



Llywodraeth Cymru
Welsh Government

WELSH ELECTIONS (CORONAVIRUS) BILL

Explanatory Memorandum
incorporating the
Regulatory Impact Assessment and
Explanatory Notes

27 January 2021

Explanatory Memorandum to the Welsh Elections (Coronavirus) Bill

This Explanatory Memorandum has been prepared by the Office of the First Minister within the Welsh Government and is laid before Senedd Cymru.

Member's Declaration

In my view the provisions of the Welsh Elections (Coronavirus) Bill, introduced by me on 27 January 2021 would be within the legislative competence of Senedd Cymru.

Julie James MS

Minister for Housing and Local Government
Member of the Senedd in charge of the Bill

27 January 2021

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PART 1 – EXPLANATORY MEMORANDUM

1. Description

1. The Senedd Cymru ordinary general election is due to take place on 6 May 2021 in accordance with section 3(1) of the Government of Wales Act 2006. The coronavirus pandemic is likely to have an impact on these elections, the extent of which will depend on the prevalence of coronavirus ahead of and at the time of the election.
2. At present, any local government vacancies arising between 15 March 2020 and 31 January 2021 have had their respective by-elections postponed. Section 67 of the Coronavirus Act 2020 enables the date of by-elections to be postponed to no later than 6 May 2020.
3. The Welsh Elections (Coronavirus) Bill therefore makes provision to respond to the potential risks to the ordinary general election for membership of Senedd Cymru ("the Senedd") arising from the pandemic with the objective of ensuring the election can be administered and proceed safely and that the electorate can participate and vote. In terms of the Senedd, the provisions in the Bill will apply only for the ordinary general election due to be held on 6 May 2021 and will not apply to any subsequent elections. The Bill also responds to the potential risks of coronavirus by enabling local government by-elections to be postponed beyond 6 May 2020 if required.

2. Legislative Competence

4. Senedd Cymru has the legislative competence to make the provisions in the Welsh Elections (Coronavirus) Bill pursuant to Part 4 of the Government of Wales Act 2006 as amended by the Wales Act 2017.
5. The Wales Act 2017 provided the Senedd with the power to legislate on matters relating to Senedd elections. This will be the first Senedd election held since the Senedd gained this power.

3. Purpose and intended effect of the legislation

Background and context

6. The ordinary general election for membership of the Senedd is due to take place on 6 May 2021, during which time it is unclear what the situation will be regarding the current coronavirus pandemic. Local government by-elections that have been postponed must also be held on a date no later than 6 May 2020.
7. In the light of the pandemic, the Welsh Government established the Elections Planning Group in June 2020 to consider the impact of coronavirus on the next Senedd election and, in particular, the legislative adjustments required to reflect the public health position and to protect the safety and wellbeing of all involved in it. The Elections Planning Group report¹ was debated by the Senedd on 17 November 2020.²
8. The Government's firm intention is that the election will proceed on 6 May 2021. But it is prudent to ensure that contingency arrangements are in place in the event that the pandemic presents a serious threat to public health and the conduct of the election.
9. During the course of the past year, the Welsh Government, along with the other governments of the UK, have introduced a range of measures under the Public Health (Control of Disease) Act 1984 to protect public health and respond to the unfolding pandemic. The Government has also issued statutory and non-statutory guidance to complement the legislation that has been put in place. The measures include rules on social distancing, the wearing of masks and in severe instances, restrictions on movements of people. Those who have tested positive for coronavirus, or who have been in contact with those who have tested positive, are asked to self-isolate for 10 days. The measures have also required the closure of facilities and business such as pubs, restaurants and gyms and restricted recreational activity by limiting access to open spaces and public rights of way.
10. The running of an election is the responsibility of Returning Officers within the rules for the conduct of elections that are set out in legislation. The legislative framework for ordinary general elections for membership of the Senedd is set out in primary and secondary legislation and the National Assembly for Wales (Representation of the People) Order 2007 (as amended) sets the rules for the conduct of elections for membership of the Senedd. Under section 13 of the Government of Wales Act 2006, the Welsh Ministers have the power to make provisions about elections. Any order made by the Welsh Ministers must be within the legislative

¹ The report of the Elections Planning Group: <https://gov.wales/elections-planning-group-report-september-2020-html>

² Record of the debate in Plenary on the report of the Elections Planning Group: <https://record.assembly.wales/Plenary/6676#A62227>

competence of the Senedd. Whilst the Welsh Ministers make the secondary legislation, there is a clear distinction in roles and responsibilities, the conduct and administration of the election being a matter for Returning Officers.

11. Public Health officials have previously identified a range of individuals who are considered to be at high risk from coronavirus. At the height of the pandemic, those within this “shielding” category were advised to minimise their contact with others and those who were at particularly high risk were advised to self-isolate. Although the requirement to shield has been formally lifted, many individuals may continue to shield out of concern for their own safety, and there is no guarantee that this requirement will not return. Current public health guidance advises members of the public that avoiding contact with others and maintaining personal hygiene are good ways to reduce the risk of contracting the virus.
12. Actions are being taken by Returning Officers and electoral administrators to mitigate risks associated with running the election during the pandemic. This includes encouraging the use of postal voting and planning for social distancing measures both at polling stations during the day of the poll and at the count itself. The Welsh Government recognises that these are exceptional times and that there must be every opportunity for the electorate to participate in the election notwithstanding the challenging environment of the ongoing pandemic.
13. Despite the actions that Returning Officers and electoral administrators can take, there will be individuals complying with the public health regime who will be self-isolating at the time of the election and unable to attend a polling station and vote in-person. In addition, vulnerable voters such as those previously shielding and others nervous of coming into contact with people may not be willing to take the risk of attending at polling stations to vote on the day of the poll, particularly if infection rates rise significantly round polling day.
14. In the event of rising infection rates, there is also a risk that there will be a low number of available staff to successfully run the election, either because they are themselves complying with the public health regime or are nervous of coming into contact with large numbers of people at polling stations and count venues. Generally, staff at polling stations tend to be older and are more likely to be within the former shielding or higher risk categories and may therefore be less likely or willing to be available to run the election.
15. The 2021 election will be the first time that 16 and 17 year olds and qualifying foreign nationals will be entitled to vote in Senedd elections following the extension of the franchise in the Senedd and Elections (Wales) Act 2020, which will require electoral administrators to undertake additional work to ensure that newly enfranchised voters are included on the electoral register. Additionally, for younger voters this will be their first time voting, and therefore the impact of the pandemic on their first time

experience will need to be considered in the effective administration of the election.

16. The impacts of the pandemic and a rising infection rate as the date of the poll approaches could, therefore, lead to criticism about the lack of legitimacy in the result of the election. First, because of the potential for there to be a significant proportion of the electorate that could be disenfranchised either as a result of compliance with the public health regime or a lack of confidence in voting in-person at the poll, leading to a low turnout for the election. Second, because a successful election process relies on a large number of staff to manage the general administration, oversee polling stations, and to undertake the count itself. If staff that would administer the election themselves are prevented or lack confidence in participating in the election, there will be a potential risk to Returning Officers' successful delivery of the election.
17. Arrangements for the election are also complicated by the timing of the Police and Crime Commissioner ("PCC") elections, which are due to take place on the same day as the Senedd poll. The PCC election was originally due to take place on 7 May 2020, but was postponed by the UK Government via the Coronavirus Act 2020, which also provided that by-elections for the Senedd and local government could also be postponed, should they arise during the pandemic. The PCC poll has a narrower franchise to that of the Senedd elections, meaning that some voters will be allowed to vote in one poll, but not the other. The PCC boundaries also differ from the constituency and regional boundaries of the Senedd election, which will add to the complexity. As the PCC elections are a matter for the UK Government, the Welsh Government has consulted with the UK Government on this matter.

