
W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 1399 (W. 310)

**LOCAL GOVERNMENT,
WALES**

**REPRESENTATION OF THE
PEOPLE, WALES**

The Local Government
(Coronavirus) (Postponement of
Elections) (Wales) (No. 2)
Regulations 2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to certain local government by-elections which were postponed as a result of the Covid-19 pandemic. These local government by-elections were postponed by the Local Government (Coronavirus) (Postponement of Elections) (Wales) Regulations 2020 (“the 2020 Regulations”).

Regulation 4 provides that any postal ballot cast in relation to a by-election postponed by the 2020 Regulations is not to count for the purposes of a by-election that has been re-arranged. It also provides that a postal voter is not prevented from casting another postal ballot at a re-arranged by-election.

Regulation 5 makes provision on how the returning officer has to deal with the documentation which may have been created in advance of a postponed by-election, including forwarding it to the registration officer.

Regulation 6 requires the registration officer to retain such documents for a year before destroying them (subject to a court order). It also makes provision about court orders for access to those documents in respect of a prosecution.

Regulation 7 makes provision in relation to persons who were candidates at a postponed by-election. It provides that a person who was a candidate is no

longer a candidate, and is treated generally as not having been one. The effects of this include that the person is not required to complete certain returns relating to candidate expenses and donations under the Representation of the People Act 1983. Certain donations to regulated donees instead fall to be dealt with under the rules in the Political Parties, Elections and Referendums Act 2000, although the deadlines for complying with those rules are extended.

Regulation 8 amends the Representation of the People (England and Wales) Regulations 2001, so as to provide applicants with additional grounds for applying for emergency proxy votes in respect of certain local government by-elections. These additional grounds relate to persons who are unable to attend a polling station in person as a result of following relevant legislation, guidance or medical advice in relation to the Covid-19 pandemic. .

Regulation 9 modifies the effect of the Local Government (Wales) Measure 2011 in relation to the requirement to give public notice where a person is co-opted on to the membership of a community council in Wales. As a result of the Covid-19 pandemic, such public notices need only be given electronically.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

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(Coronavirus) (Postponement of
Elections) (Wales) (No. 2)
Regulations 2020

Made 1 December 2020

Laid before Senedd Cymru 3 December 2020

Coming into force 4 December 2020

The Welsh Ministers make these Regulations in exercise of the powers conferred by section 68 of the Coronavirus Act 2020⁽¹⁾

Title and commencement

1. The title of these Regulations is The Local Government (Coronavirus) (Postponement of Elections) (Wales) (No. 2) Regulations 2020.

2. These Regulations come into force on 4 December 2020.

Interpretation

3. In these Regulations—

“the 1983 Act” means the Representation of the People Act 1983⁽²⁾;

“the 2000 Act” means the Political Parties, Elections and Referendums Act 2000⁽³⁾;

⁽¹⁾ 2020 c. 7.

⁽²⁾ 1983 c. 2.

⁽³⁾ 2000 c. 41.

“the 2020 Act” means the Coronavirus Act 2020;
“the 2001 Regulations” means the Representation of the People (England and Wales) Regulations 2001(1);

“the 2020 Regulations” means the Local Government (Coronavirus) (Postponement of Elections) (Wales) Regulations 2020(2);

“ballot paper envelope”, “covering envelope”, “postal voter”, “receptacle for ballot paper envelopes” and other references to specified receptacles have the same meanings as in Part 5 of the 2001 Regulations;

“candidate” has the meaning given by section 118A of the 1983 Act(3);

“electoral area” has the same meaning as in section 203(1) of the 1983 Act;

“opened relevant envelope” means—

- (a) a covering envelope that has been opened, or
- (b) an envelope (other than a covering envelope) which is received by the returning officer or counting officer and which, when opened, contains a ballot paper envelope, postal voting statement or ballot paper;

“a postponed poll” means any poll which as a result of the 2020 Regulations will replace a relevant by-election and be held within the period commencing on 1 February 2021 and ending on 16 April 2021;

“postal voters list” and “proxy postal voters list” have the same meaning as in section 202(1) of the 1983 Act(4);

“principal area” has the same meaning as in section 270(1) of the Local Government Act 1972 (general provisions as to interpretation)(5);

“regulated donee” has the same meaning as in paragraph 1 of Schedule 7 to the 2000 Act;

“relevant by-election” means —

- (a) an election of a councillor to fill a casual vacancy in the office of councillor for any principal area in Wales; or
- (b) the election of a councillor to fill a casual vacancy in the office of community councillor in any community council in Wales,

(1) S.I. 2001/341; relevant amending instruments are S.I. 2006/752, 2006/2910 and 2013/3198.

