

Cyflwynwyd yr ymateb hwn i [ymgyngoriad y Pwyllgor Biliau Diwygio](#) ar [Fil Senedd Cymru \(Aelodau ac Etholiadau\)](#).

This response was submitted to the [Reform Bill Committee consultation](#) on the [Senedd Cymru \(Members and Elections\) Bill](#).

**SCME(P)4 Ymateb gan: | Response from: Alistair Clark**

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## **Written Evidence to the Senedd Reform Bill Committee Stage 1 Inquiry into the Senedd Cymru (Members and Elections) Bill 2023**

### **Introduction**

1. My expertise is in electoral systems, integrity and administration, with numerous published research articles and reports on these themes. I write in a personal capacity (<http://www.ncl.ac.uk/gps/staff/profile/alistairclark.html#background>).

### **Summary**

2. The Bill represents an important set of proposals to improve the capacity of the Senedd by expanding its size from 60 to 96. This overall change and intent is welcome and necessary. Most of the Bill's contents are reasonable, and the intention to carry over or develop existing structures (i.e. the combining of constituencies to create the initial 16 constituencies; the use of D'Hondt carried over from the existing regional lists etc) would seem to ensure practice evolves along pre-existing lines where possible. For the most part, this seems a sensible approach.

3. There are however some issues with the Bill that need further scrutiny, discussion or clarity from the Welsh government. This written evidence expands on those points



under four headings: electoral system; institutional consequences; candidacy and residency; and Boundary Reviews.

## **Electoral System**

4. Electoral systems can be judged by a number of indicators. There are inevitable, often political, trade-offs between them inherent in any system chosen. One account from the Electoral Reform Society highlights six indicators that might be considered to arrive at an overall assessment.<sup>1</sup> These are:

- Proportionality;
- Stable government;
- Voter choice;
- Link between MPs and geographical constituencies;
- Diversity beyond party affiliation;
- Encourages participation.

5. A big question about the introduction of the new proportional representation system would be how more proportional outcomes would impact the type of government formed post-election. A majority would seem to require 49 seats. On a very rough assessment of how current results might play out, this would seem difficult to achieve under the new system for a single party. The major parties – Labour, Conservatives and Plaid Cymru – would still dominate the party system. Smaller parties would find it difficult to be elected at their current level of performance given how the electoral system's informal thresholds are likely to work. If this were the case with smaller parties in future elections, the larger parties may pick up a handful of additional seats.

6. Such an outcome would likely mean either some form of coalition, or the largest party governing as a minority administration. Neither are necessarily unstable forms of government and Wales has experience with both. Stability would depend on a variety of factors, such as cross-party consensus, internal party divisions within government and so on.

7. Electoral systems can be thought of by the extent to which they empower either voters or political parties. On the one hand, voter choice means voters being able to choose between candidates even within political parties where they offer lists or teams of candidates. A system such as the single transferable vote (STV), for example, allows voters to have such choice between candidates and parties where parties offer more

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<sup>1</sup> Electoral Reform Society (2007) *Britain's Experience of Electoral Systems*, London: ERS.

than one person for election. While it may represent a more limited choice, a system like the additional member system (AMS) currently used to elect the Senedd, still allows voters the opportunity to exercise choice beyond one party by choosing to vote for different parties between the constituency and regional list system. Such voter choice potentially limits parties' influence.

8. By contrast, parties' powers are enhanced where voters do not have the ability to choose between the candidates that parties offer to the electorate. This is typically the case where political parties offer closed lists to voters. Under closed list PR, electors cannot choose between party candidates; they must accept the list ranking that parties offer them. Voters which might prefer a different candidate or ranking therefore cannot exercise their choice as they wish. This potentially also impacts on issues around diversity, and unless parties prioritise and rank candidates highly in relation to characteristics such as sex and ethnicity, such candidates are unlikely to be elected. I discuss this further below.

9. The choice of closed list proportional representation as the new electoral system for the Senedd, would seem to place the power over which candidates are eventually elected firmly in the hands of political parties. At a time where there is widespread scepticism about the role of political parties, this seems unfortunate.

