

## SCECLB2 – P Electoral Reform Society Cymru

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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

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**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.<sup>1</sup>

### **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

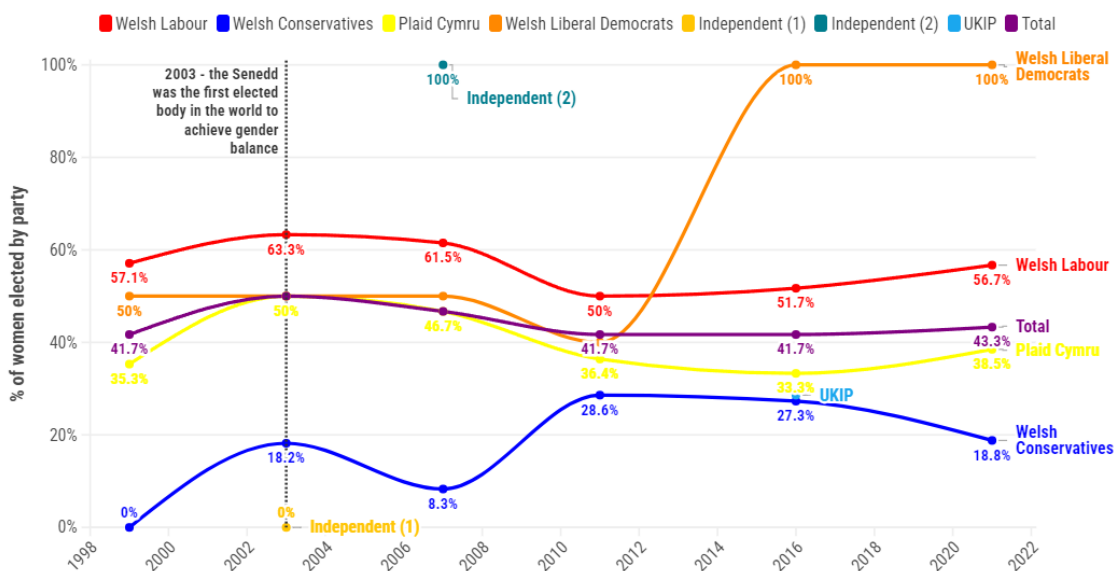
<b>Year of election</b>	<b>Number of women elected</b>	<b>Percentage of women elected (%)</b>
1999	24	40
2003	30	50
2007	28	46.7
2011	25	41.7
2016	25	41.7
2021	26	43.3

<sup>1</sup> <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/eqbesx12/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 world<sup>2</sup>:

- 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.<sup>3</sup>

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

<sup>3</sup> *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”<sup>4</sup>.

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.

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<sup>4</sup> <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

