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Llywodraeth Cymru
Welsh Government

Mick Antoniw, AM
Chair
Legislation, Justice and Constitution Committee
National Assembly for Wales
Ty Hywel
Cardiff Bay
CF99 1NA

6 February 2020

Dear Mick,

Local Government and Elections (Wales) Bill - Further information following the meeting held on 3 February 2020

Further to my appearance at Committee on 3 February, I enclose drafts of the proposed stage 2 amendments relating to the extension of the franchise for local government elections to certain prisoners and young people in custody from Wales.

The drafts are substantially developed and address the key issues about the proposed enfranchisement, residence and registration; we shall share the drafts with other interested persons also. We shall have the opportunity to refine the drafts in light of comments received from the Committee and others, before tabling the amendments at stage 2.

I look forward to receiving any views or comment the Committee may have on these draft provisions.

Yours sincerely,

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Minister for Housing and Local Government

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

RHESTR O WELLIANNAU DRAFFT LIST OF DRAFT AMENDMENTS

Bil Llywodraeth Leol ac Etholiadau (Cymru) Local Government and Elections (Wales) Bill Gwelliannau drafft estyn y bleidlais i garcharorion Draft prisoner voting amendments 27 Ionawr 2020 27 January 2020

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Section 2, page 2, line 11, leave out subsection (2). Adran 2, tudalen 2, llinell 11, hepgorer is-adran (2).	
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Section 2, page 2, after line 15, insert – (3) In section 3 of the 1983 Act (disenfranchisement offenders in prison etc.) – (a) in subsection (1), after “election” insert “, unless subsection (1A) applies to that person”; (b) after subsection (1) insert – “(1A) A convicted person is not legally incapable of voting at a local government election in Wales by virtue of subsection (1) during the time that the person is detained in a penal institution in pursuance of a sentence imposed for a term of less than 4 years. (1B) But subsection (1A) does not apply if the convicted person is incapable of voting in a local government election by virtue of section 173 (persons convicted of corrupt or illegal practice). (1C) In calculating the term of a sentence of a convicted person for the purpose of subsection (1A), terms that are consecutive or concurrent to any extent are to be treated as a single term if the sentences were imposed on the person – (a) on the same occasion, or	

- (b) on different occasions but the person was not released (other than on temporary release) at any time during the period beginning with the first occasion and ending with the last.”
- (c) In subsection (2), for “this purpose” substitute “the purposes of this section”.’.

Adran 2, tudalen 2, ar ôl llinell 15, mewnosoder –

‘(3) Yn adran 3 o Ddeddf 1983 (difreinio troseddwr sydd yn y carchar etc.) –

- (a) yn is-adran (1), ar ôl “election” mewnosoder “, unless subsection (1A) applies to that person”;
- (b) ar ôl is-adran (1) mewnosoder –
 - “(1A) A convicted person is not legally incapable of voting at a local government election in Wales by virtue of subsection (1) during the time that the person is detained in a penal institution in pursuance of a sentence imposed for a term of less than 4 years.
 - (1B) But subsection (1A) does not apply if the convicted person is incapable of voting in a local government election by virtue of section 173 (persons convicted of corrupt or illegal practice).
 - (1C) In calculating the term of a sentence of a convicted person for the purpose of subsection (1A), terms that are consecutive or concurrent to any extent are to be treated as a single term if the sentences were imposed on the person –
 - (a) on the same occasion, or
 - (b) on different occasions but the person was not released (other than on temporary release) at any time during the period beginning with the first occasion and ending with the last.”
- (c) Yn is-adran (2), yn lle “this purpose” rhodder “the purposes of this section”.’.

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Page 2, after line 24, insert a new section –

‘3 Consequential amendments to retain existing franchise for Senedd Cymru elections

In section 12 of the Government of Wales Act 2006 (c. 32) (entitlement to vote in Senedd elections) –

- (a) in subsection (1)(a), for “or fall within the extended franchise for Senedd elections as described in this section” substitute “, except those entitled to vote in such an election by virtue of section 3(1A) of the Representation of the People Act 1983 (c. 2)”;
- (b) omit subsection (1A);
- (c) omit subsection (1B).’.

