
WELSH STATUTORY INSTRUMENTS

2004 No. 870

**The Local Authorities (Conduct of
Referendums) (Wales) Regulations 2004**

Name, commencement and application

1.—(1) These Regulations are called The Local Authorities (Conduct of Referendums) (Wales) Regulations 2004 and shall come into force on 24th March 2004.

(2) These Regulations apply to the holding of referendums by local authorities in Wales.

Interpretation

2.—(1) In these Regulations, and in any provision as applied by these Regulations —

“the 2000 Act” (“*Deddf 2000*”) means the Local Government Act 2000;

“the Elections Act” (“*Deddf yr Etholiadau*”) means the Political Parties, Elections and Referendums Act 2000(1);

“the RP Act 2000” (“*Deddf CB*”) means the Representation of the People Act 2000(2);

“the 1985 Act” (“*Deddf 1985*”) means the Representation of the People Act 1985(3);

“the 1983 Act” (“*Deddf 1983*”) means the Representation of the People Act 1983(4);

“the Elections Regulations” (“*Rheoliadau Etholiadau*”) means the Representation of the People (England and Wales) Regulations 2001(5);

“the LGA Referendum Rules” (“*Rheoliadau Refferendwm LGA*”) means so much of the Principal Areas Rules as are applied, with or without modification(6), in relation to a referendum by regulation 8 of these Regulations;

“the National Assembly” (“*Cynulliad Cenedlaethol*”) means the National Assembly for Wales;

“the Parliamentary Elections Rules” (“*Rheoliadau Etholiadau Seneddol*”) means the rules set out in Schedule 1 to the 1983 Act;

“the Petitions and Directions Regulations” (“*Rheoliadau Deisebau a Chyfarwyddiadau*”) means the Local Authorities (Referendums) (Petitions and Directions) (Wales) Regulations 2001(7);

“the Principal Areas Rules” (“*Rheolau'r Prif Ardaloedd*”) means the Local Elections (Principal Areas) Rules 1986(8);

“counting observer” (“*arsylwr cyfrif*”) means a person appointed by a counting officer under regulation 13(1)(b);

(1) 2000 c. 41.

(2) 2000 c. 2.

(3) 1985 c. 50.

(4) 1983 c. 2.

(5) S.I.2001/341, amended by S.I. 2001/1149, 2001/1700, 2002/881, 2002/1871, 2003/1899.

(6) See, in particular, Table 3 in Schedule 3.

(7) S.I. 2001/2292 (W.180) as amended by S.I. 2003/398 (W.55).

(8) S.I. 1986/2214; amended by S.I. 1987/261, 1990/158, 1995/1948, 1998/578, 2000/247, 2001/81 and 2002/185.

- “counting officer” (“*swyddog cyfrif*”) means a person referred to in regulation 11(1);
- “elected mayor” (“*maer etholedig*”), in relation to a local authority, means an individual elected as mayor of the local authority by the local government electors for the local authority’s area in accordance with provisions made by or under Part II of the 2000 Act;
- “further referendum” (“*refferendwm pellach*”) means a referendum held in pursuance of an order under regulation 17(3);
- “outline fall-back proposals” (“*cynigion amlinellol wrth gefn*”) —
- (a) in relation to proposals under regulation 17 (action before referendum) or regulation 19 (action following direction) of the Petitions and Directions Regulations, means an outline of the proposals that a local authority intend to implement if proposals that are to be the subject of a referendum under Part II or Part III of those Regulations are rejected in that referendum;
 - (b) in relation to proposals under an order under section 36 (referendum following order) of the 2000 Act, means —
 - (i) if the local authority are then operating executive or alternative arrangements, a summary of those arrangements;
 - (ii) in any other case, an outline of the proposals specified in the order that the local authority are to implement if proposals that are to be the subject of a referendum are rejected in that referendum;
- “petition organiser” (“*trefnydd deiseb*”), in relation to a referendum, means a person who is treated for the purposes of paragraph (4) or, as the case may be, paragraph (5) of regulation 10 (formalities of petition) of the Petitions and Directions Regulations, as the petition organiser of any valid petition (whether an amalgamated petition, a constituent petition or a post-announcement petition) received by the local authority by or in respect of which the referendum is held⁽⁹⁾;
- “polling observer” (“*arsylwr y pôl*”) means a person appointed by a counting officer under regulation 11(3);
- “proper officer” (“*swyddog priodol*”) has the meaning given by section 270(3) of the Local Government Act 1972⁽¹⁰⁾;
- “proposals date” (“*dyddiad cynigion*”) —
- (a) in relation to a referendum, other than a further referendum, means the date on which proposals —
 - (i) under regulation 17 or 19 of the Petitions and Directions Regulations; or
 - (ii) under an order under section 36 of the 2000 Act
 are sent to the National Assembly; and
 - (b) in relation to a further referendum, means the day which falls 2 months before the day on which the further referendum is held;
- “referendum” (“*refferendwm*”) means a referendum held by virtue of regulations or an order made under any provision of Part II (arrangements with respect to executives etc.) of the 2000 Act;
- “referendum period” (“*cyfnod y refferendwm*”), in relation to a referendum (including a further referendum), means the period beginning with —

(9) S.I. 2001/2292 as amended by S.I. 2003/398. The definition of “petition organiser” is to be found in regulation 3 of the Petitions and Directions Regulations. As to the validity of petitions, see regulation 9(1) of those Regulations. As to amalgamated, constituent and post-announcement petitions, relevant definitions are to be found in regulation 3 of those Regulations.

