

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 Stephen George | Evidence from Stephen George

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 general principle, as stated above, is laudable albeit that it refers to gender rather than sex. As sex is a protected characteristic and gender (rather than gender reassignment) is not, it would be clearer if the general principle referred to sex rather than gender.

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

I am completely opposed to the introduction of the system of gender self-declaration that is proposed. Not only is it invidious in principle that men will be allowed to self-identify as women, but this particular mechanism seems to be at odds in practice with the general principle of the bill to make the senedd broadly representative of the gender (sic) make-up of the population.

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?

From the Senedd Research Service's briefing on the Bill:

"If the Bill (or part of it) is outside the Senedd's legislative competence, it could still be passed but may be challenged in the Supreme Court by the UK Government's Attorney General or the Welsh Government's Counsel General.

The Llywydd has stated that, in her view, the provisions of the Bill would not be within the Senedd's legislative competence because it:

Relates to the reserved matters of 'equal opportunities'; and

Modifies the law on reserved matters, namely the Equality Act 2010.

The Llywydd's view on legislative competence does not affect whether or not a Bill can be introduced.

This is the first time the Llywydd has stated that she considers that a Bill being introduced into the Senedd would be wholly outside of its legislative competence."

While, the Llywydd's view on legislative competence does not affect whether or not a Bill can be introduced, I assume that her view is based on considered and expert legal advice, which has not been provided frivolously or thoughtlessly.

There must, therefore, be a very real risk that the Bill will be challenged in the Supreme Court and found to be outside the Senedd's legislative competence. This raises both reputational and financial risks, although for me the reputational risk to the Senedd and devolution is by far the most important.

Are any unintended consequences likely to arise from the Bill?

It may be that this is an intended, rather than unintended, consequence, but the system of gender (sic) self-identification proposed may lead to a disproportionate number of men being elected compared to women.

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

They seem reasonable but don't appear to take account of possible legal action, and the cost should the Supreme Court rule that the Bill is outwith the Senedd's legislative competence.

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?

The powers seem appropriate given that they are mostly affirmative procedure and reflect current subordinate legislation procedures under GoWA. Where they vary from this, they seem to do so in a proportionate and appropriate way.

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

See my answer to question 10 above. It would seem that there is a strong prima facie case that the Bill is outside the Senedd's legislative competence.

I have no views on compatibility with the European Convention on Human Rights.

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

None that are not addressed in previous or subsequent answers.

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

As I have mentioned above, I believe it is invidious that the test for whether a candidate is a woman is simple self-identification. This could lead to men being elected simply because they have self-identified as women. This would be self-defeating and, as I've said, somewhat contradictory of the general principle of the Bill. I also believe it would open the Senedd to the risk of having the legislation struck down by the Supreme Court

While it would not remove my concern in principle about men taking women's places, I think the legal risks might be somewhat mitigated if the Bill was based on a requirement to prove their sex through production of a birth certificate. This would still allow men with a gender recognition certificate to provide a birth certificate allowing them to stand for election as women. However, it would limit the numbers and reduce possible abuse of the system.

Anything else?

No.