

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Materion Cyfansoddiadol a
Deddfwriaethol
Bil Senedd ac Etholiadau (Cymru)

National Assembly for Wales
Constitutional and Legislative Affairs
Committee
Senedd and Elections (Wales) Bill

CLA(5) SE12
Ymateb gan y Comisiwn Etholiadol

Evidence from Electoral Commission

This response sets out our views on three key areas in the Senedd and Elections (Wales) Bill which are relevant to the Commission's remit: the implications of extending the franchise to 16 and 17 year olds; disqualification and eligibility to stand in elections; and the financial and oversight arrangements for the Commission.

It builds on our previous responses to the [Assembly Commission's "Creating a Parliament for Wales"](#) consultation in April 2018, the Expert Panel's questions on Assembly electoral reform in [April](#) and [May](#) 2017 and the [Welsh Government's consultation on electoral reform in 2017](#).

We stand ready to continue to work with the Assembly as it delivers these reforms.

Key messages

- Legislation amending the franchise should be clear at least six months before Electoral Registration Officers (EROs) are due to begin scheduled canvass activities so that those newly eligible to vote can take the necessary steps to register to vote.
- Any changes to the law about the point at which a person disqualified from being a Member of the National Assembly for Wales or standing as a candidate for election to the Assembly should be clearly stated so potential candidates can find out easily if they might be disqualified.
- We welcome the proposals in the Bill to give Welsh Ministers the power to make provisions about Welsh elections to implement changes to electoral law recommended by the Law Commission for England and Wales. This has the potential to have a significant positive impact for all involved in the electoral process, as the UK's body of electoral law is currently large, complex and outdated.

Extending the right to vote to 16- and 17-year-olds

Legislation amending the franchise should be clear at least six months before Electoral Registration Officers (EROs) are due to begin scheduled canvass activities so that those newly eligible to vote can take the necessary steps to register to vote.

Changes to allow 16- and 17- year-olds to vote have already been effectively implemented in Scotland. The processes and arrangements that have been used there present important learning for Wales.

Significant changes to guidance, forms and electoral management software systems would be required to ensure they are able to effectively support the implementation of the franchise changes.

The Electoral Commission would expect to undertake specific education and public awareness activity targeting 16 and 17 year olds, informing them that they are eligible to vote and to provide information about how to register and vote.

1.1 The Electoral Commission does not take a view on what the minimum voting age should be for Assembly elections. The franchise is a significant constitutional decision, and it is right that the legislature should determine who is eligible to vote. Our response therefore focuses on the practical implications of any changes, and what would need to be done to ensure they are adequately resourced and can be implemented in the best interests of voters.

1.2 Legislation making any changes to the franchise should be clear six months before Electoral Registration Officers (EROs) are due to begin any scheduled canvass activities. This will mean that EROs, campaigners and the Commission have time to take the necessary steps to ensure that everyone who is newly eligible to vote can successfully register and participate in future elections.

1.3 In practice this would mean that the legislation amending the franchise should be clear by the beginning of 2020. This is because the annual household canvass will begin in the summer of 2020 to collect the information that would be needed to ensure that 16- and 17-year-olds are on the electoral register for the scheduled Assembly election in May 2021.

1.4 In Scotland, 16- and 17-year-olds were able to vote for the first time at the Scottish Independence Referendum in 2014 and have been able to vote in local government and Scottish Parliament elections since May 2016. The processes and arrangements that have been used present important learning for Wales on the practical implementation of the changes.

1.5 We are aware that Welsh Government is proposing to include provisions in the forthcoming Local Government and Elections (Wales) Bill to reduce the minimum voting age at local government elections to 16. The Assembly Commission should continue to work closely with the Welsh Government to ensure any reforms to the franchise for Assembly elections are managed consistently with those for local government elections in Wales.

Registration

1.6 The Bill makes provisions for lowering the voting age at future National Assembly for Wales elections and makes amendments to existing electoral law on the operation of the registration system. We have set out below what these changes will mean in practice for EROs and the Electoral Commission, and what will need to be done to deliver them.

1.7 At present, the minimum voting age in Wales is 18 years old. This means that 17-year-olds and some 16-year-olds are entitled to be included on the electoral register as attainers – if they will turn 18 during the lifetime of that register. Extending the right to vote to 16- and 17-year-olds means that 15-year-olds and some 14-year-olds would become entitled to be included on the register as attainers.

