

Senedd Reform Bill Committee

Senedd Cymru (Members and Elections) Bill

Written Evidence from Professor Alan Renwick, UCL Constitution Unit

Introduction

1. I am Professor of Democratic Politics in the Department of Political Science at University College London, and Deputy Director of the UCL Constitution Unit. My research examines the channels through which members of the public can participate in democratic processes. For current purposes, my most relevant work focuses on electoral systems and electoral reform. I was a member of the Expert Panel on Assembly Electoral Reform, which reported in 2017.

Summary

2. In summary, this submission welcomes most aspects of the Senedd Cymru (Members and Elections) Bill ('the Bill'):
 - The increase in the size of the Senedd is needed for it to fulfil its duties to the people of Wales with maximum effectiveness.
 - The reduction in the length of the Senedd term is welcome.
 - It is sensible to increase the maximum number of ministers.
 - Progress towards allowing job sharing is a step forward.
 - The proposed electoral system will have an appropriate level of proportionality.
 - The principle that boundary review conclusions should be implemented automatically, without political intervention, is correct.
3. But some aspects of the Bill deserve challenge:
 - Most importantly, the use of a 'closed list' form of proportional representation will not serve democracy or the Senedd effectively.
 - Allowing the maximum number of ministers to be further increased without primary legislation is not appropriate.
 - The absence of gender quotas and limited progress towards job sharing is regrettable.
 - The Committee should consider carefully whether some aspects of the boundary review process are justified.

Increase in the size of the Senedd

4. The proposed increase in the number of Senedd members from 60 to 96 is very welcome. The report of the Expert Panel on Assembly Electoral Reform analysed the size question in considerable detail and concluded that a larger chamber was needed to enable the Senedd to represent the people of Wales and to scrutinise government activity and legislative proposals as effectively as possible. The Senedd is currently unusually small in international comparison. The limited number of members makes it particularly difficult to run an effective committee system.
5. While the Expert Panel envisaged an increase in the number of members to between 80 and 90, that does not imply any argument against an increase to 96. The Panel was clear that the benefits of expansion would be greater at the upper end of its proposed range than at the lower end. By implication, a small further increase would enhance those benefits again.

Reduction in the length of the Senedd term

6. The question of what the length of the parliamentary term should be has no definite answer. Around the world, the commonest length is five years, but most of the world's healthiest democracies have shorter terms.¹ Scholars generally agree that the two-year term of the US House of Representatives is too short, meaning too much time is dominated by electioneering, and that the three-year terms used in Australia and New Zealand tend towards the same weakness. A five-year term greatly reduces that problem, but means that, by the end of the term, the preceding election is very distant and much may have changed since voters last had a direct say. Countries including Germany, Japan, Denmark, Norway, and Sweden all have four-year terms. Following perceived best practice at the time, almost all of the new democracies created in Central and Eastern Europe after the fall of communism likewise adopted four-year terms.
7. The Senedd's term was originally set to four years. This was altered only because of changes at Westminster, which have now been reversed. While a five-year term is acceptable, a four-year term probably provides better balance between the need for government to be able to plan ahead and the need for voters to have their say.

Increase in the number of ministers

8. Just as the number of Senedd members is currently low given their many important responsibilities, so is the maximum number of ministers. An increase in that number is sensible.
9. At present, there may be fourteen ministers (including the First Minister and Counsel General): 23.3% of the Senedd membership. At Westminster, the maximum number of ministers in the House of Commons (set by the House of Commons Disqualification Act 1975) is 95: 14.6% of the chamber's membership. The Bill would raise the maximum total number of Welsh ministers to nineteen: 19.8% of the Senedd membership. It would permit a further increase (through regulations) to twenty-one: 21.9% of the membership.
10. A larger number of ministers within the legislative chamber increases the 'payroll vote' and therefore weakens the chamber. This needs to be balanced against the value of a larger ministerial team. I do not have a firm view on whether the maximum should be nineteen (i.e., in the terms used in the Bill, seventeen plus the First Minister and Counsel General) or twenty-one (i.e., nineteen plus the First Minister and Counsel General). But two principles should apply:
 - First, as the chamber expands, the number of ministers should expand by a less-than-proportional amount, so that the number of ministers as a share of the chamber membership declines.
 - Second, determining the maximum number of ministers is an important matter that should be subject to full parliamentary scrutiny. It should be set out in primary legislation and should not be subject to change by secondary legislation.

