



Llywodraeth Cymru
Welsh Government

IMPACT ASSESSMENT, DOCUMENT

Senedd Cymru (Electoral Candidate Lists) Bill: equality and human rights impact assessment

Equality and human rights impact assessment on the impact of the bill for reform of Senedd electoral candidate lists.

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Introduction

The quotas policy is specifically focused on increasing the numbers of women MSs, given the fluctuating representation levels since 1999, and the fact that women and girls constitute over 50% of the population of Wales and are therefore an underrepresented majority. On Census Day, 21 March 2021, there were 1,586,000 women (51.1% of the population) and 1,521,000 men (48.9%) in Wales.

A large amount of academic research has looked at the ways in which the representation of women can benefit democratic institutions by improving their ability to scrutinise on behalf of, and represent, the interests of a wider range of communities and people, including people who share protected characteristics. Some of the identified potential benefits include the way women prioritise specific policy and legislative areas; champion particular working cultures and practices; work co-operatively with representatives from other political parties; provide role models in political leadership roles and strengthen the legitimacy of a legislature. Research has also shown that quotas can play a key role in increasing the chances of electing a legislature that reflects the gender balance of its electorate ([How Do Electoral Gender Quotas Affect Policy?](#) Clayton, 2021). International research suggests that the presence of women in a legislature is linked to lower levels of corruption, with women found to be less corrupt as individuals and they tend to play an important role in counteracting corruption ([Women political leaders: the impact of gender on democracy](#) Cowper-Coles, 2021 and [Women and corruption: What positions must they hold to make a difference?](#) 2015). Much of the detail on these potential benefits is set out in the Explanatory Memorandum for the Bill.

The proposals for quotas are considered to be proportionate in that, although they prescribe where political parties should place women on electoral candidate lists within certain parameters, they do not prevent political parties from nominating an equal number of candidates who are women and candidates who

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are not women.

It is recognised that the policy only relates to women standing for election to the Senedd and it is not proposing equivalent diversity candidate quotas for people who share other protected characteristics. This is in line with what the SPC recommended in their 2022 report.

This assessment considers the impacts of the policy proposals on protected groups under the Equality Act 2010. It has been concluded that there are some groups that are directly affected, and other groups which may be potentially affected based on a review of research from around the world, which assessed the longer-term consequences and effects of introducing gender quotas for both national and regional legislative elections.

Having assessed the proposals to understand their impacts, conclusions have been drawn that the following groups are directly affected:

- Men and Women (the protected characteristic of sex)
- Trans people (the protected characteristic of gender reassignment).

With regard to women and men, one of the main effects of the quotas policy is on the right to stand for election (Article 3 Protocol 1- right to free elections). However, the Bill does not preclude anyone from standing, while reserving a proportion of more favourable positions on candidate lists for women. The latter being considered necessary and proportionate in pursuit of the legitimate aim of making the Senedd more effective, by it being more representative, in terms of the gender make-up of the Welsh population.

Nothing in the rules about the proportion and placement of women on lists precludes any individual from standing for election. However, this impact assessment does recognise that for some individuals the requirement to state their gender in the terms set out in the Bill, may lead to a degree of anxiety about doing so.

The requirement to complete a gender statement may have a more significant impact on trans and non-binary candidates with regards to their privacy and data rights, as for them this information could be more sensitive.

An analysis of the potential effects on privacy and data rights is set out in the Human Rights section of this assessment and also in the **Data protection impact assessment**. The potential impact of having to state their gender on some candidates' mental health is considered in more detail in the section of this assessment that relates to the protected characteristic of gender reassignment.

