

SCECLB440 Cllr Pete Roberts

Senedd Cymru | Welsh Parliament

Y Pwyllgor Biliau Diwygio | Reform Bill Committee

Bil Senedd Cymru (Rhestrau Ymgeiswyr Etholiadol) | Senedd Cymru (Electoral Candidate Lists) Bill

Ymateb gan Cllr Pete Roberts | Evidence from Cllr Pete Roberts

What are your views on the general principles of the Bill and the need for legislation to deliver the Welsh Government's stated policy objective (to make the Senedd a more effective legislature by ensuring it is broadly representative of the gender make-up of the population)?

The Bill and this Consultation appear fundamentally flawed by the conflation of sex and gender. The aim we are told is to improve the gender balance of the Senedd but the introduction specifies the sex characteristic figures from the census. This therefore omits the over 10,000 residents who do not identify their gender as being the same as their sex assigned at birth. The legislation is particularly challenging to the over 1500 individuals who identify as non-binary. (Sexual orientation and gender identity in Wales (Census 2021) (revised) | GOV.WALES)

The Bill places one protective characteristic above all others and in some instances particularly in relation to LGBTQ+ representation it could drive down the candidate numbers and put members of the community at risk of harm and harassment for denying "real" women a seat.

The explanatory notes identifies a problem and some of the potential causes of it without making any attempts to address the issues, cultural and logistical, that are identified in the notes as being the cause of it. This creates a risk of inadvertent discrimination against men in small political parties if the party is unable to identify enough women to stand in a constituency or across the country.

Several women colleagues in my council have commented about the toxic and hostile nature of politics and one resigned on health grounds that were exacerbated by bullying within the community. One individual described politics to me as being worse than their coercive marriage. This Bill will do nothing to address these

perceptions which are a barrier for many individuals not just women when it comes to seeking election.

Moreover, it introduces discrimination by considering gender as a binary and forces non-binary representative to gender themselves if they wish to stand for the Senedd.

The Bill is unclear in terms of the gender reassignment process if self ID or GRC is the definition point for the purposes of the zipping of the list.

The Bill is silent on the principles of how Parties should determine the lead gender in a given seat and how they should manage the process in respect of the Equalities Act where candidates come forward that are gender non conforming. Nor does it provide guidance on how parties should manage the national 50% rules if the party is short of female candidates. This leaves the Welsh political parties at risk of litigation and delays to selection processes that could extend beyond the election window given they will be unable to prepare final selection rules until after the legislation is passed in its final form.

What are your views on the system of enforcement and potential sanctions for non-compliance proposed in the Bill?

If you accept the basis of the Bill the enforcement and sanctions regime is not unreasonable.

However

Validation of local lists must be determined within a timeframe of submission to enable alterations to be made. And this should be stated in the Bill or secondary legislation. It would be unacceptable for example for a RO to sit on an application and notify a party after close of nominations if the form is submitted within an appropriate timeframe.

Likewise for the NNCO, they should have the power to mandate alterations to a list or number of lists but the party concerned should be required to nominate the lists to be changed. Otherwise, a non-party individual could override the views of the party membership. This would be of particular concern for parties currently without representation in Wales who may hope to gain their first Senedd members in an expanded Siambwr should an NNCO decide to demote their party leader in order to create compliance.

Are there any potential barriers to the implementation of the Bill's provisions? If so, what are they, and are they adequately taken into account in the Bill and the accompanying Explanatory Memorandum and Regulatory Impact Assessment?

For the purpose of this response I will take the view that GENDER and not SEX is the characteristic where balance is to be increased in line with the narrative to the consultation on the Bill.

