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Welsh Elections (Coronavirus) Bill

[AS AMENDED AT STAGE 3]

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Welsh Elections (Coronavirus) Bill

[AS AMENDED AT STAGE 3]

An Act of Senedd Cymru to provide for measures relating to protection against coronavirus to apply to Senedd Cymru elections and local government elections.

Having been passed by Senedd Cymru and having received the assent of Her Majesty, it is enacted as follows:

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Main provisions

1 The 2021 election

In this Act, “the 2021 election” means the ordinary general election for membership of Senedd Cymru the poll for which is due to be held in 2021.

2 Application of provisions of Government of Wales Act 2006

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(1) Subsections (2) to (4) of section 3 of the 2006 Act (dissolution of Senedd Cymru before an ordinary general election and date of first meeting after the election) do not apply to the 2021 election.

(2) Section 3(1) of the 2006 Act (day on which the poll at an ordinary general election is held) has effect subject to the provisions of section 6.

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(3) Section 4(2)(c) of the 2006 Act (period within which Senedd Cymru must meet where the day of poll is varied by proclamation) does not apply to the 2021 election.

(4) Section 10 of the 2006 Act (constituency vacancies) has effect subject to the provisions of section 10.

3 Dissolution of the current Senedd

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(1) For the purpose of the holding of the poll for the 2021 election, Senedd Cymru is dissolved on 29 April 2021, unless –

(a) the Llywydd exercises the power conferred by section 6 (power to postpone 2021 election for up to 6 months), or

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(b) Her Majesty dissolves Senedd Cymru before that day by proclamation under section 4(2) of the 2006 Act (power to vary date of Senedd ordinary general election).

(2) If the Llywydd exercises the power conferred by section 6, Senedd Cymru is dissolved at the beginning of the period of 7 days that ends immediately before the day fixed for the holding of the poll, unless subsection (3) applies.

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(3) This subsection applies where, before the day on which Senedd Cymru is due to be dissolved in accordance with subsection (2), the Llywydd exercises the power conferred by section 6 again (and, accordingly, subsection (2) applies to that exercise of the power in turn).

4 Guidance on exercise of functions in the pre-election period

- (1) The First Minister must publish guidance about the exercise of the functions of the First Minister, the Welsh Ministers and the Counsel General during the pre-election period for the 2021 election.
- (2) The First Minister, the Welsh Ministers and the Counsel General must have regard to the guidance.
- (3) The First Minister must determine the pre-election period for the 2021 election for the purpose of this section.
- (4) The period determined must include the period of 30 days ending with the day fixed for the holding of the poll for the 2021 election.
- (5) The guidance must be published before the end of the period of 14 days beginning with the day on which this Act receives Royal Assent.

5 Date of first meeting after the 2021 election

Senedd Cymru must meet within the period of 21 days beginning immediately after the day on which the poll for the 2021 election is held.

6 Power to postpone 2021 election for up to 6 months

- (1) The First Minister for Wales (“the First Minister”) may propose to the Llywydd that the poll for the 2021 election is postponed if, for a reason relating to coronavirus, the First Minister considers it necessary or appropriate to do so.
- (2) But before making a proposal under subsection (1), the First Minister must consult the member of staff of the Welsh Government designated by the Welsh Ministers as the Chief Medical Officer for Wales.
- (3) Following a proposal from the First Minister, the Llywydd may fix a day for the holding of the poll for the 2021 election if—
 - (a) Senedd Cymru approves the day to be fixed by a resolution passed on a vote in which the number of Senedd Members voting in favour of it is not less than two-thirds of the total number of Senedd seats, and
 - (b) Senedd Cymru has not been dissolved.
- (4) When fixing a day for the holding of the poll the Llywydd—
 - (a) must fix a day that is the earliest day the Llywydd considers to be reasonably practicable;
 - (b) must not fix a day that is after 5 November 2021.
- (5) As soon as reasonably practicable after fixing a day for the holding of the poll, the Llywydd must lay before Senedd Cymru a statement of—
 - (a) the day fixed for the holding of the poll, and
 - (b) the reason for the exercise of the power to fix a day.
- (6) The Electoral Commission must provide advice in relation to postponement of the poll if requested to do so by the Llywydd or the First Minister.
- (7) The powers in subsections (1) and (3) may be exercised more than once.