The Welsh Elections (Coronavirus) Bill

18. The purpose of the Welsh Elections (Coronavirus) Bill is to make provision to respond to the potential risks to the ordinary general election for membership of the Senedd arising from the coronavirus pandemic with the objective of ensuring the election can be administered and proceed safely and that the electorate can participate and vote, or, in extremis, that the election can be postponed if necessary. The overriding objective of the Welsh Government is that the election will proceed on 6 May 2021 as planned, and the adjustments made by the Bill are prudent contingency measures to ensure that the election can be delivered by Returning Officers in the context of the unfolding pandemic. The Bill will apply only for the ordinary general election due to be held on 6 May 2021 and will not apply to any subsequent elections.
19. The Bill contains provisions that: -
 - a. provide for a shorter dissolution period for the Senedd ahead of the day of the poll;

- b. protect the time within which the first meeting of the newly returned Senedd after the 2021 election must be held;
 - c. provide a power to postpone the election from 6 May 2021 for a reason relating to the coronavirus pandemic, and for a period of up to 6 months;
 - d. ensure the Llywydd's existing power to vary the date of the 2021 election continues to apply to the ordinary general election if the date of the poll for the election is postponed;
 - e. enable a by-election to fill a constituency vacancy that arises after 6 May 2021 to be held on a date fixed by the Llywydd following consultation with the Welsh Ministers;
 - f. enables a by-election to fill a vacancy for membership of a county council, county borough council or community council to be postponed to a date not later than 5 November 2021;
 - g. make consequential modifications to the National Assembly for Wales (Representation of the People) Order 2007 (as amended); and
 - h. confer a regulation-making power on the Welsh Ministers to make any incidental, supplementary, consequential, transitional, transitory or saving provisions that they consider appropriate for the purposes of, or in connection with, giving full effect to the Act.
20. The paragraphs that follow provide commentary on the purpose and intended effects of these provisions. Further commentary on all of the Bill's provisions is set out in detail in the Explanatory Notes to the Bill at Annex A.

Dissolution of the current Senedd

21. The usual position ahead of an ordinary general election for membership of the Senedd is that the Senedd is dissolved at the beginning of the "minimum period" which ends with the day of the poll in the election (section 3(2)(a) and (3) of the Government of Wales Act 2006). The "minimum period" is 21 days, excluding a Saturday, a Sunday, a day which is a bank holiday and so forth (article 148 of and rule 2 of Schedule 5 to the National Assembly for Wales (Representation of the People) Order 2007).
22. On dissolution, Members of the Senedd cease to hold office by virtue of section 14 of the Government of Wales Act 2006. The effect of this is that during the period of dissolution, there is no sitting Senedd to convene to debate or pass legislation. However, the prevalence of the coronavirus pandemic in the period before the next ordinary general election may mean that there is a spike or surge in infections that would require a legislative response.

23. The Bill therefore provides that the dissolution date will be 7 calendar days before the day of the poll, namely on 29 April if the poll for the election proceeds on 6 May as scheduled. The purpose of this is to provide a mechanism to enable the current Senedd to respond, if required to do so, to the unfolding public health issues leading up to the election. It also means that the Senedd is sitting and able to resolve to fix a date for the poll for the ordinary general election if there is a need to postpone the election for a reason relating to coronavirus in the period up to 7 calendar days before the day of the poll (see paragraphs 26 to 31 below).

Date of the first meeting of the Senedd after the 2021 election

24. Discussions with Elections Planning Group identified a risk that the mitigations put in place to reduce the spread of coronavirus may impact upon the length of time it takes to undertake the count and to return all Members. This may be a result of the impact social distancing measures have on the time taken to complete the count and possible recounts, or where there are high levels of illness in the candidates, Returning Officers or polling staff.

25. The current position following an ordinary general election for membership of the Senedd, with effect from the first poll in such an election held after 5 April 2021, is that the Senedd must meet within 14 days beginning immediately after the day of the poll (section 3(2)(b) of the Government of Wales Act 2006 amended by section 36(1) of the Senedd and Elections (Wales) Act 2020). In calculating this period, a day which is a Saturday, a Sunday, a bank holiday and so forth is discounted (section 3(4) of the Government of Wales Act 2006). Therefore, the first meeting of the Senedd would need to be no later than 26 May.

26. The Bill provides that the Senedd must meet within the period of 21 calendar days beginning immediately after the day of the election. If the election proceeds as scheduled on 6 May, this provides an extra calendar day to the time within which the Senedd must meet compared to the usual position outlined in paragraph 25 above. The purpose of this extension is to provide some flexibility to cater for a potential delay in counting ballots, confirming results and returning Members; the Welsh Government's planning assumption, following consultation with Returning Officers, is that the count could be delayed by up to 24 hours. A longer extension is not desirable, as there is a requirement under section 47 of the Government of Wales Act 2006 to nominate a First Minister within the period of 28 calendar days from the day of the poll in the election. Therefore, the nomination must be made by no later than 2 June (assuming the election proceeds on 6 May 2021). By providing that the Senedd must meet no later than 27 May, it will enable the necessary formalities to take place and for the nomination of the First Minister to be made by this deadline.

Power to postpone the 2021 election for up to 6 months

27. Although the Welsh Government's firm intention is that the next ordinary general election should be held as intended on 6 May, it is prudent to have in place contingency arrangements for a scenario in which the election cannot be held because of public health reasons.
28. Under section 4 of the Government of Wales Act 2006, the Llywydd has the power to vary the date of the poll for an ordinary general election for membership of the Senedd, and can bring forward or postpone the date by up to one month from 6 May, 2021. In the event of a surge in the pandemic, a postponement of one month may not be enough time to allow for rates to fall again to a level where an election can safely proceed, and therefore the existing power is unsuitable for these purposes.
29. The Bill therefore proposes a longer and more flexible timeframe for postponement, subject to appropriate checks and balances, to enable the date of the poll for the election to be postponed by up to 6 months from 6 May 2021. The proposal is that this power to postpone the date of the election can only be used for a reason relating to coronavirus.
30. The Bill proposes two powers, that can be exercised more than once: -
- a. First, a power for the First Minister to propose to the Llywydd that the poll for the 2021 ordinary general election be postponed for a reason relating to coronavirus where the First Minister considers it is necessary or appropriate to do so.
 - b. Second, a power for the Llywydd, following a proposal from the First Minister, to postpone the day of the poll and fix a later date for holding the poll for the election if the Senedd approves the later date by resolution passed by a two-thirds majority of the total number of Senedd seats.
31. Importantly, the discretion to put a proposal to the Senedd lies with the Llywydd, as the politically impartial office-holder who presides over the Senedd, and postponement is subject to the agreement by a super-majority of the Senedd itself. However, it falls to the First Minister to propose a postponement to reflect the policy and legislative responsibilities of the Welsh Government for both public health and elections. It would not be appropriate to require the Llywydd to initiate the request given the much more limited powers and resources available to them. A similar division of responsibilities can be found in Senedd Standing Order 12.3.
32. To provide a further safeguard, the Bill also proposes a role for the Electoral Commission in relation to postponement. If the Llywydd or the First Minister requests, the Electoral Commission must provide them with advice on the matter. The purpose of this provision is to enable the Llywydd and the First Minister to seek an opinion and/or relevant information about any proposal for postponement and the new date to be

fixed for the poll from the independent body charged with oversight of elections.

Further power for the Llywydd to vary the date of the 2021 election

33. As noted at paragraph 28, under section 4 of the Government of Wales Act 2006, the Llywydd has the power to vary the date of the poll for an ordinary general election for membership of the Senedd. The current provision enables the Llywydd to vary the date of the poll and to propose a date of up to one month before or one month after 6 May 2021.
34. Whilst the Bill proposes a power to postpone the poll by up to 6 months for reason relating to coronavirus, the Llywydd's existing power to vary the date of the poll is limited to varying the date by up to one month before or after 6 May 2021. There is therefore a potential lacuna in the ability to vary the date of the poll for reasons other than those relating to coronavirus. If the poll were to be postponed by more than one month for a reason relating to coronavirus and another reason was to arise requiring the date of the poll to be varied, the Llywydd's power in section 4 of 2006 Act would be unavailable.
35. The Bill therefore proposes a power for the Llywydd that would operate in a way that is equivalent to the Llywydd's existing power in section 4 of the Government of Wales Act in that the Llywydd may further vary the date of poll, postponed under section 5 of the Bill, by no more than one month before or one month after the date fixed for the poll. This power is not be exercised so as to fix a date that is later than 5 November 2021 in keeping with the overall timeframe within which the Bill is designed to operate.
36. The Bill does not define the reasons for the Llywydd's exercise of this proposed power, consistent with the current position in section 4 of the 2006 Act.

Constituency vacancies

37. Under section 10 of the Government of Wales Act 2006, the Llywydd must fix the date for the poll for a by-election to fill a constituency election. The date fixed must be within three of months of the date of the vacancy arising (section 10(5) of the 2006 Act). If the vacancy does not come to the Llywydd's attention within a period of one month of the vacancy arising, the date fixed must then be within three months of the date on which the vacancy came to the Llywydd's notice (section 10(6) of the 2006 Act).
38. The Bill proposes that the time period for fixing the date for a by-election to fill a constituency election arising after 6 May should be adjusted to respond to the unfolding coronavirus pandemic. If the public health risk is such, the Bill proposes that the Llywydd after consultation with the Welsh Ministers should be able to fix a date for the by-election which must take place on or before 5 November 2021 but which may be on a date which is outside the period afforded under section 10(5) or (6) of the 2006 Act.

