
Senedd reform: progress (of a sort)

A briefing note

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Author biography

Before his retirement, Dr Hugh Rawlings worked on devolution and related constitutional issues for more than twenty years. He held numerous senior civil service positions within the Welsh government, most recently as Director of Constitutional Affairs and Intergovernmental Relations.

Before moving to the Welsh Office in 1988, he was a Lecturer in Law at Bristol University for 12 years. In 1997 he became Deputy Head of the Welsh Office Devolution Unit and oversaw the referendum and the legislation that created the National Assembly for Wales, as well as the first Assembly elections. He subsequently assumed responsibility within the Welsh government for the operation of the devolution settlement for Wales, being centrally involved with the several Acts of Parliament reforming the settlement. He is an Honorary Professor at the Wales Governance Centre, and a Fellow of the Learned Society of Wales.

Introduction

In a blog published at the end of last year, I drew attention to the new Cooperation Agreement between the Welsh government and Plaid Cymru, and to the prospect of a larger Senedd which the Agreement envisages.¹ The Senedd had already established a Special Purpose Committee ('the Committee') to consider that issue, with an instruction to report by 31 May 2022; the Cooperation Agreement builds on this, with proposals for a Senedd of 80-100 members and a Bill to give effect to the plans to be introduced not later than November 2023.

The Committee has now published its report, with radical proposals for a 96-Member Senedd from 2026.²

How did we get here?

The National Assembly for Wales (the predecessor body to Senedd Cymru) was first elected in 1999, with 60 Members. 40 were directly elected from constituencies (the existing Welsh Parliamentary constituencies) and 20 drawn from regional lists in arrangements designed to mitigate the perceived unfairness of First Past the Post (FPTP). These arrangements have survived for more than twenty years. This 'Additional Member System' (elsewhere called Mixed-Member Proportional, MMP) was also adopted for the Scottish Parliament and later the Greater London Assembly, but from the outset there were proportionately fewer additional regional Members in the National Assembly than in those two bodies.³ This 60-Member outcome resulted from an internal Labour Party debate in which the UK leadership pressed on a reluctant Welsh Labour Executive the case for the proposed new Assembly to be elected by some form of proportional representation; the agreed compromise, with its less generous degree of proportionality than elsewhere, provided some reassurance to the Welsh Executive that Welsh Labour's strength in the constituencies would be (more than) fully reflected in the composition of the Assembly.

The relatively small size of the Assembly, compared to the 129-Member Scottish Parliament and the original 108 Members of the Northern Ireland Assembly, was perhaps justifiable, given the narrow range of purely executive functions for which the Assembly was initially responsible. Since 1999, however, the development of Welsh devolution has been of such a pace and scale as to bring the small size of the Assembly repeatedly into question; Senedd Cymru has a range of legislative competences which could never have been imagined in the Assembly's early years, and a separate Welsh government exists which is responsible for exercise of the Assembly's former executive functions (and much more).

An increase in size of the legislative body has therefore been in contemplation for several years. But only now, following the 2021 Senedd elections, has it become a realistic possibility, as parties favouring expansion of the Senedd (originally Plaid Cymru and the Welsh Liberal Democrats, but crucially now also Welsh Labour) are together able to legislate for it with the two-thirds 'super majority' in the Senedd which is required for this purpose. And the case for seizing this opportunity now to emphasise the Senedd's position as the

¹ Hugh Rawlings, 'Recent developments and future prospects in Welsh devolution: Part One', *The Constitution Society Blog*, 21 December 2021.

² 'Reforming our Senedd: a stronger voice for the people of Wales', 30 May 2022.

³ In both the Scottish Parliament and the GLA, regional Members comprise approximately 43% of the whole, whereas in what is now Senedd Cymru they are just 33%. Allowing 30 rather than 20 regional Members to be elected would have created the same proportion in Wales.

principal representative legislature for Wales is strengthened by the imminent marked reduction, from 40 to 32, in the number of Welsh Members of the UK Parliament, which will take effect at the next UK General Election following implementation of the Parliamentary Constituencies Act 2020.

