

Senedd Cymru (Members and Elections) Bill written evidence

October 2023

ERS Cymru welcomes the Senedd Cymru (Members and Elections) Bill. We have long supported and campaigned on the case for increasing the size of the Senedd along with broader reform of the Senedd's electoral arrangements, and are delighted to see proposals being brought forward for 96 members within this legislation. While we are supportive of the measures to increase the capacity of the Senedd we have some concerns about the specific voting system chosen, which we detail below.

Increase in the size of the Senedd

It has been nearly a decade since the publication of our 'Size Matters' report calling for an increase in the number of Senedd members,¹ and nearly two decades since the work of the Richard Commission recommended that by 2011 the 'National Assembly for Wales should increase in size from 60 to 80 members'.² Several committees and, most notably, the Expert Panel on Assembly Electoral Reform, have come to a similar conclusion since then³. During this time further powers have been devolved to Wales, including law making powers, and thus the Senedd has taken on greater responsibilities and had its scrutiny capacity stretched even further. The increase in the number of Members of the Senedd has been long overdue and we welcome the provisions in this Bill to rectify this under-resourcing and realise a Welsh Parliament with sufficient capacity to do its job.

Both the Expert Panel report and the Committee of Senedd Reform recommended increasing the size of the Senedd to between 80 and 90 members, with the Expert Panel highlighting that a move to the upper end of this range would provide the most benefits and allow a level of future-proofing of capacity.^{4,5}

Since these two reports were published in 2017 and 2020 respectively, the political landscape in Wales has changed considerably with Brexit, the Covid-19 pandemic and the UK parliamentary boundary review reducing the number of Welsh MPs from 40 to 32. Extra responsibilities in devolved areas, which were previously covered by EU law, have added to the workload of the Senedd and as such the Special Purpose Committee on Senedd Reform recommended an increase in MSs beyond 90⁶. We agree that 96 members is an appropriate number to both allow better scrutiny of current legislation and to future proof the parliament for further devolution of powers down the line. This also brings the Senedd more in line with other devolved parliaments, still significantly smaller than the Scottish Parliament and only slightly larger than Stormont.

1 <https://www.electoral-reform.org.uk/latest-news-and-research/publications/size-matters/>

2 <https://commonslibrary.parliament.uk/research-briefings/sn03018/>

3 <https://senedd.wales/media/eqbesxl2/a-parliament-that-works-for-wales.pdf>

5 <https://senedd.wales/taid%20dodwennys/perldd18452/dhd110492%20ferpdfales.pdf>

6 <https://senedd.wales/media/5mta1oyk/cr-ld15130-e.pdf>

Voting System

While we agree that a new voting system is needed to elect a larger Senedd, we have concerns about the closed list proportional representation (PR) system included in this legislation.

The Bill's explanatory memorandum recognises that a closed list PR electoral system reduces voter choice and uses it as part of the rationale for the introduction of a residency requirement for candidates, stating *"if an elector supports a party's list except for a candidate who they believe has no residency in Wales, they must either not vote for that party or be unable to express their objections"*.⁷

7 <https://senedd.wales/media/ixjdywtx/pri-ld16037-em-e.pdf> Paragraph 184, p53.

This dilemma is not unique to the issue of candidate residency, as there are endless reasons why an elector may not support the candidate at the top of a given party's list but wish to support one or more of the candidates further down the list with their vote, and provides one of the arguments as to why a closed list PR electoral system is not an appropriate electoral system for Senedd elections.

Research by LSE in 2013 showed that closed list systems can lead to voters selecting which party to vote for based solely on single, often divisive, issues. This was due to the overall party line on a topic being broadly applied to everyone standing under that list and the lack of consideration for individual candidate viewpoints, which may vary even within a specific party.⁸

8 https://eprints.lse.ac.uk/62331/1/Hix_Open%20closed%20list_2016.pdf

We would advocate for the Single Transferable Vote (STV) to be the Senedd's new electoral system, as did the Expert Panel in 2017, the Committee on Senedd Electoral Reform in 2020 and two members of the Special Purpose Committee on Senedd Reform in 2022.^{9,10,11} An STV system would allow voters to not only select their preferred candidate, but also provide as many alternative options, through ranking candidates, as they desire. It is also the electoral system that has been selected for councils to choose to move to under the Local Government and Elections (Wales) Act.¹² Across the UK STV is also used for Scottish local elections since 2007 and for local and parliamentary elections in Northern Ireland.

