

## **Explanatory Memorandum to the Senedd Cymru (Returning Officers' Charges) Order 2021**

This Explanatory Memorandum has been prepared by the Local Government Department. This instrument is not subject to any procedure and therefore is not required to be laid before the Senedd. It is simply required to be made (signed), brought into force and published.

### **Minister/Deputy Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Senedd Cymru (Returning Officers' Charges) Order 2021.

Julie James MS, Minister for Housing and Local Government  
19 March 2021

## **PART 1**

### **1. Description**

- 1.1. The Senedd Cymru (Returning Officers' Charges) Order 2021 ("the 2021 Order") will set the maximum amounts constituency returning officers (ROs) and regional returning officers (RROs) are able to claim from the Welsh Government for the conduct of the 2021 Senedd election.

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

- 2.1. The 2021 Order will be accompanied by the Senedd Cymru (Returning Officers' Accounts) Regulations 2021. These Regulations stipulate how and when ROs should submit their election accounts in order to receive the funding provided for in the 2021 Order.
- 2.2. The 2021 Order is also accompanied by the Returning Officers' indemnity, which will provide additional insurance cover to ROs to offer protection should they be liable for or face any claims in respect personal injury or death. The indemnity also covers any election petition.

### **3. Legislative background**

- 3.1. Article 23 of the National Assembly for Wales (Representation of the People) Order 2007 (as amended by the Senedd Cymru (Representation of the People) (Amendment) Order 2020) (the "2007 Order") confers upon the Welsh Ministers the powers to make an Order detailing payments for maximum amounts for services rendered and expenses incurred for, or in connection with, a contested constituency election. The amount recoverable for services rendered is concerned with electoral administration and the discharging of duties relating to the Senedd election by ROs and electoral administrators (to be paid to ROs and distributed amongst electoral administrators). This power is exercisable by statutory instrument and is not subject to any Senedd procedure.
- 3.2. Article 16A of the 2007 Order (as inserted by the National Assembly for Wales (Representation of the People) (Amendment) Order 2016) also requires that the costs for the combined aspects of the polls must be apportioned equally between both sets of elections. The Welsh Government and UK Government are responsible for meeting these costs.

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

- 4.1. The 2021 Order will provide for payments for services rendered and expenses incurred concerned with electoral administration by ROs and electoral administrators in connection with the conduct of the Senedd elections, which are due to be held together with the Police and Crime Commissioners' (PCC) elections on 6 May 2021.

##### Calculation of 2021 Maximum Recoverable Amounts (MRAs)

- 4.2. The 2021 funding model set out within the Order has been calculated using, as a basis, the agreed recoverable amounts claimed by ROs in 2016 as the PCC and Senedd (then the National Assembly for Wales) elections were also combined in 2016.
- 4.3. For the 2021 Order, the MRAs have been increased to take account of:
- The inflation rate over the years between 2016 and 2021; and
  - The increased number of voters due to the extension of the franchise in Wales to 16 and 17 year olds and qualifying foreign citizens.

##### Calculation of coronavirus related MRAs

- 4.4. The 2021 Order includes additional payments per Senedd constituency to take account of the fact that the May 2021 elections will be held under pandemic conditions. Welsh Ministers have agreed that additional funding should be made available to ensure the safety of polling stations, count venues, all staff and voters. Therefore the 2021 Order identifies specific additional funding to this end.
- 4.5. In calculating the costs associated with ensuring the polls are delivered safely, a general 10% uplift has been applied to the calculated MRAs for 2021. This aligns with the approach taken by the UK Government and will therefore be replicated for PCC MRAs.
- 4.6. Further to this, additional funding has been identified specifically for Personal Protective Equipment (PPE) and hygiene costs. These have been calculated on a Senedd constituency basis. The additional funding applied to each constituency is:
- £100 per polling station for gloves, face masks and cleaning materials;
  - £360 per polling station for Perspex screens; and

- 10% of the constituency MRA to cover costs such as additional staff, additional signage and other specified spend relating to Covid-19.

4.7. In the first table in Schedule 1 to the 2021 Order, total expenses in column 3 are broken down further to show standard expenses and coronavirus related expenses. This is to provide clarity to ROs on how much additional coronavirus related funding has been supplied and to ensure consistency of approach in the future.

#### Calculation of Regional MRAs

4.8. Specific funding has also been allocated to costs associated with the running of regional polls. In order to determine the allocation for 2021, an uplift has been applied to the 2016 MRA based on electorate increase and inflation between 2016 and 2021.

4.9. This funding is usually only used for ballot paper costs.

#### Payments to Returning Officers and Administrators

4.10. In previous Senedd elections, ROs received a personal fee for the running of the election. However, the Senedd Cymru (Representation of the People (Amendment) Order 2020 amended article 23 of the National Assembly for Wales (Representation of the People) Order 2007 to provide for payment to “electoral administrators” which include ROs, deputy ROs and council officials. The principle of the payment is to recognise the importance of the work of, and additional workload placed upon, electoral teams in running a Senedd election.

4.11. The 2021 Order therefore provides for a basic amount of £6,000 for each local authority core elections team. £2,500 per additional constituency is added to the basic sum. Where the RO is also the regional RO, that electoral team will receive a further additional £2,500.

ROs will need to provide assurance that this funding was used for its intended purpose as part of their electoral account statements.

### **5. Consultation**

5.1. ROs and the Electoral Commission were consulted on the policy and tables setting out the recoverable amounts for each constituency contained in this Order.

5.2. 5 responses were received from ROs and their administrators in support of the content of the Order and the amounts available. One

RO queried the provision of additional exceptional expenditure relating to the use of alternative venues. An administrator also raised queries on how the formula used was calculated.