Local Government vacancies

39. The Bill proposes a regulation making power for the Welsh Ministers enabling them to postpone local government by-elections in Wales that fall between 6 May 2021 and 5 November 2021. These provisions do not provide for the indefinite postponement of by-elections and will have no effect on the ordinary local government elections due to be held in May 2022. The provisions will apply to all tiers of local government in Wales and are applicable to principal councils and town and community council casual vacancies. This power is designed to be used in the event of a public health situation whereby the holding of polls is considered to present such significant challenges that the Welsh Ministers do not believe mitigating actions would allow for the safe delivery of local government by-elections and the holding of polls is not within the public interest. The power enables retrospective provision to be made in relation to local government by-elections, an approach consistent with that taken in section 68 of the Coronavirus Act 2020 which enables the postponement of local government by-elections to 6 May 2021. The provision will expire on 5 November 2021 at which point no local government by-elections can take place in Wales in line with the provisions of the Local Government Act 1972 that set out the procedure where local government casual vacancies arise within 6 months of the ordinary local government elections.

Consequential modifications

40. The Bill proposes consequential modifications to the National Assembly for Wales (Representation of the People) Order 2007 (as amended) (“the Conduct Order”) to reflect the changes proposed in the Bill to shorten the dissolution period for the Senedd ahead of the day of the poll scheduled for 6 May; and to implement recommendations made by the Elections Planning Group for flexibility in certain areas in the conduct of the election in response to the demands of the coronavirus pandemic.

41. In relation to the shortened dissolution period, the Bill proposes a modification to decouple the time at which a person becomes a “candidate” in the election from the dissolution period. The Bill proposes that a person will become a “candidate” 21 days before 6 May (calculated by disregarding a day that is a Saturday, a Sunday, a bank holiday and so forth) rather than on the date of dissolution, which would be 7 days before the day of the poll as proposed in the Bill. The effect of this is that a person will become a candidate at the next election at the same time as they would have done had not the Bill proposed to shorten the dissolution period.

42. This provision has implications for the “regulated period” for campaign expenditure for the election under the Political Parties, Elections and Referendums Act 2000. The regulated period will remain linked to 6 May 2021 and will begin 4 months before that date regardless of any postponement to the date of the poll for the ordinary general election in accordance with the provisions for postponement proposed in the Bill.

43. In response to the recommendations of the Elections Planning Group, the Bill proposes to introduce flexibility for applications in relation to proxy voting where a person finds they cannot reasonably be expected to vote in person because they are required to comply with an enactment relating to coronavirus or they are following guidance relating to coronavirus issued by the Welsh Ministers. The Bill proposes that medical attestation for an application for an emergency proxy in these circumstances will not be required. The purpose of the provision is to enable voter participation in the election where, in the period ahead of the poll, a voter becomes unable to participate in person on the day of the poll because of a reason relating to coronavirus. This is consistent with provision being made for elections across the UK.
44. The Elections Planning Group also recommended exploring whether there could be an increase in certain circumstances in how many people one individual can be a proxy voter for, for example if a household with multiple voters is required to self-isolate. The Bill does not make provision for this, because after further exploration and reflection the Welsh Government believes that such arrangements could be open to abuse and would potentially put vulnerable voters at risk of being disenfranchised.
45. The Bill does propose to introduce flexibility into the process for the delivery of nomination papers and candidates' consent to nomination, as recommended by the Elections Planning Group. The delivery of nomination papers and consent to nominations is a physical rather than a virtual process. The proposed adjustments are to provide more time in each day for the delivery of nomination papers (9.00am to 5.00pm instead of 10.00am to 4.00pm). In addition, it is proposed that nomination papers can be delivered on a candidate's behalf by a person nominated by the candidate for that purpose by providing the person's name and address to the returning officer in writing or electronically before or at the time the nomination paper is delivered.
46. The final adjustment proposed in the Bill is in relation to candidates' consent to nomination. There is no prescribed form for the consent to nomination, provided it is in writing, delivered to the returning officer in the specified time and attested by a witness. Where a candidate is overseas, it can be delivered by facsimile or other similar means – and notably without the requirement for attestation by a witness. For the election due to be held on 6 May 2021, the Bill proposes to adjust the current rules to enable candidates to deliver their respective consent to nomination in the time specified for delivery of nomination papers either in writing at the place for delivery of those papers or electronically to an electronic address for that purpose. It is proposed that there will be no requirement for a candidate's consent to nomination to be attested by a witness.

Regulation making power

47. Whilst the Bill seeks to respond to the impacts of the coronavirus pandemic, the complexity and evolving nature of the situation is such that not all of the potential impacts on the conduct of the ordinary general election for membership of the Senedd may have been foreseen and catered for in the provisions of the Bill. Similarly, there may be a need to deal with the practical consequences of cancelling or postponing the election, and there may be a need for legislation that deals with matters like candidates' deposits, destruction of postal votes and so forth that can be dealt with by way of secondary legislation.
48. The Bill therefore proposes that a regulation-making power is conferred on the Welsh Ministers to make any incidental, supplementary, consequential, transitional, transitory or saving provisions that they consider appropriate for the purposes of, or in connection with, giving full effect to the Act. In respect of local government by-elections, the power enables retrospective provision to be made, an approach consistent with that taken in section 68 of the Coronavirus Act 2020 which enables the postponement of local government by-elections to 6 May 2021. The Bill proposes that the power is subject to Senedd scrutiny via the negative procedure, balancing scrutiny against the need for any regulations to be made on an urgent basis to respond to the ever changing coronavirus climate.

4. Consultation

49. In June 2020, the First Minister engaged a select group of stakeholders to form the Elections Planning Group, which invited representatives to share their views on the extent to which adaptations were necessary in relation to the conduct and administration of the ordinary general election for membership of the Senedd due to take place 6 May 2020, in order to accommodate for the impacts of the coronavirus pandemic.

50. The Group set out the following aim within its terms of reference:

“The overall aim is to maximise democratic participation whilst also protecting public health. This includes ensuring that, in safety and with confidence:

- *candidates and campaigners can make their case;*
- *voters can participate;*
- *administrators can run the poll; and*
- *the public can trust the result.”*

51. The Group was comprised of representatives from the following stakeholders:

- a. Electoral Commission
- b. Returning Officers
- c. Association of Electoral Administrators
- d. Political Parties
- e. Senedd Commission
- f. UK Government
- g. Wales Electoral Co-ordination Board
- h. National Union of Students

52. The Group met on five occasions and set out a number of recommendations within its report, published on 6 November 2020, though the group did not reach a consensus on all of these recommendations. The full report was published on the Welsh Government website - <https://gov.wales/written-statement-report-elections-planning-group>.

53. Although a number of the recommendations were practical matters for electoral administrators, some of the Group’s recommendations require legislative solutions. In terms of these, there were recommendations where the Group reached a consensus, and those where it did not.

54. In terms of areas of consensus, the Group agreed:

1. the continuing aim should be for the Senedd election to be held on 6 May as planned;
2. greater flexibility on who is permitted to present nomination papers should be provided and papers should be permitted to be presented electronically; and

3. greater flexibilities in respect of proxy votes should be permitted;

55. The Group did not reach a consensus on the following recommendations:

1. a power for the Llywydd, as a contingency measure, to postpone the date of the election by more than a month if public health advice indicated it would not be safe to hold the poll;
2. amending the requirement for the first Plenary meeting to be held 14 days after the poll to 14 days after the result (to reflect a probably longer count period); and
3. extending polling hours – either longer on 6 May or over additional days.

56. Each of these matters is set out in current electoral legislation and would require in some cases secondary and other cases primary legislation to make a change to current arrangements. The approach taken in the Bill is to include in it all of the legislative proposals that relate to the ordinary general election for membership of the Senedd due to be held on 6 May. The provisions of the Bill will apply only to the next ordinary general election and to no subsequent election and it was considered appropriate to make adjustments in one legislative vehicle to the extent that this is possible.

57. The Welsh Government acknowledges that two of the three areas listed above (in paragraph 56(1) and (2)) where the group did not reach a consensus have been included in the Bill. It is not the desire of the Welsh Government to change to date of the poll and it is the Government's firm intention that the election proceed on 6 May 2020, but it is prudent to ensure that there are additional options available, should the pandemic result in a situation where the election cannot be held.

58. As regards extending the hours of polling, the Welsh Government recognises that these are exceptional times and that there must be every opportunity for the electorate to participate in the election notwithstanding the challenging environment of the on-going pandemic. Whilst there are no provisions included in the Bill, the Welsh Government has continued to engage with the Electoral Commission, the Association of Electoral Administrators, the Wales Electoral Co-ordination Board and other stakeholders to explore the feasibility of early voting ahead of the poll and to discuss with the UK Government applying this to the PCC elections which take place on the same day as the Senedd election.