Tudalen 2, ar ôl llinell 25, mewnosoder adran newydd –

‘3 Diwygiadau canlyniadol i barhau’r etholfraint bresennol yn etholiadau Senedd Cymru

Yn adran 12 o Ddeddf Llywodraeth Cymru 2006 (p. 32) (hawlogaeth i bleidleisio yn etholiadau’r Senedd) –

- (a) yn is-adran (1)(a), yn lle “or fall within the extended franchise for Senedd elections as described in this section” rhodder “, except those entitled to vote in such an election by virtue of section 3(1A) of the Representation of the People Act 1983 (c. 2)”;
- (b) hepgorer is-adran 1A);
- (c) hepgorer is-adran (1B).’.

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Section 3, page 2, after line 33, insert –

- ‘(3) Despite the coming into force of the amendments made by the provisions mentioned in subsection (4) by virtue of section 171(3), they only have effect for the purposes of an election for membership of Senedd Cymru at which the poll is held on or after 5 April 2021.
- (4) The provisions are –
 - (a) section 2, so far as it has consequential effects on section 12 of the Government of Wales Act 2006 (c. 32);
 - (b) section [*inserted by amendment 3*];
 - (c) paragraph 8(3)(b) of Schedule 2.’.

Adran 3, tudalen 2, ar ôl llinell 36, mewnosoder –

- ‘(3) Er gwaethaf y ffaith bod y diwygiadau a wneir gan y darpariaethau a grybwyllir yn is-adran (4) yn dod i rym yn rhinwedd adran 171(3), nid ydynt ond yn cael effaith at ddibenion etholiad ar gyfer aelodaeth o Senedd Cymru pan gynhelir y bleidlais ar 5 Ebrill 2021 neu ar ôl hynny.
- (4) Y darpariaethau yw –
 - (a) adran 2, i’r graddau y mae ganddi effeithiau canlyniadol ar adran 12 o Ddeddf Llywodraeth Cymru 2006 (p. 32);
 - (b) adran [*a fewnosodir gan welliant 3*];
 - (c) paragraff 8(3)(b) o Atodlen 2.’.

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Section 171, page 108, line 18, after ‘2’, insert ‘and [*section inserted by amendment 3*]’.

Adran 171, tudalen 108, llinell 18, ar ôl ‘2’, mewnosoder ‘a [*adran a fewnosodir gan welliant 3*]’.

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Schedule 2, page 119, after line 10, insert –

(2) In section 7A (residence: persons remanded in custody etc.) –

(a) after subsection (1) insert –

“(1A) But this section does not apply to the registration of local government electors in Wales.”;

(b) in subsection (6), after “In this section” insert “and section 7AA”.

(3) After section 7A insert –

“7AA Residence of persons in custody for registration of local government electors in Wales

(1) This section applies to the registration of local government electors in Wales.

(2) Subsection (3) applies to –

(a) a person to whom section 3(1A) applies (convicted person detained and sentenced to a term of less than 4 years), and

(b) a person who is detained at any place pursuant to a relevant order or direction and is so detained otherwise than after –

(i) being convicted of any offence, or

(ii) a finding in criminal proceedings that the person did the act or made the omission charged.

(3) In determining whether the person is resident in a dwelling on the relevant date for the purpose of section 4(3)(a), the person’s residence is not to be taken to have been interrupted by reason of the person’s detention if –

(a) the person –

(i) intends to resume actual residence there when released from detention (other than on temporary release), and

(ii) will not be prevented from doing so by an order of any court, or

(b) the dwelling serves as a permanent place of residence (whether for the person alone or with other persons) and the person would be in actual residence there but for the convicted person’s detention.

(4) In determining whether the person is resident in a place on the relevant date for the purposes of section 4(3)(a), the person’s residence is not to be taken to have been interrupted by the person’s detention if-