- (8) The First Minister must lay a statement before Senedd Cymru on or before 24 March 2021 setting out whether or not the First Minister intends to exercise the power in subsection (1).
- (9) If the First Minister does not intend to exercise the power, the statement must set out –
- 5 (a) the reasons for not exercising the power, and
- (b) whether, in the First Minister’s view, a full and fair election campaign can be conducted by all persons seeking election in the 2021 election which does not disadvantage any person eligible to vote in that election.
- (10) Any intention expressed in the statement under subsection (8) does not affect the exercise of the power in subsection (1).
- (11) Nothing in this section limits the power in section 4 of the 2006 Act to vary the date of an ordinary general election for membership of Senedd Cymru.
- (12) The Welsh Ministers must publish the criteria to be used by the First Minister for determining whether it is necessary or appropriate to postpone the poll for the 2021 election for a reason relating to coronavirus under subsection (1).
- 15 (13) The criteria must be published before the end of the period of 14 days beginning with the day on which this Act receives Royal Assent.

7 **Power to provide for additional polling days**

- (1) This section applies if the day for the holding of the poll of the 2021 election is fixed under section 6.
- (2) The Welsh Ministers may, by regulations made by statutory instrument, provide that polling that would otherwise be required to take place only on the date fixed under section 6 may take place on one or more additional days specified in the regulations.
- (3) Regulations under subsection (2) may –
- 25 (a) specify a day only if it falls within the period of 7 days immediately preceding the day fixed for the holding of the poll;
- (b) require polling on additional days to take place at particular locations or descriptions or categories of locations specified in the regulations;
- (c) modify the meaning of a relevant reference so far as it relates to provision made in the regulations.
- 30 (4) In subsection (3), a “relevant reference” means a reference (however expressed) in any enactment or document to the day or date of the poll at the 2021 election.
- (5) The Electoral Commission must provide advice in relation to the exercise of the power in subsection (2) if requested to do so by the Welsh Ministers.
- 35 (6) When laying draft regulations under subsection (7) before Senedd Cymru, the Welsh Ministers must at the same time lay before Senedd Cymru a statement of the reasons for the regulations.

(7) A statutory instrument containing regulations under subsection (2) must be laid before Senedd Cymru and ceases to have effect on the expiry of 28 days beginning with the day it is made unless, before the expiry of that period, it is approved by resolution of Senedd Cymru.

5 (8) But if—

(a) Senedd Cymru votes on a motion for a resolution to approve a statutory instrument laid under subsection (7) before the expiry of the period of 28 days mentioned in that subsection, and

(b) the motion is not passed,

10 the instrument ceases to have effect at the end of the day on which the vote takes place.

(9) In calculating any period of 28 days for the purposes of subsection (7), no account is to be taken of any period during which Senedd Cymru is—

(a) dissolved, or

(b) in recess for more than 4 days.

15 (10) Subsections (7) and (8) do not—

(a) affect anything done in reliance on the regulations before they ceased to have effect, or

(b) prevent the making of new regulations.

20 (11) Regulations under subsection (2) have no effect where the poll at the 2021 election and the poll at the ordinary election of police and crime commissioners for police areas in Wales are to be taken together under article 16A of the 2007 Order.

(12) In subsection (11), “ordinary election of police and crime commissioners for police areas” has the meaning given in section 50 of the Police Reform and Social Responsibility Act 2011 (c. 13).

25 8 Further power to vary date of 2021 election

(1) This section applies if the day for the holding of the poll of the 2021 election is fixed under section 6.

(2) The Llywydd may propose, for the holding of the poll, a day which is not more than one month earlier, nor more than one month later, than the day fixed under section 6.

30 (3) The power under subsection (2) may not be exercised so as to propose a date after 5 November 2021.

(4) If the Llywydd proposes a day under subsection (2), Her Majesty may by proclamation under the Welsh Seal—

(a) dissolve Senedd Cymru;

35 (b) require the poll at the election to be held on the day proposed.

- (5) As soon as reasonably practicable after a proclamation is made under subsection (4), the Llywydd must publish a statement of—
- (a) the day on which the poll is to be held, and
 - (b) the reason for the exercise of the Llywydd's power under subsection (2).