The annual canvass and sending Invitations to Register

1.8 The Bill provides new rules for the protection of information about persons aged under 16. This includes preventing EROs printing the date of birth of anyone aged under 16 on the pre-printed canvass form or undertaking house to house inquiries in relation to any person under the age of 16. We would welcome confirmation that the Assembly Commission has sought advice from the Information Commissioner's Office to ensure the practical arrangements proposed relating to lowering the voting age reflect appropriate data protection standards.

1.9 EROs in Wales will need to find alternative ways of communicating information about how to register to 14- and 15-year-olds. In Scotland, for example, EROs can send 14- and 15-year-olds an email, rather than making a personal visit, if they do not respond to the annual household canvass or any other canvassing during the year.

1.10 The Welsh Government has recently consulted jointly with the UK and Scottish Governments on proposals to reform the annual canvass process. If canvass reform proposals are implemented for Welsh electoral registers, the Welsh Government and Assembly Commission will need to ensure that they take account of the implications of these further changes for 14- and 15-year-old attainers. We understand the Scottish Government is also considering the practical implications of canvass reform for 14- and 15-year-old attainers in Scotland.

Special category electors: declaration of local connection

1.11 If the circumstances in which a person is permitted to make a declaration of local connection are amended in the way set out in the Bill, EROs would need to consider how they would engage with children who:

- are cared for or supervised by the authority
- are being kept in secure accommodation

- the local authority has responsibilities for under a legal order issued by a court.

1.12 In Scotland, local authorities have a duty to promote awareness of how to register as local government electors for children that are “looked after” by that council (who can be up to the age of 18) and to provide assistance to help such young people to register. To do this, EROs need to engage actively with other departments and staff in local authorities and other bodies with responsibilities of care. We would encourage a similar requirement for EROs in Wales.

Digital Service, data sharing agreements and Electoral Management Systems

1.13 If the voting age is lowered there will be implications for EROs who will need to verify the identity and entitlement to register of electors who are under 16 and may not yet have received their National Insurance number. The experience of reducing the voting age in Scotland suggests that data sharing agreements with educational establishments could assist EROs with the registration of under 16s and be used as a tool to encourage registration.

1.14 In addition, EROs will need to discuss with suppliers the changes that will be necessary to their Electoral Management Systems (EMS) to meet the requirements of the franchise changes. The Wales Electoral Coordination Board could play an important role in supporting this, but sufficient time would be needed to coordinate this work.

Forms and guidance for EROs

1.15 The Bill places a requirement on the Electoral Commission to develop registration forms that account for legislative changes relating to 16 and 17 year olds. The development of new registration forms will require sufficient time for user-testing, translation, design and production, as well as for obtaining Ministerial sign-off.

1.16 Changes will also be required to registration forms as a result of the proposed changes to the annual canvass process.

1.17 We would welcome the opportunity to discuss the process for designing the amended forms with Assembly Commission officials as soon as possible.

1.18 We will also update our guidance to reflect the franchise changes in order to ensure that EROs have the information they need to deliver registration activity and maintain accurate and complete electoral registers.

Public awareness to inform people about the franchise change

1.19 Before any election to the National Assembly for Wales, the Electoral Commission would expect to run a public awareness campaign encouraging the eligible electorate in Wales to register to vote.

1.20 If the minimum voting age is lowered, we would anticipate undertaking additional specific public awareness activities targeting 15-, 16- and 17-year-olds in

order to make them aware that they were now eligible to register to vote. This would be accompanied by information about how to vote for those who would reach voting age by the date of the poll.

1.21 We would expect our public awareness work to include:

- running specific advertising to target this group, alongside our mass media advertising for the wider electorate ahead of any relevant major poll;
- working in partnership with youth organisations who already have effective communication channels for reaching the target audience;
- providing low-cost resources to partners, including Electoral Registration Officers, to promote voter registration and information messages to their audiences;
- running PR and partnership activity in the run-up to any relevant major poll to make sure that these groups have the information they need to cast their vote;

1.22 We would want to build on our experience in Scotland which makes clear the importance of engaging young people while they are still in school to ensure that they are aware that they are now eligible to register to vote. We would want to work with educational partners and local authorities in Wales to identify opportunities for supporting ongoing political literacy in schools and encouraging young people to register when they attain the age to do so.