Impact on Non-binary and gender fluid politicians

In 2018 the Employment Tribunal found in Taylor-v-Jaguar Land Rover 1304471/2018 that

“Parliament intended gender reassignment to be a spectrum moving away from birth sex, and that a person could be at any point on that spectrum. That would be so whether they described themselves as “non-binary” i.e. not at point A or point Z, “gender fluid” i.e. at different places between point A and point Z at different times, or “transitioning” i.e. moving from point A, but not necessarily ending at point Z, where A and Z are biological sex.” (at paragraph 178)

This was reaffirmed earlier this year in Lister vs New College Swindon 1404223/2022 which noted paragraph 178 as above at 6.34 then at 6.35 reaffirmed that view.

6.35 The ECHR Code supported that position. Gender reassignment described a process of moving from one's birth sex, rather than a medical procedure.

Given that this legislation relates to the terms under which an individual is restricted from seeking employment. It is appropriate to consider that the legislation needs to be drafted such that it does not discriminate against the gender reassignment characteristic of those who are trans, non-binary and/or gender fluid.

However, the following outcome of the Bill;

Require all candidates on a party's list to state either whether they are, or are not, a woman.

Would result in a non-binary or gender fluid politician being forced to gender themselves an action which could be argued is a breach of their rights under the Equalities Act or have their non-binary status treated as being not a woman and hence decreasing the number of male candidates that are able to seek election.

Given the low numbers of individuals in Wales this could be argued to be a theoretical issue however as there is at least one non-binary county councillor and there have been several at town and community level it is an issue the committee should be aware of and consider as part of its review.

The Bill by omission allows for gender self identification. This to be welcomed in so much as it recognises the difficulty in securing a Gender Recognition Certificate and so doesn't further stigmatise a trans individual without one. However, with no guidance as to how transition is determined legally in the context of the Bill it does open up several potential avenues of abuse that may bring the Senedd into disrepute and lead to mockery of trans individuals (see unintended consequences)

Given these comments I would hope the committee will spend time considering if these issues need addressing to prevent a possible legal challenge to the Bill as being in breach of the protected characteristic of gender reassignment under the Equalities Act.

Are any unintended consequences likely to arise from the Bill?

I would offer the following scenarios where unintended consequences may occur.

A small party can only find 5 women who are prepared to stand as candidates but 15 men. Without a quota this party could contest all the constituencies however with the horizontal quota they would only be entitled to field candidates in 10 constituencies disenfranchising their members and voters in 6 constituencies.

In one constituency the 5 leading parties all place a man at the top of their list and the vote shares out such that each party elects one member. Leading to no women returned in that constituency.

Because of a limited number of women candidates a party is only able to field 2 candidates in a constituency not a full list. The first candidate is successful but unable to complete their term and the second candidate is unable to take up the vacant seat leaving the party unable to supply a new MS.

If replacement MSs have to be the same gender as the MS they are replacing the number 2 and 4 on a list will never be able to become an MS.

An absence of guidance on how to select candidates to populate these lists could lead to litigation by a member against the party.

Delays to the approval of the Bill or a legal challenge to it could make it impossible for Parties to produce selection rules and run selection processes in a timely manner for a 2026 election.

What are your views on the Welsh Government's assessment of the financial and other impacts of the Bill?

No comments

What are your views on the balance between the information contained on the face of the Bill and what is left to subordinate legislation? Are the powers for Welsh Ministers to make subordinate legislation appropriate?

No comments

Do you have any views on matters relating to the legislative competence of the Senedd including compatibility with the European Convention on Human Rights?

Because of the failure to address the impact on Trans and non-binary politicians and for the latter it forces them to gender themselves I would question if the legislation is compatible with the ECHR and the Equalities Act.

As the act and explanatory notes identifies but fails to address the barriers to becoming a candidate for women combined with the increasing hostility towards politicians there is also a question as to the discriminatory nature of the legislation towards men where the absence of women candidates means a party cannot submit a full list even though a full list of male candidates sought selection.

Do you have any views on matters related to the quality of the legislation, or to the constitutional or other implications of the Bill?

No comment

Are there any other issues that you would like to raise about the Bill and the accompanying Explanatory Memorandum or any related matters?

No comment

Anything else?

No comment