

# Review of Rules and Guidance on the use of Senedd Resources. Report of Consultation - 2022

18 July 2022

As Chief Executive and Clerk of the Senedd, I am responsible for providing Members of the Senedd with resources and services to undertake their roles. I am also the principal accounting officer of the Senedd Commission. This requires me to provide assurance on how resources provided via the Commission budget are spent. There are many ways in which I achieve the necessary assurance that resources are used in accordance with my accounting officer role. This includes provisions made for Members' pay and allowances by the Independent Remuneration Board of the Senedd ("the Board"). One such way of doing so is by setting rules for how resources should be used. These are not intended to restrict what Members are lawfully entitled to do but rather to provide clarity and assurance.

My predecessor in this role collated various rules from across the Senedd about the use of resources. This is something I have continued as I believe it clearly sets out in one place all resource-related rules for Members of the Senedd. It also gives the staff of the Senedd an unambiguous basis on which to provide advice to Members.

This report sets out various changes that will be made to the Rules for the Use of Senedd Resources. These changes are made following a public consultation which received responses from Party Groups in the Senedd, individual Members of the Senedd and their staff, Members of the public and key stakeholders. The aim of the changes is to enhance clarity and ensure the rules are up to date with the provisions made by the Board. It is hoped that the changes will enable Members to make the best use of the available resources and increase transparency on how funding is used.

As Members requested, the rules seek to achieve a balance in terms of being clear about the intention, whilst providing for individual Members to exercise



their judgement in some areas. However, those areas also carry a greater responsibility on the part of Members to account for the judgement they have exercised if called upon to do so.

Some of the responses to the consultation called for a comprehensive review of the support structures for Members. This is an important suggestion, which I would be happy to support provided there is agreement to do so across the Senedd. However, it seems prudent to wait until current discussions in relation to Senedd reform have concluded so that a holistic review of support can take place.

I am grateful to everyone who engaged with the consultation in such a positive and constructive manner to inform the development of this update to the Rules and Guidance.

Manon Antoniazzi

Chief Executive and Clerk of the Senedd

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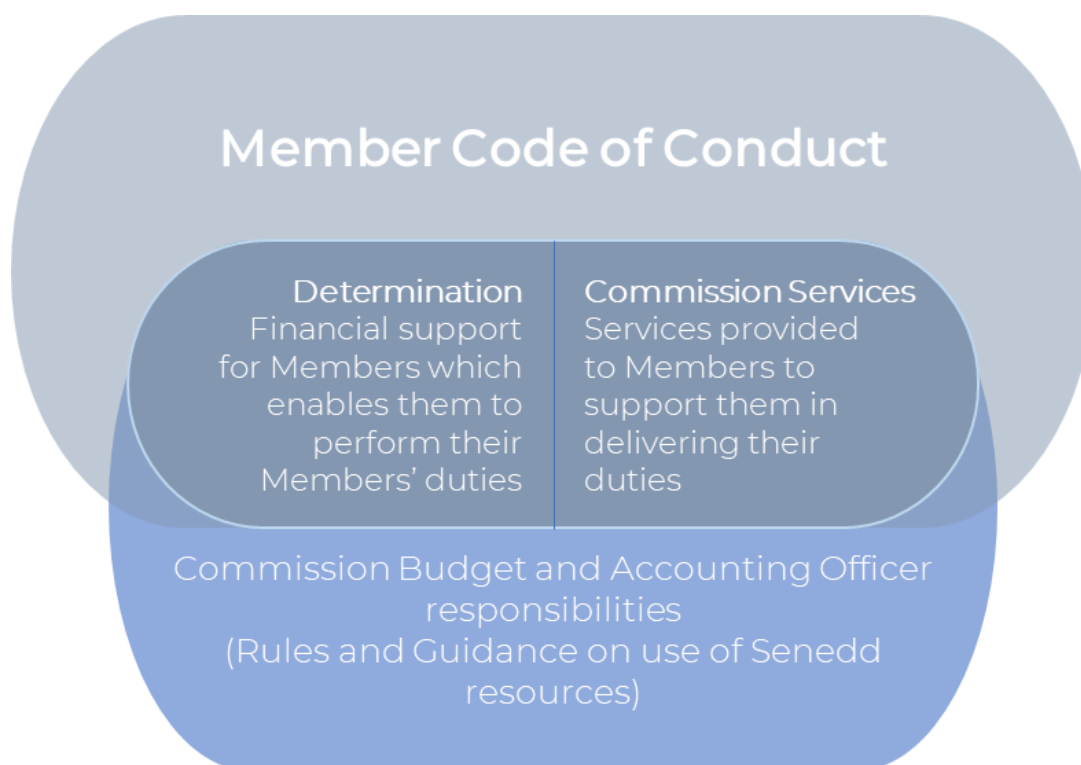
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# 1. Introduction and status of the Rules

1. The regulation of the conduct of Members of the Senedd, their remuneration and allowances, the functions of the Senedd Commission and the role of the accounting officer are all interrelated. The current arrangements have developed incrementally since the Commission was established in 2007. The inception of the Independent Remuneration Board and the Commissioner for Standards followed shortly afterwards as did approval by the (then) accounting officer of the first set of Rules on the Use of Senedd Resources.
2. Each plays a role in determining and administering the services and resources that are made available to Members of the Senedd are the responsibility of various decision-makers, as follows:
  - The Code of Conduct is approved by the Senedd. Complaints are investigated by the Commissioner for Standards. Where applicable, the Committee responsible for Standards decides on what actions to recommend to the Senedd in light of a report from the Commissioner.
  - The Determination is set by the Independent Remuneration Board of the Senedd.
  - The Senedd Commission is required to provide Members with property, staff and services for the Senedd's purposes. It decides how best to make those provisions. Most decisions are, however, delegated to the Chief Executive and Clerk.
  - The Rules and Guidance on the Use of Senedd Resources are made by Accounting Officer (the Chief Executive and Clerk).
3. The Code of Conduct and the Determination, along with their underlying principles, set the parameters for Members' access to services and resources and the framework within which the Accounting Officer rules exist.