(a) a declaration of local connection is in force in respect of the person, and

- (b) the declaration was made by virtue of the person falling within section 7B(2)(c)."
- (4) In section 7B (notional residence: declarations of local connection) –
 - (a) in subsection (2A) –
 - (i) omit paragraph (a);
 - (ii) in paragraph (b), for “paragraphs (a) to (c)” substitute “paragraphs (a) or (c)”;
 - (iii) in paragraph (c), after “(2B)” insert “or (2E)”;
 - (b) for subsection (2B) substitute –
 - “(2B) The requirements are that the person –
 - (a) is under 18 years of age and is, or has been, a child who is looked after by a local authority, or
 - (b) is being kept in secure accommodation.”;
 - (c) omit subsection (2C);
 - (d) after subsection (2D) insert –
 - “(2E) In relation to the registration of local government electors in Wales, this section also applies to a person who, on the date on which the person makes a declaration under subsection (1), is a person –
 - (a) to whom section 7AA applies (persons in custody), and
 - (b) who would not be entitled to be registered as resident at the place in which the person is in legal custody by virtue of section 5(6) or any other place by virtue of section 7AA.”;
 - (e) in subsection (4), after paragraph (c) insert –
 - “(d) in the case of a person falling within subsection (2E) –
 - (i) the address in Wales where the person would be residing but for the person’s detention,
 - (ii) if the person cannot give an address under subparagraph (i), the address in Wales at which the person was resident immediately before the person’s detention (but not the address of a penal institution), or if the person was homeless at that time, the address of, or which is nearest to, a place in Wales where the person commonly spent a substantial part of the person’s time (whether during the day or night), or
 - (iii) if the person can only give an address under paragraph (i) or (ii) at which the person would be prevented from residing because of an order of any court (“the prohibited address”), an address used by a council of a county or county borough in Wales in whose area the prohibited address is located.”;
 - (f) in subsection (7B)(a), after “(2A)” insert “or (2E)”;

(g) after subsection (7C), insert –

“(7D) In a relevant declaration, a person may not give an address under subsection (3)(a)(i) or subsection (4)(d)(i) or (ii) at which the person would be prevented from residing because of an order of a court.”.

Atodlen 2, tudalen 119, ar ôl llinell 11, mewnosoder –

(2) Yn adran 7A (preswylfa: personau sydd wedi eu remandio yn y ddalfa etc.) –

(a) ar ôl is-adran (1) mewnosoder –

“(1A) But this section does not apply to the registration of local government electors in Wales.”;

(b) yn is-adran (6), ar ôl “In this section” mewnosoder “and section 7AA”.

(3) Ar ôl is-adran 7A mewnosoder –

“7AA Residence of persons in custody for registration of local government electors in Wales

(1) This section applies to the registration of local government electors in Wales.

(2) Subsection (3) applies to –

(a) a person to whom section 3(1A) applies (convicted person detained and sentenced to a term of less than 4 years), and

(b) a person who is detained at any place pursuant to a relevant order or direction and is so detained otherwise than after –

(i) being convicted of any offence, or

(ii) a finding in criminal proceedings that the person did the act or made the omission charged.

(3) In determining whether the person is resident in a dwelling on the relevant date for the purpose of section 4(3)(a), the person’s residence is not to be taken to have been interrupted by reason of the person’s detention if –

(a) the person –

(i) intends to resume actual residence there when released from detention (other than on temporary release), and

(ii) will not be prevented from doing so by an order of any court, or

(b) the dwelling serves as a permanent place of residence (whether for the person alone or with other persons) and the person would be in actual residence there but for the convicted person’s detention.

- (4) In determining whether the person is resident in a place on the relevant date for the purposes of section 4(3)(a), the person's residence is not to be taken to have been interrupted by the person's detention if-
- (a) a declaration of local connection is in force in respect of the person, and
 - (b) the declaration was made by virtue of the person falling within section 7B(2)(c)."
- (4) Yn adran 7B (preswylfa dybiannol: datganiadau o gysylltiad lleol) –
- (a) yn is-adran (2A) –
 - (i) hepgorer paragraff (a);
 - (ii) ym mharagraff (b), yn lle "paragraphs (a) to (c)" rhodder "paragraphs (a) or (c)";
 - (iii) ym mharagraff (c), ar ôl "(2B)" mewnosoder "or (2E)";
 - (b) yn lle is-adran (2B) rhodder –
 - "(2B) The requirements are that the person –
 - (a) is under 18 years of age and is, or has been, a child who is looked after by a local authority, or
 - (b) is being kept in secure accommodation."
 - (c) hepgorer is-adran (2C);
 - (d) ar ôl is-adran (2D) mewnosoder –
 - "(2E) In relation to the registration of local government electors in Wales, this section also applies to a person who, on the date on which the person makes a declaration under subsection (1), is a person –
 - (a) to whom section 7AA applies (persons in custody), and
 - (b) who would not be entitled to be registered as resident at the place in which the person is in legal custody by virtue of section 5(6) or any other place by virtue of section 7AA."
 - (e) yn is-adran (4), ar ôl paragraff (c) mewnosoder –
 - "(d) in the case of a person falling within subsection (2E) –
 - (i) the address in Wales where the person would be residing but for the person's detention,
 - (ii) if the person cannot give an address under subparagraph (i), the address in Wales at which the person was resident immediately before the person's detention (but not the address of a penal institution), or if the person was homeless at that time, the address of, or which is nearest to, a place in Wales where the person commonly spent a substantial part of the person's time (whether during the day or night), or