(10) 1972 c. 70.

- (a) where the proposals date precedes the coming into force of these Regulations, the date on which these Regulations come into force;
 - (b) in any other case, the proposals date, and ending on the date of the referendum; and
- “voting area” (“*ardal y bleidlais*”) means the area in which a referendum is held.

(2) Any reference in the following provisions of these Regulations to a section followed by a number is, unless the context otherwise requires, a reference to the section of the 2000 Act that bears that number.

The statement and the question to be asked in a referendum

3.—(1) Where the proposals in relation to which a referendum is to be held involve a mayor and cabinet executive(11), the statement to precede the question (“the statement”) and the question to be asked in that referendum shall be in the form set out in paragraph 1 of Part I of Schedule 1 to these Regulations.

(2) Where the proposals in relation to which a referendum is to be held involve a mayor and council manager executive(12), the statement and the question to be asked in that referendum shall be in the form set out in paragraph 2 of Part I of Schedule 1.

(3) Where the proposals in relation to which a referendum is to be held involve a leader and cabinet executive(13), the statement and the question to be asked in that referendum shall be in the form set out in paragraph 3 of Part I of Schedule 1.

Publicity and other information in connection with referendums

4.—(1) The proper officer shall, as soon as reasonably practicable after the proposals date, publish, in at least one newspaper circulating in the local authority’s area, a notice which contains —

- (a) a statement that, as the case may be —
 - (i) proposals under regulation 17(3) or 19(1) of the Petitions and Directions Regulations, or
 - (ii) proposals under an order under section 36, have been sent to the National Assembly;
- (b) a description of the main features of the proposals and of the outline fall-back proposals;
- (c) a statement —
 - (i) that a referendum will be held,
 - (ii) of the date on which the referendum will be held,
 - (iii) of the question to be asked in the referendum,
 - (iv) where the local authority have made a determination under regulation 10(1), that the votes in the referendum may be cast only by postal ballot,
 - (v) where no such determination has been made, that save for extended hours of polling the referendum will be conducted in accordance with procedures similar to those used at local government elections,

(11) See section 11(2) of the Local Government Act 2000.

(12) See section 11(4) of the Local Government Act 2000.

(13) See section 11(3) of the Local Government Act 2000.

- (vi) of the referendum expenses limit (as defined in regulation 6(1)) that will apply in relation to the referendum, and of the number of local government electors by reference to which that limit has been calculated,
- (vii) of the address and times at which a copy of the proposals, and of the local authority's outline fall-back proposals, may be inspected, and
- (viii) of the procedures for obtaining a copy of the proposals and outline fall-back proposals.

(2) Unless the notice required to be published by paragraph (1) ("the first notice") is published less than 56 days before the date of the referendum, the proper officer shall publish a second notice containing the particulars specified in paragraphs (i) to (viii) of sub-paragraph (c) of paragraph (1).

(3) The second notice shall be published —

- (a) in the same newspaper or newspapers as were used for the publication of the first notice, and
- (b) not more than 55 days before the date of the referendum and not less than 28 days before that date.

(4) The local authority shall make available for inspection throughout the referendum period, at the address and times stated in the notice, and free of charge, a copy of the proposals and outline fall-back proposals, and shall secure that sufficient copies are available for persons who wish to obtain copies.

(5) The authority may provide (whether or not in pursuance of any duty to do so) any other factual information relating to the proposals, the outline fall-back proposals and the referendum so far as it is presented fairly.

(6) In determining for the purposes of paragraph (5) whether any information is presented fairly, regard shall, in accordance with section 38, be had to any guidance for the time being issued by the National Assembly under section 38.

Restriction on publication etc. of promotional material

5.—(1) This regulation applies to any material which —

- (a) provides general information about the referendum;
- (b) deals with any of the issues raised by the question to be asked in the referendum; or
- (c) puts any arguments for or against a particular answer to that question.

(2) Subject to paragraph (3), no material to which this regulation applies shall be published by or on behalf of a local authority during the period of 28 days ending with the date of the poll at the referendum.