## The Code of Conduct

4. The Code of Conduct (the Code) sets out the standards of behaviour and conduct expected of Members of the Senedd. It has statutory authority under the legislation which established the independent Commissioner for Standards (the National Assembly for Wales Commissioner for Standards Measure 2009). The Code is periodically agreed by the Senedd following proposals from the Committee with responsibility for Standards. So, the code is not static and is updated from time to time to reflect changing circumstances.
5. The Code requires Members to comply with rules made from time to time by the Chief Executive and Clerk of the Senedd (the Clerk) as Principal Accounting Officer of the Senedd Commission on the use of resources provided to Members by the Senedd Commission (the Commission).

## The Determination

6. The Independent Remuneration Board of the Senedd (the Board) has the function of making determinations relating to Members' salaries, allowances, and pensions. The rules are set out in the Board's Determination on Members' Pay and Allowances, more commonly known as the "Determination", which must be made based on:

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- providing Members of the Senedd with a level of remuneration which fairly reflects the complexity and importance of the functions which they are expected to discharge, and does not, on financial grounds, deter persons with the necessary commitment and ability from seeking election to the Senedd;
  - providing Members of the Senedd with resources which are adequate to enable them to fulfil their functions as Members; and
  - ensuring probity, accountability, value for money and transparency with respect to the expenditure of public funds.

7. Section 1.3 of the Determination sets out the principles of financial support which are aligned with the Code of Conduct for Members of the Senedd and underpin the rules by which Members may be reimbursed and payments administered.

8. As well as Members' remuneration (including the salaries of all office holders and Members' pension rules), the Board sets allowances and associated rules for Members to be reimbursed the costs related to their Members' duties. In some cases, the Commission administers these payments directly, for example, Support Staff are paid directly by the Commission.

9. Section 1.3A of the Determination sets out the role of the Board and section 1.3B the role of the Commission, which is described as follows:

*1.3B.1. The Senedd Commission is responsible for providing the funds required to meet the costs of the remuneration and financial support allowed under the Determination. The Senedd Commission also provides a broad range of support services for Members in addition to that provided for under the Determination. The Chief Executive and Clerk, in their capacity as Accounting Officer, is responsible for oversight of the use and stewardship of public funds and resources. On occasions the Board may also seek or receive advice from the Accounting Officer on issues relevant to their Accounting Officer duties.*

*1.3B.2. The Chief Executive and Clerk ensures that expenditure by Members provided for by the Determination is properly and efficiently administered by Senedd Commission staff and that Members are advised on how to make claims, notwithstanding*

*that Members remain personally responsible for all their claims.*

10. The use of resources is allocated by the Determination and provided by the Commission. Resources are administered consistently with the Determination and in accordance with the Accounting Officer's Rules and Guidance on the Use of Resources.
11. The Annual Budget Motion, agreed by the Senedd, sets out the resource available to the Commission each year. This amount is provided to fund items such as the Commission's operational costs and to meet the provisions of the Determination, which are required to be provided by the Commission and fall under the responsibility of the Accounting Officer.
12. The Annual Budget Motion provides an overall budget for the Commission and there is no ring-fenced amount for the provision of the Determination. The Commission itself distinguishes between the Determination and the remainder of the budget, ensuring there is adequate funding for its provision, as required.
13. All items claimed under the Determination (whatever the cost) remain the property of the Commission.

### **Commission services**

14. The Commission is established as a corporate body to provide property, staff and services to support Members.
15. The Commission provides direct services and property to Members (unlike the Determination which enables Members to choose how to use their allowances and be reimbursed).
16. The Commission, in accordance with paragraph 7 of Schedule 2 to the Government of Wales Act 2006, has delegated its functions, including its responsibility for the management of staff, to the Clerk subject to the following exceptions and conditions:
  - the appointment, terms and conditions and remuneration of the Clerk, non-executive independent advisers to the Commission, and members of the Audit and Risk Assurance Committee; and



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- the authorisation of expenditure under paragraph 6 of Schedule 2 to the 2006 Act (provision of financial assistance to the Electoral Commission)

17. The Commission also set out that the Clerk must consult the Commission before:

- making appointments to any Director level posts;
- changing the remuneration and terms and conditions for the staff occupying those posts;
- creating new Director posts or abolishing existing Director posts;
- authorising expenditure for projects or contracts in excess of £5 million; and
- authorising expenditure on matters that could be regarded as novel or contentious.

18. The delegation of the functions by the Commission, however, does not prevent the exercise of those delegated functions by the Commission.

19. Whilst the Commission has the discretion as to how to discharge the duty of providing the Senedd with the necessary property, staff, and services, it is also subject to the financial oversight of the Clerk, as the Commission's Principal Accounting Officer, and it is accountable to the Senedd.

### **Principal Accounting Officer**

20. The Principal Accounting Officer of a public sector organisation is the custodian of public trust in its use of public resources. The responsibilities of an accounting officer are set out in a direction issued by HM Treasury, and additional guidance is provided in their publication "Managing Public Money".

21. In the case of the Commission, the Accounting Officer is the Clerk, who is designated as Principal Accounting Officer under section 138 of the Government of Wales Act 2006.

22. As Principal Accounting Officer, the Clerk is accountable to the Senedd and must be able to assure the Senedd and the public of high standards of probity in the management of public funds.

23. The Accounting Officer is personally responsible for the regularity and propriety of expenditure, robust evaluation of different mechanisms for delivering policy objectives, value for money, the management of risk, and accurate accounting for the use of resources. To support these responsibilities the Accounting Officer requires an effective assurance regime. The rules on the use of resources are part of these assurance arrangements.
24. Rule 8 of the Members' Code of Conduct underpins the rules and states:
- Members must comply with the rules made from time to time by the Clerk and Chief Executive of the Senedd as Principal Accounting Officer of the Senedd Commission on the use of resources provided to Members by the Senedd Commission.*
25. Any resources made available to Members, whether in the form of services or property by the Commission or via the Determination, are administered in accordance with the Accounting Officer's Rules on the use of Senedd Resources ("the Rules"). They ensure a consistent interpretation across the use of all resources funded by the taxpayer, through the Commission budget.
26. To assist Members in complying with the Rules, the Clerk, as Principal Accounting Officer, has also issued Guidance, which is published with the Rules, but does not form part of the Rules.
27. "Rules and Guidance on the Use of Senedd Resources" were first issued in early 2016, with the approval of the then Accounting Officer, and within the Accounting Officer's remit to ensure the regularity and propriety of expenditure. They brought together in one place various rules and procedures that had developed over several years to ensure the expenditure of Commission resources for their intended purposes. The enforcement of those Rules was secured through section 10 of the previous Members' Code of Conduct, which also required Members to comply with the Rules and Guidance on the Use of Assembly Resources.
28. The present Accounting Officer committed, in summer 2020, to review these Rules on a regular basis to ensure that the provisions outlined continue to be relevant in changing circumstances, as well as to reflect the experience gained from their operation. This was in response to issues drawn to the attention of the Clerk by the Board or raised with the

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Standards Committee by the Commissioner for Standards, the latter in discharge of his statutory functions, or raised by Members.