90 <https://senedd.wales/media/6mta1oyk/droktf530/euplfa0452/dhdd10452%20ferpdfales.pdf>

12 <https://www.legislation.gov.uk/asc/2021/1/contents>

Given the timescale of implementation for this Bill is tight, an alternative option would be to look at the electoral system recommended by the Expert Panel in the event that STV was not implemented, the flexible list system.¹³

13 <https://senedd.wales/media/eqbesx12/a-parliament-that-works-for-wales.pdf>

We would endorse the addition of an amendment to the legislation to allow for a flexible list. This would entail allowing voters to vote for an individual candidate or a party, with individual candidates only moving up a party's list if they pass a certain threshold percentage of the party's votes in that constituency. This would improve voter choice, and give voters a mechanism to effectively deselect a candidate at the top of the list if they believe they were not doing a good job. Minimal amendments to the Bill as it stands could facilitate the change to a flexible list voting system.

This flexible list approach is used widely in countries across Europe including Austria, Belgium, the Czech Republic, Denmark, Estonia, Norway, the Netherlands, Slovakia, and Sweden.¹⁴ There are also examples of countries who have abandoned closed lists in favour of a flexible list approach. One such example is Sweden, which initially used a closed list PR system and upgraded this with a move to a flexible list system in 1998.

14 <https://www.santiagoolivella.info/pdfs/es2013.pdf>

The Expert Panel developed a system for flexible lists in Wales as part of their 2017 report.

"In terms of the second dimension, Flexible List systems use a wide variety of mechanisms. The system we have developed uses flexible lists of the 'threshold' form. Under this system, parties determine the order in which candidates' names appear on the ballot paper. If no candidate receives sufficient personal votes to meet a specified candidate threshold, the party's preferred order is the order in which candidates take up any seats won by the party. If a candidate's personal votes pass the threshold, she or he moves to the top of the list. If several candidates pass the threshold, they are ordered by the number of votes they have each received. For example, in Sweden, candidates receiving 5 per cent or more of the votes received by the party list move to the top of the list. We have opted for this system

because it is simple and therefore readily understood by parties, candidates and voters. While other forms of flexible lists have certain advantages, we do not think these outweigh the value in the context of Assembly elections of the threshold system's simplicity."

A flexible list approach, as described by the Expert Panel, could alleviate some concerns around the lack of voter choice under the current system proposed, while likely being manageable in light of the tight timescales of the Bill.

Seat Allocation

The electoral formula stipulated in the Bill to allocate seats under a list PR electoral system is the D'Hondt method. We have reservations around this as this method can result in less proportional results than the Sainte-Laguë method which was recommended by the Expert Panel.¹⁵

If a list PR approach continues (either flexible or closed), then as the Expert Panel recommended, the Sainte-Laguë formula should be adopted to allocate seats on proportionality grounds. The D'Hondt method usually produces less proportional results than the Sainte-Laguë method due to the electoral formula normally favouring larger parties over smaller parties. The Expert Panel found in its modelling work "that the D'Hondt electoral formula generally produces outcomes which are less proportional than those using the Sainte-Laguë formula, and sometimes less proportional than the current electoral system" with two members of the Special Purpose Committee also initially preferring this formula.¹⁶

¹⁵ <https://senedd.wales/media/eqbesxl2/a-parliament-that-works-for-wales.pdf>

¹⁶ <https://senedd.wales/media/5mta1oyk/cr-ld15130-e.pdf>, p37.

Constituency Boundaries

While we recognise the time limitations in getting this legislation enacted for the 2026 Senedd Elections we would like to note that it is a shame that there won't be bespoke Senedd constituencies at this time. Using the new UK parliamentary constituencies relies on boundaries that operate for an entirely different political system, that are drawn based on incomplete electoral rolls instead of actual population figures and are based on a different franchise.

We also have concerns about the provisions to ensure the number of representatives per constituency are equal due to the variance in constituency size and the number of voters represented, which specifically is an issue in the case of Ynys Môn given its protected status in the Westminster boundary review. As acknowledged in the explanatory memorandum of the Bill this will mean that voters within that paired constituency are effectively over-represented at the Senedd.¹⁷

The pairing of the Westminster constituencies also doesn't account for the different franchise in Wales and how that might alter the electorate size across the constituencies. The boundary review ahead of the 2030 Senedd elections should rectify this by establishing bespoke Senedd constituencies with more balanced electorates based on the Welsh franchise. However, the specification on the face of the Bill for 16 constituencies each electing six members has the potential to be too rigid in terms of balancing the competing interests of equal numbers of electors and respecting natural community boundaries in this boundary review exercise.

