

# Consultation Response



## Response to consultation on Senedd Cymru (Electoral Candidate List) Bill

**Organisation:** The Association of Electoral Administrators (AEA).

**Summary:** Founded in 1987, the AEA is the professional body representing the interests of UK electoral administrators. We are a non-governmental and non-partisan body with over 2,000 members, the majority employed by local authorities to provide electoral registration and election services. Eleven branches of the Association cover the United Kingdom, including the Scotland and Northern Ireland Branch.

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### Background and summary of response to consultation:

The Reform Bill Committee is consulting on the [Senedd Cymru \(Electoral Candidate Lists\) Bill](#), introduced on 11 March 2024.

This is the second Bill in a package of Senedd reforms. The first, the [Senedd Cymru \(Members and Elections\) Bill](#), includes provisions to change the electoral system, amend constituencies and reduce the Senedd term. We provided a [response to the Welsh Government's consultation](#) on this Bill in October 2023.

The Electoral Candidate Lists Bill is based on recommendations made by the Special Purpose Committee on Senedd Reform in their 2022 report, [Reforming our Senedd: A stronger voice for the People of Wales](#). The report recommended the Senedd should be elected with integrated statutory gender quotas. The Bill is intended to make sure the Senedd is representative of the population gender make-up.

It includes:

- integrating a gender quota to the closed list proportional representation electoral system
- setting out new rules about the placement of women in candidate lists – vertical and horizontal placement criteria
- creating a National Nominations Compliance Officer to oversee compliance with the horizontal placement rule
- requiring party list candidates to state whether they are, or are not, a woman
- providing for a Senedd committee review of the impact of the new legislation

We represent electoral administrators. We will only comment on areas relevant to them, including where additional burdens could impact their ability to deliver quality electoral services.

As a general point, we remain concerned about increasing levels of divergence between the nations in Great Britain in the delivery of electoral services. It creates additional complexity as well as voter confusion.

## Consultation Questions

### General principles

#### **1. What are your views on the general principles of the Bill and the need for legislation to deliver the Welsh Government's stated policy objective (to make the Senedd a more effective legislature by ensuring it is broadly representative of the gender make-up of the population)?**

The policy objective is a matter for Welsh Government. However, we understand the importance of legislation in delivering the policy objective. Having considered the current situation and research cited in the Explanatory Memorandum., it is unlikely the objective could be delivered through non-statutory mechanisms alone - such as discretionary or voluntary gender quotas, incentivising or setting targets.

Statutory provisions for the proportion and placement of women on party lists of candidates, along with an enforcement process, should help deliver the objective.

However, we would call for clear support for those responsible for implementing these provisions.

This includes clear and unambiguous secondary legislation setting out the detail of the new process, made in good time – ideally by May 2025.

Clear and helpful Electoral Commission (EC) guidance for Constituency Returning Officers (CROs) and the National Nominations Compliance Officer (NNCO) available in good time – ideally by September 2025.

Electoral administrators would need training and support on these new processes, alongside other Senedd reforms, at least six months before implementation. It is vital legislation and guidance is in place to allow time for training needs to be assessed and training to be devised and delivered.

Welsh Government should also consider how to successfully communicate changes to candidates and political parties. Parties will need sufficient lead in time to understand how to comply with the new requirements and select candidates. If parties are unclear about the process, there is likely to be an increased burden on CROs from candidates seeking clarification.

The EC should produce precise and accessible guidance for candidates, agents, and parties in a range of formats, making sure changes are widely understood. This needs to reach all registered parties including those not currently represented in the Senedd. Independent candidates and new parties should not be at a disadvantage when it comes to understanding and adhering to the new requirements.

Practical policy delivery should be monitored and evaluated, so any identified issues or gaps can be addressed in enhanced guidance or legislative amendments.

## Enforcement and compliance

### 2. What are your views on the system of enforcement and potential sanctions for non-compliance proposed in the Bill?

CROs will need to assess whether party lists are compliant with quota and **vertical placement** criteria. At least half of listed candidates must be women. A candidate who is not a woman must be immediately followed in the list by a woman, unless they are the last person on the list.

CROs will verify these requirements are met as part of their usual nomination checks. They will be able to hold nomination papers invalid if they are not complete or do not comply with either the quota or vertical placement criteria.

Although an additional burden, we believe it is appropriate for the CRO to determine compliance with these aspects of the Bill.

The new NNCO will need to assess whether the party lists comply with the **horizontal placement** criteria. Where the party submits lists of candidates for more than one Senedd constituency, the first candidate on at least half of those lists must be a woman.

Although the NNCO will oversee compliance, the decision about the validity of nominations and party lists will remain with the CRO. We agree with this principle, as part of the CRO's overall responsibility for determining nominations. However,

they can only make their determination by sharing information with the NNCO who has oversight of all party lists. Careful co-ordination between the NNCO and CROs will be necessary to identify non-compliance and subsequent actions.

