



## **Elections and Elected Bodies (Wales) Bill**

### **Written Evidence of the Wales Electoral Coordination Board (WECB)**

#### **The Wales Electoral Coordination Board (WECB)**

The Wales Electoral Coordination Board (WECB) has been in existence since 2017. Whilst currently operating under a voluntary arrangement, with no statutory basis or formal powers and, until very recently, with no national grant funding, the WECB is recognised by the professional elections network, national partners and both governments.

The WECB:-

- coordinates the planning of, and de-risks, all electoral events in Wales – both non-reserved and reserved elections;
- advises on the planning, drafting and implementation of electoral reform policy, legislation and test/pilot innovation,
- maintains and supports a resilient network of returning officers and electoral administrators; and
- promotes good, innovative and consistent practice.

The WECB has been highly effective in fulfilling these roles, and in meeting its objectives over the past six years, through a combination of good leadership, networking, and consensus. Wales has a national reputation and proven track record for high performance in elections and electoral registration management. This is borne out by independent evaluations of our performance e.g. reports of the Electoral Commission on the management of major elections, and in the consistent achievement of the national performance standards set for Returning Officers.

The Board will be appearing before the Local Government and Housing Committee on 22<sup>nd</sup> November to give oral evidence.

#### **The role of the WECB in giving evidence**

Under the provisions of its terms of reference the Board has a limited role in giving written and oral evidence on draft legislation at the scrutiny stage.

We can provide expert advice on (1) the practicality of implementing the provisions of draft legislation once published (2) the risks which will need to be managed to ensure that any electoral reform, ongoing electoral registration and the electoral events themselves can be administered efficiently and safely, with integrity, and with the trust and confidence of the electorate and all stakeholders and (3) the resource

requirements for returning officers and elections services teams within local authorities and their national partners.

The Board contributes to the development and drafting of legislation - from conception to publication – in the background, through close liaison with civil servants and alongside national partners. This has been the case with this particular Bill and we compliment the lead officials, and their teams, for working so inclusively to help ensure that the specific provisions of the Bill are capable of implementation both legally and practicably as far as is possible.

Our evidence should be read in conjunction with any written evidence submitted by the Electoral Commission, the Association of Electoral Administrators (AEA) and the Welsh Local Government Association (WLGA) as our national partners, all of whom are members of or advisors to the WECB. The Society of Local Authority Chief Executives (SOLACE) has formally endorsed our written and oral evidence as speaking for the WECB and SOLACE jointly. There will be a high level of consistency, and complementarity, within and across our collective evidence.

## **Written Evidence on the Bill**

### **Principles**

The WECB advocates the following principles in advising on electoral reform:-

- That any legislation should be passed in sufficient time for advance and safe planning, and no later than six months before the next applicable electoral event according to the Gould principle;
- That legislation should be conceived, drafted and tested in close partnership with stakeholders and specifically with those who will be responsible for its implementation both legally and practicably;
- That any electoral reform initiated by Governments should be fully funded by the respective Government;
- That where there are identified risks for implementing new legislation then the responsibility for those risks should be shared and not simply transferred to those who have to implement them in practice e.g. Returning Officers; and
- That, wherever possible, divergence in electoral law and practice for reserved (to the UK Parliament) and non-reserved (to the Senedd) elections should be minimised to avoid the risks of voter confusion and/or administrative error by electoral administrators and political parties alike.

### **Electoral Management Board**

No-one is better placed than the WECB to comment on the proposals to create a new Electoral Management Board (EMB) in our place as set out in paragraph 3.14 onwards of the Explanatory Memorandum.

We are fully supportive of the proposal, having been a leading advocate for the concept of a statutory board for some time. We are also supportive of the EMB being hosted by the Local Democracy and Boundary Commission as the most appropriate national body.

