

Agenda – Reform Bill Committee

Meeting Venue:

Committee Room 1, Senedd

Meeting date: Wednesday, 24 April
2024

Meeting time: 09.15

For further information contact:

Helen Finlayson

Committee Clerk

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Hybrid

1 Introductions, apologies, substitutions, and declarations of interest

(09.15)

2 Papers to note

(09.15)

2.1 Letter to the Independent Remuneration Board of the Senedd regarding the Senedd Cymru (Electoral Candidate Lists) Bill – 22 March 2024

(Pages 1 – 2)

2.2 Letter from the Independent Remuneration Board of the Senedd regarding the Senedd Cymru (Electoral Candidate Lists) Bill – 12 April 2024

(Pages 3 – 8)

2.3 Letter from the First Minister to the Llywydd in relation to Members in Charge of Welsh Government Bills – 5 April 2024

(Page 9)

2.4 Response from the Standards of Conduct Committee regarding the Stage 1 Report on the Senedd Cymru (Members and Elections) Bill – 17 April 2024

(Page 10)

2.5 Letter from the Llywydd regarding the Senedd Cymru (Electoral Candidate Lists) Bill – 15 April 2024

(Pages 11 – 16)



3 Senedd Cymru (Electoral Candidate Lists) Bill: Evidence session with Diverse 5050

(09.15–10.15)

(Pages 17 – 93)

Victoria Vasey, Women's Equality Network Wales

Jessica Blair, Electoral Reform Society Cymru

Uzo Iwobi, Race Council Cymru

Selima Bahadur, Ethnic Minorities and Youth Support Team Wales

Supporting documents

Paper 1 Written evidence: Diverse 5050

Paper 2 Written evidence: Electoral Reform Society Cymru

Research brief

Paper 3 Legal advice note

Break (10.15–10.25)

4 Senedd Cymru (Electoral Candidate Lists) Bill: Evidence session with the Women's Rights Network

(10.25–11.20)

(Pages 94 – 121)

Catherine Larkman, Women's Rights Network coordinator in Wales

Claire Loneragan, Women's Rights Network Director

Heather Binning, Women's Rights Network Founder and Director

Supporting documents

Paper 4 Written evidence: Women's Rights Network

Research brief

Break (11.20–11.30)

5 Senedd Cymru (Electoral Candidate Lists) Bill: Evidence session with the Senedd Women's Caucus

(11.30–12.15)

(Pages 122 – 141)

Joyce Watson MS, Chair, Senedd Women's Caucus

Janet Finch–Saunders MS

Sioned Williams MS

Rhianon Passmore MS

Supporting documents

Paper 5 Written evidence: Joyce Watson MS, Chair, Senedd Women's Caucus

Research brief

6 Motion under Standing Order 17.42(ix) to resolve to exclude the public for the remainder of the meeting, and for item 1 at the meeting on 1 May 2024

(12.15)

7 Senedd Cymru (Electoral Candidate Lists) Bill: Consideration of evidence

(12.15–12.30)

Dr Elizabeth Haywood
Chair, Independent Remuneration Board of the
Senedd

22 March 2024

Dear Elizabeth

Senedd Cymru (Electoral Candidate Lists) Bill: written evidence

The Senedd Cymru (Electoral Candidate Lists) Bill ('the SC(ECL) Bill') has been referred to the Reform Bill Committee for Stage 1 scrutiny of its general principles. We are writing to seek written evidence from the Independent Remuneration Board to inform our work. In particular, we would welcome further information in relation to the questions set out below.

In asking these questions, we recognise that there are interdependencies between the design and cost of the SC(ECL) Bill and the Senedd Cymru (Members and Elections) Bill as a package of reforms. However, our role is to scrutinise each Bill and associated Explanatory Memorandum and Regulatory Impact Assessment on their own merits, especially as the commencement provisions in the SC(ECL) Bill do not specify at which Senedd general election the Bill's provisions will come in to force.

1. We note that the Welsh Government's Regulatory Impact Assessment accompanying the SC(ECL) Bill identifies no additional costs to the Senedd Commission (including in respect of Members' pay and allowances). What involvement has the Independent Remuneration Board had in the development of the Regulatory Impact Assessment? Can you confirm that there are no anticipated quantifiable or unquantifiable costs or savings in respect of Members' pay and allowances associated with the SC(ECL) Bill?
2. When you appeared before the Committee on 30 November 2023, you indicated that the Board would shortly be discussing its thematic review of Members' pay and personal support. Given the increase in the number and proportion of women elected to the Senedd the SC(ECL) Bill aims to achieve, what assessment has the Board made of the level and effectiveness of the current financial allowance and support package for Members with childcare or caring responsibilities?

3. What consideration has been given to the way in which any levers within the remit of the Board might be used to address barriers arising from the Senedd's ways of working that might otherwise inhibit women and under-represented groups from standing for election or constrain the length of their tenure?

4. How does the Board intend to engage with Members and stakeholders on potential changes to the Determination for the Seventh Senedd aimed at supporting women and under-represented groups?

It would be helpful if you could respond by 12 April 2024. This letter is being copied to the Finance Committee and the Legislation, Justice and Constitution Committee, and the First Minister.

Yours sincerely



David Rees MS
Chair, Reform Bill Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg. We welcome correspondence in Welsh or English.

**Bwrdd Taliadau Annibynnol
y Senedd**

**Independent Remuneration Board
of the Senedd**

David Rees MS
Chair
Reform Bill Committee

12 April 2024

Senedd Cymru (Electoral Candidate Lists) Bill: written evidence

Dear David,

Thank you for your letter dated 22 March and the opportunity to contribute to the Reform Bill Committee's scrutiny of the Senedd Cymru (Electoral Candidate Lists) Bill.

Your letter details several questions relating to the Board's involvement in the preparations of this Bill as well as whether and how the Board might consider the implications of the Bill on matters within the remit of the Board.

I have detailed my answers to these questions in an annex to this letter.

Yours sincerely,



**Dr Elizabeth Haywood,
Chair, Independent Remuneration Board of the Senedd**

Croesewir gohebiaeth yn Gymraeg neu Saesneg. | We welcome correspondence in Welsh or English.

Agenda Item 2.2

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Annex A: Remuneration Board Response to Reform Bill Committee Questions

Reform Bill Committee: Senedd Cymru (Elected Candidate Lists) Bill

April 2024

1. **We note that the Welsh Government's Regulatory Impact Assessment accompanying the SC(ECL) Bill identifies no additional costs to the Senedd Commission (including in respect of Members' pay and allowances). What involvement has the Independent Remuneration Board had in the development of the Regulatory Impact Assessment? Can you confirm that there are no anticipated quantifiable or unquantifiable costs or savings in respect of Members' pay and allowances associated with the SC(ECL) Bill?**
 - 1.1. The Board has not had any involvement with the development of the Welsh Government's Regulatory Impact Assessment (RIA), but given the purpose of the Bill and the minimal impact its provisions would have on the Determination, this is to be expected.
 - 1.2. Based on the published Bill, Explanatory Memorandum and RIA for this Bill, the Board does not anticipate any significant quantifiable or unquantifiable costs or savings in respect of Members' pay and allowances associated with the Bill. The Determination related costs of an increase in size of the Senedd have already been reflected in the RIA for the Senedd Cymru (Members and Elections) Bill, and are based on an uprating of the existing provisions in the Determination.
 - 1.3. A range of Additional Support for Members is currently provided for in the Determination, including (3A.3) support for Members with childcare and other caring responsibilities and (3A.4) support for Members on parental leave. The Determination (4.4.3h) also includes provision for additional accommodation costs for those Members who have a caring responsibility for a dependent normally resident with them in the Cardiff area. Chapter 3A is designed to be responsive to changing needs and costs claimed under this chapter can change during the course of a Senedd term, or a financial year, as is appropriate to meet the changing circumstances or needs of Members.

2. **When you appeared before the Committee on 30 November 2023, you indicated that the Board would shortly be discussing its thematic review of Members' pay and personal support. Given the increase in the number and proportion of women elected to the Senedd the SC(ECL) Bill aims to achieve, what assessment has the Board made of the level and effectiveness of the current financial allowance and support package for Members with childcare or caring responsibilities?**

- 2.1. The Terms of Reference for the Board's thematic review on Members' pay and personal support were consulted on during December 2023 and January 2024 and are included at Annex B for information. This work is commencing in Quarter 1 of 2024-25. Any proposals resulting from this review will be consulted on ahead of the publication of the Determination for the Seventh Senedd.
- 2.2. The Review will consider Members' Pay and personal support, including the existing provisions set out in Chapter 3A of the Determination, which includes support for disabled Members, support with caring responsibilities and support for Members on parental leave. Additionally, there are provisions for Members with caring responsibilities in Chapter 4, relating to residential accommodation expenditure (4.4.4 h), which will also be reviewed.
- 2.3. The review will consider relevant data to understand use of these provisions, review these measures in line with best practice, review recent literature on family friendly and inclusive parliaments and carry out engagement with Members to better understand what is working well and whether there are any barriers or challenges the Board should seek to address for the Seventh Senedd.
- 2.4. Equality, diversity and inclusion (EDI) is also a consideration across all of the Board's thematic reviews to ensure that the Determination not only impacts fairly and equitably on Members but also does what it can to advance equality.

3. What consideration has been given to the way in which any levers within the remit of the Board might be used to address barriers arising from the Senedd's ways of working that might otherwise inhibit women and under-represented groups from standing for election or constrain the length of their tenure?

- 3.1. As outlined above, EDI is a consideration across all of the Board's thematic reviews as well its day-to-day work.
- 3.2. We have also noted above how the particular thematic review relating to Members' personal support will be undertaken, which includes provisions to support disabled Members and those with caring responsibilities.
- 3.3. The Board is mindful of how changing ways of working and a hybrid Senedd may change the needs of Members and their staff, and how this may interact with issues of EDI. Several of these matters will relate to procedural arrangements or the parliamentary estate or facilities, which will be considered by the Business Committee and the Senedd Commission respectively. These considerations will inform the Ways of Working review that is being led by Sir David Hanson, which considers how Members might engage and work within and from their constituencies.
- 3.4. Job sharing has previously been explored by Committees and the Expert Panel as an issue which might help reduce barriers to participation. The Board notes that the Reform Bill Committee in its Stage 1 report recommended that the Business Committee should consider proposing the establishment of a new committee in this Senedd to explore issues relating to job sharing and temporary holding of an office, or asking an existing Senedd Committee with a relevant remit to undertake the work. The Board has not considered job sharing to date and would consider the implications on Members' salaries or senior additional office holder

salaries following any legislation or any Senedd decision to bring forward the introduction of job sharing.

- 3.5. A further lever that the Board will be considering as it makes decisions for the Seventh Senedd is the level of flexibility that can be provided to Members under the Determination. The Board recognises that the Determination needs to provide adequate flexibility for Members to respond to their own differing or evolving needs.

4. How does the Board intend to engage with Members and stakeholders on potential changes to the Determination for the Seventh Senedd aimed at supporting women and under-represented groups?

- 4.1. The Board will consult on proposals for the Seventh Senedd, as it is required to do by the National Assembly for Wales (Remuneration) Measure 2010. It will also continue to engage with Members and support staff through representative groups and Member drop-ins. Consultation and engagement will also be undertaken at different times as thematic reviews progress. The Board will encourage Members to use these opportunities to feed in views and evidence on what works and what could be done differently, particularly in the context of Senedd reform.
- 4.2. The Board will also consult wider stakeholders, particularly those with expertise in the EDI field, so will be taking steps to encourage people and organisations to feed into consultations on policy proposals and the draft Determination for the Seventh Senedd.

Annex B:

Remuneration Board

Thematic Review

Members' Remuneration and Personal Support Terms of Reference

March 2024

Purpose

1. This document sets out the terms of reference for the Member's Remuneration and Personal Support Thematic Review.

Objectives

2. The review will seek to ensure the Determination for the Seventh Senedd reflects the statutory objectives of:
 - providing Members of the Senedd with a level of remuneration
 - which fairly reflects the complexity and importance of the functions which they are expected to discharge, and
 - does not, on financial grounds, deter persons with the necessary commitment and ability from seeking election to the Senedd,
 - and providing Members of the Senedd with resources which are adequate to enable them to exercise their functions as Members of the Senedd

Principles

3. All work undertaken by the Independent Remuneration Board is underpinned by a set of principles:
 - Financial support and remuneration for Members should support the strategic purpose of the Senedd and facilitate the work of its Members

- Decisions must be appropriate within the context of Welsh earnings and the wider financial circumstances of Wales
- The system of financial support for Members must be robust, clear, transparent, sustainable, inclusive and represent value for money for the taxpayer

Terms of Reference

4. The review will consider Members' salaries, additional office holder salaries, personal support, Members' travel and Residential Accommodation Expenditure, support to Members who leave office. Travel and Residential Accommodation Expenditure, although not pay or remuneration, is included within this review as it helps balance Members' personal and caring commitments, where applicable, whilst enabling and supporting their work-related travel and accommodation needs.
5. The review will have a particular focus on Members' personal support with a view to reducing barriers, promoting accessibility and supporting diversity and equality in the new Senedd and smoothing the transition to life after the Senedd.
6. It will also explore issues related to these areas of support such as flexibility, carbon neutrality, and safety and wellbeing of Members.
7. The review will be organised into three distinct workstreams:
 - **Workstream One:** Member's Pay and Conditions (covering provisions in Chapter 3 and 3A of the Determination on Member's Pay and Allowances)
 - **Workstream Two:** Residential Accommodation and Travel (Chapters 4 and 5 of the Determination)
 - **Workstream Three:** Member's Leaving Office (Chapter 9 of the Determination)
8. In conducting the review, the Board will:
 - Consider any changes to Members' roles and responsibilities in recent Senedd terms
 - Consider the implications of Senedd reform in terms of numbers of Members, their responsibilities and the range of 'additional office holders' entitled to additional salary
 - Seek views of Members on any changes required to the Determination for the Seventh Senedd
 - Seek the views of the Senedd Commission, public and stakeholders, gather comparative evidence and consider methodologies from other parliaments in the UK and internationally.

Vaughan Gething AS/MS
Prif Weinidog Cymru/First Minister of Wales

Agenda Item 2.3



Llywodraeth Cymru
Welsh Government

Elin Jones MS
Llywydd
Senedd Cymru
Cardiff Bay
CF99 1NA

5 April 2024

Member in Charge, Government Bills

I am writing to notify you of my authorisation, under Standing Order 24.4(ii), of the following members of the Government as Members in Charge of Government Bills:

- Julie James MS, Cabinet Secretary for Housing, Local Government & Planning as the Member in Charge of the Infrastructure (Wales) Bill.
- Mick Antoniw MS, Counsel General as the Member in Charge of the Senedd Cymru (Members and Elections) Bill.
- Mick Antoniw MS, Counsel General as the Member in Charge of the Elections and Elected Bodies (Wales) Bill.
- Rebecca Evans MS, Cabinet Secretary for Finance, Constitution & Cabinet Office as the Member in Charge of the Local Government Finance (Wales) Bill.
- Jane Hutt MS, Trefnydd and Chief Whip as the Member in Charge of the Senedd Cymru (Electoral Candidate Lists) Bill.

Yours sincerely,

VAUGHAN GETHING

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Agenda Item 2.4

Y Pwyllgor Safonau
Sinddygiad

Standards of Conduct Committee

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David Rees MS
Chair, Reform Bill Committee
By email

17 April 2024


Dear David,

Senedd Cymru (Members and Elections) Bill: Stage 1 report

As noted in my letter of 22 January, the Standards of Conduct Committee met on 5 February to consider the recommendation from the Reform Bill Committee.

The Committee considers this to be a very important area to help ensure confidence in the Senedd, although we noted that it is a complex matter which will require substantial consideration. The Committee has formally agreed to the recommendation and will be taking it forward as part of its inquiry into dignity and respect, which will look across the broad range of provisions within the Standards framework. The Committee will keep the Reform Bill Committee informed of progress.

Yours sincerely,



Vikki Howells MS
Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Y Gwir Anrhydeddus Elin Jones AS

Llywydd, Senedd Cymru

Right Honourable Elin Jones MS

Llywydd, Welsh Parliament

Agenda Item 2.5

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David Rees MS

Chair of the Reform Bill Committee

15 April 2024

Dear David,

Senedd Cymru (Electoral Candidates Lists) Bill

Thank you for your letter of 22 March 2024, and for the opportunity to assist the Committee in its scrutiny of the Senedd Cymru (Electoral Candidate Lists) Bill ("SC(ECL) Bill"). Please find enclosed my response to the questions raised in your letter.

As you will know, as Llywydd, I laid my statement on legislative competence in relation to the SC(ECL) Bill (as required under Standing Order 26.4) on 11 March 2024. As requested, I write to you now in my capacity as both Chair of the Senedd Commission, and Chair of the Senedd's Business Committee. The information enclosed is, therefore, provided independently of my statement on legislative competence. Equally, my enclosed response should bear no influence on the interpretation of my statement on legislative competence.

If I can be of any further assistance to the Committee in its deliberations please do not hesitate to contact me.

Yours sincerely,

The Rt. Hon. Elin Jones MS/AS

Llywydd and Chair of the Senedd Commission

Response to questions contained within the letter from the Chair of the Reform Bill Committee: 22 March 2024

Question 1: We note that the Welsh Government's Regulatory Impact Assessment for the SC(ECL) Bill identifies no costs or savings to the Senedd Commission. What involvement has the Senedd Commission had in the development of the Regulatory Impact Assessment? Can you confirm that there are no anticipated quantifiable or unquantifiable costs or savings to the Senedd Commission associated with the SC(ECL) Bill?

Response: I can confirm that the Senedd Commission has had no involvement in the development of the SC(ECL) Bill's Regulatory Impact Assessment. The Commission provided costings for the Regulatory Impact Assessment for the Senedd Cymru (Members and Elections) Bill. I understand that, given the scope of the SC(ME) Bill and information provided, the Welsh Government did not require the Senedd Commission to provide any additional information to inform the Regulatory Impact Assessment for the SC(ECL) Bill.

Question 2: What preparations is the Senedd Commission making to raise public awareness of the SC(ECL) Bill? What is the estimated cost of this activity?

Response: A high-level communications plan has been developed in anticipation of the passing of the reform legislation.

The Senedd Commission's communications campaign for Senedd Reform will set out to:

- Raise awareness of the changes to the Senedd;
- Increase understanding of the role of the Senedd and its Members; and
- Encourage participation in the Senedd election.

This will largely complement the objectives of the Senedd Commission's Communications and Engagement Strategy for the Sixth Senedd, which is in its third year and aims to reach audiences who have not previously engaged with the Senedd. This will remain the Senedd Commission's priority audience, but due to the scale of the changes, the Communications and Engagement Strategy will also incorporate techniques to reach those who are more likely to have engaged with the Senedd and establish itself as a trusted source of information.

Considering the scale of the changes and their importance, work has already begun to explore opportunities to work with partners, such as Welsh Government and Electoral Commission, to align the Senedd Commission's communications plans and ensure each institution is working together wherever possible and to avoid the duplication of efforts, confusing messaging and to provide best use of public money.

The Senedd Commission's Senedd Reform Campaign Plan is split into phases that extend from the passing of the Bill to the introduction of a new, reformed Senedd in 2026.

Phase One – Information Sharing (Summer 2024 – Spring 2025)

This phase of the campaign will concentrate efforts on ensuring people engaging with the Senedd are able to easily access clear and understandable information on the changes and how it will affect them.

This includes updates to the Senedd's website, updated information on site for visitors to the Senedd, updated education sessions and information at the Senedd Commission's summer shows.

This phase of the campaign will also be used to mark the 25th anniversary of the Senedd to highlight what is next in its journey, including exploring media opportunities and events at the Senedd hosted by the Llywydd.

Phase Two – Inspiring Participation (Spring 2025 – May 2026)

During this phase efforts will be stepped up to reach audiences who do not typically engage with the Senedd, as well as maintaining connections with those who have done so before.

This includes focusing most of the Senedd Commission's face-to-face engagement activities on Senedd Reform – including summer shows, community outreach, events and education sessions, using audience insight to align the activities with the needs of those target audiences.

The peak of this phase will come towards its end, when the Senedd Commission launches its election information campaign, early ideas for which include working with social media content creators, a digital advertising campaign, community outreach – with a focus on communities that have been less likely to engage with the Senedd previously, and a step-up of education sessions with a focus on those over 16.

