

**EXPLANATORY MEMORANDUM TO**  
**THE WALES ACT 2017 (CONSEQUENTIAL AND SAVING PROVISIONS)**  
**REGULATIONS 2018**

**2018 No. 272**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Cabinet Office on behalf of the Wales Office and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 The Wales Act 2017 (Consequential and Saving Provisions) Regulations 2018 (“the 2018 Regulations”) make consequential amendments and saving provision in respect of certain pieces of electoral legislation. The instrument is required as a result of the commencement of sections 3, 5, 6 and 8 of, and Schedule 1 to, the Wales Act 2017 (c. 4). These provisions devolve powers to the National Assembly for Wales (“the Welsh Assembly”) and the Welsh Ministers in relation to Welsh Assembly and local government elections in Wales, including the franchise and the registration of electors for local government elections in Wales. The Wales Act 2017 (Commencement No. 4) Regulations 2017 (S.I. 2017/1179 (c. 111)) provide that these provisions in the Wales Act 2017 will be commenced on 1 April 2018.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 The Wales Act 2017 (Commencement No. 4) Regulations 2017 commence a number of provisions of the Wales Act 2017, including sections 3, 5, 6 and 8, and Schedule 1, on 1 April 2018. By virtue of the coming into force of section 3 of, and Schedule 1 to, that Act the legislative competence of the Welsh Assembly will include, amongst other matters, the registration of electors on the register of local government electors in Wales, and subject to the reservations contained in Schedule 1, the conduct of Welsh Assembly elections. The digital service for the registration of electors will remain reserved.
- 4.2 Section 5 of the Wales Act 2017 will substitute a new section 13 of the Government of Wales Act 2016 (c. 32) (“GoWA”), giving the Welsh Ministers powers to make provision in respect of the conduct of Welsh Assembly elections, and other specified matters. Section 5 will also insert a new section 13A into GoWA providing a power for the Secretary of State to make provision for certain reserved combinations of polls for Welsh Assembly elections. Section 6 makes provision about the timing of

elections, including that an ordinary local government election in Wales and an ordinary general Welsh Assembly election cannot take place on the same day.

- 4.3 Section 8 of the Wales Act 2017 includes amendments to section 52 of the Police Reform and Social Responsibility Act 2011 (c. 13). These amendments provide that the franchise for Police and Crime Commissioner (“PCC”) elections in Wales, which will remain reserved under Schedule 1 to the Act, will cease to be expressed as the franchise for local government elections in Wales, as a consequence of the devolution of the franchise for local government elections in Wales.
- 4.4 The 2018 Regulations amend regulation 26(9) of the Representation of the People (England and Wales) Regulations 2001 (S.I. 2001/341) (“the 2001 Regulations”) in connection with the coming into force of section 3 of, and Schedule 1 to, the Wales Act 2017 and the reservation of the digital service, and substitutes a new regulation 26(10) in relation to overseas applications made through the digital service. The 2018 Regulations also amend provisions in the Police and Crime Commissioner Elections Order 2012 (S.I. 2012/1917) to make consequential amendments in connection with the commencement of section 8 of the Wales Act 2017.
- 4.5 The 2018 Regulations also make saving provision in connection with the commencement of sections 3, 5 and 6 of, and Schedule 1 to, the Wales Act 2017.

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England and Wales.

## **6. European Convention on Human Rights**

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

### *What is being done and why*

- 7.1 Provisions in the Wales Act 2017 (sections 3 and 5 to 8, and Schedule 1) devolve powers to the Welsh Assembly and the Welsh Ministers in relation to Welsh Assembly and local government elections in Wales. Under the Act, the legislative competence of the Welsh Assembly will include the franchise and registration of electors for local government elections in Wales and, subject to some reservations, the conduct of local government and Welsh Assembly elections. The Wales Act 2017 also gives Welsh Ministers the power to make provision in respect of the conduct of Welsh Assembly elections.
- 7.2 The Wales Act 2017 (Commencement No. 4) Regulations 2017 provide that these provisions in the Wales Act 2017 will be commenced on 1 April 2018. The 2018 Regulations make amendments as a consequence of the commencement of sections 3, 5, 6 and 8 of, and Schedule 1 to the Act to ensure that the devolution of these powers in relation to elections in Wales operates effectively.
- 7.3 The 2018 Regulations make provision in relation to the digital service. The registration of electors for local government elections in Wales is devolved under the Wales Act 2017. Regulation 2 amends regulation 26(9) of the 2001 Regulations. This currently states than an application to register to vote may be made through the

