

## SCECLB32- P The Electoral Commission

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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 Y Comisiwn Etholiadol | Evidence from The Electoral Commission

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# Reform Bill Committee consultation on Senedd Cymru (Electoral Candidate Lists) Bill – response from the Electoral Commission

April 2024

## 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

This response sets out our views on the Senedd Cymru (Electoral Candidate Lists) Bill.

We are committed to working with the Welsh Government, the Senedd and the wider electoral community in Wales to ensure that the changes proposed by both the Senedd Cymru (Members and Elections) Bill and the Electoral Candidate Lists Bill can be delivered successfully ahead of the 2026 election.

Our role in this will include producing guidance for electoral administrators, providing support for campaigners to comply with the law and enforcing the law if they do not, and running a public awareness campaign to ensure that voters understand the changes being introduced and know how to cast their vote.

## Previously made recommendations

1. There are some recommendations we made relating to the Senedd Cymru (Electoral Candidate Lists) Bill that are also relevant to the Committee's consideration of this Bill:

### Timescales

2. We continue to recommend that 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.
3. This should include primary legislation and any subsequent secondary legislation – in particular the significant changes to the National Assembly for Wales (Representation of the People) Order 2007 that will be needed ahead of the election. 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 implementation of the new system.

### Support for electoral administrators

4. The Welsh Government will need to ensure that electoral administrators are properly supported and resourced to deliver these reforms. Implementation of the two Senedd Cymru Bills is likely to run in parallel with implementation of the Elections and Elected Bodies (Wales) Bill and ongoing work to deliver Elections Act 2022 provisions for reserved elections; many electoral administrators in Wales have raised concerns about their capacity to deliver these multi-layered changes within an already complex environment.
5. These reforms will need to be fully resourced by the Welsh Government. This should include any potential changes that may be required to electoral management software systems, and any additional processes that electoral services teams will need to carry out as a result of these reforms.
6. The Welsh Government will also need to ensure effective planning and communication with electoral administrators throughout the implementation process, via forums such as the Wales Electoral Coordination Board, the Wales Electoral Practitioners Working Group and any future Electoral Management Board.

### Support for parties and candidates

7. Ahead of the 2026 election, the Welsh Government will need to ensure that political parties and candidates are confident that they understand the changes being introduced. This will be particularly important for the new rules around candidate gender quotas, given that parties will need to have a clear understanding of the changes in advance of selecting their candidates.

8. We will play our part in this by updating our guidance for parties and candidates and providing advice, training and support as required. We will also continue to facilitate discussions between the Welsh Government and political parties on these reforms via the Senedd Political Parties Panel.
9. The Welsh Government should also consider how it can address concerns around candidate abuse and intimidation ahead of the 2026 election – this is a serious issue which could act as a barrier to women wanting to put themselves forward as candidates. Following the 2022 Welsh local government elections, a notable proportion of candidates [responding to our survey](#) (40%) said that they experienced some form of abuse or intimidation. In most cases this involved verbal or online abuse, and the majority of instances came from members of the public.

### **Consolidation of electoral law**

10. In the longer term, we are calling on governments to reform the increasingly complex legal framework underpinning the UK's electoral systems. The [2022 White Paper on Electoral Administration and Reform](#) set out an ambition to consolidate and increase the accessibility of devolved electoral law in Wales.
11. The Welsh Government has indicated that the first step towards achieving this will be developing a more modern and accessible Conduct Order ahead of the 2026 election, and we will work to support these changes.
12. The Welsh Government's focus should then turn to the wider consolidation of devolved electoral law, including how the three reform Bills that have been published in the last year could be simplified and consolidated.

## **Specific comments on elements of the Bill**

### **The role of the Constituency Returning Officer**

13. The Bill sets out a very specific set of rules for how the vertical candidate placement should work, resulting in a relatively clear process for the Constituency Returning Officer to follow in order to determine whether a list is compliant or not.
14. The Bill will require candidates to declare whether they are a woman or not a woman as part of the nomination process. It will be critically important to maintain the longstanding precedent – based on case law – that Returning Officers take any information that is provided by candidates at face value and are not required to investigate whether this information is correct or not. The onus must always be on the candidate to ensure the information they have provided is correct.
15. We were reassured to hear the Minister echo this position when providing evidence to the Committee on 13 March.