In their spring 2022 conferences, Welsh Labour and Plaid each adopted resolutions authorising their respective leaders, Mark Drakeford and Adam Price, to enter into discussions on the policy detail for an enlarged Senedd. These resulted in a set of proposals, published on 10 May in the form of a letter jointly written by Messrs Drakeford and Price to the Chair of the Committee. As might be expected, the Committee's report published three weeks later substantially endorses the Drakeford-Price proposals, its path to doing so having been facilitated by the resignation of the Conservative Member of the Committee immediately those proposals emerged into the public domain. There are, however, some expressions of dissent in the Report to the principal Drakeford-Price proposal.

The Leaders' proposals and the Committee's report

Welsh Labour's resolution gave Mark Drakeford broad room for manoeuvre in negotiations, but the mandate afforded to its leader by Plaid Cymru was rather more specific in its terms. Whereas the Labour resolution said nothing about a preferred electoral system, Plaid's aspiration has long been for adoption of the Single Transferable Vote (STV), with continuation of MMP as a fallback option (albeit with that system being made more proportional through adoption of the Sainte-Laguë rather than the d'Hondt divisor). And whereas the Labour resolution simply called for positive steps to entrench equality in the selection of candidates, Plaid has advocated specific arrangements to secure gender equality, and perhaps quotas for people of colour.

In their proposals, the Leaders have built upon the UK Parliamentary 32-constituency map coming into being in 2023. They suggested that the Local Democracy and Boundary Commission for Wales (LDBC) be asked to 'pair' these to create 16 Senedd constituencies, from each of which six Members would be elected. Such arrangements could set the scene for adoption of STV, for which Mr Price no doubt argued, but Mr Drakeford must have been unwilling to go that far, or even agree a marginally more proportional MMP system. Instead, the Leaders agreed to propose elections from the 16 constituencies using closed party lists, with allocation of seats by reference to the d'Hondt divisor. The Committee supports this, although the Liberal Democrat Member dissented and would have preferred STV, as would one of the Plaid representatives (although the latter was not willing to press her opposition so far as formally to dissent).

While the commitment to a 96-Member Senedd is bold and welcome, adoption of a closed proportional list system to elect them would represent a significant backward step. Voters would no longer be entitled to select their preferred candidates but would instead be asked to identify their preferred parties, some of whose listed candidates might then be deemed elected once the votes for each party have been counted and the d'Hondt divisor applied. Welsh voters have become accustomed to voting for parties under the existing MMP system in National Assembly/Senedd elections, but such 'second votes' have always been seen as supplementary (and in a sense corrective) to the traditional vote for individual constituency candidates. It is a very different thing, and contrary to the UK's constitutional tradition, to limit voters' options to selection of a preferred party (with candidates ordered in accordance with the party's preferences rather than their own) instead of for an individual candidate. A majority of the Committee justifies this on the basis that 'Members would still be accountable

to the electorate, because their performance as individual Members will have a bearing upon the votes cast for their parties, which in turn will determine their likelihood of election'. Such indirect accountability would represent a disappointing and significant weakening of Welsh democracy, however.

The Leaders also proposed that, following the 2026 Senedd elections, a full boundary review of the 16 Senedd constituencies should be instigated, to be undertaken by the LDBC (with a revised statutory mandate) and implemented in time for Senedd elections in 2031. Given that the 16 constituencies will use the new Parliamentary constituencies as building blocks, a further review, however, seems unnecessary, and possibly unwise.

