

LG 04

Bil Llywodraeth Leol ac Etholiadau (Cymru)

Local Government and Elections (Wales) Bill

Ymateb gan: Cymdeithas Diwygio Etholiadol Cymru

Response from: Electoral Reform Society Cymru



Local Government and Elections (Wales) Bill

Evidence to the Communities and Local Government Committee from ERS Cymru

4th December 2019

The Local Government and Elections (Wales) Bill is an extensive piece of legislation that includes some key areas of reform, specifically over elections. We are delighted to see the inclusion of moves to extend the franchise, changes to the electoral system and the ability for Returning Officers to automatically register voters however we believe it is vital that this legislation is strengthened in some key areas as it progresses through the Senedd.

We have been keeping a close eye on the legislation as it has developed, including responding to the Welsh Government's Consultation on Electoral Reform in Local Government in Wales in 2017.¹

There are some parts of the legislation on which we as an organisation hold no views. As such our response to the Bill is specific to those parts of the legislation on which we do have policy and views.

Part 1- Elections

The extension of the franchise

A principal area of this legislation is to extend the franchise to 16 and 17 year olds and foreign nationals. The extension of the franchise to 16 and 17 year olds is something we have long campaigned for and we are very pleased to see its inclusion in this Bill.

Given the recent passing of the Senedd and Elections (Wales) Bill, it's vital that the franchise is as consistent as possible and it makes utter sense that the same people will be able to vote in both Senedd and local elections. The inclusion of the extension of the franchise in the

¹ <https://www.electoral-reform.org.uk/latest-news-and-research/parliamentary-briefings/response-to-the-welsh-governments-electoral-reform-in-wales-consultation/>

Local Government and Elections (Wales) Bill also puts pressure on the next UK Government to ensure votes at 16 is enacted for UK General Elections, to ensure an entirely consistent franchise across the UK, and that 16 and 17 year olds in England and Northern Ireland will have the same rights as young people in Scotland and Wales.

There are a range of arguments over the extension of the vote to 16 and 17 year olds, from a rights-based perspective, where young people can be employed, pay taxes and get married to those that come from a perspective of citizen engagement. Our perspective is that 16 and 17 year olds are far more likely to be in a school environment where they can receive effective political education and be able to register alongside others.

Our most recent example of the extension of the vote was in Scotland, where turnout for 16 and 17 year olds (75%) in the Scottish Referendum was actually higher than their 18-24 year old counterparts (54%). While they were still less likely to vote than those aged 35 and above,² this kind of engagement from younger voters was clearly something to be celebrated. Indeed, 97% of 16 and 17 year olds who reported having voted in the 2014 Scottish Referendum said that they would vote again in future elections and referendums.³

Research undertaken by Dr Jan Eichhorn at the University of Edinburgh has also shown engagement has extended beyond the referendum. In a survey ahead of the 2015 General Election, a comparison of 16 and 17 year old Scots with their English, Northern Irish and Welsh counterparts showed that Scottish participants demonstrated substantially higher levels of engagement with democracy even beyond voting, for example by signing petitions, and engaging with a greater range of information sources about politics.⁴

This research demonstrates the possible positive effects of votes at 16, which the Welsh Government also point to in the Explanatory Memorandum that goes alongside the Bill. However, we must be very cautious about ensuring that in Wales this is done effectively with extensive political education alongside it. Welsh young people will not have the 'event' of the Scottish Referendum to drive them to the polling station, yet in terms of the next local elections in 2022 many young people will have already had the chance to vote in the Senedd elections in 2021.

This necessitates a substantial effort to effectively engage young people ahead of both elections, and means there is a specific need for the Welsh Government to be actively involved in the plans for informing young people about the changes to the franchise ahead of the 2021 elections.

We are pleased to see the inclusion of the duty to promote awareness and provide assistance contained in Part 1, Section 4 of the Bill. This duty applies to councils themselves, however we would argue that Ministers should also have this duty in terms of coordinating a central campaign that reaches all attainers and those newly enfranchised.