- (iii) if the person can only give an address under paragraph (i) or (ii) at which the person would be prevented from residing because of an order of any court (“the prohibited address”), an address used by a council of a county or county borough in Wales in whose area the prohibited address is located.”;
- (f) yn is-adran (7B)(a), ar ôl “(2A)” mewnosoder “or (2E)”;
- (g) ar ôl is-adran (7C), mewnosoder –
 - “(7D) In a relevant declaration, a person may not give an address under subsection (3)(a)(i) or subsection (4)(d)(i) or (ii) at which the person would be prevented from residing because of an order of a court.”.

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Schedule 2, page 123, after line 7, insert –

- ‘(b) in paragraph 2 (manner of voting), after sub-paragraph (6) insert –
 - “(6ZA) In relation to a local government election in Wales, nothing in the preceding provisions of this paragraph applies to a person to whom section 3(1A) of the 1983 Act (convicted persons detained and sentenced to a term of less than 4 years capable of voting in local government elections) applies; and such a person may only vote by post or by proxy (where the person is entitled as an elector to vote by post or, as the case may be, by proxy at the election).”;
- (c) in paragraph 3(3) (absent vote at elections for definite or indefinite period) –
 - (i) in paragraph (c) omit the “or” at the end of the paragraph;
 - (ii) at the end of paragraph (d) insert “, or”;
 - (iii) after paragraph (d) insert –
 - “(e) in the case of local government elections in Wales, if the person is a person to whom section 3(1A) of the 1983 Act (convicted persons detained and sentenced to a term of less than 4 years capable of voting in local government elections) applies,”.

Atodlen 2, tudalen 123, ar ôl llinell 7, mewnosoder –

- ‘(b) ym mharagraff 2 (y modd o bleidleisio), ar ôl is-baragraff (6) mewnosoder –
 - “(6ZA) In relation to a local government election in Wales, nothing in the preceding provisions of this paragraph applies to a person to whom section 3(1A) of the 1983 Act (convicted persons detained and sentenced to a term of less than 4 years capable of voting in local government elections) applies; and such a person may only vote by post or by proxy (where the person is entitled as an elector to vote by post or, as the case may be, by proxy at the election).”;

- (c) ym mharagraff 3(3) (pleidlais absennol mewn etholiadau am gyfnod penodol neu amhenodol) –
- (i) ym mharagraff (c) hepgorer yr “or” ar ddiwedd y paragraff;
 - (ii) ar ddiwedd paragraff (d) mewnosoder “, or”;
 - (iii) ar ôl paragraff (d) mewnosoder –
 - “(e) in the case of local government elections in Wales, if the person is a person to whom section 3(1A) of the 1983 Act (convicted persons detained and sentenced to a term of less than 4 years capable of voting in local government elections) applies,”.

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Schedule 2, page 123, after line 14, insert –

- ‘(5B) A person is not capable of voting as proxy at a local government election in Wales if on the date of the election section 3(1A) of the 1983 Act (convicted persons detained and sentenced to a term of less than 4 years capable of voting in local government elections) applies to the person.’.

Atodlen 2, tudalen 123, ar ôl llinell 14, mewnosoder –

- ‘(5B) A person is not capable of voting as proxy at a local government election in Wales if on the date of the election section 3(1A) of the 1983 Act (convicted persons detained and sentenced to a term of less than 4 years capable of voting in local government elections) applies to the person.’.

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Schedule 2, page 124, after line 18, insert –

- ‘(2) Omit sections 10 and 11.’.

Atodlen 2, tudalen 124, ar ôl llinell 19, mewnosoder –

- ‘(2) Hepgorer adrannau 10 ac 11.’.