

Senedd and Elections (Wales) Bill

Bill Summary

July 2019



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National Assembly for Wales
Senedd Research

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July 2019

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Paper Overview:

This research paper provides a summary of the Senedd and Elections (Wales) Bill. It includes a summary of the main elements of the Bill and the response to it, including the views of the Welsh Government and the Constitutional and Legislative Affairs Committee.



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Introduction

The Senedd and Elections (Wales) Bill, an Assembly Commission Bill, was introduced in the Assembly on 12 February 2019 by the Member in Charge, Elin Jones AM, in her capacity as Llywydd.

The purpose of the Bill is to:

- rename the Assembly to “Senedd” and make consequential changes to relevant names, titles and descriptors;
- lower the minimum voting age in Assembly elections to 16 and make associated changes to electoral registration arrangements;
- place a duty on the Assembly to consider the financial and oversight arrangements for the work of the Electoral Commission in relation to devolved Welsh elections and devolved referendums;
- make changes to rules on disqualification from being an Assembly Member;
- extend the deadline for the first meeting of the Assembly after an election;
- give Welsh Ministers a power to make regulations for the purpose of implementing Law Commission recommendations; and
- clarify Assembly Commission powers to charge for goods and services.

The **Business Committee** remitted the Bill to the Constitutional and Legislative Affairs Committee for consideration of its general principles.

The Committee published its **Stage 1 report** on 28 June.

The Finance Committee also considered the Bill, and **reported** on its financial implications on 28 June.

Background to the Bill

This Bill is part of the Assembly Commission's programme of electoral reform. It was initially anticipated that there would be a second Bill to make provision for increasing the size of the Assembly and make consequential reforms to the electoral system. However, on 10 June the **Llywydd wrote to all Assembly Members** informing them that the Assembly Commission has decided that it is not possible to legislate on the second phase of electoral reform in the current Assembly.

Consultation

The main provisions of the Bill are based on recommendations made in the report of **the Expert Panel on Assembly Electoral Reform** published on 12 December 2017, and were subject to **consultation** between 12 February and 6 April 2018. A **full consultation** report was published in October 2018.

The Expert Panel was established by the Assembly Commission in February 2017 to provide politically impartial advice on the size of the Assembly, the most suitable electoral system, and the minimum voting age for Assembly elections. This followed the Fifth Assembly Commission's announcement in November 2016 that it intended to look into using the Assembly's new powers to address the capacity of the Assembly following its predecessors January 2015 report on **The future of the Assembly: ensuring its capacity to deliver for Wales** which concluded that "with only 60 Members, the National Assembly is underpowered and overstretched".

In terms of changing the name of the Assembly, an Assembly Commission **consultation** on this subject was published in December 2016. 60.9 percent of respondents agreed with the statement that "the National Assembly for Wales should change its name". In response to the consultation question on which name would best describe the role and responsibilities of the Assembly, respondents answered as follows:

- 73 per cent considered that a bilingual name consisting of "Welsh Parliament" and "Senedd Cymru" would positively describe the role and responsibilities of the National Assembly for Wales;
- 69 per cent considered that a bilingual name consisting of "Parliament of Wales" and "Senedd Cymru" would positively describe the role and responsibilities of the National Assembly for Wales;

- 53 per cent considered that a monolingual name consisting of "Senedd" would positively describe the role and responsibilities of the National Assembly for Wales; and
- 38 per cent considered that a bilingual name consisting of "National Assembly for Wales" and "Cynulliad Cenedlaethol Cymru" would positively describe the role and responsibilities of the National Assembly for Wales.

After considering the responses to the consultation, the Assembly Commission announced in June 2017 that it had agreed to legislate to change the name of the Assembly to "Welsh Parliament/Senedd Cymru". However, on 12 November 2018 in a **letter** to all Assembly Members, the Llywydd announced that she had decided that the name change should be the monolingual name "Senedd" and that Members should be referred to as "Aelodau'r Senedd/Members of the Senedd". The letter states that Assembly Commissioners agreed at a meeting on 5 November 2018 that the Llywydd should determine the Assembly's name and the way Members are described, as Member in Charge of the Bill.

With regards to lowering the voting age, the Assembly **consulted** on this issue between November 2014 and June 2016 and found that 53% of the 10,375 who took part were in favour of lowering the voting age to 16.

