

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 Meryl Kenny, Athro Rhywedd a Gwleidyddiaeth, Prifysgol Caeredin | Evidence from Meryl Kenny, Professor of Gender and Politics, University of Edinburgh

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)?

With this Bill, Wales would join a rapidly growing number of countries around the world who have adopted legal quotas, including as part of wider processes of electoral reform. Gender equality is essential for democratic legitimacy – research demonstrates that citizens (both men and women) strongly prefer gender-balanced decision-making bodies, which they see to be more fair, trustworthy, and legitimate [1]. These effects remain even when equal representation has been achieved through legal rule changes [2]. In seeking to redress these inequalities, action on women's representation worldwide has moved increasingly from an 'incremental track' to a 'fast track', where significant increases in women's representation have been brought about by the introduction of legal gender quotas, rather than relying on the voluntary efforts of individual parties [3].

International research provides an extensive evidence base with regards to the positive impact of quota measures on women's representation and political institutions; and suggests that quota effectiveness also increases over time, as measures become accepted, and as policy makers refine and strengthen quota rules [4, 5]. While the relationship between women's numerical representation and outcomes is complex, evidence from the UK (including the devolved parliaments) and comparatively suggests that gains in the political presence of women and other under-represented groups can make a difference to public and political attitudes, policy priorities and ways of working [6, 7, 8]. While arguments against gender quotas frequently claim that they dilute 'merit', there is very little research evidence (either in the UK or comparatively) to suggest that this is the case. Studies, for example, find that quotas can improve candidate quality and experience [9]; that

voters do not penalise 'quota women' at the ballot box [10]; and that 'quota women' have equally successful career trajectories to men once they are in office [11].

The proposed Bill's candidate threshold of at least 50% is both substantively and symbolically important – given that women are over 50% of the population. The comparative evidence generally finds that quotas with higher candidate thresholds result in higher levels of women's representation [4]. While the Senedd Cymru has a strong track record on women's representation, women are still currently under-represented amongst candidates and members. Levels of women's representation in Wales also differ significantly across parties and have fluctuated over time, with headline figures largely the result of voluntary party quotas used by (some) Welsh parties [12]. These patterns reinforce the need for legislation – voluntary quotas apply only to those parties that choose to implement them, meaning that overall numbers may stagnate or even reverse over time depending on party representation and commitment. Legal quotas, in contrast, would apply to all parties – ensuring that equal representation is the responsibility of all. Evidence-based calls for legal quotas have been made across the UK and beyond – including, for example, through the Scottish Women 5050 campaign and the House of Commons Speaker's Conference on Parliamentary Representation.

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

For quota laws to deliver their desired impact, they cannot just be 'on the books', they also need to be effectively implemented. It is increasingly the global norm for quota laws to include not only threshold requirements, but also placement mandates and sanctions for non-compliance. Research evidence finds that quota rules matter – and that the implementation of placement mandates and sanctions (alongside higher candidate thresholds) increases the effectiveness of quotas in delivering gains in women's representation [4]. In including both vertical and horizontal placement mandates and oversight of compliance with these rules at constituency and national level – the Bill is broadly in line with international best practice and is more likely to deliver on its intended aims.

Not all sanctions are equally effective – and 'fit' with electoral rules and the wider context of party regulation and finance is important to consider. The strongest form of sanctions usually require electoral commissions (or other bodies) to reject candidate lists that do not comply with quota laws; weaker sanctions include monetary fines, or limiting access to state funding [13]. The Bill's incorporation of sanctions in the form of the invalidation (or re-ordering) of nomination papers that do not comply with vertical or horizontal placement rules fits within this stronger category, and these are, in turn, more likely to be effective at ensuring compliance. Financial penalties related to funding are unlikely to work in this context, compared to other countries such as

the Republic of Ireland, where state funding is more central; and fines are often ineffective, particularly in the case of bigger and better resourced parties (e.g. as seen in France) [14].

As the accompanying rationale for enforcing horizontal placement criteria recognises, there is still the possibility that a particular party could fulfil both the vertical and horizontal placement rules and still not deliver equal (or close to) representation. This may particularly be the case for small parties. In Scotland, for example, in the 2016 Scottish Parliament elections, the Scottish Greens zipped their regional list candidates – alternating men and women – and paired its lists, ensuring that 50% of them were topped by women. In the end, however, only 1 of 6 Green MSPs elected were women (17%) – highlighting the interplay between horizontal placement rules and district and party magnitude. In 2021, Scottish Green women topped every regional list not being contested by an incumbent (five out of eight lists) and were placed second in six regions – with five women ultimately elected (63% of the parliamentary party) [15]. While horizontal ‘winnability’ cannot be easily tackled through legislation, political parties might be encouraged to consider this as part of their decision-making. The Bill’s 50% minimum threshold and vertical placement criteria (versus a mandatory and symmetric zipping system) allows for flexibility in this regard, with the decision ultimately in the hands of parties as to whether to zip the list, or place multiple women candidates in succession on particular lists.