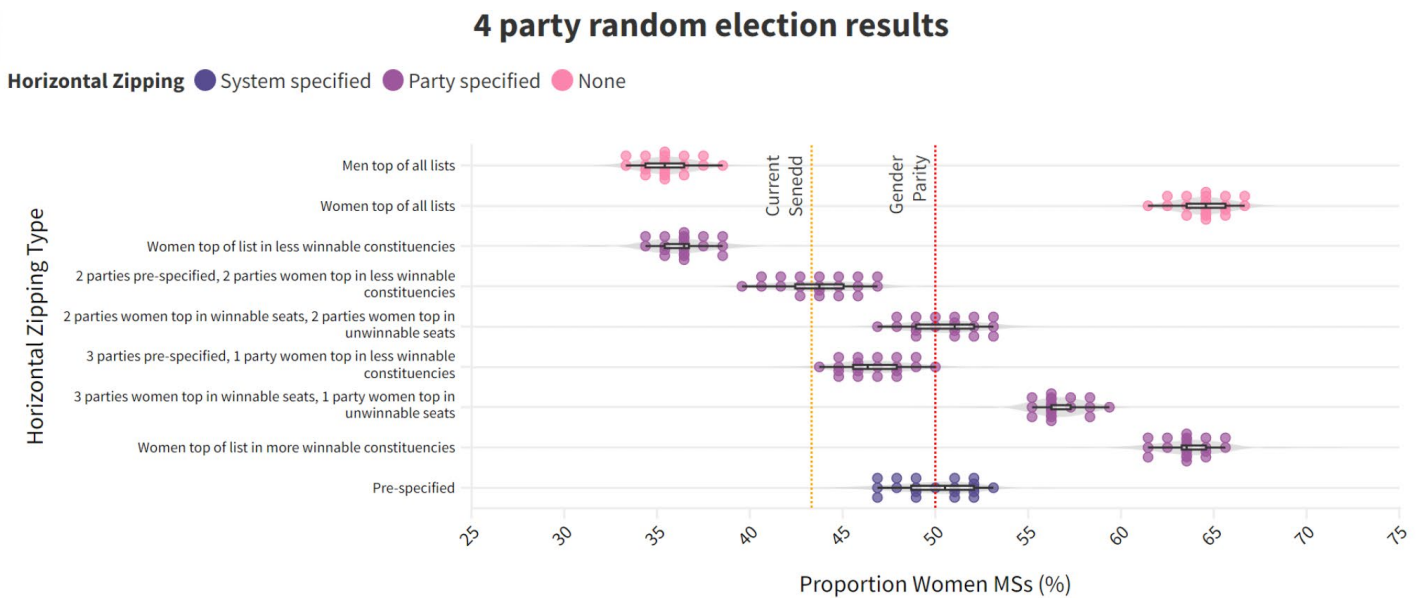
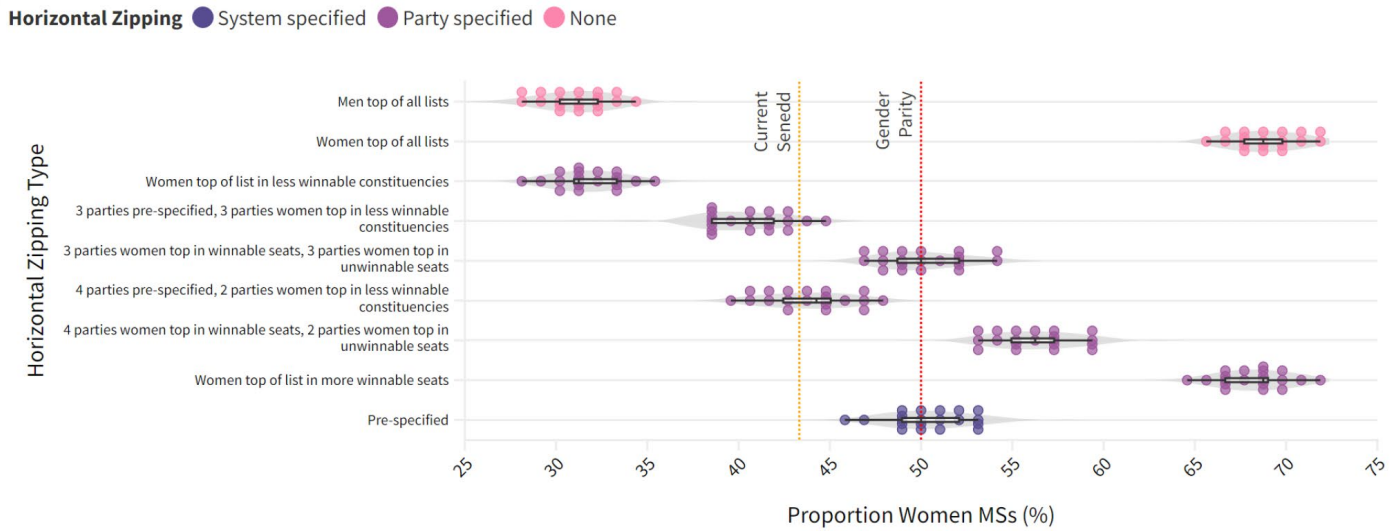


Figure 5 shows a number of outcomes in terms of the proportion of women MSs depending on the quota model used. The quota most likely to deliver parity according to the modelling is the pre-specified model but where women are placed in winnable seats also has a clear impact.