² <http://blog.whatscotlandthinks.org/2014/12/many-16-17-year-olds-voted/>

³ https://www.electoralcommission.org.uk/sites/default/files/pdf_file/Scottish-independence-referendum-report.pdf

⁴ <https://blogs.lse.ac.uk/politicsandpolicy/votes-at-16-new-evidence-from-scotland/>

We have recently been undertaking a project with the Senedd Commission, going into schools across Wales to ask young people what information they need to know ahead of the introduction of votes at 16 in 2021, and asking how best to deliver that information. From that research it's clear that young people are ready and willing to engage, but that existing political education provision across Wales is not sufficient to give them the information they need. These findings highlight the need for a comprehensive pan-Wales programme of political education both within and outside of the curriculum. Currently there is a clear tension between the extension of the franchise for 2021 and 2022 and the timeline for the rollout of the curriculum in 2025. This requires specific resources to be developed for both the 2021 and 2022 elections. It makes sense that the Senedd Commission should take responsibility for the 2021 elections, but the Welsh Government will need to step up for local elections in 2022. As a result of this, and the need for the resources in 2022 to be based on what has and hasn't worked in 2021, the Senedd Commission and Welsh Government need to be working together to develop a coordinated approach.

Voting systems for local elections

It is very welcome that legislation on electoral reform has now been introduced in Wales, which includes a move to a more proportional voting system.

We have long seen the problems with the current First Past the Post (FPTP) system in local elections. Disproportionate results are common place under this system, something clear at the 2017 local elections where, in Cardiff, Labour received 39.5% of the vote but 53% of seats and in Conwy where Plaid Cymru received 8% of the vote and 17% of seats, while the Conservatives took 37% of the vote but just 27% of the seats. Ultimately, FPTP forces random results and ensures 'safe' seats are perpetually held by the same person, one of the major blockages to diversity. Furthermore in the last local elections 92 seats were uncontested. Scotland moved to the Single Transferable Vote system in 2007 and at the last election had just 3 uncontested seats. These uncontested wards were on the islands of Orkney and Shetland and on the Kintyre peninsula. This was the first time that any wards had been uncontested since the introduction of STV for Scottish local elections.

Scotland's experience of changing from FPTP to STV offers much to learn from. ERS research by Professor John Curtice following the 2012 local elections in Scotland found that that voter choice expanded, with the average number of candidates per ward increasing from 3.4 in 2003 to 7.1 in 2012 and uncontested seats had been reduced to 0 in the 2007 and 2012 elections.⁵ The number of candidates increased slightly in the 2017 Scottish locals, with 2,572 candidates contesting seats in 354 multi-member wards, giving voters on average a choice of 7.3 candidates.⁶ However, the 2012 report cautioned that STV alone had not been able to make major progress on gender balance and could only do so when coupled with direct positive action.

⁵ <https://www.electoral-reform.org.uk/latest-news-and-research/publications/2012-scottish-local-elections/>

⁶ <https://www.electoral-reform.org.uk/latest-news-and-research/publications/democracy-denied-the-2019-election-audit/#sub-section-21>

The permissive PR model contained in this legislation is not unprecedented; the system has been used in New Zealand since the passing of the Local Electoral Act 2001. This has meant since the local elections in 2004 local authorities have had the opportunity to choose between FPTP and STV.

While it has been used before, permissive PR does not come without its risks but overall is a step forward in terms of legislating upon a new voting system for local elections in Wales.

In terms of those risks, there are real communication challenges in terms of having a patchwork of electoral systems across one election. It is imperative that each local authority moving to the STV system puts in place an extensive communications strategy for the initial vote.

STV is simple for voters - all they have to do is rank as many or as few candidates as they wish in order of preference. The main change that will need to be communicated to voters is that they need to decide on how they would like to rank the candidates on the ballot paper. There is also a need to brief parties and candidates separately about the different requirements and consequences of campaigning under STV. New Zealand's Department of Internal Affairs has developed a webpage with some resources for local authorities on how to use STV, which may offer some insight into the kind of communications that would be required.⁷

There are some aspects of campaigning which will be affected by STV and merit consideration by parties.

First off, there is information gathering. On top of familiar campaigning issues (such as local issues and general pattern of support), parties will need to pay attention to the following considerations when deciding on their campaign strategy and, in particular, how many candidates to stand:

- How many people are strong supporters of the party?
- How many people might vote for one of the party's candidates because of personal or other factors?
- How is support for the party, and for individual candidates, distributed throughout the area?
- Are supporters of other candidates and parties prepared to give your candidates transfers? If so, which candidate is most attractive to transfers?