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?

Are any unintended consequences likely to arise from the Bill?

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

The costs and/or savings for political parties (Regulatory Impact Assessment, paras 170-172) are seen to be contextual, relating to how they organise and select candidates, and whether or not they have experience of implementing voluntary party quotas. The introduction of other recommendations in the Special Purpose Committee report – for example around transparently publishing data on the diversity of Senedd candidates, and encouraging parties to publish Diversity and Inclusion Strategies – might on the one hand add to initial and short-term ‘costs’ for parties, but would ultimately facilitate implementation and monitoring of quotas over the long haul.

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?

Do you have any views on matters relating to the legislative competence of the Senedd including 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?

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

If changes to the size of the Senedd (and its electoral system) are not accompanied by quotas (or reforms are not introduced at the same time), there is a potential risk that levels of women's representation may fall in upcoming elections – given wider candidate trends. Expansion without quotas may also reinforce incumbency effects, and further entrench party asymmetries on women's representation, which may in turn inhibit future efforts at diversifying the Senedd.

While the Bill focuses on women as an 'under-represented majority', I would support the Committee on Senedd Electoral Reform's recommendation to further explore the possibility of introducing 'diversity quotas' with regards to other protected characteristics, building on research expertise and working in partnership with under-represented groups and relevant organisations. This could include exploring the design and potential implementation of intersectional quotas – for example 'tandem' quotas targeted at different groups (but largely operating independently) or 'nested' quotas where a proportion of seats go to a targeted sub-group of members (e.g. women of colour) [16, 17].

Anything else?

This submission draws on the following research:

[1] Clayton, A., O'Brien, D. and J.M. Piscopo. 2019. All Male Panels? Representation and Democratic Legitimacy. *American Journal of Political Science*. 63 (1): 113-29.

[2] Clayton, A., O'Brien, D. and J.M. Piscopo. Working Paper. Electoral Quotas and Democratic Legitimacy. Working Paper presented at the American Political Science

Association. Available at: https://www.jenniferpiscopo.com/wp-content/uploads/2023/11/COP_QUOTAS_forcirculation_corrected.pdf.

- [3] Dahlerup, D. and Freidenvall, L. 2005. Quotas as a 'fast track' to equal representation for women: Why Scandinavia is no longer the model. *International Feminist Journal of Politics*. 7(1): 26–48.
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- [7] Mackay, F. 2010. Gendering constitutional change and policy outcomes: substantive representation and domestic violence policy in Scotland. *Policy & Politics* 38 (3): 369-88.
- [8] Clayton, A. 2021. How Do Electoral Gender Quotas Affect Policy? *Annual Review of Political Science* 24: 235-52.
- [9] Besley, T., Folke, O., Persson, T. and Rickne, J. 2017. Gender Quotas and the Crisis of the Mediocre Man: Theory and Evidence from Sweden. *American Economic Review*. 107 (8): 2204-42.
- [10] Cutts, D., Childs, S., and Fieldhouse, E. 2008 "This is What Happens When You Don't Listen": All-Women Shortlists at the 2005 General Election. *Party Politics* 15 (5): 575-595.
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- [12] Stirbu, D., Lerner, J. and McAllister, L. 2018. Gender Representation in Wales: New Approaches to Candidate Selection in UK's Devolved Legislatures and Beyond. In Cordero, G. and X. Coller (eds). *Democratizing Candidate Selection: New Methods, Old Receipts?* Basingstoke: Palgrave Macmillan.
- [13] Hughes, M. M., Paxton, P., Clayton, A. B., & Zetterberg, P. 2019. Global Gender Quota Adoption, Implementation, and Reform. *Comparative Politics* 51(2): 219–238.
- [14] Murray, R. 2010. *Parties, Gender Quotas and Candidate Selection in France*. Basingstoke: Palgrave.

[15] Belknap, E. and Kenny, M. 2023. 'The first, but not the last': women's descriptive and substantive representation in the 2021 Scottish Parliament election. *British Politics*. Advance access: <https://doi.org/10.1057/s41293-023-00246-x>

[16] Hughes, Melanie, M. 2018. The Combination of Gender and Ethnic Quotas in Electoral Politics. In R. Rubio-Marin and W. Kymlicka (eds) *Gender Parity and Multicultural Feminism*. Oxford: Oxford University Press.

[17] Hughes, Melanie, M. 2011. Intersectionality, Quotas, and Minority Women's Representation Worldwide. *The American Political Science Review*. 105 (3): 604-20.