The Senedd Commission will further explore partnership working with key organisations – such as the Electoral Commission - during this phase to ensure efforts are not duplicated and to maximise reach. This could include collaborating on education resources and events, and sharing information on marketing campaigns.

Phase Three – Introduction of a Reformed Senedd (May 2026 – Autumn 2026)

This phase will focus on raising awareness of the Senedd and what it can do to support people and their communities.

With the biggest change likely to be around Members and their constituencies, a key focus of this phase will be on supporting people to find their Members and what their Members can do to support them. This will be a focused effort across all channels, including digital advertising, local media, community engagement, and visits and tours.

Costings

The Regulatory Impact Assessment for the SC(ME) Bill includes the costs of raising public awareness in relation to Senedd reform legislation. No further costings have been identified for the SC(ECL) Bill.

Question 3: In light of the likely increase in the number of Members of the Senedd with caring responsibilities for children and infants, has any consideration been given to making adaptations to the Senedd estate, such as the provision of an on-site crèche facility, or increasing the provision of accessible parking, family rooms, and facilities for breastfeeding and expressing milk?

Response: In response to Senedd Reform proposals, the Ty Hywel 26 Project has been established within the Senedd Commission's Ways of Working programme. The scope of this project, noting the challenging timescales involved for delivery by early 2026, is to provide additional office space for the potential increase in Members and their support staff, whilst also accommodating Senedd Commission staff and providing sufficient space for an increased number of Welsh Government Ministers and officials. Consultation with Members on their needs are being sought through a number of ways including Cwrt drop ins, Members reference groups and workshops for both the Ty Hywel and Siambr projects. The Tŷ Hywel project will consider necessary adaptations should Members make representations to that end.

Within the Ways of Working programme, the Senedd Commission has also established the Cardiff Bay 2032 project. This work will identify and deliver the Senedd's long-term estate and accommodation needs, including consideration of a wide range of facilities needed to support the Senedd and its Members, within the funding parameters that are agreed by the Senedd. At the appropriate point in the development of the project, the Senedd Commission will undertake detailed engagement with party groups to ensure that Members' needs are fully reflected within the designs for any proposed future accommodation option.

Question 4: Has any consideration been given to the Senedd's future ways of working to address barriers that might otherwise inhibit women and under-represented groups from standing for election, such as the timetabling of Senedd business, flexible working practices and technological innovations?

Response: In relation to any barriers which may be presented by the Senedd's procedures, the Business Committee considered a paper on procedural preparedness for Senedd reform in November 2023 and agreed in principle to commence consideration of areas of procedural reform in autumn 2024.

In its current form, the reform legislation contains a number of provisions which, if passed, will necessitate changes to Senedd procedures, including amendments to Standing Orders and associated guidance.

Although the parameters of this review are currently being developed, Business Committee will need to, as a minimum:

- review Standing Orders and associated guidance in light of the Senedd Reform legislation, once passed, and
- propose changes to Standing Orders to the Senedd to ensure that there are no procedural impediments to the operation of the Seventh Senedd.

As part of the work it undertakes to scope this review, the Business Committee will consider, among other things, whether to include matters such as organising business differently and/or considering the effect of any existing or potential procedural changes on the ability of the Senedd to attract as wide and diverse a range of Members as possible.

Additionally, in May 2022 the Special Purpose Committee on Senedd Reform made a recommendation to the Business Committee that it should consider “the practical and procedural issues associated with...two Members job sharing a particular role (such as that of a Committee Chair)”, citing its potentially positive impact on the diversity of candidates standing for election as a reason to explore this area further. The matter has been added to the Business Committee’s procedural forward work programme and is scheduled for consideration in 2024.

Since then, provision relating to a review of possible job sharing (and temporary holding) of offices relating to the Senedd has been proposed in the SC(ME) Bill. In January 2024, the Reform Bill Committee recommended that the SC(ME) Bill be amended to remove the mechanism for reviewing possible job-sharing of offices relating to the Senedd, and that the Business Committee should consider proposing the establishment of a new committee in this Senedd to explore issues relating to job sharing and temporary holding of an office, or asking an existing Senedd Committee with a relevant remit to undertake the work. The Business Committee accepted this recommendation noting that it would consider the request made once there was certainty around the legislative changes (anticipated to be summer term 2024).

In the meantime, as committee chairs are non-statutory roles and therefore do not require legislative changes to enable job sharing, the Business Committee has undertaken initial consideration of proposals for committee chairs job sharing. This early work included consideration of information presented to Senedd committees and elsewhere relating to the impact of job-sharing on the accessibility and flexibility of roles, and the diversity of those who take them on. The Business Committee will return to this work in more detail during the summer term 2024.

It should be noted that the organisation of Senedd business and the timetable are normally matters for the Business Committee and Senedd to decide at the start of its term. In July 2022 the Senedd agreed a number of changes to Standing Orders that had been proposed by the Business Committee following a review of temporary Standing Order 34 and remote participation of Members in Senedd proceedings, both of which had been introduced in response to the Covid-19 pandemic. Having consulted with Members, party groups and others, the Business Committee proposed that the ability for Members to participate remotely in Plenary and committee meetings should be maintained. Following the Senedd’s agreement of changes to Standing Orders, guidance covering virtual and hybrid proceedings was

issued under Standing Order 6.17. The Business Committee has noted that this will be kept under review in light of experience during the Sixth Senedd.

In terms of technological innovations, the Senedd Commission employs a range of technologies that help to remove the barriers to participation in Senedd business, that otherwise might inhibit individuals or groups from standing for election.

Robust cybersecurity measures have allowed the Senedd Commission to deliver ICT tools that enable safe, seamless communication and collaboration from any Internet connected location. Video conferencing, instant messaging, and virtual collaboration platforms such as Microsoft Teams and Zoom facilitate real-time interactions, allowing Members to work from different locations. This extends to formal parliamentary proceedings such as Plenary and committee meetings, allowing Members to fully participate remotely, including voting.

In response to the Senedd Reform proposals, the Siambwr 2026 Project has been established within the Ways of Working Programme. This project will deliver an expanded chamber capable of accommodating 96 Members. Central to this project are improvements to the technologies that underpin Plenary meetings, and the need to ensure that any change takes account of the needs of all those who may wish to stand for election to the Senedd. Full equality impact assessments will be completed for both projects as they progress.

Like many organisations, the Senedd Commission is seeking to harness the benefits of generative AI. It is anticipated that Senedd Members will be able to harness the automation and efficiency improvements these technologies can deliver, eliminating many routine tasks and freeing up Members' time.

All of these technologies will benefit from future improvements and will continue to adapt to allow Members to undertake their role in a way that suits their specific needs and the needs of their constituents.

Agenda Item 3

SCECLB5 – P Diverse5050

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 5050Amrywiol | Evidence from Diverse5050

4. Your opinion

To assist with our inquiry, the Committee would welcome your views on any or all of the following points:

Some helpful things to be aware of before you start answering the consultation questions:

- You do not need to answer every question, only those on which you wish to share information or have a view.
- If you provide any information that you feel is not suitable for public disclosure, please indicate which parts should not be published and give your reasons for this.

General principles

1. 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 would be grateful if you could keep your answer to around 500 words)

We are fully supportive of the general principles and stated policy objective of the Bill, which is to make the Senedd a more effective legislature for, and on behalf of, the people of Wales by aiming to ensure that the Senedd is broadly representative of the gender make-up of the Welsh population. Without robust measures to encourage the election of a Senedd that better reflects the Welsh population, the potential of reform proposals to deliver a more effective legislature for the people of Wales will be deeply compromised. The provision for legislative gender quotas set out in the Bill comprises the single most effective measure towards achieving this and are therefore central to delivering the overall policy objective of Senedd reform.

The role of the Bill within Senedd reform

The Bill is a central element of a package of Senedd Reform proposals which would jointly achieve the shared policy objective of making the Senedd a more effective legislature. Most of the proposals would be delivered through the Senedd Cymru (Members and Elections) Bill, which is currently at Stage 3 of the legislative process. This includes the expansion of the Senedd from 60 to 96 members, which would increase the Senedd's capacity to properly scrutinise legislation and policy and can ultimately translate into better frontline public services and better value for money for the people in Wales.

As we have highlighted in several previous submissions, the potential benefits of Senedd expansion will only be fully realised if the expansion goes hand in hand with well-designed measures to encourage the election of a Senedd that better reflects the population of Wales, including with regard to gender. In a submission to the Committee on Senedd Electoral Reform in 2020, ERS Cymru argued that the diversity of a future Senedd must go “hand in hand” with electoral reform and capacity increase.¹ WEN Wales, in response to the same consultation, argued that “women’s participation and the success of women as candidates in elections are vital indicators of the health of a representative democracy.”²

This point has been recognised throughout the findings of the Expert Panel on Electoral Reform, the Committee on Senedd Electoral Reform, and the Special Purpose Committee. It is further supported by a wealth of evidence on the positive impact of women’s representation on the legitimacy and effectiveness of legislatures. A full review of this evidence would be outside the scope of this submission, but details can be found in the reports of the aforementioned bodies and submissions, as well as in the Explanatory Memorandum accompanying the Bill.

Why legislative quotas are needed to deliver the stated policy objective

The evidence is equally clear on the point that achieving a legislature that better reflects the gender make-up of the population is best achieved through legislative gender quotas. Gender quotas have been found to be the “single most effective tool for ‘fast tracking’ women’s representation in elected bodies for government” and are used by over 130 countries worldwide.³ The majority of these countries use legislative as opposed to voluntary quotas, either in the form of legislative candidate quotas or less commonly through reserved seats.⁴ The evidence also suggests that legislative gender quotas benefit women from marginalised communities, while voluntary gender quotas at party level do not have the same impact.⁵

¹ ERS Cymru (2020), Electing a more diverse Senedd. Consultation Response, <https://business.senedd.wales/documents/s102091/DIV%2001%20Electoral%20Reform%20Society%20Cymru.pdf>

² WEN Wales (2020), Electing a more diverse Senedd. Consultation Response, <https://business.senedd.wales/documents/s102095/DIV%2005%20Womens%20Equality%20Network%20Wales.pdf>

³ International IDEA. Gender Quotas Database, retrieved 27 Mar 2024. <https://www.idea.int/data-tools/data/gender-quotas>; Drude Dahlerup et al. (2013), Atlas of Electoral Gender Quotas, International Institute for Democracy and Electoral Assistance [IDEA], IPU and Stockholm University.

⁴ International IDEA. 2020. Gender Quotas Database, retrieved 27 Mar 2024. <https://www.idea.int/data-tools/data/gender-quotas>;

⁵ Hughes, M. (2011). Intersectionality, quotas, and minority women’s political representation worldwide. *American Political Science Review*, 105(3):604-20.

Data from the 2021 Senedd election shows that women's underrepresentation was more pronounced at the candidacy stage than after the election.⁶ Women made up only 31% of candidates but managed to secure 42% of seats. This means that, once given the chance to stand, women were, on average, more successful than men at winning elections. This suggests the key bottleneck for women's underrepresentation in Wales is parties' candidate selection rather than voter bias. Legislative candidate quotas are the only tool that would be both effective and specific in addressing this major barrier to the election of a Senedd that reflects the gender make-up of the Welsh population. The implementation of legislative gender quotas will become even more important given that the provisions in the Senedd Cymru (Members and Elections) Bill to introduce a closed proportional list voting system would increase the influence of political parties (vis-à-vis the electorate) over the gender and diversity make-up of the Senedd.⁷

While voluntary quotas have been used by some individual parties in Wales, they have failed to deliver consistent, long-term results. Since devolution, women have been underrepresented in all but one Senedd election and remain so to this day. This is unsurprising. Unless ambitious voluntary quotas are used by all political parties, their effectiveness is dependent on the electoral success of specific parties. More generally, the use of voluntary quotas is, by definition, always at the discretion of parties, which is why they can never offer a long-term guarantee for women's representation. As better representation of the gender make-up of Wales' population has been found to be a central pillar of the Senedd's future legitimacy and effectiveness, it cannot be left at the discretion of individual parties. Legislative quotas are necessary.

Enforcement and compliance

As part of the nominations process, candidates would be required to make a statement about whether they are a woman or not a woman. This statement will be used as the basis for enforcing the rules. Constituency Returning Officers (CROs) will take these statements at 'face value', meaning that they would not undertake any investigation into whether the information provided by a candidate is correct. CROs would be responsible for verifying that a minimum of 50% of candidates on each list have made a statement that they are

⁶ Senedd Research (2021), How diverse is the Sixth Senedd? <https://research.senedd.wales/research-articles/election-2021-how-diverse-is-the-sixth-senedd>

⁷ WEN Wales (2023), Response to the Consultation on the Senedd Cymru (Members and Elections) Bill, <https://wenwales.org.uk/wp-content/uploads/2023/11/WEN-Consultation-response-on-the-Senedd-Cymru-Members-and-Elections-Bill.pdf>.

women, and that the vertical rule is met. If a list does not comply, the CRO will be able to invalidate the nomination papers.

For the national quotas, the Bill gives the Welsh Government the power to appoint a National Nominations Compliance Officer (NNCO). This role would oversee compliance with the horizontal rule. If a political party's lists do not comply with the rule, they will be given the opportunity to re-order one or more list to make them compliant. If they do not, then one or more lists would be chosen by the NNCO and re-ordered by the relevant CRO.

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

(we would be grateful if you could keep your answer to around 500 words)

The proposed system of enforcement and potential sanctions for non-compliance, including the practice of taking gender statements at 'face value', is appropriate and in accordance with international practice.

At the level of individual party lists, we would expect the rejection of non-compliant lists by the Constituency Returning Officer to be a highly effective enforcement mechanism as parties would not be able to stand candidates in a particular constituency unless they submit a compliant list. A potential alternative sanction to list rejection would be the use of financial sanctions, as done e.g. in Ireland.⁸ Lack of relevant state funding for political parties in Wales means financial sanctions would not be feasible. In addition, financial sanctions would allow parties to proceed to an election with non-compliant lists if they are willing and able to make the financial sacrifice. This is not a possibility with list rejection, making it arguably a more effective enforcement mechanism.

At the horizontal level, the appointment of a National Nominations Compliance Officer to ensure compliance via the proposed process appears appropriate. As parties become more familiar with the new system, consideration could be given as to whether the process can be streamlined.

The Bill's implementation

⁸ National Women's Council (2021), Candidate Gender Quota for Local Elections Briefing paper, https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_housing_local_government_and_heritage/submissions/2021/2021-07-28_submission-national-women-s-council-hlgh-369a-2021_en.pdf.

The Regulatory Impact Assessment is set out in Part 2 of the **Explanatory Memorandum** (<https://senedd.wales/media/xp4dqjto/pri-ld16394-em-e.pdf>). This includes the Welsh Government's assessments of the financial and other impacts of the Bill and its implementation.

3. 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?

(we would be grateful if you could keep your answer to around 500 words)

The Explanatory Memorandum comprehensively addresses a range of potential impacts relating to the implementation of the Bill's provisions. But there are several aspects relating to the costs and benefits of the Bill that require further consideration.

The Regulatory Impact Assessment (RIA) sets out the costs and benefits for two different options – *business as usual* or *implementation of the Bill*. The RIA recognises that there are a range on non-monetary benefits as well potential financial savings associated with the implementation of the Bill. As detailed under Question 1, this is because better gender representation would make the Senedd a more effective legislature, which in turn can be expected to achieve better value for money. The RIA recognises that these benefits and savings could be incurred as potential opportunity costs in the "business as usual" scenario.

However, we would add there is a risk that the "business as usual" scenario (not implementing the Bill) could incur costs above and beyond the stated opportunity costs. This is due to a risk that Senedd expansion *without* parallel implementation of the Bill could easily lead to a Senedd that is *less* representative of the population of Wales than is currently the case, both in terms of gender and potentially with regard to other protected characteristics. There is a further risk that any potential regression would likely be entrenched for years to come.

The risk is explicitly recognised elsewhere in the Explanatory Memorandum, which states:

31.As men typically outnumber women as candidates at Senedd elections, there is a risk that without the introduction of quotas the planned significant expansion of the Senedd, increasing the number of MSs from 60 to 96, will lead to a greater gender imbalance than at present.

We would stretch that men currently *significantly* outnumber women as candidates at *all* levels of Welsh elections. Without the introduction of quotas, and the accompanying work

of parties to attract more women as candidates, we would expect an imbalance in the pipeline of potential candidates for the 2026 Senedd election. This imbalance could easily result in men securing an even greater share of seats than in previous Senedd elections. In addition, gender quotas have been found to have a positive impact on diversity by encouraging the election of women from marginalised communities, and could provide an impetus for parties to consider wider diversity in candidate selection.⁹

A failure to introduce gender quotas in parallel with Senedd expansion could therefore easily result in a regression in terms of gender diversity and could also have potential negative impacts on wider diversity. In either case, the “business as usual” scenario would result in a Senedd that is less representative of the Welsh population. As set out in the response to Question 1, research and scrutiny work on Senedd reform found that being less representative of the population would make the Senedd a *less* effective legislature along various dimensions. This means the “business as usual” scenario could incur non-monetary and financial costs beyond the opportunity costs acknowledged in the RIA.

Due to the impact of an amplified *incumbency overhang*, this net loss of diversity – and, in turn, legitimacy and effectiveness – could be entrenched far beyond the election at which the Senedd is first expanded. Incumbency overhang is an effect described by Laura McAllister, which creates a bias towards the existing demographic composition of a legislature.¹⁰ If the existing underrepresentation of women and other marginalised groups is increased as the Senedd expands, the incumbency overhang that is already working against these demographics would be amplified. This means a failure to implement gender quotas in parallel with Senedd expansion could set us on the path of a downward spiral in terms of diversity of representation. Any opportunity costs and potential additional costs of a less representative Senedd could become entrenched for years to come. Future measures needed to address the set-back in diversity of representation would incur costs on top of these, and they could be higher due to the magnitude of the challenges having increased in the meantime.

⁹ Hughes, M. (2011). Intersectionality, quotas, and minority women’s political representation worldwide. *American Political Science Review*, 105(3):604-20; Krook, M. L., & Nugent, M. K. (2016). Intersectional institutions: Representing women and ethnic minorities in the British Labour Party. *Party Politics*, 22(5), 620-630.

¹⁰ WEN Wales (2023), Response to the Consultation on the Senedd Cymru (Members and Elections) Bill, <https://wenwales.org.uk/wp-content/uploads/2023/11/WEN-Consultation-response-on-the-Senedd-Cymru-Members-and-Elections-Bill.pdf>.

4. Are any unintended consequences likely to arise from the Bill?

(we would be grateful if you could keep your answer to around 500 words)

Impact on trans and non-binary candidates

At face value, the provisions in the Bill would offer the opportunity for trans and non-binary people to stand for Senedd elections as who they are, which is to be welcomed. However, we are concerned that, in the present climate, there is an increased risk for people with certain gender identities to have their election challenged in various ways, including through an election petition. As the Bill and relevant subordinate legislation progresses through the Senedd, we urge that every effort is made to protect the privacy and safety of trans and non-binary people as part of the electoral process.

Impact on wider diversity

While there is evidence that gender quotas alone have some positive impact on the representation of women who face intersecting discrimination, the effect of incumbency overhang and wider societal factors and barriers could lead to a situation whereby the Bill could in practice benefit women who occupy relatively privileged social positions more than those who face intersecting discrimination. To prevent this potential unintended consequence, it is imperative that wider measures to advance diversity and inclusion in elected office are implemented in parallel to the progression of the Bill. Further details on this are discussed in response to Question 9.

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

(we would be grateful if you could keep your answer to around 500 words)

The accompanying documents provide assessments of the financial and other impacts of the Bill. Our focus has been on the equality and justice impact assessments, which are detailed and comprehensive. The findings were generally in line with our own understanding of the potential impacts of the Bill on different groups of women, which are overwhelmingly positive and have the potential to generate additional benefits for people with other protected characteristics.

