

SL(5)750 – The Senedd Cymru (Letters Patent and Proclamations) Order 2021

Background and Purpose

The Senedd Cymru (Letters Patent and Proclamations) Order 2021 ("the Order") relates to the Letters Patent that give Her Majesty's Assent to a Bill passed by Senedd Cymru. The Order amends the name of the Senedd in the Letters Patent in accordance with the provisions of the Senedd and Elections (Wales) Act 2020 ("SEWA"). The Order also amends who is responsible for submitting Bills for Royal Assent, changing it from the Clerk of the Senedd to the Llywydd.

The Order includes the wording for royal proclamations relevant to the power of the Llywydd under section 4 of the Government of Wales Act 2006 ("GoWA") and the duty of the Llywydd under section 5 of GoWA. Section 4 of GoWA gives the Llywydd the power to propose that the date of the poll for an ordinary general election of the Senedd be varied by up to one month from the first Thursday in May in the fifth year following the previous election. Section 5 of GoWA places a duty upon the Llywydd to propose a date for an extraordinary general election of the Senedd in specified circumstances. Following a proposal under either section 4 or section 5 of GoWA, Her Majesty may by proclamation dissolve the Senedd and set a date for the poll.

Procedure

Negative.

The Order was made by the Her Majesty in Privy Council, in exercise of the power under section 116(3) the Government of Wales Act 2006, before it was laid before the Senedd.

The Senedd can annul the Order within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date it was laid before the Senedd.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following three points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.



Article 2 of the Order provides the form of wording for the Letters Patent and proclamations as set out in the Schedule to the Order, but states that such form of wording is:

subject only to such variations as are necessitated by the circumstances.

The Welsh Government is requested to provide further information as to:-

- a) why this wording is necessary; and
- b) what variations are envisaged by this wording.

In particular, in the context of the wording for a royal proclamation under section 4(2)(a) of GoWA, where the Senedd has already been dissolved, would the wording quoted above permit the omission of the words which dissolve the Senedd from the royal proclamation, thereby permitting the Llywydd to propose a change to the date of an election right up until the day before such election? If so, how does this fit with section 4(2)(a) of GoWA which specifically provides that the royal proclamation will dissolve the Senedd?

2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

Section 4(2)(c) of GoWA provides that a proclamation to vary the date of the election must require that the first meeting of the Senedd takes place within 7 days of the election (although section 39 of SEWA extends this period to 14 days and comes into force on the day of the poll for the first election to take place after 5 April 2021).

However, the form of wording for a proclamation to be made under section 4(2) of GoWA, as set out in Part 2 of the Schedule to the Order, makes no reference to the timescale within which the Senedd is to meet for the first time following an election which takes place following such proclamation.

It is noted that section 4(2)(c) of GoWA has been disapplied for the purposes of the 2021 election only by the Welsh Elections (Coronavirus) Bill ("the Bill"), which was passed by the Senedd on 10 February 2021 (at the time of writing Royal Assent has not yet been received) for the Bill. Under section 5 of the Bill, the Senedd must meet within 21 days of the 2021 election, regardless of when such election takes place (no later than 5 November 2021 under the provisions of the Bill).

The Welsh Government is asked to confirm what steps it intends to take to ensure that the Order complies with section 4(2)(c) of GoWA.

3. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

Section 5(4)(c) of GoWA provides that a proclamation to declare an extraordinary Senedd election must require that the first meeting of the Senedd takes place within 7 days of the election. SEWA extends this period to 14 days for the first election to take place after 5 April



2021. The Welsh Government is asked to confirm what steps it intends to take in the future to ensure that the Order complies with section 5(4)(c) of GoWA as amended.

Welsh Government response

1. The wording “subject only to such variations as are necessitated by the circumstances” as set in article 2 of the Order, has been included to allow, where circumstances dictate, for there to be a variation of the form of words in the Letters Patent and proclamations as set out in the Schedules to the Order. The wording has been included to accommodate necessary interim changes to the form of wordings in the Letters Patent and Proclamations, such changes can be adopted until such time as the Order can be amended.

The identical wording was adopted in article 2 of the National Assembly for Wales (Letters Patent) Order 2011 and the wording was relied upon to substitute the “National Assembly for Wales” with “Senedd Cymru” in all Letters Patent following the Senedd’s change of name in the Senedd and Elections (Wales) Act 2000.

We do not consider that section 4(2)(a) specifically provides that a royal proclamation will dissolve the Senedd. Section 4(2) provides that Her Majesty may by proclamation dissolve the Senedd, but does not provide that Her Majesty must dissolve the Senedd and we are satisfied therefore that the Llywydd may exercise her emergency power under section 4(2) of GoWA where the Senedd has already been dissolved and at very short notice.

In the context of the wording of a royal proclamation under section 4(2)(a), we do consider that the wording in article 2 would permit such a variation of the proclamation wording, as would be necessary if the Senedd had already been dissolved before the Llywydd were to exercise her power under section 4(2) of the 2006 Act. In this regard, we would foresee the wording at point 1 of the Order “Senedd Cymru is hereby dissolved” would be omitted from a proclamation made under section 4(2) where the Senedd had already been dissolved.

2. The Welsh Elections (Coronavirus) Bill was agreed by the Senedd on the 10th February 2021. It is hoped that Royal Assent will be achieved in the coming weeks. The Order has been drafted to accommodate the disapplication of section 4(2)(c) for the purpose of the 2021 general election.

In the event that Royal Assent is not achieved, the wording as set out in [1] above and which appears in article 2 of the Order, could be used to vary the form of wording of a proclamation made under section 4(2) of the 2006 Act in respect of the first meeting of the Senedd.

We are satisfied that there is sufficient statutory provision requiring the Senedd to meet in the period of 14 days or 21 days after the next General Election, either by virtue of the Welsh Elections (Coronavirus) Bill or Section 39 of the Senedd and Elections (Wales) Act 2020.



3. The form of wording of any proclamation made under section 5(4) of the 2006 Act may be varied on an interim basis, pursuant to the words as set out in [1] above and which appears in article 2 of the Order, to vary the date of the first meeting of the Senedd from 7 days to 14 days.

The words in article 2, as referred to at [1] above is intended to adopt interim changes, and as such, it is anticipated that the Order will need to be amended following the next General Election, to give effect to section 36 of the Senedd and Elections (Wales) Act 2020 in relation to the date of the first meeting.

Committee Consideration

The Committee considered the instrument and Government response at its meeting on 1 March 2021 and reports to the Senedd in line with the reporting points above.

