

Cyflwynwyd yr ymateb hwn i [ymgyngoriad y Pwyllgor Biliau Diwygio](#) ar [Fil Senedd Cymru \(Aelodau ac Etholiadau\)](#).

This response was submitted to the [Reform Bill Committee consultation](#) on the [Senedd Cymru \(Members and Elections\) Bill](#).

SCME(P)13 Ymateb gan: | Response from: Public and Commercial Services union



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## **PCS Wales response to the Draft Senedd Cymru (Members and Elections) Bill**

### **Background**

1. PCS is one of the three Trade Unions recognised at the Senedd Commission, alongside Prospect and FDA. PCS also represents a number of Members Support Staff working for Plaid Cymru Members and/or the Plaid Cymru Group Office within the current Senedd. Members' Support Staff from other political parties, including those parties who may have Members in a more diverse future Senedd, would also be welcome to join PCS as their Trade Union of choice.



2. PCS has continued, since initial devolution in 1999 to push for further political reform on behalf of its members in Wales and Scotland. This includes publications such as “Politics for the Many, the Trade Union case for Political Reform” published in April 2018<sup>1</sup>.
3. Through successive Wales Acts the areas of responsibility of Welsh Ministers, the Legislative competence of the Senedd and the Senedd’s scrutiny workload have all increased. An increase in the membership of the Senedd is now overdue.
4. PCS supports Proportional Representation rather than First Past the Post electoral systems.

### **The general principles of the Senedd Cymru (Members and Elections) (Wales) Bill and whether there is a need for legislation to deliver the Bill’s stated policy objectives.**

5. PCS generally agrees with the concepts of Senedd Reform and the increase in the number of Members in the Senedd from the current 60 to the proposed 96. However, a body with more powers needs both more Members and more staff to support the increased body of work that it is expected to carry out.
6. A reformed Senedd must also improve the working terms and conditions and pay for both Commission staff and Members Support Staff including those directly employed by the Members and those within the Group Offices at the Senedd.

### **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.**

#### Physical footprint of the Senedd Estate in Cardiff Bay

7. PCS believes that lack of funding for the Senedd Commission (estimates provided in the EM) to undertake its scrutiny functions and to support the increased effectiveness of the institution would undermine key objectives of the Bill, as set out in the Statement of Policy Intent.
8. The Explanatory Memorandum (EM) projects, and a successful Financial Resolution on this Bill would authorise, a proportional increase in funding to “the Senedd” in order to fund Members’ salaries and to the direct support that Members receive through their directly employed office staff from the budgets provided by the Remuneration Board. The Senedd Commission is not being provided with a similar uplift in its revenue funding to allow for a matching increase in the support available to Members via Commission-

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<sup>1</sup> <https://politicsforthemany.co.uk/wp-content/uploads/2018/04/The-Trade-Union-Case-for-Political-Reform-report1.pdf>

provided services. We fear that once the political priorities are catered for, the Senedd Commission's budget uplift may be squeezed to compensate.

9. Para 65 of the EM suggests that there will be no requirement to exceed the physical capacity of Tŷ Hywel, or in any other way expand the Cardiff Bay Estate of the Senedd as a result of this legislation, due to a reduction in the use of the space by Senedd Commission staff. The pattern of use of the Senedd Estate, following the reductions during the pandemic, is still evolving. Whilst it is true that Commission Staff use of the Senedd Estate is not what it was previously, there is an ongoing programme of work (the Ways of Working Programme) that is actively looking at the Commission's evolving use of the Estate and one of the main advantages to the Commission of having our Cardiff Bay Estate is that ability to get Commission Staff together when required. Whilst the Commission's space requirements may take different shapes to what had been required previously, there is concern expressed by staff that the Commission's use of its own Estate should not be overly restricted by an assumption that the space available to Members will simply increase proportionally to the number of additional Members.
10. The Bill and EM do not actively state that current Members are being engaged to look at their potential future use of the space on the Senedd Estate, in particular the future provision and use of dedicated Cardiff Bay office space for Members. We expect the projected need for Members' space to be evidenced and put on the Record rather than accept the assumption suggested in para 65 of the EM as read. That all 96 Members can continue to receive a similar footprint on the Senedd Estate on a per-Member basis relies on the Senedd Commission shrinking into a sufficiently small footprint, should no overall increase of the Senedd Estate in Cardiff Bay occur.

