

Explanatory Memorandum to the Representation of the People (Election Expenses Exclusion) (Wales) (Amendment) Order 2020.

This Explanatory Memorandum has been prepared by the Local Government Department and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Representation of the People (Election Expenses Exclusion) (Wales) (Amendment) Order 2020.

Julie James MS
Minister for Housing and Local Government
07 October 2020

PART 1

1. Description

1.1 This Order amends Part 2 of Schedule 4A to the Representation of the People Act 1983 (“the 1983 Act”), exempting expenses relating to a candidate’s disability and those relating to the costs incurred or attributable to translating English to or from Welsh from a candidate’s election expenses for local government elections. This Order also amends Part 1 of Schedule 8 to the Political Parties, Elections and Referendums Act 2000 (“the 2000 Act”), exempting from inclusion in the campaign expenditure of political parties, expenses relating to a candidate’s disability and those costs incurred or attributable to translating English to or from Welsh at both Senedd and local government elections. The Order further amends the National Assembly for Wales (Representation of the People) Order 2007 (“the 2007 Order”) exempting expenses relating to a candidate’s disability and those costs incurred or attributable to translating English to or from Welsh from a party candidate’s or independent candidate’s election expenses at Senedd constituency elections.

1.2 Currently, any expenses incurred by a candidate or a political party as a result of reasonable adjustments relating to a candidate’s impairment to enable them to stand for election, such as the need for braille documentation or the provision of a British Sign Language interpreter are included in either the candidate’s expenses or the political party’s overall campaign expenditure limits. Likewise, the costs incurred or attributable to translating anything from English to or from Welsh for candidates campaigning in Wales are also included within a candidate’s expenses or a political party’s campaign expenditure limits.

1.3 Matters of expenditure that would be common to both disabled and non-disabled candidates, such as the normal printing of campaign leaflets for distribution to the public, would not fall within the scope of this exemption. However, where a disabled candidate requires specially adapted measures to participate in campaigning on a level basis with a non-disabled candidate, then the additional expenses incurred in the provision of such measures, are likely to fall within the scope of this Order.

1.4 This Order will also exclude the costs incurred or attributable to the translation of anything from English to or from Welsh from both a candidate’s expenses and a political party’s campaign expenditure limits, in accordance with the principle that Welsh should be treated no less favourably than English as provided by the Welsh Language Act 1993.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

2.1 There are no matters of special interest to bring to the attention of the Committee.

3. Legislative background

Election expenses

3.1. Legislative competence in respect of electoral matters in Wales was devolved to the National Assembly for Wales, now Senedd Cymru, by the Wales Act 2017. The Welsh Ministers (Transfer of Functions) Order 2018 as modified by the Government of Wales Act 2006 (Amendment) Order 2019, also transferred to the Welsh Ministers, functions exercisable by a Minister of the Crown in respect of local government elections in Wales, so far as those functions are exercisable within the Senedd's legislative competence.

3.2. The matters which are excluded from the definition of "election expenses" are listed in Part 2 of Schedule 4A to the 1983 Act, Part 1 of Schedule 8 to the 2000 Act and Part 2 of Schedule 7 to the 2007 Order. Under the current legislative framework, disability-related and translation expenses are not excluded from the definition of "election expenses" in section 90ZA of the 1983 Act, section 72 of the 2000 Act or article 63 of the 2007 Order. Consequently, such expenses count towards a candidate's expenses or a political party's campaign expenditure spending limits respectively.

Disability Related Expenses and Translation Costs

3.3. Pursuant to Schedule 8A of the 2000 Act, the expenses of non-party campaigners (as opposed to candidates) that are reasonably attributable to an individual's impairment are excluded from electoral spending limits as are the costs of translating anything from English into Welsh or from Welsh into English.

3.4. Disability-related expenses are exempt from election spending limits in both UK Parliament elections¹ and Scottish Parliament elections² and Scottish³ and English local council elections and subsequent by-elections.

3.5. Except as set out in paragraph 3.3 above, there are currently no existing provisions concerning the exemption of translation expenses from a candidate's expenses or a political party's campaign expenditure in Wales.

The Welsh Language Act 1993 and the Welsh Language Measure (Wales) 2011

3.6. The Welsh Language Act 1993 legislated for the Welsh and English languages to be treated on the basis of equality in the course of public business so far as is reasonably practicable and the following Welsh Language (Wales) Measure 2011 modernised the existing legal framework regarding the use of the Welsh language in the delivery of public services and confirms the official

¹ The Representation of the People (Election Expenses Exclusion) (Amendment) Order 2019

² Scottish Parliament (Elections etc.) Order 2015 (S.I. 2015/425)

³ Scottish Local Government Elections Amendment (No. 2) Order 2016 (S.I. 2016/354)

status of Welsh in Wales alongside the English language.

3.7. On that basis, the cost of translation (English to Welsh or Welsh to English) should be exempt from both candidate expenses and political party campaign expenditure limits to promote the equal treatment of both languages.