We would emphasise that, while the Bill alone may have some positive impact on people with other protected characteristics, it is imperative that these are leveraged through other diversity and inclusion measures that need to be rolled out at pace to take effect prior to

Senedd expansion. This is particularly important to ensure that the Bill will encourage the election of women who experience intersecting discrimination, as they often face additional barriers to elected office and are especially underrepresented.¹¹ For instance, women under 40 make up only 6.1% of the world's MPs.¹² In countries without any quota legislation, the odds of being elected for women from racial, ethnic or religious minorities are 1 in 14 compared to men from a majority (non-minority) background, 1 in 3 compared to women from a majority (non-minority) background, and 1 in 2 compared to men from minority backgrounds (relative to their share in the overall population).¹³

As discussed under Question 4, we echo the concern that, in the present climate, the provision in the Bill could lead to negative impacts on people with certain gender identities, including on trans women, and these risks need to be managed very carefully.

Subordinate legislation

The powers to make subordinate legislation are set out in Part 1: Chapter 5 of the **Explanatory Memorandum** (<https://senedd.wales/media/xp4dqjto/pri-ld16394-em-e.pdf>).

The Welsh Government has also set out its **statement of policy intent for subordinate legislation**

(<https://business.senedd.wales/documents/s146049/Statement%20of%20Policy%20Intent%20PDF,%20313KB.pdf>).

6. 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?

(we would be grateful if you could keep your answer to around 500 words)

Other considerations

¹¹ WEN Wales (2022), Diversity Quotas Briefing,

https://wenwales.org.uk/wp-content/uploads/2022/02/DiversityQuotas.WenWales.Final_.pdf

¹² IPU (2020), Young women's political participation and leadership, <https://www.ipu.org/content/objective-6-2020>.

¹³ Hughes, M. (2011). Intersectionality, quotas and minority women's political representation worldwide. *American Political Science Review* 105(3), 604-620.

'Legislative Competence' is the term used to describe the scope of the Senedd's power to legislate. The 'Reserved Powers Model' established by the **Wales Act 2017** (<https://www.legislation.gov.uk/ukpga/2017/4/contents>) allows the Senedd to legislate on matters that are not reserved to the UK Parliament. A provision in a Senedd Bill is unable to modify the law on **reserved matters** (<https://www.legislation.gov.uk/ukpga/2006/32/schedule/7B/paragraph/1>).

7. 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 would be grateful if you could keep your answer to around 500 words)

In 2022, WEN Wales and ERS Cymru instructed Christian J Howells, a public and constitutional law specialist at 30 Park Place Chambers, to provide a legal opinion on whether the Senedd has legislative competence to pass legislation in relation to quotas for gender and other protected characteristics.

The legal opinion was submitted to the Special Purpose Committee on Senedd Reform and a copy has been attached. Further information will be supplemented in due course.

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

(we would be grateful if you could keep your answer to around 500 words)

9. Are there any other issues that you would like to raise about the Bill, the accompanying Explanatory Memorandum and Regulatory Impact Assessment, or any related matters?

(we would be grateful if you could keep your answer to around 500 words)

The impact of party selection procedures

It has been suggested that the Bill could potentially result in an underrepresentation of men because it allows women to take up more than 50% of places on each candidate list and more than 50% of top places in lists overall. We anticipate that the risks of this occurring are slim, because the number of candidates of each gender that are being elected will partly be driven by who is being placed in winnable seats. Subject to the horizontal placement criteria, placement into winnable seats will remain at the discretion of individual parties. Evidence from Wales and other nations suggests that parties tend to

place more men in winnable seats and there is no reason to expect that this practice will fully cease with the implementation of the Bill.

The Explanatory Memorandum recognises that, in theory “a party could fulfil the requirements of the minimum threshold and placement criteria and still see up to 8 more candidates who are not women elected than those who are women.” While an impact of this magnitude is only expected in very specific circumstances, the Explanatory Memorandum acknowledges that “political parties have a key role to play through the candidate selection process and the formulation of constituency party lists in ensuring that women candidates are placed in winnable seats and in winnable constituencies if the legislation is to fully meet its purpose.”

This suggests that, rather than there being a chance of tipping the balance *too far*, there remains a risk that the provisions in the Bill would *not go far enough* to secure 50% representation for women. We recommend that this aspect should be closely monitored as part of the post-implementation review. If the vertical and horizontal placement criteria in the Bill are found to be insufficient to facilitate the election of a Senedd that reflects the gender make-up of the Welsh population, consideration should be given to the introduction of an additional placement criterion that requires that women are placed in at least 50% of winnable seats. Such a criterion could make references to established metrics of winnable seats, such as seats requiring less than a 5% swing to win.¹⁴

Support for women candidates

As the existing literature on Senedd reform recognises, women face a range of barriers to elected office and these are amplified for women who experience intersecting discrimination. While the provisions in this Bill would specifically and effectively address one major barrier – candidate selection processes – they would have no direct impact on other barriers, such as the disproportionate exposure to harassment and abuse, the lack of support with caring responsibilities, and other elements of political and wider culture that compound additional challenges in women’s candidacy and their work as elected members. If these barriers are not addressed, there is a significant risk that parties may struggle to attract women candidates, that women will be less likely to seek re-election, and that they will face barriers in seeking senior positions. It is therefore imperative that measures to address other barriers are implemented at pace, alongside the progression of the Bill.

¹⁴ English, P. (2022), High rejection, low selection: How ‘punitive parties’ shape ethnic minority representation, *Party Politics* 28(2), 294–305, <https://journals.sagepub.com/doi/full/10.1177/1354068820973851>.

We would envisage that an appropriate suite of measures should encompass a financial assistance scheme for candidates with caring responsibilities, opportunities for job-sharing, a review of standards and grievance procedures, measures to tackle harassment and abuse and ensure candidate safety, and targeted mentoring and training opportunities. Special consideration should be given to ensure these measures effectively support women from a diverse range of backgrounds and are tailored to address the impact of intersecting discrimination.

Wider diversity measures

Achieving the overall policy objective of Senedd reform depends on the extent to which reform proposals will succeed in making the Senedd representative of the Welsh population *in all its diversity*. This will only be possible if the gender provisions in the Bill go hand in hand with initiatives to encourage the election of candidates with different protected characteristics and from different marginalised communities.

The Diverse5050 Campaign has called for the implementation of quotas relating to other protected characteristics as well as gender quotas. International evidence suggests that gender quotas and quotas for other protected characteristics can be effectively combined into *intersectionally embedded quotas* to encourage the election of a Senedd that fully reflects the diversity of the Welsh population.¹⁵ The Committee on Senedd Reform and the Special Purpose Committee recognised the potential benefits of quotas for protected characteristics other than gender to encourage the election of a more diverse Senedd. Both Committees recommended that further work should be undertaken to assess the feasibility of such quotas. To date, this work has not been commenced, nor does the Bill include provisions to ensure it would be progressed following the passing of the Bill.

As well as assessing the feasibility of quotas for other protected characteristics, we would urge the Welsh Government to swiftly develop robust guidance on political parties' diversity and inclusion strategies, the implementation of the provisions to promote diversity in the Elections and Elected Bodies (Wales) Bill, and measures for the collection and publication of anonymised candidate diversity data.¹⁶ All measures should align with the commitments and frameworks set out in the Anti-Racist Wales Action Plan, the LGBTQ+ Action Plan, the Violence Against Women, Domestic Abuse and Sexual Violence (VAWDASV) Strategy, and the Social Model of Disability.

¹⁵ WEN Wales (2022), Diversity Quotas Briefing,

https://wenwales.org.uk/wp-content/uploads/2022/02/DiversityQuotas.WenWales.Final_.pdf.

¹⁶ WEN Wales (2023), Elections and Elected Bodies (Wales) Bill Consultation Response, <https://wenwales.org.uk/wp-content/uploads/2023/11/WEN-consultation-response-on-the-Elections-and-Elected-Bodies-Wales-Bill.pdf>.

About Diverse5050

The award-winning Diverse5050 campaign is a coalition campaign in partnership between the Women's Equality Network (WEN) Wales, the Ethnic Minorities and Youth Support Team (EYST) Wales, the Electoral Reform Society Cymru and Race Council Cymru. Its aim is to ensure that Wales elects politicians at a local, Westminster and Senedd level that are gender balanced, with meaningful representation from people with protected characteristics and marginalised communities.

About our partners

Women's Equality Network (WEN) Wales: Our vision is of a Wales free from gender discrimination where all have equal authority and opportunity to shape society and their own lives. We work with our vibrant coalition of organisational and individual members to transform society. Our work sits under three pillars. We will Connect, Campaign and Champion women so our vision is realised.

Ethnic Minorities & Youth Support Team (EYST) provides services and support for individuals across Wales who identify as ethnic minorities and/or have lived experience as an asylum seeker or refugee. We provide a range of services including education, employment, health, family support and community safety, challenge and counter negative stereotypes about ethnic diversity, and aim to increase awareness and understanding about the diverse communities who live in Wales.

The *Electoral Reform Society (ERS) Cymru* operates on a simple premise – that politics can be better than it is. We are campaigning for a better democracy in Wales, and across the UK.

Race Council Cymru (RCC) is the overarching umbrella body established by ethnic minority grassroots communities in Wales to bring key organisations together to combat racial prejudice, race discrimination, harassment, victimisation, abuse and violence.

ADVICE ON LEGISLATIVE DIVERSITY QUOTAS FOR SENEDD ELECTIONS

1. I am instructed to advise WEN Wales and ERS Cymru on whether the Senedd can pass legislation in relation to quotas for gender and other protected characteristics, within the meaning of the Equality Act 2010. They in turn have been asked by the Senedd Special Purpose Committee on Electoral Reform to identify any legislative options that may be available.
2. I am of the view that the introduction of mandatory selection arrangements, to include gender quotas, would arguably be within legislative competence because:
 - a. It is arguable that the purpose of such legislation would not relate to a reserved matter (equality of opportunity) but would relate to Senedd elections and so would not be caught by section 108A(2)(c) of the Government of Wales Act 2006 ('GoWA'); and
 - b. It is arguable that such legislation would fall within the exception to section N1 of Schedule 7A and so would not be caught by s108A(2)(c) GoWA.
3. Alternatively, it would be open to the Senedd to pass legislation imposing a duty on political parties to have due regard to the desirability of gender balanced candidate lists - mandating consideration of utilising section 104 of the Equality Act 2010.

Purpose of legislation would relate to Senedd elections not equality of opportunity

4. Legislative selection arrangements would probably be introduced by way of amendment to section 7 and/or 9 GoWA, '*candidates at general elections*' and '*allocation of seats to electoral region members*'. Those provisions are not protected by virtue of §7(2)(a)(v) of schedule 7B.

5. Senedd legislation will be outside competence where *“it relates to reserved matters”* in schedule 7A; section 108A(2)(c) GoWA.

6. Section 108A(6) provides the test to be applied in determining whether legislation relates to reserved matters. It provides:

“The question whether a provision of an Act of the Senedd relates to a reserved matter is determined by reference to the purpose of the provision, having regard (among other things) to its effect in all the circumstances.”

7. The Supreme Court has on two occasions clarified that the purpose of the legislation is to be ascertained in the usual way. If the purpose relates to a matter within devolved competence, then the fact that the legislation also touches upon reserved matters does not render the legislation outwith legislative competence:

- a. *Martin v Most* [2010] UKSC 10, (2010) SC (UKSC) 40 was a case where an increase in the summary sentencing powers of Scottish criminal courts to 12 months impliedly amended the Road Traffic Offenders Act 1988 which stated that the maximum summary sentence for offences under the Act was 6 months. The Act was a reserved matter. The Court held by a majority at §§ 31 and 59 - 60 that as the purpose of the new legislation was to re-allocate the caseload and reduce pressure on the higher courts, it was *“directed”* as Scots law and did not relate to a reserved matter. Most of what was enacted by the Westminster Parliament (that it was an offence and the maximum penalty was 12 months) was left untouched;
- b. *Re Agriculture Sector (Wales) Bill* [2014] UKSC 43, [2014] 1 WLR 2622 was a case where the Welsh Assembly passed legislation setting minimum terms and conditions of employment in the agricultural sector. Agriculture was then a conferred power, but employment and industry were not. The Court accepted at §58 that the bill *“might in principle be characterised as relating to “employment” and “industrial relations”*”.

Nevertheless, it held at §§ 65 – 68 that so long as the bill related to a devolved matter (the scheme of devolution was then a conferred powers model rather than a reserved powers model) it was within competence – GoWA at that time did not require that the legislation should only be categorised as relating a devolved subject.

8. The purpose of legislation can be ascertained by looking at the reports and papers that brought it about. I have considered the documents: (i) *A Parliament that Works for Wales* (November 2017) written by an expert panel on Assembly Electoral Reform; and (ii) *Senedd Reform: The next steps* (September 2020) written by the Senedd Committee on Senedd Electoral Reform. Recommendation 10 of document (i) was “*in order to safeguard the achievements of the Assembly and political parties in Wales in relation to gender-balanced representation, we recommend that a gender quota is integrated within the electoral system put in place for 2021.*” At §12.19 it stated that it would be anomalous if the Senedd did not have competence to determine its own electoral arrangements, including gender quotas. At §12.22 it states “*the intention of our proposals for gender quotas is to ensure that the Assembly is as representative as possible of the people of Wales*”. Read as a whole, the proposals in document (i) were not formulated to create equality of opportunity, but rather to ensure the Senedd was as representative as possible of the people of Wales.

9. Depending on the reasons for the legislative proposal going forward, if it can be said that the purpose of the legislation is to ensure the Senedd is representative of the electorate, then it can be argued that the purpose of the legislation relates to Senedd elections and although it may also touch upon equality of opportunity, that is insufficient to render it outside competence. The only reservations relating to Senedd elections are set out at §§ 21 - 27 of section B1 of Schedule 7A and are not relevant here.

10. Quotas in respect of protected characteristics other than gender need to be carefully thought through bearing in mind that the Senedd's competence is restricted by compatibility with the European Convention on Human Rights (s108A(2)(e)) and drawing distinctions along other lines requires careful justification for the purposes of the principle of non-discrimination contained in article 14 of the Convention.

11. Section 104 of the Equality Act 2010 ('EA') allows a political party to introduce selection arrangements which are designed for the purpose of reducing inequality in a party's representation and are proportionate arrangements. The introduction of mandatory gender quotas in candidate lists for each party in Wales would not be inconsistent with section 104 EA but would make additional provision - make such arrangements mandatory rather than permissible. I do not consider that there would be any modification of section 104 EA by the proposed amendment of sections 7 and 9 GoWA (and so I disagree with the suggestion to the contrary made at §278 of the report of the Senedd Committee on Electoral Reform). The Senedd legislation would not alter the rule laid down in section 104 EA or be in conflict with its unqualified continuation in force as before, so that section 104 EA has to be understood as having been in substance amended, superseded, disapplied or repealed; see *Re Withdrawal from the EU (Scotland) Bill* [2018] UKSC 64, [2019] AC 1022 at §51.

12. In any event, even if there were such modification, the Equality Act 2010 is not protected legislation in §5 of Schedule 7B and so can be modified by the Senedd, subject to the operation of section 108A(2)(c) and schedule 7A. §2 of Schedule 7B allows the modification of an enactment the subject matter of which is a reserved matter if such modification is ancillary to legislation which does not relate to a reserved matter. Thus, if the effect of an amendment to sections 7 and 9 GoWA was an implied amendment of section 104 EA, that would be permissible.

13. However, if such legislation is passed, there is a real risk that the Attorney General would refer the legislation to the Supreme Court pursuant to section 112 GoWA. That process will take 8 – 12 months to resolve.

Even if purpose related to equality of opportunity, the proposed mandatory selection arrangement would fall within an exception to the reservation

14. Schedule 7A sets out the reserved matters but also sets out the exceptions to those reserved matters. If the legislation falls within the exception, it is not caught by s108A(2)(d).
15. Section N1 of schedule 7A materially states:

“Section N1 Equal opportunities

187 *Equal opportunities.*

Exceptions

The encouragement (other than by prohibition or regulation) of equal opportunities, and in particular of the observance of the equal opportunity requirements.

...

The provision falling within this exception does not include any modification of the Equality Act 2010, or of any subordinate legislation made under that Act, but does include –

- (a) provision that supplements or is otherwise additional to provision made by that Act;*
- (b) in particular, provision imposing a requirement to take action which that Act does not prohibit;*
- (c) provision that reproduces or applies an enactment contained in that Act, with or without modification, without affecting the enactment as it applies for the purposes of that Act.” [emphasis added]*

16. If reliance is being placed on the exception because it is accepted, or the Supreme Court holds, that mandatory selection arrangements would relate to a reserved matter, then any legislation could not modify the Equality Act 2010,

as the exception expressly says so and §1 of schedule 7B would bite. But the Senedd **can** pass a provision which supplements or is otherwise additional provision and which imposes a requirement to take action which the Equality Act 2010 does not prohibit.

17. The first point is that, for the reasons given at §10, a legislative quota would not modify the Equality Act 2010 – it would be additional provision and would fall within the exception. Section 104 EA allows selection arrangements by political parties and the Senedd legislation would only require action already permitted by the Equality Act 2010. Such mandatory selection arrangements would be an encouragement of equal opportunity. I have debated whether a mandatory requirement would amount to regulation, which is not permitted by the exception, but in light of the fact that it later says such provision does include a requirement that is not prohibited, then I have come to the conclusion that it is arguable that mandatory selection arrangements would fall within the exception of encouragement.

The lesser option of a due regard duty

18. If it was accepted, or the Supreme Court held, that a mandatory selection requirement did not fall within the exception of encouragement (because it was regulation) or because it did amount to a modification of the Equality Act 2010, then there is the lesser option of introducing a duty on all political parties who submit a list of candidates to have due regard to the desirability of gender balanced lists. This would simply be encouraging parties to take advantage of section 104 EA and it would be open to the parties to decline, so long as they consider it.

Conclusion

19. Accordingly, I am of the view that it is within the legislative competence of the Senedd to introduce legislation which requires political parties at Senedd elections to submit candidate lists which are comprised of at least 50% female candidates. Alternatively, it is within the legislative competence of the Senedd to impose a duty on political parties to have due regard to the desirability of implementing selection arrangements in accordance with section 104 of the Equality Act 2010.

Christian J Howells

30 Park Place, Cardiff

31 January 2022

SCECLB2 – P Electoral Reform Society 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 Cymdeithas Diwygio Etholiadol Cymru | Evidence from Electoral Reform Society Cymru



Reform Bill Committee's consultation on the Senedd Cymru (Electoral Candidate Lists) Bill
ERS Cymru written evidence
April 2024

Introduction

ERS Cymru welcomes the Senedd Cymru (Electoral Candidate Lists) Bill. We believe that this is an important element of the wider package of democratic reforms progressing through the Senedd currently. Building a stronger Senedd relies not just on increasing its capacity but also ensuring that it is representative of people in Wales.

A key part of a healthy democracy is that our elected representatives reflect the populations that they serve. Diverse representation brings with it diverse perspectives and experiences, which aid policy making. When there is gender parity, political institutions' decision-making process and their decisions are viewed as more legitimate.¹

The representation of women in the Senedd

Historically the Senedd has done well in terms of the number of women elected. This peaked following the 2003 election, which saw the then National Assembly for Wales become the first legislature to reach 50:50 in terms of male and female representation.

Figure 1. Proportion of women elected at each Senedd election

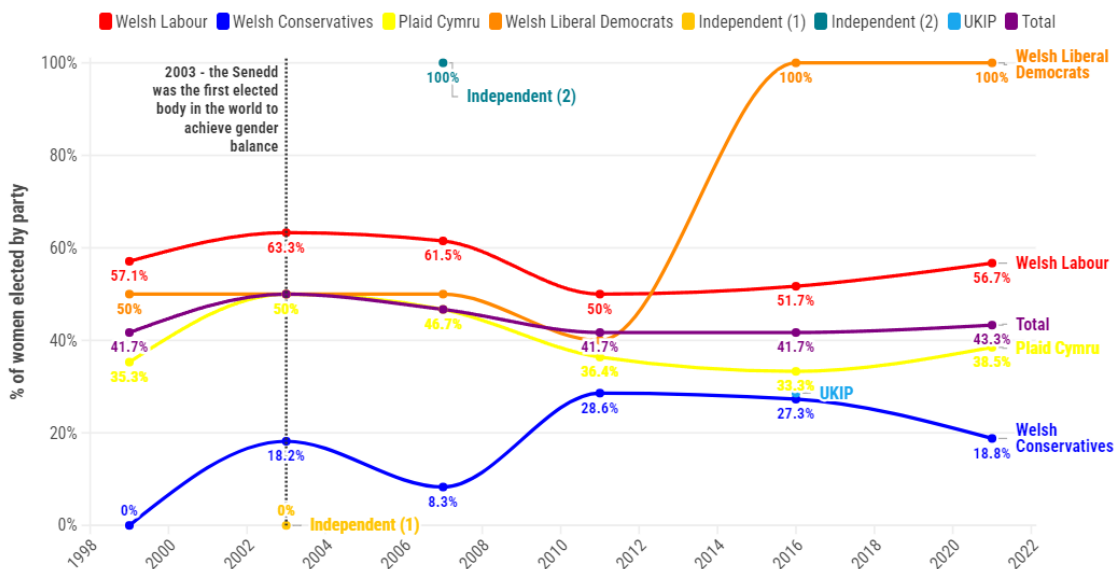
Year of election	Number of women elected	Percentage of women elected (%)
1999	24	40
2003	30	50
2007	28	46.7
2011	25	41.7
2016	25	41.7
2021	26	43.3

¹ <https://www.jstor.org/stable/45132466>

Since the 2003-2007 term the representation of women has dropped, remaining under 50% consistently. While this is relatively high in terms of representation in other political institutions, there is no guarantee that this will continue. The relatively high levels in terms of the representation of women has been reliant on political parties taking positive action around the selection of their candidates and the placement of these candidates in winnable constituencies or high on lists.

