



Llywodraeth Cymru
Welsh Government

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Senedd Cymru (Electoral Candidate Lists) Bill: justice impact assessment

Justice impact assessment of the impact of the bill for reform of Senedd electoral candidate lists.

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Executive summary

The Welsh Government's assessment of the impacts of this legislation on the justice system is that it has no or negligible potential impact.

Introduction

Primary legislation is planned to implement the second phase of Senedd reform measures. The MOJ may wish to refer to JSII-1035-WG-Senedd Reform which covered other reform measures provided for in the Senedd Cymru (Members and Elections) Bill. This Bill, already introduced to the Senedd, seeks to make a number of reforms to Senedd elections, including increasing the number of Members of the Senedd, changing the voting system and updating the boundaries for Senedd constituencies.

The legislation which is the focus of this JSII (the Senedd Cymru (Electoral Candidate Lists) Bill) does not create a new criminal offence, but it is currently planned to expand an existing criminal offence in subordinate legislation to other circumstances. This expansion will be minimal and will therefore have negligible potential impact.

The Bill will introduce women quotas for Senedd elections, requiring that parties' candidate lists (for Senedd elections) comply with rules regarding the proportion and placement of women on them. The rules will require political parties to ensure that at least 50% of the candidates on any of their candidate lists are women and that at least 50% of their lists for a Senedd general election have a woman in first position. There will also be a specific rule relating to the placement of women on any single list. The Bill sets out the quota requirements and provides for their enforcement through provision to be made in an order under section 13 of the Government of Wales Act 2006 (commonly referred to

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as “the Conduct Order”). It is anticipated that the provision to be made in the section 13 Order will be along the following lines. Lists that do not comply with the vertical quota rules (i.e. those at individual constituency level) will be rejected as invalid and nominees on the list will not become candidates. If a party is found to be non-compliant with the quota rule at national/all-Wales level (i.e. the rule that 50% of lists have a woman in the first/only position), there will be arrangements whereby lists can be rearranged to comply, failing which as a last resort, a single candidate on a list of one may cease to be nominated. To enable Returning Officers to validate lists, candidates will be required to complete a statement (that they are a woman or not a woman). The statement will not be included in the existing offence of providing false information on a nomination form (article 34 of the current Conduct Order SI 2007/236). There is case law about a returning officer rejecting a nomination which is a manifest sham and case law also deals with the grounds upon which an election may be challenged (which is by election petition, tried by an election court).

Therefore, the quota rules give rise to additional circumstances which might amount to a sham and may give rise to additional circumstances in which an individual could lodge an election petition, although there are currently no plans to make specific provision on these matters in respect of the quotas.

It is currently intended that subordinate legislation to be made under the primary legislation will apply an offence relating to Returning Officers (breach of official duty, in article 32 of the current Conduct Order) to a new role (National Nominations Compliance Officer) created by virtue of the new legislation. The National Nominations Compliance Officer will have functions related to the enforcement of the rule at national/all-Wales level.

Whilst the legislation does give rise to a potential increase in applications to the courts, the likelihood of an increase occurring is considered negligible. The expansion of the breach of duty offence is only to cover the NNCO, whose role will be confined to Senedd elections. Whilst there may be more scope for dispute and bringing a petition, we estimate that at most Senedd elections in

future, as in the past, there would be no cases.

What is proposed

The Bill will legislate for the introduction of women quotas for elections to Senedd Cymru. The quotas are part of a package of reforms to the Senedd, which began with the Senedd Cymru (Members and Elections) Bill, introduced on 18 September. The purpose of the reforms is to make the Senedd a more effective legislature for, and on behalf of, the people of Wales. Part of that includes implementing the quotas with the aim of returning a Senedd that has a gender balance which broadly reflects that of the Welsh population, because a more representative legislature is a more effective one. Women are an underrepresented majority in the Senedd. 51% of the Welsh population are women, while currently only 43% of Senedd Members are women. The quotas will increase the chances of achieving gender balance which will help to achieve the purpose of a more effective legislature. We aim that quotas should be implemented for the Senedd election in 2026 and apply to every subsequent general Senedd election.

Candidate lists will need to comply with the quota by including a minimum of 50% women candidates and complying with the placement criteria as they are prescribed in the primary legislation.

The quota will be a mandatory requirement for parties. By placing quotas on a legislative footing, we aim to achieve a gender balance that reflects the population the Senedd serves to further the aim of a more effective legislature.

No new offences will be created, although the subordinate legislation may expand an existing criminal offence.

Existing electoral law provides for a number of electoral offences relating to the

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fair running of elections targeted at electoral administrators and participants. Returning Officers could be found to be in breach of official duty if they fail to run an election in accordance with Senedd electoral law (the offence in article 32(1) of the current Conduct Order SI 2007/236). The subordinate legislation made to implement the Bill may amend this offence so that it applies also in respect of the National Nominations Compliance Officer. Whilst an additional person may then commit the offence and returning officers would have more duties to comply with in administering the election, it is considered that the likelihood of this leading to an increase in cases before the courts is negligible. It would only extend the offence to one person and it is considered unlikely that that person and the returning officers would commit the offence. The law concerning their duties to enforce the quotas will be clear and it is likely that the Electoral Commission will issue guidance to support them in performing their functions.

For participants, the relevant existing offence would be providing false information on a nominations paper, (which is a corrupt practice), but it is not intended to make giving a false statement part of that corrupt practice offence (in article 34 of the National Assembly for Wales (Representation of the People) Order 2007, the current Conduct Order).

Although the Bill does not create any new offences, as it will be implementing new rules by which administrators and participants must abide this does potentially increase the circumstances upon which an election petition could be lodged.

However, it is considered that the risk of this happening is minimal. An election petition in such circumstances must be brought within 21 days of the election (specifically the day of the return of the Member) in question and brings with it a significant financial requirement. Election petitions are not a frequent occurrence – there have been no election petitions raised in respect of Senedd elections so far.

Post-implementation review

The Bill will be introduced on 11 March 2024 and will include a mechanism with a view to instigating a review by the Senedd of the operation and effects of the legislation following the first election at which the quota rules apply. This is anticipated to be the 2026 Senedd election.

The review by the Senedd may include consideration of any impacts of the quota and whether any adjustments are needed prior to the next election. Such impacts could include the occurrence of election petitions.

Lists that do not comply with the vertical quota rules, at individual constituency level, will be deemed invalid and nominees on the list will not become candidates unless the political party can resolve the non-compliance issue within a deadline, to be specified in law. If a party is found to be non-compliant with the gender quota rules at national/all-Wales level, there will be arrangements whereby lists can be rearranged to comply.

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