We are in early discussion with the Commission, and with Welsh Government and Electoral Commission colleagues, over transition planning. For information, we would expect that within the transition:-

- the legacy of the WECB is respected and built-upon in the planning arrangements for the new EMB;
- the principles under which the WECB operates are followed in the planning of the new EMB - *inclusivity*, *collectivism* and *independence*. Specifically: *inclusivity* in membership and the way the EMB will communicate, engage and operate; *collectivism* through working by consensus wherever possible – both within the EMB and in building support from the Returning Officer/Elections Services Manager (RO/ESM) community for key decisions e.g. the making of directions; *independence* of thought and advice for example in advising on the wisdom and/or practicality of legislative and policy proposals;
- the EMB should be given a high degree of delegation and independence within the constitution of the Commission, and not be overly directed;
- the membership of the elections community within the EMB should be as now within the WECB as a model, alongside the appointed commissioners and others (as per the Bill where a minimum number only is set out in the draft legislation);
- the functions and activities of the EMB should follow and build on those of the WECB with the addition of any new responsibilities conferred on the Commission;
- the EMB should take care to plan its activities in such a way that the roles and work plans of the EMB are complementary to those of the Electoral Commission and the AEA, wherever possible, and do not duplicate or conflict; and
- that directions should be issued sparingly and following the above principle of collectivism. There is protection for ROs and EROs from the risk of conflict between issued directions and their substantive legal duties and powers within the provisions of the Bill. However, the need for balance between the national desire to coordinate and the local requirement upon an RO to enact according to local circumstances/legal duties, should be a constant consideration and uppermost in the minds of EMB members.

We would foresee the new EMB coming into being in the first quarter of 2025.

### **Electoral Registration Without Application**

We support the proposals for automatic registration as set out in paragraph 3.23 onwards and are supportive of the ongoing work on planning for, and piloting, new practice. Notwithstanding this support we do need to again stress that Electoral Registration Officers can only secure high registration rates to a point.

We are equally frustrated that a sizeable minority of the eligible public do not register, whether through lack of awareness, disinterest or evasion. We can only share in responsibility for any lack of awareness – of registration rights and

processes - which might prevent a citizen from registering or from maintaining their registration over time. We cannot share in the responsibility for 'failure rates' in registration that are due to disinterest or evasion as this is a question of citizen responsibility.

We are confident that automatic registration will make a positive impact on registration rates. We fully support the removal of the open register of electors, a measure which in itself might encourage some who evade registration to come forward. The open register has often been used for commercial marketing purposes. This was never an intention and is arguably a use of the register that conflicts with the principles behind the substantive legislation for data protection.

Having said the above, the maintenance of different registers for reserved and non-reserved elections under different measures (IER versus IER/Automatic registration respectively) will create administrative complexity with additional cost, and will cause some voter confusion.

The proposals will need to be planned and implemented with care, noting the risks of voter confusion and error.

### **Elections Piloting and Reform**

We are supportive of the continued approach to piloting reform as set out in paragraph 3.27 onwards and of the roles and responsibilities for oversight and evaluation as set out. Any proposed pilot should be supported by a business case, be fully funded, and should give value for money. The risks, and costs – direct and hidden – should not outweigh the benefits.

We cannot support the proposal for Ministers to be vested with powers to compel participation in pilots as set out in paragraph 3.51. This would be counter-intuitive to the very notion of a pilot exercise where any participating local authority must have the compulsion, confidence and capacity to make it succeed. We have a strong track record of co-operative partnership working in Wales and particularly so in the field of electoral registration, electoral reform and elections management. The concept of mandating is alien to our style of working, and should be withdrawn from the Bill.

At this point we should raise the need for a broader national strategy for digitisation – to be led by Welsh Government in close co-operation with the WECB and our partners. Piloting, and reform, will be held back by a variable approach to digitisation across councils and a lack of investment. The WECB and Welsh Government officials are about to work on a digital strategy looking beyond the provisions of this Bill. An essential first step will be to grant-aid all councils to be able to digitise the administration of the issue of ballot papers, and the maintenance of the recorded electoral registers, within and across all polling stations on the day of an election. Without this platform the scope for pilots e.g. early voting is limited. Whole-sector digitisation would then be a platform for more ambitious reform, such as the introduction of a single digitised electoral register for Wales.

### **Accessibility and Diversity**

We support the proposals for support for voters with disabilities as set out in paragraph 3.52 onwards to be consistent with the provisions of UK legislation and avoid divergence between reserved and non-reserved elections (based on one of our principles as set out above). Our support is though conditional that expectations meet the tests of reasonableness – polling stations can only be equipped to meet the needs of voters to a certain extent, noting that polling station teams are themselves able to assist voters with discretion, and without breaching the secrecy to which the voter is entitled in casting their vote. Officials in both Governments, and within the Electoral Commission, are very aware of the limitations in equipping polling stations on the grounds on logistics and cost.

