

SCECLB22-P Merched 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 Merched Cymru | Evidence from Merched 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)?

We consider gender quotas to be a blunt instrument that does little to address the structural inequalities that prevent women from being fully represented in politics. It is our view that gender quotas will help smooth the path for women who are already politically engaged and active within their parties and who would likely face few barriers to selection as candidates. We cannot see how it will support women from minoritised and/or disadvantaged backgrounds who are under-represented in politics and whose voices seldom heard. We note that Nordic nations, which have the longest history of broadly equal political representation in terms of sex, have not imposed statutory quotas. These countries are widely recognised as more egalitarian in general, with high levels of social, welfare and economic equality between the sexes. Women's political advancement will be achieved by reducing the significant social and economic inequalities we face as a class resulting from factors including pregnancy and maternity, and the overwhelming share of caring responsibilities for children and elderly or disabled family members.

Legislation that gives a leg-up to a class of women who already have significant social and political capital might help to increase the number of women Members of the Senedd, but it will not do much to improve representation within that cohort of women. Despite the lack of successful action to address the barriers women face, we note that the Senedd has historically achieved a fairly good balance between male and female representatives. We question, therefore, the drive to impose a statutory duty when political parties already have discretion to take action to improve the representation of women candidates.

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

It is our view that the system of enforcement is essentially meaningless when there is no definition of what is meant by 'a woman' and 'not a woman'

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?

The main barrier to implementing the Bill's provisions is that it is outside the Senedd's legislative competence.

Are any unintended consequences likely to arise from the Bill?

We would refer you to our responses to questions 6, 7, 8 and 9 below for our key concerns. Likely consequences (it is unclear whether some are intended or not) include:

- Conflation of protected characteristics under the Equality Act 2010 resulting in practices which are in conflict with the provisions and spirit of that legislation.
- The technical possibility that the ratio of male to female Members of the Senedd will change to favour male candidates unless there is a clear biologically based definition of 'woman' on the face of the Bill.
- Potential for legal challenges from a number of quarters, including from male Senedd election candidates who fail to be selected or elected. Due to the issues around competence the status of the proposed legislation, even if passed by the Senedd, would be as Professor Emyr Lewis of Aberystwyth University has described it "a permanent nothing". The validity of any elections held under its rules would be questionable.
- The introduction of a de facto system of self-certified sex or gender recognition in limited circumstances in Wales, with no consideration of the impact. This is implied by the content of the Integrated Impact Assessment and the Explanatory Memorandum.
- A reduced focus on initiatives, policies and working practices that make elected office attractive and compatible with women's lives (such as job sharing and funded maternity cover), and those which help increase women and girls' ability and capacity to participate in civil society.

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?

It is our view that too much is being left to subordinate legislation. We note the concern raised by the Justice, Legislation and Constitutional Committee in its annual report about the high volume of errors in subordinate legislation drafted by Welsh Government. The Committee's report highlighted a range of issues, including inconsistencies within texts, unclear definitions, and incorrect references. This does not give us confidence in the quality and clarity of subordinate legislation in relation to this Bill. We see these faults reflected in the Bill and the Explanatory Memorandum, neither of which define the key terms of 'gender' or 'woman'. Further, there is no indication in the Explanatory Memorandum of how the proposed 'gender statement' would be phrased and what definitions would be used for 'a woman' and 'not a woman'.

A leaked draft of a previous version of the Bill, which was withdrawn at the last minute in December 2023, included the explicit proposal to allow candidates to self-identify as women in order to stand on party electoral lists. While this proposal is not in the current Bill, the accompanying impact assessments strongly suggest that self-identification is still envisaged and will be accepted through the 'gender statement' provided by candidates. The need for clarity on this is essential as Returning Officers will be obliged to take candidates' statements at face value, with no further investigation. They would be responsible for verifying that a minimum of 50% of candidates on each list have made a statement that they are women; not that those statements are accurate or truthful. We are concerned that the drafting of the gender statement will be used in a further attempt to redefine 'woman' via subordinate legislation so that men who identify as women can be included. This would be completely against the spirit of any legislation designed to increase the participation of women as defined by the Equality Act 2010.

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 despite the Llywydd making clear her view that the Senedd does not have the legislative competence to enact this Bill, the Welsh Government appears determined to pursue this legislation. This is a waste of civil servants' time and taxpayers' money and will have a significant negative impact on the reputations of the Senedd and Welsh Government.

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

The most fundamental issue we have with this Bill is the absence of any clear definition of the terms 'gender' and 'woman'. There is only one reference to the correct protected characteristic of 'sex' in the Explanatory Memorandum, which refers otherwise entirely to 'gender'. This is a term that has no stable or consistent definition in law. While the terms 'gender' and 'sex' have in the past been used interchangeably to mean 'sex', the current public debate about conflicts of rights between people with the protected characteristics of sex and gender reassignment means that clarity about who is counted as a woman for the purposes of this Bill is vital. An earlier version of the Bill that was leaked in late 2023 explicitly proposed that the category of women would include transwomen -ie men who identify as women.

It is not within the Senedd's competence to redefine the category of 'women' to include men. This had been demonstrated by the judgment in the judicial review brought by For Women Scotland of the Scottish Government's Gender Representation on Public Boards Act (Scotland), of which the Welsh Government would have been aware. It is our view that the lack of clear definition of terms is deliberate in order to leave a loophole by which the Welsh Government can attempt to introduce a form of self-ID in Wales via subordinate legislation. A Cabinet statement in June 2019 and repeated statements since Ministers make it clear that the Welsh Government holds to the highly ideological position that 'transwomen are women'. The Welsh Government has also made clear its intention to explore all options for enabling self-ID in Wales. In light of this, we feel it is reasonable to have serious concerns about the motivations of the Welsh Government in failing to define its terms when drafting this Bill and Explanatory Memorandum

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

The lack of definitions in the Bill and Explanatory Memorandum can only result in poor legislation that is open to challenge or quashing at a UK Government level, with the accompanying reputational damage to the Welsh Government and the Senedd. No convincing case for imposing gender quotas has been made and there is little attention to addressing the structural barriers that women face in becoming involved in politics. Coupled with the controversial closed list system, which was rejected by the Expert Panel on Assembly Electoral Reform, and the use of the d'Hondt method of voting as opposed to the Expert Panel's preferred Single Transferable Vote system, the Bill will reduce public confidence in the transparency and fairness of the political system in Wales. Despite the careful and considered review carried out by

the Expert Panel, it is our view that the Welsh Government has opted for the worst of all options for reasons that it does not make clear.

Anything else?