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

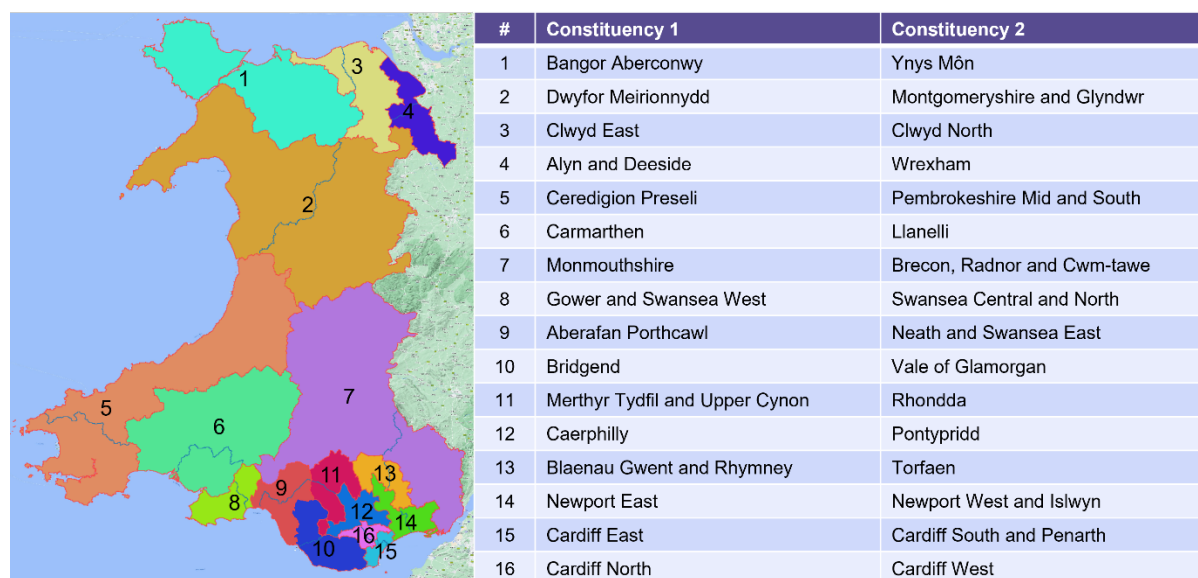


#### Modelled election results

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

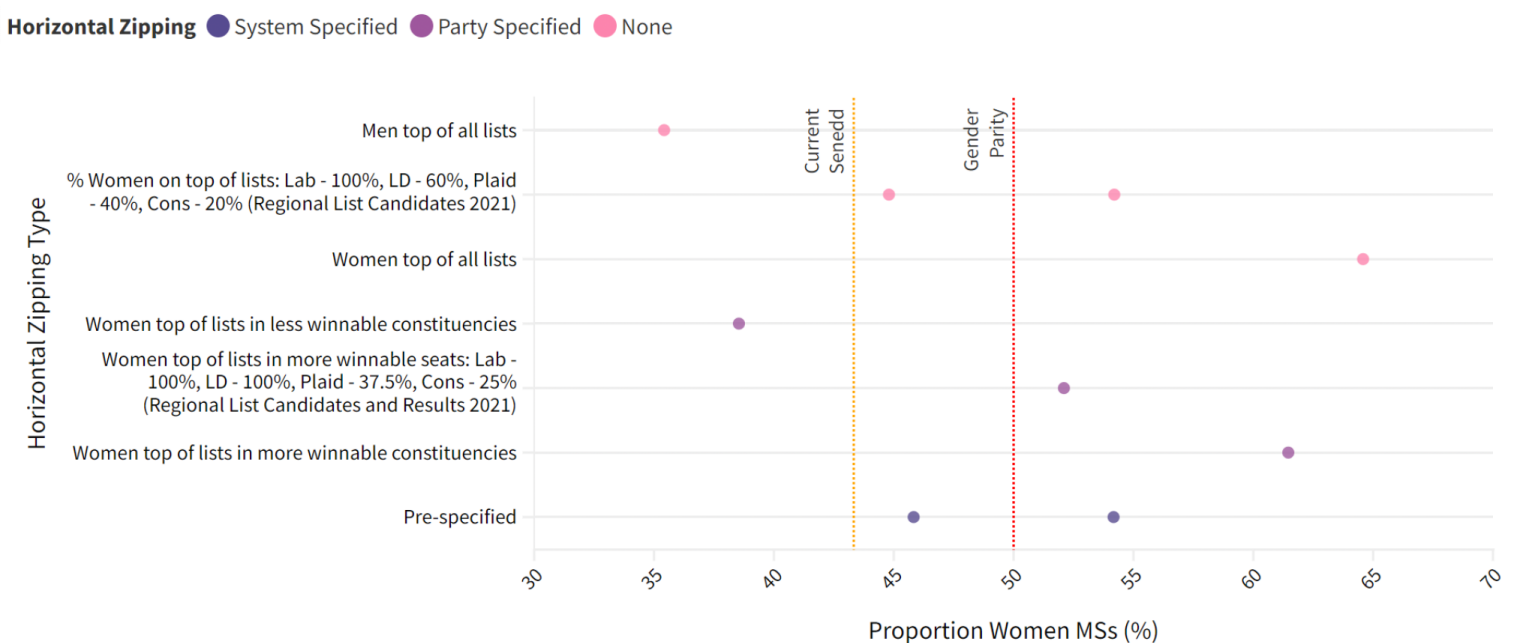


Figure 9 shows that under the modelled election results there is still a range of outcomes depending on which method of quota is used. Again the option that delivers the most reliable range around parity is the pre-specified model, but there are a number of ways of doing that depending on where women 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.”<sup>5</sup>

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.”<sup>6</sup>

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.