It has been considered that there could be secondary effects on groups who share other protected characteristics as a result of introducing quotas and these conclusions are largely based on international evidence and research from around the world. The Explanatory Memorandum published alongside the Bill provides more detail, but in summary some research found there to be an increase in debates on a variety of social, societal and family-related issues and policies as a result of a women's representation in political institutions (**Point break: using machine learning to uncover a critical mass in women's representation 2021** and **Cowper-Coles 2021**). It is reasonable to conclude that there is the potential for a similar positive outcome for the Senedd as a result of increased women's representation. It is possible that through achieving a critical mass of women's voices there may be an increase in debates on issues related to the following groups who share protected characteristics:

- Children and young people (the protected characteristic of age)
- Those who are pregnant or on maternity leave (the protected characteristic of pregnancy and maternity)
- Disabled people (the protected characteristic of disability)
- Those who require care, including older people and disabled people (the protected characteristics of age and disability).

Research indicates that the introduction of quotas can act as an incentive for more women to stand for elected office and lead to increased representation of a

range of diverse perspectives.

Research also suggests that increasing the proportion of women can make a legislature more representative of the population more broadly, because women should not be seen as a homogenous group, but one differentiated by intersecting identities and different experiences ([Clayton, 2021](#)).

The legislation includes a review mechanism by which the Senedd itself, through the establishment of a committee (should it vote to approve a motion that must be brought to establish one) will carry out a review of the operation and effect of the quota rules. This provides the Senedd with an opportunity to consider the impact of the policy.

Record of impacts by protected characteristic

Protected characteristic/group: Age

Think about different age groups.

Impacts of the proposal

A potential positive impact in the longer term has been identified- an increase in elected representation of women of a broader range of ages (excluding anyone who is not the age of 18 before the day on which their nominated - Schedule 1A, Government of Wales Act 2006), especially if coupled with other interventions to remove barriers to participation in politics.

A potential positive has been identified - increase in debates on issues related to those who share this protected characteristic.

Reasons

The average age of a Member of the Senedd is 55 ([Election 2021: How diverse is the Sixth Senedd?](#)). This is compared to the average (median) age of the Welsh population, which is 42 years old ([Demography and migration in Wales: Census 2021](#)). These figures clearly demonstrate that the Senedd is attracting an older profile of person than that of the general population.

[Research suggests](#) that there is a low number of younger Senedd members. Introducing quotas may have a positive effect on this, resulting in women of all different ages being encouraged to stand and achieving election.

The introduction of quotas in countries around the world shows that when contributing to policy development, legislating and carrying out scrutiny, women politicians tend to highlight and bring a wider variety of social issues for debate and discussion, which impact on people of all ages ([Piscopo 2020](#) and [Clayton, 2021](#)).

Mitigation

N/A

Protected characteristic/group: Disability

Consider the social model of disability and the way in which your proposal could inadvertently cause, or could be used to proactively remove, the barriers that disable people with different types of impairments.

Welsh Government uses the social model of disability. We understand that disabled people are not disabled by their impairments but by barriers that they encounter in society. Ensuring that your proposal removes barriers, rather than

creating them, is the best way to improve equality for disabled people. For more information, go to the intranet and search 'social model'.

Impacts of the proposal

A potential positive effect has been identified - increase in debates on issues related to those who share this protected characteristic and participation by Members with a lived experience of being disabled, especially if coupled with other interventions to remove barriers to participation in politics and public life.

Reasons

Research on the introduction of quotas in countries around the world suggests that women politicians when contributing to policy development, legislating and carrying out scrutiny, highlight and bring a wider variety of social issues for debate and discussion ([Cowper-Coles 2021](#)).

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

Mitigation

NA

Protected characteristic/group: Gender reassignment

The act of transitioning and Transgender people.

Impacts of the proposal

There may be an impact on both the privacy and potentially the mental health of trans candidates.