29. The Rules were presented in a new format which also incorporated guidance for Members and their staff, with a view to making them clearer and easier to use.

### **Reviewing the Rules and Guidance on the Use of Senedd Resources**

30. Over time, Members have asked for greater clarity about the use of resources provided for them to deliver their duties. Part of achieving this has been through the production of these rules and refining the content with the aim of reaching an effective balance to provide clarity without being over prescriptive – to learn lessons from experience but not over correct.
31. The aim of this consultation was to help simplify the Rules and achieve a shared understanding and a respectful relationship of mutual trust and confidence in relation to the regulatory framework within which Members operate when they wish to access public funds. The proposals recognised the complexity of the situation within which Members of the Senedd need to operate.
32. Prior to launching the consultation, the Accounting Officer engaged with representatives of Members and their support staff. The proposals put forward for consultation included areas of the Rules and Guidance which needed to be adjusted in light of experience or that would benefit from additional clarification. They also took account of a number of issues that had been raised by Members and representations which had identified ways in which some wording in the Rules could be adjusted for consistency or to make the meaning clearer.
33. Having considered the feedback to this consultation, and more widely, the revised rules will be clarified and simplified where possible – such as by removing unnecessary repetition and making changes which would enable the deletion of some rules all together.
34. Two consultation responses suggested that the current decision making and regulation arrangements for how Members are resourced to carry out their scrutiny and representational roles has led to some confusion, overlap and concerns about accountability.

35. The responses also commented that it has been some time since the arrangements were reviewed in a significant or holistic way, advocating a wider review to consider whether the current balance of responsibilities that support the operation of the Senedd is right. One went on to suggest a pause in consideration of the proposals under consultation while such a review takes place.
36. The initiation of a more wide ranging review of the regulatory framework for Members at this time would take place against the backdrop of the work of the Special Purpose Committee on Senedd Reform and subsequent legislation. For example, the future relevance of consultation responses referring to the use of resources by Regional Members to “target” particular constituency seats, depends of the electoral arrangements for an expanded Senedd.
37. Such a review could result in recommendations to amend and/or restate the legislation regulating the institutions that support the operation of the Senedd. Accordingly, a review would need to be undertaken by the Senedd rather than by board members, office holders or officials of the institutions the Senedd has created or which are within its legislative competence (i.e. the Commission). Furthermore, such a process would be both open through being conducted in public and also evidence-based.
38. By the start of the Seventh Senedd the present arrangements will have been in operation for some years and there is a case for a review of both the substance of the legislation underpinning these and their integration and interrelationships in the light of operational experience.
39. It is a matter for political consensus as to whether a comprehensive review should take place and the format of such a review. However, it is recommended that such a review is not initiated before the future structure of the Senedd, and its electoral arrangements, are known as a result of the current discussions about Senedd reform.
40. Should there be a consensus on undertaking a comprehensive review, the constraints arising from the Senedd reform process, both in terms of understanding the future structure of the Senedd and the timing of the reform process, suggest that such a review could only work effectively if carried out later in the present Senedd probably with a view to implementation at the start or early in the Seventh Senedd.

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41. Pending any more wider review, changes made as a result of the current consultation exercise will address areas where there is a broad consensus, or which clarify matters arising from the consultation. These updated Rules and guidance will form the basis for use in decision making in the administration of the Determination and for use of Commission services where they are necessary.
42. To address some of the further comments about confusion or lack of clarity about accountability in the framework within which the Rules exist it is intended to be more explicit about the relationship of the Rules with the Determination and the consultation that has been undertaken in amending text content of the Rules.

### **The consultation proposals**

43. A chapter by chapter summary of the feedback received and subsequent conclusions about changes to the Rules and Guidance on use of Senedd resources is set out below.
44. Annex A provides a copy of the updated text for the rules, to be issued for use from 18 July 2022.

## 2. Proposals on the employment of staff funded by Commission resources

45. The consultation set out the following proposals in relation to the rules relating to the employment of Member's staff funded by Commission resources:

*Proposal 1. It is proposed to amend existing Rule 3 to use more clear wording by stating "Members must ensure that all staff employed by them only undertake work in connection with the Member's duties during the time they are contracted to undertake work, which is remunerated with Commission resources."*

*Proposal 2. It is proposed to supplement guidance to Rule 3 to advise that Members must consider what processes they need to put in place in order to ensure that their staff only undertake work in connection with the Member's duties (i.e. the purpose for which the provision is made) during their working time. That process might include keeping accurate records of hours worked by each staff member, but it will not be a requirement.*

46. The full background to the proposals can be found in the consultation document.

### Summary of views on the proposals

#### Proposal one

47. There was broad agreement to the principle advocated by this rule.

Members recognised the need to manage the work undertaken by their staff, highlighting the varied ways support staff deliver their roles.

48. One response suggested that it would better to base the main rule about what use of the Commission's resources is acceptable on a simple and definitive list of prohibited activities, and that this Rule (3) should require that "Members shall ensure that any of the staff employed by them do not undertake improper work during the time they are contracted to undertake work paid for by Commission resources." A definition of

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"improper work" would be needed to set out the types of activity described in the list of prohibited activities.

49. Most of the responses also set out that support staff sometimes undertake public duties such as being a school governor etc. Members highlighted that the Board permits staff to take paid leave for some activities and that this may need to be reflected in the guidance to this rule.

## **Proposal two**

50. There was a broad acknowledgement that, as an employer, each Member needs processes in place to enable them to account for staff time. The recognition that individual Members should set the mechanism for this for their staff was welcomed. The Labour group response stated that Members already ensure they have processes in place and the Plaid Cymru group response stated that their Group Office has introduced mandatory recording of working hours and leave. The Conservative Group expressed the view that it is impractical for Members to carry out their duties and to fully monitor the hours worked by their staff. One individual respondent's view was that Members should ensure that staff record when they start work for the Member and when they finish.
51. Some wider views were also expressed on the adequacy of the staffing support budget, which is a matter for the Remuneration Board and these responses will be shared with them.