For example, a ward under FPTP where, say, Labour poll 50–55% or so and the rest of the vote is scattered between the other parties would be a very predictable Labour seat to which nobody would devote much attention. But if it were a four-member STV seat, Labour's campaigning efforts might make the difference between winning two seats or three seats. The other parties would also find it worth campaigning, not only to try to deprive Labour of the third seat but also to come top in the race for the non-Labour seat or seats, and to persuade supporters of other parties to transfer their lower preferences in the right direction.

⁷ <http://www.stv.govt.nz/STV/index.htm>

In terms of the practicalities included in the Bill of how a council could move to a new system, it is absolutely right that councils should consult voters and their members of the proposed change.

The required two thirds majority makes sense in terms of ensuring the change in voting system is most likely a cross party move, given it is very unlikely for one party to hold two thirds of seats (the exception to this is in Neath Port Talbot where Labour currently hold 39 of the 64 seats). In terms of current support among councillors for STV, over the summer we contacted councillors in Wales and asked them to complete a survey on their views on proportional representation. There were 318 responses (25% of total councillors in Wales) with 45% in favour and 36.8% against. In an additional question, 42.8% of respondents wanted more information on the issue.

It is also sensible to have a lengthy period of notice ahead of an election and for the requirement to have local authorities not be able to change back to their previous system for two full cycles. This ensures there is an appropriate length of time for electoral arrangements to be put in place and for an effective information campaign to be run around the change.

In terms of the boundary arrangements recommended in the legislation, there is limited information in the Bill itself however we support the recommended district magnitude of around three to six representatives per ward. This is also consistent with the magnitude recommended by the Expert Panel on Assembly Electoral Reform when looking at how STV might work for Senedd Cymru elections.

While we are pleased to see the inclusion of PR in this legislation, and think the particular restrictions around the introduction of it are sensible, there is no denying that our preferred option would be the full rollout of STV for all council elections at the same time. It is clear that the current system is not working effectively and it is likely that, by giving councils the option to do so, most authorities won't do it. Indeed in New Zealand, where this model has been used for 15 years STV has failed to be widely adopted by local authorities with only 11 out of the 67 opting to use the voting system in the 2019 elections.

In their Explanatory Memorandum Welsh Government state "It is appropriate that the council should decide on its voting system, which best reflects the needs of their local people and communities". We would argue that no community is best served by unfair and disproportionate results or uncontested seats.

Realistically the only way to ensure proportional results across Wales and an effective education campaign around a change to the electoral system is for a comprehensive overhaul. It no longer makes sense for FPTP to be used for any election in Wales and we would welcome the Welsh Government introducing STV for all Welsh local elections.

Electoral registration database and moves towards automatic registration

Regulations in this legislation to develop a database of electoral registration information are to be very much welcomed. The move to a single electronic register is long overdue and something that will enable wider modernisation of the registration process. For example, this would facilitate easier identification of duplicates on the register and a process whereby potential voters could much more easily confirm if they are registered or not. It would also

facilitate new models of voting, such as the ability for voters to be able to vote in a different polling station.

In terms of the practicalities of making this happen obviously the safety of holding so much data electronically should be of utmost concern. Local Authorities and Welsh Government should work with cyber security experts and seek advice from the Information Commissioner on how this is best delivered so as to comply with data privacy laws.

The moves to develop a system of automated registration, whereby registration officers can notify potential voters of their impending addition to the register, will go a huge way to simplifying the registration process. According to the latest Accuracy and Completeness estimates from the Electoral Commission, the local government register in Wales was just 81% complete and 89% accurate as of December 2018.⁸ The possibility for this to be combined with information from other government sources, such as the DVLA or passport office or council tax information, has the potential for this move to hugely increase the completeness of the register and ensure the groups less likely to be registered (the young, the private rented sector, BAME groups) can be directly targeted leading to a much more complete register. The Electoral Commission has recently assessed how information from different sources could be used to update the registers.⁹

Election Pilot Schemes

The inclusion of moves to allow Welsh Ministers to introduce pilot schemes for local elections are an exciting development. If used to their full potential, we could see a real move towards testing out ideas that may boost participation. At the last local elections we saw a turnout of just 41%. Would voting on different days (such as over the weekend) or in different places (such as supermarkets) improve this in the future? We just don't know in Wales and ultimately piloting these methods is the best way to test them.