Government's digital service. As a consequence of the reservation of the digital service in section 3 of the Wales Act 2017, regulation 26(9) is amended to provide that applications may be made through the digital service where the Minister for the Cabinet Office has made arrangements for such applications to be made using the digital service. Regulation 26(10) of the 2001 Regulations, which relates to overseas elector applications being accepted through the digital service, is also amended as a consequence of the amendments to regulation 26(9). As a result, where an application in pursuance of an overseas elector's declaration is made via the digital service the registration officer may, but need not, accept the application through the digital service. These changes are equivalent to those made (by S.I 2017/602) to the Representation of the People (Scotland) Regulations 2001 (S.I. 2001/497) when the elections provisions in the Scotland Act 2016 were commenced.

- 7.4 Regulations 3 to 6 make changes concerning PCC elections. These polls remain reserved under Schedule 1 to the Wales Act 2017. Section 8 of the Wales Act 2017 amends section 52 of the Police Reform and Social Responsibility Act 2011 to provide that the franchise for PCC elections in Wales will cease to be expressed as the franchise for local government elections in Wales, as a consequence of the devolution of the franchise for local government elections in Wales. The amendments provide that the PCC franchise in Wales will be expressed as:
- the parliamentary franchise, with the exclusion of overseas electors, and
  - the inclusion of peers and EU citizens over the age of 18 who are entitled to vote in local government elections in Wales.
- 7.5 Under the Wales Act 2017, there is no change to the current entitlement to vote at a PCC election in Wales. The 2018 Regulations make consequential changes to the Police and Crime Commissioner Elections Order 2012 which sets out the rules for the conduct of PCC elections to reflect the devolution of the franchise for local elections in Wales. The proposed changes include inserting a revised definition of the 'register of electors' at PCC elections in Wales, in line with the changes made by the Wales Act 2017, and omitting the definition of "relevant citizen of the Union" as a consequence of section 8 of the Wales Act 2017 having inserted a definition of that term into the Police Reform and Social Responsibility Act 2011. The 2018 Regulations also make consequential changes to absent voting provisions and two nomination forms used by candidates at PCC elections (including the Welsh version of Form 6 (nomination of candidates)).
- 7.6 The 2018 Regulations include a saving provision. This provides that the existing National Assembly for Wales (Representation of the People) Order 2007 (S.I. 2007/236) (made by the Secretary of State) that sets out the rules for the conduct of Welsh Assembly elections will continue in force after the commencement of the new section 13 of GoWA substituted by section 5 of the Wales Act 2017, and the commencement of section 6 of, and Schedule 1 to the Wales Act 2017, on 1 April 2018, so that they will be in place for future Welsh Assembly elections. This is with the exception of provisions providing for the combination of polls at Welsh Assembly ordinary general elections and ordinary local government elections in Wales. Provision made by section 6 of the Wales Act 2017 prevents an ordinary general election of members of the Welsh Assembly being held on the same day as an ordinary local government election in Wales, and this combination will be reserved under Schedule 1 to the Wales Act 2017.

### ***Consolidation***

- 7.7 The Law Commission is currently conducting a review into the desirability and feasibility of consolidating electoral law. The Government is working with the Law Commission on taking forward this programme of work.

### **8. Consultation outcome**

- 8.1 The Electoral Commission has been consulted on the instrument. In addition, the Cabinet Office has shared a draft of the instrument with representatives of the Association of Electoral Administrators, the Society of Local Authority Chief Executives, and the Welsh Government.
- 8.2 The Electoral Commission and other stakeholders are content with the changes made by the instrument.

### **9. Guidance**

- 9.1 The Electoral Commission issues guidance to electoral administrators on electoral registration and the conduct of elections, and will update its guidance as necessary to cover the changes set out in this instrument.

### **10. Impact**

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

### **11. Regulating small business**

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

### **12. Monitoring & review**

- 12.1 The Electoral Commission will produce reports on electoral registration, and the administration and conduct of PCC and Welsh Assembly elections and related matters, and the Cabinet Office will consider any findings or recommendations made by the Commission about the provisions introduced by this instrument. The Cabinet Office will continue to keep all electoral legislation under review to ensure it continues to support electors' participation in elections and effective electoral administration.

### **13. Contact**

- 13.1 Peter Richardson at the Cabinet Office, telephone: 020 7271 6433 or email: [peter.richardson@cabinetoffice.gov.uk](mailto:peter.richardson@cabinetoffice.gov.uk) can answer any queries regarding the instrument.