#### Size of the Senedd Commission

11. PCS question assumptions made around the size of the Senedd Commission, in particular "any 'cap' on the overall Commission staffing establishment" and the "Increases in headcount for Commission staff should be kept to a minimum" mentioned in Annex 5 to the EM.
12. One of the assumptions being made around Senedd Reform is that additional Members will mean more "Member Hours" available within the week to allow the Senedd to perform its role of being "the democratically elected body that represents the interests of Wales and its People... [which] makes laws for Wales, agrees Welsh taxes and holds the Welsh Government to account". This statement is found (in full) on the inside cover of most documents produced by and on behalf of the Senedd.
13. It is concerning that this Bill sets up an expectation that increased scrutiny functions will be possible by an institution which is attempting to function with essentially the same number of Commission staff. In fact not even in Full Time Equivalent (FTE) but measured by a rigid "headcount" which blocks those Commission Staff who may wish to

move to Part Time working or a job-share as the organisation is not only limiting the number of staff-hours available at each Grade but the total number of staff it is willing to have on the books.

14. Surely, to increase the functions of an organisation and support an over 50% increase in the number of Members working there should be an increase of something similar in proportion to the number of Commission Staff facilitating the work of those Members and planning/undertaking the leg work of arranging scrutiny sessions, organising visits across Wales and drafting committee reports on behalf of those Members.

## **Whether there are any unintended consequences arising from the Bill.**

Ability to elect a Member

15. Whilst the Senedd already has a proportion of its Membership elected by the list system, full Proportional Representation (PR) on a closed list system, as proposed, does mean that the individual voter cannot bypass an individual candidate – in contrast to the Single Transferrable Vote (STV) method, which increases flexibility for the voter and maintains the accountability of individual candidates.
16. This system also favours the larger parties who can field a full list of candidates (and reserve candidates) as opposed to the Independent candidate who, whilst they may have better grasp of local issues, brings with them in the proposed model, the risk of voters being under-represented if their chosen list of 1 is unable to represent them for any number of reasons. The proposed model has limits where the list (in this example) of 1 runs out and there are no provisions for a by-election to fill the now vacant seat for that constituency. In fact, further than their being no such provision, the Bill (page 7 line 35) actively removes the ability to hold a by-election to fill a vacant seat which cannot be filled by means of further candidates from a party list.
17. While recognising the potential benefit that the proposed electoral system might facilitate more cohesive political parties setting out policy programme for Government, rather than a system based around personalities, PCS is concerned that the system would leave a great deal of influence vested in the bureaucracies of established political parties, by virtue of their ability to decide the order of candidates on their lists, to the detriment of voter choice.
18. PCS is also concerned about this Bill's ability to support smaller parties and Independent candidates through the proposed closed list system. The public may seek to vote for candidates from larger parties simply to ensure that their voice continues to be in the mix in a fair balance by means of *someone* vaguely of their political leaning sitting in every seat for their Constituency rather than leaving their voice depleted by means of an empty seat.

## Lack of provisions around Constituency Offices

19. It is disappointing, from a capital investment point of view, that the opportunity to establish permanent Senedd Constituency Offices within the new Senedd Constituencies was not taken in this Bill.
20. Savings on the determination could have been made by providing fixed locations to future Members of the Senedd as this Bill sets out effectively 6 Members who will work to represent each new Constituency.
21. The investment lost in individual Member offices by the Senedd on features such as security and access improvements are potentially lost each time the Member/Party holding a seat changes as the offices are rented directly by the Member (using Senedd funds) and are not fully in control of the Senedd Commission as an asset.
22. The breaking up of these functions into individual offices also means that the investment that the Senedd can make within each Constituency is limited. Advantage will not be able to be taken by strategic investment in the potential for, say, 16 centres as a physical presence of the Senedd spread across Wales, with some additions for constituencies of greater size.
23. For Senedd Commission Staff, the provision of these regional centres would also allow for non-Cardiff-Bay office provision and assist in spreading where professional-level roles for the Senedd Commission could be based across Wales by the hybrid provisioning of Home-Working combined with available space in a Senedd Office (as opposed to a Member or Party run office) within each new Senedd Constituency.
24. Whilst it would not be impossible for the Senedd to still make such a decision in the future, a time of change such as this period of Reform would be the obvious place to both agree on the principle and to agree for sufficient capital funding for the institution to acquire the dedicated premises required.
25. For Members Support Staff, there is an agreement that there is a conversation to be had about the ongoing provision of Constituency Offices. However, changes to offices and office locations directly affect MSS working conditions.
26. At present, each Member has their own office which is either local to their constituency, or staff working in regional offices (for Regional Members) are aware of the location of offices within the constituent Constituencies of the region upon recruitment.
27. For those whose Members are returned again at the next election a requirement for all Members to wholesale move to new regional centres at a fixed point in time may affect the individual's ability to continue working for that Member if re-location to the new premises is not convenient.

