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Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation – Summary of Responses

Draft Senedd Cymru (Representation of the People)
(Amendment) Order 2020

24 November 2020

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Introduction

The National Assembly for Wales (Representation of the People) Order 2007, (sometimes known as “the Conduct Order” and referred to in the remainder of this document as “the 2007 Order”), sets out the detailed rules for the conduct of elections to Senedd Cymru. It sets out the way in which the election and the election campaign are conducted, and includes provisions for legal challenge to an election. It also includes provisions concerning the collection and retention of personal identifiers for postal and proxy voters and requirements in connection with the application for and dealing with absent votes. The 2007 Order is reviewed and has generally been amended before each Senedd general election.

The Welsh Government undertook a consultation that sought views on the draft Senedd Cymru (Representation of the People) (Amendment) Order 2020, which is scheduled to be enacted before the 2021 Senedd elections. The draft 2020 Order outlines amendments to the 2007 Order that are largely technical in nature and are required to reflect policy decisions and legislative changes which have already been subject to substantive consultation and debate. In particular most arise as a result of changes to the franchise and disqualification arrangements made by the Senedd and Elections (Wales) Act 2020 as well as some consequential amendments arising from the naming provisions.

The legislative changes relating to the Senedd change of name, franchise and disqualification arrangements took effect in the Senedd and Elections (Wales) Act 2020. The Senedd Cymru (Representation of the People) (Amendment) Order 2020 is embedding these required amendments as a result of the 2020 Act into the National Assembly for Wales (Representation of the People) Order 2007. The consultation sought views on the need to change the provisions in the 2007 Order, as brought about by the 2020 Act. The consultation did not include consulting on the merits of policies which had already been subject to consultation and debate.

The consultation also sought views on more significant amendments which reflect changes made elsewhere in the United Kingdom to allow candidates the option of not publishing their home address at an election, along with the issue of payment to returning officers fees for services rendered, as well as other general updates reflecting changes since the last amending Order was made.

It also highlighted provisions that were being considered for inclusion in the final Order:

- Provision to ensure that the rules in the Order for absent voters’ records and the rules for the protection of information about 14 and 15 year old attainers in the Senedd and Elections (Wales) Act 2020 operate effectively together.
- Provision for political parties to use the term “Welsh” or “Cymru” on nomination and ballot papers to ensure that the distinction can be made between devolved branches of UK-wide political parties and avoid confusion for voters.

The draft 2020 Order was published alongside the consultation document. The consultation was published on the Welsh Government website, and a link to the consultation was sent to all key stakeholders with a direct interest in the proposals, inviting their comments.

The purpose of the consultation was to seek views on whether there were any additional aspects of the 2007 Order which require updating or amending as well as comments on the proposed amendments themselves.

The consultation began on 15 June 2020 and closed on 8 September 2020.

The consultation posed the following five questions:

Question 1

We would like to know your views on the proposed amendments to the Conduct Order. Are the amendments workable? Do they have the effect intended by the changes to the primary legislation which gives rise to them? Are they clear and understandable?

Question 2

We would like to know whether there are any other aspects of the Order you think may require updating or amending? Have there been any developments since the Order was last amended which necessitate changes to the Order?

Question 3

We would like to know your views on the effects that the Order would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be? How positive effects could be increased, or negative effects be mitigated?

Question 4

Please also explain how you believe the Order could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 5

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

Responses

A total of 14 substantive responses were received. While some respondents were from organisations, political parties or individuals whose roles have a direct connection to elections, eight responses were from members of the public.

The respondents to the consultation are listed at Annex A.

Several responses commented that the amendments to the 2007 Order were supported overall.

The responses received are summarised under the title of each proposed amendment:
Senedd change of name (to reflect Part 2 of the Senedd and Elections (Wales) Act 2020)

Two respondents stated that they support the changes being made to the Order.

Extension of Senedd franchise to 16 and 17 year olds and associated provisions (to reflect Part 3 of the Senedd and Elections (Wales) Act 2020)

Three respondents were not supportive of the extension of the franchise to 16 and 17 year olds. One respondent commented that the extension of the franchise to children below 18 would class them as adults. Another respondent suggested that there should be a referendum to establish whether the people of Wales believe it is appropriate for the voting age to be lowered. A third respondent questioned the maturity and vulnerability of this age group to peer pressure, or pressure from relatives to vote for a certain political party.