Part 3 – Promoting Access to Local Government

Public participation in local government

We welcome the new duties on local authorities to encourage local people to participate in decision making. Methods such as participatory budgeting and citizens' assemblies could be great tools to boost engagement by local authorities.

As an organisation we have developed extensive research on the merits of deliberative democracy and better engagement, and are excited by the potential for councils to adopt such measures within these duties. In Scotland, ERS is part of the 'Our Democracy' coalition running a campaign called 'Act As If You Own The Place' where communities come together at events to redesign their local democracy so it works better for them.¹⁰ The ERS has also

⁸ <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/accuracy-and-completeness-electoral-registers/2019-report-2018-electoral-registers-great-britain/national-estimates-accuracy-and-completeness>

⁹ <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/changing-electoral-law/a-modern-electoral-register/modernising-electoral-registration-feasibility-studies>

¹⁰ <https://ourdemocracy.scot/>

been involved in running Citizens' Assemblies at the UK level¹¹ - one in 2015 on devolution and one in 2017 on Brexit - and in Scotland, where we are on the stewarding group of the Citizens' Assembly of Scotland, which is looking into the short and long term challenges facing the country and how best to deal with them.¹²

Petitions are also a good way to engage the public, as the Bill highlights, however it's fundamental that transparent mechanisms are put in place within the process, so petitioners can see the decisions undertaken following their petition and the reasons why a petition may or may not have been taken forward.

We remain concerned that the legislation may lead to a patchwork of effectiveness at local authority level, replicating what we are already seeing. Some local authorities are better than others at engaging and using deliberative processes and there is a risk that this legislation will perpetuate that. The Welsh Government should develop guidance on the kinds of methods they expect from local authorities and hold their effectiveness to account. In their Explanatory Memorandum to the Bill Welsh Government report that the legislation "enables decisions about the future of local government to be rooted in a renewed democracy, driven by active citizenship and transparent political decision making". We are not convinced that the public participation strategies alone will do this.

We are also concerned that this duty may be papering over some of the fundamental reasons many people don't engage with local government. The recent Welsh Government evidence synthesis on democratic renewal highlighted concerns around the electoral system as a discouraging factor for engagement and turnout, alongside wider trends around disengagement, a lack of diversity and a lack of political education.¹³ Addressing these fundamentals should not be forgotten when developing strategies around engagement.

Part 4 – Local Authority Executives, Members, Officers and Committees

Job sharing: executive leaders and executive members

We are pleased to see the inclusion of measures around job sharing for executive positions in a local authority. There are major benefits to job sharing of executive leaders and members' roles, including increasing the diversity of members' perspectives and expertise, and reducing the barriers to members with additional requirements being able to take on these roles.

This is something that has been proven to work in Swansea Council, which currently holds three shared positions, enabling members to share workloads, public visits and make the role much more suited to themselves.¹⁴

¹¹ <https://citizensassembly.co.uk/>

¹² <https://www.electoral-reform.org.uk/what-happens-at-the-citizens-assembly-of-scotland/>

¹³ https://gov.wales/sites/default/files/statistics-and-research/2019-03/democratic-renewal-evidence-synthesis-to-support-local-government-electoral-reform_0.pdf

¹⁴ <https://www.swansea.gov.uk/Cabinet>

There is a direct link between job sharing and diversity, with members with additional requirements typically being women (who are more likely to be in charge of, for example, childcare or other caring responsibilities, or to have to juggle other work commitments), yet the sharing of roles should not be seen as something just available to women.

Job sharing was also recommended by the Expert Panel on Assembly Electoral Reform for the Senedd, but has yet to be enacted. This is an area where local government is clearly taking the lead and it is promising to now see that in legislation.

Standards within local government

Our work has shown areas of huge concern around the abuse and harassment of those in elected office. Standards Committees within local government have the potential to be an appropriate response, if they are representative, diverse, transparent and accountable.

Of 121 politicians that took part in our survey on abuse and harassment in 2018, 21 reported that this was either from another politician or within their party.¹⁵

As the recent issues with the Senedd's Standards Commissioners' resignation have shown, it is vital that these committees include expertise on abuse and harassment within politics. They should also be careful not to replicate the lack of diversity in local government, ensuring a diverse range of voices on each committee. Furthermore, transparency and accountability must go beyond an annual report, with clear and regular updates on issues and decisions.