Reasons

This is due to the requirement for all candidates to complete a gender statement as to whether they are a woman or not, as part of the candidate nomination process. For some individuals, giving this information could be a sensitive matter. This is more likely be the case for transgender people, because for them there could be a heightened risk of challenge by way of election petition. This has the potential for the candidate to face scrutiny of their gender, which they may consider personal and private. There is also the potential for media and other scrutiny as a result of a legal case. The potential negative consequences on mental health are indicated from research that suggests that trans people noted a fear of discrimination or reprisal, including the possibility of public humiliation or not being taken seriously, as a factor affecting their willingness to participate in public and political life.

The research also indicated that trans people were concerned about being 'outed' or 'exposed' and that this can impact on their decision to disclose information about themselves publicly, particularly when participating in some high profile political activities, including standing for election ([Report to the Government Equalities Office 2010](#)). Other research shows that of 1054 trans people surveyed, 81% of respondents expressed that a lack of acceptance of the gender they live in, created a feeling of fear and therefore they see it as a barrier to participation in a range of everyday life situations ([Trans Mental Health Study 2012](#)).

Mitigation

A candidate's party will need to know how their candidates complete the gender statement and electoral administrators will need to see gender statements. Parties and electoral administrators will be subject to data protection law in handling the data. Further detail on the process for sharing information is set out in the [Data protection impact assessment](#) for the Bill.

It is envisaged that there will be 2 possible limited circumstances where a candidate's gender statement may need to be viewed by others beyond the candidate, the party they are standing for and the relevant Returning Officer (RO)/ electoral administration staff and the National Nominations Compliance Officer (the NNCO may not actually view it, but be informed of what the candidate in the first or only position on a list has stated). The first circumstance could be if limited other persons are entitled to inspect it during the electoral process (the Bill gives power to provide for this in subordinate legislation). It is anticipated that the subordinate legislation, if it confers rights of inspection, would also contain appropriate safeguards, just as there are currently in respect of existing rights of inspection of candidates' home address forms. The second circumstance is where a legal challenge is brought (e.g. an election petition to challenge the election) and the candidate's gender statement is relevant to the case, which may result in their statement being disclosed to the court. However, election petitions and other legal challenges are not a frequent occurrence, therefore it is considered that the risk of this happening is minimal. It is considered that this risk of legal challenge may be slightly heightened for some transgender individuals depending on the circumstances.

While the information provided in a candidate's gender statement will not be published, the order of a parties list for a constituency (which will be informed by candidates' statements and the quota rules) will be made publicly available. Therefore, it may be possible to ascertain, or at least confidently predict, how some candidates have stated their gender (though not necessarily all

candidates).

Protected characteristic/group: Pregnancy and maternity

Impacts of the proposal

A potential positive impact has been identified - increase in debates on issues related to those who share this protected characteristic.

Reasons

As mentioned previously, there is research to suggest that with an increased number of women within a legislature, this can increase the focus on issues of relevance to people who share protected characteristics. Also, gender quotas in some contexts may lead to more diverse representation more generally, including from underrepresented groups ([Clayton, 2021](#)).

Mitigation

NA

Protected characteristic/group: Race

Including different ethnic minorities, Gypsies and Travellers and Migrants, Asylum seekers and Refugees.

Impacts of the proposal

A potential positive impact in the longer term has been identified – increase in elected representation of women initially and potentially women from black and minority ethnic backgrounds in due course.

Reasons

As mentioned previously, research suggests that with an increased number of women within a legislature, this can increase the focus on issues of relevance to people who share protected characteristics. Also, gender quotas in some contexts may lead to increasing minority representation ([Clayton, 2021](#) and [Cowper-Coles 2021](#)).

Mitigation

NA

Protected characteristic/group: Religion, belief and non-belief

Impacts of the proposal

A potential positive impact in the longer term has been identified – increase in elected representation of women who are from a variety of religious backgrounds and who hold a range of beliefs.

Reasons

As mentioned previously, research suggests that increasing the number of women within a legislature can lead to a greater focus on issues of relevance to people who share protected characteristics. Also, gender quotas in some contexts may lead to more diverse representation more generally, including from underrepresented groups ([Clayton, 2021](#) and [Cowper-Coles 2021](#)).