Two respondents specifically stated in their response that they supported the amendments to reflect the extension of the franchise to 16 and 17 year olds by the Senedd and Elections (Wales) Act 2020.

Another respondent welcomed changes in the voting franchise but suggested that further clarification was needed as to whether political parties will be able to identify attainers on the electoral role and whether dates of birth will be available.

Extension of Senedd franchise to qualifying foreign citizens (to reflect Part 3 of the Senedd and Elections (Wales) Act 2020)

Two responses specifically stated that they welcomed the amendments proposed to reflect provisions in the Senedd and Elections (Wales) Act 2020 extending the franchise to qualifying foreign citizens.

Disqualification (to reflect Part 4 of the Senedd and Elections (Wales) Act 2020)

Two respondents commented that they supported the changes being made to the Order.

Publication of candidates' addresses

Three responses welcomed the amendments to ensure candidates are able to withhold their home address from publication and also to ensure that where a candidate acts as his/her own agent their home addresses are not published.

The Association of Electoral Administrators commented, "We support the proposed amendments to ensure candidates can withhold their home address from publication. This would protect the safety and security of candidates and provide consistency across UK elections. We also welcome and support the amendments to ensure that, where a candidate is acting as their own agent and withholds their home address, it is not published anywhere else (publication of claims, notices, and imprints of campaign material). This issue has been missed in legislation for other UK elections."

Payments to Returning Officers

Only one respondent was in favour of the removal of payments to Returning Officers. Four respondents specifically stated that they did not support the proposed removal of the personal fees payable to Returning Officers.

The arguments put forward for not supporting the proposed removal of the personal fees payable to Returning Officers generally fell into three main categories.

- The independence of Returning Officers
- The personal responsibility of Returning Officers

- The additional workload of Returning Officers

The independence of the Returning Officer

It was highlighted that the Returning Officer is a unique position set out by Section 27(1) of the Representation of the People Act 1983 and that these provisions serve to emphasise the independence of the Returning Officer. It was also pointed out that this independence is important as it gains the trust of those who stand for election and those who participate in elections. It was thought that it would call into question who the employer of staff engaged on election work would be if the Returning Officer's role was undertaken as part of their remunerated substantive role within the Local Authority.

The Electoral Commission commented in their response "As a matter of principle, we believe that ROs should be independent from both local and national governments when delivering their statutory electoral administration duties.

The independence of the RO is necessary to ensure that elections are effectively administered and conducted in voters' best interests. It also avoids any perception of bias and helps to promote public confidence and trust in the process.

There is also a risk that confidence in the impartiality of ROs could be damaged, if their only payment for carrying out election duties is through their contract of employment by the local authority which appointed them to their substantive role.

Any changes to the current management framework for the delivery of elections in Wales, including to the current arrangements for funding elections and payments to ROs for their services, must not weaken the independence and accountability of those responsible for delivering polls, or the perception of this by voters and campaigners.

The proposal to replace the RO fee with an amount payable to all electoral teams involved running the Senedd elections in 2021, could bring this independence into question, if paid to the local authority, as proposed.

We think it is important to be clear that ROs are not employed by councils when they deliver official election or referendum duties and that they are independent statutory office-holders, accountable to the courts for the delivery of their official duties. As is the case under the current system, a payment to ROs of some description helps to denote the different and independent status of the role."

The personal responsibility of the Returning Officer

It was pointed out that the Returning Officer's duties are the personal responsibility of the Returning Officer who is answerable directly to the courts for any question or failure in these duties. The Returning Officer can be challenged in an election court should any element, of the administration of the election, fail. Should there be a failing in performance the Electoral Commission, itself an independent body, can recommend that any fee payable to the Returning Officer be withheld.

The Association of Electoral Administrators commented "The RO is not responsible to the local authority, its elected members or the Senedd. Personal responsibility ensures independence, which we believe is essential in the provision of effective and trusted elections. As an independent role, the liabilities are that of the individual, not the local authority. This is demonstrated by the Returning Officer being subject to election petitions within Part III of the Representation of the People Act 1983. Every Returning Officer has to ensure they have personal insurance for this very reason. If they are found guilty of any act or omission in breach of their official duty, they are liable on summary conviction to a fine not exceeding £5,000."