## **The role of the National Nominations Compliance Officer**

16. The Bill will establish a new National Nominations Compliance Officer (NNCO), and sets out in broad terms the process that the NNCO will have to follow in order to determine whether a party is compliant with the horizontal placement criteria. A period of up to three days is expected to be added to the electoral timetable for Senedd elections to allow for these checks to take place.
17. Without seeing further details on the role of the NNCO, which is expected to be set out in future secondary legislation, we cannot provide a detailed response at this point. However, we expect that this process will be deliverable, and we note that the Welsh Government has designed the proposed system in consultation with electoral administrators.
18. There are some outstanding questions around what the appointment process for the NNCO would look like and what accountability or performance management measures would be put in place. We currently set performance standards for Returning Officers and Electoral Registration Officers, which form an important part of our package of support for electoral administrators. We have had some early discussions with the Welsh Government about how these performance standards could be extended to cover the NNCO role, but this is an area that will require further consideration in the coming months.
19. We would also echo the comments made by the Chair of the Wales Electoral Coordination Board to the Committee on 21 March on the prospect of a deputy NNCO. The Welsh Government should explore whether provision should be made for a deputy to be appointed in case of illness or other personal circumstances resulting in the NNCO being unable to fulfil their duties during an election period.

## **Enforcement and compliance**

20. As set out above, there is a longstanding precedent that ROs should take the information that is provided by candidates at face value. This is an important principle which must be maintained, with responsibility ultimately resting on political parties and candidates to ensure that the information they are providing is correct.
21. The Welsh Government has suggested that, ultimately, an election petition to challenge a result could be a way of protecting against abuse of the system. Although this is not a matter for the Electoral Commission, we will look to work with the Welsh Government moving forward to understand the potential impact of an election petition being brought forward on the basis of a false gender declaration.

## **Timescales for implementation**

22. The Committee will be aware, from its scrutiny of the Senedd Cymru (Members and Elections) Bill, of the importance of all legislation being in place in sufficient time in advance of an election. As we have set out above, we always recommend that 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.

23. Although the introduction of this Bill was delayed, having originally been scheduled for December 2023, we believe the changes proposed should still be deliverable in time for the 2026 election. The majority of the provisions relating to new arrangements for Senedd elections are contained within the Members and Elections Bill, which is currently at Stage 3 proceedings and is on course to receive Royal Assent in the summer.

24. However, any further delay to the progression of this Bill could begin to pose a significant risk to effective implementation ahead of 2026.

### **Engagement with political parties**

25. At our evidence session on 21 March, we committed to providing further information to the Committee on how the Electoral Commission has facilitated discussions between the Welsh Government and political parties on these proposals. Whilst it is ultimately the responsibility of the Welsh Government to engage with political parties on these reforms, we have and will continue to provide any support that we can in this area.

26. As the Bill was being developed, we arranged for the Welsh Government to attend a meeting of our Senedd Political Parties Panel, which includes representatives from the four parties represented in the Senedd. This provided a useful opportunity for the Welsh Government to hear directly from parties on its proposed reforms and resulted in a follow-up meeting. To date, we have not arranged any meetings between the Welsh Government and smaller political parties. Again, it is for the Welsh Government to speak to a wide range of parties on these proposed changes, but we would be happy to assist with this in the coming months if this would be helpful.

27. Ahead of the 2026 election, we will update our guidance to take into account any changes that are introduced by Senedd reform legislation. This would include the introduction of candidate gender quotas and what parties will need to do to comply with the new rules.

### **Other diversity measures**

28. We note that some of the wider recommendations on diversity and inclusion made by the Special Purpose Committee on Senedd Reform have not been taken forward in this Bill – namely the recommendations that anonymised candidate diversity data should be collected and published, and that political parties should be required to publish diversity and inclusion strategies.

29. The Welsh Government has indicated that guidance will be published to encourage parties to publish diversity and inclusion strategies, and that work is ongoing to consider how the collection of candidate diversity data might work in the future. We

will play our part in supporting this work, and would be happy to facilitate discussions between the Welsh Government and political parties on this area.

### **Review of operation and effect of legislation**

30. Clause 2 of the Bill would provide for a Senedd committee to be established after the next election in order to carry out a review of sections 7A to 7D of the Government of Wales Act 2006 (as amended by this Bill). This represents a similar approach to the equivalent provisions within the Senedd Cymru (Members and Elections) Bill.
31. We agree that it will be important to monitor the implementation of these new arrangements to ensure they are working as originally intended. We have a statutory duty to report on the administration of Senedd elections and will publish a post-poll report in 2026. This will include analysis of the experiences of voters, campaigners and electoral administrators. We would expect that any issues relating to the new gender quotas requirements for candidate lists would be picked up as part of this reporting process.
32. We will use this evidence, as well as any other insights we have gathered, to support any work that is taken forward under these provisions.