

**Explanatory Memorandum to the Candidate Election Expenses (Senedd Elections) Code of Practice 2021**

This Explanatory Memorandum has been prepared by the Office of the First Minister and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.14

**Minister/Deputy Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Candidate Election Expenses (Senedd Elections) Code of Practice 2021

Julie James MS,  
Minister for Housing and Local Government  
20 January 2021

## **PART 1**

### **Description**

1. This Code gives guidance as to what does or does not fall within Part 1 or Part 2 of Schedule 7 of the National Assembly for Wales (Representation of the People) Order 2007 ('the 2007 Order')<sup>1</sup>.
2. Those Parts are relevant to the definition of 'election expenses' and therefore, in particular, to what expenses a candidate is required to report.
3. Part 1 of Schedule 7 lists the matters in respect of which any expenses for the purposes of the candidate's election count as 'election expenses'. Part 2 lists the exclusions.
4. This Code also gives guidance as to the cases or circumstances in which expenses are, or are not, to be regarded as incurred 'for the purposes of a candidate's election'. This Code supplements the definition of that phrase in article 63 of the 2007 Order.

### **Matters of special interest to the Legislation, Justice and Constitution Committee**

5. The amount that can be spent on candidate election expenses is limited by the 2007 Order. A spending limit applies in relation to a particular period, often referred to as a 'regulated period'.
6. For elections to the Senedd, the regulated period is not specifically defined but rather is derived from article 63(1) of the 2007 Order. It starts on the day after a person officially becomes a candidate and ends on polling day (the close of poll).
7. The Electoral Commission will issue guidance prior to the Code of Practice being in force to ensure information is available.

### **Legislative background**

8. The Electoral Commission has power under Schedule 7, paragraph 14 of the National Assembly for Wales (Representation of the People) Order 2007 to prepare a Code of Practice giving guidance as to Candidate Election Expenses.
9. The Candidate Election Expenses (Senedd Elections) Code of Practice 2021 was prepared by the Electoral Commission and submitted to the Welsh Ministers for approval.
10. This Code of Practice will be laid by the Minister for Housing and Local

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<sup>1</sup> <https://www.legislation.gov.uk/uksi/2007/236/schedule/7/made>

Government under Schedule 7, paragraph 14 of the 2007 Order.

11. This Code of Practice will follow the draft negative procedure. Unless the Senedd resolves not to approve the draft within 40 days of its being laid, the Code of Practice will be brought into force by an appointed day order made by the Welsh Ministers, and published by the Electoral Commission.
12. Paragraph 14 of Schedule 7 to the National Assembly for Wales (Representation of the People) Order 2007 was inserted by Article 55 of the Senedd Cymru (Representation of the People) (Amendment) Order 2020<sup>2</sup>.

### **Purpose and intended effect of the legislation**

13. This Code gives guidance as to what does or does not fall within Part 1 or Part 2 of Schedule 7 of the 2007 Order.
14. Those Parts are relevant to the definition of 'election expenses' and therefore, in particular, to what expenses a candidate is required to record as an election expense.
15. Part 1 of Schedule 7 lists the matters in respect of which any expenses for the purposes of the candidate's election count as 'election expenses'. Part 2 lists the exclusions.
16. This Code also gives guidance as to the cases or circumstances in which expenses are, or are not, to be regarded as incurred 'for the purposes of a candidate's election'. This Code supplements the definition of that phrase in article 63 of the 2007 Order.
17. Candidates must either appoint an agent to oversee their spending or act as their own agent. The agent has responsibilities for incurring and paying for candidate election expenses – see articles 46 and 43 of the 2007 Order respectively.
18. Article 52 requires an agent of a constituency candidate or individual regional candidate to submit a return of election expenses. Article 53 requires both the agent and the candidate to make a declaration as to the accuracy of the return.
19. Article 54 requires each candidate on a registered party's regional list to make a declaration as to election expenses.
20. Under article 54(3), a person is guilty of a corrupt practice if they knowingly make a false declaration.
21. Where a candidate or agent does not follow this Code they are likely to be in breach of the statutory requirements relating to election expenses. This could result in a prosecution for a corrupt and/or illegal practice under

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<sup>2</sup> <https://www.legislation.gov.uk/wsi/2020/1558/article/55/made>

articles 120 and/or 121 of the 2007 Order i.e. a fine and, in respect of a corrupt practice, potential imprisonment.

22. Where a candidate or agent is found personally guilty of a corrupt practice, they are disbarred from holding elective office for a period of five years. For an illegal practice, they are disbarred for three years. The candidate's election may be void.

### **Consultation**

23. This Code of Practice on candidate election expenses for Senedd elections was prepared by the Electoral Commission following consultation with interested persons and bodies, including representatives of political parties, as well as the Welsh Government and the Senedd Commission.

24. The Electoral Commission amended the Code following feedback from the consultation in Wales, and also took into account feedback received from political parties and other stakeholders following the consultations in both Scotland and England in order to make all the Codes consistent where possible.

25. A link to the Electoral Commission's consultation report is available at the following link:

<https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-consultations/response-consultation-feedback-codes-practice-spending-candidates-and-political-parties-senedd>

### **Regulatory Impact Assessment (RIA)**

26. Relevant Welsh Subordinate Legislation for which a Regulatory Impact Assessment must be carried out is defined in Section 76(2)(b) of the Government of Wales Act 2006 as subordinate legislation that is made by the Welsh Ministers, the First Minister or the Counsel General and is required to be laid before the Senedd. This Code has been prepared by the Electoral Commission under Schedule 7, paragraph 14 of the National Assembly for Wales (Representation of the People) Order 2007. As such, the Code does not satisfy the section 76 criteria and a Regulatory Impact Assessment is therefore not required.