## **Response to feedback:**

52. Proposal One was to make the existing rule clearer, not to introduce a new rule.
53. The employment relationship is between each Member and their staff. As individuals, Members are able to employ staff in any role/contract etc subject to employment law. Usually, Members wish to do this within the allowances made available to them through the Determination so that the financial liability can be met by the Member from public funds. Members Business Support (MBS) assist and advise Members in seeking to ensure that all staff costs incurred are recoverable from allowances. Any costs that are not recoverable from public funds must be met by the Member as employer as they are liable for all the costs arising from the employment of staff.

54. The most significant part of rule 3 is in the guidance rather than the rule, as the Determination includes that staffing expenditure costs can only be claimed in respect of costs which are “wholly, exclusively and necessarily for the purpose of the performance of their duties as Members”.
55. The Remuneration Board’s recent review of the Determination considered further provisions for paid/unpaid special leave. This relates directly to the point made by respondents that support staff sometimes undertake public duties.

## **Outcome and Decision**

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56. The need for additional wording to clarify the Board’s agreement that support staff may undertake specific activities, not directly related to the employing Member’s duties will be reflected in the update to the Rules. This will be in addition to the clarification of the wording set out in Proposal 1. The potential for the specifics of those activities to change will be reflected in the way in which the Rule is worded.
57. The proposal to change the approach in the Rules to set out a main rule about what use of the Commission’s resources is acceptable by listing prohibited activities would require more extensive redrafting to the rules. It is explored in greater detail under proposals 3 and 4.
58. The guidance to Rule 3 will be supplemented to incorporate the proposed advisory text, and to reflect points about other activities undertaken by Members’ staff. Considering wider feedback to the consultation about clarity and simplification, text in the guidance will be simplified and unnecessary repetition will also be removed.



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### 3. Proposals on defining party political for the purpose of the use of resources

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59. The consultation set out the following proposals in relation to defining party political for the purpose of the use of resources.

***Proposal 3.** It is proposed that the existing definition of ‘party political’ is retained, other than to add clarification to include reference to campaigning generally and in referendums. The Rule would thus read as follow:*

*“party political” – means anything that could be perceived by a fair minded and impartial observer as party political or seeking to achieve a particular result in an election or referendum (whether as a member of a registered political party or not), but does not include the discussion and deliberations by Members and their staff related to the political response to business before the Senedd including the business of the political groups within the Senedd, [or the use of logos or branding in accordance with these Rules<sup>1</sup>].*

***Proposal 4.** In relation to Rule 1 guidance, about Members’ personal accountability, it would be made clear that Members must bear in mind, as an overarching principle, that Senedd resources must not be used for party political activity.*

60. The full background to the proposals can be found in the consultation document.

#### **Summary of views on the proposals**

61. The Remuneration Board supported proposals 3 and 4 as it considers activity/content of material that would be perceived as party political should not be funded from Commission resources. It reiterated its guiding principle:

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<sup>1</sup> The words in square brackets are to be subject to further consideration in light of replies to the proposals in Part 7 below.

*“... to ensure that only Senedd business is funded by the taxpayer and not party business.”*

62. All Party groups expressed concern about the existing definition and approach. Strong views were expressed that Members of the Senedd undertake their role in a fundamentally political environment. They said that a better way needs to be found for differentiating between operating a political party or carrying out explicit party political activity from the Senedd estate, which is not acceptable, and allowing Members to operate as politicians.
63. A proposal was made to replace the definition with one which sets out the prohibited activities. In the respondent's view, it would be better to base the main rule about acceptable use of the Commission's resources on a simple and definitive list of prohibited activities. This would be similar to the list applied to "Short Money" (issued to opposition parties in Westminster) which was referenced in the consultation document.
64. Few comments were received specifically on proposal four. The feedback received was supportive of the proposal, reinforcing the principle that Senedd resources should not be used for party political purposes. Comments received included “this proposal is unambiguous and reasonable”. One Group observed that they would have liked to see full wording included in the consultation before commenting.
65. The Remuneration Board re-stated in its response that it has “deliberately sought, through some of the changes it has made to the Determination for the Sixth Senedd, to remove any potential for public funds to be used for party political purposes.”
66. One respondent agreed with the proposal within a context of their view that defining the acceptable use of the Commission's resources would best be done through the main rule and defining a list of specific prohibited activities.

## Response to feedback

67. The definition in proposal 3 effectively sets out how ‘party political’ would be interpreted, for example when administering the Determination, and was aimed at adding clarity to existing text. Some of the responses effectively asked for further clarity on this definition, in particular seeking

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recognition that Members of the Senedd operate in a political environment.

68. Contributions range around the right of Members to engage in political discussions, as part of democracy in Wales, to the principle of political party business not being funded by the taxpayer.
69. The Accounting Officer has recognised within the existing rules and guidance that maintaining a strict separation between business that properly relates to Member duties and something that falls within the definition of “party political” can sometimes be difficult.
70. The rules form part of the framework of assurance for the Accounting Officer’s role as custodian of public resources. The existing definition was written so as to encompass what would be the test in law “that could be perceived by a fair minded and impartial observer as...”, whilst recognising within guidance that an incidental reference to something party political during the otherwise proper conduct of a Member’s duties is unlikely to amount to a breach of Rules.
71. The Accounting Officer has previously explained that the “business before the Senedd” encompasses all the activities permitted under Standing Orders – including oral questions, debates, statements, draft bills, committee scrutiny and activities such as challenging and interrogating Ministers as part of Senedd business in holding the Welsh Government to account.
72. In considering the points made by some respondents to the consultation in relation to Proposals 3 and 4, it is concluded that further amendments to Rule 1 and the definition of “party political” would be helpful in clarifying that Members reasonably need to prepare for, as well as participate in, the business before the Senedd. The inclusive nature of the operation of Senedd business means that Members are not limited to responding to Senedd business, but drive and shape it in the way they deliver their parliamentary duties.

## **Outcome and Decision**

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73. In response to the consultation feedback, a number of options of approach have been considered. Rather than proceed with the proposals as set out, the updated version of the Rules will instead reflect the feedback and

encompass the supported overarching principle that Senedd resources must not be used for party political activity (and that they are provided to facilitate the discharge of a Member's duties) into the wording of Rule 1 and provide within the guidance an indication of activities which would breach the rule.