There is no doubt the extra communication of information, co-ordination of activity, and potential re-ordering of lists creates additional effort and complexity. Sufficient time to resolve issues must be built into the nomination process. We understand the detail of how this will work in practice will be set out in secondary legislation. We would welcome the opportunity to comment on the workability of the process and timetable.

For the CRO and the NNCO to make their assessments during the nomination process, party list candidates will need to state whether they are, or are not, a woman.

We would want these statements to only be used for the purpose they are given, to avoid any data protection breaches. It is essential secondary legislation makes specific provision to limit inspection and prohibit publication of the statements. This could follow similar provisions in place for home address forms.

We agree the CRO should take the information given in the statements as declared and without further investigation, in line with legal precedent for determining nominations on 'face value' (*Greenway Stanley v Paterson* [1977] 2 All ER 663; *R v An Election Court ex parte Sheppard* [1975] 1 WLR 1319).

There are no financial sanctions proposed for non-compliance with the gender quota or placement criteria. The sanction appears to be the whole party list is potentially rejected. However, we are unclear about the difference in approach at constituency level compared to nationally as outlined in the explanatory memorandum. We cannot see any proposed new offences. We would like clarification about what is being considered to deter or penalise candidates who make a false gender statement. Also, how it will be determined if a false statement has been made.

## **The Bill's implementation**

### **3. Are there any potential barriers to the implementation of the Bill's provisions? If so, what are they, and are they adequately taken into account in the Bill and the accompanying Explanatory Memorandum and Regulatory Impact Assessment?**

The current election timetable is a barrier to implementation.

Currently, nomination papers are delivered to CROs between 24 and 19 working days before the day of the poll. They must be determined by the CRO as soon as

practicable to allow the Statement of Persons (and Parties) Nominated to be published 18 working days before the poll.

The additional checking for gender quota and placement criteria needs to be built into the election timetable. We believe an additional three working days (as envisaged in Welsh Government’s [Statement of Policy Intent](#)) would allow time to finalise candidate list information for the notices and printing and proofing of ballot papers. There is precedent for an extended timetable where the nomination process is complicated and additional checks are required. For example, at Greater London Authority election there are two working days between the deadline for nominations and publication of the Statement of Persons (and Parties) Nominated.

We have previously called for the election timetable to be extended in general. Our [Blueprint for a Modern Electoral Landscape](#) published in 2021 suggests a 30-working day timetable would reduce risk and increase capacity. Considering the need for a compliance period we would now suggest a 33-day working timetable is required as a minimum. Our suggested nomination process timetable is set out below:

### **AEA proposed nomination timetable for 2026 Senedd elections**

<b>Event</b>	<b>2021 Senedd timetable</b>	<b>Proposed timetable</b>
Publication of notice of election	Not later than 25 days	Not later than 33 working days before polling day
Delivery of nomination papers	Between the hours of 9am and 5pm on any day after the publication of the notice of election until 4pm 19 days before polling day	Between the hours of 9am and 5pm on any day after the publication of the notice of election until 4pm 27 working days before polling day
Deadline for delivery of nomination papers	19 days (5pm)	27 working days before polling day (4pm)

<b>Event</b>	<b>2021 Senedd timetable</b>	<b>Proposed timetable</b>
Making objections to nomination papers	<p>On 19 days (9am to 6pm), subject to the following:</p> <p>Between 9 am – 12 noon objections can be made to all delivered nominations</p> <p>Between 12 noon and 5pm objections can only be made to nominations delivered after 4pm, 20 days before the poll</p>	Remove ability for objections to be made
Deadline for withdrawals	19 days (4pm)	27 working days before polling day (4pm)
Compliance period for NNCO to carry out horizontal check – explanatory memorandum suggests three days required for this process	N/A	From 4pm on 27 working days before the poll until 4pm 24 working days before the poll
Publication of statement of persons nominated, including notice of poll and situation of polling stations	Not later than 18 days (4pm)	Not later than 22 working days before the poll (4pm)

While we appreciate Welsh Government concerns around an earlier Senedd dissolution date, there is precedent for a longer timetable at Scottish Parliamentary elections. The notice of election for a Scottish Parliamentary election can be published no earlier than 35 working days and no later than 28 working days before the poll – allowing a maximum 35 working day timetable. We would encourage Welsh Government to work with Scottish Government to understand how a longer timetable has worked for them and how they have mitigated concerns around earlier dissolution.

As outlined in question 1, the legislation needs to be made in a timely manner to allow for guidance and training to be given to CROs, candidates and parties.

#### **4. Are any unintended consequences likely to arise from the Bill?**

Consideration is needed about the impact of a candidate withdrawing or dying during the election process or timetable, and what this means for candidate placement on a party list.

For example, if a woman candidate withdraws from a list, would this automatically invalidate it, and would the party have to submit a new set of nomination papers? What if there is no time? Can a CRO invalidate a list they have previously deemed valid?

Could a list be amended if the party selects another candidate of the same gender? What if the party cannot find another suitable candidate?