The pre-requisites for an acceptable boundary review are that it be undertaken by a public agency free of political influence, and be able to operate in accordance with well-defined statutory criteria. The LDBC is perfectly well-placed to undertake such an exercise, but what of the criteria? The Leaders specified that the parameters for the review should include 'amongst other things, a broadly equal number of electors and the same number of Members per constituency', and the Committee endorses that, but the statutory criteria for review of Parliamentary constituencies already provide for broadly equal numbers of electors per constituency. Although there are differences between the eligible electorates for Parliamentary and Senedd elections, in numerical terms these will be of minimal significance for the precise drawing of boundaries, and there is no reason to think that a review of constituencies by the LDBC would produce any significantly different result to that already undertaken, or to be undertaken in future, by the BCW. (Even more is this the case given that the Secretariat which undertakes the detailed review work serves both Commissions in turn!)

Suppose, however, that quite different criteria are developed for the LDBC to apply. These would presumably result in a Senedd constituency geography significantly different from that for Parliamentary elections. That would be a very unfortunate outcome. Our particular form of parliamentary democracy is heavily dependent on the ability of constituency parties/associations to organise, select candidates and campaign effectively on a local basis. Their ability to do this may be significantly inhibited if they are required to form and re-form themselves on a geographic basis as elections to the UK Parliament and the Senedd respectively approach. It is a strength of the Leaders' proposals that they make use of and build upon the single constituency geography that will be in place from 2023 for parliamentary elections and for which established review procedures are in place. There is no good case either for two Commissions rather than one to review that geography using similar criteria, or to provide for the possibility, through use of other criteria, of a quite different geography being created for Senedd elections. All that is required is that, following each boundary review by the BCW, the LDBC is required to review the constituency pairing arrangements and propose adjustments as necessary.⁴

So far as equality issues are concerned, the Leaders proposed, and the Committee agrees, that party lists should be constructed subject to 'integrated statutory gender quotas and mandatory zipping', so parties' lists will need to contain equal numbers of men and women and place

⁴ The Committee's apparent opposition to coterminosity of Senedd and Parliamentary constituencies is based in part on concern that a future boundary review might produce an odd number of Parliamentary constituencies, making pairing for Senedd constituency purposes impossible. There is however a better solution to this, given that as a matter of law there will always be an Ynys Mon constituency; if a boundary review produced say 31 constituencies, Ynys Mon could stand alone, returning three Members to the Senedd, and the remaining 30 constituencies could be twinned. The Bill implementing these proposals could simply present two scenarios, one to apply when there is an odd number of constituencies, one when there is an even number.

them in alternating order on their lists. Providing for this in statute may raise difficult legislative competence issues for the Senedd, given its limited room for manoeuvre in relation to equality issues under the devolution settlement.⁵ It is also not yet clear whether provision will be proposed for quotas for people of colour. The Committee ‘recommends that a relevant [Senedd] committee considers how further work can best be undertaken on examining the merits and implications of legislative diversity quotas for characteristics other than gender’.

What happens next?

There will be a Senedd debate on 8 June on the Committee’s report. Thereafter, the resolution adopted by Welsh Labour in March specified that the outcome of the Leaders’ negotiations should be submitted to a recall conference for ratification, and there will no doubt also be discussions within Plaid on the agreed package.

Following these debates, three sets of challenges will need to be addressed. First, and most obviously, is the legislative challenge. The Cooperation Agreement requires that a Bill be introduced into the Senedd not later than November 2023. Welsh Labour and Plaid, together with the possibly reluctant support of the sole Liberal Democrat, have the votes necessary to secure the ‘super-majority’ required for the Bill to pass. The numbers are however tight (and some Labour MSs are publicly on record in support of STV), so Messrs Drakeford and Price will no doubt be active in dissuading their backbenchers from challenging key components of the package. Mr Drakeford, at least, will presumably be strengthened in this by his Party’s conference ratification of the proposals.