(2) S.I. 2020/461 (W.105)

(3) Section 118A was inserted by the Political Parties, Elections and Referendums Act 2000 (c. 41), section 135.

(4) Section 202(1) was amended by the Electoral Administration Act 2006 (c. 22), Schedule 1, paragraph 128.

(5) 1972 c. 70; section 270(1) was amended by the Local Government Act 1985 (c. 51), Schedule 16, paragraph 8.

where the poll for any such election was due to be held during the relevant period and was not held during that period as a result of the 2020 Regulations;

“the relevant period” (“*y cyfnod perthnasol*”) means the period beginning on 16 March 2020 and ending on 31 January 2021;

“relevant registration officer”—

(a) in the case of a relevant by-election—

- (i) where the election was for a councillor to fill a casual vacancy in the office of councillor for any principal area in Wales, has the meaning given by rule 52(2) of Schedule 2 or (as the case may be) rule 52(3) of Schedule 3 to the Local Elections (Principal Areas) (England and Wales) Rules 2006(1);
- (ii) where the election was for a councillor to fill a casual vacancy in the office of community councillor in any community council in Wales, has the meaning given by rule 52(2) of Schedule 2 or (as the case may be) rule 52(3) of Schedule 3 to the Local Elections (Parishes and Communities) (England and Wales) Rules 2006(2).

Postal ballots: general

4.—(1) A postal ballot paper which was returned by a postal voter in relation to a relevant by-election has no effect for the purposes of a postponed poll.

(2) The fact that a postal voter cast a postal ballot paper in respect of a relevant by-election does not prevent that person from casting a postal ballot paper in respect of a postponed poll.

(3) Where any list has been created under regulation 87(3) of the 2001 Regulations in relation to a relevant by-election, regulation 61C(4) of those Regulations (notification of rejected postal voting statement) does not apply in respect of an absent voter who appears on that list.

(4) Regulation 84A(5) of the 2001 Regulations (confirming receipt of postal voting statements) does not apply in relation to any postal ballots issued in relation to a relevant by-election.

(1) S.I. 2006/3304, to which there are amendments not relevant to these Regulations.

(2) S.I. 2006/3305, to which there are amendments not relevant to these Regulations.

(3) Regulation 87 was amended by S.I. 2006/2910 and S.I. 2013/3198.

(4) Regulation 61C was inserted by S.I. 2013/3198, regulation 28.

(5) Regulation 84A was inserted by S.I. 2006/2910, regulation 52.

Postal ballots: disposal of documents by the returning or counting officer

5.—(1) The returning officer for a relevant by-election—

- (a) subject to paragraph (2), must not take any steps or further steps to open a covering envelope, or deal with the contents of an opened relevant envelope, in accordance with Part 5 of the 2001 Regulations;
- (b) must treat as if it were a counted ballot paper—
 - (i) any unopened covering envelope;
 - (ii) the contents of any opened relevant envelope; and
 - (iii) any contents of the postal ballot box.

(2) Where the polls for one or more relevant by-elections were due to be taken together—

- (a) the returning officer may open any covering envelopes or ballot paper envelopes in order to separate the contents by election for the purposes of paragraph (4);
- (b) the requirements of Part 5 of the 2001 Regulations do not apply to any such opening of envelopes.

(3) The returning officer—

- (a) must seal up in packets—
 - (i) any contents of the receptacle for rejected votes;
 - (ii) any contents of the receptacle for ballot paper envelopes;
 - (iii) any contents of the receptacle for rejected ballot paper envelopes;
 - (iv) any lists of spoilt, lost or cancelled postal ballot papers kept in accordance with regulations 77(8), 78(4) or 78A(3) of the 2001 Regulations;
 - (v) any contents of the receptacle for rejected votes (verification procedure);
 - (vi) any contents of the receptacle for postal voting statements (verification procedure);
 - (vii) anything treated as if it were a counted ballot paper under paragraph (1)(b) which would not otherwise be contained in a packet in accordance with subparagraphs (i) to (vi);
 - (viii) the marked copies of the postal voters list and the proxy postal voters list;
- (b) must forward those packets to the relevant registration officer, together with—

- (i) any sealed packets described in regulations 75(1), 77(6), 78(2C) and 78A(2)(c) of the 2001 Regulations (completed corresponding number lists and spoilt, lost and cancelled postal ballot papers);
- (ii) any list required to be compiled in accordance with regulation 87(4) of the 2001 Regulations (lists of rejected ballot papers).