The additional workload of the Returning Officer

It was pointed out that the Returning Officer's role is a complex and high profile position. It was considered inappropriate for that person to not be appropriately remunerated for taking on the additional workload and associated personal liabilities that accompany the role. It was also pointed out that any remuneration for any position should be regularly reviewed and evaluated, including Returning Officers, and reflect the workload and responsibilities of the role.

One respondent commented that "Returning Officers, if not remunerated in this role, should be able to recover payment for additional hours worked as Returning Officers for overtime and antisocial hours e.g. counting overnight as would any other members of the elections team. Few ROs currently have expenses of any note, as they take a fee to cover everything they do. RO's should also be able to command a count management fee if there is no overall fee."

The Electoral Commission also highlighted concerns that the removal of the payment may deter appropriate candidates from applying for the role of Returning Officer and Regional Returning Officer "It is also important that an appropriate person with the right skill set should carry out the role of Returning Officer and Regional Returning Officer, and should be remunerated accordingly to ensure this. It is possible that removing a personal fee may discourage experienced and capable senior officers from willingly putting themselves forward to undertake the important role of Regional Returning Officer."

Proposed Payment to Electoral Management Teams

Three responses welcomed the proposed payment to the Electoral Administration Team but asked for further clarification.

One respondent commented "It is welcomed that there is a recognition of these teams and the importance they make to the successful delivery of all polls. The principle of proper recompense for the work they undertake, and associated responsibilities is welcomed and supported. It needs to be noted that such work is normally performed over and above their normal local authority contractual hours. It is questionable that any 'lump sum' payment will provide adequate remuneration for the core work undertaken. Payments by local authorities can vary and, once again as details of the proposed scheme have not been seen it is difficult to comment on this. Payments, made, should be clear and transparent reflecting every individual's responsibilities, and work carried out, when administering polls at both regional and local levels."

In their response the Association of Electoral Administrators commented "We welcome the recognition of electoral administration teams and fully support the principle of proper recompense for the work they undertake above contracted responsibilities. We are concerned that a lump sum payment may not necessarily provide sufficient recompense, as there are often council by council variances that cannot be reflected in modelling. We believe that any payments made should be clear and transparent and reflect the individual's responsibilities and work carried out on conducting the election."

Codes of Practice

Three respondents stated that they supported the provision for the Electoral Commission to be able to prepare a code of practice, for candidate election expenses, subject to approval by the Welsh Ministers.

Presentation of Political Parties on Nomination and Ballot Papers

Three respondents stated that they supported the proposal for allowing political parties the use of Welsh prefixes and suffixes on nomination papers and ballot papers.

One of those respondents added that “It will assist in distinguishing between UK wide, political parties, and those of devolved institutions and will mirror changes made in Scotland in 2015. It is essential that such a proposal be made to the local government election changes to ensure alignment with both pieces of legislation.”

Another respondent commented: “We are strongly in favour of this amendment and welcome the Welsh Government's proposal. Current legislation (PPERA) only permits parties wishing to stand as joint candidates to register a single description for candidates in all elections (including UK Parliament, Welsh Parliament and local government). As this one description has to be used UK wide, it is not currently possible to include the word 'Welsh', in the same way that single parties, who have up to 12 registered descriptions, may do.”

Two respondents asked for further clarification on the proposed provision.

In particular the Electoral Commission asked for further clarification as to how the proposal will interact with the requirements for registering a party name outlined in section 28(4) and paragraph 2 of Schedule 4 of PPERA, and the requirements for descriptions outlined in section 28A(2) of PPERA. An example given was that as parties in Wales can be registered with a name in English and a name in Welsh, or just a single name, the Conduct Order would need to specify under what circumstances “Welsh” or “Cymru” could be prefixed to a party's name. This would especially be in the cases where a party's name is not expressed in English or Welsh, or is expressed bilingually.