Figure 2. The representation of women in the Senedd grouped by political party in each election

Graph showing the % women elected in each Senedd election by Party from 1999 to 2021



Data taken from The report of the Expert Panel on Assembly Electoral Reform, "A PARLIAMENT THAT WORKS FOR WALES", pg. 120, (2017). Available at: <https://senedd.wales/media/eqbesxl2/a-parliament-that-works-for-wales.pdf>

The Welsh Labour party in particular has used measures such as all women shortlists, twinning and the zipping of lists to increase the number of female candidates. As Figure 2 shows this has been successful in returning over 50% women in every Senedd election. The only other party to have achieved over 50% representation is the Welsh Liberal Democrats in 2016 and 2021, who while having 100% representation of women only had one member each time. Plaid Cymru has also used measures, including zipping. However, the use of these methods has reduced over time. The Conservatives, as far as we are aware, have not used any methods to ensure diversity and, as a result, have the lowest proportion of female MSs.

Without statutory measures to ensure the representation of women there is always a risk that the number of female elected representatives could drop further. With a lack of consistency in how parties are currently using positive action, the relatively high

numbers of women returned to the Senedd has, in part, been due to the success of a party who has consistently utilised measures to increase the number of female candidates standing for its party, Welsh Labour. At present, this leaves the gender balance in the Senedd dependent on the next election outcome and therefore susceptible to backsliding in part due to the lack of widespread or systematically implemented gender quotas.

Therefore, a guarantee is needed to ensure all parties are standing diverse candidates and that the balance of men and women elected to the Senedd is as close to 50:50 as possible.

The effect of the legislation

The Senedd Cymru (Electoral Candidate Lists) Bill is a relatively short piece of legislation that largely introduces measures around the proportion and placement of women on electoral lists. This essentially aims to act as a way to both horizontally and vertically 'zip' a closed list, where parties will stand a list of candidates in each constituency.

As our recently released Pursuing Parity report outlined, zipping is one method of implementing quotas and is used in varying ways across the world²:

- zebra or zipper systems: alternating female and male candidates throughout the lists (as used in Bolivia, Costa Rica, Ecuador, France, Kenya, Republic of Korea, Lesotho, Libya, Nicaragua, Senegal, Tunisia and Zimbabwe); alternation is used by many Green parties as well Social Democratic parties;
- a requirement that the top two candidates are not of the same sex (used in Belgium);
- 40:60 ratio for every five posts on the list (Spain); and
- one out of every group of three candidates must be a woman (Albania, Argentina, Indonesia, Serbia, Timor-Leste).

The Senedd Cymru (Electoral Candidate Lists) Bill seeks to introduce a system most similar to the zebra or zipper system. While it only relates to the placement of female candidates, this will likely have the effect of alternating female candidates, with male or non binary candidates, creating that zipping system.

To be the most effective it is widely recognised that vertical distribution should be accompanied by guarantees of fair horizontal distribution, which we believe this Bill seeks to achieve through section 7b.³

² <https://www.electoral-reform.org.uk/latest-news-and-research/publications/pursuing-parity-examining-gender-quotas-across-electoral-systems/#sub-section-6>

³ *Ibid*

Modelling of the effects of gender quotas on the representation of women in the Senedd

In May 2022 the former First Minister, Mark Drakeford, and the former Leader of Plaid Cymru, Adam Price, announced their way forward for Senedd Reform, which included a commitment to “closed proportional lists with integrated statutory gender quotas and mandatory zipping”⁴.

As a result of this over the past 18 months ERS Cymru has been exploring what effect this might have on the representation of women at future Senedd elections and produced some modelling of the effects quotas might have if implemented.

This modelling shows that quotas, while likely to have a positive impact on the representation of women in the Senedd, still requires parties to play an active role in considering where to place women at the top of electoral lists.

Clearly, modelling of any election comes with significant caveats. This work was undertaken prior to the final report of the Boundary Commission for Wales on the new Westminster constituencies and is obviously prior to the creation of the 16 constituencies for the 2026 Senedd election.

In addition it is always difficult to model future election results based on previous elections as voting behaviour changes significantly from one election to the next. In this case this is particularly difficult as if the Senedd Cymru (Members and Elections) Bill passes there will be a largely new voting system and new boundaries for the 2026 election. This modelling was also limited to two binary genders.

For this modelling two approaches were used, firstly simulated election results were produced using a random number generator, secondly modelled election results were produced using the 2021 Senedd election regional list votes as the basis for modelling results under the new system.

Simulated election results

Simulated election results were generated through a random number generator using the proposed electoral system under Senedd Reform to provide the input parameters (Figure 3).

Figure 3: Inputs used to generate simulated election results.

⁴ <https://www.gov.wales/a-way-forward-for-senedd-reform>

Element	Value	Simulated function
Numbers in a line	4, 5 or 6	Number of parties winning seats per constituency
Sum total of numbers in a line	6	Total number of seats in the constituency
Range of numbers	0-6	Number of seats a party won in a given constituency
Number of lines	16	Number of constituencies

Twenty sets of simulated election results were produced for 4 parties, 5 parties and 6 parties winning seats in the Senedd respectively. Different approaches to legislative gender quotas were then applied to these election results to determine how they affected the gender balance of the election results.

Figure 4: Example of one set of simulated election results for 4 parties, 5 parties and 6 parties winning seats respectively.

4 Party					5 Party					6 Party							
Constituency	Seats won				Constituency	Seats won				Constituency	Seats won						
	Party A	Party B	Party C	Party D		Party A	Party B	Party C	Party D		Party E	Party A	Party B	Party C	Party D	Party E	Party F
1	3	0	2	1	1	0	2	0	1	3	1	2	4	0	0	0	0
2	1	0	0	5	2	0	5	0	1	0	2	0	1	0	3	0	2
3	0	3	1	2	3	2	0	1	3	0	3	1	0	0	0	5	0
4	3	1	2	0	4	0	1	3	0	2	4	3	0	2	0	1	0
5	1	3	2	0	5	0	2	4	0	0	5	0	0	2	0	3	1
6	4	0	1	1	6	1	2	2	1	0	6	2	1	1	1	1	0
7	1	3	2	0	7	0	1	0	5	0	7	5	1	0	0	0	0
8	0	3	2	1	8	0	1	3	2	0	8	1	0	0	2	3	0
9	3	0	1	2	9	4	2	0	0	0	9	2	0	1	0	3	0
10	2	4	0	0	10	1	3	1	0	1	10	1	0	0	3	2	0
11	0	0	4	2	11	2	0	2	1	1	11	0	1	0	5	0	0
12	3	2	0	1	12	0	2	0	0	4	12	0	3	2	0	0	1
13	0	0	5	1	13	0	1	0	0	5	13	0	5	1	0	0	0
14	3	0	1	2	14	1	0	3	1	1	14	1	0	1	2	1	1
15	0	2	1	3	15	0	2	1	3	0	15	1	1	1	1	2	0
16	0	4	1	1	16	2	1	3	0	0	16	3	0	2	0	0	1

A range of scenarios were tested from no horizontal zipping through to highly specified system mandated horizontal zipping. The scenarios used were:

1. No horizontal zipping:
 - a. Men on top of all candidate lists across all constituencies
 - b. Women on top of all candidate lists across all constituencies
2. Party specified horizontal zipping:
 - a. Women on top of candidate lists in constituencies where they would win proportionally less seats (0, then 2, 4, 6)

- b. Combinations of different numbers of parties placing women on top of lists in constituencies where they would win proportionally more seats, less seats and pre-specified ordering
 - c. Women on top of candidate lists in constituencies where they would win proportionally more seats (1 then 3, 5)
3. System mandated horizontal zipping:
 - a. Pre-specified, parties are told who to put on top of lists where with genders alternating across constituencies in a strict way

The Senedd Cymru (Electoral Candidate Lists) Bill would be closest to the third scenario if passed and implemented but would be less strict as parties will be able to decide where half of their lists would be topped by women bringing an element of party specified horizontal zipping.

Figure 5: Random election modelling results, based on four parties winning seats in the Senedd

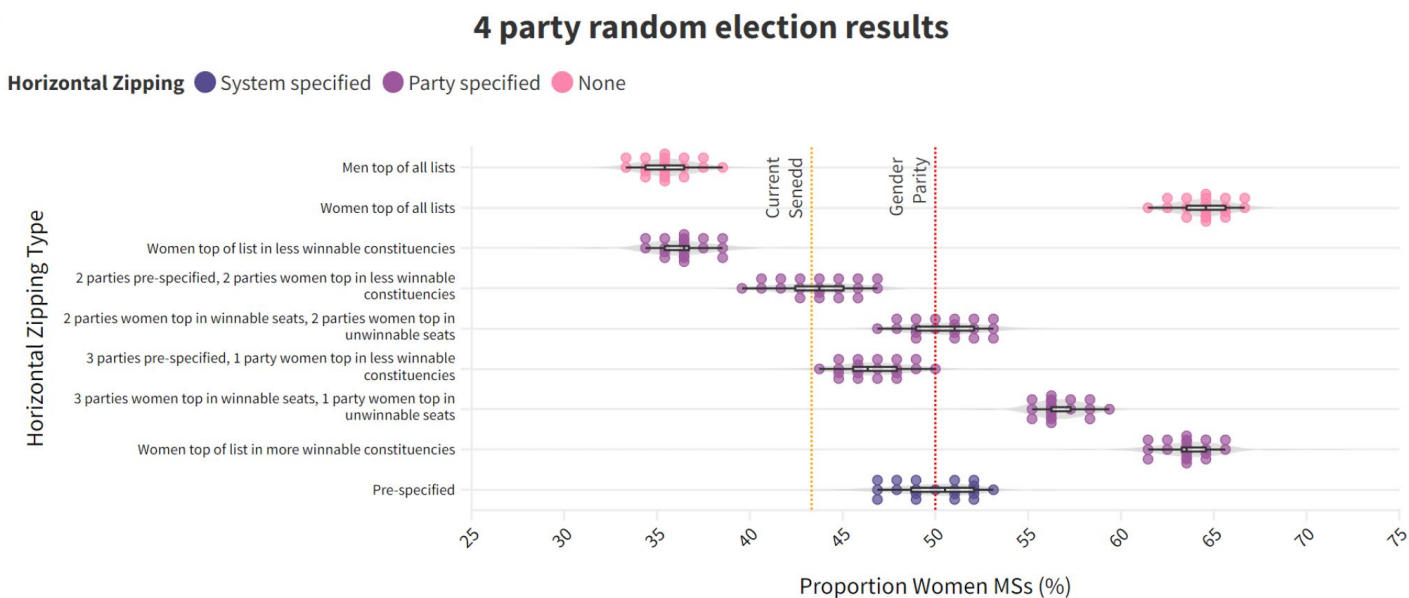
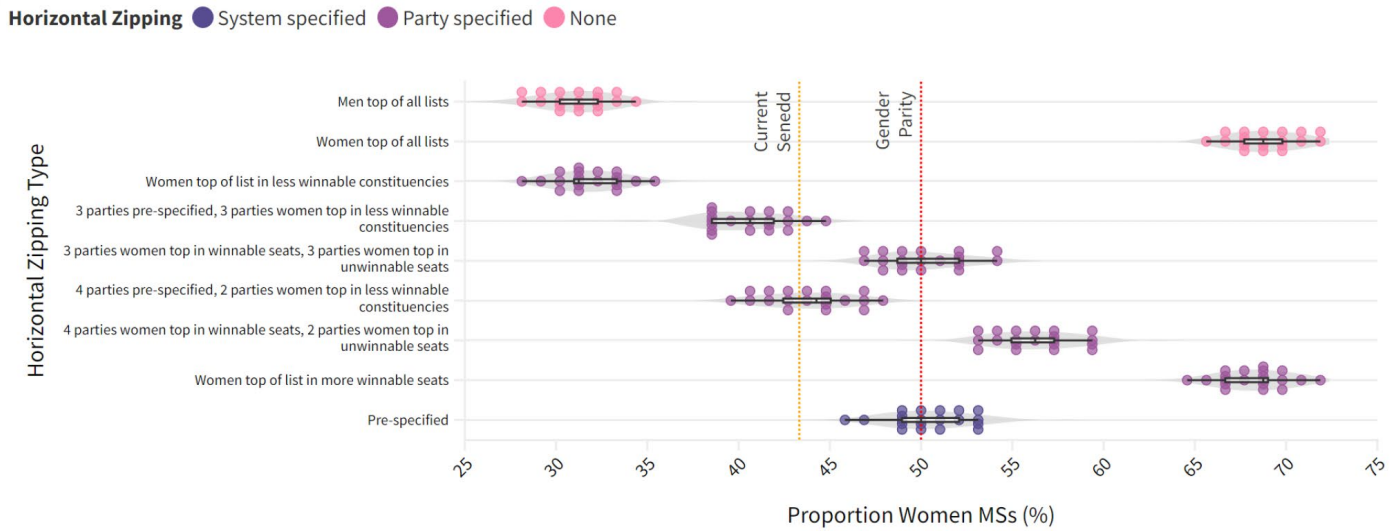


Figure 5 shows a number of outcomes in terms of the proportion of women MSs depending on the quota model used. The quota most likely to deliver parity according to the modelling is the pre-specified model but where women are placed in winnable seats also has a clear impact.

The main differences between the modelling where four, five or six parties won seats in the Senedd was a greater spread in the results of the modelling across the different hypothetical elections we ran.

Figure 6: Random election modelling results, based on six parties winning seats in the Senedd

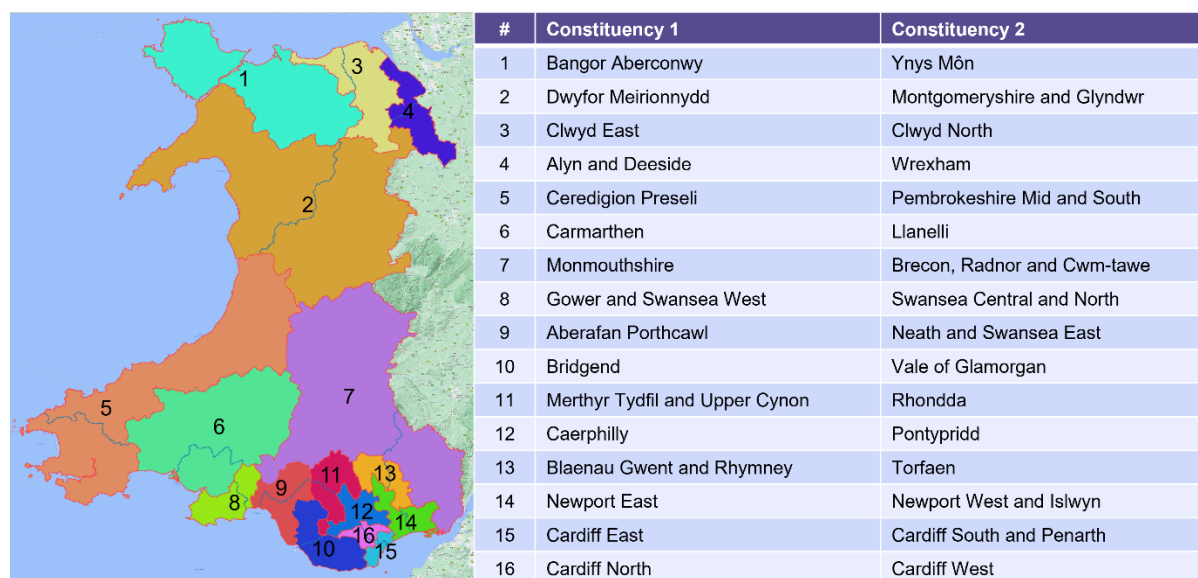
6 party random election results



Modelled election results

For the modelled election results the regional list votes from the 2021 Senedd elections were collated at a constituency level. Using the reprojection data produced by [Electoral Calculus](#) for the interim boundary review new constituencies (i.e. the best data that was available in January 2023), the regional list votes were adjusted by weighting their contribution to each of the new 32 Westminster constituencies based on the proportion of each of the old 40 constituencies within a new constituency. Once the new constituency votes were collated, the 32 constituencies were then paired into 16 Senedd constituencies (Figure 7) and the votes summed across these pairings. We want to be clear that these are hypothetical pairings and thus not the constituencies that will be used at the 2026 elections, but were necessary in order for us to model potential outcomes. They are also based on the interim boundaries for the Westminster constituencies as this work was undertaken prior to the final constituencies being published.

Figure 7: Westminster interim constituency pairings to produce 16 Senedd constituencies.



Seats were then allocated in each constituency using the D'Hondt method, with six seats per constituency. These seat allocations to each party per constituency were then used as an input dataset to apply the different approaches to legislative gender quotas to.

Figure 8: Modelled election results under a closed lists electoral system based on the contents of the 2022 announcement by the former First Minister and the former Leader of Plaid Cymru.

Party	Number of seats	% Seats	% Votes (total across all constituencies)
Welsh Labour	46	48%	36%
Welsh Conservatives	28	29%	25%
Plaid Cymru	21	22%	21%
Welsh Liberal Democrats	1	1%	4%

This data is purely based on the regional votes of the 2021 Senedd election and it should be noted that voter behaviour is likely to be different under a fully closed list system and under different boundaries.

A range of scenarios were then tested from no horizontal zipping through to highly specified system mandated horizontal zipping. The scenarios used were:

1. No horizontal zipping:
 - a. Men on top of all candidate lists across all constituencies

- b. Party specific % of women on top of lists based on candidate order for regional list in 2021 Senedd elections – placed in both more winnable and less winnable areas
 - c. Women on top of all candidate lists across all constituencies
2. Party specified horizontal zipping:
 - a. Women on top of candidate lists in constituencies where they will win proportionally less seats (0, then 2, 4, 6)
 - b. Party specific % of women on top of candidate lists in more winnable constituencies based on regional list results from 2021 Senedd elections
 - c. Women on top of candidate lists in constituencies where they will win proportionally more seats (1 then 3, 5)
 3. System mandated horizontal zipping:
 - a. Pre-specified, parties are told who to put on top of lists with genders alternating across constituencies in a strict way.