5 **9 Guidance on election campaigning**

- (1) The Welsh Ministers must issue guidance to persons undertaking election campaigning activities for the purpose of an election specified in subsection (2) about how they may undertake those activities in accordance with enactments imposing restrictions relating to the control of coronavirus.
- 10 (2) The elections are—
- (a) the 2021 election;
 - (b) an election to be held before 6 November 2021 under section 10 of the 2006 Act to fill a vacant constituency member seat;
 - 15 (c) an election to be held before 6 November 2021 to fill a casual vacancy in the office of councillor in a county council, county borough council or community council in Wales.
- (3) The duty in subsection (1) only applies if, and so far as, restrictions imposed by an enactment affect election campaigning activities for the purpose of an election specified in subsection (2).

20 **10 Power to postpone Senedd by-elections**

- (1) This section applies after 6 May 2021 where an election is to be held under section 10 of the 2006 Act to fill a vacant constituency member seat (“a Senedd by-election”).
- (2) The Llywydd may fix a date for the holding of the poll for a Senedd by-election that is outside the period required under section 10(5) or (6) of the 2006 Act.
- 25 (3) When fixing a day under subsection (2), the Llywydd must fix a day that is the earliest day the Llywydd considers to be reasonably practicable.
- (4) The power under subsection (2)—
- (a) may be exercised more than once, and
 - (b) may not be exercised so as to fix a date after 5 November 2021.
- 30 (5) Before exercising the power under subsection (2), the Llywydd must consult the Welsh Ministers.

11 Power to postpone local authority by-elections

- (1) The Welsh Ministers may, by regulations made by statutory instrument, provide—
- 35 (a) that the poll for a local authority by-election is to be held on a date, or within a period, specified in the regulations;

- (b) that the poll for a local authority by-election that would otherwise be required to be held on a date that falls within a period specified in the regulations is instead to be held on a later date, or within another period, specified in the regulations.
- (2) In this section, a “local authority by-election” is an election where –
- 5 (a) the date of the poll for the election falls within the period beginning with 6 May 2021 and ending with 5 November 2021, and
- (b) it is an election to fill a casual vacancy in the office of councillor in a county council, county borough council or community council in Wales.
- (3) Regulations under subsection (1) must not specify –
- 10 (a) a date after 5 November 2021, or
- (b) a period ending after 5 November 2021.
- (4) The power to make regulations under subsection (1) may be exercised more than once in respect of any local authority by-election.
- (5) Regulations under subsection (1) may make provision by reference to local authority by-elections of a description specified in the regulations (for example, by reference to the nature, date or location of the elections).
- 15 (6) The power to make regulations under subsection (1) includes the power to amend, modify, repeal or revoke any enactment.
- (7) Subsection (8) applies to a statutory instrument containing regulations under subsection (1) that amend, modify or repeal provision contained in primary legislation.
- 20 (8) A statutory instrument to which this subsection applies must be laid before Senedd Cymru and ceases to have effect on the expiry of 28 days beginning with the day it is made unless, before the expiry of that period, it is approved by resolution of Senedd Cymru.
- 25 (9) But if –
- (a) Senedd Cymru votes on a motion for a resolution to approve a statutory instrument laid under subsection (8) before the expiry of the period of 28 days mentioned in that subsection, and
- (b) the motion is not passed,
- 30 the instrument ceases to have effect at the end of the day on which the vote takes place.
- (10) In calculating any period of 28 days for the purposes of subsection (8), no account is to be taken of any period during which Senedd Cymru is –
- (a) dissolved, or
- (b) in recess for more than 4 days.
- 35 (11) Subsections (8) and (9) do not –
- (a) affect anything done in reliance on the regulations before they ceased to have effect, or
- (b) prevent the making of new regulations.

- (12) A statutory instrument containing regulations under subsection (1) to which subsection (8) does not apply is subject to annulment in pursuance of a resolution of Senedd Cymru.

12 Orders and rules on the conduct of elections to be held in 2021

- (1) Subsection (3) applies to a statutory instrument containing an order under section 13(1) (a) of the 2006 Act (power to make an order as to the conduct of Senedd elections) that contains provision that applies –

(a) only to the 2021 election, or

(b) only to an election under section 10 of the 2006 Act to fill a vacant constituency member seat the poll for which is to be held before 6 November 2021.