74. This approach would enable the definition of "party political" to be removed from the Interpretation section of the document. It would also enable repetitive descriptive information to be removed from several other areas of rules and guidance. The guidance would also be supported by moving the existing de minimis provision from elsewhere in the rules.
75. There is some risk associated with inclusion of a list of activities, if an area of 'improper' work is not identified in the list, and the approach being taken to mitigate this is to include these as examples within the guidance rather than as text of the Rule itself.
76. The updated guidance will also include a reminder to Members that they should keep in mind their separate statutory obligations under the Political Parties, Elections and Referendums Act 2000, the Representation of the People Act 1983 and the National Assembly for Wales (Representation of the People) Order 2007 as appropriate. This legislation regulates donations to Members, to political parties and to candidates in an election. The rules around donations apply at all times but have particular significance in the run-up to an election. The misuse of Senedd resources may constitute a donation to the Member or their Party, which may attract criminal or civil liability under statute for those concerned. Members are responsible for ensuring that they are aware of, and act in compliance with, any such requirements, which are out of scope of the Accounting Officer Rules. Members should refer to the Electoral Commission for any guidance on these matters.

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## 4. Proposals on data protection

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77. The consultation set out the following proposals in relation to data protection:

***Proposal 5.** It is proposed to introduce a requirement for a simple clear statement to be used when any Commission funded communication or engagement activity will result in the collection of personal data to make clear that it will not be shared, other than to necessarily support case work, and that information provided will be treated anonymously.*

78. The full background to the proposals can be found in the consultation document.

### Summary of views on the proposals

79. There was no objection to the proposal to introduce the requirement for a statement to be used regarding activity where personal data is collected.

80. The Conservative group response states that their Members already use standardised data protection wording on surveys and publications. They suggested that the statement could be amended to reference “the special category of MSs as elected representatives in data protection legislation”. The Plaid Cymru Group expressed concern that there could be unintended consequences of limiting collection of data explicitly to case work.

### Response to feedback

81. The consequence of the proposal set out is to make it clear that personal data collected, where it is funded through Commission resources, should not be shared other than where that is necessary for casework. The rule is intended to relate to the sharing of data collected rather than to the collection of it.

82. With reference to the “special category of MSs as elected representatives”, The view from the Commission’s Legal Service is that elected representatives do not have a special status under data protection law and are subject to data protection requirements just like any other individual / organisation that processes personal data. The regulator of personal data, the ICO, has produced extensive guidance for elected representatives

(although it is noted that some of it is out-of-date), but in particular it states: “Elected representatives have data protection responsibilities for the personal information they process in their work. They are data controllers under the UK GDPR. This means they are responsible for making sure all personal data handled by their office is done in a way that complies with the requirements of the UK GDPR.”

## **Outcome and Decision**

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83. From the responses received it appears there is no change needed to the purpose of this proposal. However, the wording of the change will be adjusted to make clear that the requirement is about personal data, which can be shared where necessary for individual case work. Guidance will be added to clarify that personal data collected in relation to a Member’s duties, through any Commission funded activity, must not be shared with political parties/campaigns, but that information collected to inform research or policy development may be shared for that purpose, providing the information is anonymised of personal data.

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## 5. Proposals on communication and engagement with constituents using Commission resources

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84. The consultation set out the following proposals in relation to communication and engagement with constituents using Commission resources:

***Proposal 6.** It is proposed to make explicit that items/materials produced for constituent engagement using Senedd resources must not be added to with additional materials of a party political nature.*

***Proposal 7.** It is proposed to allow Members to refer to their party affiliation as part of the way that they inform their constituents of the ways they are delivering their role as a Member of Senedd, provided it is done as a factual statement in plain text.*

***Proposal 8.** It is proposed to mitigate against the risk of perception of public funds being used for party political purposes by removing access to parliamentary funding for any materials, whether physical or digital, which include use of party logos or political campaign emblems. This would apply to claims made from the implementation date for the updated rules.*

*The guidance associated with this rule would remind Members that their use of colour (including party brand colour) and photos in engagement material will contribute to the way those materials are likely to be perceived by a fair minded and impartial observer and that care should be taken to prevent a perception of the materials being party political.*

*Use of the Senedd logo, in specified ways, would be permitted.*

***Proposal 9.** It is proposed to amend the wording of Rule 10 to make clear that a Member's website that is built or maintained using Commission resources must only be used in connection*

*with a Member's duties. The reference to logos or branding in Rule 10 would also be removed to be consistent with the proposal above.*

***Proposal 10.** It is proposed to make explicit the requirement for a simple clear statement, displayed prominently, on a website funded using Commission resources to state that the costs of the website have been met by the Senedd Commission from public funds.*

***Proposal 11.** It is proposed to make clear that a website funded using Commission resources must not contain or embed party political content.*

***Proposal 12.** It is proposed to adjust the guidance relating to social media to remind Members of the parameters within which they must operate, and to clarify that, if using Commission resources, promotional activity must be delivered in the way the provision intends, must not be party political and must not be aimed at a party political audience or for electoral gain.*

85. The full background to the proposals can be found in the consultation document.

## **Summary of views on the proposals**

86. There were no objections received to the principle of proposal six. Individual respondents to the consultation accepted that, for example, Commission-funded materials should not be mixed with party-political literature.

87. However, all the groups expressed concerns that proposal six could be misinterpreted and inadvertently impact on the use of volunteers to deliver materials. The concern expressed arises from the fact that volunteers routinely deliver both party political material and materials paid for using Senedd resources. In other words, materials funded from different sources are often delivered at the same time.

88. There were generally no objections to proposal seven to allow Members to refer to their party affiliation, however several responses were linked to those made to proposal eight (summarised below).