59. The Welsh Government did not undertake a consultation on a draft of the Bill, due to the time constraints of ensuring the necessary primary legislation was in place ahead of dissolution of the Senedd. The Bill will apply only for the ordinary general election for membership of the Senedd

due to be held on 6 May 2021. It will not apply to subsequent Senedd ordinary general elections. The Welsh Government has worked closely with the electoral community, who would be called upon to implement the measures outlined in the Bill, and with Senedd Commission officials. Their comments have helped shape the content of the Bill.

5. Power to make subordinate legislation

60. The Bill contains a power to make subordinate legislation. Table 5 refers.

61. The Welsh Government will consult on the content of subordinate legislation where it is considered appropriate to do so. The precise nature of consultation will be decided when proposals have been formalised.

Table 5: Summary of powers to make subordinate legislation in the provisions of the Welsh Elections (Coronavirus) Bill

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
8	Welsh Ministers	Regulations made by statutory instrument	There is existing provision under section 67 of the Coronavirus Act 2020 to enable by-elections to fill casual vacancies arising in a local authority to be postponed to 6 May 2021, the power is designed to be used in the event of a public health situation whereby the holding of polls is considered to present such significant challenges that Welsh Ministers do not believe mitigating actions would allow for the safe delivery of polls. This power cannot be used to postpone by elections beyond 6 May 2021. The power in this Bill is provided to enable the postponement of by elections should the public health situation be such that it would not be considered safe to hold by-elections after 6 May 2021. This power could not be used to set a date for a poll in a by-	Negative procedure	To respond to the unfolding pandemic to enable the date of a poll in a by-election to be postponed if to do so is necessary for public health reasons to allow for the safe delivery of the poll.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			election that is after 5 November 2021. The power enables retrospective provision to be made in relation to local government by-elections, an approach consistent with that taken in section 68 of the Coronavirus Act 2020.		
12	Welsh Ministers	Regulations made by statutory instrument	Although the Bill seeks to address issues relating to the general election that may arise as a result of the pandemic, the fast moving nature of the situation may lead to issues which could not have been foreseen but require legislation to resolve. The postponement of the poll may lead to practical consequences, such as candidates' deposits and destruction of postal votes, which would be best addressed via secondary legislation.	Negative procedure	<p>The powers would relate only to the purpose of or to give full effect to the Bill.</p> <p>The subject matter of the Bill will require swift action.</p>

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Regulatory Impact Assessment (RIA) summary

A Regulatory Impact Assessment has been completed for the Bill and it follows below.

There are no specific provisions in the Bill which charge expenditure on the Welsh Consolidated Fund.

Table A

The following table presents a summary of the costs and benefits for the Bill as a whole. The table has been designed to present the information required under Standing Order 26.6 (viii) and (ix). In this RIA all costs have been rounded to the nearest £1000. The current financial year (2020-21) is used as the base year in the RIA. Since all of the costs in the analysis are expected to be incurred in 2021-22 they need to be discounted to be shown in present value terms. As a result of this discounting, the present value figure is lower than the undiscounted figure.

WELSH ELECTIONS (CORONAVIRUS) BILL		
Preferred option: Introduce legislative changes allowing for increased flexibility in electoral law, including an extension to the Llywydd's ability to move the date of the poll.		
Stage: Introduction	Appraisal period: 2020/21 - 2021/22	Price base year: 2020/21
Total Cost Total: £9,938,000 Present value: £9,602,000	Total Benefits Total: £0 Present value: £0	Net Present Value (NPV): £-9,602,000

Administrative cost

Costs: *The postponement of the poll carries the most significant administrative cost and the bulk of this would fall on Local Authorities. These costs are claimed back from Welsh Government and would be incurred in 2021/2022. The estimated cost of the 2021 election (assuming no change in the date) is £11,840,000. A delayed poll would incur a total cost for the 2021 election of £21,778,000. Therefore the provisions of the Bill could incur an additional cost of £9,938,000.*

Transitional: £9,938,000	Recurrent: £0	Total: £9,938,000	PV: £9,602,000
Cost-savings: <i>There are unlikely to be any cost savings of any significance associated with the Bill. The bulk of costs, such as producing ballot papers, will have already been completed in advance and before any decision to postpone. Though there may be a saving in staff costs for the day of the poll, as with many of the costs associated with the poll, this charge would simply be postponed until the re-arranged date when staff would again be needed.</i>			
Transitional: £0	Recurrent: £0	Total: £0	PV: £0
Net administrative cost: £9,938,000			

Compliance costs

Transitional: £0	Recurrent: £0	Total: £0	PV: £0

Other costs

N/A			
Transitional: £0	Recurrent: £0	Total: £0	PV: £0

Unquantified costs and disbenefits

There are potential additional costs to the Senedd Commission for communication and engagement activities in relation to any postponement of the election. Similarly, the Electoral Commission may incur additional through working with Local Authorities and the provision of guidance, resources and voter information. These costs are unknown at this stage.

Benefits

The provisions in the Bill will provide increased flexibility in options for responding to the pandemic by providing a contingency for the election to be moved in the event of a worst case scenario and the updates to rules regarding proxy voting, nominations, and procedures in the Senedd. These measures also assist in reducing the risk of transmission of coronavirus through the increased flexibility in proxy voting and nominations. A shortened dissolution period also allows for the Senedd to scrutinise legislation for a longer period. The Bill also ensures that the public can have confidence that the pandemic will not prevent them from voting.

Total: £0

PV: £0

Key evidence, assumptions and uncertainties

There is a degree of uncertainty in the impact that the pandemic will have upon the successful running of the election. The provisions set out here are designed as a response to a worst case scenario in which infection levels are high enough to pose a risk to turnout and staffing levels. As such, the impact the pandemic could have on turnout and use of absent voting options are difficult to predict, as voters' willingness and ability to participate would be affected by the infection rate at the time.

7. Options

62. The policy objective is to respond to the potential risk to the 2021 Senedd election arising from the pandemic with the objective of ensuring the election can be administered and proceed safely and that the electorate can participate and vote. The rationale for this is set out in the Explanatory Memorandum.

63. Two options have been considered:

Option 1: Business as usual – Allow the election to proceed as normal without changes to electoral legislation.

Option 2: Introduce legislative changes allowing for increased flexibility in electoral law, including an extension to the Llywydd's ability to move the date of the poll.

Option 1: Business as usual

64. The Senedd election is due to take place on 6 May 2021. It is difficult to predict how the pandemic will have progressed at this point and whether infection rates will have increased or decreased. Higher levels of infection bring with them additional risks to the election. Voters may be unwilling or unable to participate in the poll due to illness, or a requirement to self-isolate or simply a reluctance to attend a polling station where they may come into contact with the virus. High levels of sickness could also reduce the number of staff available to administer the poll, putting the election itself at a significant risk of failure.

65. Electoral administrators are introducing a number of mitigations to reduce these risks, including introducing social distancing and hygiene measures at polling stations and at the count. As many voters may be unable or unwilling to attend polling stations, there will be promotional activities to encourage voters to make use of absent voting options, such as postal voting and proxy voting. These measures are being put in place through non-legislative methods and there would be no changes made to electoral rules through legislative changes. Therefore the date of the poll and other changes included in the Bill would have to follow existing law and could not be changed.

66. Each of the non-legislative actions does serve to meet the policy objective of the Bill: to facilitate the safe running of the election. However, they provide insufficient flexibility and no contingency in the event of the worst case scenario. Electoral law would still have to be followed, even in the case of a critical rate of infection among the population. The Senedd would be dissolved too far in advance of the election to enable Members to oversee the response to the pandemic. For this reason, this option does not meet the policy objective, as it does not provide contingency for the worst case scenario.

Option 2: Introduce legislative changes allowing for increased flexibility in electoral law, including an extension to the Llywydd's ability to move the date of the poll.

67. The rules regarding the management of Senedd elections are set out in electoral legislation, such as the Government of Wales Act 2006. Making changes to these rules can require primary legislation and, by convention, any such changes must be in place 6 months prior to an election to allow sufficient time for arrangements to be made.

68. So far, the trajectory of the pandemic has been difficult to predict and there is difficulty in knowing what the status of the pandemic will be when the election takes place on 6 May 2021. The lack of flexibility available for making changes to electoral rules is not appropriate for responding to the pandemic, which has so far required pace and pragmatism in responding quickly to a rapidly changing situation.

