

SCECLB19- P Labour Women's Declaration (LWD) Cymru

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 Datganiad Merched Llafur (DMLI) Cymru | Evidence from Labour Women's Declaration (LWD) Cymru

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 Labour Women's Declaration is the work of a movement started in autumn 2019 to raise the profile of women's sex-based rights within the Labour Party and wider socialist movement. The Declaration states:

1. Women and girls are subject to discrimination and oppression on the basis of their sex.
2. Women have the right to freedom of belief, freedom of expression and freedom of assembly (Articles 18, 19 and 20 of the UN Declaration of Human Rights).
3. Women have the right to discuss policies which affect them, without being abused, harassed or intimidated.
4. Women have the right to maintain their sex-based protections, as set out in the Equality Act 2010. These include female-only spaces such as changing rooms, hospital wards, sanitary and sleeping accommodation, refuges, hostels and prisons.
5. Women have the right to participate in single-sex sports, to ensure fairness and safety at all levels of competition.
6. Women have the right to organise themselves, as a sex, across a range of cultural, leisure, educational and political activities.
7. We condemn all attempts to undermine or limit the rights of women to self-organise and call on the Labour Party and the trades union movement to actively support these essential freedoms.

LWD Cymru has over 100 women supporters across Wales who campaign within the Labour Party in support of women's sex-based rights.

We support the policy objective of making the Senedd a more effective legislature by ensuring that it is broadly representative of the sex make-up of the population, that is to achieve equal representation of women in the Senedd.

We do not support the policy objective of making the Senedd representative of the "gender" make-up of the population: we do not think that such a thing is possible, for the reasons set out below.

For us, sex and gender are not synonyms. Sex has a specific meaning in both English language and in UK law: it refers to biological difference and the fact that, in humans, whether an individual is male or female is determined at conception and is immutable (reference: Clinical Advisory Network - Sex and Gender (CAN-CG): <https://can-sg.org/frequently-asked-questions/can-humans-change-sex/>)

Gender, on the other hand, is infinitely mutable, between individuals, for individuals, over time and across cultures (reference: Stonewall: <https://www.stonewall.org.uk/list-lgbtq-terms>)

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

In the UK, our sex is noted at birth and is registered on our birth certificate.

It is possible for individuals to apply for a Gender Recognition Certificate which allows them to be recognised as being of the gender opposite to their sex for some purposes. Specifically, until 2014 when same-sex marriage was legalised in the UK, it was not possible to same-sex couples to marry without one of them having a GRC.

However, it is not possible to change sex. For many purposes, particularly in relation to healthcare and for determining someone's entitlement to use services and spaces designated as being either for men (and boys) or for women (and girls) , it is crucial that individuals know which sex they are and accept that sex and gender are different things.

If candidates standing for election are asked to make a declaration regarding their sex, it is reasonable to require that the declaration be truthful and that an untruthful declaration is fraudulent.

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?

As drafted, the Bill risks perpetuating the existing confusion in public life in Wales between sex and gender.

We support Welsh Government in adopting the aim of the United Nations, contained in successive UN Conventions and Conferences, that of achieving "Gender Equality" for women. However, we believe that implementation of this policy in Wales has happened without due consideration of the fact that the language used by the United Nations does not always reflect the language of the law in the UK and, specifically, it clashes with the terms of the Equality Act 2010.

In our view, it would be helpful to use scrutiny of this Bill as an opportunity to reflect on the unintended consequences that have already arisen in Wales through adopting the language of the United Nations, without due consideration. This Bill presents the Senedd with an opportunity to bring Welsh Government into compliance with the Equality Act 2010, to benefit of all.

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

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?

We are concerned that the confusion between "sex" and "gender", which is evident in the Explanatory Memorandum and in the Integrated Impact Assessment means that the proposed Bill is not compliant with the Equality Act 2010.

There are a number of places where the use of the word "gender" rather than "sex" makes the meaning of the sentence unclear, nonsensical or simply wrong.

To take two examples, for instance, Paragraph 94 of the Explanatory Memorandum states: "While parties will be required to ensure that at least 50% of their candidates are women, the remaining candidates can be any gender, including women, in any proportion." The purpose of the Bill is to achieve equal representation between men and women, so even if the word "gender" is deemed acceptable in this context - which we would argue it is not - this should read "either gender", not "any gender".

Another example lies in Paragraph 225 of the Explanatory Memorandum, which states: "Political parties will need to know the stated gender of their candidates so that they can ensure that their party lists comply with the quota rules." There is no need whatsoever for political parties to know whether their candidates have a gender identity, or what it is: they only need to know the candidate's sex, information which

is routinely requested in public life and which is recorded on personal documents such as birth certificates, NHS cards, passports and driving licences.

We believe that this failure to use language accurately means that that Bill, as currently drafted, lies outwith the legislative competence of the Senedd.

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?

We are concerned that because the terms "sex" and "gender" are used as if they are synonyms, when they are not, that this Bill will lead to men who identify as women being allowed to take places intended to be reserved for women.

This would mean that the Bill would not achieve its purpose of ensuring equal representation of the sexes, and equality of representation for women, in the Senedd.

Anything else?

We are concerned that persisting in trying to enact poorly drafted legislation will bring the Senedd into disrepute.

Further, unless the Bill is re-drafted so as to ensure that the term "sex", not gender, is used to differentiate between men and women we think there is a real risk of a challenge being made in the courts, which would incur both reputational risk and financial costs for Welsh Government.

We note what has happened in Scotland over attempts to introduce legislation containing similarly flawed use of language: we do not want the same to happen in Wales.

We thank the Committee for giving LWD Cymru the opportunity to put our views.