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89. The Board expressed the view that proposal seven appeared to be a reasonable and practicable way to allow for party affiliation to be clearly communicated to constituents whilst also avoiding the perception of improper use of public funds that may arise from the use of party logos.
90. One individual suggested that a potential unintended consequence of proposals 7 and 8 could be a proliferation of party affiliation being described within text. They felt proposals 7, 8 & 9 should be abandoned (with the exception of the reference to the use of the Senedd logo, which they suggest should be mandatory within all Commission-funded communications).
91. In response to proposal eight (and related proposals) there was agreement that this matter should be clear, and recognition that a requirement that involves judgment needing to be applied can be complicated and difficult.
92. The Board supported the proposed change to prohibit the use of party logos on publicly funded materials and recognised it as implementing the recommendation of the previous Board. They also supported that existing products should continue to be used to the end of their lifespan, as a reasonable and proportionate approach to implementing the proposal on the use of logos over time.
93. The Board referenced its previous correspondence in which it had said “when the time is right, the use of political party logos on all publicly funded resources should not be allowed. Members are elected to represent and communicate with all their constituents as a Member of the Senedd, not on behalf of their party or those who voted for their particular party”. The Board observed that the inclusion of any lists of materials should be clarified with wording that it is not exhaustive.
94. The other responses received were not supportive of this proposal. In general, the other respondents argued strongly that the use of party logos helps to bring clarity to communications with the public, particularly as one third of Members are elected on the basis of the Regional lists and residents of Wales each have five representatives in the Senedd, not one. The party groups describe party logos as a valuable way of helping to identify a Member and their allegiance/values to their constituents (in the interests of transparency), and an argument is presented that the main risk of Commission funded material being perceived as “party political” lies

in the written content. They express confidence that the current rules and checking mechanisms ensure that party political content is not permitted. Groups argue that presence of a single discreet party/group logo should be permitted on engagement materials and that this would be a more proportionate approach.

95. There were some suggestions about limiting size (e.g. no bigger in height than the equivalent of two lines of text) and location of party logos.
96. No respondents objected to proposal nine to make the wording of the rule clear in relation to the purpose permitted for a publicly funded website being solely for Members' duties. The responses received in relation to proposal nine focused on the use of logos and sought consistency with the decisions on logos in relation to proposal eight.
97. There was no explicit disagreement with the principle of clarification at proposal ten that inclusion of the statement about funding extends to websites. However, there was some concern raised that the proposed wording of 'displayed prominently' may be open to too much interpretation and create operational difficulties.
98. One response made a separate point, expressing the view that the wider requirement to include a statement that items are funded by the Commission from public funds can be disproportionate and asked for it to be removed. They illustrate this concern with an example of office signs.
99. The Conservative Group observed that its Members already include a statement about funding on their websites. The Plaid Cymru Group expressed concern that the word 'prominently' would require Commission officials to exercise judgement.
100. There were no objections received to proposal 11, to make clearer that a website funded using Commission resources must not contain or embed party political content. The Conservative group response was that this is already the case for the websites of their Members.
101. There was acceptance that Commission funded websites should not contain static content which is party political. Some concerns were expressed that wording may have an impact on the embedding of Social Media feeds which could have incidental party political content such as re-tweets and likes.

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102.It was requested that clarity was provided that Member's social media feeds should be permitted to be embedded in a Member's website as a 'live' feed. This was to avoid Members inadvertently contravening this rule, reflecting that the alternative would be to exclude feeds from their social media or to have separate Senedd and 'party' profiles, which the respondents felt would be out of touch with realities of social media. They expressed the view that integrated content from platforms like Twitter and Facebook are key to modern website design and enabling communication with constituents.

103.It was suggested that to strengthen protections, the statement referenced in proposal ten should also include a disclaimer requirement to the effect that the Senedd has no ownership or control over the nature and content of embedded social media feeds.

104.There was broad agreement with proposal twelve and it was considered reasonable guidance where claims are made for costs associated with activity on social media, such as claims for boosting posts on Facebook. It was requested that the guidance was clear that this did not include routine posts to social media - which are not paid for by the Commission. Responses highlighted that Members should be free to post their opinions on political matters to their own accounts if they so wish, subject to the wider rules on standards of conduct.

## Response to feedback

105.The proposed amendments to the Rules cover several distinct aspects of communication and engagement activity. The principle being applied across these proposals is one of seeking to be clear that parliamentary funding available to Members is not provided for promotion of party awareness or to enable party political activity.

106.Proposal six is to make it clear that items/materials produced for constituent engagement and/or distributed using Senedd resources must not be supplemented with additional materials that would not be permitted.

107.To address the concern about misinterpretation around the use of volunteers to distribute engagement materials, wording will be added to the guidance to Rule 8 as a reminder that the rules would not apply where

there is no draw on resources. In other words, where there is no claim for delivery costs, the rules do not apply.

### **Party affiliation and the use of party logos or other branding**

108. The use of party identification, logos and branding on communication and engagement materials produced with Commission resources is a sensitive subject. Proposals seven and eight were set out for the purpose of consultation, as an approach to mitigate against the risk of perception of public funds being used for political party purposes.
109. The proposals set out a precise and clear approach, which was supported by the Board.
110. However, the case is made forcefully by party groups that presence of a single discreet party/group logo should be permitted on engagement materials, in the context of bringing clarity and transparency to communications with the public, particularly as residents of Wales currently each have five representatives in the Senedd, not one.
111. The consultation document explained that the guidance associated with rule 8 would be drafted to remind Members that their use of colour and photos in engagement material and the extent of that use will contribute to the way those materials are likely to be perceived. Care should be taken to prevent a perception of the materials being party political.
112. An argument is presented by respondents that the main risk of Senedd funded material being perceived as “party political” lies in the written content, and that a single discreet party/group logo should be permitted on engagement materials. They suggest that the use of a logo be encompassed within the guidance about avoiding the perception of materials being party political.
113. This type of approach would require an exercise of judgement on the part of Members, which they should be prepared to justify if challenged.
114. There are also suggestions in the consultation feedback that use of a logo be permitted with limitations, such as of a set fixed size, location and/or to require a party logo to be alongside the Senedd logo.
115. A significant part of the mitigation against the risk of perception of parliamentary funds being used for political party purposes is the

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requirement to state that items have been publicly funded, the inclusion of the statement makes clear, at the point of access, that public funds have facilitated the activity/product concerned.

116. The rules do not make a distinction between physical and digital materials, and that will be added to the guidance to make it absolutely clear. However, there had been an intention to set out that correspondence with individuals is excluded from the requirement, and this will be included in the guidance to Rule 8.

117. The Board considered the significance of timing in relation to the approach to use of logos, acknowledging that the timing needs to be right. The arguments put forward to this consultation suggest that now may not be the right time. The current work being undertaken by the Senedd to consider further reforms contributes to that view.

