

## **Explanatory Memorandum to the Local Elections (Miscellaneous and Consequential Amendments) (Wales) Regulations 2022**

This Explanatory Memorandum has been prepared by the Department for Local Government 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 Local Elections (Miscellaneous and Consequential Amendments) (Wales) Regulations 2022.

Rebecca Evans MS

Minister for Finance and Local Government

08 February 2022

## **PART 1**

### **1. Description**

The Local Elections (Miscellaneous and Consequential Amendments) (Wales) Regulations 2022:

- make supplementary, consequential and transitional provision for the purposes of, in consequence of, or for giving full effect to the making of new rules for the conduct of local government elections in Wales, by way of the Local Elections (Principal Areas) (Wales) Rules 2021 and the Local Elections (Communities) (Wales) Rules 2021 or the Local Government and Elections (Wales) Act 2021; and
- make miscellaneous provision amending the two sets of Rules referred to above and regulation 56 of the Representation of the People (England and Wales) Regulations 2001 which relates to proxy voting.

Throughout this Explanatory Memorandum certain generic terms are used for succinctness:

- Principal area – referring to a county and / or a county borough
- Principal council – referring to a county council and / or a county borough council
- Community council – referring to a community council and / or a town council
- The PA Rules 2021 – the Local Elections (Principal Areas)(Wales) Rules 2021
- The Communities Rules 2021 - the Local Elections (Communities) (Wales) Rules 2021
- The 1983 Act – the Representation of the People Act 1983

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

None.

### **3. Legislative background**

The Welsh Ministers are empowered to make these Regulations under section 36A(1) to (6) of the 1983 Act, by paragraphs 4(2)(c) and 6(7) and (8) of Schedule 4 to the Representation of the People Act 2000 and by section 173(1) and (2) of the Local Government and Elections (Wales) Act 2021.

Section 36A(1) to (4) of the 1983 Act enables the Welsh Ministers to make rules for the conduct of elections to principal councils and community councils in Wales. Section 36A(5) of the 1983 Act enables the Welsh Ministers to make supplementary, incidental, consequential, transitional, transitory or saving provisions for the purposes of, in consequence of or for giving full effect to rules made under section

36A(1). Section 36A(6) of the 1983 Act enables the Welsh Ministers, in making provision under section 36A(5), to amend, modify repeal or revoke any enactment.

Paragraphs 4(2)(c) and 6(7) and (8) of Schedule 4 to the Representation of the People Act 2000 enable the Welsh Ministers to make provision regarding absent voting at local government elections in Wales.

Section 173(1) of the Local Government and Elections (Wales) Act 2021 (“the 2021 Act”) enables the Welsh Ministers to make supplementary, incidental, consequential, transitional, transitory or saving provisions for the purposes of, in consequence of or for giving full effect to any provisions made under the 2021 Act. Section 36A of the 1983 Act was inserted in the 1983 Act by section 13(3) of the 2021 Act. Section 173(2) of the 2021 Act enables the Welsh Ministers, in making provision under section 173(1), to amend, modify repeal or revoke any enactment.

In accordance with section 7(1) and (2)(e) of the Political Parties, Elections and Referendums Act 2000, the Welsh Ministers have consulted with the Electoral Commission. In accordance with section 36A(7) of the Representation of the People Act 1983, the Welsh Ministers have also consulted such other persons as they considered appropriate.

On 14 December 2021 Senedd Cymru considered and approved the PA Rules 2021 and the Communities Rules 2021, collectively referred to in this memorandum as “the 2021 Rules”.

The two sets of 2021 Rules provide the rules of conduct by which the election of councillors to principal councils and to community councils in Wales is to take place. Both sets of 2021 Rules are Wales-specific and aim to provide an updated and modernised set of conduct rules. For example, the two sets of 2021 Rules set out rules on the:

- timetable for certain activities that take place before and on polling day,
- giving notice of an election,
- nomination of candidates,
- form of ballot papers,
- functions of returning officers and presiding officers,
- appointment (by candidates) of polling agents and counting agents,
- counting of votes and the declaration of results.

The 2021 Rules also provide for policies made as part of the development and delivery of the Local Government and Elections (Wales) Act 2021 to be implemented; namely, the optional publication of the candidate’s home address, the statement of party affiliation and necessary changes following the extension of the franchise to those aged 16 and 17 and qualifying foreign citizens.

The 2021 Rules will apply to the election of councillors to principal councils and to community councils in Wales held on or after 5 May 2022.

The PA Rules 2021 and the Communities Rules 2021 replace respectively the Local Elections (Principal Areas) (England and Wales) Rules 2006 (“the PA Rules 2006”) and the Local Elections (Parishes and Communities) (England and Wales) Rules 2006 (“the Communities Rules 2006”). The two sets of 2006 Rules were made by the Secretary of State on an England-and-Wales basis, in English only, and contained a complex mix of provisions, some of which applied in Wales and some of which did not.