Figure 9: Outcome of modelled election results with a variety of zipping measures applied

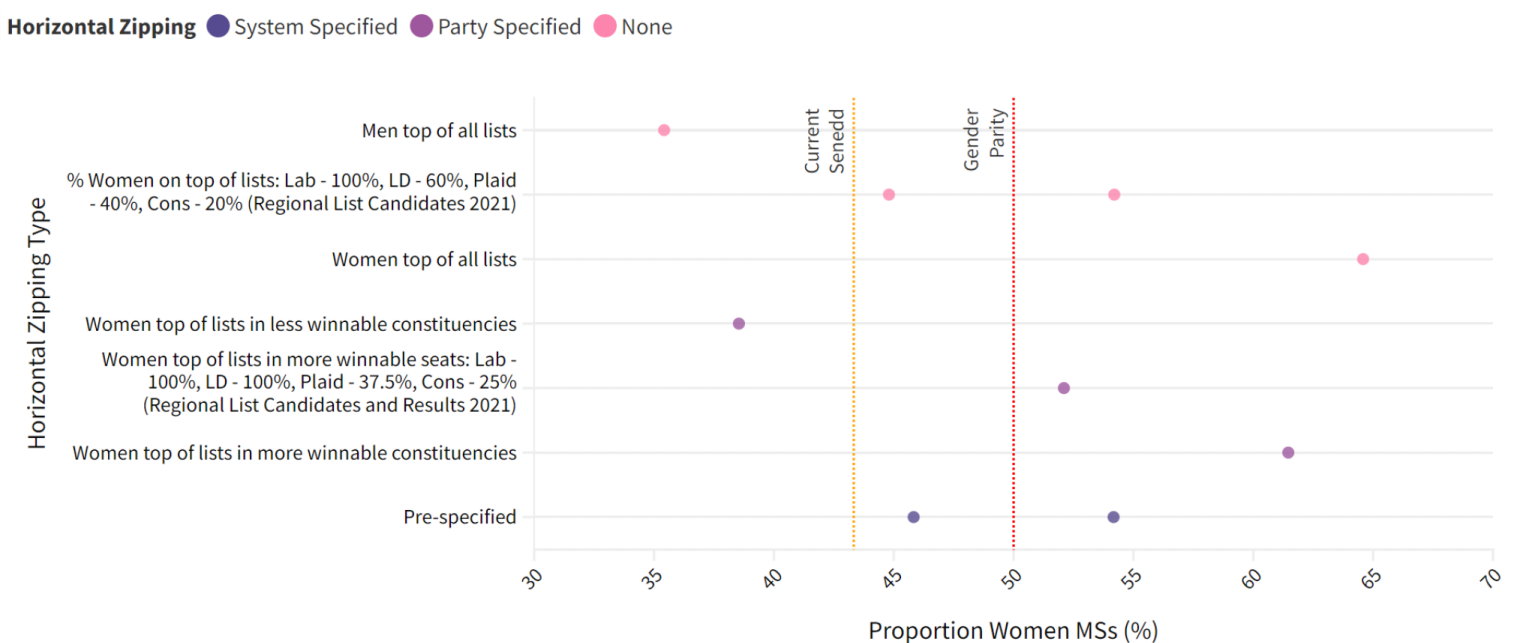


Figure 9 shows that under the modelled election results there is still a range of outcomes depending on which method of quota is used. Again the option that delivers the most reliable range around parity is the pre-specified model, but there are a number of ways of doing that depending on where women are placed on the top of lists.

Since we have undertaken this modelling, we have seen the publication of the Senedd Cymru (Electoral Candidate Lists) Bill, which now means we have a clearer picture of which of these zipping methods will be most similar to what would be used if this legislation is passed and implemented. However, what this modelling highlights is that there is a range of outcomes even under the strictest zipping method, which this legislation falls short of.

Therefore, the number of women elected even under legislative quotas will vary depending on and how many seats each party wins in a constituency. For example, if a party standing a man on the top of a list in one constituency wins three seats they will have two male and one female candidate successfully elected and vice versa. All of this will have an impact on the whole makeup of the Senedd but is entirely reliant on votes actually cast and not something that can or should be controlled.

But what parties can control that will have an impact is where parties stand women at the top of their lists. Parties should factor this in, as much as possible, when deciding which lists should be topped by women.

In summary, this modelling demonstrates that quotas could go a long way in providing a backstop to stop the number of women elected declining, but that parties should not rest on quotas if they are passed and implemented. Parties will still have a huge role in ensuring the diversity of the next Senedd and should not take this lightly.

Competency

We are aware that the competency of this Bill is the subject of discussion for the Reform Bill Committee. We believe it is for the Senedd to do its job and scrutinise this legislation and that includes questions around its competency. But we believe that this Bill goes hand in hand with other reforms currently progressing through the Senedd.

In 2022 ERS Cymru and WEN Wales instructed Christian J Howells of 30 Park Place Chambers to provide some legal advice on the competency of legislative quotas for Senedd elections. That legal advice is attached.

Other measures needed

Measures to promote diversity beyond gender

We have spoken about representation of members in terms of gender in our response. This is due to the contents of the Bill. However, we strongly believe diversity in its wider sense should be addressed, particularly around greater representation of black, Asian and ethnic minority candidates, disabled candidates,

LGBTQ+ candidates and candidates with a wider range of lived experiences, including age and societal barriers.

This was something recognised by the Committee on Senedd Reform, who recommended in their final report that:

“The relevant Sixth Senedd committee should undertake further work on diversity quotas in respect of characteristics other than gender to inform decisions on whether such quotas would be appropriate mechanisms to encourage the election of a more diverse Senedd. This work should be informed by expert advice on the design and operation of diversity quotas, and by working closely in partnership with underrepresented groups, including BAME communities in Wales and people with disabilities.”⁵

Furthermore, the Special Purpose Committee on Senedd reform stated:

“We recommend that a relevant committee considers how further work can best be undertaken on examining the merits and implications of legislative diversity quotas for characteristics other than gender. We anticipate that this consideration will inform decisions on whether such quotas may, in time, provide effective mechanisms for encouraging the election of a more diverse Senedd, at an appropriate time in the future.”⁶

While we understand competency might be a consideration here there has been little progress on exploring what measures can be put in place to increase the wider diversity of the Senedd and regret that no substantive piece of work addressing this is underway and that there are no measures around this within the Senedd Cymru (Electoral Candidate Lists) Bill.

Data on the diversity of candidates and elected representatives

The lack of official data on the diversity of candidates and elected representatives is a significant issue that has yet to be addressed. Existing data around the diversity of candidates and Members of the Senedd is not based on official figures; beyond the Senedd measures to collect data on the diversity of candidates for local elections has demonstrated that voluntary collections of data are not sufficient. Without accurate data it is very difficult to measure where progress is and is not being made on improving diversity.

⁵ <https://senedd.wales/laid%20documents/cr-ld13452/cr-ld13452%20-e.pdf>

⁶ <https://senedd.wales/media/5mta1oyk/cr-ld15130-e.pdf>

We have long called for the enactment of Section 106 of the Equality Act, which would require political parties to publish diversity data on candidates standing in elections to the House of Commons, Scottish Parliament and the Senedd.

In its absence there are measures that we believe could be taken at a devolved level, yet there has been little progress on this to date.

Multiple Senedd Committees and the Expert Panel on Assembly Electoral Reform have examined this issue and all recommended that data be collected in some way.

The Special Purpose Committee recommended:

“We recommend that a legislative requirement is placed upon a devolved Welsh Authority to collect and prominently publish anonymised candidate diversity data.”⁷

This is a relatively simple change, but one that would have a significant impact on our ability to understand the effects of measures like legislative gender quotas.

⁷ *Ibid*

ADVICE ON LEGISLATIVE DIVERSITY QUOTAS FOR SENEDD ELECTIONS

1. I am instructed to advise WEN Wales and ERS Cymru on whether the Senedd can pass legislation in relation to quotas for gender and other protected characteristics, within the meaning of the Equality Act 2010. They in turn have been asked by the Senedd Special Purpose Committee on Electoral Reform to identify any legislative options that may be available.
2. I am of the view that the introduction of mandatory selection arrangements, to include gender quotas, would arguably be within legislative competence because:
 - a. It is arguable that the purpose of such legislation would not relate to a reserved matter (equality of opportunity) but would relate to Senedd elections and so would not be caught by section 108A(2)(c) of the Government of Wales Act 2006 ('GoWA'); and
 - b. It is arguable that such legislation would fall within the exception to section N1 of Schedule 7A and so would not be caught by s108A(2)(c) GoWA.
3. Alternatively, it would be open to the Senedd to pass legislation imposing a duty on political parties to have due regard to the desirability of gender balanced candidate lists - mandating consideration of utilising section 104 of the Equality Act 2010.

Purpose of legislation would relate to Senedd elections not equality of opportunity

4. Legislative selection arrangements would probably be introduced by way of amendment to section 7 and/or 9 GoWA, '*candidates at general elections*' and '*allocation of seats to electoral region members*'. Those provisions are not protected by virtue of §7(2)(a)(v) of schedule 7B.

5. Senedd legislation will be outside competence where *“it relates to reserved matters”* in schedule 7A; section 108A(2)(c) GoWA.

6. Section 108A(6) provides the test to be applied in determining whether legislation relates to reserved matters. It provides:

“The question whether a provision of an Act of the Senedd relates to a reserved matter is determined by reference to the purpose of the provision, having regard (among other things) to its effect in all the circumstances.”

7. The Supreme Court has on two occasions clarified that the purpose of the legislation is to be ascertained in the usual way. If the purpose relates to a matter within devolved competence, then the fact that the legislation also touches upon reserved matters does not render the legislation outwith legislative competence:

a. *Martin v Most* [2010] UKSC 10, (2010) SC (UKSC) 40 was a case where an increase in the summary sentencing powers of Scottish criminal courts to 12 months impliedly amended the Road Traffic Offenders Act 1988 which stated that the maximum summary sentence for offences under the Act was 6 months. The Act was a reserved matter. The Court held by a majority at §§ 31 and 59 - 60 that as the purpose of the new legislation was to re-allocate the caseload and reduce pressure on the higher courts, it was *“directed”* as Scots law and did not relate to a reserved matter. Most of what was enacted by the Westminster Parliament (that it was an offence and the maximum penalty was 12 months) was left untouched;

b. *Re Agriculture Sector (Wales) Bill* [2014] UKSC 43, [2014] 1 WLR 2622 was a case where the Welsh Assembly passed legislation setting minimum terms and conditions of employment in the agricultural sector. Agriculture was then a conferred power, but employment and industry were not. The Court accepted at §58 that the bill *“might in principle be characterised as relating to “employment” and “industrial relations”*”.

Nevertheless, it held at §§ 65 – 68 that so long as the bill related to a devolved matter (the scheme of devolution was then a conferred powers model rather than a reserved powers model) it was within competence – GoWA at that time did not require that the legislation should only be categorised as relating a devolved subject.

8. The purpose of legislation can be ascertained by looking at the reports and papers that brought it about. I have considered the documents: (i) *A Parliament that Works for Wales* (November 2017) written by an expert panel on Assembly Electoral Reform; and (ii) *Senedd Reform: The next steps* (September 2020) written by the Senedd Committee on Senedd Electoral Reform. Recommendation 10 of document (i) was “*in order to safeguard the achievements of the Assembly and political parties in Wales in relation to gender-balanced representation, we recommend that a gender quota is integrated within the electoral system put in place for 2021.*” At §12.19 it stated that it would be anomalous if the Senedd did not have competence to determine its own electoral arrangements, including gender quotas. At §12.22 it states “*the intention of our proposals for gender quotas is to ensure that the Assembly is as representative as possible of the people of Wales*”. Read as a whole, the proposals in document (i) were not formulated to create equality of opportunity, but rather to ensure the Senedd was as representative as possible of the people of Wales.

9. Depending on the reasons for the legislative proposal going forward, if it can be said that the purpose of the legislation is to ensure the Senedd is representative of the electorate, then it can be argued that the purpose of the legislation relates to Senedd elections and although it may also touch upon equality of opportunity, that is insufficient to render it outside competence. The only reservations relating to Senedd elections are set out at §§ 21 - 27 of section B1 of Schedule 7A and are not relevant here.

10. Quotas in respect of protected characteristics other than gender need to be carefully thought through bearing in mind that the Senedd's competence is restricted by compatibility with the European Convention on Human Rights (s108A(2)(e)) and drawing distinctions along other lines requires careful justification for the purposes of the principle of non-discrimination contained in article 14 of the Convention.
11. Section 104 of the Equality Act 2010 ('EA') allows a political party to introduce selection arrangements which are designed for the purpose of reducing inequality in a party's representation and are proportionate arrangements. The introduction of mandatory gender quotas in candidate lists for each party in Wales would not be inconsistent with section 104 EA but would make additional provision - make such arrangements mandatory rather than permissible. I do not consider that there would be any modification of section 104 EA by the proposed amendment of sections 7 and 9 GoWA (and so I disagree with the suggestion to the contrary made at §278 of the report of the Senedd Committee on Electoral Reform). The Senedd legislation would not alter the rule laid down in section 104 EA or be in conflict with its unqualified continuation in force as before, so that section 104 EA has to be understood as having been in substance amended, superseded, disapplied or repealed; see *Re Withdrawal from the EU (Scotland) Bill* [2018] UKSC 64, [2019] AC 1022 at §51.
12. In any event, even if there were such modification, the Equality Act 2010 is not protected legislation in §5 of Schedule 7B and so can be modified by the Senedd, subject to the operation of section 108A(2)(c) and schedule 7A. §2 of Schedule 7B allows the modification of an enactment the subject matter of which is a reserved matter if such modification is ancillary to legislation which does not relate to a reserved matter. Thus, if the effect of an amendment to sections 7 and 9 GoWA was an implied amendment of section 104 EA, that would be permissible.

13. However, if such legislation is passed, there is a real risk that the Attorney General would refer the legislation to the Supreme Court pursuant to section 112 GoWA. That process will take 8 – 12 months to resolve.

Even if purpose related to equality of opportunity, the proposed mandatory selection arrangement would fall within an exception to the reservation

14. Schedule 7A sets out the reserved matters but also sets out the exceptions to those reserved matters. If the legislation falls within the exception, it is not caught by s108A(2)(d).
15. Section N1 of schedule 7A materially states:

“Section N1 Equal opportunities

187 *Equal opportunities.*

Exceptions

The encouragement (other than by prohibition or regulation) of equal opportunities, and in particular of the observance of the equal opportunity requirements.

...

The provision falling within this exception does not include any modification of the Equality Act 2010, or of any subordinate legislation made under that Act, but does include –

- (a) provision that supplements or is otherwise additional to provision made by that Act;*
- (b) in particular, provision imposing a requirement to take action which that Act does not prohibit;*
- (c) provision that reproduces or applies an enactment contained in that Act, with or without modification, without affecting the enactment as it applies for the purposes of that Act.” [emphasis added]*

16. If reliance is being placed on the exception because it is accepted, or the Supreme Court holds, that mandatory selection arrangements would relate to a reserved matter, then any legislation could not modify the Equality Act 2010,

as the exception expressly says so and §1 of schedule 7B would bite. But the Senedd **can** pass a provision which supplements or is otherwise additional provision and which imposes a requirement to take action which the Equality Act 2010 does not prohibit.

17. The first point is that, for the reasons given at §10, a legislative quota would not modify the Equality Act 2010 – it would be additional provision and would fall within the exception. Section 104 EA allows selection arrangements by political parties and the Senedd legislation would only require action already permitted by the Equality Act 2010. Such mandatory selection arrangements would be an encouragement of equal opportunity. I have debated whether a mandatory requirement would amount to regulation, which is not permitted by the exception, but in light of the fact that it later says such provision does include a requirement that is not prohibited, then I have come to the conclusion that it is arguable that mandatory selection arrangements would fall within the exception of encouragement.

The lesser option of a due regard duty

18. If it was accepted, or the Supreme Court held, that a mandatory selection requirement did not fall within the exception of encouragement (because it was regulation) or because it did amount to a modification of the Equality Act 2010, then there is the lesser option of introducing a duty on all political parties who submit a list of candidates to have due regard to the desirability of gender balanced lists. This would simply be encouraging parties to take advantage of section 104 EA and it would be open to the parties to decline, so long as they consider it.

Conclusion

19. Accordingly, I am of the view that it is within the legislative competence of the Senedd to introduce legislation which requires political parties at Senedd elections to submit candidate lists which are comprised of at least 50% female candidates. Alternatively, it is within the legislative competence of the Senedd to impose a duty on political parties to have due regard to the desirability of implementing selection arrangements in accordance with section 104 of the Equality Act 2010.

Christian J Howells

30 Park Place, Cardiff

31 January 2022



Modelling the potential outcomes of legislative gender quotas

Approach to modelling LGQs

Dual approach:

- **Random election results constrained by the bounds of Senedd Reform**
 - **16 constituencies**
 - **6 seats in each**
- **Modelled election results based on 2021 Senedd regional list votes to allocate seats to parties in each new constituency**

Vertical Zipping

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- **Adjacent candidates going down a party list may not be of the same gender**
- **Other names for vertical zipping include rank or placement mandate and zebra system**
- **Many countries use vertical zipping in their LGQ including: Bolivia, Costa Rica, Ecuador, France, Kenya, Republic of Korea, Lesotho, Libya, Mexico, Nicaragua, Senegal, Tunisia and Zimbabwe**

Position on list	Example 1	Example 2	Example 3
1	F	M	F
2	M	F	N
3	F	M	F
4	M	F	M
5	F	M	F
6	M	F	M

F – female, M – male, N – non-binary

Horizontal Zipping

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- Horizontal zipping is more complex as there are several ways to zip party lists horizontally, but in essence it refers to alternating genders at the top of the list so that the first seat isn't always won by the same gender across the available constituencies
- This could be pre-specified by an electoral management board or similar and dictated to the parties
- Or parties could decide which candidates to put on top of the list where

Constituency	Example 1	Example 2	Example 3
Area 1	F	M	F
Area 2	M	M	N
Area 3	F	M	F
Area 4	M	F	M
Area 5	F	F	F
Area 6	M	F	M

F – female, M – male, N – non-binary

Horizontal Zipping

- This variability in approaches means outcomes could be different under different forms of horizontal zipping
- Countries that use horizontal (and vertical) zipping in their LGQs include Mexico, Costa Rica, Bolivia and Ecuador
 - Some require that women must be placed in 'winnable' seats based on the parties' results at the last election
- Latin America is leading in this element of quota design

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Constituency	Example 1	Example 2	Example 3
Area 1	F	M	F
Area 2	M	M	N
Area 3	F	M	F
Area 4	M	F	M
Area 5	F	F	F
Area 6	M	F	M

F – female, M – male, N – non-binary

Random election methods

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- 20 iterations, providing 20 sets of election results per number of parties winning seats
- Random number generator used to generate election results with following settings:
 - Sets of numbers per line specified between 4 – 6 representing the number of ‘parties’ winning seats in a given set of elections
 - Each individual number could vary between 0 – 6 (the minimum and maximum numbers of seats a ‘party’ could win in any given constituency) and all numbers in a given line had to sum to 6 (i.e. the number of seats available in any constituency)
 - 16 lines of numbers were produced in each iteration reflecting the 16 constituencies
- Different approaches to horizontal zipping (the alternating of genders at the top of the list across constituencies) were then applied to these election results
- Under all scenarios there was always vertical zipping down party lists

Random election example results

4 Party

Constituency	Seats won			
	Party A	Party B	Party C	Party D
1	3	0	2	1
2	1	0	0	5
3	0	3	1	2
4	3	1	2	0
5	1	3	2	0
6	4	0	1	1
7	1	3	2	0
8	0	3	2	1
9	3	0	1	2
10	2	4	0	0
11	0	0	4	2
12	3	2	0	1
13	0	0	5	1
14	3	0	1	2
15	0	2	1	3
16	0	4	1	1

5 Party

Constituency	Seats won				
	Party A	Party B	Party C	Party D	Party E
1	0	2	0	1	3
2	0	5	0	1	0
3	2	0	1	3	0
4	0	1	3	0	2
5	0	2	4	0	0
6	1	2	2	1	0
7	0	1	0	5	0
8	0	1	3	2	0
9	4	2	0	0	0
10	1	3	1	0	1
11	2	0	2	1	1
12	0	2	0	0	4
13	0	1	0	0	5
14	1	0	3	1	1
15	0	2	1	3	0
16	2	1	3	0	0

6 Party

Constituency	Seats won					
	Party A	Party B	Party C	Party D	Party E	Party F
1	2	4	0	0	0	0
2	0	1	0	3	0	2
3	1	0	0	0	5	0
4	3	0	2	0	1	0
5	0	0	2	0	3	1
6	2	1	1	1	1	0
7	5	1	0	0	0	0
8	1	0	0	2	3	0
9	2	0	1	0	3	0
10	1	0	0	3	2	0
11	0	1	0	5	0	0
12	0	3	2	0	0	1
13	0	5	1	0	0	0
14	1	0	1	2	1	1
15	1	1	1	1	2	0
16	3	0	2	0	0	1

Random election LGQ approaches

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No horizontal zipping:

- Men on top of all candidate lists across all constituencies
- Women on top of all candidate lists across all constituencies

Party specified horizontal zipping:

