

WELSH ELECTIONS (CORONAVIRUS) ACT 2021

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes are for the Welsh Elections (Coronavirus) Act 2021 (“the Act”) which was passed by Senedd Cymru on 10 Feb 2021 and received Royal Assent on 16 March 2021. They have been prepared by the Welsh Government to assist the reader of the Act. The Explanatory Notes should be read in conjunction with the Act but are not part of it.

OVERVIEW OF THE ACT

2. The Act provides for measures relating to coronavirus (SARS-CoV-2) to apply to Senedd Cymru elections and Welsh local government by-elections due to take place in 2021.
3. The measures include –
 - power to postpone the 2021 Senedd Cymru general election (due to take place on 6 May 2021) for up to 6 months (section 6);
 - power to provide for additional polling days for that election (section 7);
 - power to postpone Senedd Cymru by-elections due to be held after 6 May 2021 (section 10);
 - power to postpone Welsh local government by-elections due to be held after 6 May 2021 (section 11).
4. The powers conferred by the Act do not allow an election to be postponed to a date after 5 November 2021.
5. The Act requires guidance to be issued:
 - to members of the Welsh Government about the exercise of functions in the period before the Senedd Cymru general election (section 4), and
 - about election campaigning in the elections covered by the Act (section 9).
6. The Act also changes the Senedd Cymru scrutiny procedures that apply to any orders and rules made by the Welsh Ministers that include provisions on the conduct of elections which apply only to Senedd Cymru elections and Welsh local government by-elections held before 6 November 2021 (section 12).

COMMENTARY ON SECTIONS

Section 1 – The 2021 election

7. This section defines the key term in the Act, “the 2021 election”, as the ordinary general election for membership of Senedd Cymru the poll for which is due to be held in 2021.

Section 2 – Application of provisions of Government of Wales Act 2006

8. This section disapplies or limits the application of specified provisions of the Government of Wales Act 2006 (“the 2006 Act”) to the 2021 election.
9. Subsections (2)(a) and (3) of section 3 of the 2006 Act, in combination with article 148 of the National Assembly for Wales (Representation of the People) Order 2007, would have required the Senedd to be dissolved on 7 April 2021. Section 2(1) disapplies these provisions. Instead, section 3 of the Act makes provision for the dissolution of the Senedd before the 2021 election.
10. Subsections (2)(b) and (4) of section 3 of the 2006 Act, as amended by section 36(1) of the Senedd and Elections (Wales) Act 2020 (“the 2020 Act”), provide for the first meeting of the Senedd after an ordinary general election to be held 14 days after the day of the poll. These provisions are disapplied by section 2(1) of the Act and section 5 makes alternative provision about the date of the first meeting after the 2021 election.
11. Section 3(1) of the 2006 Act, which requires the day of the poll for the ordinary general election to take place on 6 May 2021, and only on that date, has effect subject to section 6 of the Act which enables the day of the poll to be moved if necessary and appropriate to do so for a reason relating to coronavirus.
12. Section 2(3) of the Act provides that section 4(2)(c) of the 2006 Act (as amended by section 36(2) of the 2020 Act) does not apply to the 2021 election. This provision of the 2006 Act allows a proclamation under the Welsh Seal to require the Senedd to meet within 14 days after the day of the poll if the powers to vary the date of the election are exercised under section 4 of the 2006 Act. In the case of the 2021 election, if the date of the poll is varied under section 4 of the 2006 Act, section 5 of this Act requires the Senedd to meet 21 days after the day of the poll.
13. Section 2(4) of the Act provides that section 10 of the 2006 Act, which makes provision about Senedd by-elections, has effect subject to section 7 of the Act. Section 7 allows for the date of the poll for by-elections to be fixed beyond the date provided for in section 10(5) and (6) of the 2006 Act.