(3) Paragraph (2) does not apply to —

- (a) material made available to persons in response to specific requests for information or to persons specifically seeking access to it;
- (b) the publication of information relating to the holding of the poll at the referendum; or
- (c) the publication of press notices containing factual information where the sole purpose of publication is to refute or correct any inaccuracy in material published by a person other than the local authority.

(4) In this regulation "publish" means make available to the public at large, or to any section of the public, in whatever form and by whatever means (including, in particular, by inclusion in any

programme included in a programme service within the meaning of the Broadcasting Act 1990(14)); and “publication” shall be construed accordingly.

General restriction on referendum expenses

6.—(1) In this regulation and regulation 7 —

“campaign organiser” (“*trefnydd yr ymgyrch*”) means the individual or body by whom, or on whose behalf, referendum expenses are incurred (including expenses treated as incurred) in connection with a referendum campaign;

“referendum campaign” (“*ymgyrch refferendwm*”) means a campaign conducted with a view to promoting or procuring a particular outcome in relation to the question to be asked in a referendum;

“referendum expenses” (“*treuliau refferendwm*”) means expenses incurred by or on behalf of any individual or body during the referendum period for referendum purposes in respect of any of the matters set out in paragraph 1 of Schedule 2 to these Regulations, as read with paragraph 2 of that Schedule;

“referendum expenses limit” (“*cyfyngiadau treuliau'r refferendwm*”) means the aggregate of £2,000 and such amount as is found by multiplying by five pence the number of entries in the relevant register;

“for referendum purposes” (“*at ddibenion y refferendwm*”) means —

- (a) in connection with the conduct or management of any campaign conducted with a view to promoting or procuring a particular outcome in relation to the question asked in the referendum; or
- (b) otherwise in connection with promoting or procuring any such outcome; and

“the relevant register” (“*y gofrestr berthnasol*”) means the register (or registers) of local government electors published under section 13 (publication of registers) of the 1983 Act (as substituted) after the conclusion of the canvass conducted under section 10 of that Act in the year immediately preceding that in which the referendum is held, which has (or have) effect in the area of the local authority by which, or as regards which, the referendum is held (whether or not the persons to whom those entries relate are entitled to vote in the referendum).

(2) The total referendum expenses incurred or, in accordance with regulation 7, treated as incurred, by or on behalf of any individual or body shall not exceed the referendum expenses limit.

(3) Where any referendum expenses are incurred in excess of the referendum expenses limit, a person who knew or reasonably ought to have known that that limit would be exceeded, or who, without reasonable excuse, authorises another person to exceed that limit, is guilty of an offence.

(4) Where information is given to the Director of Public Prosecutions that an offence under paragraph (3) has been committed, it is the duty of the Director of Public Prosecutions to make such inquiries and institute such prosecutions as the circumstances of the case appear to the Director of Public Prosecutions to require.

(5) Where an offence under paragraph (3) which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any other person purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(6) A person who commits an offence under paragraph (3) shall be liable —

(14) 1990 c. 42. The definition of “programme service” is to be found in section 201.

- (a) on summary conviction, to a fine not exceeding the statutory maximum or imprisonment for a term not exceeding six months, or both; or
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding one year, or both.

(7) Nothing in paragraph (2) affects the right of any creditor who, when the expense was incurred, was ignorant of that expense being in contravention of that paragraph.

Notional referendum expenses

7.—(1) This regulation applies where —

- (a) property, services or facilities is or are provided for the use or benefit of any person either —
 - (i) free of charge; or
 - (ii) at a discount of more than 10 per cent. of the commercial rate for the use of the property or for the provision of the services or facilities; and
- (b) the property, services or facilities is or are made use of by or on behalf of that person in circumstances such that, if any expenses were to be (or are) actually incurred by that person or on their behalf in respect of that use, they would be (or are) referendum expenses incurred by that person or on that person's behalf.

(2) Subject to paragraph (5), where this regulation applies an amount of referendum expenses determined in accordance with paragraph (3) shall, unless it is not more than £200, be treated for the purposes of regulation 6 as incurred by that person during the period for which the property, services or facilities is or are made use of as mentioned in paragraph (1)(b).

(3) The amount mentioned in paragraph (2) is such proportion of either —

- (a) the commercial rate for the use of the property or the provision of the services or facilities (where the property, services or facilities is or are provided free of charge), or
- (b) the difference between that commercial rate and the amount of expenses actually incurred by or on behalf of that person in respect of the use of the property or the provision of the services or facilities (where the property, services or facilities is or are provided at a discount),

as is reasonably attributable to the use made of the property, services or facilities as mentioned in paragraph (1)(b).

(4) Where the services of an employee are made available by that person's employer for the use or benefit of a person, the amount which is to be taken as constituting the commercial rate for the provision of those services shall be the amount of the remuneration or allowances payable to the employee by the employer in respect of the period for which the employee's services are made available (but shall not include any amount in respect of contributions or other payments for which the employer is liable in respect of the employee).

