

Explanatory Memorandum to The Representation of the People (Amendment) (Wales) (Coronavirus) (No. 2) Regulations 2021

This Explanatory Memorandum has been prepared by Education and Public Services and is laid before the 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 (Amendment) (Wales) (Coronavirus) (No. 2) Regulations 2021.

Rebecca Evans AS/MS
Minister for Finance and Local Government
05 November 2021

PART 1

1. Description

- 1.1. 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.
- 1.2. 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.

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

- 2.1. I have written to the Committee to request early consideration of these Regulations in order for them to be debated on 9 November. Subject to the will of the Senedd they will come into force on 10 November 2021, and will apply to all relevant by-elections taking place after this date.

3. Legislative background

- 3.1. These Regulations are made under paragraph 4(2) and 6(7) and (8) of Schedule 4 to the Representation of the People Act 2000.

4. Purpose and intended effect of the legislation

- 4.1. The Regulations are temporary measures designed to extend the emergency proxy vote rule applicable where an individual is complying with relevant legislation, Welsh Government advice or the advice of a registered medical practitioner in relation to coronavirus.
- 4.2. The provisions are time limited and will cease to have effect after 28 March 2022.
- 4.3. 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 our communities.

Proxy voting for those shielding

- 4.4. Paragraph 4 of Schedule 4 of the Representation of the People Act 2000 makes provision for absent voting at a particular election. Paragraph 4(2)(a) specifically provides that the Returning Officer shall grant an application to vote by proxy where they are satisfied that the applicant's circumstances on the date of the poll will be, or are likely to be, such that the applicant cannot reasonably be expected to vote in person at a relevant polling station. The circumstances of individuals self-isolating would fall into this category.
- 4.5. These Regulations amend regulation 56 of the Representation of the People (England and Wales) Regulations 2001, with the effect that the regulation expanding the categories of people that can apply for an emergency proxy (to include individuals who cannot vote in person because they are following relevant legislation, Welsh Government guidance or medical advice in relation to coronavirus and self-isolating) is extended to the 28 March 2022.
- 4.6. The changes are temporary and will only apply to elections held until 28 March 2022.

5. Consultation

- 5.1. 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.

6. Regulatory Impact Assessment (RIA)

- 6.1. These Regulations are not considered to have any significant financial impact, and as such no regulatory impact assessment has been carried out.