118. Notwithstanding this, it would be for the Board to set out, if it wishes to, more explicitly the appropriate parameters in relation to what is regarded as party political in the context of engagement activities.

## **Outcome and decision**

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119. Having considered the responses to the consultation in relation to the reasoning set out for making change, Rule 8 and its guidance will be re-framed, taking account of the information set out in the consultation document and the feedback. This means that the rule will be clearer that Members must avoid giving the impression that engagement materials have been funded by a political party. Additionally, they must not be used in a way that could be perceived as seeking to affect political support for a political party or candidate, when engaging with their constituents using Commission resources.

120. This approach seeks to achieve a balance in terms of being sufficiently clear about the intention, whilst providing for Members to exercise their judgement in relation to individual circumstances. However, it also carries a greater responsibility on the part of Members to account for the judgement they have exercised if called upon to do so.

121. Use of the Senedd logo would not be required, and Members may include a single, unobtrusive party or group logo on engagement materials, where not disallowed elsewhere.

122.Consideration has been given to the feedback about the proportionality of the requirement to include a statement that items are funded by the Commission from public funds can be disproportionate and asked for it to be removed. This requirement forms part of the mitigation against the risk of perception of parliamentary funds being used for political party purposes, and provides transparency. However, it had been intended that correspondence with individuals be excluded from the requirement. This will be made clear in the guidance. Signage on a Member's office/shop front façade will also be excluded from this requirement.

## **Websites and social media**

123.Proposal nine was to use improve the clarity of wording in stating that a Member's website that is built or maintained using Commission resources must only be used in connection with a Member's duties. As there were no objections to this proposal, the only factor for consideration is any adjustment required to ensure the reference to logos or branding is consistent with the broader approach to their use in engagement activities.

124.Proposal ten was to make clear that the existing requirement for communication and engagement activity to state clearly that it is funded by the Commission from public funds extends to digital, as well as physical, materials.

125.As there was no disagreement with the proposed clarification the proposal will be taken forward. No views were received as to whether the statement should be prescribed text, as suggested, or a requirement for a statement without prescribing wording, however there was a suggestion that an alternative to 'prominently' might be preferable.

126.The current rules set out that a website must only be used in connection with Member's duties and that this excludes party political content, providing an exclusion to allow the inclusion of links to separate websites that carry party political content. The Member's website must also make clear that any links lead to websites that are not funded from Commission resources.

127.Proposal 11 is to amend the text to make these requirements clearer and the types of links that are permitted and clarify the risks of embedded content.

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## Outcome and Decision

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128. In response to feedback received, the proposed word 'prominently' will be replaced with 'clearly'. The clarification of the requirement for inclusion of a statement about the funding source of website costs will not prescribe wording, but guidance will suggest wording that would be regarded as meeting the need, to be helpful.
129. It is recognised that social media is a constantly evolving area which creates a number of risks and challenges for Members. Considering the consultation feedback about Members' need to be able to reflect the realities of social media and the ways it forms part of the package of engagement activities used by them, it is proposed to set out that an individual Member's own social media feeds may be embedded as content on their own website.
130. While this would not prevent a complaint from being made to the Commissioner for Standards about party political content, it would reflect that the alternative would effectively result in a Member needing to maintain multiple social media accounts to avoid them inadvertently contravening the rule.
131. Guidance currently sets out that "The Member's website should make clear that the links lead to websites that are not hosted by the Member and are not funded from Commission resources." This will be made clearer, in that this requirement only applies when links are included. In that event, the Member's website should include a clear statement that the Senedd Commission is not responsible for embedded content and that links lead to websites that are not funded from Commission resources.
132. Proposal 12 (relating to Rule 11 – Social media activity) reflected both that Members should be free to post their opinions on political matters to their own social media accounts if they so wish, and that there are risks associated with doing so. Its intention was to remind Members that if using Commission resources for social media activity they must be mindful of the ways in which they are using Commission resources.
133. Respondents sought clarity that routine social media activity would not fall within the rules. The Rules document addresses this matter upfront by stating clearly "These Rules apply to Members whenever they make use of Commission resources".

134. In the spirit of simplifying the Rules where possible at this time and reflecting that a distinction is not made between physical and digital engagement materials when Members wish to access public funds, an adjustment will be made to proposal 12. This will encompass deleting Rule 11 and simply incorporating the existing aspect of the guidance relating to the targeting of the promotional activity into the re-draft of Rule 8 guidance, so removing repetition of detail already included elsewhere.



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## 6. Proposals on Security Vetting

135.The consultation set out the following proposals in relation to security vetting:

***Proposal thirteen:** It is proposed to bring Members' spouses/partners in line with other (non-elected) building users by requiring the completion of CTC level security checks before being able to be issued with a photo building pass.*

***Proposal fourteen:** It is proposed to amend the wording of guidance to Rule 15 for clarity to make it clear that no-one, other than Members, may start work before they have been security vetted, whether based in Tŷ Hywel or elsewhere.*

136.The full background to the proposals can be found in the consultation document.

### Summary of views on the proposals

137.There was majority agreement with proposal thirteen. One group raised a concern that a decision on a Spouse/partner pass was made solely on CTC checks and would like any issues raised in that process to be able to be escalated prior to a final decision being reached on the issuing of a building pass.

138.Proposal fourteen was broadly supported. Responses from Members raised that vetting checks need to be undertaken in a timely fashion, ensuring staff can start when needed. Concerns were raised about the beginning of a Senedd and the need to have staff promptly to help establish an office, and where short term/time specific need arises.

### Response to feedback

139.Proposal 13, described in the consultation was related to the issuing of photo security passes. This rule and guidance are about access to Commission resources requiring appropriate security clearance. This proposal would bring Members' partners/spouses into line with all other non-elected building users, removing unaccompanied attendance on the estate without security clearance. The Commission were consulted about this change in December 2020 and had no objection.