The Electoral Commission recommended that when the Welsh Government develops its own provisions for the Senedd elections in 2021 the Welsh Government should take into account the similar provision made ahead of the Scottish Parliamentary elections in 2015. Where the word “Scottish” is not part of the registered party name, the party name on the nomination form can have the word “Scottish” included in front of it. If the registered party name starts with the word “the”, the word “Scottish” can be inserted after the word “the” on the nomination form. This is the case for both constituency candidates and for party regional lists. The Electoral Commission recommended that the Welsh Government considers specifying something similar when prefixing the word “Welsh” to a party name in conjunction with the word “the”.

One respondent asked if "Welsh" or "Cymru" would be included in the maximum number of words allowed. The response also commented that the inclusion of regional candidates' names on the ballot is important for greater accountability and voter choice. The response requested clarification on whether this would still be going ahead and what the font size of names would be.

Exemptions from election expenses for disability and translation related costs – for inclusion in a separate Order in due course

Three responses welcomed that the Electoral Commission's recommendations regarding the exemption from political parties' and candidates' electoral spending limits of translation costs between Welsh and English and reasonable costs attributable to an individual's disability will be given effect ahead of the 2021 Senedd general election.

One respondent commented that the provisions outlined have the potential to increase the use of Welsh in Senedd elections and asked for further consideration to be given as to how providing bilingual material generally impacts on costs, through the need to print larger materials or greater volumes, and whether the treatment of additional spend as a result of

providing additional material is something that could increase the use of the Welsh language in campaigning.

Additional Issues Raised

Consolidation of the 2007 Order for the 2026 Senedd Elections

Two respondents commented that the draft Order could be clearer and that they found it hard to follow especially when needing to refer to the draft Order, 2007 Order and the UK Act.

The Association of Electoral Administrators stated that they strongly support the decision to completely review the Order after the 2021 Senedd elections and the intention to consolidate previous legislation into a single updated Conduct Order before the 2026 Senedd elections.

Two responses advised that the Amendment Order and future Consolidated Order will require sufficient lead-in time from when legislation is passed. They referred to the Gould report and the need to adhere to the principle of any piece of legislation being introduced at least six months before polling day as a minimum to reduce risks to the electoral process. One response recommended a significantly longer lead-in time for the proposed consolidated legislation for the 2026 Senedd elections.

The impact of COVID-19

The Association of Electoral Administrators and the Electoral Commission commented on the separate discussions taking place to respond to the current COVID-19 crisis. These discussions are to ensure that the 2021 elections can be delivered effectively in the interests of all concerned and in light of the possibility of the need to conduct the elections in a socially distanced manner. Both responses were supportive of any recommendations to facilitate the conduct of these elections via additional amendments to the current Order or by other legislative means which may be available.

Another respondent commented on Article 19 of the 2007 Order, which requires county and county borough councils to make their staff available for running Senedd elections. The respondent observed that due to staff being redeployed to support the response to and recovery effort from COVID-19 the ability of local authorities to place officers at the disposal of returning officers to run Senedd Cymru elections would be even further limited if a second or third wave of the pandemic were to happen. The response recommended that any emergency legislation should recognise and make provision for that event.

Imprints on non-printed campaign material

The Electoral Commission included in its response a section on imprints on non-printed campaign material and commented that they were disappointed that the draft Order does not make provision to extend the imprint rules to non-printed campaign material and that such requirements will not be in place for the Senedd elections in 2021.

“Digital campaigning is an increasingly important aspect of election campaigns in the UK but, as you’ll be aware, the imprint rules don’t currently apply to digital election campaign material. This affects voters’ ability to see who is behind the campaign material they see online, and it affects the ability of the Electoral Commission, police and prosecuting bodies to enforce the law. Therefore, extending the imprint rules to digital election campaign material should be a priority for all the Governments of the UK.”

The Electoral Commission referred to the Referendums (Scotland) Act (RSA) which was passed in January 2020 and contained provisions for imprints on both printed and digital referendum material. Digital material that promotes a particular outcome in a Scottish referendum will need an imprint but individuals are exempt from the requirement to include imprints if they are expressing their personal opinions and publishing the material on their own behalf on a non-commercial basis. However, individuals with senior compliance or decision-making roles in registered referendum campaign organisations cannot benefit from this exemption. They will have to include imprints on digital material. The Scottish Government intends to introduce digital imprint rules for devolved Scottish elections, and in time for the 2021 May Scottish Parliament elections.