In Europe, both Spain and Portugal use the closed list PR system for their parliamentary elections. Spain has district magnitudes varying from 2 to 37 across its 50 multi-member constituencies, and Portugal has district magnitudes varying from 2 to 48 across its 22 multi-member constituencies. In the UK, MEP elections used to be held using the closed list PR system; these too had varying district magnitude with between 3 and 10 MEPs being elected across the different nations and regions. Having equal district magnitudes, such as in this Bill, is far from the norm as natural boundaries and communities rarely fall into such similarly populated geographies.

In fact across all of the 20 EU member states who use any variation of the list PR electoral system, only two countries, Croatia and Slovenia, use equal district magnitude across multiple constituencies. The result of this is that their electoral

¹⁷ <https://senedd.wales/media/ixjdywtx/pri-ld16037-em-e.pdf>

18 <https://analihpd.hr/en/hrvatske-muke-po-izbornim-jedinicama-sto-ne-valja-s-vladinim-rjesenjem/>

districts follow unnatural boundaries, something which is a cause of contention at the moment in Croatia.¹⁸ Given this, we believe that there is no need for the rigidity around the number of elected members per constituency. This will only serve to constrain the boundary review due to take place following the 2026 Senedd elections.

Job Sharing

The requirements in the Bill for the next Senedd to vote on a motion to establish a committee to look into job sharing are welcome, but leave us yet again without an opportunity for the benefits of job sharing to be realised in the next Senedd. The Expert Panel made recommendations around the provision of job shares for MSs in 2017, and nearly a decade later we will have made little practical progress on this issue.¹⁹ Both the Committee on Senedd Reform and the Special Purpose Committee on Senedd Reform looked at job sharing in varying depths but advised further consideration was needed. Job sharing for cabinet members in principal councils already takes place, and has been considered quite successful over a number of years.

19 <https://senedd.wales/media/eqbesxl2/a-parliament-that-works-for-wales.pdf>

We have a number of concerns around the suggested method for any future discussion of job sharing. The legislation as drafted only requires a motion to be tabled following the 2026 Senedd election to establish a committee. There is no guarantee that motion would even be passed by the Senedd. There are also limited parameters in the legislation in terms of that committee if it were to be established. While it will be required to report on job sharing and temporary cover for if a member was unavailable, there is little to ensure that this work is extensive. Likewise, while this legislation requires a report to be tabled and Welsh Ministers to respond there is no guarantee these recommendations will be taken forward. We have concerns that this amounts to a further kicking into the long grass in relation to an issue that has already had substantial discussion within various Senedd committees and is supported by a range of third sector organisations and academics.

Senedd Term

We support the return to four year terms for the Senedd, meaning that the electorate are able to choose their representatives more frequently. This return to pre-2011 term lengths is logical given the issue of clashes with UK parliamentary elections has changed with the introduction of the Dissolution and Calling of Parliament Bill, which repealed the Fixed-term Parliaments Act 2011, removing the five-year interval between UK parliamentary elections.²⁰ Alongside the provisions to change Senedd elections to every four years, the Welsh Government should also consider making this change for local elections. The electorate should have a frequent say in their representatives at a local level.

20 <https://bills.parliament.uk/publications/41467/documents/206>

Recall/by-election mechanism

The provisions for filling vacant seats are consistent with the current rules regarding vacancies when a member who has been elected on the regional list stands down, is disqualified or dies, with in most cases the next person on the list taking that vacant seat. This highlights the need for parties to stand a full list in each constituency if they can.

We are concerned by the lack of provision for a protocol around Members of the Senedd who change parties or leave a party to become an independent member, as detailed in paragraph 265 on page 73 of the Explanatory Memorandum.²¹ Given that under a closed list PR system, voters will be voting specifically for a party not for individual candidates, this brings into question the legitimacy of the mandate from their electors of any MS who changes party during a Senedd term.