69. The Bill provides a contingency for dealing with a worst case scenario by:

- a. shortening the length of the dissolution which allows for the Senedd to sit for longer, thereby offering greater scrutiny of coronavirus related legislation;
- b. protecting the period of time between the poll and the first meeting of the Senedd, in light of potential delays in counting votes;
- c. allowing greater flexibility in the proxy voting rules and submission of nominations; and
- d. extending the Llywydd's ability to move the date of the poll as a contingency should infection rates cause a significant risk to the safety and legitimacy of the poll.

70. Each of these measures provides additional flexibility and a contingency measure should the worst case scenario come to pass. As stated above, the Welsh Government is committed to proceeding with the election on the date set out in law, but what this Bill provides is an extra level of risk mitigation that the business as usual scenario cannot provide. For this reason, Option 2 better meets the policy objective.

8. Costs and benefits

Option 1: Business as usual

71. This is the baseline option and as such the costs or benefits associated with this option will be incurred whether the Bill proceeds or not.

72. Table A below estimates the cost of the ordinary general election for membership of the Senedd scheduled for 6 May 2021. The base costs for the estimate are derived from the costs of administering the ordinary general election held in 2016. These costs are sourced from figures³ published by the Welsh Government and have been updated to current prices using the GDP deflator series to arrive at the costs for 2021.

Table A

		<u>2016 Cost</u>	<u>2021 Estimate</u>
Local Authority	Polling Stations	1,429,000	1,554,000
	Postal Votes	515,000	560,000
	Poll Card	749,000	814,000
	Count	440,000	479,000
	Staff	197,000	214,000
	Returning Officer Fees	201,000	219,000
	<u>Total</u>	<u>3,531,000</u>	<u>3,840,000</u>
	Coronavirus Measures		4,000,000.00
Welsh Government	Royal Mail Contract	4,000,000	4,000,000.00
<u>Final Total</u>		<u>7,531,000</u>	<u>11,840,000</u>

*Figures are rounded to the nearest thousand

73. As can be seen from Table A the bulk of costs associated with running the election will fall to local authorities. These costs are then charged back to the Welsh Consolidated Fund via the Welsh Government. The total estimated cost of the administrative tasks necessary to conduct the election and falling to local authorities is £3,840,000. It covers all of the practical elements of administering the election including polling stations, polling cards, ballot papers and staff.

74. Additional costs for the 2021 Senedd election, and not ones that arose in relation to the 2016 election, are for measures needed for pandemic mitigation purposes, such as Personal Protective Equipment and social distancing arrangements at both polling stations and count venues. These

³ <https://gov.wales/national-assembly-wales-election-costs-2016>

additional costs have been estimated at approximately £4,000,000. In addition, the Welsh Government will spend £4,000,000 on a contract with Royal Mail that allows each candidate at a Senedd election to issue a “mailshot” to each registered elector. As a result the total estimated cost of the election in 2021 is £11,840,000.

75. The main benefit of following this option is constitutional. The date of the election is set out in Government of Wales Act 2006 for the purpose of preventing those in power from moving the date for political gain. It ensures clarity for both voter and candidate and allows for administrators to carry out preparations effectively. Elections hold an important function in a democracy, providing voters with the opportunity to voice their opinion on the work of their elected representatives and to subject them to scrutiny for how they have served the public during their term of office. It is essential that voters are able to trust that they will be able to exercise their fundamental right to vote.
76. This option allows for mitigations to be put in place for the purposes of reducing the risks raised by the pandemic. Electoral administrators are adapting polling stations and count locations to allow for effective social distancing and hygiene practices to be put in place, as well as investing in additional PPE and training for staff. Voters will be made aware of the absent voting options available to them and encouraged to make use of them where they wish to.
77. However, this option does not mitigate against all risks associated with the pandemic. It does not guard against the risk to turnout posed by the pandemic. Voters may at short notice find themselves unable to attend a polling station in person, and be too late to register for a postal vote and unable to arrange for a proxy vote, despite the best efforts to raise awareness of these options. In the worst case scenario, a severely high infection rate could lead to a situation where there are not enough able bodied staff available to administer the poll, leading to the failure of the election itself.

Option 2: Introduce legislative changes allowing for increased flexibility in electoral law, including an extension to the Llywydd’s ability to move the date of the poll.

78. The Bill is primarily an enabling Bill, providing extra flexibility to respond to the pandemic that would not be available under the existing rules. The main costs associated with the Bill would only be incurred should the decision be made to delay the election. All of the costs are expected to be incurred in 2021-22.
79. As Table A illustrates, the bulk of costs associated with running the election will fall to local authorities, and therefore the bulk of the costs associated with a delayed election will also fall to them. Regardless of whether the election is postponed from 6 May, the preparations for the original day of the poll will have already taken place and the costs set out

in Option 1 will apply. This is particularly the case as the proposed power to postpone the day of the poll for a reason relating to coronavirus could be exercised by the Llywydd up to the point that the Senedd dissolves. The Bill proposes a shorter dissolution period ahead of the 2021 election of 7 calendar days.

80. Table B assumes that costs for many of the practical matters necessary to deliver the election as set out in Option 1 are committed ahead of the day of the poll and on postponement, they will necessarily need to be re-incurred for the new day fixed for holding the poll in the election. The assumption is a worst case scenario but provides an estimate of the extent of the additional costs, per postponement, that could potentially accrue if the election is postponed. It is entirely possible that Returning Officers may be able to negotiate a saving of additional costs in advance of a postponement but because (a) postponement could arise as little as 8 days before the day of the poll; and (b) this is entirely a matter for Returning Officers, we consider it is prudent to estimate the potential additional costs on a worst case scenario.

Table B

		<u>2021 Estimate (baseline – from Table A)</u>	<u>Additional Costs caused by delay</u>
Local Authority	Polling Stations	1,554,000.00	1,554,000
	Postal Votes	560,000	560,000
	Poll Card	814,000	814,000
	Count	479,000	479,000
	Staff	214,000	214,000
	Returning Officer Fees	219,000	219,000
	Coronavirus Measures	4,000,000.00	
	Communicating the change of date		350,000
	To cover UK Government contribution**		1,766,000
		<u>Total</u>	<u>7,840,000</u>
Welsh Government	Royal Mail Contract	4,000,000.00	4,000,000.00
<u>TOTAL</u>		<u>11,840,000</u>	<u>9,938,000</u>

*Figures are rounded to the nearest thousand

** The estimates are based on the costs from the 2016 Senedd election which took place on the same day as the Police and Crime Commissioner elections. The UK Government contributed to the cost of running the election, as the PCC elections are

their responsibility. If the election were moved so that these polls did not take place on the same day, Local Authorities would have to cover the contributions that UK Government would have made.

81. The total estimated cost for the 2021 election in the event of a postponement is £21,778,000. This figure would cover the costs associated with both the original election and the additional costs for the postponed poll. As such, the Bill would incur estimated additional costs on local authorities of £9,938,000 for a postponement of the day of the poll from 6 May 2021.
82. The Bill will also have an impact on the Senedd Commission and the Electoral Commission. These costs are currently unknown. In the case of the Senedd Commission additional costs would be incurred for communication and engagement activities connected with any postponement of the date of the poll. In the case of the Electoral Commission, additional costs would be incurred working with local authorities and providing guidance, resources and voter information connected to any postponed date to help raise awareness of the election.
83. The main benefit of this option is enabling a level of flexibility around the arrangements for the poll and allowing for a contingency in the event of a worst case scenario coming to pass. The pandemic poses two risks to the integrity of the election: one to the ability of voters to participate in the poll; and a second to the ability of administrators to carry out the poll.
84. High infection rates carry with them serious risk of disenfranchising those who are required to self-isolate under coronavirus guidance. This will have a wider impact in those who are more at risk to exposure to and the effects of the virus. It is possible that a voter may be unable to attend a polling station at short notice and be too late to register for a postal vote and unable to arrange for a proxy vote. The Bill will extend proxy voting rules to include a requirement to self-isolate as a valid reason for a proxy vote, without a need for medical attestation. The extension of the Llywydd's power to move the date of the poll will also allow for a worst case scenario contingency. By delaying the poll, we allow more time to get the virus under control, which allows for more voters to participate in the election, thereby reducing disenfranchisement of the most vulnerable in society.
85. In the very worst case scenario, high infection rates pose a risk to the running of the election itself. If high numbers of staff involved in the administration of the poll are not well enough to do so, it may be simply unfeasible to safely and fairly run the election.
86. This option does bring with it a risk of criticism if the poll date were to be changed. All participants in the consultation agreed that the poll should go ahead as planned on 6 May 2021. Any change to this date should only be as a last resort, with some stakeholders holding the view that it should not be changed under any circumstance. Moving the date could attract criticism that voters are being denied their right to have their say on the

performance of their elected representatives and that the government is acting under a political motive. For this reason, the ultimate decision to move the poll will be subject to agreement by the Senedd itself.