(5) No amount of referendum expenses shall be regarded as incurred by virtue of paragraph (1) in respect of the provision by any individual of their own services provided voluntarily in their own time and free of charge.

Application of provisions

8.—(1) Subject to paragraph (2), and regulations 9, 10, 11, 12 and 15 the provisions set out in column (1) of Tables 1 to 4 in Schedule 3 shall have effect in relation to the referendum with the modifications shown in column (2) of those Tables and any other necessary modifications; and in particular, except where the context otherwise requires —

- (a) a reference to an election shall be construed as a reference to the referendum;
- (b) a reference to a returning officer shall be construed as a reference to the counting officer;
- (c) a reference to a constituency or an electoral division shall be construed as a reference to a voting area;
- (d) a reference to voting for, or a vote for, a candidate shall be construed as a reference to voting for, or a vote for, an answer;
- (e) a reference to promoting or procuring the election of a candidate, or furthering a person's candidature, shall be construed as a reference to promoting or procuring a particular result in the referendum;
- (f) references to nomination papers and, except as mentioned in sub-paragraphs (d) and (e), references to candidates, shall be ignored;
- (g) a reference to the return of a person shall be construed as a reference to a particular result in the referendum;
- (h) a reference to a person voting as an elector shall be construed as a reference to a person voting on their own behalf;
- (i) a reference to a person's entitlement as an elector to an absent vote shall be construed as a reference to a person's entitlement to vote by post on their own behalf or to vote by proxy;
- (j) where anything is required to be done in the presence of election, polling, counting or other agents, the reference to the presence of agents shall be ignored;
- (k) a reference to anything being prescribed shall be construed as a reference to its being provided for by a provision of subordinate legislation applied by these Regulations;
- (l) a form which is required to be used may be used with such variations as the circumstances may require;
- (m) a reference to the registration officer, in relation to a local authority, is a reference to the relevant registration officer appointed under section 8 of the 1983 Act; and for the purpose of the exercise of a registration officer's functions in relation to the referendum, sections 52(1) to (4) (discharge of registration duties) and 54(1), (3) and (4) (payment of expenses of registration) of that Act shall have effect;
- (n) a reference to an election petition shall be construed as a reference to a referendum petition;
- (o) any reference to an enactment or instrument made under an enactment shall be construed as a reference to that enactment or instrument as applied by these Regulations; and
- (p) so much of any provision as applies only in relation to England, Scotland or Northern Ireland, shall be ignored.

(2) A provision set out in column (1) of Table 4 in Schedule 3 and expressed to apply only in circumstances there mentioned, and any modification shown in column (2) as applicable to any such provision, shall have effect only in those circumstances.

Ballot papers

9.—(1) Where the statement and the question to be asked in the referendum is that set out in paragraph 1 of Part I of Schedule 1, the front of the ballot papers to be used in that referendum shall be in Form A set out in Part II of that Schedule.

(2) Where the statement and the question to be asked in the referendum is that set out in paragraph 2 of Part I of Schedule 1, the front of the ballot papers to be used in that referendum shall be in Form B set out in Part II of that Schedule.

(3) Where the statement and the question to be asked in the referendum is that set out in paragraph 3 of Part I of Schedule 1, the front of the ballot papers to be used in that referendum shall be in Form C set out in Part II of that Schedule.

(4) The back of the ballot papers to be used in any referendum shall be in the form set out in Part III of that Schedule.

(5) Every ballot paper —

- (a) shall be capable of being folded up;
- (b) shall have a number printed on the back; and
- (c) shall have attached a counterfoil with the same number printed on it.

Postal ballots and postal votes

10.—(1) Subject to paragraph (2), a local authority may determine, in relation to a referendum which they are to hold, that the votes in the referendum shall be cast only by postal ballot; and where such a determination is made —

- (a) no polling station shall be used at the referendum;
- (b) any person who, but for the determination, may vote in person, either as a person entitled to vote in the referendum⁽¹⁵⁾ or as proxy, may only vote by post; and
- (c) the references in these Regulations⁽¹⁶⁾ and any reference in the Elections Act, the RP Act 2000, the 1983 Act, rules under section 36 of the 1983 Act, the Elections Regulations, or any enactment relating to the qualification or disqualification for election to, or membership of, a local authority —
 - (i) to polling day, the day or date of the poll or the date fixed for the poll, shall continue to have effect, in respect of that referendum, as a reference to the date of the referendum; and
 - (ii) to the close of the poll, shall continue to have effect, in respect of that referendum, as a reference to 10 p.m. on the day of the referendum.