The Welsh Government also **consulted** on extending the franchise to include all those aged 16 on polling day in Welsh local government elections as part of its consultation on reforming local elections in Wales between July and October 2017. The **consultation document** states

It has been Welsh Government policy for several years to reduce the voting age to 16 and indeed the National Assembly by a clear majority voted in favour of this move in May 2013. Furthermore, the policy was included in the manifestos of the Labour Party, Plaid Cymru and the Liberal Democrats at the General Election. We should soon be in a position to implement this.

The Assembly Commission's **Expert Panel on Electoral Reform** recommended in December 2017 that the minimum voting age for Assembly elections should be reduced to 16 with effect from the 2021 election (Recommendation 14). According to the Panel:

The evidence we have considered suggests a reduction in the minimum voting age to 16 would be a powerful way to raise political awareness and participation among young people. In addition, if the Welsh Government legislates to reduce the voting age for local government elections in Wales from 2022, it would be extremely anomalous, and create additional administrative and political issues, if the voting age

for Assembly elections from 2021 were not also reduced. The evidence suggests that higher salience elections are more likely to result in higher turnout and voter participation; it is therefore desirable that if the franchise is to be extended in Wales, it should first take effect at the higher salience Assembly election. [Report para 15.39]

The Panel also concluded that “any reduction in the minimum voting age should be accompanied by appropriate, effective and non-partisan political and citizenship education.”

The **Explanatory Memorandum** to the Senedd and Elections (Wales) Bill explains that it was not considered possible to consult on a draft Bill relating to the votes at 16 provisions:

It was not possible to include the text of draft provisions in the subsequent consultation seeking views on the Expert Panel’s recommendations, and on other reforms to the Assembly’s electoral and operational arrangements. The timescales involved in developing such provisions would have substantially delayed such consultation, and would have made it unfeasible for the required legislation to be in place for the 2021 Assembly election. Instead, the Commission worked closely with a range of stakeholders to develop this legislation and their views informed the preparation of the Bill’s provisions. This included regular dialogue with political parties throughout the process of developing the Bill and seeking the views of external stakeholders especially those with expertise on electoral matters. In addition to this, individual Assembly Members and the public were kept informed of the Commission’s policy decisions relating to the Bill via regular statements and public announcements.

Welsh Government involvement

The Assembly Commission and the Welsh Government worked together on the provisions of the Bill relating to lowering the minimum voting age. In a **letter** to the Chair of the Constitutional and Legislative Affairs Committee on 13 February, the Counsel General said that he was “pleased that the Welsh Government has been able to provide assistance to the Llywydd in developing the franchise provisions in the Bill, given the links with our own forthcoming legislation about local government elections”.

A **Memorandum of Understanding** between the Assembly Commission and Welsh Government was drafted and agreed to govern how this work would be taken forward.

Legislative competence

The Government of Wales Act 2006, as amended by the Wales Act 2017, gives the Assembly power to change the name of the Assembly and make provisions about Assembly and local government elections.

Paragraph 14 of the **Explanatory Memorandum** that accompanies the Bill states:

It is not considered that any provision made by the Bill falls within any of the reservations contained in Schedule 7A. The overall purpose of the Bill is to improve the accessibility of the National Assembly for Wales and its operational arrangements in order to make it a more effective legislature for the people of Wales.

The Deputy Presiding Officer issued a **statement** on 12 February confirming that, in her view, the provisions of the Bill would be within the Assembly’s legislative competence.

Main elements of the Bill

The Bill is divided into 6 Parts containing 41 sections and 2 Schedules.

Part 2 of the Bill makes provision for the name of the Assembly to be changed to the monolingual name “Senedd” by 6 May 2020, and makes consequential changes to relevant names, titles and descriptors. For example, members will be referred to as “Aelodau'r Senedd / Members of the Senedd” and Acts of the Assembly will be known as “Acts of the Senedd / Deddfau'r Senedd”.

The Bill also provides that the “Senedd” may also be known as the “Welsh Parliament”. Paragraph 122 of the Explanatory Memorandum to the Bill states:

It is anticipated that “Welsh Parliament” will also be used alongside the name “Senedd” on signage and other types of public information to help to ensure public understanding of the meaning of the new name.