The 2021 Rules set out the rules that apply in Wales in a clear way, in one place and in both English and Welsh.

In the unlikely event of a by-election being needed to a principal council in the period between the making of the 2021 Rules and the elections held on 5 May 2022, the election would be held under the PA Rules 2006. Such an election could only take place in the six months before 5 May 2022 (the day of ordinary elections) if the vacancy or vacancies brings the total number of unfilled vacancies on the principal council in question to over one third of the whole number of members. If that threshold is not exceeded, any vacancies occurring during the last six months remain unfilled until the next ordinary election.

If a vacancy occurs in a community council in the period between the making of the 2021 Rules and the elections held on 5 May 2022, the vacancy may be filled by the council in question by co-opting a person to fill the vacancy. If the council decides not to fill the vacancy in that period or is unable to do so, the vacancy may remain unfilled until the next ordinary election.

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

Regulation 1 sets out the title and commencement provisions.

Regulation 2 amends the PA Rules 2021 and the Communities Rules 2021. The amendments add, to the list of grounds on which the returning officer may hold a nomination paper to be invalid, that the nomination paper does not include the declarations that the candidate is required to include in their nomination paper, signed by the candidate.

Regulation 3 amends rule 51 and rule 30 of the Schedules to the PA Rules 2021 and Communities Rules 2021. The amendment to rule 51 enables the marked copies of the registration records and list of proxies and the marked corresponding number list to be placed in packets and sealed at a place other than the polling station (as soon as practicable after close of poll). In consequence of this, rule 30 is amended so that the presiding officer may authorise the clerks appointed by the returning officer to act in any place where the presiding officer is carrying out functions.

Regulation 4 amends rule 31 of Schedule 2 to the Communities Rules 2021. Schedule 2 sets out the rules that apply where the poll at a community election is combined with the poll at certain other elections. The amendments provide for the issue of official poll cards at the community election to be at the request of the community council, except for poll cards issued to electors with anonymous entries

which must be issued regardless of whether there is a request. This is the situation which applies, under rule 31 of Schedule 1 to the Communities Rules 2021, at community elections which are stand-alone (i.e. not combined with another election). The amendments correct an oversight in Schedule 2 and mean that the position as respects the issue of poll cards at community elections is the same whether or not the poll is combined.

Regulation 5 makes amendments relating to the timetable for elections. Paragraphs (2) and (3) amend the PA Rules 2021 and the Communities Rules 2021 so as to add, to the list of days that are disregarded in calculating periods of time in the election timetable, days appointed for public thanksgiving or mourning. The amendments correct an omission in those Rules. Paragraph (1) makes a related amendment to section 40(1) of the 1983 Act and corrects an omission there. The effect of the amendment to section 40(1) of the 1983 Act is that, where the poll at an ordinary local government election in Wales would fall on a Saturday, a Sunday, Christmas Eve, Christmas Day, Good Friday, a bank holiday or a day appointed for public thanksgiving or mourning, the election is postponed until the first day afterwards that is not one of those days.

Regulation 6 amends provisions of the 1983 Act relating to election agents in consequence of and to give further effect to the provision made in rule 9(6) of each of Schedule 1 or 2 to the PA Rules 2021 that enables candidates at a principal area election to include a statement in their home address form that their home address must not be made public.

Under rule 9(6) of each of Schedules 1 and 2 to the PA Rules 2021 a candidate may include in their home address form a statement that their home address must not be made public. Where a candidate includes such a statement, they must also state the “relevant area” where they reside. If the candidate lives in the UK the relevant area is the local government area, which is defined for each nation in the UK in rule 9(8) of Schedules 1 and 2 to the PA Rules 2021. If the candidate lives outside the UK, the relevant area is the country where they reside. The relevant area is then published as part of the candidate’s details in the statement of persons nominated and on the ballot paper (instead of their home address).

Section 67 of the 1983 Act makes various provision about the appointment of an election agent. In particular, section 67(6) requires the proper officer of the council (“the appropriate officer”) to give public notice of the name and address of an election agent, whose details must be provided to the that officer under section 67(1) of the 1983 Act. If a candidate at a principal council election is acting as their own election agent, the requirements of section 67(1) and (6) mean their home address would be made public via the notice about election agent’s details, even if that candidate had requested their home address be withheld from the statement of persons nominated and the ballot paper.

Accordingly, regulation 6(2) of these regulations amends section 67 of the 1983 Act by inserting a new subsection (6A), which provides that if a candidate who is also acting as their own election agent has made a statement in their home address form that their address must not be made public, then the appropriate officer, in publishing

the information required under section 67(6) about the election agent, must not include the candidate's home address in the public notice, but must include instead the information given by the candidate in their home address form, i.e. the relevant area where they reside.