Mitigation

NA

Protected characteristic/group: Sex/Gender

Impacts of the proposal

It has been identified that there will be a positive impact on women candidates because of the candidate placement criteria (that a woman must follow a candidate who is not a woman, apart from in respect of the candidate at the bottom of the candidate list) and the minimum 50% thresholds set out in the policy. This aims to ensure that women candidates are not relegated to the bottom of parties' candidate lists where they are less likely to be elected.

For women more generally, a higher proportion of elected women MSs has the potential to result in greater visibility and consideration of women's and family-related policy issues in the Senedd and the sharing of broader perspectives on a range of other issues.

It has been identified that there will be a limited negative impact on men where,

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as a result of the quota, some men may not be placed on a candidate list or be placed in a less favourable position. This may result in them not being elected.

There could also be a more limited impact on women occasionally, who may be placed in a less favourable position on a list to comply with the placement criteria. This may result in them not being elected.

Reasons

The legislation aims to make the Senedd a more effective legislature, through seeking to ensure that the Senedd better reflects the gender make-up of the population of Wales, with the associated policy benefits that are expected to arise from this.

The policy aims to achieve this overall objective by having both vertical (constituency level) and horizontal (national level) criteria relating to the proportion of women candidates' political parties must put forward for election. At least 50% women at the vertical level and 50% at the horizontal level provided there is more than one candidate at each level. Research suggests that having placement criteria for women candidates both at local and national level is important, in order for quotas to achieve the desired outcome of more women being elected ([Quotas for Women in Politics](#) 2009).

The rule that a person who is not a woman must be followed by a woman on a list could result in candidates (including potentially women on occasion) being placed lower down a list than they would otherwise have been, which could result in them not being elected when they might otherwise have been. Similarly, the rule that at least 50% of a party's list must have a woman in the first or only position, could result in a candidate who is not a woman being placed in second position on a list when they might otherwise have been in first position.

The rejection of party lists that are not compliant with the vertical (constituency)

rules could lead to parties, and their candidates, not standing at an election.

The provisions of the Conduct Order to address non-compliance with the horizontal (national level) criteria could result in candidates who are not women being moved down a position on a list, or even occasionally, ceasing to stand nominated at that election.

A party candidate failing to state whether or not they are a woman during the nomination process would not be validly nominated, so unable to stand at that election.

Mitigation

If parties do not meet the constituency criteria set out in the legislation, they will be unable to stand any candidates within the particular constituency, as their candidate list will be rejected by the RO. Research suggests that this is an effective way in which to ensure compliance ([Twenty Years of Parité Under the Microscope in France](#) 2023). At the national level, it is anticipated that if parties do not meet the criteria, ROs will intervene to enable the party to stand in as many constituencies as possible, while also complying with the legislation (with parties having a short opportunity first to select the constituency list(s) to be changed to bring them into compliance). To avoid issues of non-compliance arising where candidates would be prevented from standing, consideration will be given to any awareness raising and guidance required ahead of the quota coming into effect. It is also expected that the current scope for engagement between parties and ROs during the nominations process, may help parties to comply.

The approach is considered proportionate in achieving the aim of a more effective Senedd, as women are and have been an under-represented majority.

Protected characteristic/group: Sexual orientation

Lesbian, Gay and Bisexual

Impacts of the proposal

A potential positive impact in the longer term has been identified– increase in elected representation of women who are gay or bisexual.

Reasons

Research undertaken by the Senedd in 2021 indicates that 3 Members of the Senedd currently identify as LGBTQ+ ([Election 2021: How diverse is the Sixth Senedd?](#)). This equates to 5% of the current MSs. This can be compared to data from the 2021 Census relating to sexual orientation for the whole of Wales, which indicates that of the Welsh population, 1.5 per cent identify as Gay or lesbian, 1.2% identify as bisexual, and 0.3% identify by other sexual orientations ([Census 2021](#) ONS).