The Electoral Commission's response asked that the Welsh Government consider introducing similar provisions for future elections in Wales.

Miscellaneous

One response commented that those who become members of the Senedd should be resident in Wales.

One other respondent commented that there was no mention of mental health concerns.

Questions 3 and 4 relating to the Welsh Language

One response commented that the draft Order will have a positive impact on the Welsh language.

One respondent commented that as the draft Order makes amendments to English only legislation in effect, the Welsh amendments are pointless, however this could be mitigated by remaking the 2007 Order bilingually.

Other responses were ambivalent as to the effect the 2020 Order would have on the Welsh Language or had no comment to make.

Welsh Government response to the consultation

The Welsh Government is grateful to all those who responded and has carefully considered all the responses received.

The Welsh Government appreciates the overall support given by respondents to the proposed amendments to the 2007 Order as outlined in the draft Senedd Cymru (Representation of the People) (Amendment) Order 2020.

Further information on questions raised in the responses to the consultation and changes to the draft Senedd Cymru (Representation of the People) (Amendment) Order 2020 as a result of the consultation are outlined as follows:

Extension of Senedd franchise to 16 and 17 year olds and associated provisions

The draft Senedd Cymru (Representation of the People) (Amendment) Order 2020 amends the 2007 Order to reflect the extension of the franchise to 16 and 17 year olds by the Senedd and Elections (Wales) Act 2020. The proposal to extend the franchise to 16 and 17 year olds was a major part of the Senedd and Elections Bill (now the Senedd and Elections (Wales) Act 2020).

The Senedd and Elections (Wales) Act 2020 implements proposals made by the Expert Panel on Assembly Electoral Reform, an independent panel established by the Assembly Commission in 2017 to provide advice on, amongst other things, the minimum voting age for elections to the Senedd. The Assembly Commission issued a consultation seeking views on the Panel's recommendations in February 2017 in which 59% of respondents agreed the minimum voting age should be reduced to 16. Similarly a Welsh Government consultation in 2017 found strong support for a reduction in the voting age for local government elections.

The Welsh Government agrees with the arguments that enabling 16 and 17 year olds to vote would strengthen democratic accountability and increase democratic participation in the longer term.

Information of attainers on the electoral role

Electors who are 16 and over are included on the electoral register in the same way as all other electors. The data of young people under the age of 16 is protected in line with the Senedd and Elections (Wales) Act 2020 and may not be made available except in extremely limited circumstances provided for in legislation. One such exception is that before Senedd elections, the information on those under 16 years of age who will be eligible to vote at the election (i.e. will attain the age of 16 on or before polling day), can, for the purposes of the election, be disclosed in the electoral register, postal voters list, list of proxies and list of postal proxies, that is supplied to:

- candidates at Senedd elections for electoral purposes or to comply with the rules on political donations (where the candidate is a regional candidate, access to the register is conferred on the election agent of the party).
- the Returning Officer for the purposes of a Senedd election
- the Electoral Commission

The information supplied is not available to political parties whose access to electoral register is set out in the Representation of the People Regulations 2001 and must not contain dates of birth, or anything else that would identify a voter as under 16 years old.

Consolidation of the 2007 Order for the 2026 Senedd Elections

The Welsh Government is committed to making the law in Wales accessible and easy to navigate. We recognise, along with many others, that electoral law generally is in need of updating and consolidation. The 2007 Order has already been amended in 2010, 2013 and twice in 2016. Given the number of times the current Order has been subject to amendment the Welsh Government plans to review the Order further after the elections with a view to consolidating the 2007 Order in time for the 2026 elections. The consolidated Order will be made bilingually. The consolidation of the elections Orders before the 2026 election will make access to elections legislation more accessible and transparent.

The recommendation that a longer lead-in time than the six months outlined by the Gould principle would be necessary for the proposed consolidated legislation for the 2026 Senedd election will be taken into consideration.

