

SL(6)067 - The Representation of the People (Amendment) (Wales) (Coronavirus) (No. 2) Regulations 2021

Background and Purpose

The [Representation of the People \(Amendment\) \(Wales\) \(Coronavirus\) \(No. 2\) Regulations 2021](#) ("the Regulations") are made under paragraph 4(2) and 6(7) and (8) of Schedule 4 to the Representation of the People Act 2000.

These Regulations make provision in relation to proxy voting at certain local government by-elections held between the coming into force of these Regulations and 28 March 2022.

Regulation 2 amends the Representation of the People (England and Wales) Regulations 2001, so as to extend to 28 March 2022 the provisions which provide applicants with additional grounds for applying for emergency proxy votes at these by-elections. These additional grounds relate to persons who cannot reasonably be expected to vote in person at a polling station as a result of complying with relevant legislation, Welsh Government advice or the advice of a registered medical practitioner in relation to coronavirus, as well as allowing those who have an existing proxy vote to change their nominated proxy in the event the nominated individual has to self-isolate.

Electoral law currently provides for scenarios where electors may need to apply for an emergency proxy vote because they are complying with relevant legislation, Welsh Government advice or the advice of a registered medical practitioner in relation to coronavirus. However, the current rule will not apply to by-elections taking place on or after 5 November 2021. The Welsh Government has been made aware of a small number of by-elections scheduled for after this date, and therefore Welsh Government must extend the current rule for polls taking place in the near future, when the Covid-19 virus is still likely to be prevalent in communities.

The provisions are time limited and will cease to have effect after 28 March 2022.

Procedure

Draft Affirmative.

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.



Merits Scrutiny

The following two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance of gives rise to issues of public policy likely to be of interest to the Senedd

We note there has been no formal consultation on these Regulations. In particular, we note the following paragraph in the Explanatory Memorandum:

“Due to the emergency nature of these Regulations the Welsh Government did not undertake a public consultation before the Regulations came into force. However, views were sought and taken into consideration on the first set of Regulations - The Representation of the People (Amendment) (Wales) (Coronavirus) Regulations 2021 - which this statutory instrument extends to 28th March 2022. The Electoral Commission have been made aware of the intention to extend these provisions to support the democratic rights of those wishing to participate in local government by-elections.”

We note also the following explanation provided by Rebecca Evans MS, Minister for Finance and Local Government, in a letter to the Chair of the Legislation, Justice and Constitution Committee dated 26 October 2021:

“Given the current rising number of Covid-19 cases it has become necessary for us to extend the rule to allow those self-isolating on and after the 5 November 2021 to take part in any scheduled local government by-election.

My officials have recently been made aware of three by-elections, scheduled for 11, 18 and 25 November. So that these provisions are in place for the first of those by-elections, I am asking you to consider the Regulations to an expedited timetable and report on them in time for a plenary debate on 9 November 2021.”

2. Standing Order 21.3(ii) – that it is of political or legal importance of gives rise to issues of public policy likely to be of interest to the Senedd

The Welsh language Explanatory Memorandum (“Welsh EM”) contains errors and is missing some of the detail included in the English language Explanatory Memorandum (“English EM”). Such inconsistencies arise at paragraphs 2.1 (matters of interest to LJC), 3.1 (Legislative background) and 5.1 (Consultation).

At paragraph 2.1 of the English EM it is provided that “subject to the will of the Senedd, the Regulations will come into force on 10 November 2021”. The Welsh EM contains an incorrect date and does not refer to the Senedd’s role. The text in the Welsh EM translates as “the Regulations come into force on 10 November 2022” (Daw’r Rheoliadau i rym ar 10 Tachwedd 2022).

Paragraph 3.1 refers to the powers conferred on the Welsh Ministers by the Representation of the People Act 2000 (“the 2000 Act”). These Regulations are made under paragraphs 4(2)



and 6(7) and **(8)** of Schedule 4 to the 2000 Act. There are brackets missing in the Welsh EM, which gives the impression the Regulations are made under paragraph 8 of Schedule 4, not 6(8) of Schedule 4. The same error does not arise in the English language EM.

Paragraph 5.1 of the Welsh EM does not contain information that is included in the English EM regarding the Electoral Commission.

The name of the Minister for Finance and Local Government is also incorrectly spelt in the Welsh EM.

Whilst the Explanatory Memorandum does not form part of the law, these errors taken together may serve to confuse the citizen about the effect of the Regulations.

Welsh Government response

A Welsh Government response is required in respect of the second Merits reporting point only.

Legal Advisers

Legislation, Justice and Constitution Committee

2 November 2021



Senedd Cymru
Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad
—
Welsh Parliament
Legislation, Justice and Constitution Committee