(2) Where a determination under paragraph (1) has effect, the provisions (as applied by regulation 8) of the 1983 Act, with the exception of section 31, the 1985 Act, the Elections Act, the RP Act 2000, the Elections Regulations, with the exception of regulations 55, 62 and 79, and the Principal Areas Rules shall apply, as regards the referendum; but the provisions set out in column (1) of Schedule 4 shall apply subject to the further modifications set out in relation to them in column (2) of that Schedule (in addition to the modifications having effect by virtue of regulation 8).

(3) The function of making a determination under paragraph (1) shall not be the responsibility of an executive of a local authority operating executive arrangements⁽¹⁷⁾.

Counting officer's functions, and assistance for counting officers

11.—(1) Functions conferred by these Regulations on the counting officer shall be exercised in each voting area by the person who is for the time being the returning officer at elections of councillors for that area under subsection (1A)(a) of section 35 (returning officers: local elections) of the 1983 Act.

(2) It is the counting officer's general duty at the referendum to do all such acts and things as may be necessary for effectually conducting the referendum in the manner provided by these Regulations.

⁽¹⁵⁾ For the persons entitled to vote in a referendum *see* section 45(4) of the Local Government Act 2000.

⁽¹⁶⁾ *See* regulation 5(2) the definition of "the relevant register" in regulation 6(1), and paragraphs (2) and (4) of regulation 13.

⁽¹⁷⁾ *See* section 13(2) of the Local Government Act 2000.

(3) The counting officer may appoint persons to attend at polling stations for the purpose of detecting personation (“polling observers”).

Hours of polling

12.—(1) Subject to paragraph (2), the hours of polling shall be between 7 a.m. and 10 p.m. on the day of the referendum.

(2) Paragraph (1) shall not apply in relation to a referendum as regards which a determination under regulation 10(1) has effect.

Counting of votes etc.

13.—(1) The counting officer —

- (a) shall appoint and pay such persons as may be necessary for the purpose of the counting of the votes; and
- (b) shall appoint persons to observe the counting of the votes and the verification of the ballot paper account (“counting observer”).

(2) For the purpose of assisting the counting officer in the discharge of that person’s functions under paragraph (1)(b), a petition organiser may, not less than the fifth day before the date of the poll, by notice in writing to the counting officer, nominate persons who, in the opinion of the petition organiser, are suitable for appointment as counting observers; and the notice shall also contain the address of each nominee.

(3) Subject to paragraph (4) of rule 24 of the LGA Referendum Rules, the counting officer shall not, without good cause, decline to appoint as a counting observer a person nominated by a petition organiser.

(4) The counting officer shall, as soon as practicable after the close of the poll, make arrangements for counting the votes in the presence of the counting observers, and shall give those observers notice in writing of the time and place at which the count of the votes will begin.

(5) No person may attend the counting of votes for any voting area unless that person is —

- (a) the counting officer for that area;
- (b) a person appointed by the counting officer under paragraph (1);
- (c) the elected mayor, if any, of the local authority in respect of which the referendum is held;
- (d) a petition organiser; or
- (e) permitted by the counting officer for that area to attend the count.

(6) The counting officer shall give the counting observers such reasonable facilities for observing the proceedings at the counting of votes, and all such reasonable information with respect to them, as can be given to them consistently with the orderly conduct of the proceedings and the discharge of the counting officer’s duties in connection with them.

Result of referendum or further referendum

14.—(1) Subject to regulations 16 and 17, if the majority of the votes cast in a referendum other than a further referendum are “yes” votes, the result of the referendum is, for the purposes of regulation 23 (action where referendum proposals approved) of the Petitions and Directions Regulations or, as the case may be, the comparable provisions of any other regulations or order made under any provision of Part II of the 2000 Act, to approve the proposals that were the subject of the referendum.

(2) Subject to regulations 16 and 17, if the majority of the votes cast in a referendum other than a further referendum are “no” votes, the result of the referendum is, for the purposes of regulation 24

(action where referendum proposals rejected) of the Petitions and Directions Regulations or, as the case may be, the comparable provisions of any other regulations or order made under any provision of Part II of the 2000 Act, to reject the proposals that were the subject of the referendum.

(3) Subject to regulations 16 and 17, if the majority of the votes cast in a further referendum are “yes” votes, the result of the referendum is to approve the continuation of the local authority’s existing executive arrangements.

(4) Subject to regulations 16 and 17, if the majority of the votes cast in a further referendum are “no” votes, the result of the referendum is to reject the continuation of the local authority’s existing executive arrangements.

Procedures for questioning a referendum

15.—(1) A referendum under these Regulations may be questioned by petition (“referendum petition”) —

- (a) on the ground that the result of the referendum was not in accordance with the votes cast;
- (b) on the ground that the referendum was avoided by such corrupt or illegal practices, within the meaning of the 1983 Act, as are relevant to referendums by virtue of regulation 8 or paragraph (8) below;
- (c) on the grounds provided by section 164 (avoidance of election for general corruption etc.) of the 1983 Act, as applied for the purposes of these Regulations by paragraph (8) below; or
- (d) subject to paragraph (3), on the ground that a payment of money or other reward has been made or promised since the referendum in pursuance of a corrupt or illegal practice relevant to referendums by virtue of regulation 8 or paragraph (8) below.