Section 3 – Dissolution of the current Senedd

14. The effect of this section is that, if the ordinary general election of the Senedd is held on 6 May 2021, the Senedd will be dissolved on 29 April, a period of 7 calendar days before the day of the poll. If, however, the Llywydd (the presiding officer of Senedd Cymru) exercises the power conferred by section 6 of the Act to postpone the day of the poll for the election; or Her Majesty dissolves the Senedd before that date by proclamation under section 4(2) of the 2006 Act the Senedd is dissolved 7 days before the day on which the poll is to be held.
15. If the Llywydd exercises the power in section 6 on more than one occasion and further postpones the day of the poll, the provision will ensure that the Senedd is dissolved 7 calendar days before the date fixed for the poll, whenever that may be.

Section 4 – Guidance on exercise of functions in the pre-election period

16. This section requires the First Minister to publish guidance about the exercise of the functions of the First Minister, the Welsh Ministers and the Counsel General during the period immediately before the 2021 election.

Section 5 – Date of first meeting after the 2021 election

17. This section provides that the Senedd must meet within the period of 21 days beginning immediately after the day of the 2021 election.
18. The provision is longer than currently provided for in the 2006 Act (14 days). The purpose of the extension is to provide some flexibility and cater for a potential delay in counting ballots and confirming results due to coronavirus measures such as physical distancing and other public health rules which may be still be in force at the time of the election.

Section 6 – Power to postpone 2021 election for up to 6 months

19. This section provides the Llywydd with the power to postpone the 2021 election and fix a new date (subsection (3)).
20. The Llywydd may only fix a new date for the election if the First Minister makes a proposal to the Llywydd that the 2021 election be postponed (subsection (1)). The First Minister may only make such a proposal if the First Minister considers the postponement to be necessary or appropriate for reasons relating to coronavirus. And before making a proposal the First Minister must consult the Chief Medical Officer for Wales.
21. A day may only be fixed by the Llywydd for the holding of the poll if—
 - the Senedd approves the day to be fixed by a vote on a resolution passed by two thirds majority of the total number of Senedd seats;
 - the Senedd has not already been dissolved.
22. Section 6 of the Act does not limit the power of the Llywydd to vary the date of the poll for an ordinary general election set out in section 4 of the 2006 Act.

23. The powers in the section can be exercised more than once, but a day fixed under this section may not be later than 5 November 2021.

Section 7 – Power to provide for additional polling days

24. This section enables the Welsh Ministers to make regulations which allow polling for the 2021 election to take place on specified days, in addition to the day on which the poll for the election is due to take place. But additional polling days for the Senedd election are not permitted if the day of the poll for the 2021 Senedd election is on the same day as the poll for the election of police and crime commissioners in Wales.

Section 8 – Further power to vary date of 2021 election

25. This section confers a power on the Llywydd to propose that the date of the poll for the election in 2021 fixed under section 6 of the Act be brought forward or postponed for up to a month. The exercise of this power does not have to be for reasons relating to coronavirus and may not be exercised to propose a date that is after 5 November 2021.
26. If the Llywydd proposes a date, Her Majesty may by proclamation under the Welsh Seal dissolve the Senedd and require the poll at the election to proceed on the day proposed. If the power under this section is exercised, section 5 of the Act requires the first meeting of the Senedd to take place within 21 days of the date of the poll. The Llywydd may only exercise the power to propose a variation of the date of the Senedd election under section 4 of the 2006 Act if the election is to be held on 6 May 2021. If the election is postponed under section 6 of the Act, and the Llywydd wishes to propose a variation of the date of the postponed election, the proposal can only be made and the date of the election can only be varied under this section.

Section 9 – Guidance on election campaigning

27. This section requires the Welsh Ministers to issue guidance about election campaigning for the 2021 election, Senedd by-elections before 6 November 2021 and local government by-elections before 6 November 2021 whilst restrictions imposed by enactments relating to the coronavirus are in place.

Section 10 – Power to postpone Senedd by-elections

28. This section enables by-elections for Senedd constituencies to be postponed beyond the period permitted by section 10(5) and (6) of the 2006 Act. The power to postpone Senedd by-elections in section 66 of the Coronavirus Act 2020 cannot be exercised so as to fix a date after 6 May 2021. Section 10 of the Act will continue allow vacancies arising after 6 May 2021 to be postponed, but not to dates after 5 November 2021.
29. As with Section 6 of this Act and section 66 of the Coronavirus Act 2020, the power to postpone a Senedd by-election may be used more than once.