140. Providing a safe and healthy environment to work and engage is one of the Commission's identified priorities. The Commission works to the security vetting standards set by National Security Vetting (NSV), in line with other Parliaments across the UK. NSV consists of Baseline Personnel Security Standard (BPSS), Counter Terrorist Check (CTC) and where applicable the higher-level Security Check (SC).
141. As elected office holders, Members of the Senedd are not subject to security vetting before their photo building passes are issued. All Members are automatically eligible for a security pass to the Senedd Estate upon taking their oath.
142. Security checks are carried out on all staff working for Members, Commission staff and contractors. All personnel requiring a photo building pass are subject to a CTC check. Members staff fall in to two categories they are either Constituency based or Senedd estate based. Constituency-based staff are security cleared to BPSS (and provided with a visitor pass on attendance on the Estate) whereas Senedd staff are cleared to CTC level. The CTC clearance also covers someone working in both. This includes all spouses or partners working for a Member.
143. The security checks are currently carried out in line with Cabinet Office vetting guidelines, with the agreement of the Commission. Introducing an 'appeal process' for new applicants would go outside of those vetting guidelines. However, un-vetted spouses/partners could continue to attend the estate as visitors, who would not normally require security vetting as their presence is limited to public areas of the estate or they must be accompanied by a pass holder. Guidance to the security rule would be added to make this clear.
144. Proposal fourteen is a clarification of existing guidance wording rather than introducing a new measure.
145. The Commission's security team regard having appropriate security vetting in place as an essential part of the measures and systems in place to provide support a safe environment on the estate, and for Members in their communities.
146. As an individual a Member can employ whoever they chose, subject to the relevant law. The application of these rules arises when public funds are accessed through Commission resources. This rule and guidance are

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about access to Commission resources requiring appropriate security clearance.

147. In responding to the consultation, Members have raised reasonable points about the importance of being able to appoint staff to begin work in a timely way in order to enable them to deliver their duties. However, there has also been experience of individuals having started work for Members and then failing security checks and so not being able to deliver the role for which they were employed. This can lead to contractual issues for Members.

## **Outcome and Decision**

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148. In light of the feedback received it is intended to add wording to the guidance to make clear that it applies where work involves use of Commission resources.

149. Assurances have been given by the Security vetting team about the priority given to appointees to be vetted. A number of steps have been introduced to ensure that this process is as quick as possible, such as the team being notified at the recruitment stage of new appointments. Consideration is also being given to the implication of post-pandemic working practices for the appropriate level of security clearance needed for different roles and working locations.

## 7. Clarifications of wording

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150. The consultation sets out ways in which wording in the Rules could be adjusted, either for consistency or to make the meaning plainer.

151. Of particular note was the proposal to amend the wording of the definition of election period to set out the definition more clearly in the context of Wales more clearly: “election period” – means any period as described below in sub-paragraphs (i) to (viii):

- i. a period when the Senedd is dissolved;
- ii. a period when the UK Parliament is dissolved;
- iii. a referendum period as defined by section 102 of the Political Parties, Elections and Referendums Act 2000;
- iv. a period starting when a notice of election has been issued for the election of councillors for a local government area in Wales and ending on polling day;
- v. a period starting when a notice of election has been issued for the election of a councillor for a local government by-election in Wales and ending on polling day;
- vi. a period starting when a notice of election has been issued for the election of a Police and Crime Commissioner for any area in Wales and ending on polling day;
- vii. a period starting when nominations are invited for candidates to stand for a by-election for a seat in the Senedd and ending on polling day; and
- viii. a period starting when nominations are invited for candidates to stand for a by-election for a Welsh seat in the UK Parliament and ending on polling day

### Summary of views on the proposals

152. Only one matter was raised about the changes contained in this proposal. The concern was about the inclusion of any local government, the Senedd or Westminster Parliament by-election in the definition of ‘election period’.

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## Response to feedback

153. The inclusion of by-elections in the definition of ‘election period’ exists in the current rules and is not a new proposal. The significant change in the wording was to make clear the relationship to elections occurring within Wales – for local government elections in Wales, Police and Crime Commissioner for any area in Wales, and for a by-election for a Welsh seat in the UK Parliament.
154. The definition of ‘election period’ is particularly pertinent to Rule 12 Media operations, which specifies (amongst other requirements) that “[media operations] “(d) may not take place anywhere on the Senedd estate during an election period.” and Rule 16, which provides for potential additional restrictions on the use of Commission resources.
155. Experience following the Welsh Elections (Coronavirus) Bill being agreed by the Senedd, led to an unusual situation of the Dissolution period being shorter than the Election period for the 2021 Senedd elections. During that period, when there was a need to enhance clarity in some Rules relating to the use of resources (in response to concerns raised), it became evident that doing so was not tied to the existence of Rule 16.

## Outcome and decision

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156. By taking a different approach in Rule 12 making specific reference to an appropriate limitation on media operations, it is possible to simplify the rules by removing both the definition of ‘election period’ and Rule 16.
157. Rule 12 will be adjusted to make clear that media operations may not take place anywhere on the Senedd estate in relation to any election campaign for public office where campaigning is taking place in Wales. Rule 16 will be replaced by a brief reference in introduction section, which can act as a reminder that special provisions may be applied during elections and referendum periods.
158. The other proposals to adjust wording in the Rules for consistency or to make the meaning plainer will be taken forward. Similarly, a consistent approach will be taken where the Rules require Members to include a statement to particular effect. The Rules will require that a simple clear statement must be used, without prescribing the wording but providing illustrative wording that would meet the requirement within the guidance.

## 8. Matters raised not in the consultation

159. There were a few other issues raised which were not the subject of specific proposals included in the consultation. Two respondents raised concerns about the use of commission funded resources by Regional Members to gain a party political advantage by deploying them in a tactical manner. They say, for example that a Regional Member could disproportionately focus resources on a constituency which they intend to contest at a future election and propose that this part of the Code should be policed by Commission officials who should consider whether there is any consistent geographic targeting of one constituency in engagement by a Regional Member.

160. The respondents recognise that the Code on Different Responsibilities of Constituency and Regional Members states that 'Members will work throughout the region they represent'. However, they were concerned that this does not place a requirement on Regional Members to distribute their use of resources in a broadly equitable way across their region.

161. As highlighted in responses to other aspects of the consultation, Members often use volunteers for delivery of community engagement, and as such it would not be possible for Commission officials to know where materials are delivered to. Further, there is no requirement on Members to set out where their staff are undertaking community engagement activities. As such, Commission officials would not have a complete picture to be able to undertake the type of evaluation suggested.

162. The Code on Different Responsibilities of Constituency and Regional Members is the responsibility of the Standards of Conduct Committee and therefore it seems prudent that these concerns are raised with the Committee in the first instance.