- Women on top of candidate lists in constituencies where they will win proportionally less seats (0, then 2, 4, 6)
- Combinations of different numbers of parties placing women on top of lists in constituencies where they will win proportionally more seats, less seats and pre-specified ordering
- Women on top of candidate lists in constituencies where they will win proportionally more seats (1 then 3, 5)

System mandated horizontal zipping:

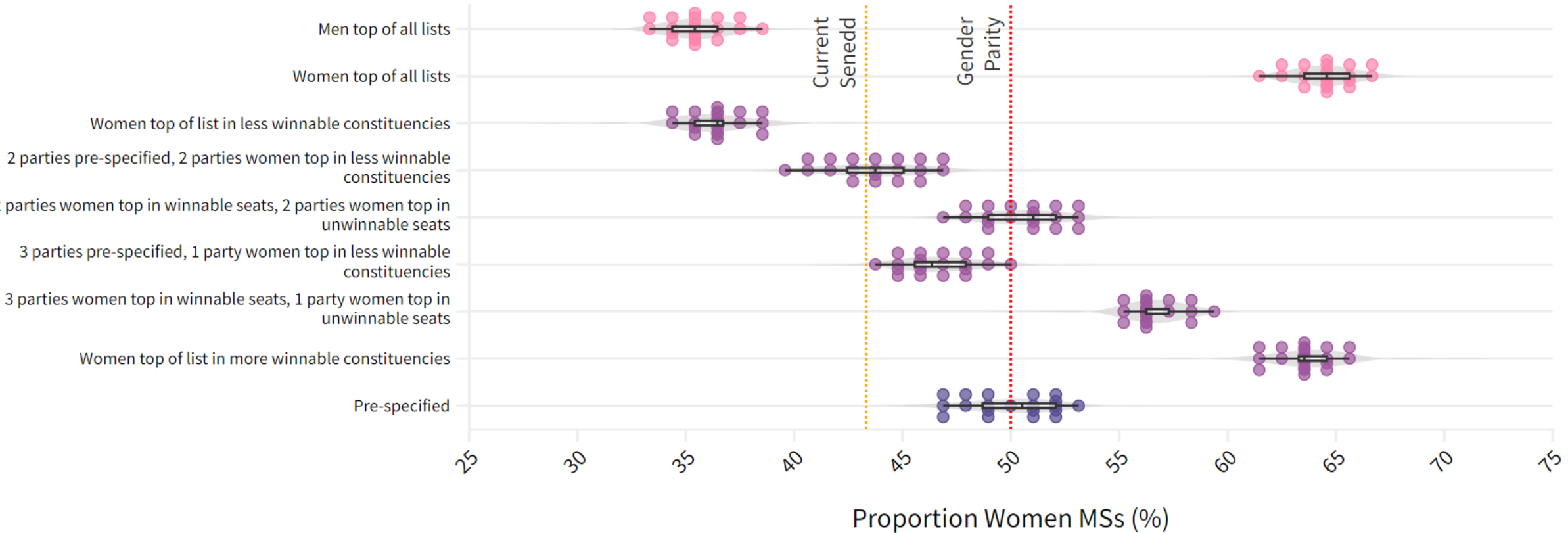
- Pre-specified, parties are told who to put on top of lists where with genders alternating across constituencies in a strict way

Random election modelling results

4 party random election results

Horizontal Zipping ● System specified ● Party specified ● None

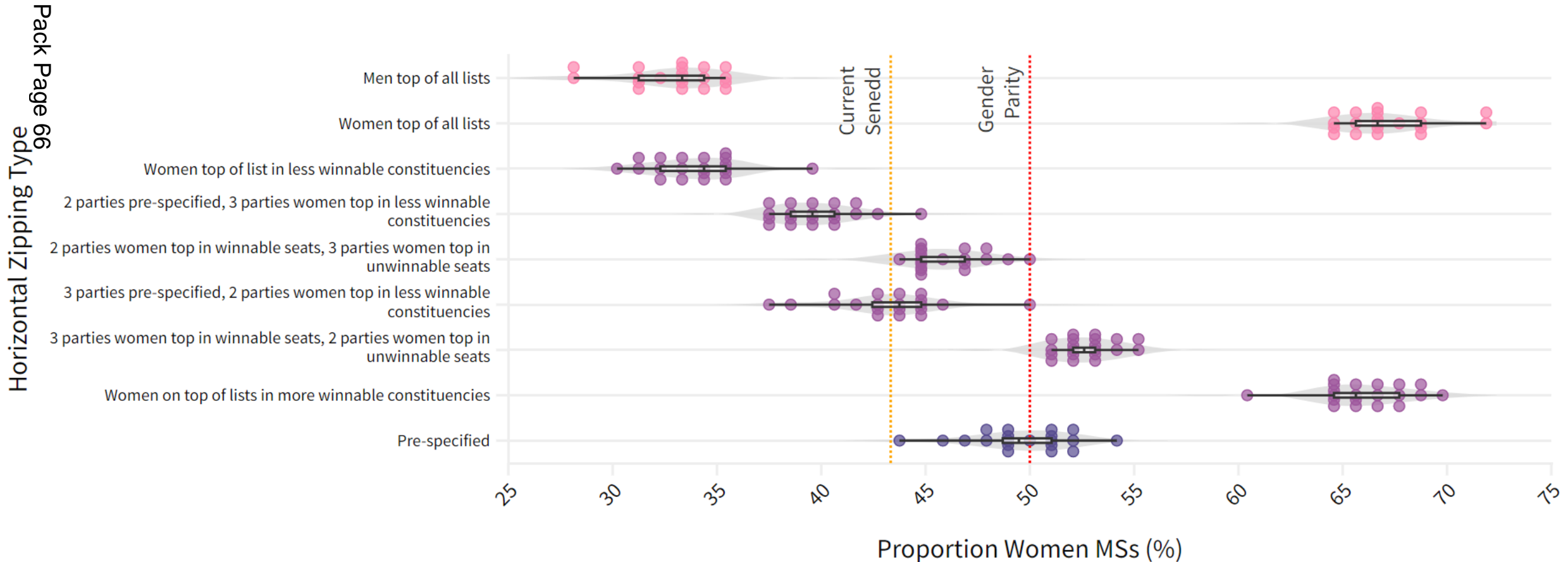
Horizontal Zipping Type
Pack Page 65



Random election modelling results

5 party random election results

Horizontal Zipping ● System specified ● Party specified ● None

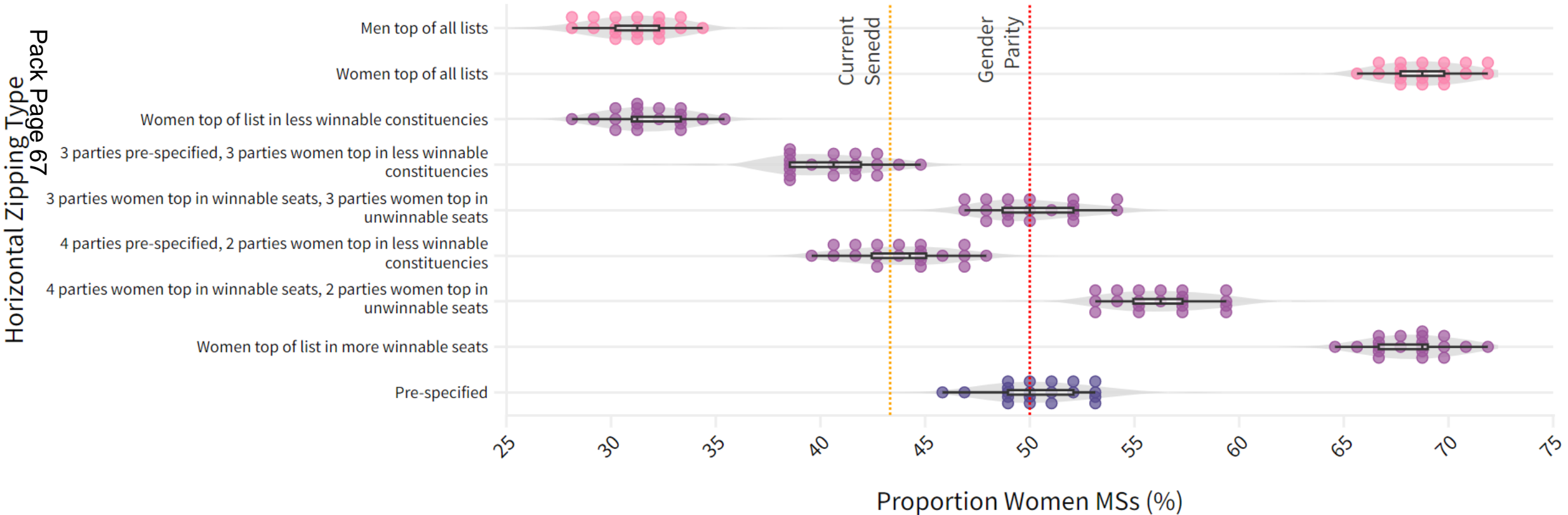


Random election modelling results

6 party random election results

Horizontal Zipping ● System specified ● Party specified ● None

Horizontal Zipping Type
Pack Page 67



Conclusions from random election LGQ modelling

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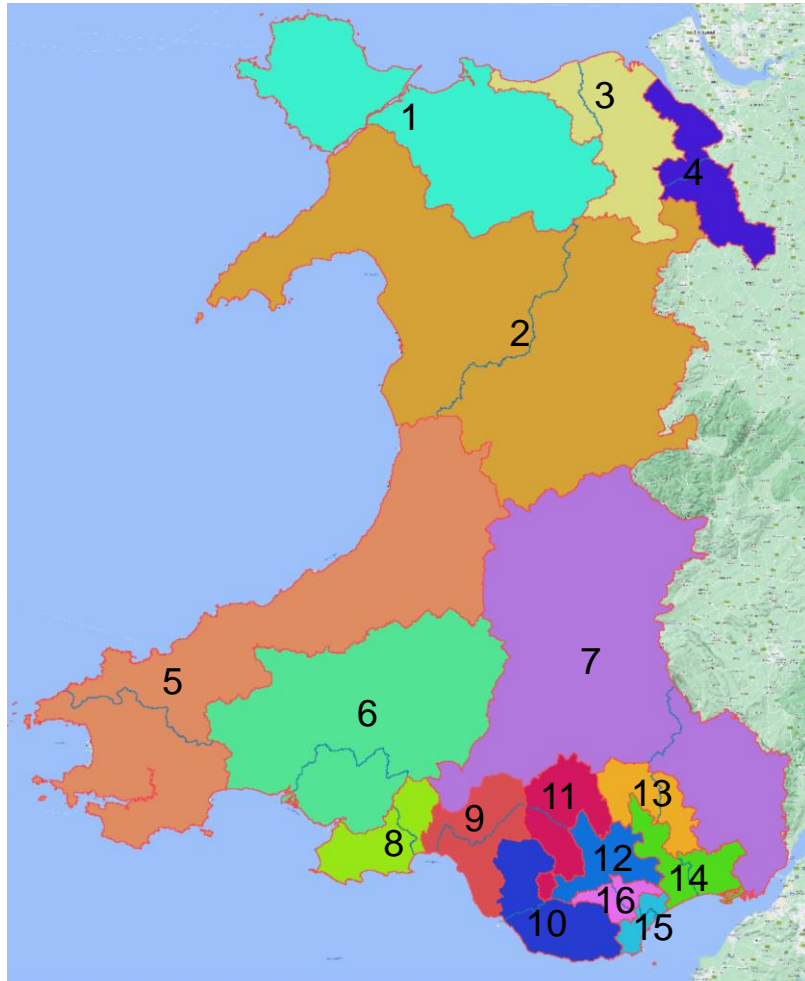
- **Wide range of outcomes from different horizontal zipping methods**
- **Some methods produce results that are less balanced than the current Senedd**
- **No approach guarantees exact parity across different election result iterations**
- **Number of parties winning seats in a given election also affects outcomes**

Modelled election results post-Senedd Reform - Methods

- **Caveats: all results are estimates based on the data available but cannot be considered accurate predictions of future election results**
- **Regional list votes from the 2021 Senedd elections were used as a base for the modelling**
- **Votes from the 40 current constituencies were projected onto the new 32 constituencies weighted using the proportions of electorate within each new constituency from the boundary commission reports**
- **The 32 constituencies were then paired into 16 new Senedd constituencies and votes summed across these pairings**
- **Seats were allocated to each party using the D'Hondt method in each of these 16 constituencies**

Modelled new constituency boundaries

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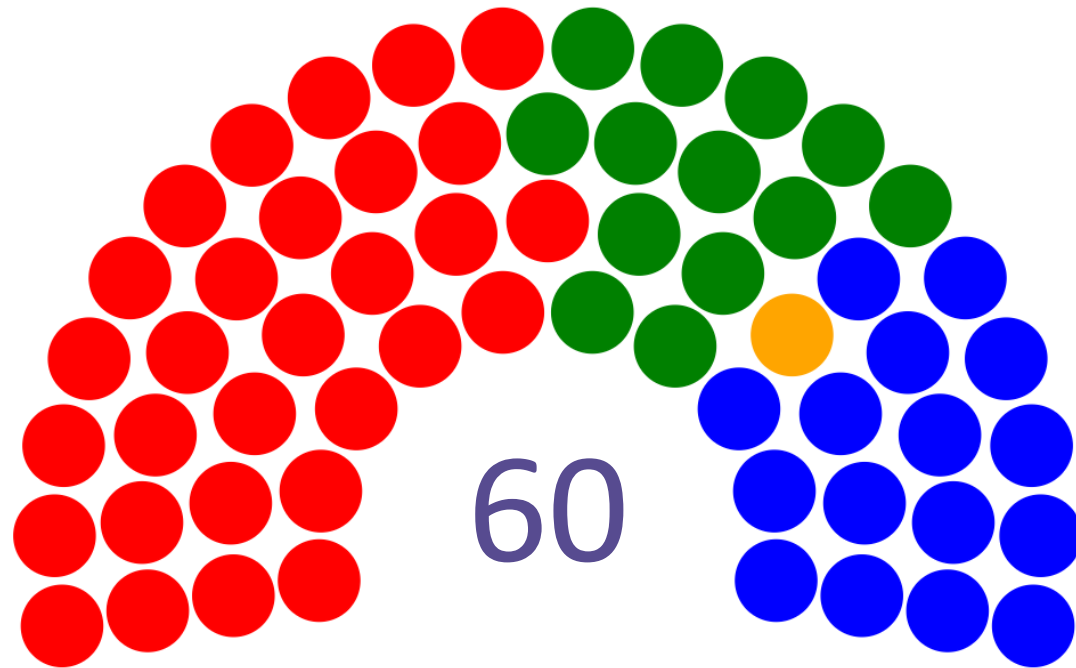
#	Constituency 1	Constituency 2
1	Bangor Aberconwy	Ynys Môn
2	Dwyfor Meirionnydd	Montgomeryshire and Glyndwr
3	Clwyd East	Clwyd North
4	Alyn and Deeside	Wrexham
5	Ceredigion Preseli	Pembrokeshire Mid and South
6	Carmarthen	Llanelli
7	Monmouthshire	Brecon, Radnor and Cwm-tawe
8	Gower and Swansea West	Swansea Central and North
9	Aberafan Porthcawl	Neath and Swansea East
10	Bridgend	Vale of Glamorgan
11	Merthyr Tydfil and Upper Cynon	Rhondda
12	Caerphilly	Pontypridd
13	Blaenau Gwent and Rhymney	Torfaen
14	Newport East	Newport West and Islwyn
15	Cardiff East	Cardiff South and Penarth
16	Cardiff North	Cardiff West

Modelled election results post-Senedd Reform - Results

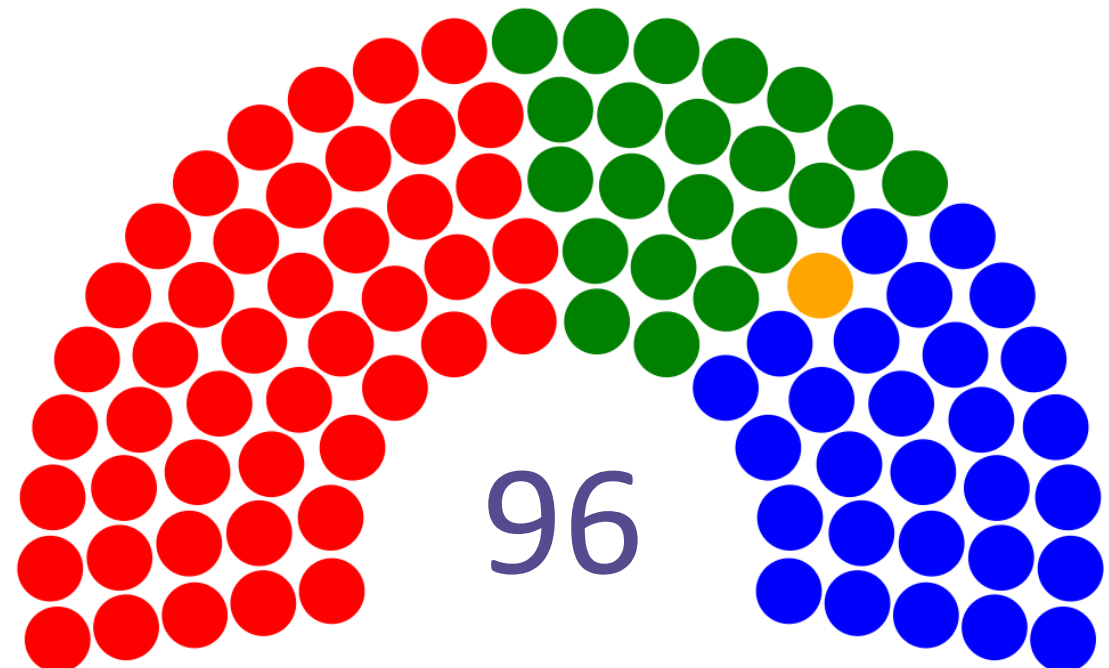
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Party	Number of seats	% Seats	% Votes (total across all constituencies)
Welsh Labour	46	48%	36%
Welsh Conservatives	28	29%	25%
Plaid Cymru	21	22%	21%
Welsh Liberal Democrats	1	1%	4%

Senedd 2021 results Senedd Reform model



Senedd 2021 results **Senedd Reform model**



Party	Senedd 2021 results	Senedd Reform model	Seat change
● Welsh Labour	30	46	↑ 16
● Plaid Cymru	13	21	↑ 8
● Welsh Liberal Democrats	1	1	0
● Welsh Conservatives	16	28	↑ 12

Modelled election LGQ approaches

No horizontal zipping:

- Men on top of all candidate lists across all constituencies
- Party specific % of women on top of lists based on candidate order for regional list in 2021 Senedd elections – placed in both more winnable and less winnable areas
- Women on top of all candidate lists across all constituencies

Party specified horizontal zipping:

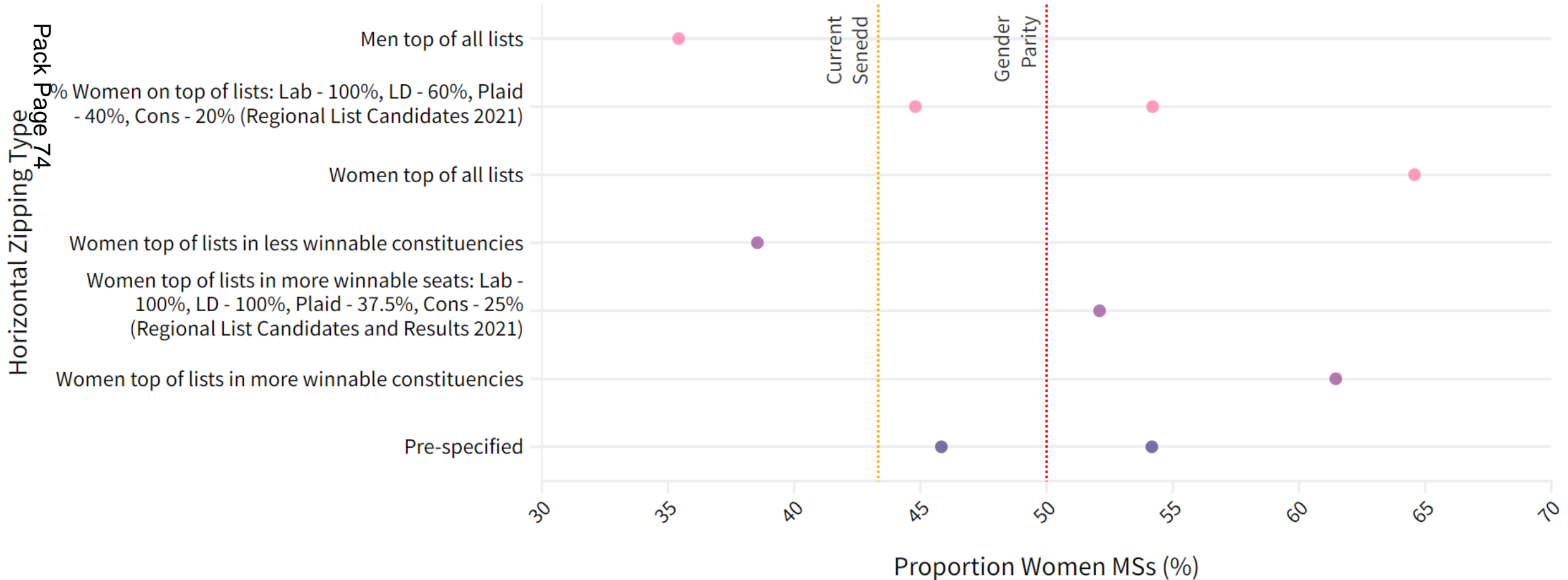
- Women on top of candidate lists in constituencies where they will win proportionally less seats (0, then 2, 4, 6)
- Party specific % of women on top of candidate lists in more winnable constituencies based on regional list results from 2021 Senedd elections
- Women on top of candidate lists in constituencies where they will win proportionally more seats (1 then 3, 5)

System mandated horizontal zipping:

- Pre-specified, parties are told who to put on top of lists where with genders alternating across constituencies in a strict way

Modelled election LGQ outcomes

Horizontal Zipping ● System Specified ● Party Specified ● None



Conclusions from modelled election LGQ outcomes

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- Range of outcomes based on zipping method
- Vertical zipping only could produce proportions of women MSs as low as 35.4% if men are placed at the top of candidate lists by all parties across all constituencies
- Mandating horizontal, as well as vertical zipping improves outcomes could still be as low 38.5% women MSs if women are placed on top of lists in less winnable areas
- Strict pre-specified horizontal zipping produces outcomes from 46 – 54% but may not be possible under current competencies
- Even if vertical and horizontal zipping are mandatory then parties may still play a huge role in determining the outcomes through where individuals are placed on top of the list

Document is Restricted

By virtue of paragraph(s) ix of Standing Order 17.42

Document is Restricted

Agenda Item 4

SCECLB7 - P Women's Rights Network

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 Rhwydwaith Hawliau Merched | Evidence from Women's Rights Network



9 April 2024

Reform Bill Committee
The Senedd
Cardiff
CF99 1SN

To whom it may concern,

Thank you for the invitation to give oral evidence on 24th April 2024 in an evidence session before the Reform Bill Committee, responsible for Stage 1 of the Senedd (Electoral Candidates Lists) Bill. As previously indicated, we will attend and provide this evidence directly to you on that date.

Our written submission in respect of that Bill is duly attached in advance of the closing date for consultation responses on 12th April 2024.

We look forward to the opportunity to address you further.

Yours sincerely,

Heather Binning
Founder, Women's Rights Network

General principles

1. 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 would be grateful if you could keep your answer to around 500 words)

1. Our position is that this Bill to ensure equal representation of women is not required. However, if a Bill is brought, it must deliver improved representation of women. For the purpose of this response, we use the definition of woman supplied by the Equality Act 2010¹: a female of any age. The UN Special Rapporteur on Violence against Women and Girls, Reem Alsalem² uses the same definition: women are biological females.
2. The Bill talks about "gender" which is not defined while the census information quoted by the Explanatory Memorandum talks of sex. There must be consistent use of terms and definitions for purposes of clarity and to avoid confusion. The definition of "gender" is disputed³ and therefore sex as defined by the Equality Act 2010⁴ should be used throughout.
3. If the Welsh Government finds itself unable to agree with the ordinary usage definitions stated above, then the Bill must clarify what is meant by the words "woman" and "gender".
4. An agreed definition of terms is required to ensure the objectives of the Bill are clear (*"to make the Senedd a more effective legislature by ensuring it is broadly representative of the gender make-up of the population"*) and so that success can be measured and demonstrated.
5. From the Explanatory Memorandum:

The Expert Panel referred to evidence indicating that over half of the world's nations use some form of electoral quota and that their use is increasing internationally.

But Senedd reform: the next steps⁵ acknowledges that "seven out of the ten best performing countries for female representation do not use quotas, Dr Fiona Buckley and Dr Meryl Kenny identified that of these, many had a well-established system of voluntary party quotas".

¹ <https://www.legislation.gov.uk/ukpga/2010/15/section/212?view=plain>

² <https://www.ohchr.org/sites/default/files/documents/issues/women/sr/statements/20240404-Statement-sr-vawg-cedaw-convention.pdf>

³ <https://www.ohchr.org/sites/default/files/documents/issues/women/sr/statements/20240404-Statement-sr-vawg-cedaw-convention.pdf>

⁴ <https://www.legislation.gov.uk/ukpga/2010/15/section/11>

⁵ <https://senedd.wales/laid%20documents/cr-ld13452/cr-ld13452%20-e.pdf>

6. In the National Assembly for Wales consultation report⁶ we note that;
 - a. A total of 1340 responses were considered.
 - b. Overall, 39% of respondents **do not** support a change to the electoral system (400 do not support, 120 do not know).
 - c. Overall, only 16% (210) of respondents support formal measures such as gender quotas.
 - d. Other measures such as shortlists and financial incentives have been disregarded without explanation. The UK Labour party has used shortlists to great effect⁷.

7. Although there are more men than women currently elected, that has not always been the case. In 2003 the Senedd was 50% women, proving that it is possible to achieve a sex balance without quotas. The choice to implement mandatory quotas is not evidenced.

8. The mechanism chosen to achieve “parity” is:
 - complicated and likely to be poorly understood by the electorate;
 - breaks the democratic link between electorate and individual candidates;
 - might reduce turnout if lists include members that the electorate feel unable to vote for.

9. The rules around eligible lists could return a Senedd entirely composed of women. This would not be “*broadly representative of the gender make-up of the population*” and by the Welsh Government’s argument, this would make the Senedd less effective.

10. The rules around eligible lists could return a Senedd entirely composed of male people as long as 50% of them state they are women. (It could be 100% who state they are women). This is unlikely, but good laws don't rely on undesired outcomes being unlikely. Spanish soldiers and policemen have stated that they are women to gain employment benefits intended for women⁸. When the Scottish government voted through the GRRB they didn’t for a moment think that they would be defending a rapist calling himself Isla Bryson being placed in a women's prison.

11. From the Explanatory Memorandum:

29. Theory of change research published by the Welsh Government specifically identifies male incumbency as a barrier faced by women in the context of access to

6

<https://business.senedd.wales/documents/s79146/Full%2520consultation%2520report%2520PDF%25201.1MB.pdf&sa=D&source=docs&ust=1712219621924071&usg=AOvVaw0xsNK3zcMrS-PH622WIfOv> questions 4 & 5

⁷ <https://www.democraticaudit.com/2016/02/19/gender-quotas-do-not-pose-a-threat-to-merit-at-any-stage-of-the-political-process/>

⁸ <https://www.telegraph.co.uk/news/2024/03/05/spanish-soldiers-change-gender-benefits-for-women/#:~:text=Spain's%20Left%20Dwing%20government%20introduced,of%20Ceuta%20in%20North%20Africa.>

elected office. The research report notes that the costs of campaigning can be significant for women as they 'are more likely to have caring responsibilities, work part-time, and take career breaks to raise children' compared with men. The report also identified that 'fear of violence, abuse and harassment from the public ... [is] a significant barrier for women' standing for election in local elections.

The proposed Bill does nothing to address these acknowledged barriers that prevent or discourage talented women from standing as candidates. Maternity, caring responsibilities and financial constraints are likely to be the real challenges. This Bill will simply make selection easier for women who do not face such barriers or have already overcome them.

Enforcement and compliance

As part of the nominations process, candidates would be required to make a statement about whether they are a woman or not a woman. This statement will be used as the basis for enforcing the rules. Constituency Returning Officers (CROs) will take these statements at 'face value', meaning that they would not undertake any investigation into whether the information provided by a candidate is correct. CROs would be responsible for verifying that a minimum of 50% of candidates on each list have made a statement that they are women, and that the vertical rule is met. If a list does not comply, the CRO will be able to invalidate the nomination papers.

For the national quotas, the Bill gives the Welsh Government the power to appoint a National Nominations Compliance Officer (NNCO). This role would oversee compliance with the horizontal rule. If a political party's lists do not comply with the rule, they will be given the opportunity to re-order one or more list to make them compliant. If they do not, then one or more lists would be chosen by the NNCO and re-ordered by the relevant CRO.

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

(we would be grateful if you could keep your answer to around 500 words)

12. Assertions that women are 51% of the population is based on their sex according to the 2021 census. There is a legal requirement to be truthful when completing the census, with a penalty for deliberate falsehoods.
13. For this Bill, sanctions only apply for failing to follow the rules about zipping, ordering, and horizontal and vertical list compliance. There is no sanction for falsely stating that a person is a woman to prioritise their name on a list.
14. There is no mention of what would constitute a false statement – no mention of a person's sex, a GRC, or even having an "intention to live as a woman". In this Bill, making a statement with no evidential requirement is deemed sufficient. Self-declaration such as this is not UK law. ⁹
15. From the Explanatory Memorandum:

*236. Existing electoral law provides for a number of electoral offences relating to the fair running of elections targeted at electoral administrators and participants. One such offence is breach of official duty by Returning Officers and other electoral officials and this may be amended to cover the NNCO. For participants, there are various offences which are corrupt or illegal practices, one of which involves providing false statements in nomination and other papers. **Making a false gender statement will not be part of that corrupt practice offence.***

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https://www.google.com/url?q=https://record.senedd.wales/Committee/13794&sa=D&source=docs&ust=1712162482654029&usg=AOvVaw0ZuTiRL3fsloa-Yp_1nQwR Paras 100 - 104 & 126

This explicitly recognises that a false gender statement is possible. As a key criterion for candidate selection, there is no justification for excluding falsification from sanction.

16. There are obvious benefits for a man to claim he is a woman even if he does not believe it and has every intention to desist as soon as elected. In Mexico, 15 men identified as transgender in order to occupy candidacies designated for women¹⁰.
17. Men might reasonably feel that they are being discriminated against by these rules that cap the number of men at 50% but do not cap the number of women, incentivising them to falsify their gender statement.
18. The current Senedd sex balance is 43% women to 57% men, and in 2003 the sex balance was 50:50, so abuse of the “gender statement” could make the sex balance worse.
19. If a person stated they were a woman when registering as a candidate for election, but stated they were a man after the election, would that person be required to stand down? The proponents of this Bill have not made that clear.¹¹
20. Our view is that enforcement is weak or non-existent on this point and will encourage men who would game the criterion.

¹⁰ <https://www.theguardian.com/world/2018/jun/22/mexico-elections-fake-transgender-candidates-disqualified>

¹¹ <https://record.senedd.wales/Committee/13793> Paras 143-146

The Bill's implementation

The Regulatory Impact Assessment is set out in Part 2 of the **Explanatory Memorandum** (<https://senedd.wales/media/xp4dqjto/pri-ld16394-em-e.pdf>). This includes the Welsh Government's assessments of the financial and other impacts of the Bill and its implementation.

3. 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?

(we would be grateful if you could keep your answer to around 500 words)

21. The direction of travel for this Bill is towards the Supreme court. There is dispute around the legislative competence of the Welsh Government to implement this Bill. The Llywydd has stated her opinion¹² based on legal advice that the necessary legislative competence is lacking. The scrutiny committee headed by David Rees makes the same point¹³.
22. The definition of a person as a woman or not-a-woman based on a "gender statement" does not align to the definition of a woman in the Equality Act 2010, nor with the Gender Recognition Act 2004. The For Women Scotland ruling published 1 Feb 2024¹⁴ confirms that this is a reserved matter.
23. To carry out positive action on behalf of any protected characteristic, it must be shown to be a proportionate means to a legitimate aim¹⁵. No such case has been made. Action to remove the challenges faced by women or implementation of voluntary shortlists, for example, would be more proportionate.
24. It has not been demonstrated that women are being treated unfairly. Nor that having more than 50% women elected is proportionate or would achieve the desired outcome (of a more accountable and effective Senedd).
25. **Government of Wales Act** Equal Opportunities provision¹⁶ (Excerpt below):
 - Does not permit regulation for equal opportunities.
 - Requires Equal Opportunity provisions to comply with the Equality Act 2010.
 - Requires provision to be based on the EA2010 PCs (gender is not a PC).

¹² <https://www.google.com/url?q=https://senedd.wales/media/jmeascd1/pri-ld16394-pos-e.pdf&sa=D&source=docs&ust=1712502893905665&usg=AOvVaw1wOJytYKaM6qqYBGxjHkGB>

¹³ <https://business.senedd.wales/documents/s146028/Paper%203%20-%20Letter%20from%20the%20Llywydd%20regarding%20the%20Senedd%20Cymru%20Electoral%20Candidate%20Lists%20Bill%20-%202011%20M.pdf>

¹⁴ <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2024/2/1/a7eae3c4-71eb-4d56-b6bf-836715c99f68#:~:text=The%20Court%20of%20Session%20decided,position%20since%2019%20April%202022.>

¹⁵ <https://www.legislation.gov.uk/ukpga/2010/15/schedule/3/part/7> para 26

¹⁶ <https://www.legislation.gov.uk/ukpga/2006/32/schedule/7A> Para 187

Exceptions

- The encouragement (other than by prohibition or regulation) of equal opportunities, and in particular of the observance of the equal opportunity requirements.
- Equal opportunities in relation to the functions of any devolved Welsh authority, other than a function that relates to the inclusion of persons in non-executive posts on boards of devolved Welsh authorities. The provision falling within this exception does not include any modification of the Equality Act 2010, or of any subordinate legislation made under that Act, but does include—

(a) provision that supplements or is otherwise additional to provision made by that Act;

(b) in particular, provision imposing a requirement to take action which that Act does not prohibit;

(c) provision that reproduces or applies an enactment contained in that Act, with or without modification, without affecting the enactment as it applies for the purposes of that Act.

Interpretation

- ““Equal opportunities”” means the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions, but not including language.
- ““Protected characteristic”” has the same meaning as in the Equality Act 2010.
- The references to the Equality Act 2010 and any subordinate legislation made under that Act are to be read as references to those enactments, as at the principal appointed day, but treating any provision of them that is not yet in force on that day as if it were in force.

4. Are any unintended consequences likely to arise from the Bill?
(we would be grateful if you could keep your answer to around 500 words)

26. Women who do not believe in Gender Identity Ideology may be unwilling to make a “gender statement”. Women who believe in the reality of biological sex consider women to be adult human females, which is a protected belief¹⁷. A “gender statement” is incompatible with sex-realist beliefs, and women holding sex-realist beliefs may self-exclude.

27. There is a clear risk of fewer women (females) in the Senedd if women are displaced by men with a gender statement claiming to be a woman.

28. From the Explanatory Memorandum:

30. A further concern in the context of Senedd elections is that men generally make up a greater proportion of the pipeline of new politicians compared with women, as was visible at the 2021 Senedd election at which 69% of the 470 candidates who stood for election were men.

69% of the candidates were men, but 57% of those elected were men. That suggests the electorate are happy to elect women when they are the best candidates. If worse candidates are selected on the basis of sex, this would undermine the respect that competent women have accrued.

29. Most women (like most men) want to be elected on merit, not because they tick a box. The use of quotas is likely to drive the belief that successful candidates are not good enough to be elected otherwise, reducing respect for MSs.

30. From the Explanatory Memorandum:

31. As men typically outnumber women as candidates at Senedd elections, there is a risk that without the introduction of quotas the planned significant expansion of the Senedd, increasing the number of MSs from 60 to 96, will lead to a greater gender imbalance than at present.

This suggestion is unevidenced and, presumably, there is the potential that more women will be elected.

31. The asymmetry of the proposed quotas which is designed specifically to favour people willing to provide a gender statement that says they are women is likely to cause discontent among men who find themselves excluded.

¹⁷ <https://www.gov.uk/employment-appeal-tribunal-decisions/maya-forstater-v-cgd-europe-and-others-ukeat-slash-0105-slash-20-slash-joj>

32. The evidence for specific intended outcomes resulting from quotas is weak, and predominantly rests on two academic papers, (Clayton, 2021¹⁸ and Cowper-Coles 2021¹⁹).

Clayton herself says *“the positive consequences of quotas are not guaranteed. Entering into men-dominated parliaments, quota-elected women often face gendered constraints in their legislative work, particularly when they attempt to reform policies that uphold traditional male authority. As such, researchers would do best to avoid any variant of the old “add women and stir” expectation that might predict universally salutary effects following women’s rising numbers”*.

33. As referenced at paragraph 10 there is every likelihood of the Welsh Government suffering significant embarrassment from the adoption of this Bill. In not requiring evidence to support the truth (or otherwise) of a candidate’s statement, and then promoting said candidates on the basis of that statement alone, there is scope for the failures of the Bill to become known, if that statement is subsequently proven to be false.

¹⁸ <https://www.annualreviews.org/doi/abs/10.1146/annurev-polisci-041719-102019>

¹⁹ <https://www.kcl.ac.uk/gjwl/assets/women-political-leaders.pdf>

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

(we would be grateful if you could keep your answer to around 500 words)

34. From the Explanatory Memorandum:

150. Increasing the gender diversity of the Senedd is expected to lead to more effective representation. This, in turn, may reasonably be anticipated to maximise the value for money delivered through public expenditure, and thereby lead to financial savings.

The link between financial savings and more effective representation has not been made. Spending money better (for instance on more valuable projects) is not the same as spending less money. Better representation might lead to additional funding requirements being identified.

35. No costs are identified for:

- debating and drafting amendments
- communicating the change to the public – e.g. via leaflets and TV advertising
- effort to enact the Bill, update statute etc
- subordinate legislation

36. No provision has been made for any legal challenge. If the legal challenge comes from Westminster, then the Westminster government might seek to recover their costs too (should they win) as is happening in relation to the Scottish GRRB²⁰.

37. The expectation that “Greater gender balance will potentially result in a Senedd that features a broader range of perspectives and a greater range of expertise” has no place in the section on costs. It is entirely unevicenced and unquantifiable.

²⁰ <https://www.holyrood.com/news/view,scottish-ministers-wont-contest-calls-to-pay-uk-government-grr-legal-costs-21374>

Subordinate legislation

The powers to make subordinate legislation are set out in Part 1: Chapter 5 of the **Explanatory Memorandum** (<https://senedd.wales/media/xp4dqjto/pri-ld16394-em-e.pdf>).

The Welsh Government has also set out its **statement of policy intent for subordinate legislation**

(<https://business.senedd.wales/documents/s146049/Statement%20of%20Policy%20Intent%20PDF.%20313KB.pdf>).

6. 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?

(we would be grateful if you could keep your answer to around 500 words)

38. The Explanatory Memorandum is vague around the management of gender statements, leaving questions of scrutiny, challenge and enforcement to subordinate legislation. This Bill implements gender quotas, and as such, management of gender statements is key to its success, and should not be left to subordinate legislation.

39. From the Explanatory Memorandum

114. The powers in the legislation also include powers for the Welsh Ministers to make specific provision in an Order under section 13 in respect of the right to inspect candidates' gender statements. Currently, restricted groups of people (including other candidates standing in the same constituency and their agents) are permitted to inspect nomination papers during the pre-electoral period.

115. The Bill provides the powers for these operational matters to be addressed through subordinate legislation

224 ... the Bill, together with the subordinate legislation to be made under it, will require the processing of personal information about candidates, which may be sensitive for some people.

226. The information about gender will be received by the CRO and their staff in the same way as personal and potentially sensitive information is currently received and processed. UK GDPR law will apply in these circumstances and it is anticipated that policies and guidance similar to those currently relating to how candidate information is to be protected and handled will be made relevant.

227. The Bill gives power to make provision in subordinate legislation about the inspection of candidate gender statements.

