

SL(5)686 – The Local Government (Coronavirus) (Postponement of Elections) (Wales) (No. 2) Regulations 2020

Background and Purpose

The Local Government (Coronavirus) (Postponement of Elections) (Wales) Regulations 2020 postponed by-elections for principal and community councils that were due to take place during the period of 16th March 2020 to 31st January 2021 and required them to be held between 1st February 2021 and 16th April 2021.

These Regulations provide for supplementary issues to ensure that the postponed by-elections are conducted in accordance with electoral law and good practice, and that Returning Officers are able to carry out their duties.

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

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

Regulation 6 requires the registration officer to retain such documents for a year before destroying them (subject to a court order).

Regulation 7 makes provision in relation to persons who were candidates at a postponed by-election. It provides that a person who was a candidate is no longer a candidate, and is treated generally as not having been one.

Regulation 8 provides applicants with additional grounds for applying for emergency proxy votes in respect of certain local government by-elections.

Procedure

Negative.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument:



1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

We note the breach of the 21-day rule (i.e. the rule under section 11A(4) of the Statutory Instruments Act 1946 that a negative procedure statutory instrument should be laid before the Senedd at least 21 days before that instrument comes into force), and the explanation provided by Rebecca Evans MS, Minister for Finance and Trefnydd in a letter to the Llywydd dated 3 December 2020.

In particular, we note the following paragraph of the letter:

"Not adhering to the 21 day convention allows the Regulations to come into force on 4 December 2020. This is necessary in order to ensure ROs have enough time to prepare for the first postponed by-elections which are scheduled to take place in early February. An RO must publish a notice of election no later than 25 working days before the date of the election. Therefore, if a by-election was to be held at the earliest opportunity, on 4 February 2021, the election notice would need to be published no later than 31 December 2020. If the 21 day rule was observed for these Regulations, they would not be in force by the time an RO would need to lay the notice of election in order to have the by-election."

2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

The two footnotes in regulation 7(5) make reference to amendments made by the Political Parties and Elections Act 2009. However, the relevant provisions in the 2009 Act have not yet been brought into force and a date has yet to be appointed as to when they will be. Therefore the current position is that the provisions referred to in regulation 7(5) have not (yet) been amended in the manner described in the footnotes.

It is accepted that a footnote does not form part of the law. However, if the purpose of its inclusion is to assist a reader, it would be helpful if the references could be updated to reflect the current position.

3. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

We note there has been no formal consultation on these Regulations. In particular, we note the following paragraph in the Explanatory Memorandum:

"Due to the emergency nature of these Regulations the Welsh Government did not undertake a public consultation before the Regulations came into force. Views have been sought from stakeholders such as the Electoral Commission, the Wales Electoral Coordination Board (WECEB) and the Association of Electoral Administrators (AEA)."



4. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

The Explanatory Note provides that the Welsh Ministers considered the Code of Practice on the carrying out of Regulatory Impact Assessments and concluded:

"it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations."

However, a Regulatory Impact Assessment is included on page 6 of the Explanatory Memorandum.

Implications arising from exiting the European Union

None.

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

8 December 2020