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

<sup>6</sup> <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.”<sup>7</sup>

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.

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<sup>7</sup> *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

- **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

- 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

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

- 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

## 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)

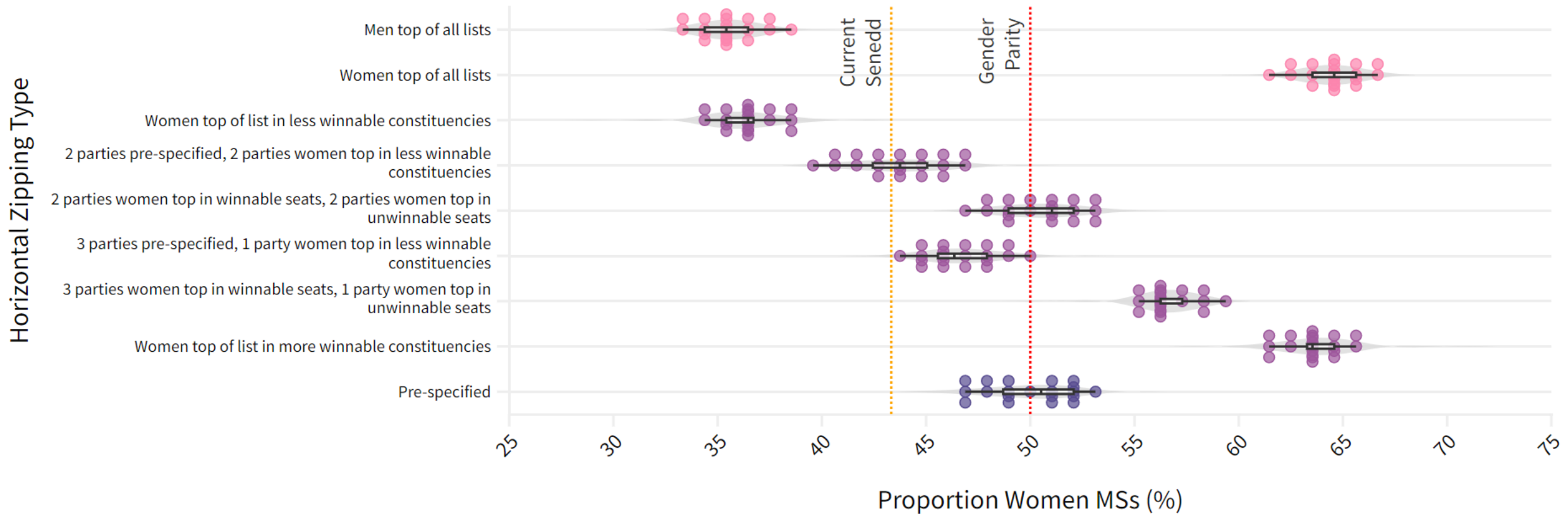
## System mandated horizontal zipping:

- 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

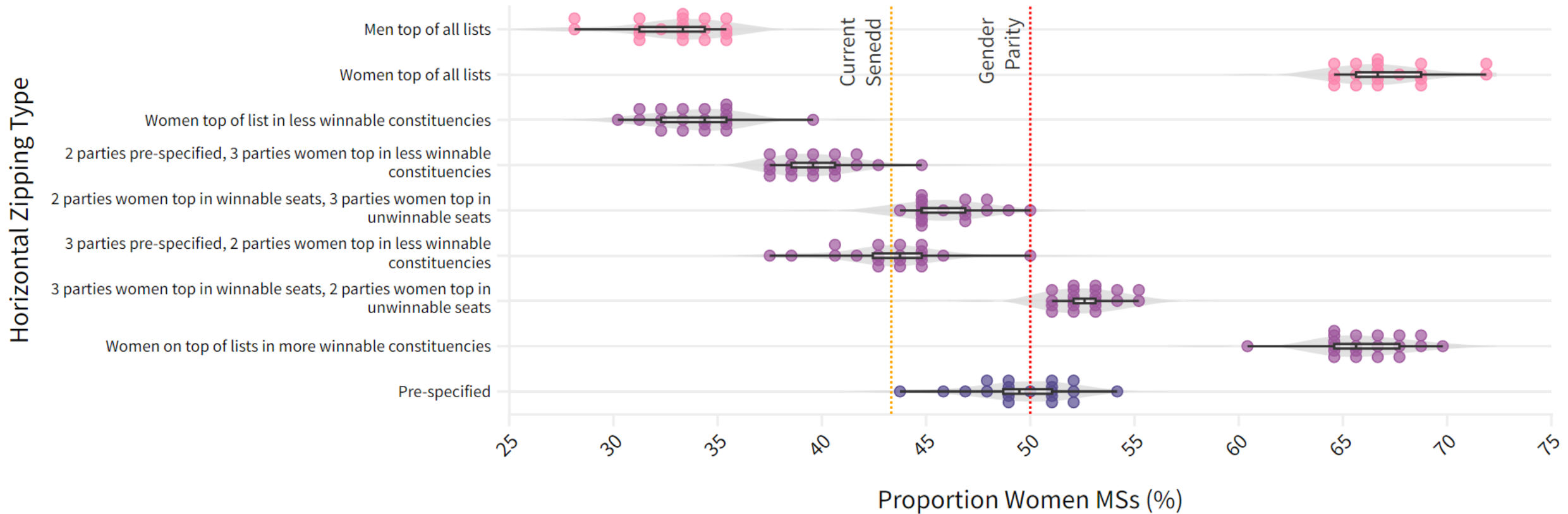
Horizontal Zipping ● System specified ● Party specified ● None



# Random election modelling results

## 5 party random election results

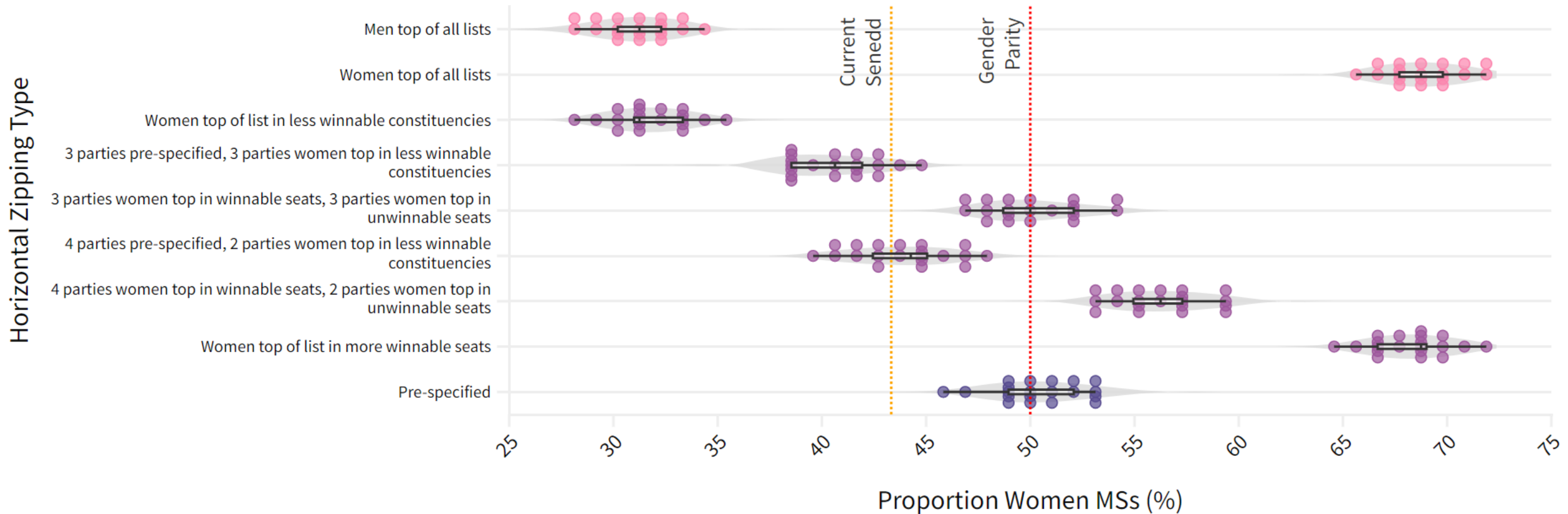
Horizontal Zipping ● System specified ● Party specified ● None