There is clearly a role for group leaders to play in tackling these issues too, but the legislation as it stands is unclear in terms of which steps they are expected to take to promote and maintain high standards. Further clarity on this should be sought, with an idea of what penalties could be expected if group leaders fail to comply.

Areas missing from the Bill

We are disappointed to see a number of proposed changes to local government missing from this Bill, particularly around provisions to increase diversity in politics at a local level.

Local Government is one of the weakest levels of government in terms of diversity. At the 2017 elections just 28% of those elected were women.¹⁶ 33% of wards had no female candidates at all.¹⁷

This Bill does not address this and we think this is a missed opportunity.

The specific omissions we are concerned about with this legislation include the lack of an Access to Elected Office Fund and quotas to ensure gender balance.

¹⁵ <https://www.electoral-reform.org.uk/latest-news-and-research/publications/new-voices-how-welsh-politics-can-begin-to-reflect-wales/#sub-section-12>

¹⁶ <https://www.electoral-reform.org.uk/latest-news-and-research/publications/new-voices-how-welsh-politics-can-begin-to-reflect-wales/#sub-section-8>

¹⁷ <https://www.bbc.co.uk/news/uk-wales-39721534>

An Access to Elected Office Fund was a specific recommendation from the Unpacking Diversity: Barriers and Incentives to standing for election to the National Assembly for Wales report commissioned by the Senedd's Remuneration Committee, which we also endorsed in our New Voices report in 2018.¹⁸ Access to funding has often been cited by underrepresented groups as one of the major barriers to engaging in politics and we are discouraged that the legislation does not endeavour to address this. An Access to Elected Office fund needs to be established by the Welsh Government to offer targeted support to people with disabilities, people from ethnic minorities, people from the LGBT community and people on a low income.

It is also clear that the only guaranteed way to boost diversity is to include measures to promote positive action. The Atlas of Electoral Gender Quotas argues that "gender quotas have proved to be the single most effective tool for 'fast-tracking' women's representation in elected bodies of government...Out of the 37 countries that as of November 2013 have more than 30 per cent or more women in the lower houses of parliament, 30 (81 per cent) use some type of gender quota".¹⁹ This has strong support from groups such as WEN Wales, who have a reach of 34k people in their coalition. They recommend legally binding candidate gender quotas and can share expertise from around the world in how to achieve this.

A move to a Single Transferable Vote based electoral system would provide the greatest opportunity for the use of gender quotas integrated into the electoral system. The Expert Panel on Assembly Electoral Reform recommended the linking of gender quotas to the STV system.²⁰

As we stated in our response to part 1 of the Bill, our preferred option would be for a wholesale reform of the voting system in Wales and the Welsh Government should explore legislating on integrated gender quotas to go alongside this.

Conclusion

As we have identified in our evidence above there are some areas of this Bill which contain really exciting plans for reform. The extension of the franchise in particular could change the way young people engage with politics at a local level. Furthermore, plans to change the registration system could lead to a much more complete register and remove barriers for under represented groups.

Yet, more needs to be done to strengthen the changes to the voting system and ensure wholesale reform there. In addition measures around improving transparency and engagement need to be much more developed, with serious consideration to how such strategies could look and to ensure their effectiveness.

¹⁸ <http://senedd.assembly.wales/documents/s77244/Unpacking%20Diversity.pdf>

¹⁹ <https://www.idea.int/sites/default/files/publications/atlas-of-electoral-gender-quotas.pdf>

²⁰

<http://www.assembly.wales/NAfW%20Documents/About%20the%20Assembly%20section%20documents/Expert%20Panel%20on%20Assembly%20Electoral%20Reform/A%20Parliament%20that%20Works%20for%20Wales.pdf>

We remain very disappointed that so little has been done in this legislation to improve the diversity of our elected representatives, a fundamental challenge facing local democracy.

We hope that the Welsh Government and Members of the Senedd will take our comments seriously and use them to ensure the Local Government and Elections (Wales) Bill is as strong as it can be as it progresses through its legislative journey.

For further information please contact:

Jessica Blair

Director, ERS Cymru