1.23 We also plan to produce education materials for use with 15- to 17-year-olds, with the aim of increasing understanding and engagement with the democratic process.

Public awareness work in Scotland

In Scotland we worked with a range of partners to undertake public awareness activities aimed at 15- to 17-year-olds. These included Education Scotland, School Leaders Scotland, the Association of Directors of Education Scotland along with a range of youth organisations such as Young Scot and the Scottish Youth Parliament.

Working with education partners in Scotland, we produced a political literacy briefing providing guidance and information sources to schools, colleges, universities and all other organisations wishing to develop political literacy amongst young people.

We also developed a 'ReadyToVote' campaign which ran ahead of both the Scottish Parliament election in 2016 and the Scottish council elections in 2017. The campaign encouraged schools across Scotland to run voter registration events with all eligible pupils and provided schools with a digital teaching resource to support them to do this. Over 80% of Scottish secondary schools signed up to this campaign.

Cost implications

1.24 The Commission is content with the indicative costs included within the regulatory impact assessment for this area of work in Wales. It reflects our assessment of the cost implications of reducing the minimum voting age for Assembly elections in [our response](#) to the [Expert Panel](#) in May 2017.

Disqualification - who is eligible to stand for election

- Any changes to the law about the point at which a person disqualified from being a Member of the National Assembly for Wales or standing as a candidate for election to the Assembly should be clearly stated so that potential candidates wanting to stand for election can find out easily if they might be disqualified.
- Any changes should be communicated six months before the deadline for nominations so any changes can be understood.

1.25 We welcome the approach proposed in this Bill to change the law about the point at which a person is disqualified from being a Member of the National Assembly for Wales or standing as a candidate for election to the Assembly. This reflects the approach that we recommended in our 2015 report on Standing for Election, that the law in England, Wales and Northern Ireland is changed to make a clear distinction between offices or employment which would prevent someone standing for election, and those which would prevent someone from holding office if elected.

1.26 It is important these changes are clearly stated in law so that potential candidates wanting to stand for election can find out easily if they might be disqualified. It is also important that they are communicated six months before the deadline for nominations so any changes can be understood.

1.27 We continue to recommend that all legislation should be in place at least six months before it is required to be implemented or complied with by campaigners, ROs or EROs. This will enable us to amend our guidance for EROs, ROs and candidates and agents, as well as amending the nomination forms which are prescribed in legislation, including the consent to nomination declaration. The consent to nomination form will also need to reflect the changes in the Disqualification Order.

1.28 The National Assembly for Wales (Disqualification Order) 2015 will need to be amended to reflect the proposed changes to disqualification ahead of the next Assembly elections. Ministers should consider the questions that we set out in our *Standing for Election* report to help establish whether particular post holders should be able to stand for election:

- Firstly, is there a real conflict of interest between the appointed post and the elected post? If so, the post holder would have to resign before taking up elected office.

- Secondly, does the post holder need to have resigned and served out notice by nomination or election, for example:
 - Does the post holder's role require political impartiality during the election campaign?
 - Does the post holder have access to privileged information that would advantage them over other candidates?
 - Could the post holder exert undue influence over electors by virtue of their position?
 - Is the post holder involved in the administration of the election?

Oversight arrangements for the Electoral Commission in relation to devolved elections and devolved referendums

- To protect the fundamental principle of our independence, the Commission must be funded by the relevant legislature rather than the government.
- We actively welcome scrutiny and accountability for how we spend public funds from the legislature providing them.

1.29 The Bill places a requirement on the National Assembly for Wales to consider the financial and oversight arrangements for the Electoral Commission's work in relation to devolved Welsh elections and devolved referendums. The Bill also requires the Electoral Commission to respond to any recommendations relevant to it by laying a report before the National Assembly for Wales.

1.30 Since June 2017, the Electoral Commission has been working with the Assembly Commission on the detail of how the Electoral Commission would be accountable to the Assembly and be funded. On 12 March we provided [evidence](#) to the Finance Committee inquiry as part of its scrutiny on the financial implications of the Senedd and Elections (Wales) Bill.

1.31 Since the establishment of the Electoral Commission, we have reported to the National Assembly for Wales in relation to policy scrutiny matters and have a long history of giving evidence and advice. We expect to continue with this arrangement of reporting to Assembly Committees on policy.