(4) The returning officer must endorse each packet described in paragraph (4) with—

- (a) a description of its contents;
- (b) the date of the poll for the relevant by-election; and
- (c) the name of the electoral area (or areas) to which the relevant by-election relates.

(5) Section 36(4) or (5A) of the 1983 Act (local elections in England and Wales: payment of expenditure)⁽¹⁾ applies to all expenditure properly incurred by a returning officer in relation to the exercise of the officer's functions under this regulation as it applies to expenditure properly incurred in relation to the holding of an election.

Postal ballots: retention, production and destruction of documents by the relevant registration officer

6.—(1) The relevant registration officer must—

- (a) retain the documents forwarded to the officer in accordance with regulation 5(3)(b) for the period of one year; and
- (b) after that period, cause those documents to be destroyed, unless otherwise directed by an order of a county court, a Crown Court or a magistrates' court.

(2) A person must not be allowed to inspect any of the documents described in regulation 5(3)(a)(i) to (iii), (v) to (vii) and (b)(ii) which are in the possession of the relevant registration officer, except in accordance with an order made by a court for the inspection or production of any document for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers.

(3) In relation to an order described in paragraph (2)—

- (a) where it relates to an election for a councillor to fill a casual vacancy in the office of

⁽¹⁾ Section 36(4) and (5A) was amended by the Local Government Act 1985 (c. 51), Schedule 17; by the Local Government (Wales) Act 1994 (c. 19), Schedule 16, paragraphs 68(9) and (10).

councillor for any principal area in Wales, paragraphs (3) to (7) of rule 53 of Schedule 2 or (as the case may be) Schedule 3 to the Local Elections (Principal Areas) (England and Wales) Rules 2006(1) apply in accordance with paragraph (4); and

- (b) where it relates to an election for a councillor to fill a casual vacancy in the office of community councillor, paragraphs (3) to (7) of rule 53 of Schedule 2 or (as the case may be) of Schedule 3 to the Local Elections (Parishes and Communities) (England and Wales) Rules 2006(2) apply in accordance with paragraph (4).

(4) The provisions referred to in paragraph (3) apply to an order described in paragraph (2) in the same way as they apply to an order made under those provisions, save that references in those provisions to “counted ballot papers” should be read as references to the documents described in regulation 5(3)(a)(i) to (iii), (v) to (vii) and (b)(ii).

(5) Section 176 of the 1983 Act (time limit for prosecutions)(3) applies in respect of documents retained by the relevant registration officer under paragraph (1) and references to “rule 57 of the parliamentary elections rules” in subsections (2C) and (2D) should be read as a reference to regulation 6(1) of these Regulations.

(6) Section 54 of the 1983 Act (payments of expenses of registration)(4) applies to the exercise of functions of the relevant registration officer under this regulation as it applies to the exercise of functions of the registration officer under the 1983 Act.

Candidates at relevant by-elections

7.—(1) A person (“P”) who was a candidate at a relevant by-election is no longer to be regarded as a candidate, and is treated as not having been a candidate before the coming into force of this regulation.

(2) A person (including P) is not liable in respect of any act or omission (whenever occurring) in relation to P’s candidacy at a relevant by-election before the coming into force of this regulation (disregarding paragraph (1)), under—

(1) S.I. 2006/3304.

(2) S.I. 2006/3305.

(3) Section 176 was amended by the Representation of the People Act 1985 (c. 50), sections 24 and 28, Schedule 4, paragraph 61 and Schedule 5.

(4) Section 54 was amended by the Representation of the People Act 1985, Schedule 4, paragraph 14; and by the Electoral Registration and Administration Act 2013 (c.6), Schedule 4, paragraphs 1 and 17.

- (a) section 71A of, and Schedule 2A to, the 1983 Act (control of donations to candidates)(1); and
- (b) sections 73 to 90D, and Schedule 4 to the 1983 Act (provisions about candidate election expenses)(2) including the application of

(1) Section 71A was inserted by the Political Parties, Elections and Referendums Act 2000 (“the 2000 Act”), section 130. Schedule 2A was inserted by Schedule 16 to the 2000 Act.

