

**Explanatory Memorandum to The Local Government (Coronavirus)
(Postponement of Elections) (Wales) Regulations 2020.**

This Explanatory Memorandum has been prepared by Education and Public Services and is laid before the Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Local Government (Coronavirus) (Postponement of Elections) (Wales) Regulations 2020.

Julie James AM
Minister for Housing and Local Government
15 May 2020

PART 1

1. Description

1.1. These Regulations provide that local elections to fill casual vacancies in county councils, county borough councils and community councils in Wales that are scheduled to take place after 15th March 2020 or that would otherwise be required before 31st January 2021 are postponed until a period commencing on 1st February and ending on 16th April 2021. Such casual vacancies occur when an individual is no longer able to fill their elected seat as a result of death, resignation, incapacity or disqualification, and these elections are referred to as “local by-elections”.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

2.1. In accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by Sch.10 para 3 of the Government of Wales Act 2006, the Llywydd has been informed that the regulations will come into force less than 21 days from the date of laying.

2.2. These regulations have been made and laid as soon as practicable after The Coronavirus Act 2020 received Royal Assent. As a result, they have come into force less than 21 days after they were made.

2.3. Not adhering to the 21-day convention allows the Regulations to come into force on 5 May. This is necessary as The Coronavirus Act 2020 only provides Returning Officers indemnity cover for 30 days. A long gap between the end of that indemnity cover and these regulations being put in place would leave Returning Officers vulnerable to prosecution if they were to need to postpone an election during this time. In view of the circumstances the reduced period is therefore thought necessary and justifiable in this case.

2.4. These Regulations have retrospective effect as they postpone local elections that were scheduled to take place on or after 15 March 2020. This power has been conferred expressly in the enabling provision in primary legislation.

2.5. They also provide that if such local elections have taken place between 16 March 2020 and the coming into force of these Regulations then these Regulations do not apply to these local elections. The 2020 Act and these Regulations together relieve returning officers and others of any liability for not having taken actions in relation to polls postponed.

3. Legislative background

3.1. The powers to make these regulations are in sections 67 and 68 of the Coronavirus Act 2020. The Act enables the Governments of the UK to

respond to an emergency situation and manage the effects of a COVID-19 pandemic.

3.2. In relation to elections the Coronavirus Act 2020 provides Welsh Ministers the power to:

- Section 65 of the Act dis-applies certain provisions that otherwise apply to local elections. These are necessary to ensure that any actions or omissions of returning officers and others in relation to a poll that was due to be held between the period commencing on 16 March 2020 and ending on 24 April 2020 cannot result in criminal prosecution for breach of duty.
- Section 67 of the Act provides a power to the Welsh Ministers, by regulations to postpone any election arising from casual vacancies in the office of councillor in a county council, county borough council or community council in Wales (also known as by-elections) where the date of the poll for the election would otherwise fall between the period 16 March 2020 and 5 May 2021, by regulation.
- Section 68 of the Act provides Welsh Ministers with the power to make by regulations consequential, supplementary, incidental, transitional or saving provisions in connection with section 66 or section 67 of the Act. The provision which may be made includes provision about electoral activity prior to the postponement of a poll, the conduct of elections, the manner of voting in elections that have been postponed, the terms of office of incumbent officer holders, nominations of candidates, expenses incurred in relation to the election by those other than Local Authorities, and compensation for Local Authorities or candidates as a result of the provisions within the Act.

4. Purpose and intended effect of the legislation

4.1. The Coronavirus Act 2020 enables the Governments of the UK to respond to an emergency situation and manage the effects of a COVID-19 pandemic.

4.2. The Act contains temporary measures designed to either amend existing legislative provisions or introduce new statutory powers which are designed to mitigate these impacts. Many of the provisions are time limited for two years. However, the regulation making powers in sections 67 and 68 are excepted from expiry pursuant to section 89(2)(i). The Act contains a number of provisions around elections and a regulation making powers for Welsh Ministers.

4.3. Due to the ongoing risk posed by coronavirus the UK Government announced its intention to postpone all scheduled elections to be held in May 2020 through the Coronavirus Act 2020. The Welsh Government gave its full support to returning officers who made the decision to suspend their

polls before the date of Royal Assent which would not be covered by these provisions in the Act.

- 4.4. The need for the postponement arises from concerns that running a poll would be, at best, inadvisable and, at worst, impossible if candidates, campaigners, electors, electoral administrators and those providing supply and support to them are affected by either Covid-19 or the measures around it.
- 4.5. These Regulations provide that local by-elections that had been scheduled to take place to fill vacancies in principal councils and casual vacancies on town and community councils in Wales after on or after 15 March 2020 up until 31 January 2021 are postponed and held on a date during the period commencing on 1 February 2021 and ending on 16 April 2021. This will allow Returning Officers to hold postponed elections at time when it is safe to do so and convenient for their local circumstances.
- 4.6. These Regulations also dis-apply certain provisions that would otherwise apply to local elections. These are necessary to ensure that any actions or omissions of returning officers and others in relation to a poll that was due to be held cannot result in criminal prosecution for breach of duty.
- 4.7. The provisions that are dis-applied are sections 39 and 63 of the Representation of the People Act 1983. Section 39 places a duty on returning officers to order an election within a certain time period in the event of a causal vacancy. Section 63 provides for a breach of official duty and applies to returning officers and other election officials.

5. Consultation

- 5.1. Due to the emergency nature of these regulations the Welsh Government did not undertake a consultation before the regulations came into force. Views have been sought from stakeholders such as the Electoral Commission, the Wales Electoral Coordination Board (WECEB) and the Association of Electoral Administrators (AEA).
- 5.2. Further views of stakeholders will be sought retrospectively as part of a future consultation on supplementary provisions which will be required.
- 5.3. This second set of regulations will provide provisions around expenses incurred from the postponement of the polls, nomination processes and the conduct of the postponed elections.

6. Regulatory Impact Assessment (RIA)

6.1. These Regulations need to be put in place quickly to deal with an emergency situation. As such, no RIA has been completed. This is in line with the Welsh Ministers' regulatory impact assessment code for subordinate legislation.