Gender quotas and job sharing

11. The Expert Panel set out its clear reasoning on the value of gender quotas and job sharing, and it is regrettable that progress on these matters has been so slow. The proposed review of the latter is nevertheless welcome. This process should be taken seriously and any recommendations should be acted on.

¹ Inter-Parliamentary Union, Parline Database, available at <https://data.ipu.org/>.

Electoral system

12. The proposed changes to the Senedd electoral system would have two key effects: upon electoral proportionality; and upon the nature of voters' choice.
13. The effect on *proportionality* is in principle ambiguous: depending on the distribution of votes, it could yield outcomes that are either more or less proportional than those delivered by the current rules. Given what the actual distribution of votes has tended to be in Wales, however, the effect of the change would be somewhat to increase proportionality. Specifically, Labour would lose the bonus that it currently obtains from winning the large majority of constituencies in South Wales. The overall level of proportionality would, however, still be moderate: D'Hondt formula would still bring some advantage to the largest party; and the relatively small size of constituencies (six members each) would mean that small parties would still face a significant hurdle to winning seats.
14. There is no clear optimal level of proportionality, but the proposed system is within the range of the moderate proportionality that many experts have advocated.
15. The effect on *voter choice* of the proposed reforms is not at all ambiguous: the reforms would reduce it. Voters would no longer be able to vote for an individual candidate and would no longer be able to split their vote as the current system allows. Voters in the UK are used to voting for candidates, not for party lists, and confidence in political parties is very low. While political parties are central to representative democracy and their strong functioning is therefore desirable, forcing voters to think solely in party terms and denying them any choice over individuals would be harmful to democracy and to public confidence in the Senedd. It would also risk giving parties undue control over their MSs, thereby limiting the value of the expanded chamber. This is by some margin the most significant weakness in the Bill as it stands.
16. The Expert Panel proposed that a Single Transferable Vote (STV) voting system would be most appropriate for the Senedd. If it was felt that this system shifted the balance too far away from united parties, the Expert Panel suggested a moderate 'flexible list' system that would allow voters to select among the individual candidates and thereby influence which of their chosen party's candidates were elected. This system would be simple to use – for voters, parties, and election administrators.
17. Most European democracies use flexible (or fully open) lists, and the trend has been to increase this flexibility over time.² The adoption of closed lists would be a retrograde step and would put Wales out of line both with the British democratic tradition and with modern European democratic practice. I therefore strongly urge the Committee to consider amendments to provide for either flexible lists or STV.

Boundary reviews

18. The Bill provides for the automatic implementation of boundary commission recommendations. This is very welcome: boundary review processes should be strictly impartial, and allowing a Senedd vote on recommendations would put that in danger.
19. So-called 'automaticity' in the implementation of boundary commission recommendations does, however, make the impartiality of the review process itself even more important. The Committee should consider whether extra safeguards against undue government influence are needed. It would be possible, in particular, to tighten up procedures around the appointment of members of the Democracy and Boundary Commission Cymru, and to provide the Commissioners will serve

² Alan Renwick and Jean-Benoit Pilet, *Faces on the Ballot: The Personalization of Electoral Systems in Europe* (Oxford: Oxford University Press, 2016), p. 52.

non-renewable terms. (I wish to make it clear that I make absolutely no suggestion that there has been improper practice in the past, or that the existing Commission has acted with anything other than complete impartiality.)

20. Most aspects of the proposed boundary review processes are entirely sensible, including the proposed shortened review process for the initial pairing of Westminster constituencies.
21. On two points, however, the Committee may wish to consider carefully whether the proposed approach is optimal:
 - First, the Bill allows for a 10% margin of variation in constituency electorates around the electoral quota after 2030. That is twice the margin allowed for Westminster constituencies. It is unclear why such wide variation – which is a deviation from the principle of democratic equality – would be justified.
 - Second, the Bill allows six months for the implementation of new boundaries after the Commission’s final report. This compares with four months for Westminster constituencies. It is unclear why such a long period is deemed necessary.