10. The Expert Committee on Electoral Reform recommended the Single Transferable Vote (STV) to ensure that there was a geographical link between constituencies and members, while still producing more proportional results.<sup>2</sup> My research into STV in Scottish local elections has confirmed these ideas are applicable to the use of the STV on the British mainland, while also demonstrating that voters have little problem in adapting to STV as an electoral system.<sup>3</sup> While I appreciate that this might be unlikely, and there has already been lengthy consideration of electoral systems, *I would nevertheless recommend reconsideration of STV.*

11. *If a proportional list system is deemed necessary, I would recommend that some level of voter choice be incorporated into it and an open list proportional representation (OLPR) system be developed instead.* This would allow political parties to present the lists they have selected, but voters to choose between particular candidates within those lists. There are numerous variations of OLPR, but it is used in countries such as

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<sup>2</sup> <https://business.senedd.wales/documents/s104463/Committee%20report%20-%20Summary%20of%20recommendations.pdf> [23/10/23].

<sup>3</sup> Clark, A. (2021) 'The Effects of Electoral Reform on Party Campaigns, Voters and Party Systems at the Local Level: From Single Member Plurality to the Single Transferable Vote in Scotland', *Local Government Studies*, 47, (1), pp79-99; Clark, A. (2013) 'Second Time Lucky? The Continuing Adaptation of Parties and Voters to the Single Transferable Vote in Scotland', *Representation*, 49, (1), pp55-68.

the Netherlands, Norway and Denmark. The democracy assistance organisation International IDEA have produced a useful overview.<sup>4</sup>

12. There seems an inconsistency between the Bill allowing parties to present lists of up to eight candidates (Section 7), when only six members will be elected from the 16 constituencies. Those at the bottom of party lists were already unlikely to be elected; for those in seventh and eight place it would seem an impossibility. Were an open list system introduced, this provision for lists of eight could remain but instead of being an inconsistency, it could be justified by giving voters increased choice.

13. Political parties should be encouraged to prioritise diversity of candidacy in choosing their lists. This might be done formally, by requiring parties, as part of this legislation, to have either a quota for particular characteristics, or to 'zip' their candidate lists, alternating between candidate sex (male/female/male/female or vice versa). Political science evidence suggests that quotas are the most likely to be successful to improving descriptive representation and contribute to candidates with certain characteristics being elected.<sup>5</sup> Procedures such as 'zipping' have also had some success. It was reported that the Bill might contain measures to permit 'zipping', but these do not seem to have made it through to the version published for Stage 1 Scrutiny.<sup>6</sup>

14. The alternative to requiring this in legislation would be to provide some sort of informal encouragement or incentive for parties to do so. Another option would be to develop programmes to encourage potential candidates to come forward, preferably with cross-party support.

15. It is correct that the Bill limits the number of lists that candidates can stand on, to prevent unsuccessful candidates from 'venue shopping'. I support this measure.

16. Research has suggested that there can often be links between 'independent' candidates and party lists, some 'independents' choosing that label for electoral reasons, knowing that they would be unlikely to be elected if they stood for a party they were nevertheless close to.<sup>7</sup> It is correct therefore that there are limits on the ability of independent candidates to also stand on a party list.

17. With independent candidates, there is a need to be sure that such restrictions do not limit ballot access unnecessarily however. Independent candidates are already

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<sup>4</sup> <https://www.idea.int/sites/default/files/publications/open-list-proportional-representation.pdf> [23/10/23].

<sup>5</sup> For example: Clayton, A. (2021) [How Do Electoral Gender Quotas Affect Policy?](#) *Annual Review of Political Science* 2021 24:1, 235-252.

<sup>6</sup> <https://www.bbc.co.uk/news/uk-wales-politics-61392204> [23/10/23].

<sup>7</sup> Copus, C., Clark, A., Reynaert, H. and Steyvers, K. (2009) 'Minor Party and Independent Politics Beyond the Mainstream: Fluctuating Fortunes but a Permanent Presence', *Parliamentary Affairs*, 62, (1), pp4-18.

likely to face a high bar to election, even under a more proportional system. Such electoral systems have informal thresholds which require candidates to achieve more than a certain proportion of the vote before they are elected. This largely depends on issues like turnout on polling day and is difficult to predict precisely. Nonetheless, an independent candidate is likely to need at least approximately 10-12% to be elected to a list. It is therefore unlikely that many such candidates will be elected.

### **Institutional Consequences**

18. The return to four-year terms represents an accountability check on executive power. While five-year terms were not necessarily problematic, they were nevertheless on the long side for voters being able to express their views. A shorter term allows for greater accountability and provides an important imperative for governments to be responsive and implement public policy commitments quickly and effectively. I support this change.