- (2) Subsection (3) applies to a statutory instrument containing rules under section 36A of the Representation of the People Act 1983 (c. 2) (power to make rules in relation to the conduct of elections of councillors for local government areas in Wales) that apply only to an election to fill a casual vacancy in the office of councillor in a county council, county borough council or community council in Wales the poll for which is to be held before 6 November 2021.

- (3) A statutory instrument to which this subsection applies must be laid before Senedd Cymru and ceases to have effect on the expiry of 28 days beginning with the day it is made unless, before the expiry of that period, it is approved by resolution of Senedd Cymru.

- (4) But if –

(a) Senedd Cymru votes on a motion for a resolution to approve a statutory instrument laid under subsection (3) before the expiry of the period of 28 days mentioned in that subsection, and

(b) the motion is not passed,

the instrument ceases to have effect at the end of the day on which the vote takes place.

- (5) In calculating any period of 28 days for the purposes of subsection (4), no account is to be taken of any period during which Senedd Cymru is –

(a) dissolved, or

(b) in recess for more than 4 days.

- (6) Subsections (3) and (4) do not –

(a) affect anything done in reliance on the order or rules before they ceased to have effect, or

(b) prevent the making of a new order or new rules.

Supplementary

13 Effect of this Act on existing power to make provision about elections

- (1) This Act does not affect the power of the Welsh Ministers to make an order under section 13 of the 2006 Act, but subsection (7) of that section (Senedd Cymru procedure) is subject to section 12.

- (2) This Act does not affect the power of the Welsh Ministers to make rules under section 36 or section 36A of the Representation of the People Act 1983 (c. 2), but section 36A(10) (Senedd Cymru procedure) is subject to section 12.

14 Modification of the 2007 Order

- (1) The 2007 Order is modified in relation to the 2021 election as follows.
- (2) Article 2(1) (interpretation) has effect as if it contained the definition of “coronavirus” given by section 16.

- (3) In Article 84(2)(b) (timing of when a person becomes a candidate in relation to a Senedd general election) has effect as if—

(a) for “any subsequent Assembly election” there were substituted “the ordinary general election for membership of Senedd Cymru the poll for which is, on the day on which this provision comes into force, due to be held on 6 May 2021”;

(b) in paragraph (i), for sub-paragraph (aa) there were substituted—

“(aa) which is 21 days before 6 May 2021, computed in accordance with rule 2 of the rules set out in Schedule 5;”.

- (4) In Schedule 1, paragraph 7 (closing date for applications for absent voting at Senedd elections) has effect as if—

(a) in sub-paragraph (2), after “sub-paragraph (3)” there were inserted “and sub-paragraph (3A)”;

(b) after sub-paragraph (3) there were inserted—

“(3A) Where an application—

(a) to vote by proxy under article 9(1), or

(b) for the appointment of a proxy under article 11(6) or (7)

is made on the grounds set out in sub-paragraph (3AB) the application shall be disregarded if it is received after 5pm on the day of the poll at the election for which it is made.

(3AB) The grounds are that—

(a) the application is made as a result of the need to comply with an enactment relating to coronavirus or to follow guidance relating to coronavirus issued by the Welsh Ministers, and

(b) the applicant became aware of the grounds after 5pm on the sixth day before the date of the poll at the election for which it is made.”

- (5) In Schedule 5 (Senedd election rules)—

(a) rule 1(1) (timetable for conduct of proceedings at a Senedd election), in the table, in the column headed “Time”, the entry corresponding to the entry “Delivery of nomination papers.” has effect as if—

(i) the reference to “10” were substituted by “9”;

(ii) the reference to “4” were substituted by “5”.

- (b) rule 4 (nomination of candidates at a Senedd constituency election) has effect as if after paragraph (1) there were inserted –

“(1A) The constituency nomination paper may also be delivered on the candidate’s behalf by a person authorised by the candidate for the purpose if the candidate has given the person’s name and address to the returning officer in writing or electronically before or at the time the paper is delivered.”

- (c) rule 6 (nomination of individual candidates at a Senedd regional election) has effect as if after paragraph (1) there were inserted –

“(1A) The individual nomination paper may also be delivered on the candidate’s behalf by a person authorised by the candidate for the purpose if the candidate has given the person’s name and address to the returning officer in writing or electronically before or at the time the paper is delivered.”