Section 11 – Power to postpone local authority by-elections

30. This section gives the Welsh Ministers a power to make regulations postponing local authority by-elections in Wales beyond the period required by the Local Government Act 1972 where the poll would otherwise be required to be held between 6 May 2021 and 5 November 2021. Section 67 of the Coronavirus Act 2020 has a similar power but does not enable the regulations to fix a date or period for the by-election after 6 May 2021. Regulations made under this section may not postpone the by-election to a date later than 5 November 2021.
31. Section 17 makes equivalent provision to section 68 of the Coronavirus Act 2020 (power to make supplementary, incidental, consequential, transitory etc. provision for giving full effect to provision made under a provision of this Act). Section 17(2)(a) of the Act enables retrospective provision to be made in relation to local government by-elections, an approach consistent with that taken in section 68(3) of the Coronavirus Act 2020 which enables the postponement of local government by-elections to a date up to 6 May 2021.
32. Regulations under this section which amend modify or repeal a provision in primary legislation are subject to a made affirmative Senedd procedure, which means they must be approved by Senedd Cymru before the end of a period of 28 days after they are made or they will cease to have effect at the end of that period. In all other cases, the negative Senedd procedure applies to regulations made under this section. The negative procedure means that the regulations must be laid before the Senedd after they are made and they will continue in effect unless the Senedd objects to the regulations within a period of 40 days after they are laid.

Section 12 – Orders and rules on the conduct of elections to be held in 2021

33. Where an order made by the Welsh Ministers under section 13(1) of the 2006 Act about the conduct of Senedd elections contains provision only about the 2021 election or only about Senedd by-elections held before 6 November 2021 this section requires the Senedd made affirmative procedure to apply to the making of the order instead of the affirmative procedure that would otherwise apply. The affirmative procedure requires approval of a draft of an order before it is made. The made affirmative procedure requires Senedd approval after the order is made.
34. Similarly, where rules under section 36A of the Representation of the People Act 1983 (“the 1983 Act”) contain provision only about the conduct of a local authority by-election to be held before 6 November 2021 the made affirmative procedure applies to the making of the rules instead of the procedure that would otherwise apply.
35. Section 36A of the 1983 Act comes into force on 20 March 2021 and rules made under it would otherwise be subject to the affirmative procedure by virtue of section 36A(10) of the 1983 Act.

36. Before section 36A of the 1983 Act comes into force, section 36 of the 1983 Act can be relied upon by the Welsh Ministers to make rules about the conduct of local authority elections. The negative procedure applies to rules made under section 36 of the 1983 Act (see section 36(7) of the 1983 Act).

Section 13 – Effect of this Act on existing power to make provision about elections

37. The purpose of this section is to clarify that the Welsh Ministers' existing powers to make provision about the conduct of elections under section 13 of the 2006 Act and sections 36 and 36A of the Representation of the People Act 1983 are unaffected by provision made in the Act about elections.
38. Section 13(1) of the Act clarifies that section 13(7) of the 2006 Act, which requires orders made under section 13 of the 2006 Act to be subject to the affirmative procedure, does not apply to orders of the kind specified in section 12 of the Act. The made affirmative procedure applies to orders to which section 12 applies.
39. Section 13(2) clarifies that where rules of the kind specified in section 12 of the Act are made under section 36A, section 36A(10) of the 1983 Act (requirement for affirmative procedure) does not apply and the made affirmative procedure applies by virtue of section 12(3) of the Act.

