would give Welsh Ministers powers to issue guidance to local authorities or EROs in relation to pilot schemes. It is not clear what kind of guidance Ministers might consider issuing, and how it would relate to the Commission's existing statutory role to provide guidance to EROs and ROs. There are no equivalent powers for UK Government Ministers in relation to pilot schemes at local government elections in England.
50. We would like to discuss this further with Welsh Government to ensure that this proposed government guidance provision would meet a need that it is appropriate for government to lead on. As matters stand, we have substantive concern if guidance on the running of a poll were to be issued to EROs or ROs by Ministers, rather than by an independent body such as the Commission.

Expenditure of Returning Officers

Meeting expenditure of Returning Officers (Section 28)

51. Section 28 of the Bill seeks to clarify that ROs cannot claim personal fees in respect of their services during the conduct of a local government elections.
52. We recognise the central role that ROs play in the democratic process. They are critical to delivering well-run elections and referendums which produce results in which voters and campaigners can have confidence.
53. We continue to support the important principle that ROs should be independent from both local and national governments when delivering their statutory electoral administration duties. This is necessary to avoid any perception of bias and to promote public confidence and trust in the process. A payment to ROs of some description denotes the different role,
54. It is therefore important to be clear that ROs are not employed by councils when they deliver official election or referendum duties. They are independent statutory office-holders and they are accountable to the courts for the delivery of their official duties.
55. Any changes to the current management framework for the delivery of local government elections in Wales, including to the current arrangements for funding elections and payments to ROs for their services, must not weaken the independence and accountability of those responsible for delivering polls.

56. Removing personal fees for ROs may in practice risk reducing their independence, and there is also potential for impartiality to be damaged if their only payment for carrying out election duties is through their contract of employment by the local authority which appointed them to their substantive role.
57. It is also important that an appropriate person with the right skill set should carry out the role of Returning Officer and should be remunerated accordingly. Removing any personal fee may discourage experienced and capable senior officers from agreeing to undertake this important but sensitive role.
58. The Explanatory Notes to the Bill indicate that the personal fee is also proposed to be removed for National Assembly for Wales elections when a Returning Officers' Charges Order is next made. We will ask the Assembly Commission to take into consideration our view set out above.

Additional considerations

59. There are aspects of electoral law reform that we have previously recommended which do not appear in the Bill. We believe that the Bill should be amended to incorporate the changes, or that they should be addressed in subsequent secondary legislation. We outline these recommendations below.

Digital imprints

60. Online campaign material produced by candidates, political parties and non-party campaigners should – like its printed equivalent – be required to include an imprint stating who has published it. This would enable voters to identify who is spending money on trying to influence them at elections. It would also assist the police and prosecutors to more effectively ensure compliance with the spending rules by identifying the source of campaign material.
61. We encourage Welsh Government to amend this Bill to make it a legal requirement for candidates and campaigners at local elections to put imprints on their online campaign material to ensure this gap in transparency is closed. This would also be consistent with emerging new electoral legislation in another part of the UK i.e. Scotland.

Exemption for disability expenses

62. Disabled candidates standing in local elections in England, Scotland and Northern Ireland benefit from an exemption which means that expenses relating to their disability do not count towards their spending limits for those elections. Wales is now the only part of the UK where disabled candidates do not benefit from a disability-related exemption.
63. Creating an exclusion for expenses related to the needs of disabled candidates will create a more level playing field between candidates, and will make standing for election more accessible for disabled candidates. We therefore recommend that the Bill be amended to create such an exemption for local elections (and we believe this should also be the case for National Assembly for Wales elections), and would welcome the opportunity to work with Welsh Government on this.

Exemption for translation costs

64. We support the view that the costs of translating campaign material between Welsh and English should be exempt from the spending limits for candidates at local government elections (and National Assembly for Wales elections). This exemption would ensure that campaigning at local elections is inclusive of all official languages of Wales. We therefore recommend that the Bill be amended to include a translation exemption.

Publication of candidate spending returns online

65. The public can view copies of candidate spending returns by visiting the office of the Returning Officer. There would be greater transparency of election spending if candidate spending returns were published online.
66. The UK's Law Commissions have previously recommended that secondary legislation should prescribe in detail the process for Returning Officers to publicise and make available for inspection of spending returns (including non-receipt of a return), paving the way for publication online.
67. We agree with this recommendation and believe it should be taken forward for Welsh local government elections (and indeed for National Assembly for Wales elections). We encourage the Welsh Government to amend the Bill to make publication online a legal requirement.

Prisoner voting

68. We understand that Welsh Government is considering introducing an amendment at Stage 2 in relation to prisoner voting. In January 2019 we provided a [response](#) to an inquiry by the Equality, Local Government and Communities Committee into voting rights for prisoners.
69. We take no view on whether prisoners should be entitled to vote or not, but have addressed the practical implications should prisoners in Wales be given the right to vote.