According to the Explanatory Memorandum, renaming the Assembly as the “Senedd” would “better reflect the evolution of its constitutional status and its responsibilities as a national parliament that it is today”, and:

...presents a valuable opportunity to raise awareness of the role and functions of both the legislature and the government amongst the people of Wales, and to encourage engagement in the democratic process.

The Bill makes changes to the Government of Wales Act 2006 to give effect to the new name. Section 9 of the Bill introduces Schedule 9 which lists all the changes to the 2006 Act. However the Bill does not change the term “Assembly” where it first appears in section 1(1) of the Act. Instead, it amends the section so that it reads:

There is to be an Assembly for Wales to be known as the Senedd.

The Explanatory Memorandum to the Bill states that leaving the word “Assembly” in is “less than ideal”, but notes that the default position under the 2006 Act is that the Assembly cannot amend the Act itself apart from some express exceptions.

Part 3 of the Bill makes changes to electoral law to enable persons aged 16 and 17 to vote in Assembly including changes around the electoral register, the annual canvass and the protection of young people’s information. These include:

- adding persons aged 16 and 17 to the register of local government electors and enabling young people aged 14 and 15 who will turn 16 during the period the register is in force to register to vote as an attainer;

- making provisions setting out the arrangements for the protection of information about young people;
- allowing Looked After Children to register to vote in Wales in the area where they are most connected;
- allowing persons under 18 to be considered for a service qualification as an individual, enabling them to be registered as an elector based overseas; and
- enabling 16 and 17 year olds to act as a proxy.

Part 3 also places a duty on the Senedd to consider the financial and oversight arrangements for the work of the Electoral Commission in relation to devolved Welsh elections and devolved referendums, and places a duty on the Electoral Commission to respond to any recommendations relevant to it by laying a report before the Senedd.

Paragraph 220 of the Explanatory Memorandum states that the provision would give the Assembly the opportunity to consider issues such as:

- the cost of regulating Welsh devolved elections and referendums;
- the funding of such costs by the Assembly;
- how the funds required to cover such costs would be transferred from Westminster to the Assembly;
- the arrangements by which the Assembly would hold the Electoral Commission to account for its work on devolved Welsh elections; and
- how such scrutiny arrangements would work alongside scrutiny of the Electoral Commission by the UK Parliament.

However, as stated in paragraph 223 of the Explanatory Memorandum, the Bill does not specify how the Assembly should consider the financial and oversight arrangements for the work of the Electoral Commission:

Whilst it is considered appropriate that the Bill requires the Assembly to consider how the Electoral Commission’s functions should operate in relation to Wales, it is not considered appropriate to dictate how this exercise should be carried out. Rather the Bill specifies that the Senedd may make provision within its Standing Orders on how the duty should be carried out. The Bill provides that any such provisions made within the Standing Orders can delegate functions to the Presiding Officer, a committee or sub-committee of the Assembly.

During an evidence session with the Constitutional and Legislative Affairs Committee on 11 March, the Llywydd said that it was her working assumption that this section of the Bill would be amended at Stage 2 “to give greater clarity on the accountability and oversight arrangements for the Electoral Commission”.

Part 4 of the Bill makes changes to the law on disqualification from being an Assembly Member. These changes implement **recommendations for legislative change** in relation to the rules around disqualification made by the Constitutional and Legislative Affairs Committee of the Fourth Assembly.

Section 29 of the Bill:

- disqualifies Members of the House of Lords from being Members of the Assembly, although there are exceptions from disqualification for those members of the House of Lords on leave of absence from the Lords;
- disqualifies all Lord-lieutenants, Lieutenants or High Sheriffs for areas of Wales from membership of the Assembly;
- sets out all disqualifications from membership of the Assembly in a new Schedule to the Government of Wales Act 2006;
- changes the way in which the Government of Wales Act 2006 deals with the disqualification of the Auditor General and Public Services Ombudsman for Wales so that they are treated on the same basis as other publicly appointed offices in Wales; and
- establishes two distinct categories of disqualifications by distinguishing between circumstances that disqualify someone to be a candidate for the Assembly and offices that disqualify someone from membership of the Assembly but not to be a candidate.