Section 14 – Modifications of the 2007 Order

40. Section 13 of the 2006 Act gives the Welsh Ministers the power to make provision by order about the conduct of Senedd elections and the National Assembly for Wales (Representation of the People) Order 2007 ("the 2007 Order") is an order made under that section.
41. This section modifies certain provisions of the 2007 Order for the purposes of the 2021 election.
42. Subsection (3) modifies article 84(2) of the Conduct Order and the point at which a person becomes a candidate in the election. This is currently tied to the dissolution of the Senedd. Section 3 of the Act shortens the dissolution period. Subsection (4) decouples the time at which a person becomes a candidate from the point of dissolution. The effect of the modification to article 84(2) is that, for the purposes of Part 3 of the 2007 Order, a person becomes a candidate 21 days before 6 May (calculated by disregarding certain days including a day that is a Saturday or a Sunday or a bank holiday). This is the date on which the Senedd would have dissolved for the ordinary general election on 6 May had section 3 of the Act not made provision to shorten the dissolution period. A person remains as a candidate for the purposes of Part 3 of the 2007 Order (barring their resignation or deselection, for example) even if the election is postponed in accordance with section 6 (or as the case may be, section 8) of the Act to a date later than 6 May 2021.

43. Subsection (4) makes an adjustment to paragraph 7 of Schedule 1 to the Conduct Order to allow emergency applications for proxy voting to be made where an elector or existing proxy finds they cannot reasonably be expected to vote in person because they are required to comply with an enactment relating to coronavirus or they are following guidance relating to coronavirus issued by the Welsh Ministers. Medical attestation for an application for an emergency proxy in these circumstances will not be required.
44. Subsection (5) modifies Schedule 5 (Senedd election rules) to the Conduct Order to introduce flexibility into the process for the delivery of nomination papers and candidates' consent to nomination in response to the challenges presented by the coronavirus pandemic. The delivery of nomination papers and consent to nominations is a physical rather than a virtual process. The modification provides more time in each day for the delivery of nomination papers (9.00am to 5.00pm instead of 10.00am to 4.00pm). In addition, nomination papers can be delivered on a candidate's behalf by a person nominated by the candidate for that purpose by providing the person's name and address to the returning officer in writing or electronically before or at the time the nomination paper is delivered.
45. The final adjustment is in relation to candidates' consent to nomination. Under the rules in Schedule 5 to the Conduct Order, there is no prescribed form for the consent to nomination, provided it is in writing, delivered to the Returning Officer in the specified time and attested by a witness. Where a candidate is overseas, it can be delivered by facsimile or other similar means – and notably without the requirement for attestation by a witness. For the 2021 election, the Act modifies the rules in Schedule 5 to enable candidates to deliver their respective consent to nomination in the time specified for delivery of nomination papers either in writing at the place for delivery of those papers or electronically to an electronic address for that purpose. There is no requirement for a candidate's consent to nomination to be attested by a witness

Section 15 – Review: preparations for the holding of the poll

46. This section requires the Welsh Ministers to carry out reviews on how preparations for the holding of the poll for the 2021 election are progressing. It also requires the Welsh Ministers to lay a statement before Senedd Cymru stating whether, based on that review, postponement of the election seems likely.

Section 16 – Interpretation

47. This section provides the meaning of key terms used throughout the Act.

Section 17 – Power to make consequential and transitional provision etc.

48. This section gives the Welsh Ministers a regulation-making power to make any incidental, supplementary, consequential, transitional, transitory or saving provisions that they consider appropriate for the purposes of, or in connection with, giving full effect to the Act. Regulations made in reliance on the power can modify, repeal or revoke any enactment, including a provision in the Act itself. The power enables retrospective provision to be made in relation to local government by-elections. The power to make such regulations is subject to Senedd scrutiny via the negative resolution procedure but where regulations under this section amend, modify or repeal provision contained in primary legislation the made affirmative procedure applies.

Section 18 – Coming into force

49. This section provides that the Act will come into force on the day after the day on which it receives Royal Assent.

RECORD OF PROCEEDINGS IN SENEDD CYMRU

50. The following table sets out the dates for each stage of the Act’s passage through the Senedd. The Record of Proceedings and further information on the passage of this Act can be found on the Senedd’s website at:

<https://business.senedd.wales/mgIssueHistoryHome.aspx?IId=35328>

Stage	Date
Introduced	27 January 2021
Stage 1 - Debate	2 February 2021
Stage 2 Scrutiny Committee – consideration of amendments	9 February 2021
Stage 3 Plenary - consideration of amendments	10 February 2021
Stage 4 Approved by the Senedd	10 February 2021
Royal Assent	16 March 2021