87. It is the intention that the election should go ahead as planned on 6 May 2021. However, it would be irresponsible not to make preparations for a worst case scenario in which the pandemic poses a risk to the integrity of the poll.
88. Costs In relation to local authority by-elections that would potentially be postponed under provisions in the Bill are currently unknown, but have been estimated as being negligible.

9. Impact Assessments

What action is the Welsh Government considering and why?

89. The Welsh Elections (Coronavirus) Bill makes provision to respond to the potential risk to the 2021 Senedd election arising from the pandemic with the objective of ensuring the election can be administered and proceed safely and that the electorate can participate and vote. The provisions in the Bill will apply only for 2021 elections and not to any subsequent elections.

90. The Bill seeks to:

- e. Extend the power for the Llywydd to vary the date of the election from one month to six months;
- f. Shorten the Dissolution period;
- g. Extend the length of time between the date of the poll and the first meeting of the Senedd;
- h. Increase flexibility with regards to both proxy voting and the candidate nominations process;
- i. Make provision to ensure that Senedd constituency and local government by elections can be postponed if necessary;
- j. Confer a regulation making power on Welsh Ministers, in relation to the provisions in the Bill.

How the five ways of working in the Well-being of Future Generations (Wales) Act 2015 are being applied:

Long term

91. The Senedd elections are taking place on 6 May 2021, during which time it is unclear how the coronavirus pandemic will be affecting life in Wales. Electoral administrators are taking mitigating action to reduce the impact on voters and to allow them to partake in the election.

92. The Bill provides only short term changes and applies only to 2021 elections. The Bill is intended to provide short term solutions for a temporary issue, and ultimately these changes are only intended for a worst case scenario. The limited timeframe within which the Bill operates preserves for future elections the arrangements set out in the constitutional statute, the Government of Wales Act 2006.

93. There are two long term benefits associated with the Bill:

1. maintaining public trust in the election process; and
2. reducing risk to public health.

Prevention

94. The Bill is primarily intended to provide a contingency for a worst case scenario in which infection rates are so significant it is not feasible to hold the poll. Other non-legislative measures are being put in place to reduce the risk posed to the voters. The Bill provides for the poll to be moved to a later date, therefore allowing for the election to be carried out effectively by administrators and to allow voters confidence to take part safely.

95. The power to move the date of the poll is only intended to be used if other preventative measures are failing and infection rates are high.

Integration

96. The Welsh Government is undertaking wide ranging efforts to address the coronavirus pandemic. This has included putting restrictions affecting daily life in place to reduce the spread of the virus among the general population and issuing guidance to the public and businesses on how they can reduce the risk. Welsh Government have issued the following advice on how the public can keep Wales safe:

- stay out of each other's homes, except in very limited circumstances
- try to limit how many different people you meet
- maintain social distancing
- wash your hands regularly
- work from home if you can

97. Although practical measures are being put in place to ensure elections comply with this advice, current electoral legislation does not allow for the flexibility required to respond to the pandemic. The adaptations to the proxy voting and nominations rules will allow for candidates and voters to comply with public health advice while also enabling them to take part in the election.

Collaboration

98. The running of the elections in Wales is primarily the responsibility of Returning Officers. However, there are other stakeholders with an interest in the running of elections:

- The Welsh Government sets the policy and legislative framework for devolved elections and provides resources.
- The Electoral Commission has a role in regulating party and election finance and it sets standards for how elections should be run.
- The Senedd Commission is the corporate body responsible for ensuring that property, staff and services are provided for the Senedd.

- The UK Government has responsibility for the Police and Crime Commissioner elections, which in 2021 are due to take place on the same day as the Senedd elections.

99. The Scottish Government have taken their own action in relation the 2021 Scottish Parliament elections, introducing the Scottish General Election (Coronavirus) Bill on 16 November 2020. The Bill makes provisions for a poll to be conducted whilst maintaining social distancing and the possibility of a poll being delayed because of virus conditions. The Bill also provides a power for Ministers to hold an all-postal voter election.

100. Welsh Government have engaged with stakeholders throughout planning and continue to do so. In June 2020, Welsh Government sought views from the Elections Planning Group on the effect of the pandemic upon the 2021 election.

Involvement

101. In June 2020, the First Minister engaged a select group of stakeholders to form the Elections Planning Group, which invited representatives to share their views on ways to adapt the Senedd Elections in 2021 in light of the pandemic.

102. Although a number of the Group's recommendations were practical matters for electoral administrators, some of them require legislative solutions to implement. The Group reached a consensus on the following areas where legislative solutions would be required:

1. the continuing aim should be for the Senedd election to be held on 6 May as planned;
2. greater flexibility on who is permitted to present nomination papers should be provided and papers should be permitted to be presented electronically; and
3. greater flexibilities in respect of proxy votes should be permitted.

103. The Group did not reach a consensus on the following areas where legislative solutions would also be required for implementation: -

1. a power for the Llywydd, as a contingency measure, to postpone the date of the election by more than a month if public health advice indicated it would not be safe to hold the poll;
2. amending the requirement for the first Plenary meeting to be held 14 days after the poll to 14 days after the result (to reflect a probably longer count period); and

3. extending polling hours – either longer on 6 May or over additional days.

Equality Impact Assessment

104. The pandemic has been found to have a greater impact on certain groups, who are more at risk of exposure to and the effects of the virus.
105. Older people, and those with certain disabilities were identified by Welsh Government as being in a high risk category. Low income households are often reliant on income from occupations at a higher risk of coronavirus, where home working is not an option. People from a number of Black, Asian or Minority ethnic groups are more likely to be subject to additional risk factors, such as living in overcrowded housing, living in deprived areas or to be employed as key workers or in occupations at a higher risk of coronavirus. Each of these groups are more likely to be at risk from the virus and therefore may be either effectively self-isolating during the election period or lack the confidence to attend a polling station to vote in person on the day of the election.
106. The Senedd and Elections (Wales) Act 2020 extended the franchise for elections for membership of the Senedd to 16 and 17 year olds and a Children’s Rights Impact Assessment was complete for that policy⁴. The coronavirus pandemic will impact on particular groups of newly enfranchised children in different ways. Some groups may not be able to participate and vote in person in the election if the rate of infection on or around the day of the poll is significant. This may include children with health conditions that make them more susceptible to serious illness if they contract the virus. It may also include children who reside with family members who are themselves at greater risk from the virus, by reason of health conditions or age. These groups would benefit from the proposals in the Bill that enable the postponement of the day of the poll for a reason relating to coronavirus.
107. The Welsh Government considers any impact on the wider community will, therefore, be positive, in so far that enabling the election to be delayed for a reason relating to coronavirus would provide a contingency that allows for those worst affected by the pandemic to participate safely in the election at a later date when the infection rates are lower.

Welsh Language Impact Assessment

108. Those administering and supporting the elections in Wales are already required to provide elections materials bilingually and this will not be impacted by the provisions in the Bill. The impact therefore will be minimal or nil.

⁴ See the Explanatory Memorandum to the Senedd and Elections (Wales) Bill, pages 230 to 254 (<https://senedd.wales/laid%20documents/pri-ld12142-em-r/pri-ld12142-em-r-e.pdf>)

Justice System Impact Identification

109. The Bill creates no new offences and makes no changes to existing offences. Existing electoral law will still be in place to ensure the election is run within the rules and to the extent that the Bill will modify existing rules for the conduct of elections, we envisage there would be minimal or nil impact on the justice system. We intend to undertake discussion with the Ministry of Justice regarding the impact of the Bill but at this stage the impact of the Bill on the justice system is currently unknown.

10. Post-implementation review

110. The Bill proposes modifications to the National Assembly for Wales (Representation of the People) Order 2007 to introduce flexibilities into aspects of the electoral process to respond to the impacts of the coronavirus pandemic. Specifically, the Bill enables a person who is unable to attend a polling station and vote in person on the day of the poll because they are complying with public health legislation or guidance to apply for a proxy vote at short notice and without the need for medical attestation. The Bill also allows flexibility in the delivery of nomination papers, including the electronic delivery of candidates' consent to nomination which is currently an option only available to candidates who are overseas at the time that their respective consents to nomination need to be delivered. The effect of these modifications on the 2021 Senedd election will be reviewed to assess whether these temporary measures should be introduced for all elections for membership of the Senedd.

Annex 1

Explanatory Notes

Welsh Elections (Coronavirus) Bill

1. These explanatory notes have been prepared by the Welsh Government to accompany the Welsh Elections (Coronavirus) Bill. In accordance with the Standing Orders of the Welsh Parliament (Standing Order 26.6(vii)), these explanatory notes summarise objectively what each provision in the Bill is intended to do. They should be read in conjunction with the Bill.