The Bill will, however, in drafting terms, amount to less than half of the legislative challenge, as it will need to be supplemented by a comprehensive new set of Regulations relating to the conduct of elections. Even if AMS had been retained, the existing Regulations would have required substantial updating, but they will now need to be addressed de novo in light of the new proposals (dealing, for example, with new issues such as the format of ballot papers; instructions to Returning Officers as to the acceptable form of ‘zipped’ party lists; provision in relation to election expenses for party list campaigns; and revised processes for challenging elections). The Bill and the new Regulations will need to be conceived of as an integrated package; if drafting resources allow, draft Regulations should be published for consultation at the same time the Bill is introduced, so that the totality of the reforms can be properly understood.

The second challenge will be one of public education in the new system of voting. Welsh voters are already accustomed to voting for parties given the supplementary list component of AMS, but much will need to be done to explain that the opportunity of voting as well for an individual constituency candidate will no longer be available. And because of the additional significance now to be attached to the vote for a party, will it be necessary to seek to explain to the electorate exactly how the d’Hondt system translates votes into seats for candidates on party lists? Good luck with that.

⁵ The Committee is concerned that any reference of the Bill to the Supreme Court on a competence issue would be likely to lead to significant delay before the Bill could reach Royal Assent. This would imperil the reforms being in place for 2026. It recommends that ‘the Welsh Government takes appropriate steps to ensure that our recommendations on Senedd reform for 2026 are not put at undue risk of a Supreme Court referral’. The Committee does not elaborate on what steps would be ‘appropriate’.

Finally, there will be what one might describe as the logistics challenge. In normal times, the Senedd's 60 Members sit in Y Siambr (the chamber) in seats allocated to them personally and individually; there is minimal room for more. Under the new proposals there will be 96 Members. When the Senedd building was being constructed, provision was made for Y Siambr to be extendable to accommodate up to 80 Members if required. It is however difficult to see how 96 could be individually accommodated in Y Siambr without major building works being necessary. Under the Covid restrictions, temporary provision has been made for 'hybrid' proceedings, with some Members participating remotely while others are physically present; will this need to become a permanent feature of Senedd proceedings, given the likely lack of space?

Furthermore, there will need to be additional provision for Members' offices and other facilities. At present, all are accommodated in the converted office block known as Ty Hywel, adjacent to the Senedd building. But parts of Ty Hywel are also occupied by the Welsh government, which will be deeply reluctant to give up its space and move elsewhere. And this is more than a matter simply of competition for office space; the co-location of all Ministers' offices on the Fifth Floor of Ty Hywel, and their close daily proximity to all other MSs, are determining features in the culture of the Welsh devolved institutions. There will be difficult discussions ahead on this.

Conclusion

The proposals being taken forward merit two cheers, but no more. The planned increase in number of Members from 60 to 96 is bold, and at the highest end of expectations; for the pragmatic supporters of Welsh devolution, that will probably be sufficient to secure their endorsement of the overall package. Depending on exactly how they are developed, and if they can be delivered, the proposals on securing a more diverse membership of the Senedd are also to be welcomed. But the choice of electoral system is disappointing, although it is not surprising that a process consisting largely of party leaders' bargaining has prioritised the interests of parties over those of voters. And the proposal for boundary reviews by the LDRC is simply not properly thought through and should be dropped.

Finally, it is worth setting these proposals in the context of UK electoral arrangements as a whole. For the UK Parliament, FPTP is of course the only present option, and will soon become the only available system for all forms of voting in England. In Northern Ireland, STV is used both for the Assembly and for local government. In Scotland, STV is also used for local government, but elections for the Parliament use AMS. In future, in Wales, if these plans are implemented, the Senedd will be elected from constituency closed party lists, but Welsh local authorities will continue to use FPTP in single or multi-member wards unless, on an individual authority basis, they choose to adopt STV – a truly eccentric position.

So if, after the next General Election, a government comes to power with a commitment to introduce proportional representation for the UK Parliament, it will have a wide range of models from which to choose. One must doubt whether the proposed Senedd electoral arrangements will long survive that scrutiny as a possible candidate for adoption for elections to Parliament.