- (d) rule 9(1) (consent to nomination at a Senedd constituency election) has effect as if –

- (i) sub-paragraph (b) were omitted;
(ii) for sub-paragraph (c) there were substituted –

“(c) is delivered at the place for the delivery of nomination papers or is delivered electronically to an electronic address for that purpose; and

(d) is delivered within the time specified for the delivery of the nomination papers.”

- (e) rule 9(2) (consent to nomination at a Senedd regional election) has effect as if –

- (i) sub-paragraph (b) were omitted;
(ii) for sub-paragraph (c) there were substituted –

“(c) is delivered at the place for the delivery of individual nomination papers or party nomination papers, or is delivered electronically to an electronic address for that purpose; and

(d) is delivered within the time specified for the delivery of the nomination papers.”

15 **Review: preparations for the holding of the poll**

- (1) The Welsh Ministers must carry out reviews of the preparations for the holding of the poll for the 2021 election.
- (2) The first review must take place by 19 February 2021.
- (3) Subsequent reviews must take place at least once in each subsequent period of 21 days up until the poll for the 2021 election is held.
- (4) As soon as reasonably practicable after a review, the Welsh Ministers must lay before Senedd Cymru a statement summarising the result of the review and stating whether any postponement of the 2021 election is reasonably anticipated.

General

16 Interpretation

In this Act –

“the 2006 Act” (“*Deddf 2006*”) means the Government of Wales Act 2006 (c. 32);

“the 2007 Order” (“*Gorchymyn 2007*”) means the National Assembly for Wales (Representation of the People) Order 2007 (S.I. 2007/236);

“the 2021 election” (“*etholiad 2021*”) has the meaning given by section 1;

“coronavirus” (“*coronafirws*”) means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);

“the Llywydd” means the Presiding Officer of Senedd Cymru;

“primary legislation” (“*deddfwriaeth sylfaenol*”) means –

- (a) a Measure passed under Part 3 of the Government of Wales Act 2006 (c. 32);
- (b) an Act passed under Part 4 of that Act;
- (c) an Act of the Parliament of the United Kingdom.

17 Power to make consequential and transitional provision etc.

(1) If the Welsh Ministers consider it necessary or appropriate for the purposes of, in consequence of, or for giving full effect to any provision of this Act or provision made under it, they may by regulations made by statutory instrument make –

- (a) supplementary, incidental or consequential provision;
- (b) transitional, transitory or saving provision.

(2) Regulations under subsection (1) may –

- (a) make retrospective provision in relation to a local authority by-election within the meaning given by section 11(2), including provision having effect in relation to times before the coming into force of this Act;
- (b) amend, modify, repeal or revoke any enactment (including provision contained in this Act);
- (c) make different provision for different purposes or areas.

(3) Subsection (4) applies to a statutory instrument containing regulations under subsection (1) that amend, modify or repeal provision contained in primary legislation.

(4) A statutory instrument to which this subsection applies must be laid before Senedd Cymru and ceases to have effect on the expiry of 28 days beginning with the day it is made unless, before the expiry of that period, it is approved by resolution of Senedd Cymru.

(5) But if—

(a) Senedd Cymru votes on a motion for a resolution to approve a statutory instrument laid under subsection (4) before the expiry of the period of 28 days mentioned in that subsection, and

5 (b) the motion is not passed,

the instrument ceases to have effect at the end of the day on which the vote takes place.

(6) In calculating any period of 28 days for the purposes of subsection (4), no account is to be taken of any period during which Senedd Cymru is—

(a) dissolved, or

10 (b) in recess for more than 4 days.

(7) Subsections (4) and (5) do not—

(a) affect anything done in reliance on the regulations before they ceased to have effect, or

(b) prevent the making of new regulations.

15 (8) A statutory instrument containing regulations under subsection (1) to which subsection (4) does not apply is subject to annulment in pursuance of a resolution of Senedd Cymru.

18 Coming into force

This Act comes into force on the day after the day on which this Act receives Royal Assent.

20 **19 Short title**

The short title of this Act is the Welsh Elections (Coronavirus) Act 2021.