As mentioned previously, research suggests that an increased number of women within a legislature can increase the focus on issues of relevance to people who share protected characteristics. Also, gender quotas in some contexts may lead to more diverse representation more generally, including from underrepresented groups ([Clayton, 2021](#) and [Cowper-Coles 2021](#)).

Mitigation

NA

Protected characteristic/group: Marriage and civil partnership

Impacts of the proposal

No specific positive or negative impacts have been identified.

Reasons

NA

Mitigation

NA

Protected characteristic/group: Children and young people up to the age of 18

Impacts of the proposal

An increased number of women legislators could lead to a greater focus in Senedd debates on issues relating to children and their rights, and to more effective scrutiny in these policy areas.

As identified in the Explanatory Memorandum, the proposals are not expected to have any adverse impacts on children and children's rights. Prospective Members of the Senedd must be 18 on the day of their nomination to stand for

election.

Reasons

As mentioned previously, research suggests that with an increased number of women within a legislature, this can increase the focus on issues of relevance to people who share protected characteristics including children and young people ([Clayton, 2021](#) and [Cowper-Coles 2021](#)).

Mitigation

NA

Protected characteristic/group: Low-income households

Impacts of the proposal

If more women are incentivised by quotas to stand for election, and supported to stand through other initiatives and interventions, it is reasonable to conclude that more women from a broader range of socio-economic background may become MSs, leading to this breadth of lived experience being reflected in the Senedd.

Reasons

There is some research to suggest that quotas may provide an incentive for more women to stand for election ([Unpacking diversity](#) 2018, page 6).

Mitigation

NA

Human Rights and UN Conventions

Article 8: Right to privacy

Impacts of the proposal

There is a potential negative impact on all candidates standing for a registered political party, as a result of them being required to disclose whether or not they are a woman, which they may consider to be personal or private. For the majority of candidates however, whether or not they are a woman is a visible characteristic and one which they are comfortable being open about. This negative impact may be of an increased relevance for trans and non-binary candidates, particularly if their statement becomes publicly known against their wishes or becomes the subject of challenge.

Reasons

Estimates from the **Census 2021** suggest that people whose gender identity is different to their sex assigned at birth, comprise a relatively small proportion of the Welsh population, 0.4% (Note: the question on gender identity was new for the Census 2021, the question was voluntary and was only asked of people aged 16 years and over). The number of people who fall into this group who would also be within the pipeline to be a candidate for a Senedd election is therefore very low.

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With regard to election petitions, the numbers that have been filed in the UK are very low and the numbers are even lower for those that have been brought before the courts for formal consideration. There have been no petitions with regards to Senedd elections to date.

Mitigation

The party and electoral administrators will be subject to data protection law in handling the personal data (including gender statements) contained in nomination papers. Further detail on the process for sharing information is set out in the [Data protection impact assessment](#) for the Bill.

It is envisaged that there will be 2 possible limited circumstances where a candidate's gender statement may need to be viewed by others beyond the candidate, the party they are standing for and the relevant RO/ electoral administration staff and the NNCO (the NNCO may not actually view it, but be informed of what the candidate in the first or only position on a list has stated). The first circumstance could be if limited other persons are entitled to inspect it during the electoral process (the Bill gives power to provide for this in subordinate legislation). It is anticipated that the subordinate legislation, if it confers rights of inspection, would also contain appropriate safeguards, just as there are currently in respect of existing rights of inspection of candidates' home address forms. The second circumstance is where a legal challenge is brought (e.g. an election petition to challenge the election) and the candidate's gender statement is relevant to the case, which may result in their statement being disclosed to the court. However, election petitions and other legal challenges are not a frequent occurrence, therefore it is considered that the risk of this happening is minimal. It is considered that this risk of legal challenge may be slightly heightened for some transgender individuals depending on the circumstances.