28. We also note that the pairings of the 16 constituencies have not yet been published as a part of the consideration of the Bill and will not happen until after the Bill is passed. Any pairings proposed for 202 will also be interim and will only be agreed for the longer time ahead of the proposed 2030 Senedd election.
29. Considering the impact of moving to new offices which have not yet started to be acquired, one option is to re-consider this matter with the new Senedd Commissioners in consultation with the new Members of the Seventh Senedd (and their Support Staff) rather than dealing with this matter as a direct result of the current Bill before the Senedd.

#### Assumptions about “sunk costs”

30. Para 456 of the EM first refers to the concept of “sunk costs” which are incurred and are not recoverable. It is disappointing that, due to the timing of the implementation of this Bill much of the preparation for the transition by the Senedd Commission will need to be done before the Bill becomes an Act and the costs fully attributed to the new Legislation.
31. In fact, some costs were already being incurred by the Senedd Commission in the 2023-24 financial year before this Bill was even tabled. The recently published Senedd Commission Draft Budget for 2024-25 attempts to quantify the elements of revenue spend that relate directly to preparations for the implementation of this Bill should it pass. However, in our response to that Draft Budget<sup>2</sup>, PCS has set out our concerns around the insufficient uplift being given to the Senedd Commission to allow the Business as Usual to continue whilst many current Commission Staff are being asked to support preparations and modelling of new ways of working for the Seventh Senedd alongside their day-job.
32. With the timing for the implementation of this Bill there is not the time-frame available to wait to make these plans until the Bill has passed and its implications more fully known. It is important that Members factor in the increased workload that Senedd Reform is already generating when considering the Senedd Commission Budget in the coming years as the legislation progresses, to allow the proper preparation for and scrutiny of the impact of such a change.
33. Provision will then need to be made for increases not only to the direct Member-facing part of the Senedd Commission’s Budget from 2026 onwards but also the portion that allows for the Senedd Commission to be suitably resourced to support Members in their scrutiny work. Underfunding the Senedd Commission, even with increased Membership

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<sup>2</sup> [Letter from the PCS Union to Senedd Finance Committee - 11 October 2023](#)

of the Senedd, will not achieve the effective increase in Scrutiny of the functions of the Welsh Government (and other public bodies in Wales) that this Bill seeks.

#### Ill-defined “staff of Senedd Cymru”

34. The body corporate which employs staff in support of the functions of the Senedd is the Senedd Commission, and its staff are referred to as “staff of the Senedd Commission”.
35. Line 10 on page 11 of the Bill currently refers to “staff of Senedd Cymru”. The Welsh Parliament / The Senedd / Senedd Cymru does not employ any staff directly. All staff are either employed by an individual Member of the Senedd or a Group Office on behalf of Members and so are covered by the definitions in lines 11-13 on this page, or should be referred to as “staff of the Senedd Commission”.
36. PCS also have concerns that “appointed to assist a Member of the Senedd with carrying out the Member’s functions” is a very loose definition and does not restrict to those who are (or have recently) been employed by the Member’s (or relevant Group) Office to carry out such a function. The phrase could encompass many volunteer roles taken on by individuals to “assist a Member” or those with less well documented party roles to do such and so have an unintended consequence of reducing the possible representation available on the new Democracy and Boundary Commission Cymru. Particularly where some will self-select out due to an unclear definition of whom should be excluded by these lines.
37. In the current drafting people are only excluded from being appointed to the Commission by Welsh Ministers. There is nothing forbidding those who are already appointed from holding roles on the list of exclusions in the 2013 Act. Whilst this works for those who are in longer term roles as stated in the current wording of the Act (e.g. an MP or a Member of the Senedd) the proposed changes of wording in the Local Government (Democracy) (Wales) Act 2013 by the insertions at 4(3) and 8(4) of this Act adds two categories which can, and do, change on a more frequent basis.
38. To give clarity to the conflicts that can arise by holding both roles, provision should be made for disqualification from the Commission on appointment to such roles. That would then mean that, for example, an existing Chief Executive of the Commission would not be able to take up a role within the Senedd Commission without first resigning from the Boundary Commission due to the potential for conflicts of interest that could arise. Similarly, MSS would not be able to resign their post for a short while to be appointed and then be re-employed by a Member once they have taken up the role of a Boundary Commissioner for Wales.