# Random election modelling results

## 6 party random election results

Horizontal Zipping ● System specified ● Party specified ● None



# Conclusions from random election LGQ modelling

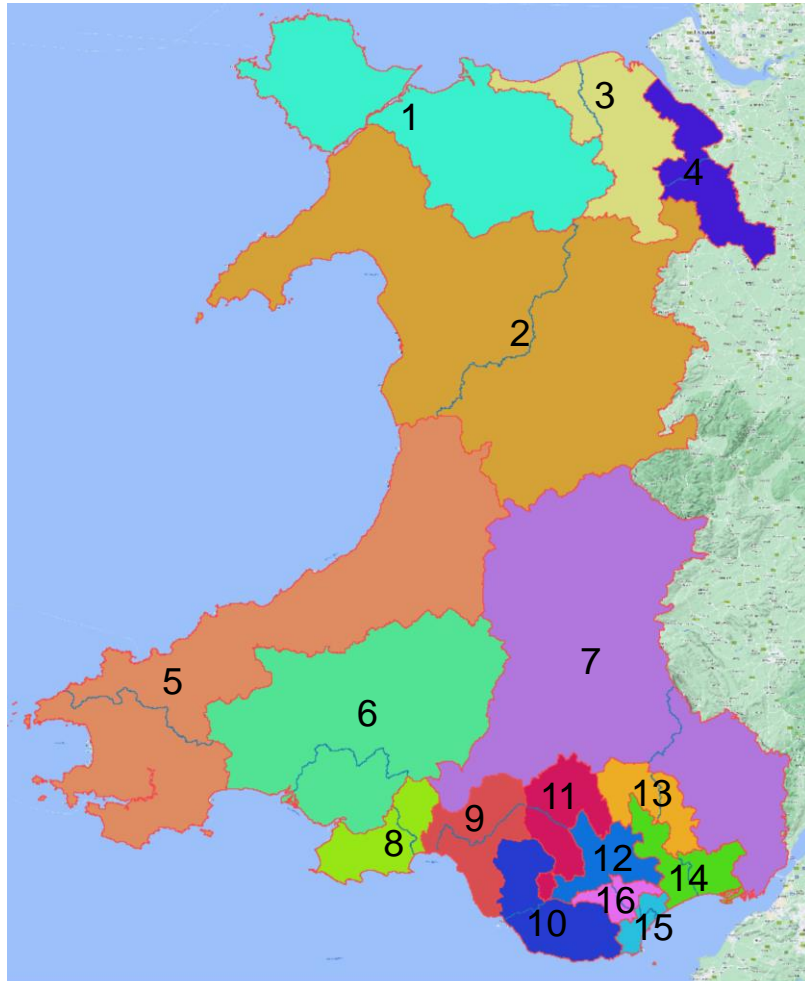
- **Wide range of outcomes from different horizontal zipping methods**
- **Some methods produce results that are less balanced than the current Senedd**
- **No approach guarantees exact parity across different election result iterations**
- **Number of parties winning seats in a given election also affects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