(2) A referendum petition on any of the grounds specified in paragraph (1)(a) to (c) shall be presented within 21 days after the day on which the referendum was held.

(3) A referendum petition on the ground mentioned in paragraph (1)(d) may be presented only with the leave of the High Court.

(4) An application for leave shall be made, not later than 28 days after the date of the alleged payment or promise, by application notice to the court at such time and place as the court may appoint.

(5) Not less than seven days before the day so appointed the applicant shall —

- (a) serve the application notice on the respondent and the Director of Public Prosecutions and lodge a copy in the election petitions office; and
- (b) publish notice of the intended application in at least one newspaper circulating in the voting area for the referendum to which the application relates.

(6) The application notice shall state the grounds on which the application is made.

(7) A referendum petition shall be tried by an election court, that is to say, a court constituted under section 130 (election court for local election in England and Wales, and place of trial) of the 1983 Act for the trial of an election petition, as applied by paragraph (8) below.

(8) The provisions set out in column (1) of Schedule 5 shall have effect in relation to the questioning of a referendum as they have effect in relation to the questioning of an election under the Local Government Act 1972(18) subject to —

- (a) the modifications set out in sub-paragraphs (a) to (p) of paragraph (1) of regulation 8;

(b) the substitution, for “an election petition”, wherever that term appears, of “a referendum petition under the Local Authorities (Conduct of Referendums) (Wales) Regulations 2004”; and

(c) the further modifications set out in column (2) of Schedule 5.

(9) The Election Petition Rules 1960(19) shall have effect in relation to a referendum petition as they have effect in relation to a local election petition within the meaning of those Rules subject to the modifications set out in Schedule 6.

Immediate consequences of referendum petitions

16.—(1) Where a referendum petition is presented on any of the grounds specified in sub-paragraphs (a) to (c) of paragraph (1) of regulation 15, or leave is granted for the presentation of a referendum petition —

(a) in relation to a referendum —

(i) at which the statement and the question asked was in the form set out in paragraph 3 of Part I of Schedule 1; and

(ii) in which the majority of the votes cast are “yes” votes; and

(b) before the local authority have passed a resolution under section 29,

the local authority shall take no further steps in consequence of the referendum until the election court has certified its determination in the matter of the referendum petition.

(2) Where a referendum petition is presented on any of the grounds specified in sub-paragraphs (a) to (c) of paragraph (1) of regulation 15, or leave is granted for the presentation of a referendum petition —

(a) in relation to a referendum —

(i) at which the statement and the question asked was in the form set out in paragraph 3 of Part I of Schedule 1; and

(ii) in which the majority of the votes cast are “yes” votes; and

(b) after the local authority have passed a resolution under section 29,

the local authority shall continue to operate the executive arrangements that are the subject of that resolution.

(3) Where a referendum petition is presented on any of the grounds specified in sub-paragraphs (a) to (c) of paragraph (1) of regulation 15, or leave is granted for the presentation of a referendum petition —

(a) in relation to a referendum —

(i) at which the statement and the question asked was in the form set out in paragraph 1 or 2 of Part I of Schedule 1; and

(ii) in which the majority of the votes cast are “yes” votes; and

(b) without an election for the return of an elected mayor having taken place in consequence of the referendum,

the local authority shall take no further steps in consequence of the referendum until the election court has certified its determination in the matter of the referendum petition.

(4) Where leave is granted for the presentation of a referendum petition —

(a) in relation to a referendum —

- (i) at which the statement and the question asked was in the form set out in paragraph 1 or 2 of Part I of Schedule 1; and
 - (ii) in which the majority of the votes cast are “yes” votes; and
- (b) after an election for the return of an elected mayor has taken place in consequence of the referendum,
- the elected mayor shall continue in office.

(5) Where —

- (a) a referendum petition is presented on any of the grounds specified in sub-paragraphs (a) to (c) of paragraph (1) of regulation 15, or leave is granted for the presentation of a referendum petition in relation to a referendum in which the majority of the votes cast are “no” votes; and
- (b) the local authority’s outline fall-back proposals are based on the executive or alternative arrangements which they were operating at the date of the referendum,

they shall continue to operate those arrangements.

(6) Except in a case to which paragraph (5) applies, where a referendum petition is presented on any of the grounds specified in sub-paragraphs (a) to (c) of paragraph (1) of regulation 15, or leave is granted for the presentation of a referendum petition —

- (a) in relation to a referendum in which the majority of the votes cast are “no” votes; and
- (b) before the local authority have passed a resolution under section 29 (operation of, and publicity for, executive arrangements) or section 33 (operation of alternative arrangements),

the local authority shall take no further steps in consequence of the referendum until the election court has certified its determination in the matter of the referendum petition.

