

## **Explanatory Memorandum to the Senedd Cymru (Representation of the People) (Amendment) Order 2021**

This Explanatory Memorandum has been prepared by the Office of the First Minister and is laid before 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 Senedd Cymru (Representation of the People) (Amendment) Order 2021.

**Mark Drakeford MS**  
**First Minister of Wales**

17 March 2021

## **PART 1**

### **Description**

1. The National Assembly for Wales (Representation of the People) Order 2007 (S.I. 2007/236) (“the Conduct Order”)<sup>1</sup>, which sets out the detailed rules for the conduct of elections to the Senedd is reviewed, and has generally been amended, before each general election to the Senedd.
2. Following the Welsh Elections (Coronavirus) Act 2021 (“the Act”) gaining Royal Assent, further amendments to the National Assembly for Wales (Representation of the People) Order 2007 are required through an amending Order ahead of the Senedd ordinary general election on 6 May 2021.

### **Matters of special interest to the Legislation, Justice and Constitution Committee**

3. None

### **Legislative background**

4. The Conduct Order was originally made under Section 11 of the Government of Wales Act 1998 (the predecessor to Section 13 of the Government of Wales Act 2006 “GOWA”)<sup>2</sup> but as a result of paragraph 8 to Schedule 11 to GOWA is treated as if having been made under Section 13 of that Act.
5. Section 13 was amended by the Wales Act 2017 and was previously a power of the Secretary of State. These powers are now vested in the Welsh Ministers. The Welsh Ministers therefore have the power to make an Order as to the conduct of the 2021 Senedd election under Section 13 GOWA.
6. Any amending Order to the Conduct Order is usually made under the draft affirmative procedure in accordance with Section 13(7) of GOWA.
7. Section 12 of the Welsh Elections (Coronavirus) Act 2021 changes the Senedd Cymru procedure applicable to regulations making temporary changes to the rules for Senedd elections taking place before 6 November 2021.
8. The effect of Section 12 of the Act is that regulations made under Section 13 of the Government of Wales Act 2006 in relation to elections taking place before 6 November 2021 will be subject to the made affirmative procedure.
9. Under the made affirmative procedure, the statutory instrument may come into force from the day it is made by the Minister. However, unless the Senedd agrees a motion to approve the statutory instrument within the timeframe specified in the

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<sup>1</sup> The National Assembly for Wales (Representation of the People) Order 2007  
<http://www.legislation.gov.uk/uksi/2007/236/contents/made>

<sup>2</sup> Section 13 of the Government of Wales Act 2006  
<https://www.legislation.gov.uk/ukpga/2006/32/section/13/2018-04-01>

parent Act, the instrument will cease to have effect. In relation to this Order, the Order must be approved by resolution of the Senedd within 28 days from the day that is made, discounting periods of dissolution or when the Senedd is in recess for more than 4 days.

10. Section 12(3) of the Act states:

“(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.”

### **Purpose and intended effect of the legislation**

11. The National Assembly for Wales (Representation of the People) Order 2007 sets out the detailed rules for the conduct of elections to Senedd Cymru. It sets out the way in which the election and the election campaign are conducted, and includes provisions for legal challenge to an election. It also includes provisions concerning the collection and retention of personal identifiers for postal and proxy voters and requirements in connection with the application for and dealing with absent votes.
12. The Conduct Order is reviewed and has generally been amended before each Senedd general election. Amendments to the Conduct Order are typically made to reflect any relevant policy or legislative changes, or any relevant technical and/or minor updates which have taken place since the previous election.
13. The Senedd Cymru (Representation of the People) (Amendment) Order 2020 which outlined amendments to the Conduct Order in readiness for the 2021 Senedd general election was made on 16 December 2020 and came into force on 17 December 2020.
14. The Welsh Elections (Coronavirus) Act 2021 also made modifications to the National Assembly for Wales (Representation of the People) Order 2007 to respond to the potential risks to the ordinary general election for membership of Senedd Cymru arising from the coronavirus pandemic.
15. The provisions in the Act apply only for the 2021 ordinary general election, which is currently due to take place on the 6<sup>th</sup> May 2021 or may be postponed under the Act to a date no later than 5<sup>th</sup> November 2021. The provisions of the Act do not apply to any subsequent elections.
16. Following the Welsh Elections (Coronavirus) Act 2021 gaining Royal Assent, further amendments to the National Assembly for Wales (Representation of the People) Order 2007 are required through an amending Order ahead of the Senedd ordinary general election currently scheduled on 6 May 2021.
17. The provisions included in the Senedd Cymru (Representation of the People) (Amendment) Order 2021 will follow the made affirmative procedure in

accordance with Section 12 of the Welsh Elections (Coronavirus) Act 2021, and apply to the 2021 Senedd general election.

#### Time of closure for receipt of nominations for the 2021 Senedd election

18. For the purposes of the 2021 Senedd election, Section 14(5)(a) of the Welsh Elections (Coronavirus) Act 2021 extended the time for delivery of nomination papers from 10:00am to 4:00pm on each day that nominations can be delivered to 9:00am to 5:00pm to provide more time on each day when nominations can be delivered to respond to the circumstances of the pandemic.
19. The last day for delivery of nominations is the nineteenth day before the day of the election. On that day, it is preferable for the deadline for closure of nominations and withdrawal of nominations to be contiguous.
20. The 2021 Order will revert the time for closure of receipt of nominations to 4:00pm on the nineteenth day before the day of the poll to align the times for receipt and withdrawal of nominations.

#### Prescribed "Home Address Form" for the Senedd elections

21. The Senedd Cymru (Representation of the People) (Amendment) Order 2020 inserted the home address form into the Conduct Order. The form allows candidates to request that their home address not be made public on nomination papers. The form asks a candidate to insert the name of the Senedd Cymru constituency within which the candidate resides.
22. The 2021 Order will amend the form to include reference to the UK Parliament and this will serve to capture any candidates living outside Wales. The provisions in the Conduct Order relating to the form will also be amended to make reference to Senedd Cymru and UK Parliamentary constituencies.
23. This amendment will apply to the 2021 Senedd election only and will need to be incorporated into a revised or new Order for subsequent elections.
24. The purpose and intended effect of the Senedd Cymru (Representation of the People) (Amendment) Order 2021 is therefore to correct the positions on the time for the closure of receipt of nominations and the home address form.

#### **Consultation**

25. The Electoral Commission have been consulted throughout the process of producing the Senedd Cymru (Representation of the People) (Amendment) Order 2021. This is in line with Section 7 of the Political Parties, Elections and Referendums Act 2000 which requires consultation with the Electoral Commission before an Order under Section 13 of the Government of Wales Act 2006 can be made.

26. The Electoral Commission's response when consulted on the draft Order was that they are content with both the provisions relating to the time of closure of receipt of nominations and the home address form.
27. The changes included in the 2021 Order have also been discussed with the electoral community, including with the five Regional Retuning Officers ("RROs"). It was agreed with the RROs to include the provision to revert the time for closure of receipt of nominations to 4:00pm on the nineteenth day before the day of the poll to align the times for receipt and withdrawal of nominations.

### **Regulatory Impact Assessment (RIA)**

28. The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. 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 the provisions relating to the time of closure of receipt of nominations and the home address form as these fall within the exemption contained within the Code where routine technical amendments or factual amendments are required to update regulations.