19. Given the large increase in size that the Bill proposes for the Senedd, the addition of a further Deputy Presiding Officer seems an entirely reasonable reform. This can be justified by the need to provide capacity to run parliamentary business. Both the House of Commons and the Scottish parliament operate with systems of Deputy Presiding Officers/Speakers. I support this change.

20. The increase in size of the Senedd to 96 indicates providing additional capacity to deal with an expanded policy agenda given the increased powers the Senedd has accrued over time. Under such circumstances, it seems reasonable for the Welsh government to seek to increase the number of ministers. The increase from 12 to 17 would also seem reasonable.

21. Adding the potential for the Welsh government to appoint two further ministers by regulations (affirmative procedure) seems inconsistent with the need to pass primary legislation for the initial increase to 17. That any such further change would be irreversible seems potentially problematic, tying the hands of any future FM as to the shape of their government. The Welsh government should be pressed to clarify and detail the circumstances under which it would seek to appoint any additional ministers.

22. The requirement in Section 7 to initiate a Committee to examine possible job-sharing seems reasonable. There are numerous issues that would need to be resolved in this regard, such as the balance of responsibilities within any such job-share and the circumstances under which any job share was permissible. The Committee should examine these issues in detail.

23. At least two specific issues seem to be relevant to job-sharing where the role involved is Member of the Senedd (something which by definition also impacts the other roles specified in the Bill). Firstly, there is an obvious potential democratic conflict with this role being elected. To what extent will the proposal to job-share be highlighted to voters in an election campaign so that voters can make an informed choice? This interacts directly with the issues around closed lists noted above. What would it mean for parties to present lists, when one or more of their candidates was proposing to job share? Yet it would seem fundamental to the democratic choice put before voters that they know how candidates are proposing to perform their role if elected.

24. Secondly, might there be a link to job-sharing and the potential for MS's to have second jobs or hold other elected positions, such as councillors? This may seem to apply less with most of the roles, such as Ministers, Presiding and Deputy Presiding Officers set out in the legislation. It would however seem to apply with MS's, and become an area of potential future controversy.

25. Section 19's intention to establish a Committee to review the operation of the act in the aftermath of the 2026 election seems a good idea. *I would suggest that this is established as a formal post-legislative scrutiny process.*

26. However, Section 19 seems to go considerably beyond the narrow purpose of reviewing the Act. Section 19, clause ii's point about any review covering 'the extent to which the elements of a healthy democracy are present in Wales' is an extremely wide question, which almost inevitably contains many aspects not in this Bill. While a wider democracy review or audit would certainly be useful and desirable, this can be achieved in a number of other ways. *I would recommend removal of this specific point from the Bill.* This would ensure that the Act's operation is central to any inquiry, and that the review does not get diverted into other matters.

### **Candidacy and Residency**

27. The question about residency requirements can, to a large part, be linked to the choice of electoral system. List proportional representation tends to de-emphasise local geographical links. An alternative system to proportional representation such as STV has, to a larger extent, a degree of localism built into it, while also providing a level of proportionality to results.

28. The recent history of electoral law in Wales has been towards opening and more permissive ballot access. For example, the franchise has been extended to residents, regardless of nationality in the Senedd and Elections (Wales) Act 2020 and the Local Government and Elections (Wales) Act 2021. While not unreasonable, the proposal in

the current Bill to restrict candidacy and membership to those registered to vote in Wales could potentially be presented as restricting access to the ballot. The key theme in both those previous Acts and the current Bill being scrutinised would seem to be the importance of residency in the exercise of electoral rights.

29. Whether this restriction would apply to a large number of candidates is probably unlikely, since political and campaign discourse highlighting their registration status would almost inevitably provide a deterrent to most candidates except the most determined or high profile. Such candidates would also, presumably, be unable to vote for themselves.

### **Boundary Reviews**

30. The various measures contained in the Bill relating to Boundary Reviews, renaming the Local Democracy and Boundary Commission for Wales as the Democracy and Boundary Commission Cymru, and clarifying its procedures seem reasonable enough. My only concern is that 'Democracy Commission' is reminiscent of, and is inevitably likely to be confused with, the Electoral Commission. Unless the intention is to signal some wider purpose, it might be simpler and clearer just to rename it the Boundary Commission Cymru.