#### Omission of provisions relating to the Senedd’s Independent Remuneration Board

39. The Bill as introduced fails to take the opportunity to modernise the legislative basis for the Senedd's Remuneration Board. This is a significant part of the machinery supporting the work of Members and Party Groups of the Senedd and its operation and constitution as a key decision maker on Member Support Staff and Group Staff terms, conditions and pay has a significant impact on these important group of actors in our democratic process. If a reformed Senedd is to lead to a step change in the conditions of employment of political staff and engagement with trade unions representing them – as PCS believes it must – then it is necessary, at the very least, to revisit the Board's founding legislation. Schedule 1 of the National Assembly for Wales (Remuneration) Measure 2010 at 1(h) disqualifies "a person employed by a Member of the Senedd or by a group of Members for the purpose of assisting that member or the members of that group to perform the functions of a Member of the Senedd". We understand that a potential rationale for this is that the principle that Members should play no role in determining their pay and conditions was key founding principle of the Board. However, PCS would question whether the same principle should continue to be applied to the staff of those Members. Having worker representatives on boards is not a particularly radical concept and PCS sees no reason why MSS / Group staff should continue to be disqualified.
40. Section 5 of the Measure enables the Counsel General, following a resolution of the Senedd, to remove a category of person from Schedule 1 which would lift this disqualification, which should be a timely development to coincide with the Senedd Cymru (Members and Elections) Bill. Not making this change would risk the principles and framework for determining working conditions of MSS and Group Staff in a reformed Senedd moving further away from those Members of the Senedd have put in place for other comparable workers through the Social Partnerships and Public Procurement (Wales) Act, for instance, which we do not see will apply to the activities of the Remuneration Board. Furthermore, the opportunity should be taken to amend Schedule 2(3) of the Measure to require the Clerk to the Senedd when making arrangements to appoint members to the Board to positively require those arrangements to ensure that the membership of the Board consists at any given time, as a minimum, of a person with current or previous experience as a member of staff in Welsh politics and trade union representation for political workers in the Senedd. Both of these propositions should also facilitate, and certainly not preclude, a move to collective bargaining in the future which would in turn contribute to the Welsh Government's stated desire to increase the proportion of Welsh workers whose pay and conditions is set through collective bargaining (see indicator 20 of the National Indicators – proportion of employees whose pay is set by collective bargaining).

Missed opportunity for a broader review of employment arrangements for political staff

41. Due to the unique position that Members technically "claim" funding from the Remuneration Board to employ political staff (along with other liability costs involved in employing staff) then the same test that is used to consider whether a Member is allowed to claim for anything (train ticket or stationery) is to all extents and purposes applied to staffing matters as well. The golden thread running through the Determination issued by the Remuneration Board is that permissible expenditure must be "necessary for the performance of a Member's duties". As set out at the beginning of Chapter 7 of the current Determination – Staffing Support for Members:

*7.1.1. A Member is entitled to claim staffing expenditure costs, up to a maximum of £121,759, for persons employed by them where those costs are wholly, exclusively and necessarily incurred to enable the performance of the Member's duties.*

An equivalent principle governs the provision of staffing expenditure costs for Political Group Staff in Chapter 8 on the Political Parties Support Allowance.

42. Since there is no definitive definition of what constitutes a "Member's duties", and we note that the Bill as introduced does not seek to change that position, the Clerk of the Senedd determines appeals from time to time in the case of a dispute whether individual staffing decisions (such as a Member or Group offering a secondment to a member of their staff) satisfy this principle upon which the whole system is framed. This can lead to inconsistency and delay in implementing fairly simple and routine staffing decisions and it means they are subject to the decision of a third party, beyond the control of the Member and beyond the parameters of how any normal employment relationship is usually governed – between employer and employee. There is a question as to how suitable a procedure like this is to govern the employment conditions of political staff at all, and PCS has heard concerns that it hinders Members' ability to develop their workforce which in turn has a direct effect on staff.
43. There may be some workarounds that the Remuneration Board itself may and should be able to put in place in the short term through the Determination to confirm beyond doubt that allowing a Member / Group to develop its workforce through offering secondments, sabbatical, or unpaid leave whilst retaining continuous employment, together with being able to procure independent and specialist human resources and legal advice is quite fundamental to carrying out a Member's duties as an employer. It is clear that failing to do this could compromise the employer's legal obligation and its ability to attract and retain staff – resulting in high levels of staff turnover, a failure to build expertise within this group of employees in the Senedd as well as causing damage potentially to the reputation of the Senedd itself. However, PCS believes that a more strategic look at the most sustainable arrangements for employing political staff in the round should take place as we prepare for an expansion in the number of political staff to support 36 additional Members.