Overview of the Act

2. The Senedd ordinary general election is scheduled to take place on 6 May 2021. The coronavirus pandemic will have an impact on the election, the extent of which will depend on the prevalence of coronavirus ahead of and at the time of the election. The purpose of the Act is to put in place a range of temporary measures to ensure that the ordinary general election can be safely and successfully delivered in the context of the public health issues posed by the pandemic, including moving the day of the poll if necessary and appropriate to do so for a reason relating to coronavirus.
3. The measures are only in place for the Senedd ordinary general election scheduled to be held in 2021 and not for any subsequent election.
4. The Act also responds to the potential risks of coronavirus by enabling local authority by-elections to be postponed beyond 6 May 2020 if required.

Section 1: The 2021 election

5. This section defines the key term in the Bill, “the 2021 election”, as the ordinary general election for membership of Senedd Cymru the poll for which is due to be held in 2021. The Act does not apply to any subsequent general election for membership of the Senedd.

Section 2: Application of provisions of Government of Wales Act 2006

6. This section provides for the application of specified provisions of the Government of Wales Act 2006 to the ordinary general election for membership of the Senedd due to be held on 6 May 2021 that would otherwise apply to the election. Specifically, subsections (2) to (4) of section 3 of the 2006 Act (dissolution of Senedd Cymru before an ordinary general election and date of first meeting after the election) do not apply to the election due to be held on 6 May. The Act makes provision for these

matters for the ordinary general election in 2021 in sections 3 and 4 (as to which, see below).

7. Section 3(1) of the Government of Wales Act 2006 which prescribes 6 May 2021 as the day of the poll for the ordinary general election, has effect subject to measures contained in section 5 of the Act to move the day of the poll if necessary and appropriate to do so for a reason relating to coronavirus.
8. Section 4(2)(c) of the Government of Wales Act (period within which the Senedd must meet where the day of the poll is varied by proclamation) does not apply to the ordinary general election due to be held on 6 May 2021.
9. Section 10 of the Government of Wales Act 2006 which makes provision in relation to constituency vacancies, including fixing the day of the poll for a by-election, has effect subject to the measures contained in section 7 of the Act for the reasons set out in paragraph 5 above.

Section 3: Dissolution of the current Senedd

10. The usual position ahead of an ordinary general election for membership of the Senedd is that the Senedd is dissolved at the beginning of the “minimum period” which ends with the day of the poll in the election (section 3(2)(a) and (3) of the Government of Wales Act 2006). The “minimum period” is 21 days, excluding a Saturday, a Sunday, a day which is a bank holiday and so forth (article 148 of and rule 2 of Schedule 5 to the National Assembly for Wales (Representation of the People) Order 2007). On dissolution, Members of the Senedd cease to hold office by virtue of section 14 of the Government of Wales Act 2006.
11. This section provides that, ahead of the scheduled day of the poll on 6 May 2021, the Senedd will be dissolved on 29 April, a period of 7 calendar days before the day of the poll, unless: -
 - a. the Llywydd exercises the power conferred by section 5 of the Act to postpone the day of the poll for the election; or
 - b. Her Majesty dissolves the Senedd before that date by proclamation under section 4(2) of the Government of Wales Act 2006.
12. Should the Llywydd exercise the power conferred by section 5 of the Act, the dissolution date will be 7 calendar days before the new date fixed for the day of the poll. If the Llywydd exercises the power on more than one occasion and further postpones the day of the poll, the dissolution date will track the new date fixed for the poll and will be 7 calendar days before the new date that is fixed.

Section 4: Date of first meeting after the 2021 election

13. This section provides that the Senedd must meet within the period of 21 days beginning immediately after the day of the election.
14. The provision is intended to provide some flexibility and cater for a potential delay in counting ballots and confirming results due to coronavirus measures such as physical distancing and other public health rules which may still be in force at the time of the election, and provides a backstop date by which the first meeting of the newly elected Senedd must take place.

Section 5: Power to postpone 2021 election for up to 6 months

15. This section provides the Llywydd with the power to postpone the ordinary general election due to be held on 6 May 2021. This power is in addition to the existing power of the Llywydd to vary the date of the poll for an ordinary general election set out in section 4 of the Government of Wales Act 2006 (power to vary date of ordinary general election). A postponement under this section of the Act can only be for a reason relating to coronavirus. The section enables the election to be postponed for a period of up to 6 months, to no later than 5 November 2021.
16. The section further confers certain powers on the First Minister and Llywydd and requires a resolution by supermajority of the Senedd before the poll for the ordinary general election can be postponed and a new day for holding the poll for the election fixed. The powers can be exercised more than once, as might be necessary in the context of the unfolding coronavirus pandemic.
17. Subsection (1) confers a power on the First Minister to propose to the Llywydd that the poll for the ordinary general election to be held on 6 May 2021 be postponed for a reason relating to coronavirus where the First Minister considers it is necessary or appropriate to do so. This recognises the functions exercised by the Welsh Ministers in relation to the public health response to the coronavirus pandemic. The Act does not prescribe the information or data that the First Minister must provide the Llywydd to support the proposal.
18. Subsection (2) confers a power on the Llywydd, following a proposal from the First Minister, to postpone the day of the poll and fix a later date for holding the poll for the election. The Llywydd's power is subject to two conditions: -

These notes refer to the Welsh Elections (Coronavirus) Bill which was introduced into the Senedd Cymru on 27/01/2021

- a) the Senedd, by resolution passed by not less than two-thirds of the total number of Senedd seats, approving the day to be fixed for holding the poll for the election; and
 - b) the Senedd must not be dissolved.
19. The new day fixed for holding the poll must be the earliest day the Llywydd considers to be reasonably practicable, taking account of the proposal made by the First Minister, and must be no later than 5 November 2021. The Llywydd must lay before the Senedd a statement of the day fixed for holding the poll and the reasons for the exercise of the power to do so.
20. When exercising the powers under section 5 the Llywydd or the First Minister may request advice from the Electoral Commission in respect of any postponement. Where this advice is sought the Electoral Commission is under a specific duty to respond to the Llywydd or the First Minister.
21. Section 5 of the Act does not limit the power of the Llywydd to vary the date of the poll for an ordinary general election set out in section 4 of the Government of Wales Act 2006.

Section 6: Further power to vary date of 2021 election

22. The purpose of this section is to confer a power on the Llywydd to further vary the date of the poll for the election in 2021 where the day for holding the poll has been fixed under section 5 of the Act. The exercise of this power does not have to be for reasons relating to coronavirus.
23. Where exercising this power under section 6 of the Act, the Llywydd may propose a date for holding the poll that is not more than one month earlier not more than one month later than the date fixed for holding the poll under section 5. The power must not be exercised by the Llywydd to propose a date that is after 5 November 2021.
24. If the Llywydd proposes a date, Her Majesty may by proclamation under the Welsh Seal dissolve the Senedd and require the poll at the election to proceed on the day that has been proposed. The date of the first meeting of the Senedd would take place in accordance with section 4 of the Act.

Section 7: Power to postpone Senedd by-elections

25. The purpose of this section is to enable by-elections for constituency elections that arise after 6 May 2021 to be postponed. The section provides that where a constituency vacancy arises after that 6 May, a by-election can be held on a date fixed by the Llywydd following consultation with the Welsh Ministers. The by-election must take place before 5 November 2021 but the Llywydd may fix a date for the poll which is outside the required period currently afforded under section 10(5) or (6) of the Government of Wales Act 2006.

26. As with Section 5, the power to postpone a by-election may be used more than once.

Section 8: Power to postpone local authority by-elections

27. The purpose of this section is to enable by-elections to fill casual vacancies which may arise in any local authority in Wales, where the date of the poll for the election would otherwise fall between the period beginning 6 May 2021 and ending 5 November 2021, to be postponed by regulations made by the Welsh Ministers. By virtue of section 12(2) of the Act, the power enables retrospective provision to be made in relation to local government by-elections, an approach consistent with that taken in section 68 of the Coronavirus Act 2020 which enables the postponement of local government by-elections to 6 May 2021.

Section 9: Effect of Act on existing power to make provision about elections

28. The purpose of this section is to clarify that the Welsh Ministers' existing power to make provision about the conduct of elections under section 13 of the Government of Wales Act 2006 is unaffected by the Act. Under section 13 of the Government of Wales Act 2006, the Welsh Ministers have the power to make provisions about Senedd elections. Any order made by the Welsh Ministers must be within the legislative competence of the Senedd. The National Assembly for Wales (Representation of the People) Order 2007 makes provision about the conduct of elections and the recent amending order has been made by the Welsh Ministers in reliance on the power conferred by section 13 of the 2006 Act.