While the information provided in a candidate's gender statement will not be

published, the order of a parties list for a constituency (which will be informed by candidates' statements and the quota rules) will be made publicly available. Therefore, it may be possible to ascertain, or at least confidently predict, how some candidates have stated their gender (though not necessarily all candidates).

Article 3 of Protocol 1: Right to free elections / Right to stand for election

Impacts of the proposal

Nothing in the quota rules prevents any person or party from standing at a Senedd election.

Various aspects of the rules provided for in the Bill and the related provision to be made under a section 13 order could interfere with rights to stand for election.

The rules could result in some potential candidates not standing when they otherwise would have done, or being in lower positions on lists than they otherwise would have been. This could have the effect that they are not elected when they might otherwise have been.

They could also result in parties not being able to stand their preferred choice of candidates. Non-compliance with the rules could also result in candidates and parties not being able to stand.

Reasons

The rules could result in potential candidates who are not women not being included on a party's candidate list in order to comply with the requirement that

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at least 50% of candidates on a list are women.

The rule that a person who is not a woman must be followed by a woman on a list could result in candidates (including potentially women on occasion) being placed lower down a list than they would otherwise have been, which could result in them not being elected when they might otherwise have been. Similarly, the rule that at least 50% of a party's list must have a woman in the first or only position, could result in a candidate who is not a woman being placed in second position on a list when they might otherwise have been in first position.

The rejection of party lists that are not compliant with the vertical (constituency) rules could lead to parties, and their candidates, not standing at an election.

The provisions of the Conduct Order to address non-compliance with the horizontal (national level) criteria could result in candidates who are not women being moved down a position on a list, or even occasionally, ceasing to stand nominated at that election.

A party candidate failing to state whether or not they are a woman during the nomination process would not be validly nominated, so unable to stand at that election.

The requirement to make a gender statement may be a concern for some potential candidates (the privacy aspects of this were addressed above in the context of Article 8).

Mitigation

The quotas are critical to achieve the legitimate aim pursued by the legislation which is to make the Senedd a more effective legislature by it broadly reflecting the gender make-up of the population it is seeking to represent and serve.

To give effect to that aim, the quota rules seek to ensure that 50% of Members

of the Senedd returned at a general election are women, given that women are and have been the under-represented majority in terms of gender.

The requirement that a party candidate state whether or not they are a woman and any provisions to enforce the rules (e.g. rejection of non-compliant lists) are necessary for the rules to be effective.

The requirements in the Bill regarding the proportion and placement of women on party candidate lists are clear and the consequences will be foreseeable.

Further consideration will be given to the provisions of the secondary legislation to ensure that they too are clear, proportionate and consequences foreseeable.

The rules regarding the proportion and placement of women on party lists do not restrict individuals' right to stand for election beyond what is necessary to safeguard a proportion of the more favourable list positions for women, and therefore increase the chances of the policy aim being achieved- namely, to return a Senedd which is more representative of the gender make-up of the Welsh population, so that it can be a more effective legislature.

Article 14: Protection from discrimination

Impacts of the proposal

As identified above, there is scope for negative impacts for potential candidates, but it may be greater for, or occur more often in respect of, potential candidates who are not women than those that are women.

As also identified above, there may be more negative impacts for transgender or non-binary persons.

Reasons

As indicated in respect of Article 3 of Protocol 1.

As indicated above in respect of Article 8.

Mitigation

As indicated above in respect of Article 8 and Article 3 of Protocol 1.

Ultimately the rules do not prevent any party from having equal numbers of men and women on their lists and in first position across all the constituencies where they choose to stand candidates, making it possible for men and women to be represented in equal numbers overall in the election.

EU/EEA and Swiss Citizens' Rights

It is not considered that the Bill will have specific impact upon EU, EEA or Swiss citizens (whose rights are protected by the Citizens Rights Agreements) compared to other persons living in Wales.

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