Regulation 6 also amends section 69 of the 1983 Act. Section 69 requires every election agent and every sub-agent to have an office to which all claims, notices, legal process and other documents may be sent. The address of the office must be declared to the appropriate officer and it is published in the public notice of the name of the election agent. If the candidate is acting as their own election agent, they may well be using their home as the office. Regulation 6(3) and (4) of these regulations amends section 69 of the 1983 Act so in the case of a candidate who is acting as their own election agent and whose home address is also their office address, if the candidate does not want their office address to be included in the public notice they may, in addition to declaring the office address, provide another address to be used for correspondence ("the correspondence address"). If a candidate provides a correspondence address, which must be in England or Wales, the correspondence address must be included in the public notice given under section 67(6) of the 1983 Act, instead of the office address. Any claim, notice, legal process or other document delivered to a correspondence address under section 69 shall be deemed to have been served on the election agent in the same way that they would be if delivered to the office address.

Regulation 6(5) and (6) amends section 70 of the 1983 Act which deals with the position of a candidate who becomes their own election agent by default, generally because they have not appointed anyone as their election agent. The amendments provide for the candidate to be deemed to have an office at the home address given in their home address form if that address is in England or Wales and otherwise at the address by virtue of which they established their qualification to be a candidate ("the qualifying address"). The amendments also deal with the application of sections 67 and 69 in this situation. Section 67 applies in the usual way. However, the candidate will not have any opportunity to provide an alternative correspondence address under section 69. In consequence, the candidate's deemed office address will always be included in the public notice given.

Section 71 of the 1983 Act provides that a candidate at a community council election in Wales need not have an election agent and that the provisions in sections 67 and 69 of the 1983 Act do not apply at a community council election, even if a candidate does appoint an election agent. Accordingly, the amendments made by regulation 6 apply to candidates at principal council elections only, there being no need for such amendments for candidates / agents at community council elections.

Regulation 7 introduces Schedules 1 and 2 to these Regulations, which make consequential amendments to the PA Rules 2006 and the Communities Rules 2006 respectively, so the two sets of 2006 Rules apply to elections in England only. The PA Rules 2021 and the Communities Rules 2021 supplant the PA Rules 2006 and Communities Rules 2006 insofar as principal council and community council

elections in Wales are concerned. However, the two sets of 2006 Rules continue to apply for principal council and parish council elections in England.

Schedule 1 to these Regulations sets out amendments to the PA Rules 2006 with the effect that henceforward those rules apply to elections to principal councils in England only.

Schedule 2 to these Regulations sets out amendments to the Communities Rules 2006 with the effect that henceforward those rules apply to elections to parish councils in England only.

Regulation 8 revokes certain Welsh Forms Orders as set out in the regulation. Both the PA Rules 2006 and the Communities Rules 2006, include Appendices which set out specified prescribed forms which must be used for certain functions set out in the rules. The forms as set out in both sets of 2006 Rules are in English only.

In accordance with section 26(2) of the Welsh Language Act 1993 successive UK Ministers made Welsh Forms Orders which prescribed Welsh language versions of the prescribed English language forms set out in the Appendices to the two sets of 2006 rules; the Welsh language versions were to be used with the English language versions for the appropriate function in the election procedure.

The PA Rules 2021 and the Communities Rules 2021 were made in English and Welsh, the first time the rules themselves have been made in Welsh. The Welsh versions of the two sets of rules include Appendices which set out the Welsh language version of the relevant prescribed forms. The Welsh language forms set out in the two sets of 2021 Rules supplant the forms set out in the various Welsh Forms Orders. Accordingly, regulation 8 revokes the specified Welsh Forms Orders as they are now obsolete.

Regulation 9 introduces Schedule 3 to these Regulations which makes consequential amendments to Schedule 4 to the National Assembly for Wales (Representation of the People) Order 2007 (“the 2007 Order”). Schedule 4 to the 2007 Order concerns the combination of polls where an election to Senedd Cymru (formerly the National Assembly for Wales) is combined with the poll for an election to a principal council or a community council in Wales under article 16(1) or (2) of the 2007 Order (Combination of polls at Senedd and local government elections).

The combination of polls necessitates certain modifications to the rules governing the conduct of the respective elections. Part 1 of Schedule 4 to the 2007 Order makes certain general provision about the conduct of a combined poll involving a Senedd Cymru election; Part 2 of Schedule 4 makes modifications to certain rules (in Schedule 5 to the 2007 Order) for the conduct of a Senedd Cymru election when it is combined with a local government election; Part 3 of Schedule 4 makes modifications to certain rules, as set out in the PA Rules 2006, for the conduct of a principal council election in Wales, when it is combined with a Senedd Cymru election; and Part 4 of Schedule 4 makes modifications to certain rules, as set out in the Communities Rules 2006, for the conduct of a community council election in Wales, when it is combined with a Senedd Cymru election.