This could affect confidence in the democratic process. It is important the consequences of a candidate's withdrawal or death are clearly covered.

There would need to be a clear process set out in the legislation for the CRO to follow to provide consistency and an assurance of fairness. Consideration could be given to only allowing withdrawals to be made via the political party rather than candidates on a party list. However, a process would still need to be in place in case of a candidate's death.

Similarly, if a withdrawal or candidate's death impacted the horizontal placement, the NNCO would need a legislative framework to make sure they take defined and appropriate steps.

We are also concerned about potential challenge of a candidate's given gender. We believe if the provisions for dealing with objections to nominations papers are maintained, they should be clarified in secondary legislation. For example, if another candidate objects because they believe a candidate is, or is not, a woman – does the CRO maintain their face-value decision based on the statement given? Can they refuse to hear any representation challenging such a statement? This would reflect

the current limits to the objection process at UK Parliamentary and Police and Crime Commissioner elections.

Clarification is also needed on when objections to nominations could be lodged. Would it continue to be on the last day for delivery of nominations or would there be an additional objection period after the new compliance checks.

We maintain our position that the ability to object to a nomination should be removed entirely. In our [Blueprint for a Modern Electoral Landscape](#) report, we questioned the reason for the objection process, given there is little an RO can do when a nomination paper is objected to.

We would also want to make sure mitigations are in place to hold the NNCO to account. This is a new role, and it needs to be clear their actions in directing any CRO to re-order candidates are made objectively and without real or perceived, political interference. If there is any 'drawing of lots' to determine if a list is to be re-ordered, this should be done under appropriate scrutiny.

## **5. What are your views on the Welsh Government's assessment of the financial and other impacts of the Bill?**

We firmly believe the impact of the Bill should not be at a cost to local authorities. Any additional costs must be reimbursed by Welsh Government, in the same manner as 'new burdens' are treated by the UK Government.

The regulatory impact assessment for the Bill currently indicates estimated costs of £18,000 for Electoral Management Software (EMS) changes will fall to local authorities. We strongly disagree with this.

Costs will include EMS changes for relaying lists, training for CROs and electoral administrators, and briefings and guidance for candidates and political parties.

## **Subordinate legislation**

## **6. What are your views on the balance between the information contained on the face of the Bill and what is left to subordinate legislation? Are the powers for Welsh Ministers to make subordinate legislation appropriate?**

The Bill provides an appropriate framework, enabling much of the detail to be provided for in subordinate legislation. We believe this is an appropriate balance. This should make it easier to enhance or amend secondary legislation with future developments.

We would expect the subordinate legislation to provide detail on:



- provision to limit inspection and prohibit publication of gender statements
- clarification on the consequences of false statements
- clarification on the objection process and whether there is any merit in retaining it
- how the NNCO will be designated and who they will be accountable to
- provision for a deputy NNCO
- the role of the NNCO and process for checking compliance – how this will work in practice, what infrastructure will be required, will it be paper-based process or is there any scope for automation.
- the role of the CRO and process for checking compliance. It should be a simple calculation to check the gender quota, but there needs to be a step-by-step process for determining if a list meets the vertical placement criteria, whether it will be paper-based or is there scope for automated checks
- the process for the CRO and NNCO to share information and co-ordinate necessary action
- the role of the CRO and process for re-ordering candidates – how will this work in practice, what steps will need to be taken to reshuffle candidates, what paperwork is necessary to ensure a complete audit trail
- if the candidate lists require re-ordering, how this will be reflected on the Statement of Persons nominated. For example, will the Statement show the original ordering, along with an explanation of the change, for the purpose of transparency
- what actions and paperwork need to be taken and completed by a candidate who wants to withdraw
- the status of party lists if a candidate withdraws or dies
- amendments to the election timetable, and the consequence for the election
- how the NNCO will be held to account and whether they will be protected from breach of official duty if they take all steps to rectify errors and omissions
- provision for monitoring and reviewing newly introduced processes
- provisions around election challenges due to non-compliance claims.

## Other considerations

### 7. Do you have any views on matters relating to the legislative competence of the Senedd including compatibility with the European Convention on Human Rights?

We have no comment to make on this.

## **8. Do you have any views on matters related to the quality of the legislation, or to the constitutional or other implications of the Bill?**

As in question six, we expect more details to be given in subordinate legislation and would welcome the opportunity for further consultation during its development.

## **9. Are there any other issues that you would like to raise about the Bill, the accompanying Explanatory Memorandum and Regulatory Impact Assessment, or any related matters?**

We are concerned about the volume of change ahead of the 2026 Senedd elections.

These include postal ballot paper tracking and the potential introduction of automatic voter registration.

The changes to constituency boundaries will lead to an increased number of local authorities working across boundaries, and an increased complexity in Senedd election administration. We outlined our concerns about boundary changes in our response to the [Senedd Cymru \(Members and Elections\) Bill](#) in October 2023.

We are also concerned generally about increasing levels of divergence between GB nations, which create additional complexity to election delivery as well as voter confusion.