(7) Where a referendum petition is presented on any of the grounds specified in sub-paragraphs (a) to (c) of paragraph (1) of regulation 15, or leave is granted for the presentation of a referendum petition —

- (a) in relation to a referendum in which the majority of the votes cast are “no” votes; and
- (b) after the local authority have passed a resolution under section 29 or section 33,

the local authority shall continue to operate the executive arrangements or, as the case may be, the alternative arrangements that are the subject of that resolution.

Determination of referendum petitions, and subsequent procedures

17.—(1) Where an election court certifies, as its determination of a referendum petition, that the result of the referendum declared under regulation 14 is or, as the case may be, is not in accordance with the votes cast, any reference (in whatever terms) in the timetable —

- (a) included in their proposals under regulation 17(3)(a) or 19(1)(c) of the Petitions and Directions Regulations⁽²⁰⁾;
- (b) regulation 17(7)(a)(ii), or 20(3)(a)(iii) of those Regulations; or
- (c) prepared pursuant to any other regulations or an order made under any provision of Part II (arrangements with respect to executives etc.) of the 2000 Act,

to the date of the result of the referendum shall be construed as a reference to the date on which the election court certifies its determination.

⁽²⁰⁾ See, in particular, regulations 17(5)(b) and 20(2)(b).

(2) Where an election court certifies, as its determination of a referendum petition specifying any of the grounds mentioned in regulation 15(1)(b) to (d), that the referendum was avoided, the local authority concerned shall, not earlier than two months, and not later than three months, after the election court has certified its determination in the matter of the referendum petition, hold another referendum.

(3) On the substantive hearing of a referendum petition for which leave has been granted where the circumstances are as mentioned in regulation 16(4)(a) and (b), the election court shall either —

- (a) dismiss the petition; or
- (b) allow the petition,

and, where the court allows the petition, it shall declare the referendum to be tainted, and order that a further referendum be held.

(4) Where an election court makes such an order as is mentioned in paragraph (3), the local authority shall hold the further referendum as soon as reasonably practicable after the expiration of the period of five years beginning with the date on which the tainted referendum was held.

(5) If the majority of the votes cast in a further referendum are “yes” votes where the local authority are operating executive arrangements, they shall continue to operate those arrangements unless and until they are authorised or required to operate different executive arrangements or authorised to operate alternative arrangements in place of their existing executive arrangements.

(6) Subject to paragraphs (7), (8) and (9), if the majority of the votes cast in the further referendum are “no” votes, the local authority shall implement the proposals that were their outline fall-back proposals at the time of the tainted referendum.

(7) Where the local authority’s outline fall-back proposals are the executive or alternative arrangements which they were operating at the date of the tainted referendum, subsection (13) of section 27 shall apply to the implementation of detailed fall-back proposals as if, for “in accordance with the timetable mentioned in subsection (4)” there were substituted “as soon as reasonably practicable”.

(8) Where the local authority’s outline fall-back proposals are executive arrangements which involve a form of executive for which a referendum is not required⁽²¹⁾ —

- (a) subsection (1) of section 29 (operation of, and publicity for, executive arrangements) shall apply for the purpose of enabling the local authority to operate the executive arrangements set out in their detailed fall-back proposals as it applies for the purpose of enabling a local authority to operate executive arrangements in other circumstances; and
- (b) subsection (2) of that section shall apply as if, in paragraph (b), for sub-paragraph (i), there were substituted “(i) states that, in consequence of the rejection in a further referendum of the local authority’s existing executive arrangements, the local authority have resolved to operate the different executive arrangements that were described in their outline fall-back proposals at the time of the referendum,”.

(9) Where the local authority’s outline fall-back proposals are alternative arrangements —

- (a) subsection (2) of section 33 (operation of alternative arrangements) shall apply for the purpose of enabling the local authority to operate the alternative arrangements set out in their detailed fall-back proposals as it applies for the purpose of enabling a local authority to operate alternative arrangements in other circumstances; and
- (b) subsection (2) of section 29⁽²²⁾ shall apply as if, in paragraph (b), for sub-paragraph (i) there were substituted “(i) states that, in consequence of the rejection in a further referendum of the local authority’s existing executive arrangements the local authority

⁽²¹⁾ See section 26 of the Local Government Act 2000.

⁽²²⁾ See section 33(3) of the Local Government Act 2000.

have resolved to operate the alternative arrangements that were described in their outline fall-back proposals at the time of the referendum.”.