Part 1 of Schedule 3 to these Regulations makes certain technical amendments to Part 1 of Schedule 4 to the 2007 Order to take account of amendments to the 1983 Act made by the 2021 Act. Part 2 of Schedule 3 to these Regulations substitutes a new Part 3 of Schedule 4 to the 2007 Order, so the modifications made to the rules for the conduct of a principal council election when combined with a Senedd Cymru election are expressed in relation to the PA Rules 2021 rather than the PA Rules 2006. Part 3 of Schedule 3 to these Regulations substitutes a new Part 4 of Schedule 4 to the 2007 Order, so the modifications made to the rules for the conduct of a community council election when combined with a Senedd Cymru election are expressed in relation to the Communities Rules 2021 rather than the Communities Rules 2006.

Regulation 10 extends, up to and including 31 May 2023, provision in the Representation of the People (England and Wales) Regulations 2001 which provide for emergency proxy voting in relation to persons who are unable to attend a polling station in person as a result of following relevant legislation, guidance or medical advice in relation to the COVID-19 pandemic. The provision also allows individuals who already have a proxy vote to change the nominated individual up to 5.00pm on the day of the elections for the same reasons.

The deadline for an application for an ordinary proxy vote at an election is by 17:00 on the sixth day before the election (excluding weekends and public holidays). Emergency proxies can be received by the registration officer by 17:00 on the day of the poll and are available to people on the grounds of blindness or another disability.

The Local Government (Coronavirus) (Postponement of Elections) (Wales) (No.2) Regulations 2020 extended the categories of people that can apply for an emergency proxy vote to include individuals who cannot vote in person because they are following Welsh Government or medical advice in relation to COVID-19 at elections postponed under the Local Government (Coronavirus) (Postponement of Elections) (Wales) Regulations 2020. No medical attestation is required in these circumstances. The regulations also allowed individuals who already had a proxy vote to change the nominated individual up to 5.00pm on the day of the elections for the same reasons. This change was temporary and only applied to elections held under the Local Government (Coronavirus) (Postponement of Elections) (Wales) Regulations 2020 but was subsequently extended, most recently by the Representation of the People (Amendment) (Wales) (Coronavirus) (No 2) Regulations 2021 to by-elections the poll for which falls before 28 March 2022.

Regulation 10 further extends the emergency proxy provisions for reasons related to the COVID-19 pandemic until 31 May 2023 and applies them to all local government elections held in Wales in that period, be they ordinary elections or by-elections.

Regulation 11 introduces Schedule 4 to these Regulations, which makes further consequential amendments as set out in the Schedule.

Paragraph 1 of Schedule 4 omits provisions of the 2021 Act which are now spent. Section 13(4) of the 2021 Act provided that election rules made under section 36 of the 1983 Act (effectively the two sets of 2006 Rules) should continue to apply in



Wales as if made under the new section 36A power (inserted into the 1983 Act by section 13 of the 2021 Act) until such time as new rules were made under section 36A. This was a transitional arrangement; the new rules (the two sets of 2021 Rules) have now been made so section 13(4) is spent. Paragraph 1(b) of Schedule 4 to these Regulations also omits paragraph 19 of Schedule 2 to the 2021 Act which made certain amendments (specific to Wales) to the PA Rules 2006. The making of the 2021 Rules means these are spent so paragraph 19 of Schedule 2 is omitted from the 2021 Act.

Paragraph 2 of Schedule 4 to these Regulations makes consequential amendments to regulation 6 (modification of provisions about expenses in the 1983 Act) of the Representation of the People (Combination of Polls) (England and Wales) Regulations 2004. The 2021 Act made provision about expenditure by returning officers at local government elections in Wales by inserting a new section 36C into the 1983 Act. In consequence of this, amendments to regulation 6 of the Combination of Polls Regulations are required to update cross-references so regulation 6 refers to the new section 36C where appropriate. Although most of the necessary updating was made by paragraph 17(4) of Schedule 2 to the 2021 Act, there was one omission, which paragraph 2 of Schedule 4 to these Regulations corrects.

Paragraph 3 of Schedule 4 to these Regulations makes a necessary consequential amendment to regulation 4 of the Police and Crime Commissioner Elections (Functions of Returning Officers) Regulations 2012, so the current references to specific rules in the PA Rules 2006 and the Communities Rules 2006 are updated to refer to the equivalent new rules for Wales.

*Regulation 12* makes transitional provision so that relevant revocations and other amendments made by the Regulations do not affect the conduct of an election of councillors to a county council, county borough council or community council in Wales where the poll at the election takes place before 5 May 2022.

## **5. Consultation**

The Explanatory Memorandum to the 2021 Rules and the Local Government and Elections (Wales) Act 2021 detailed the consultation which took place in relation to the policies contained within those enactments and these can be accessed here ( <https://senedd.wales/media/1rubj1lr/sub-ld14684-em-e.pdf> and <https://senedd.wales/media/udpfm4r1/sub-ld14685-em-e.pdf> ) .

In accordance with section 7(1) and (2)(e) of the Political Parties, Elections and Referendums Act 2000 and section 36A(7) of the 1983 Act the Welsh Ministers have held further targeted consultations as they considered appropriate with the Electoral Commission, bodies representing local government electoral administrators in Wales, the UK Government, the Office of the Information Commissioner, the Welsh Local Government Association, One Voice Wales, local authority electoral administrators, and local authority returning officers in relation to these Regulations.