4. Purpose and intended effect of the legislation

4.1 There are limits set out in legislation as to the amounts candidates and political parties at elections can spend on their respective election campaigns. Candidates are required to submit details of their election expenses to the Electoral Commission which is required by section 145 of the 2000 Act to monitor the compliance of candidates and agents with rules on candidates' election spending and donations.

4.2 A candidate's expenses and a political party's campaign expenditure can cover such things as:

- Advertising – newspapers, on-line, posters, etc.
- Unsolicited communications - Letters, leaflets and emails
- Transport costs
- Staff and administration costs - telephone, stationery, etc.

4.3 Currently, for Senedd elections and elections to local government in Wales, where a disabled candidate requires specially adapted measures or reasonable adjustments to participate in campaigning on a level basis with a non-disabled candidate, then such additional expenses are included either within their own or a political party's spending limits, as appropriate.

4.4 Further, for Senedd elections and elections to local government in Wales, where translation to or from Welsh is required this expense is also included within either a candidate's expenses, or a political party's campaign expenditure spending limits.

4.5 The UK Government introduced the Representation of the People (Election Expenses Exclusion) (Amendment) Order 2019 to create a new category of disability-related expenses which are exempt from electoral spending limits. It did not apply to devolved elections. In January 2020, the UK Government also introduced an Order so that disability-related campaign expenses would be excluded from Police and Crime Commissioner candidates' spending limits. There are similar exemptions in force introduced by the Scottish Parliament for Scottish Parliamentary and local government elections in Scotland.

4.6 By introducing this Order for Senedd and local government elections in Wales, this will bring Wales into alignment with England and Scotland with regards to disability-related expenses and support existing Welsh legislation in ensuring that the English and Welsh languages are treated equally.

4.7 If the Order is not made, disabled people who are standing as candidates at Senedd or local government elections could be at a financial disadvantage compared to non-disabled candidates at those elections in Wales, as some of the expenses they incur will be directly related to enabling them to overcome barriers they face as a disabled person who wishes to stand for election. Under current legislation those costs must be declared and will count towards the limit for their candidate spending. Many of these disability related expenses can run into hundreds or thousands of pounds. Evidence of this was seen in applications for financial support made by disabled people to the UK and Scottish Government's Access to Elected Office funds⁴.

Translation Costs

4.8 With regard to translation costs not being exempt, it could be argued that English and Welsh are not being treated equally if a candidate or a political party is required to account for the costs of translation to or from Welsh within their respective spending limits. If Welsh is to be treated no less favourably than English, it should not be seen as a financial disadvantage to a candidate or a political party to provide campaign materials in Welsh for the electorate. By exempting translation costs from candidate expenses and political party campaign expenditure limits, this creates a more positive and enabling attitude towards the Welsh language in public life.

5. Consultation

5.1 Welsh Government has consulted informally and formally with the Electoral Commission and the Wales Electoral Co-ordination Board concerning exempting disability expenses and translation expenses with regard to local government elections in Wales. With respect to exempting such expenses from the spending limits for candidates to Senedd elections, all that is required is a recommendation from the Electoral Commission that it be done, which they confirm they have made. Ministers could also exercise the order making power after a consultation exercise, independent of an Electoral Commission recommendation. The Electoral Commission has provided advice and points for consideration in the creation of an exemption from disability related expenses based on their assessment of the UK Government's legislation and most of those comments have been incorporated into the drafting of this Order. However, the Electoral Commission's recommendation that a reasonableness

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/722039/Access_to_elected_office_evaluation_report.pdf

<https://inclusionScotland.org/wp-content/uploads/2018/05/Access-to-Elected-Office-Fund-Scotland-2017-Evaluation-Report.pdf>

test be applied to the exemption for translation expenses was not included as this would introduce a disparity in relation to the approach taken with non-party campaigners.

5.2 In 2016, Welsh Government also carried out research into the barriers facing disabled people as part of its Diversity in Democracy Programme and the types of support required by disabled people when running for elected office. Welsh Government has also taken into account the evaluation reports of the UK Government EnAble Scheme and Scottish Government's Access to Elected Office Scheme which provide grant funding to assist disabled people running for elected office.

5.3 Welsh Government has also taken account of responses to Question 20 of the Senedd Commission's consultation paper *Creating a Parliament for Wales* which asked respondents whether disability related and translation expenses should not count towards expenditure limits for political parties and candidates in relation to Senedd elections as they already are for non-party campaigners. 71 per cent of respondents to the consultation felt that costs relating to translation between Welsh and English should not count towards expenditure limits and 86 per cent felt that an individual's disability costs should not count towards expenditure limits, so there was strong support for both areas.

5.4 Welsh Government officials have also engaged with their colleagues within Welsh Government's Welsh Language Unit and Equalities departments to seek their views and advice when developing this policy. Welsh Government officials have also informed the Welsh Language Commissioner and the Disability Equality Forum of this policy intention.

6. Regulatory Impact Assessment

6.1 The need for a Regulatory Impact Assessment has been considered with reference to the Welsh Ministers' RIA Code for Subordinate Legislation. It was not considered necessary to carry out an RIA on this Order as it implements technical amendments which have no impact, or no significant, impact on the private, voluntary or public sectors.