(2) Sections 73 and 74 were amended by the Representation of the People Act 1985 (“RPA 1985”), section 14; by the Greater London Authority Act 1999 (c. 29) (“GLAA 1999”), Schedule 3, paragraphs 1, 17 and 18; by the 2000 Act, Schedule 18, paragraphs 1, 3 and 4; and section 73 was also amended by the Electoral Administration Act 2006 (c. 22) (“EAA 2006”), Schedule 1, paragraphs 104, 111 and 133. Section 74A was inserted by the 2000 Act, Schedule 18 paragraphs 1 and 5, and was amended by EAA 2006, Schedule 1, paragraphs 104, 112 and 133. Section 75 was amended by RPA 1985, Schedule 4, paragraph 24; by GLAA 1999, Schedule 3 paragraphs 1 and 19; by the 2000 Act, section 131; by EAA 2006, section 25 and Schedule 1, paragraphs 104 and 113; and by the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 (c. 4) (“the 2014 Act”), section 36(1). Sections 75ZA and 75ZB were inserted by the 2014 Act, section 36(2). Section 76 was amended by RPA 1985, Schedule 4, paragraph 25; by the Local Government Act 1985 (c. 51), Schedule 17; by the Education Reform Act 1988 (c. 40), Schedule 13, Part 1; by the Representation of the People Act 1989 (c. 28), section 6(1); by GLAA 1999, Schedule 3, paragraphs 1 and 20; by the Representation of the People Act 2000 (c. 2), Schedule 1, paragraphs 1 and 18; by the 2000 Act, section 132; by EAA 2006, Schedule 1, paragraphs 69 and 71; by the 2014 Act, section 37(1), and by S.I. 2014/1870. Section 76ZA was inserted by the Political Parties and Elections Act 2009 (c. 12) (“PPE 2009”), section 21(1), and was amended by the Fixed-term Parliaments Act 2011 (c. 14), Schedule, paragraphs 6 and 7, and by S.I. 2014/1870. Section 76A was inserted by RPA 1985, section 14, and was amended by the 2000 Act, section 133(1), and by PPE 2009, Schedule 6, paragraph 6. Section 77 was amended by GLAA 1999, Schedule 3, paragraphs 1 and 22. Sections 78 and 79 were amended by RPA 1985, Schedule 4, paragraph 26; by the 2000 Act, Schedule 18, paragraphs 1, 6 and 18, and section 78 was also amended by the Crime and Courts Act 2013 (c. 22), Schedule 9, paragraph 52(1)(b) and (2). Sections 81, 82 and 85 were amended by RPA 1985, Schedule 4, paragraphs 27 to 29; by GLAA 1999, Schedule 3, paragraphs 1 and 23 to 25; and by the 2000 Act, Schedule 18, paragraphs 1, 7, 8 and 19, and section 81 was also amended by EAA 2006, section 26 and Schedule 1, paragraphs 104, 114 and 133. Section 85A was inserted by GLAA 1999, Schedule 3, paragraphs 1 and 26. Section 86 was amended by RPA 1985, Schedule 4, paragraph 30; by the 2000 Act, Schedule 18, paragraphs 1 and 18; by the Legal Services Act 2007 (c. 29), Schedule 21, paragraphs 48 and 49, and by the Crime and Courts Act 2013, Schedule 9, paragraph 52. Section 87 was amended by RPA 1985, Schedule 4, paragraph 31, and by S.I. 2015/664. Section 87A was inserted by the 2000 Act, Schedule 18, paragraphs 1 and 9. Section 88 was amended by RPA 1985, Schedule 4, paragraph 32, and by GLAA 1999, Schedule 3, paragraphs 1 and 27. Section 89 was amended by RPA 1985, Schedule 4, paragraph 33; by the 2000 Act, Schedule 18, paragraphs 1 and 10; and by EAA 2006, Schedule 1, paragraphs 104 and 115. Section 90 was amended by the 2000 Act, Schedule 18, paragraphs 1 and 11, and by EAA 2006, Schedule 1, paragraphs 104 and 116. Section 90ZA was inserted by EAA 2006, section 27(1) and (2), and was amended by PPE 2009, Schedule 6, paragraph 7. Sections 90A to 90D were inserted by the 2000 Act, section 134. Sections 90A and 90B were repealed by EAA 2006, section 27(1), (3) and (4). Sections 90C and 90D were amended by EAA 2006, Schedule 1, paragraphs 104, 117, 118 and 133.

those provisions to the election of community councillors in Wales by section 90 of that Act.

(3) Paragraphs (4) to (6) apply in relation to a donation which would have fallen to be included in a return as to election expenses in respect of P in accordance with Part 3 of Schedule 2A to the 1983 Act⁽¹⁾ if the relevant by-election had taken place (disregarding paragraph (2)).

(4) For the purposes of paragraph 4(3)(a) of Schedule 7 to the 2000 Act (donations: disregard for candidate donations) a donation to which this paragraph applies is not to be treated as falling to be included in a return as to election expenses in respect of P.