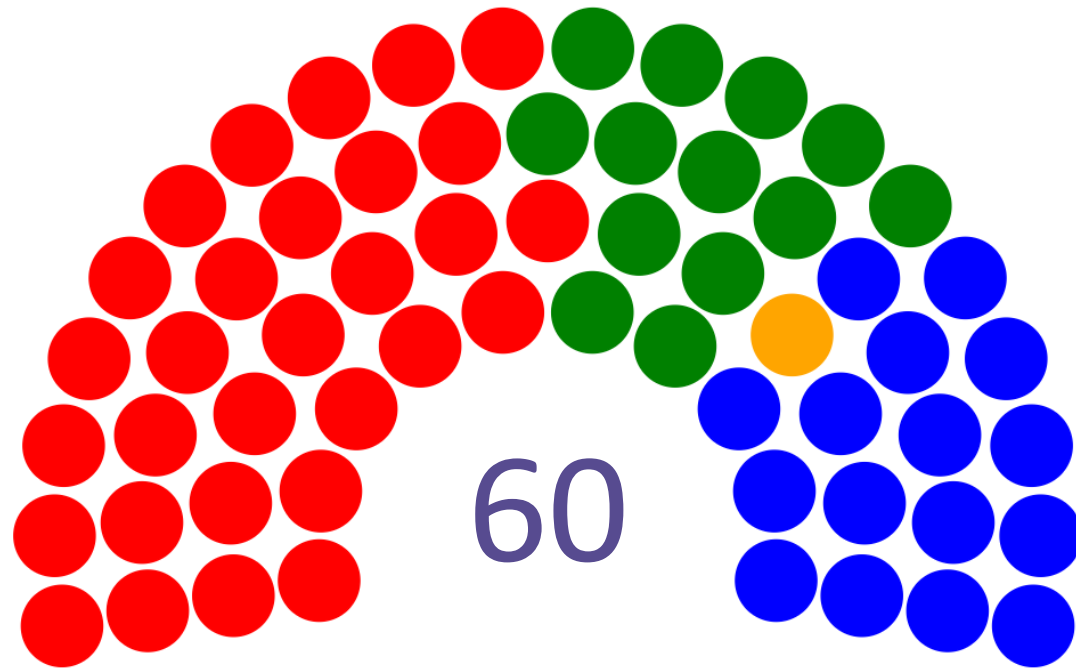


#	Constituency 1	Constituency 2
1	Bangor Aberconwy	Ynys Môn
2	Dwyfor Meirionnydd	Montgomeryshire and Glyndwr
3	Clwyd East	Clwyd North
4	Alyn and Deeside	Wrexham
5	Ceredigion Preseli	Pembrokeshire Mid and South
6	Carmarthen	Llanelli
7	Monmouthshire	Brecon, Radnor and Cwm-tawe
8	Gower and Swansea West	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

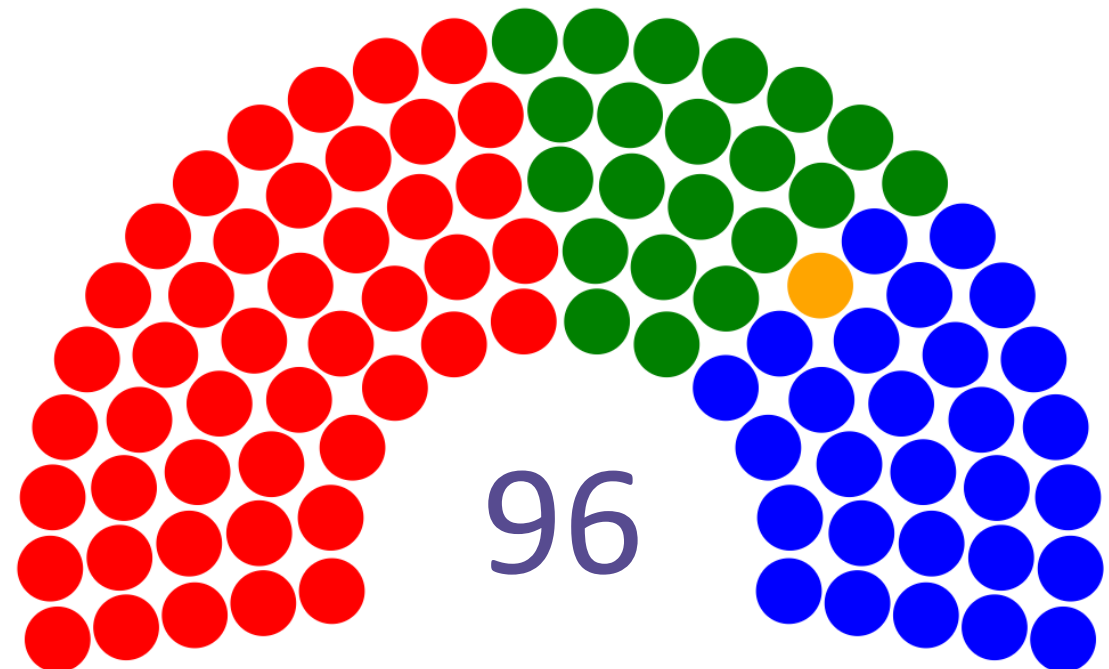
# Modelled election results post-Senedd Reform - Results