## **The Welsh Government's assessment of the financial and other impacts of the Bill as set out in Parts 2 and 3 of the Explanatory Memorandum.**

44. Part 2 of the EM currently sets out the direct costs of having 36 additional Members. What it fails to account for are the additional Senedd Commission or Welsh Government staff who will be required in order to achieve the stated aims of this Bill including the increased Scrutiny functions of the Welsh Parliament going forwards.
45. The size of the "Unquantified costs" should not be underestimated as an increase in Members (and MSS) alone will not be sufficient to achieve additional scrutiny. Further researchers, committee clerks and transcriptions services will obviously be required to support more meetings. There will also need to be a proportional increase in the indirect services to support Senedd Business. For example the Senedd Estate is already running very close to its meeting room capacity in the times that Members are willing to meet in Committee with the various exclusions put on the Committee Timetable.
46. For Members to meet more frequently as committees, further space will need to be provisioned to allow for this either through expanding the Senedd Estate or by removing spaces that are currently used for other functions (e.g. Internal meetings, Stakeholder events, public education spaces).
47. An increase in space is not only the direct capital and revenue costs for this space which do not appear in this EM but also the revenue costs for ongoing Facilities Management, ICT Support, Front of House and other support type services that are required in order to facilitate the effective use of such new spaces.

## **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).**

48. No comment on appropriateness of powers.

## **Matters relating to the competence of the Senedd including compatibility with the European Convention on Human Rights.**

49. No comment on competence.

## **The balance between the information contained on the face of the Bill and what is left to subordinate legislation.**

### Job Sharing

50. Whilst not strictly Subordinate Legislation, Para 7 of the Bill relating to job-sharing effectively pushes any mechanisms for this down the road to be the subject of a future Bill.
51. PCS are disappointed that the concept of job-sharing, particularly for the role of Member, could not have been resolved in time to include it within this Bill.
52. Job-sharing is a key equality matter. Particularly for those who are pregnant or considering getting pregnant alongside their candidacy. In any normal role a pregnant woman would expect to have someone fulfil their role effectively on their behalf for the duration of their Maternity leave – similar so for any non-birthing partner of any gender who opts to take a period of Shared Parental Leave. Without the option to job-share as an MS, the Member is left having to choose between taking time as a new parent and properly fulfilling their role as an elected Member.
53. Job sharing can also be key for those with disabilities, particularly such disabilities which reduce the capacity of an individual within the working week whereby a reduction from the standard working week is required as a reasonable adjustment.
54. In Section 7 subsection (2) we recommend that, at a future amending Stage, instead of a motion to establish a dedicated committee this should be re-phrased as a motion to make a committee responsible for such matters. This would align with the wording in the current Standing Orders in relation to Public Accounts functions which are delegated to a “responsible committee”. This would allow the Senedd to either establish a committee specifically with this remit or to delegate it to a committee which includes such a remit alongside other relevant policy matters.
55. Section 7 subsection (2)(b) refers to the preparing of a report but gives no timescale for such a report to be produced. We recommend that such a report be required by December 2027. This would strike a balance between a comprehensive study of the options and ensuring that any resultant legislation or other rules changes have the time to be drafted and implemented in time for candidates in the following election to consider a job-share as a viable option.
56. Furthermore the current drafting of this provision does not require such a report by the Committee to be Laid before the Senedd. As such, subsections (4) and (5) may never be triggered due to this technical anomaly.

57. Finally in this section subsection (5) is also missing any timing for the Welsh Ministers response to the report. It is usual practice for the Welsh Government to respond to a Committee Report within

### **Any matter related to the quality of the legislation.**

58. Similar to our point above about specifying the establishment of a committee for a singular purpose. Section 19 of the Bill aims to establish a further single purpose committee to carry out a review of this legislation. We would again prefer to see this as setting a “responsible committee” which may either be a committee with singular purpose or simply making another committee with wider remit also expressly responsible for disposing of particular functions such as assessing the extent to which the elements of a healthy democracy are present in Wales.

59. Also similar to above comments on Section 7 Subsection (2), there is a requirement in 19(2)(b) to “complete” a report but no express requirement for such a report to be Laid before the Senedd or for the Welsh Government to report on it within a fixed time period. We would like to see these anomalies amended out in future stages of this Bill’s scrutiny.

### **Any other matter related to the constitutional or other implications of the Bill.**

60. No comment on constitutional implications.