Section 10: Modifications of the 2007 Order

29. This section makes adjustments to certain provisions of the National Assembly for Wales (Representation of the People) Order 2007 (as amended) ("the Conduct Order") that will apply to the ordinary general election for membership of the Senedd due to be held on 6 May 2021.

30. Subsection (3) makes an adjustment to article 84(2) of the Conduct Order and the point at which a person becomes a candidate in the election. This is currently tied to the dissolution of the Senedd. Section 3 of the Act is shortening the dissolution period (see paragraphs 10 to 11 above). Subsection (4) therefore decouples the time at which a person becomes a candidate from the point of dissolution. A person will become a candidate 21 days before 6 May (calculated by disregarding certain days including a day that is a Saturday or a Sunday or a bank holiday). This is the date on which the Senedd would have dissolved for the ordinary general election on 6 May had section 3 of the Act not made provision to shorten the dissolution period. A person would remain as a candidate (barring their resignation or deselection, for example) even if the election was

postponed in accordance with section 5 (or as the case may be, section 6) of the Act to a date later than 6 May 2021.

31. This provision has implications for the “regulated period” for campaign expenditure for the election under the Political Parties, Elections and Referendums Act 2000. The regulated period will remain linked to 6 May 2021 and will begin 4 months before that date regardless of any postponement to the date of the poll for the ordinary general election in accordance with section 5 of the Act.
32. Subsection (4) makes an adjustment to rule 7 of Schedule 1 to the Conduct Order to introduce flexibility for applications in relation to proxy voting where a person finds they cannot reasonably be expected to vote in person because they are required to comply with an enactment relating to coronavirus or they are following guidance relating to coronavirus issued by the Welsh Ministers. Medical attestation for an application for an emergency proxy in these circumstances will not be required.
33. Subsection (5) makes an adjustment to Schedule 5 (Senedd election rules) to the Conduct Order to introduce flexibility into the process for the delivery of nomination papers and candidates’ consent to nomination in response to the challenges presented by the coronavirus pandemic. The delivery of nomination papers and consent to nominations is a physical rather than a virtual process. The adjustments therefore provide more time in each day for the delivery of nomination papers (9.00am to 5.00pm instead of 10.00am to 4.00pm). In addition, nomination papers can be delivered on a candidate’s behalf by a person nominated by the candidate for that purpose by providing the person’s name and address to the returning officer in writing or electronically before or at the time the nomination paper is delivered.
34. The final adjustment is in relation to candidates’ consent to nomination. Under the rules in Schedule 5 to the Conduct Order, there is no prescribed form for the consent to nomination, provided it is in writing, delivered to the Returning Officer in the specified time and attested by a witness. Where a candidate is overseas, it can be delivered by facsimile or other similar means – and notably without the requirement for attestation by a witness. For the ordinary general election for membership of the Senedd due to be held on 6 May 2021, the Act adjusts the current rules to enable candidates to deliver their respective consent to nomination in the time specified for delivery of nomination papers either in writing at the place for delivery of those papers or electronically to an electronic address for that purpose. There is no requirement for a candidate’s consent to nomination to be attested by a witness.

Section 11: Interpretation

35. This section provides the meaning of key terms used throughout the Act.

Section 12: Power to make consequential and transitional provision etc.

36. The Act provides measures to respond to the challenges of coronavirus pandemic its purpose is to put in place a range of temporary measures to ensure that the ordinary general election can be safely and successfully delivered in the context of the public health issues posed by the pandemic. The pandemic is an unprecedented event and its impact has been felt across all aspects of society and the economy. Whilst the measures in the Act respond to those impacts, the complexity of the situation is such that not all of the potential impacts of the coronavirus on the ordinary general election for membership of the Senedd in 2021 may have been foreseen and fully catered for.

37. This section therefore gives the Welsh Ministers a regulation-making power to make any incidental, supplementary, consequential, transitional, transitory or saving provisions that they consider appropriate for the purposes of, or in connection with, giving full effect to the Act. Regulations made in reliance on the power can modify, repeal or revoke any enactment, including a provision in the Act itself. The power enables retrospective provision to be made in relation to local government by-elections, an approach consistent with that taken in section 68 of the Coronavirus Act 2020 which enables the postponement of local government by-elections to 6 May 2021. The power to make such an Order is subject to Senedd scrutiny via the negative resolution procedure.

Section 13: Coming into force

38. This section provides that the Act will come into force on the day after the day on which it receives Royal Assent.

Annex 2

Index of Standing Order requirements

Table X

Standing order		Section	pages/ paragraphs
26.6(i)	Statement the provisions of the Bill would be within the legislative competence of the Assembly	Member's declaration	Page 1
26.6(ii)	Set out the policy objectives of the Bill	Chapter 3 - Purpose and intended effect of the legislation	Pages 5 to 14
26.6(iii)	Set out whether alternative ways of achieving the policy objectives were considered and, if so, why the approach taken in the Bill was adopted	Part 2 – Regulatory Impact Assessment	Pages 21 to 30
26.6(iv)	Set out the consultation, if any, which was undertaken on: <ul style="list-style-type: none"> (a) the policy objectives of the Bill and the ways of meeting them; (b) the detail of the Bill, and (c) a draft Bill, either in full or in part (and if in part, which parts) 	Chapter 4 – Consultation	Pages 15 to 17

Standing order		Section	pages/ paragraphs
26.6(v)	Set out a summary of the outcome of that consultation, including how and why any draft Bill has been amended	Chapter 4 – Consultation	Pages 15 to 17
26.6(vi)	If the bill, or part of the Bill, was not previously published as a draft, state the reasons for that decision	Chapter 4 – Consultation	Pages 15 to 17
26.6(vii)	Summarise objectively what each of the provisions of the Bill is intended to do (to the extent that it requires explanation or comment) and give other information necessary to explain the effect of the Bill	Annex 1 – Explanatory Notes	Pages 37 to 43
26.6(viii)	Set out the best estimates of: <ul style="list-style-type: none"> (a) the gross administrative, compliance and other costs to which the provisions of the Bill would give rise; (b) the administrative savings arising from the Bill; (c) net administrative costs of the Bill's provisions; (d) the timescales over which such costs and savings would be expected to arise; and (e) on whom the costs would fall 	Part 2 – Regulatory Impact Assessment	Pages 21 to 30

Standing order		Section	pages/ paragraphs
26.6(ix)	Any environmental and social benefits and dis-benefits arising from the Bill that cannot be quantified financially	Part 2 – Regulatory Impact Assessment	Pages 21 to 30
26.6(x)	<p>Where the Bill contains any provision conferring power to make subordinate legislation, set out, in relation to each such provision:</p> <p>(a) the person upon whom, or the body upon which, the power is conferred and the form in which the power is to be exercised;</p> <p>(b) why it is considered appropriate to delegate the power; and</p> <p>(c) the Assembly procedure (if any) to which the subordinate legislation made or to be made in the exercise of the power is to be subject, and why it was considered appropriate to make it subject to that procedure (and not to make it subject to any other procedure);</p>	Chapter 5 - Power to make subordinate legislation	Pages 18 to 19
26.6(xi)	Where the Bill contains any provision charging expenditure on the Welsh Consolidated Fund, incorporate a report of the Auditor General setting out his or her views on whether the charge is appropriate	The requirement of Standing Order 26.6(xi) does not apply to this Bill	

Standing order		Section	pages/ paragraphs
26.6(xii)	Set out the potential impact (if any) on the justice system in England and Wales of the provisions of the Bill (a “justice impact assessment”), in accordance with section 110A of the Act.	Part 2 – Regulatory Impact Assessment	Page 35
26.6B	Where provisions of the Bill are derived from existing primary legislation, whether for the purposes of amendment or consolidation, the Explanatory Memorandum must be accompanied by a table of derivations that explain clearly how the Bill relates to the existing legal framework.	The requirement in Standing Order 26.6B for a Table of Derivations is not applicable to this Bill as the Bill is a standalone piece of legislation and does not derive from existing primary legislation for the purposes of amendment or consolidation.	
26.6C	Where the Bill proposes to significantly amend existing primary legislation, the Explanatory Memorandum must be accompanied by a schedule setting out the wording of existing legislation amended by the Bill, and setting out clearly how that wording is amended by the Bill.	The requirement is Standing Order 26.6C for a Schedule of Amendments is not applicable to this Bill as the Bill does not propose to significantly amend existing primary legislation.	

Please note: this document has been prepared solely to assist people in understanding the Welsh Elections (Coronavirus) Bill. It should not be relied on for any other purpose.