## 6. Regulatory Impact Assessment (RIA)

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to the Regulations.

Most of these regulations are consequential upon the Local Elections (Principal Areas) (Wales) Rules 2021 and The Local Elections (Communities) (Wales) 2021 for which regulatory impact assessments were undertaken; these are published in the relevant explanatory memorandum accompanying the two sets of 2021 Rules. (<https://senedd.wales/media/1rubj1lr/sub-ld14684-em-e.pdf> and <https://senedd.wales/media/udpfm4r1/sub-ld14685-em-e.pdf>). However, certain regulations will require consideration in a regulatory impact assessment which is set out in part 2 of this explanatory memorandum. .

## PART 2

### Regulatory Impact Assessment

#### Introduction

The regulations include supplementary and consequential provision made for the purposes of, in consequence of, or for giving full effect to the Local Elections (Principal Areas) (Wales) Rules 2021 and the Local Elections (Communities) (Wales) Rules 2021 and the Local Government and Elections (Wales) Act 2021. A Regulatory Impact Assessment was prepared for those and can be accessed here (<https://senedd.wales/media/1rubj1lr/sub-ld14684-em-e.pdf> and <https://senedd.wales/media/udpfm4r1/sub-ld14685-em-e.pdf>).

Only certain provisions within the regulations require further consideration within this Regulatory Impact Assessment. This approach is in line with the Welsh Ministers RIA Code for subordinate legislation. The effect of the regulations is summarised below, in order to identify those which will be included in the assessment and those for which no further assessment is required:

**Regulation 1** provides for the title and commencement of the Regulations. This regulation has no cost or benefit implications and will not affect the public, private, charity or voluntary sectors. Consequently, this regulation will not be considered in this Regulatory Impact Assessment.

**Regulation 2** amends the Local Elections (Principal Areas) (Wales) Rules 2021 and the Local Elections (Communities) (Wales) Rules 2021 adding to the list of grounds on which a returning officer may hold a nomination paper to be invalid, that the nomination paper does not include the declarations that the candidate is required to include in their nomination paper, signed by the candidate. This regulation makes an amendment to the 2021 Election Rules which does not alter the policy (or its impact) in a significant way clarifying a provision in the 2021 Election Rules, As such, it has

no cost or benefit implications and will not affect the private, charity or voluntary sectors. It will not be considered in this Regulatory Impact Assessment

**Regulation 3** makes further amendments of the Local Elections (Principal Areas) (Wales) Rules 2021 and the Local Elections (Communities) (Wales) Rules 2021. The main amendments are to the rules governing the procedure at the close of the poll. These amendments enable the marked copies of the registration records and list of proxies and the marked corresponding number list to be placed in packets and sealed at a place other than the polling station. Further, rule 30 of each Schedule is also amended so that the presiding officer may authorise the clerks appointed by the returning officer to carry out functions on behalf of the presiding officer outside of the polling station (including the sealing of any documents under the Rules). This regulation enables (as opposed to requiring) presiding officers to adopt alternative procedures for practical administrative purposes. It will therefore not be considered further as part of this regulatory impact assessment. It therefore has no cost implications.

**Regulation 4** amends rule 31 of Schedule 2 to the Local Elections (Communities) (Wales) Rules 2021. Schedule 2 to those rules sets out the rules that apply where the poll at a community election is combined with the poll at certain other elections. The amendments provide for the issue of official poll cards at the community election to be at the request of the community council, except for poll cards issued to electors with anonymous entries which must be issued regardless of whether there is a request. The amendments correct an oversight in Schedule 2 and mean that the position as respects the issue of poll cards at community elections is the same whether or not the poll is combined. The effect of the amendment is that the position at a combined election is that which applied under the Local Elections (Parishes and Communities) (England and Wales) Rules 2006. Since the provision does no more than continue the previous position under the 2006 Rules concerning the issue of poll cards for community elections at a combined poll, there are no new cost or administrative implications. Regulation 4 simply corrects what was an administrative error in the drafting of the 2021 Rules and retains the position which applies at the moment under the 2006 Rules – and applies for stand-alone community elections under the 2021 Rules. Therefore, the amendment made by this regulation does not change the situation for returning officers/local authorities in any way and it has not been considered in the regulatory impact assessment.

**Regulation 5** makes amendments relating to the timetable for elections. Paragraphs (2) and (3) amend the Local Elections (Principal Areas) (Wales) Rules 2021 and the Local Elections (Communities) (Wales) Rules 2021 so as to add, to the list of days that are disregarded in calculating periods of time in the election timetable, days appointed for public thanksgiving or mourning. It should be noted that these amendments correct an omission in those Rules and in the 1983 Act and restores the position that where the poll at an ordinary local government election in Wales would fall on a Saturday, a Sunday, Christmas Eve, Christmas Day, Good Friday, a bank holiday or a day appointed for public thanksgiving or mourning, the election is postponed until the first day afterwards that is not one of those days.