(10) These Regulations, except where the context otherwise requires, shall apply (so far as relevant), to the conduct of the further referendum as they apply to the conduct of any other referendum, subject to —

(a) in regulation 4 —

(i) in paragraph (1), the omission of sub-paragraph (a);

(ii) in sub-paragraph (b) of that paragraph, the substitution, for “the proposals”, of “the local authority’s existing executive arrangements”;

(iii) in paragraph (vii) of sub-paragraph (c), the substitution, for “a copy of the proposals”, of “a document in which are set out the main features of the local authority’s existing executive arrangements”;

(iv) in paragraph (viii) of that sub-paragraph, the substitution, for “the proposals and”, of “that document and those”;

(v) after paragraph (viii) of that sub-paragraph the insertion of the following paragraph —

“(ix) that the referendum is being held in consequence of the determination of an election court that the referendum last held in the local authority’s area was tainted by reason of a payment of money or other reward made or promised since the referendum in pursuance of a corrupt or illegal practice.”;

(vi) in paragraph (4), the substitution, for “a copy of their proposals”, of “a document in which are set out the main features of the local authority’s current executive arrangements”; and

(vii) in paragraph (5), the substitution, for “the proposals”, of “the main features of the local authority’s current executive arrangements”; and

(b) the substitution of paragraph 1 of Part I of Schedule 1, by —

At the mayoral referendum held on *[insert date as appropriate]* the electorate for *[insert name of local authority]* approved the proposal that a mayor should lead that *[insert "county" or "county borough" as appropriate]* and be responsible for making decisions about council services together with a "cabinet" of elected councillors appointed by that mayor. On *[insert date as appropriate]* the Election Court declared that mayoral referendum to be tainted. The Election Court ordered that a further referendum be held.

Should the majority of votes cast in this further referendum be "no" votes, *[insert name of local authority]* will implement *[executive]* [alternative]** arrangements consisting of *[a leader elected by the authority and a cabinet of elected councillors]* [an elected mayor and council manager appointed as such by the authority]* [a politically balanced board]** responsible for making decisions about local council services.

**delete as appropriate*

.....
Question

Are you in favour of *[insert name of local authority]* continuing to be led by a mayor together with a cabinet of elected councillors?

(c) the substitution of paragraph 2 of Part I of Schedule 1 by —

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

At the mayoral referendum held on *[insert date as appropriate]* the electorate for *[insert name of local authority]* approved the proposal that a mayor should lead that *[insert "county" or "county borough" as appropriate]* and be responsible for making decisions about council services together with an officer of that *[insert "county" or "county borough" as appropriate]* appointed as "council manager" by elected councillors. On *[insert date as appropriate]* the Election Court declared that mayoral referendum to be tainted. The Election Court ordered that a further referendum be held.

Should the majority of votes cast in this further referendum be "no" votes, *[insert name of local authority]* will implement *[executive]* [alternative]** arrangements consisting of *[an elected mayor and a cabinet of elected councillors appointed by the mayor]* [a leader elected by the authority and a cabinet of elected councillors]* [a politically balanced board]** responsible for making decisions about local council services.

**delete as appropriate*

.....
Question

Are you in favour of *[insert name of local authority]* continuing to be led by a mayor together with a council manager?

(11) On the substantive hearing of a referendum petition for which leave has been granted where the circumstances are as mentioned in any paragraph of regulation 16 other than paragraph (4), the election court shall either —

- (a) dismiss the petition; or
- (b) allow the petition,

and, where the court allows the petition, it shall declare the referendum avoided.

Time

18. In calculating any period for the purposes of

- (a) any provision of the LGA Referendum Rules; or
- (b) regulation 4(1) of these Regulations,

the following days shall be disregarded —

- (i) a Saturday or Sunday, Christmas Eve, Christmas Day, Maundy Thursday, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971(23) in Wales, and

(23) 1971 c. 80.

- (ii) any day appointed as a day of public thanksgiving or mourning.

Advertisements

19. The Town and Country Planning (Control of Advertisements) Regulations 1992(**24**) shall have effect in relation to the display on any site in a voting area of an advertisement relating specifically to the referendum as they have effect in relation to the display of an advertisement relating specifically to a local government election.

Non-domestic rating: premises used for referendum purposes

20. In relation to premises in a voting area, section 65(6) of the Local Government Finance Act 1988 (occupation for election meetings and polls)(**25**) shall have effect as if —

- (a) the reference to public meetings in furtherance of a person's candidature at an election included a reference to public meetings promoting a particular result in the referendum; and
- (b) the reference to use by a returning officer for the purpose of taking the poll in an election included a reference to use by a person exercising functions of a returning officer in accordance with regulation 11 for the purpose of taking the poll in the referendum.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(**26**)

23rd March 2004

John Marek
Deputy Presiding Officer of the National
Assembly

(24) S.I. 1992/666; see regulation 3(2) and Class F in Schedule 2. S.I. 1992/666 amended by 1994/2351. There are other amendments to S.I. 1992/666 which are not relevant to these regulations.

(25) 1988 c. 41.

(26) 1998 c. 38.