40. It is not clear who will be able to inspect candidates' gender statements. Without visibility by other candidates, not only would there be no sanction for falsifying a gender statement, but there would be no grounds for challenging a gender statement either. This needs to be clarified in the Bill, not in subordinate legislation.

41. Sex is not sensitive information and will nearly always be obvious²¹. The Bill should not, therefore, treat gender statements as sensitive information which will prevent scrutiny.

²¹ <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/lawful-basis/a-guide-to-lawful-basis/lawful-basis-for-processing/special-category-data/#scd1>

Other considerations

'Legislative Competence' is the term used to describe the scope of the Senedd's power to legislate. The 'Reserved Powers Model' established by the **Wales Act 2017** (<https://www.legislation.gov.uk/ukpga/2017/4/contents>) allows the Senedd to legislate on matters that are not reserved to the UK Parliament. A provision in a Senedd Bill is unable to modify the law on **reserved matters** (<https://www.legislation.gov.uk/ukpga/2006/32/schedule/7B/paragraph/1>).

7. 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 would be grateful if you could keep your answer to around 500 words)

42. The introduction of mandatory gender quotas must be compliant with the Equality Act 2010 since Equality Opportunities legislation is reserved.
43. The mandatory quotas as defined by this Bill do not comply with the Equality Act 2010 because;
- Men suffer a detriment. To allow up to 100% women but only up to 50% men is unlikely to be considered a proportionate means of achieving a more effective Senedd. This is direct discrimination on the basis of sex.
 - Providing a statement that a person is a woman is not how the Equality Act 2010 defines "woman" (which is a female of any age)
 - Although the Gender Recognition Act 2004 allows for the concept of "legal sex", only those with a Gender Recognition Certificate (GRC) would qualify. A gender statement is not a GRC.
 - The Equality Act 2010 says this about shortlists: *These arrangements can include single-sex shortlists for election candidates, but not shortlists restricted to people with other protected characteristics*²².
 - A mandatory quota defined for people with the characteristics of sex and/or gender reassignment would fail this test.
 - A mandatory quota is not a short list.
 - Once parity is reached, single-sex short lists are not allowed.
 - Short lists as defined in the Equality Act 2010 are optional – something a political party can choose to do or not. This Bill would make shortlists mandatory which is beyond what the Equality Act 2010 permits.

²² <https://www.legislation.gov.uk/ukpga/2010/15/notes/division/3/7/5>

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

(we would be grateful if you could keep your answer to around 500 words)

44. The Equality Impact Assessment²³ is incomplete and badly flawed.

- There is no proper assessment of the protected characteristics.
- No evidence for many assertions made.
- Adverse impacts are not considered at all other than for gender reassignment.
- The protected characteristic of sex is misstated as sex/gender.
- Gender reassignment impacts are severe and lack appropriate mitigation.

45. An example of poor assessment of the protected characteristics - disability:

An increase in women's representation may lead to more representation of women who are disabled by barriers in society.

This is not a claim that more disabled people would be elected, but that women are more interested than men in the issues faced by disabled people. It is not clear why this is the responsibility of female MSs alone to take an interest in the welfare of disabled people. Despite recognising that disabled people need to be better served, as at 31 October 2023, the Welsh Government did not even know how many members of the Senedd were disabled.²⁴

46. There is no consideration in the protected characteristic of religion or belief assessment that the gender statement might be considered a statement of gender identity and as a result would exclude anyone who does not share a belief that everyone has a gender identity.

47. The impact assessment for the protected characteristic of gender reassignment notes detriments resulting from the scrutiny of their gender statement both in the media and legally which could lead to negative mental health consequences. At 620 words, this is one of the longest assessments. By contrast, the protected characteristic of pregnancy and maternity (potentially a key reason for the lack of elected women) is dealt with in just 81 words. This demonstrates a lack of rigour for the impact on protected characteristics that impact women specifically.

48. The mitigation for the stress experienced by a candidate with the protected characteristic of gender reassignment is to ensure that gender statements are not available for scrutiny, but the implementation of a wholesale change to the Welsh system of election with this concept of gender statements at its core must operate in a transparent manner.

²³ <https://www.gov.wales/senedd-cymru-electoral-candidate-lists-bill-equality-and-human-rights-impact-assessment>

²⁴ <https://www.gov.wales/senedd-cymru-members-and-elections-bill-equality-impact-assessment-html>

49. Furthermore, it is acknowledged that (certainly in lists with 50% men) the position of a candidate on a list will indicate their gender statement anyway. So the mitigation won't work.
50. The protected characteristic of sex is misstated as sex/gender. Gender is not a protected characteristic and is not defined²⁵.

²⁵ <https://www.legislation.gov.uk/ukpga/2010/15/contents>

9. Are there any other issues that you would like to raise about the Bill, the accompanying Explanatory Memorandum and Regulatory Impact Assessment, or any related matters?

(we would be grateful if you could keep your answer to around 500 words)

51. The UN Special Rapporteur on Violence against Women and Girls issued a statement²⁶ on 4 April 2024 regarding the CEDAW definition of “woman” (CEDAW being endorsed by the Welsh Government²⁷). She is clear that women and girls are female people, and that “sex and sex-based discrimination is understood as a biological category”. This is at odds with a self-declared gender statement.
52. The Public Sector Equality Duty (PSED) requires public bodies – including the Welsh Government – to:
- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act;
 - Advance equality of opportunity between people who share a relevant protected characteristic and those who do not;
 - Foster good relations between people who share a relevant protected characteristic and those who do not.

It’s a fundamental principle of the Equality Act single-sex exceptions that any positive action is “a proportionate means of achieving a legitimate aim”. Without that, it’s plain old sex discrimination. For the Bill to satisfy the PSED the proposal must show that there is a need for more women to be elected to the Senedd, and that the Bill would not cause undue detriment for other protected characteristics or damage relations. That the Explanatory Memorandum suggests that the Senedd would be improved is aspirational rather than required since current shortcomings are not evidenced.

53. This Explanatory Memorandum represents women as having a different set of interests than men, and because women are not like men, having more women elected will make the Senedd better. This is both sexist and unevidenced. Women should be fairly represented in government because it’s the right thing to do **for women**. Women are every bit as competent as men, with a wide range of policy interests. Just like men.
54. It’s important that issues faced by women but not by men – safety, healthcare, loss of earning due to childbearing – are given due regard. But most of all, creating equality of opportunity so that the best candidates are selected is good for everyone, and the best way to achieve this is to remove impediments that hold good women back. The Bill will not assist women who have been unable to overcome those impediments, rather it will actively assist those women who would already put

²⁶ <https://www.ohchr.org/sites/default/files/documents/issues/women/sr/statements/20240404-Statement-sr-vawg-cedaw-convention.pdf>

²⁷ <https://www.google.com/url?q=https://www.gov.wales/violence-against-women-domestic-abuse-and-sexual-violence-strategy-2022-2026-html&sa=D&source=docs&ust=1712502893954543&usg=AOvVaw0OiS-coYNY1mSN1wF9nNR>

themselves forward as candidates, and those who are prepared to make a statement that they are a woman.

55. Improved child care would do more to help women in all walks of life. Better maternity pay would address financial issues. The Equality Act makes sex-based discrimination illegal (where not a proportionate means to a legitimate aim), but that needs to be properly enforced.
56. This Bill talks about women as if we are not full humans but instead a group of people with specific ways of working, interests, policy focus that is reliant on outdated sex-based stereotypes. This is very regressive.
57. The bell curves for human behaviour across the sexes have a huge overlap. The people who put themselves forward for public office are likely to be more similar to each other (male or female) than the population who choose *not* to put themselves forward, particularly within the tiny sample of those elected to the Senedd.

By virtue of paragraph(s) ix of Standing Order 17.42

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Agenda Item 5

SCECLB34-P Joyce Watson MS, Chair of Senedd Women's Caucus

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 Joyce Watson AS, Cadeirydd Cawcws Menywod y Senedd | Evidence from Joyce Watson MS, Chair of Senedd Women's Caucus

The need for and impact of gender mechanisms

Submission from Senedd Women's Caucus, led by Joyce Watson MS, Chair

- I am giving evidence as chair of the Senedd Women's Caucus. We have met to discuss this and this is an updated version of the evidence previously submitted.
- Giving evidence with me will be Sioned Williams MS, Plaid Cymru, Janet Finch-Saunders MS, Welsh Conservative and Rhianon Passmore MS, Welsh Labour.
- The Senedd Women's Caucus was established last year with a mission to bring together women Members of the Senedd from across the political parties to work purposefully, promoting and supporting women's participation in politics and identifying current barriers within our parliamentary system.
- Last June the Caucus heard evidence from Senator Fiona O'Loughlin, Chair of the Oireachtas (Irish Parliament) Women's Caucus, on their use of gender quotas in elections, towards the wider goal of achieving gender equality in Ireland.
- At the Caucus' discussion of this evidence, Sian Gwenllian MS stated that mechanisms should be an essential part of the reform package.

Reforms would be incomplete without this action, and to fully represent all the women of Wales the Bill should bring forward effective mechanisms.

- Rhianon Passmore MS spoke of the importance of a suitable workplace and care infrastructure to enable all members to work effectively. She referred to data from Reykjavik on young people's perceptions of gender equality in Iceland.
- Carolyn Thomas MS shared results from a school visit she did with Girlguiding Cymru. This showed the impact of unconscious bias on young people, such as boys talking over girls in the classroom and girls on the school council still not feeling that their voices were heard.
- Sioned Williams MS said that women Senedd members had been impactful in changing the agenda in Wales, with work on subjects including work/life balance, domestic abuse and the forthcoming Women's Health Plan. This approach makes space for male members to tackle similar subjects, such as work by Huw Irranca-Davies MS on menopause.
- Several Caucus members reported that, in their experience, 'you can't rely on people doing the right thing' in internal party selections.
- Some felt that it was important that this action was enshrined in law, rather than being left to political parties, normalising it as a first step towards equality.
- Parties have rigorous selection processes ensuring good quality candidates, contradicting the argument that women candidates may not be 'the best person for the job.'
- In the 25 years since Welsh devolution, the public has consistently elected governments with a commitment to equality at the heart of their election manifestos and their programmes of government. The first

Welsh Assembly Government made equality a cross-cutting objective for all of its work, and this principle has remained throughout subsequent government programmes.

- Since the Senedd was established in 1999, the laws and rules that govern the institution specifically require that its work should be conducted “with due regard to the principle that there should be equality of opportunity for all people.”
- Wales had only ever had four women Members of Parliament prior to the 1997 general election, from Megan Lloyd George in 1927 to Ann Clwyd in 1984. From 1993 the Labour Party committed to actions to redress imbalance by implementing all women shortlists in half of ‘winnable’ seats for the next general election. This was controversial but resulted in an increase from one to four Welsh women MPs at the 1997 election. [\[Link\]](#)
- The establishment of the National Assembly for Wales presented an opportunity to create a new political culture in a brand new institution, addressing concerns about representation, among other desired changes.
- Gender equality mechanisms were used by some parties in the first Welsh Assembly elections in 1999, resulting in 24 female members out of 60. Welsh Labour used twinning, resulting in 15 of 28 Labour members being women, while Plaid Cymru used a zipping method on party lists, resulting in 6 of 17 members being women. The Welsh Liberal Democrats elected 3 men and 3 women, while the Welsh Conservatives, which did not use any mechanisms, elected nine men.
- Gender balance was achieved in the 2020 cabinet of the first Assembly, taking Wales from among the worst female representation in Europe to world-leading through these actions. [\[Link\]](#)

- In 2003, Wales became the first country in the world to have an equal number of men and women Assembly Members. [\[link\]](#)
- However, I believe that the Senedd's status as a world leader, which has received international praise, should not be taken for granted. We have seen the gender balance change across elections and by-elections, and it currently stands at 43% women and 57% men.
- Women represent 51% of the UK population according to the 2021 census and women are approximately 50% of the world's population. [\[link\]](#) [\[link\]](#)
- I would argue that democratic institutions such as the Senedd and Westminster should attempt to adequately reflect and represent the needs and specific policy concerns of half the population.
- Parliaments represent their entire populations. More diversity of representation brings a broader diversity of views, making parliaments more representative of the populations they serve.
- Fair representation leads to increased voter trust and bolsters the legitimacy of the governing body. Increased legitimacy leads to more trust between voters and government, and political space operates more effectively. [\[link\]](#)
- It is broadly recognised across Western democracies and institutions worldwide, including in the EU Parliament, that concrete formal and informal measures to address gender inequality are required to reach gender parity within politics.
- When cultural, socio-economic, and institutional structures are built by men for men, enforcement and implementation of women's policies can fall short.
- It could be argued that gender quotas should be viewed from the perspective of social and democratic justice. With half the UK's

population being women, women have the right to be included in political decision-making and outcomes that reflect their representation in society and the population as a whole. [\[link\]](#)

- Calls for quotas are often met with claims that they are anti-meritocratic. Womens' Equality Network Wales (WEN Wales) have submitted evidence rebutting this, and I concur with their arguments. Our current society is not meritocratic, and underrepresented groups face a range of challenges which traditionally dominant groups do not.
- Research has shown that, far from being underqualified, many of the women elected through mechanisms have been more highly qualified than their male counterparts, and the mechanisms themselves have encouraged them to come forward. [\[Link\]](#)
- The National Assembly's emphasis on equality led to further equality initiatives across public life in Wales [\[Link\]](#)
- The National Assembly for Wales was designed to deliver inclusiveness, including an emphasis on committee work to develop public policy, limiting the institution's working hours in order to promote a work-life balance, the requirement for gender-neutral official titles, and rules on the language permitted in political debate. [\[Link\]](#)
- In my opinion, aspects of the Senedd's programme of work, such as women's health and rights of carers, may not have been prioritised without the female perspective of lawmakers.
- A Cambridge University study found women lawmakers are more likely to propose policies that champion health and education, as well as being more likely to roll out laws that tackle sexual harassment, domestic abuse, and rape. [\[link\]](#)
- US research demonstrates how prominent female politicians can inspire other women to enter politics and how female leaders motivate

other women to run for office. As more women ‘break the glass ceiling’ and move into high political positions, it sets new precedents for society. Women in leadership positions inspire younger generations to set similar aspirations, triggering a cascade of positive growth. Women icons and mentors encourage a more politically active society. [\[link\]](#)

- The American Economic Association estimate that 15% of seats in a political body can change the political agenda but a proportion of 40% of seats is needed to pass women's friendly policies. [\[link\]](#)
- When laws establishing rules to promote parity are issued, it increases the share of women three times faster, according to a study conducted by the European Institute for Gender Equality (EIGE). [\[link\]](#)
- According to the UN Women and the Inter-Parliamentary Union 2023 map, more women are participating in political decision-making worldwide, but gender equality still has not been achieved. They believe that gender quotas are one of the most effective and important temporary special measures, which can be implemented in different forms. [\[link\]](#)
- Meryl Kenny, professor of gender and politics at the University of Edinburgh says: *“Focusing on parties redirects attention from individual solutions to institutional strategies to rectify women's political under-representation and men's over-representation. Gender quotas are an important aspect of encouraging women's participation. The global evidence suggests that, if well-designed and properly implemented, quotas—whether adopted voluntarily by political parties or enshrined in law—are one of the most effective means to ensure significant increases in women's numerical representation.”* [\[link\]](#)
- Gender quotas have achieved international recognition as a viable source of affirmative action. The principle of equal political participation

has been embedded in multiple international conventions and declarations, beginning with The Convention of the Elimination of all forms of Discrimination Against Women (CEDAW) adopted by the UN General Assembly in 1979. Article 4 of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) recognises quota systems as measures that are needed to 'kick-start' women's political representation, particularly in countries where women have traditionally been under-represented in the national legislatures.

[\[link\]](#) [\[link\]](#)

- Institutional support outside of the UK for gender quotas and equality and the consensus opinion can be evidenced by the Spanish PM, Pedro Sanchez, announcing a law promoting gender parity in politics and business. The gender equality law will require more equal representation of women and men in politics, business and other spheres of public life. [\[link\]](#)
- Additionally, to decrease inequality between men and women in the workplace, multiple European countries have legislated quota regulations in favour of women. Since 2016, a gender quota has been entrenched in German law, followed by a significant rise in the representation of women in target positions. [\[link\]](#)
- Ursula von der Leyen became the first female president of the European Commission in 2019, promising to deliver a Union of Equality – starting with her own team. Her Commission is the most gender-balanced yet, and includes the first separate equality commissioner. [\[Link\]](#)
- President of the European Commission, Ursula von der Leyen, said: *"Gender equality is a core principle of the European Union, but it is not yet a reality. In business, politics and society as a whole, we can only reach our full potential if we use all of our talent and diversity. Using only half of the*

population, half of the ideas, or half of the energy is not good enough. With the Gender Equality Strategy, we are pushing for more and faster progress to promote equality between men and women." [\[link\]](#)

- In the UK, women currently constitute around a third of MPs and local councillors, with only seven out of 23 cabinet ministers in Westminster being women. [\[link\]](#)
- In the UK, the first woman to sit in parliament was elected in 1919. In 1987, women made up 5% of MPs. Since then, the number of female MPs has grown, reaching 34% after the 2019 general election. The largest jumps were at the 1997 election when the proportion of women MPs doubled from 9% to 18%, and at the 2015 election when it rose from 22% to 30%. [\[link\]](#)
- While progress has been made across government and parliament in recent decades, women remain underrepresented in both Houses of Parliament, the cabinet, the senior civil service and among ministers and special advisers. [\[link\]](#)
- The UK ranks #48 globally according to the percentage of women in the UK Parliament (not including the devolved nations). [\[link\]](#)
- Globally, as of 1 January 2023, 11.3% of countries have women Heads of State (17 out of 151 countries, monarchy-based systems excluded), and 9.8% have women Heads of Government (19 out of 193). [\[link\]](#)
- Women are underrepresented in politics and governments worldwide. According to the IPU, a global organisation of national parliamentarians, only 26.5 percent of parliamentarians are women. In about 22 countries, women comprise less than 10 per cent of government members. [\[link\]](#)
- Of all the regions, Europe continues to have the highest number of countries led by women. No EU country has reached a 50/50 sex ratio

in parliament nor had a majority of women MPs. In 2021, Sweden had the highest number of female MPs with just over 47%, followed by Finland, Belgium, Austria, Denmark, Spain, Portugal and France. Iceland, a non-EU country, is on par with Sweden. This figure is the highest ever achieved in the European Union. [\[link\]](#)

18 April 2024

Women's Caucus

Terms of Reference

May 2022

This document sets out the working arrangements for the newly established Women's Caucus.

Purpose

The mission of the Women's Caucus is to bring together women Members of the Senedd from across the political parties:

- To work purposefully, promoting and supporting women's participation in politics and identifying current barriers within our Parliamentary system.
- To develop and advocate policy and practice initiatives that address issues affecting our women Parliamentarians and society.
- To advance the agreed agenda of the Caucus within political parties and other spheres of Senedd influence.

The Caucus may engage in a wide range of activities in pursuit of the progressive realisation of removing barriers to effective political participation and enhancing equality within the Senedd.

The Caucus will be formed of all women Members of the Senedd.

1. The steering group will comprise of:
 - Chair (Joyce Watsons MS as Commissioner with responsibility for Equalities)
 - Vice-chair (Llywydd)
 - 3 Senedd Members*



**To ensure party balance and alignment of relevant workstreams, these representatives will be the elected women Senedd Members that sit on the Commonwealth Parliamentary Association Executive Steering Committee and represent the Senedd on the CWP.*

*** Comment: Alternatively – if the Chair has already identified alternative Members she believes would be suited and wishes to approach, we can take a different approach or even a combination of models.*

2. It will be the responsibility of the Chair and Steering Group Members to consult the Members, call meetings and keep Members informed of the work of the Women's Caucus.
3. The full membership of the Women's Caucus will meet at least annually. However, it is envisaged that the full membership would be called to meet by the Chairperson and Steering Group up to four times a year.
4. For Steering Group meetings, three Members of the Group must be present for meetings, with one being either the Chairperson or Vice Chair. Secretariat support will be provided by the Llywydd's Private Office.
5. The caucus is established for the Sixth Senedd term and the Terms of Reference effective from 2022. Amendments of the Terms of Reference and termination of the Caucus will be made by agreement of the Steering Group Members.

By virtue of paragraph(s) ix of Standing Order 17.42

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