This provision corrects an omission from the 2021 Rules and the 1983 Act and in practice restores the legislation to the position it was in prior to the making of the

2021 Rules. Regulation 5 does not in itself give rise to direct cost implications for local authorities, but it does make them liable for costs if a set of circumstances (which are exceptional) then come to pass. Without the amendment, Returning Officers and Welsh Government would likely have to deal with a public outcry and reputational loss; with the amendment they will have an appropriate response to that outcry, albeit one which would have a cost implication. This regulation is therefore considered in the regulatory impact assessment and considers the potential, albeit likely to be exceptional, cost implications.

**Regulation 6** amends sections 67, 69 and 70 of the Representation of the People Act 1983 to give further effect to the provisions contained within the Local Elections (Principal Areas) (Wales) Rules 2021 allowing candidates to require that their home address must not be made public (by extending the option of not publishing the home address of a candidate at a principal council election who is acting as their own election agent -in effect, removing an existing loophole). This regulation makes a minor amendment to an existing administrative process at elections of councillors to a county or county borough council in Wales with no cost implication and will not be considered in this regulatory impact assessment.

**Regulation 7 (1)** introduces Schedule 1 which amends the Local Elections (Principal Areas) (England and Wales) Rules 2006 (S.I. 2006/3304) so that they apply only in relation to England. Provision for the conduct of local elections for principal areas in Wales is now made by the Local Elections (Principal Areas) (Wales) Rules 2021.

**Regulation 7(2)** introduces Schedule 2 which amends the Local Elections (Parishes and Communities) (England and Wales) Rules 2006 (S.I. 2006/3305) so that they apply only in relation to parishes in England. Provision for the conduct of local elections for communities in Wales is now made by the Local Elections (Communities) (Wales) Rules 2021.

**Regulation 8** revokes the Local Elections (Principal Areas) (Welsh Forms) Order 2007 (S.I. 2007/1015), the Local Elections (Communities) (Welsh Forms) Order 2007 (S.I. 2007/1013) and instruments amending those Orders. The Orders are now spent in consequence of the provision made by the Local Elections (Principal Areas) (Wales) Rules 2021 and the Local Elections (Communities) (Wales) Rules 2021.

**Regulation 9** introduces Schedule 3 which amends Schedule 4 to the National Assembly for Wales (Representation of the People) Order 2007 (S.I. 2007/236) which makes provision about what happens where the poll at a Senedd Cymru election is combined with the poll at a local government election in Wales so the combinations relate to principal and community elections under the new 2021 rules rather than the respective 2006 rules.

Regulations 7, 8 and 9 are consequential to the making and implementation of the new 2021 Rules, they have no cost implications beyond what has already been considered as part of the RIA for those Rules and will not be considered in this Regulatory Impact Assessment.

**Regulation 10** amends regulation 56(3B) and (3C) of the Representation of the People (England and Wales) Regulations 2001 and enables certain applications

relating to proxy voting to be made up until 5 pm on the day of the poll at a local government election in Wales on grounds related to the Covid-19 pandemic at all local government elections in Wales the poll for which falls before 31 May 2023.

This provision (regulation 10) could potentially have administrative and cost implications for local authorities in Wales which are considered in this Regulatory Impact Assessment.

**Regulation 11** introduces Schedule 4 which makes further consequential amendments.

- Paragraph 1 omits provisions of the Local Government and Elections (Wales) Act 2021 which are now spent.
- Paragraph 2 of that Schedule amends regulation 6 of the Representation of the People (Combination of Polls) (England and Wales) Regulations 2004 (S.I.2004/294). This is necessary as provision about the expenses of returning officers at local elections in Wales is now made by section 36C of the 1983 Act (as inserted by paragraph 2(5) of Schedule 2 to the Local Government and Elections (Wales) Act 2021).
- Paragraph 3 of that Schedule amends regulation 4 of the Police and Crime Commissioner Elections (Functions of Returning Officers) Regulations to add references to rule 55 of each of the Local Elections (Principal Areas) (Wales) Rules 2021 and the Local Elections (Communities) (Wales) Rules 2021 (dealing with the separation of ballot papers at combined polls). This is necessary because the existing references to provisions of the Local Elections (Principal Areas) (England and Wales) Rules 2006 and the Local Elections (Parishes and Communities) (England and Wales) Rules 2006 will no longer apply in relation to Wales.

The provisions made by this regulation are consequential to the making and implementation of the new 2021 Rules, they have no cost implications and will not be considered in this Regulatory Impact Assessment.

**Regulation 12** makes transitional provision so that relevant revocations and other amendments made by the Regulations do not affect the conduct of an election of councillors to a county council, county borough council or community council in Wales where the poll at the election takes place before 5 May 2022. This regulation has no cost or benefit implications and will not affect the public, private, charity or voluntary sectors. Consequently, this regulation will not be considered in this Regulatory Impact Assessment.