1.32 We actively welcome scrutiny and accountability for how we spend public funds from the legislature providing them.

1.33 Our view is that the body to which we account at the National Assembly should:

- Be independent of any Welsh Government department;
- Report directly to the Assembly;

- Be chaired by a non-party representative (a Presiding Officer or Deputy Presiding Officer).

1.34 Previous discussions with the Assembly Commission have indicated that there are some current arrangements in place that might be utilised for the Electoral Commission to report to the National Assembly for Wales. These include the current panel of Assembly Commissioners establishing a separate 'Llywydd's Committee' – a model similar to the Speaker's Committee on the Electoral Commission in the UK Parliament.

1.35 Functions of this body would include:

- General oversight of how the Electoral Commission exercises its functions derived from that legislature;
- Reviewing the Commission's annual estimate of resources required for delivery of functions carried out under its legislative responsibility;
- Requiring the Commission to provide an annual report to facilitate scrutiny of the Commission's activities;
- Receiving reports from the Wales Audit Office.

1.36 The existing business planning and accountability cycle for the Commission is set out in the Political Parties Elections and Referendums Act 2000 (PPERA). The Commission is required to submit a new Corporate Plan after each UK Parliamentary General Election for the following five years. This includes indicative budgets for all five years. We then submit an annual business plan and budget with the main estimate for each year with each year's budget. PERA also establishes that the UK Comptroller & Auditor General is responsible for audit of the Commission's accounts and value for money.

1.37 The UK, English, Welsh and Scottish electoral cycles are all different. Also, much of the Commission's activity is delivered most efficiently across the Commission as a whole. It would therefore be difficult to produce geographically-specific corporate plans at different times. These could overlap and duplicate much material or appear to contradict each other as circumstances changed.

1.38 We therefore propose to continue with our existing business planning cycles. We already include some material on geographically-specific activity. However we will aim to be even clearer in future about what activity is planned and what the benefits to the voters are in each part of the UK.

1.39 Currently, PERA appoints the (UK) Comptroller & Auditor-General as the Commission's Auditor. The current proposal is that the (C&AG) should continue as the Commission's auditor, reporting additionally to the devolved legislatures. We are discussing with HM Treasury the best way to achieve this, specifically if a new accounts direction is required.

1.40 We acknowledge that legislatures may also want to take a reserve power to send in auditors in response to concerns and feel that this could be achieved through a power to require the Commission to co-operate with any such audit.

1.41 When preparing our plans we would continue to consult as necessary with officials in the Assembly Commission, as well as in Westminster and with other legislatures and governments. We also expect to meet the required timetables to fit in with scrutiny in each part of the UK. This will, of course, make business planning a more complex process for the Commission but we welcome the opportunity to ensure priorities are better aligned across all parts of the UK and expect to accommodate the process within planned resources.

1.42 We do not anticipate any major difficulties in practice, but we can see that there is a case for officials in the various parts of the UK building relationships between the legislatures to ensure scrutiny is as joined-up as possible.

Other points included in the Terms of Reference

1.43 We welcome the proposals in the Bill to give Welsh Ministers the power to make provisions about Welsh elections to implement changes to electoral law recommended by the Law Commission for England and Wales.

1.44 The UK's body of electoral law is currently large, complex and outdated. The impact of this is felt by those who run elections and those who want to stand for election and campaign. Simplified and modernised electoral law underpins voter confidence in electoral administration and political finance, and is also a necessary building block for further reform of elections and electoral registration.

1.45 We continue to strongly support the Law Commissions' comprehensive 2016 recommendations to simplify, rationalise and consolidate electoral law. The Law Commissions' recommendations are widely supported by the overwhelming majority of electoral stakeholders, including Returning Officers and Electoral Registration Officers, political parties and campaigners, police forces and prosecutors.

1.46 For future Welsh elections, the Assembly Commission should continue to work closely with the Welsh Government to ensure any reforms to the Assembly's electoral arrangements are not made in isolation, but take also into account the ongoing work on local government elections reform. This will help move towards greater consistency between the law for future Senedd elections and local government elections in Wales.

1.47 We would welcome the opportunity to support and assist with work to implement the Law Commissions' recommendations for Welsh elections.