

SCECLB8 - P Equality and Human Rights Commission

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 Comisiwn Cydraddoldeb a Hawliau Dynol | Evidence from Equality and Human Rights Commission

Reform Bill Committee

Via email only

SeneddReform@senedd.wales

Monday 08 April 2024

Dear Reform Bill Committee,

Subject: Senedd Cymru (Electoral Candidate Lists) Bill Consultation

The Equality and Human Rights Commission (the Commission) has been given powers by Parliament to advise Governments on the equality and human rights implications of laws and proposed laws and to publish information or provide advice, including to the Senedd, (the Welsh Parliament), on any matter related to equality, diversity and human rights. We enforce the Equality Act 2010 (the Act) and have unique powers to investigate when the law isn't followed.

We welcome the opportunity to respond to the Committee's consultation on the Senedd Cymru (Electoral Candidate Lists) Bill (the Bill). Given the tight timescale of the consultation period, we are unable to respond in full and we would be keen to engage with the Committee/s as the Bill progresses.

Bydd y Comisiwn yn croesawu gohebiaeth yn y Gymraeg a'r Saesneg.

The Commission welcomes correspondence in Welsh or English.

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Tabled by the Welsh Government, following the Special Purpose Committee on Senedd Reform's recommendations, The Senedd Cymru (Electoral Candidate Lists) Bill's Explanatory Memorandum clarified that "The Bill will introduce integrated statutory gender quotas" and "the Bill aims to ensure the Senedd is broadly representative of the gender make-up of the population".

We would draw the Committees attention to [s104 – Selection of Candidates](#) of the Act. This allows a political party to tackle a lack of diversity among its elected representatives by putting in place selection processes that will help to address the under-representation of people who share a protected characteristic as set out in the Act.¹

We previously engaged with the Special Purpose Committee on Senedd Reform and provided written and oral evidence in early 2022. We clarified that in relation to addressing the under-representation of women, the relevant protected characteristic in the Act is [sex](#), not gender. As defined in s11 of the Act:

¹ The 9 protected characteristics are: sex, gender reassignment, race, sexual orientation, religion or belief, disability, age, marriage or civil partnership, and pregnancy or maternity.

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In relation to the protected characteristic of sex—

- (a) a reference to a person who has a particular protected characteristic is a reference to a man or to a woman

The protected characteristic of ‘sex’ refers to a person’s legal sex, as stated on their birth certificate or as acquired through obtaining a Gender Recognition Certificate. Further to our evidence, the Scottish Court of Session Inner House gave judgment in a case² which determined that ‘sex’, for the purposes of the Act, is not determined by ‘self-identification’. Whilst it is to be noted that Scottish judgments are not binding on courts in England and Wales and that the judgment is currently under appeal to the Supreme Court, we consider it the leading authority on the point.

The Explanatory Memorandum mentions the term “sex” once and this is to reference the protected characteristic as set out above. Gender is otherwise the term used throughout. Whilst the Bill itself refers to “women,” which is consistent with the terminology of the Act, the repeated use of “gender” throughout the

²[2023_CSIH_37.pdf \(bailii.org\)](#)

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Explanatory Memorandum may give rise to confusion about how this is defined and may lead to inconsistency with the principles of the Act.

In particular, we are concerned that the Bill appears to base eligibility for inclusion on the quota list, on candidates' declarations of whether or not they are a woman, and this in conjunction with the term 'gender' may be insufficiently clear. In short, it may lead to the inclusion of quotas based on a person's self-identified gender as opposed to their legal sex, and may therefore be inconsistent with the Act.

We were encouraged that an Equality Impact Assessment accompanied the Bill. However, there is a lack of detail as to why gender was used as a term rather than sex, and a lack of analysis of the potential impacts of this. It is unclear how the proposed "gender statements" would work in practice. If they mean self-identified gender, this is unlikely to be lawful as not all those who self-identify as women will be considered to legally be so under the Act. If "gender statements" refer to a statement of one's legal sex this should be made clear.

The provisions in this proposed legislation that concern us as the Regulator of the Act may have arisen from a lack of understanding of the Act. We strongly

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recommend that the Reform Bill Committee engages with the Commission so that we may assist in clarifying how the Act applies in the context of this Bill.

Yours sincerely,

John Kirkpatrick

Interim Chief Executive

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