For those Regulations which are included in this Regulatory Impact Assessment (Regulations 5 and 10 respectively), two options have been considered:

- Option 1 – Introduction of the provision
- Option 2 – Not introducing the provision in question

### **Regulation 5**

The proposed amendment adds a day appointed for public thanksgiving or mourning to the list of “excepted days” in rule 3(1) of the two sets of 2021 Rules, which currently comprises a Saturday, a Sunday, Christmas Eve, Christmas Day, Good Friday and a bank holiday, and makes accompanying changes to section 40 of the

1983 Act. The effect of the proposed amendment is that, where the poll at an ordinary local government election in Wales would fall on a day appointed for public thanksgiving or mourning, a proceeding listed in rule 1 of the two sets of election conduct rules is postponed until the first day afterwards that is not one of those days.

The days currently listed in this regulation are fixed well in advance and thus it is possible to take them into account in arranging a local government election.

However, it is possible that a day (or days) of public thanksgiving or mourning being announced at very short notice. If the day of public thanksgiving or mourning falls on the day appointed for most of the election proceedings, the fact that they will have to be postponed by a day will not make any significant difference, either to the organisation of the election or the costs. However, there would be implications if the day for public thanksgiving or mourning were to fall on the day appointed for polling at an election and these are discussed below.

### **Option 1 – Make the regulation**

In the event that polling day at a local government election needed to be postponed at short notice, it is anticipated that local authorities are likely to incur additional costs. The extent of these costs will vary between local authorities, but would be likely to fall into the following categories:

- Hire of polling stations. Some polling stations are located in buildings not owned by the local authority and, as a result, local authorities pay a fee for hire of the building (or room) in question. Where polling day is postponed, local authorities may incur an additional charge for re-hiring premises on a second day.
- Hire of counting centres. Most counting centres are local authority owned, but, a number are hired for the occasion and, again, where polling day is postponed, local authorities may incur an additional charge for re-hiring premises.
- Publicity around the re-scheduled polling date. Local authorities may incur costs in publicising the changes to the date of the poll.

It is extremely unlikely that the postponement of the polling day under these circumstances will result in the reprint of ballot papers. There is no reason why the same ballot papers cannot be used on the revised polling day. Indeed, it is likely that postal ballot papers will already have been issued and potentially returned by voters, adding more weight to the argument that there should not be a reprint.

In order to assess the additional costs which may be incurred as a result of postponing polling day, officials have drawn upon the claims which have been submitted by local authorities to the Welsh Government in respect of their running of the Senedd Elections in May 2021. Local authorities are able to claim from the Welsh Government in respect of costs incurred in running a Senedd election and the categories of expenses claimed are comparable to those incurred during a local government election.

- Based on the claims submitted by local authorities in respect of the 2021 Senedd elections (at time of drafting this Regulatory Impact Assessment, 18 of the 22 Local Authorities had submitted their claims), the average total claim submitted in respect of polling station hire (across a local authority) was

**£10,700** per local authority (or approximately £235,000 in total). In the event that polling day were postponed as a result of a day of public thanksgiving or mourning being announced at very short notice and falling on the day appointed for an election (and polling day being postponed), local authorities could face additional polling station hire costs amounting, on average, to this amount. This figure assumes that the full hire charge for polling station premises would be charged in respect of a postponement of polling day. In reality, local authorities might not be charged in respect of a cancelled or postponed booking or may incur only a nominal charge. The costs per local authority are therefore likely to be considerably lower and the average of **£10,700** per local authority represents a worst-case scenario.

- With regard to the premises used for counting and verification of votes following an election, local authorities use a variety of settings. Some use local authority owned facilities such as leisure centres, or schools and colleges whilst others hire privately owned venues. Counting and verification usually takes place overnight immediately after the close of poll but may take place over a number of days following polling day and the number of days for which count and verification premises are hired is usually two or three days over the weekend following the election. The impact of postponing polling day on the costs of changing bookings for counting and verification venues could vary from nothing (if venue management were content to change the booking at no extra charge), to an additional day's hire being added or, at the other extreme, a complete re-charge being made for the number of days originally booked. We have calculated that the cost per local authority per day is, on average **£1,800** (again, based on the 18 claims received thus far in respect of the 2021 Senedd Elections).
- As a significant number of the premises used for election counts and verification are local authority owned, it is arguable that whilst local authorities charge Welsh Government for the use of these venues for Senedd elections, they, themselves would not incur hire charges to use them for local government elections. However, a counter argument is that using venues for local government election purposes means that local authorities are potentially losing revenue because they are unable to hire out premises for other events.
- Postponement of polling day as a result of a period of public thanksgiving or mourning is without recent, comparable precedent and, as such it is difficult to forecast the publicity costs associated with such an event. An event of the magnitude to necessitate the postponement of a polling day will be widely covered in the national media. The national and local media would also be extremely likely to report details of the re-scheduled polling date. This would minimise the amount of publicity a local authority would need to pay for. It is also likely that maximum use would be made of social media and local authorities' own websites which is also cost minimal.