21 <https://senedd.wales/media/ixjdywtx/pri-ld16037-em-e.pdf>

While up until 2016 this was a relatively rare occurrence, with only four MSs switching parties across the first four Senedd terms (1999 - 2016), in the 5th Senedd

term (2016 - 2021) nine MSs changed parties a total of 19 times. All of the MSs in question were elected under the regional list, using the closed list PR system where voters cast their ballot for a party not an individual candidate. Six of these nine MSs changed parties multiple times over the course of the fifth Senedd, with then Member of the Senedd Mark Reckless changing allegiance a total of four times. To date 87% of incidences of MSs changing parties during a Senedd term have been those elected via the regional list (20 of the 23 incidences), with the regional list currently only making up 1/3 of the membership of the Senedd. This situation could get worse as we move to a 100% closed list PR system and leave voters represented by a party that they didn't vote for. A move to a flexible list system would give candidates more of a personal mandate and alleviate this situation somewhat.

Post-2026 election review of the legislation

We were pleased to see a requirement in the Bill for the review of the legislation post-2026 Senedd elections. We believe this review should be as wide in scope as possible, and we welcome the parameters outlined in the Bill's Explanatory Memorandum.

We also believe there could be a role for additional principles to be used to assess the effectiveness of the changes brought forth in the Bill. For example, the Electoral Administration and Reform White Paper set out six principles to guide the longer-term programme of electoral reform; equity, accessibility, participation, improving citizen experience, simplicity and integrity.²² Likewise, in 2017 the Expert Panel took a principles-based approach to assessing different electoral systems in its work; these covered 10 areas: government accountability and effectiveness, proportionality, member accountability, equivalent status, diversity, voter choice, equivalent mandates, boundaries, simplicity, sustainability and adaptability.²³

The Explanatory Memorandum details that the review should also take into account 'the extent to which the elements of a healthy democracy are present in Wales'.²⁴ The recently published Defining, Measuring, and Monitoring Democratic Health in Wales report from the Wales Centre for Public Policy, commissioned by the Welsh Government, has outlined various metrics that could be used to do this. This could be through the inclusion of Wales specific data collection in international projects such as the Varieties of Democracy (V-Dem) project or through data that is already collected on a Wales level such as metrics around the Wellbeing of Wales in the National Survey for Wales or data from the Wales Election Study.²⁵ A comprehensive dataset covering all aspects of democratic health in Wales will likely involve a combination of existing surveys/projects and the commissioning of new data gathering.²⁶ We would urge the Welsh Government to adopt the recommendations of this report, and think about what additional data it could commission or produce around elections. For example the Explanatory Memorandum for the Bill includes turnout as a measure that could be considered. We would support the idea of this being disaggregated by demographic data, as takes place in Iceland.²⁷ We believe it is a sensible approach to link this data with the review of Senedd electoral arrangements.

Additional comments

The successful implementation of this Bill relies on good communication. Good ballot design and rigorous testing will be essential closer to the election, as will wider engagement with the public on these changes.

Continued electoral divergence between systems across the UK makes public engagement and communication vital, especially when the changes in this Bill are considered alongside those in the Elections and Elected Bodies (Wales) Bill. While electoral divergence should not be a barrier to improving devolved elections and making changes to the Senedd, it does heighten the need for effective communication to voters.

22 <https://www.gov.wales/consultation-electoral-administration-and-reform-white-paper-html>

23 <https://senedd.wales/media/eqbesxl2/a-parliament-that-works-for-wales.pdf>

24 <https://senedd.wales/media/ixjdywtx/pri-ld16037-em-e.pdf>, Paragraph 201

25 <https://www.wcpp.org.uk/wp-content/uploads/2023/10/Defining-Measuring-and-Monitoring-Democratic-Health-in-Wales-REPORT.pdf>

26 <https://www.wcpp.org.uk/wp-content/uploads/2023/10/Defining-Measuring-and-Monitoring-Democratic-Health-in-Wales-REPORT.pdf>

27 <https://www.hagstofa.is/utgafur/frettasafn/kosningar/althingiskosningar-29-oktober-2016/>

Joined up and clear communication of the changes coming in ahead of the 2026 Senedd elections are crucial in ensuring that people are being brought along in that journey. This will involve working across the Senedd Cymru (Members and Elections) Bill, Elections and Elected Bodies (Wales) Bill and the forthcoming bill on gender quotas to provide a clear narrative that covers all of the changes to Welsh democracy for voters.