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:

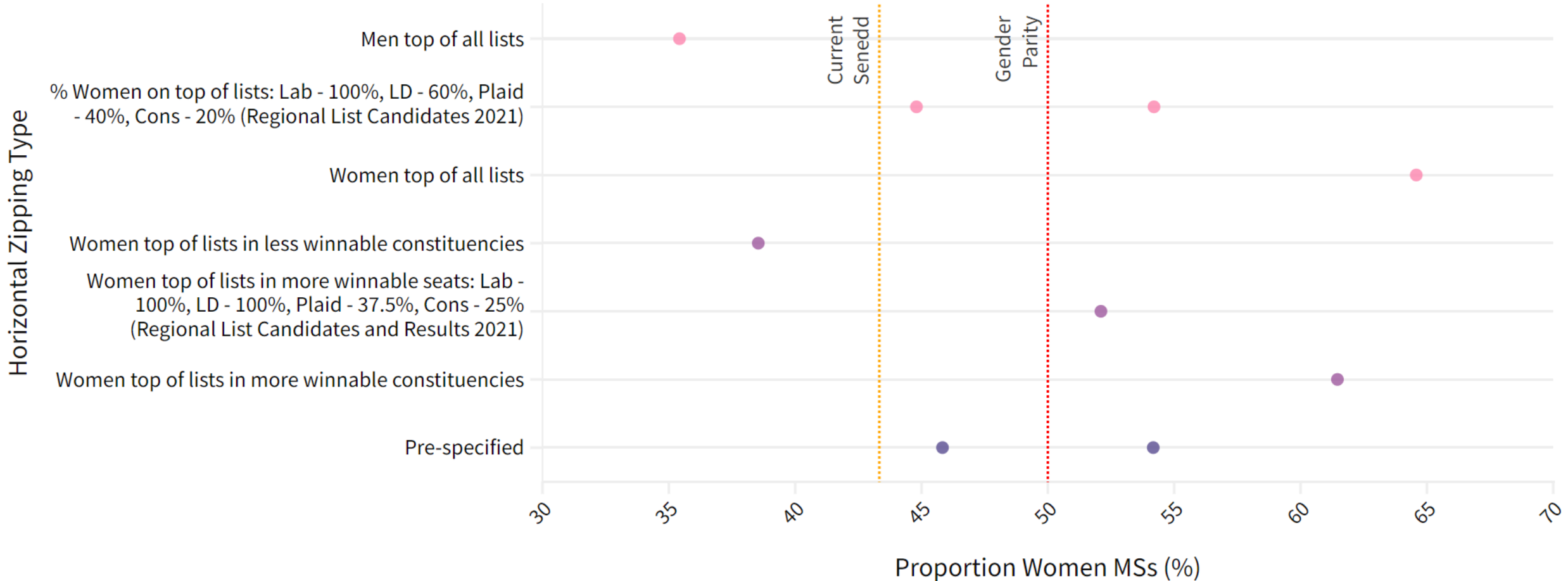
- Women on top of candidate lists in constituencies where they will win proportionally less seats (0, then 2, 4, 6)
- Party specific % of women on top of candidate lists in more winnable constituencies based on regional list results from 2021 Senedd elections
- Women on top of candidate lists in constituencies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

- 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