(5) Where a regulated donee is required to take action in respect of a donation to which this paragraph applies under section 56(2) of the 2000 Act (acceptance or return of donations)⁽²⁾, as applied by paragraph 8 of Schedule 7 to that Act⁽³⁾, that provision is to be read as if it required that action to be taken by 31 January 2021 (instead of within the period specified in the provision).

(6) Where, in relation to a donation to which this paragraph applies, a regulated donee is required to prepare a report under paragraph 10(1) or 11(1)(a) of Schedule 7 to the 2000 Act (donation reports: permissible and impermissible donors)⁽⁴⁾, paragraph 10(2) or 11(1)(b) (as the case may be) of that Schedule⁽⁵⁾ is to be read as if it required the report to be delivered to the Electoral Commission by 31 January 2021 (instead of within the period specified in the provision).

(7) A person is not liable for any failure to comply with a requirement referred to in paragraphs (5) or (6) between the time for compliance set out in relation to the requirement (prior to the modifications made by paragraphs (5) and (6) taking effect) and the coming into force of this regulation.

(8) Nothing in this regulation affects whether P is a candidate in respect of a postponed poll or any requirements which would apply in relation to P as a candidate in respect of a postponed poll.

(1) Schedule 2A was inserted by the Political Parties Elections and Referendums Act 2000 (c.41.), Schedule 16.

(2) Section 56(2) was amended by PPE 2009, section 9.

(3) Paragraph 8 was amended by PPE 2009, Schedule 4, paragraph 2 and Schedule 6, paragraph 28.

(4) Paragraph 10(1) was amended by EAA 2006, Schedule 1, paragraphs 138 and 154, and by PPE 2009, Schedule 3, paragraph 2. Paragraph 11(1) was amended by PPE 2009, Schedule 3, paragraph 3.

(5) Paragraph 10(2) was amended by PPE 2009, section 20.

Amendment of the 2001 Regulations

8.—(1) The 2001 Regulations are amended in accordance with this regulation.

(2) In regulation 56 (closing date for applications)⁽¹⁾—

- (a) in paragraph (3) for the words “Subject to paragraph (3A),” substitute “Subject to paragraphs (3A) and (3B),”;
- (b) after paragraph (3A) insert—

“(3B) Where an application is made under paragraph 4(2) of Schedule 4 in relation to a relevant Welsh by-election—

- (a) on the ground that the applicant cannot reasonably be expected to vote in person at a polling station as a result of complying with relevant legislation, Welsh Government advice or the advice of a registered medical practitioner in relation to coronavirus; or
- (b) on the ground that any person appointed as a proxy to vote for an applicant under paragraph 6 of Schedule 4 is unable to attend a polling station and vote for that applicant as a result of complying with relevant legislation, Welsh Government advice or the advice of a registered medical practitioner in relation to coronavirus,

the application, or an application under paragraph 6(8) of that Schedule made by virtue of that application, shall be refused if it is received after 5pm on the day of the poll at the election for which it is made.

(3C) In paragraph (3B) the term relevant Welsh by-election means—

- (a) an election of a councillor to fill a casual vacancy in the office of councillor for any county council or county borough council in Wales; or
- (b) the election of a councillor to fill a casual vacancy in the office of community councillor in any community council in Wales,

where the poll for such an election was postponed as a result of the Local Government (Coronavirus) (Postponement of Elections) (Wales) Regulations 2020”.

(1) Regulation 56 was amended by S.I. 2001/1700, S.I. 2006/752, S.I. 2006/2910 and S.I. 2013/3198.

(3) The Welsh Ministers must review the amendments made to the 2001 Regulations by this regulation at least once every year, with the first review being carried out by 1 October 2021.

(4) This regulation will cease to have effect at the end of the period of 2 years beginning with the day on which this regulation comes into force.

Notices required for co-option of community councillors for casual vacancies

9.—(1) This regulation applies in relation to a public notice required by virtue of section 116(2) of the Local Government (Wales) Measure 2011⁽¹⁾ (“the 2011 Measure”) in respect of a vacancy or vacancies arising between 16 March 2020 and 31 January 2021.

(2) Section 232 of the Local Government Act 1972⁽²⁾ does not apply.

(3) The notice must be published electronically.

(4) The reference to functions in section 117(1) of the 2011 Measure includes a reference to functions under this regulation in relation to a notice required to be given under section 116(2) of the Measure.

Julie James

Minister for Housing and Local Government, one of
the Welsh Ministers
1 December 2020

(1) 2011 nawm 4.

(2) 1972 c.70. Relevant amendments were made by the Local Government (Democracy) (Wales) Act 2013 (2013 anaw 4), section 56.