The impact of COVID-19

The Welsh Government appreciates the support given by the Association of Electoral Administrators and the Electoral Commission, as well as Returning Officers and other stakeholders to the efforts being undertaken by the Welsh Government to ensure that the 2021 elections can be delivered effectively in the midst of COVID-19. In particular the Welsh Government is grateful for the understanding and support that further amendments to the

2007 Order or other legislation may be necessary to facilitate the safe conduct of these elections in the current pandemic.

The Welsh Government recognises the current demands placed upon local authority staff due to the current pandemic and will continue to work closely with Returning Officers during the 2021 Senedd general election.

Imprints on non-printed campaign material

UK Government published their consultation on the technical aspects of Digital Imprints – Transparency in Digital Campaigning – which ran until November 2020.

The Minister for Housing and Local Government wrote to the UK Government’s Minister of State for the Constitution and Devolution in support of the proposals and explained that the Welsh Government would consider what approach would be suitable for devolved elections in due course. The Welsh Government is supportive of imprints in principle but needs to give further consideration to the most appropriate approach to what is a complex issue.

Post-Consultation Changes

Presentation of Political Parties on Nomination and Ballot Papers

The Welsh Government has inserted the planned provision for political parties to use the term “Welsh” or “Cymru” on nomination and ballot papers to ensure that the distinction can be made between devolved branches of UK-wide political parties and avoid confusion for voters. The option is discretionary and it is up to the candidate whether the prefix / suffix is adopted. Where the party name is neither Welsh or English, the name can be preceded by “Welsh” or followed by “Cymru”

Section 28(4) of PPERA deals with the qualifications for a registered name to be registered with the Electoral Commission. This proposal does not seek to amend the registration provisions or the registered party name as registered with the Electoral Commission and appearing on the register of political parties.

Payments to Returning Officers

The consultation outlined a proposal to remove the reference to a payment for services rendered by Returning Officers in article 23 of the 2007 Order and for this to be replaced with an amount payable to all electoral teams for running the Senedd elections in 2021.

Following the response to this consultation and further discussions between the Minister for Housing and Local Government, SOLACE, ALACE and Returning Officer representatives the Welsh Government are proposing an alternative to the current system of payment for services rendered solely by Returning Officers to one which includes the whole of the core elections team.

The purpose of the new approach in relation to Senedd elections is to reinforce the independence of the whole of the core elections team and to recognise that the team is running an election for a third party which extends beyond their contractual obligations to their own employer.

This payment will form part of the maximum recoverable amount in the Fees and Charges Order and will be administered as part of the totality of all election expenditure incurred.

Further discussions will take place to establish detailed proposals relating to funding amounts to include in the consultation on the Fee's Order to be held later this year.

The principles agreed to date are that there will be a flat amount per electoral team with additional payments for each constituency and region for which the team is responsible. Disbursal of the payment amongst the team will be at the Returning Officer's discretion with Welsh Government guidance provided as part of the usual guidance on election expenses. This fee is intended as recognition for:

- Returning Officers
- those directly deputised by Returning Officers
- substantive members of the principal council's election team, and
- those deemed by the Returning Officers to have provided substantial support to the delivery of the election.

Data Protection

The Welsh Government has inserted the planned provision to enhance the protection of information about 14 and 15 year old attainers. This involves requiring Electoral Registration Officers to include, when considering absent voters' records, the provisions in section 24 of the Senedd and Elections (Wales) Act as well as articles 8(9) and 12(13) of the 2007 Order.

Next Steps

The Welsh Government will lay the draft Senedd Cymru (Representation of the People) (Amendment) Order 2020 before the Senedd, revised as outlined above. Subject to approval by the Senedd we intend for the 2020 Order to be made later in the year.

Annex A

List of Respondents

- John Charles
- J Roberts
- Rob Thomas, Managing Director, Vale of Glamorgan Council
- Andrew Stumpf
- Karen Wilkie, Cooperative Party
- Angela Holden, Policy Manager on behalf of the national Association of Electoral Administrators and Rhys George, Chair of Wales AEA branch – joint response
- Neil McKenzie
- Chloe Hutchinson, Welsh Liberal Democrats
- Electoral Commission
- Ian Westley, Pembrokeshire County Council

We also received four responses from respondents that have requested to remain anonymous.