- 5.3. The Guidance Note to accompany the Order was amended following the consultation to provide further clarity and advice on the queries raised by consultees.

## **6. Regulatory Impact Assessment (RIA)**

### **Introduction**

- 6.1. The next Senedd general election is scheduled to take place on 6 May 2021 and will be combined with the election of Police and Crime Commissioners.
- 6.2. The Welsh Ministers are responsible for reimbursing ROs for services and expenses incurred in the conduct of the Senedd election. The overall recoverable amounts at any election are specified by Order.
- 6.3. The Senedd Cymru (Returning Officers' Charges) Order 2021 (the 2021 Order) will provide for payments for services and expenses of ROs and electoral administrators in connection with the conduct of the Senedd elections.

**Option 1-** Do nothing – ROs would be reimbursed based on maximum recoverable amounts stated in the National Assembly for Wales (Returning Officers' Charges) Order 2016.

**Option 2 –** Introduce a new Order to reflect changes in legislation since the last Senedd election and to provide funding for costs in relation to Covid.

### **Cost and Benefit Analysis**

#### **Option 1 - Do Nothing**

- 6.4. The Welsh Ministers are responsible for making payments for services rendered and the discharging of duties concerned with electoral administration relating to the Senedd election by ROs and electoral administrators.
- 6.5. The 2016 Senedd general election was combined with the election of Police and Crime Commissioners. Provision for payment to ROs for the cost of the election was made under the National Assembly for Wales (Returning Officers' Charges) Order 2016. The order set the maximum recoverable amounts ROs could claim from Welsh

Ministers for their services and expenses in the conduct of the Senedd election.

- 6.6. Legislation provides that where elections take place on the same day that certain aspects of the election such as polling stations, postal votes, poll cards and staff costs are combined and the costs split evenly between the elections. The maximum recoverable amounts in the 2016 Order were calculated based on some elements of the election being combined and costs splits between the UK Government and the Welsh Ministers.
- 6.7. Following the 2016 combined election, the National Assembly for Wales (Returning Officers' Charges) (Amendment) Order 2017 was made and set the maximum recoverable amounts an RO may claim for a stand-alone Senedd election.
- 6.8. If the new Order is not made it will mean that the maximum recoverable amounts available to ROs for the delivery of the 2021 Senedd election will be based on a stand-alone election rather than a combined election. It will not reflect changes in legislation which extended the electoral franchise to 16 and 17 year olds and qualifying foreign citizens. It will also mean that there is no additional funding for essential Personal Protective Equipment (PPE) and other hygiene costs which will be required to conduct an election during a pandemic.
- 6.9. If the new Order is not made, it will mean that there is no provision for the combined element of the election; no account taken of the cost saving that can be attributed to a combined election.

## **Option 2 – Make a new Order**

- 6.10. The 2021 Order will set the maximum recoverable amounts ROs are able to claim from the Welsh Government for the conduct of the 2021 Senedd election which will be combined with the election of Police and Crime Commissioners.
- 6.11. Making a new Order will enable the maximum recoverable amounts to be re-calculated using up to date data on the number of electors in a constituency, including the newly enfranchised cohort; account for inflation in the years since the last election and the combination element of the election.
- 6.12. The 2021 Senedd election will take place during the Coronavirus pandemic. The maximum recoverable amounts in the new Order will include an additional element for the purchase of PPE and other hygiene costs. The additional costs are for measures needed for

pandemic mitigation purposes such as cleaning equipment, social distancing arrangements and other measures for the safety of electors and staff at polling stations and count venues.

- 6.13. The amounts have been calculated on a constituency basis and reflect estimated costs provided by Welsh Government officials and local authority electoral administrators. The formula applied to each constituency is:
- £100 per polling station for gloves, face masks and cleaning materials;
  - £360 per polling station for Perspex screens; and
  - 10% of the constituency MRA to cover costs such as additional staff, additional signage and other specified spend relating to Covid-19.
- 6.14. For transparency these costs will be identified separately in the Order and ROs will also need to account separately in their accounts for the spending.
- 6.15. The Senedd Cymru (Representation of the People) (Amendment) Order 2020 amended the National Assembly for Wales (Representation of the People) Order 2007 to provide for payment to “electoral administrators”, which is defined as ROs, deputy ROs and council officials.
- 6.16. The principle of the payment is to recognise the importance of the work of, and also the additional work load placed upon, electoral teams during the Senedd election.
- 6.17. Under the new regime payments, a basic amount of £6,000 has been allocated to each local authority’s core election team. The basic amount is increased by £2,500 for each constituency the local authority is responsible for. Where the constituency RO is also the RRO the amount is increased by a further additional amount of £2,500.
- 6.18. The funding model used to calculate the maximum recoverable amounts ROs are able to claim from the Welsh Government for the conduct of the 2021 Senedd election has been calculated using:
- The agreed recoverable amounts claimed by ROs at the 2016 Senedd election;
  - The inflation rate over the years between 2016 and 2021; and
  - The increased number of voters due to the extension of the franchise in Wales to 16 and 17 year olds and qualifying foreign citizens.

## **Accounts Regulations**

- 6.19. The 2021 Order will be accompanied by the Senedd Cymru (Returning Officers' Accounts) Regulations 2021. These Regulations stipulate how and when ROs should submit their election accounts to the Welsh Ministers in order to receive the funding provided for in the 2021 Order.
  
- 6.20. The Senedd Cymru (Returning Officers' Accounts) Regulations 2021 are technical in nature and are not made by Statutory Instrument. As such, no Regulatory Impact Assessment has been prepared for The Senedd Cymru (Returning Officers' Accounts) Regulations 2021.