### **Candidate Survey**

We support the proposals as set out in paragraph 3.61 onwards in the interests of flexibility and pragmatism. There is no need for statutory regulations to be so prescriptive as has been the case.

### **Voter Information Platform**

We are not persuaded that there is value in creating a new voter information platform as set out in paragraph 3.71 onwards. Notwithstanding the public opinion research referred to there is ample information in the public domain - in many accessible and innovative forms - from national bodies, local authorities, and other organisations who promote awareness of citizen democratic rights, electoral registration and individual election events. This combines both regular information and special campaign information around specific initiatives and events. Improved co-ordination of what exists, rather than introduction of another layer of sign-posting, would be a better solution. It will be hard to justify the effort and cost of a new platform alongside the effort and costs of implementing so much electoral reform.

We support the concept of candidates being encouraged to provide personal statements to help voters understand the choice of candidates before them in an election. Many candidates in all types of election are adept in using social media platforms alongside the more traditional mediums for communication, as are the political parties themselves. Therefore, we would need to consider the positioning of any new centralised information platform in this rapidly changing landscape of communications.

We do have major reservations over the proposals as set out.

It would not be feasible for a local authority to host a website upon which candidate statements are uploaded (as referenced in paragraph 3.75). For a combined set of principal and community council local elections, for example, a Returning Officer will field hundreds of candidate nominations in a very tight and challenging electoral timetable. For the Returning Officer and their team to facilitate candidate statements as an administrative process, and crucially to validate/regulate the content provided by each candidate in good time – content which would have to conform to a set of guidance and controls – would be an impossibility. The only precedent we have here is the Police and Crime Commissioner (PCC) elections where the Police Area Returning Officer (PARO) receives, reviews and validates, and uploads a short

statement for each candidate on a national platform. The number of statements involved in PCC elections is typically small in number yet this is still another administrative burden, and one which can be time-consuming depending on the quality and conformity of the information provided by the candidates, in a tight and challenging election timetable.

If a candidate were required to submit a statement as suggested, rather than being entitled to do so, who would enforce this? What would be the sanction for non-compliance? Enforcement would not be an appropriate role for a Returning Officer, and would be a major departure from their substantive role.

Neither would it be comfortable for a local authority to host such a website. Should there be a legal challenge to the content of a candidate statement, for example on the grounds of the truthfulness of their statement, this might reflect on the local authority itself where the Returning Officer, who is normally the Chief Executive of the said authority, has to stand beyond reproach for their independence and personal integrity in overseeing the election in hand. Even were indemnifications to be provided, such a challenge may still cause reputational damage to the local authority and its Returning Officer.

We recommend that the nature and extent of the duty proposed within the Bill for a new voter information platform is given careful thought at this stage.

### **Access to Elected Office Fund**

We support the continuation of the Fund as set out in paragraph 3.79 onwards in the interests of making candidature as accessible, and supportable, as possible.

### **Campaign Finance**

We support the proposals for changes to the regulation of campaign finance as set out in paragraph 3.89 onwards to be consistent with the provisions of UK legislation and avoid divergence in regulation and practice between reserved and non-reserved elections.

### **Arrangements for Local Government**

We support the proposals for the conduct for boundary reviews as set out in paragraph 3.98 onwards. We particularly welcome the provisions in paragraph 3.102 for timescales for the completion of reviews, flexibility in the criteria/matters to be taken into account in determining the number of representative councillors, and the power for Ministers to make modifications to recommendations for example in response to representations.

### **Disqualification and Undue Influence**

We support the proposals for changes to the provisions for disqualification as set out in paragraph 3.115 onwards in the interests of consistency and simplicity.

We support the proposals for the definition of the offence of 'undue influence' as set out in paragraph 3.123 onwards both (1) to be consistent with the provisions of UK legislation and to avoid divergence in regulation and practice between reserved and

non-reserved elections and (2) to more easily enable prosecution where offences have occurred.

### **Regulatory Impact Assessment**

The WECB was fully involved with the work on parts of the Regulatory Impact Assessment (RIA) co-ordinated by the Welsh Local Government Association. The RIA is comprehensive and its construction was an inclusive process. We have no specific observations or additional comments to make.