As the situation is unprecedented and with local authorities undoubtedly adopting different approaches, it is very difficult to estimate how much they would be likely to spend. Therefore, officials suggest that for the purposes of

this regulatory impact assessment, it is assumed that local authorities would spend no more than £5,000 each in publicising the revised polling day.

The principal benefit of this option is that it provides clarity regarding what should happen in the event that a day appointed for public thanksgiving or mourning coincides with the day previously appointed as polling day. As will be seen in the following section, the cost associated with introducing emergency legislation at speed to postpone an election in the event of a period of public thanksgiving or mourning is potentially higher and could be combined with serious reputational damage for local and national government.

### **Option 2 – Not making the regulation in question**

If the day of the poll is not postponed, in the event of a day of public thanksgiving or mourning, this would likely result in public concern and confusion, as well as considerable reputational damage for government at a local and national level. It could also impact on voter turnout. As a result of public pressure, it might be considered necessary to introduce emergency legislation to postpone polling day which would result in additional costs falling to the Welsh Government and require the emergency re-convening of the Senedd.

It is therefore arguable that not introducing provision which allows for the postponement of polling day under the circumstances set out above does not represent a financial saving as public pressure will result in the postponement anyway with possibly larger costs being incurred as a result of emergency legislation being introduced at a considerable pace.

## **Regulation 10**

### **Option 1 - Make the regulation**

The effect of this regulation is to extend current provision which would otherwise expire in 2022 enabling certain applications relating to proxy voting to be made up until 5 pm on the day of the poll at a local government by-election in Wales on grounds related to the Covid-19 pandemic. Regulation 10 would also extend the application of the amendments to all local government elections in Wales the poll for which falls before 31 May 2023.

It is not possible, or at least, extremely difficult, to accurately predict the situation with regard to Covid-19 and potentially, voters might still be required to self-isolate at short notice for the foreseeable future. It is right and proper that if they are expected to comply with a requirement to self-isolate, they should be afforded every reasonable support in order to exercise their right to vote. For the purposes of this Regulatory Impact Assessment, the questions are whether this will result in a significant increase in the number of applications for emergency proxy votes and consequently an increase in administrative costs for local authorities.

With regard to whether the provision will result in a significant increase of emergency proxy applications, there is a precedent. The regulation serves to extend an existing provision which was initially introduced under emergency Covid legislation for local government by-elections.



Comparable provision was also in place for the 2021 Senedd Elections. During those elections, in one of the most highly populated local authority areas, there were only 20 applications for emergency proxy votes. This represents a very small percentage of the total number of electors and is highly unlikely to result in significant additional costs in processing them. It is unclear how many of these resulted from Covid as details of the voters' medical condition are not maintained, but, the electoral administrator has affirmed that this did not cause a problem for electoral services staff and that this number was not considered significant. We have established that a reasonable estimate for processing an unattested application for emergency proxy vote for local authorities is approximately £10 and therefore, processing all of the applications for emergency proxy votes in the local authority in question cost around £200 in total. .

### **Option 2 - Not making the regulation in question**

As has already been stated above, it is not possible, or at least, extremely difficult, to predict the situation with regard to Covid-19 accurately, and potentially, voters might still be required to self-isolate at short notice for the foreseeable future. In the event that the existing provision were not extended beyond when it would otherwise expire as is proposed by this regulation, any voter who tested positive for Covid-19 on polling day would need to have their application for an emergency proxy vote medically attested before it could be accepted. Given the requirement for self-isolation by those who test positive, this could prove extremely problematic. Such a person might effectively be considered to have been excluded from casting their ballot and thereby denied their right to vote.

### **Conclusion**

There is potentially a cost associated with introducing regulation 5. Postponing a polling day would result in additional costs for local authorities which would potentially need to re-hire polling stations, and premises for the count and verification. However, this must be compared with the impact of not making a provision for the postponement of polling day. Going ahead with polling on a day designated as a day of public thanksgiving or mourning would undoubtedly be considered inappropriate or disrespectful. In the face of such strong feelings a decision to postpone might be made anyway, requiring the costly introduction of emergency legislation. In this event, local authorities would still be likely to face the additional cost of re-hiring polling stations, and premises for the count and verification.

The making of regulation 10 would provide for an extension of existing legislation enabling voters affected by Covid-19 to apply for an emergency proxy vote up to 5pm on polling day until 31 May 2023. Potentially this could result in a wave of additional emergency proxy applications, but, whilst comparable provision was in force during the 2021 Senedd elections, one of the most populous local authorities in Wales has reported that this did not happen and that they did not face significant additional processing costs. Given the uncertainties of how the situation with Covid-19 might change in the future, the introduction of the regulation simplifies an existing procedure which, unchanged, might potentially result in individuals being unable to exercise their right to vote.