The new disqualification arrangements would take effect in time for the next Assembly election in 2021.

According to paragraph 63 to the Explanatory Memorandum to the Bill, these changes:

...should remove some barriers to standing for elections and enable more people to stand for election because they will not have to give up their employment to do so. The aim is that this lessening of a barrier to standing for office may lead to a potential increase in diversity of representation as well as to a more effective process.

Part 5 of the Bill makes miscellaneous provisions.

Section 35 extends the deadline for the first meeting of the Assembly after an election from seven to fourteen days, in line with the arrangements in the Scottish Parliament.

Section 36 amends the Government of Wales Act 2006 to enable Welsh Ministers to make regulations to give effect to changes to electoral law recommended by the Law Commission for England and Wales.

The Law Commission for England and Wales published the **electoral law reform project** on 19 July 2011. Its scope extends to electoral administration law, offences and legal challenges. An interim report was published in February 2016. The purpose of the recommendations was to simplify the administrative arrangements relating to elections and to standardise those arrangements across the four parts of the UK.

According to paragraph 235 of the Explanatory Memorandum to the Bill:

These areas are important, and the Assembly may wish to consider in due course whether the recommendations on electoral law reform proposed by the Law Commission should be implemented in relation to devolved elections in Wales. The Bill therefore amends section 13 of the GOWA 2006 to enable the Welsh Ministers to make such subordinate legislation as is required to ensure that elections in Wales are administered in a way that gives effect to changes to electoral law recommended by the Law Commission.

Section 37 of the Bill clarifies that the Assembly Commission can charge for the provision of service (as well as goods) not in connection with the discharge of its functions.

Paragraph 80 of the Explanatory Memorandum states that such clarification is needed because existing provisions in the Government of Wales Act 2006 are:

...ambiguous, as they refer to the sale of goods and the provision (rather than sale) of services. Consequently, it is unclear whether the Assembly is able to charge for services which are not in connection with the discharge of its functions, for example filming on the Assembly estate.

Documentation accompanying the Bill

The Llywydd published an Explanatory Memorandum alongside the Bill. This includes a Regulatory Impact Assessment which details the policy options the Assembly Commission considered and the associated costs and benefits of making the legislation; other impact assessments which consider the impact of the Bill on particular groups and areas; and Explanatory Notes for each section of the Bill.

Response to the Bill

The Welsh Government's position

In a **letter** to the Chair of the Constitutional and Legislative Affairs Committee dated 13 February, the Counsel General said that the proposed name change could:

add to, rather than reduce, the confusion which already exists about the names of our institutions, which is extremely important given that the proposed amendments are to our key constitutional statute.

He also said that the Welsh Government is concerned that the use of “Senedd” alone without any other indication of its territorial connection to Wales may give rise to accessibility issues. The Welsh Government’s preference would be to amend s1(1) of the Government of Wales Act 2006 to read as follows:

“(1) There is a parliament for Wales to be known as [x].”

The Welsh Government considers that “Senedd Cymru” and “Welsh Parliament” would have the advantage over “Senedd” and that this option would address its concerns about territorial connection.

In terms of extending the franchise to 16 and 17 year olds, the Welsh Government **“fully supports”** this proposal. In his letter to the Constitutional and Legislative Affairs Committee dated 13 February, the Counsel General said that the Welsh Government’s policy position is that “the franchise for Assembly elections should be consistent with that we intend to extend for local government elections.” For this reason, the Welsh Government would also like to see this Bill changing the franchise to include foreign nationals who are legal residents in Wales. Similarly, the Counsel General’s letter states that the Welsh Government also supports the “principle of prisoner voting”.

With regards to the proposals in the Bill for financing and accountability of the Electoral Commission, the Counsel General said in his letter of 13 February that this should be placed on “a formal footing” now that the Assembly has legislative competence in relation to devolved elections and referendums. According to the Counsel General, the Welsh Governments is:

... ready to work with the Llywydd, as Member in Charge, the Electoral Commission and HM Treasury, in the light of Stage 1 scrutiny, to explore whether amendments could be brought forward to achieve this, which would supersede and replace the current proposed duty in the Bill to consider reform of oversight of the work of the Electoral Commission in relation to devolved Welsh elections and referendums.

In terms of enabling Welsh Ministers to implement recommendations for reform of electoral law made by the Law Commission, the Counsel General said in his letter of 13 February that the Welsh Government does not believe it “appropriate to take forward Law Commission recommendations, or to create an expectation about them”. He explained that there are concerns about the drafting of the provisions due to their “interaction with existing powers and with powers relating to local government elections.” Rather than legislating for these provisions in the Bill in question, the Welsh Government considers that if it supports any Law Commission recommendations for reform, these should be introduced via primary legislation.

The Constitutional and Legislative Affairs Committee's view

The Bill was scrutinised at Stage 1 of the Assembly’s legislative process by the Constitutional and Legislative Affairs Committee.

The Committee conducted a public consultation exercise between 27 February and 12 April. It received 639 responses (of which more than 600 were part of a campaign on the name change). The Committee also heard oral evidence from a number of stakeholders, and held scrutiny sessions with the Llywydd as the Member in Charge of the Bill, the Counsel General for Wales and the Minister for Education.

In addition, the Assembly’s Citizen Engagement Team gathered the views of young people across Wales on lowering the voting age in Assembly elections to 16 and the need for accompanying political and citizenship education. Views were gathered via an online discussion board called Senedd Dialogue and during focus group sessions with schools and youth groups.

The Committee in its Stage 1 Committee Report made a total of 19 recommendations. Critically, the Committee recommended that the Assembly should agree the general principles of the Bill.

The Committee’s main recommendations include:

- If the Welsh Government decides to table amendments to the Bill so that section 1(1) of the Government of Wales Act 2006 reads “There is a parliament for Wales to be known as [x]”, it should ask the UK Government to bring forward an Order of Council under section 109 of the 2006 Act to avoid any doubt about the Assembly’s legislative competence to amend the words “There is to be an Assembly for Wales to be known as” in section 1(1) of the Act. However, the Committee did not come to a view on a preferred name as it believes that it

should be a matter for the whole Assembly.

- The Minister for Education should issue a written statement explaining how citizenship and political education will be delivered in time for the 2021 Assembly election. This relates to the fact that the Committee received a significant volume of evidence suggesting that extending the franchise to 16 and 17 year olds should be accompanied by appropriate education. However, as noted in paragraph 52 of the Explanatory Memorandum, the Bill does not specifically address the need for education. Instead, it is stated that the change in voting age will be accompanied by “ongoing political education and public information campaigns that are aimed at promoting awareness of the change in voting age” and that the Assembly Commission will work with the Welsh Government on this. The Committee also recommended that the stakeholder group established to carry out this work should “prepare an action plan for the co-ordination of all work related to the preparation of awareness-raising and educational materials”.
- The Bill should be amended to remove the section relating to oversight of the Electoral Commission in Wales. The Committee agrees that, as a matter of principle, the Electoral Commission in Wales should be accountable to the Assembly. However, it considers that arrangements for oversight should have been included in the Bill on its introduction rather than by tabling amendments at Stage 2. It therefore believes that the arrangements should be included in the Welsh Government’s forthcoming local government Bill instead to allow full scrutiny of the provisions and engagement with stakeholders.
- The Llywydd and the Welsh Government should satisfy themselves that the disqualifications from membership of the Assembly set out in the new Schedule 1 to the Government of Wales Act 2006 are appropriate. This relates to the Welsh Government’s view that there is “work to be done in relation to the part of the Bill” and concerns raised by stakeholders around the need to ensure consistency in the allocation of offices that are listed as incompatible with standing for election.
- The Llywydd should amend the Bill to remove the section conferring powers on the Welsh Ministers to implement Law Commission recommendations relating to electoral law. The Committee heard concerns from witnesses relating to the breadth of this power and would caution against the use of subordinate legislation to implement significant policy changes.

Next steps

The Stage 1 debate on the general principles of the Bill is on 10 July.

Should the Bill proceed past its Stage 1 debate if Assembly Members support its general principles, it will be subject to amendment by the Committee of the Whole Assembly at Stage 2. The Business Committee has set a deadline of 11 October for this stage to be completed.

The Bill will then be subject to further amendment by all Assembly Members in Plenary (Stage 3) before a final vote on whether to pass the legislation.