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Llywodraeth Cymru  
Welsh Government

Welsh Government  
Consultation Document

# The draft Senedd Cymru (Representation of the People) (Amendment) Order 2020

Date of issue: 15 June 2020

Action required: Responses by 8 September 2020

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.  
This document is also available in Welsh.

**Overview** Section 13 of the Government of Wales Act 2006 allows an Order to be made setting out the rules for the conduct of elections to Senedd Cymru (formerly known as the National Assembly for Wales). This consultation seeks your views on proposed amendments to the current Order (the National Assembly for Wales (Representation of the People) Order 2007) which would be made by the draft Senedd Cymru (Representation of the People) Order 2020.

**How to respond** You can respond to this consultation by completing, by the closing date, the consultation response form at the back of this document and returning it to us by post to the address below. Arrangements have been made to ensure responses submitted by post are received during the COVID-19 pandemic.

Constitution and Justice  
Welsh Government  
Cathays Park  
Cardiff  
CF10 3NQ

Alternatively the consultation response form is available on our website ([www.gov.wales/consultations/?lang=en](http://www.gov.wales/consultations/?lang=en)) and can be returned to us by e-mail to: [CAUMailbox@gov.wales](mailto:CAUMailbox@gov.wales).

**Further information and related documents** **Large print, Braille and alternative language versions of this document are available on request.**

The National Assembly for Wales (Representation of the People) Order 2007

<http://www.legislation.gov.uk/ukxi/2007/236/contents/made>

Senedd and Elections (Wales) Act 2020

<http://www.legislation.gov.uk/anaw/2020/1/contents/enacted>

Local Government and Elections (Wales) Bill

<http://senedd.assembly.wales/mglIssueHistoryHome.aspx?Ild=26688>

**Contact details**

For further information:

Constitution and Justice  
Welsh Government  
Crown Buildings  
Cathays Park  
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CF10 3NQ

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## General Data Protection Regulation (GDPR)

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. The Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

## Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:  
Data Protection Officer:  
Welsh Government  
Cathays Park  
CARDIFF  
CF10 3NQ

The contact details for the Information Commissioner's Office are:  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Tel: 0303 123 1113

Website: <https://ico.org.uk/>

e-mail:

[Data.ProtectionOfficer@gov.wales](mailto:Data.ProtectionOfficer@gov.wales)



## **Background**

The National Assembly for Wales (Representation of the People) Order 2007, (sometimes known as “the Conduct Order” and referred to in the remainder of this document as “the 2007 Order”), sets out the detailed rules for the conduct of elections to Senedd Cymru (formerly known as the National Assembly for Wales and referred to in the remainder of this document as the “Senedd”). It sets out the way in which the election and the election campaign are conducted, and includes provisions for legal challenge to an election. It also includes provisions concerning the collection and retention of personal identifiers for postal and proxy voters and requirements in connection with the application for and dealing with absent votes.

The 2007 Order is reviewed and has generally been amended before each Senedd general election. Amendments to the Order are typically made to reflect any relevant policy or legislative changes which have taken place since the previous election. They also make any relevant technical and/or minor updates such as amendments to certain limits to candidates’ expenditure.

Previous Orders and amendments have been made by the Secretary of State for Wales. The current 2007 Order has been amended a number of times. Following the enactment of the Wales Act 2017 the power to make provision for the conduct of Senedd elections has largely transferred to the Welsh Ministers.

## **What are the main issues?**

The 2007 Order was amended in 2010, 2013 and twice in 2016. We are committed to making the law in Wales accessible and easy to navigate. We recognise, along with many others, that electoral law generally is in need of updating and consolidation. Given the number of times the current Order has been subject to amendment we considered whether the Order should be remade rather than amended. Given the extent of the Order and the need for it to be in place sufficiently in advance of the Senedd elections in 2021, we concluded due to the scale of the work likely to be required it would be preferable to amend the Order on this occasion. However we plan to review the Order further after the elections with a view to consolidating this in time for the 2026 elections.

Some of the proposed amendments to the 2007 Order in readiness for the next Senedd general election are technical in nature and are required to reflect policy decisions and legislative changes which have already been subject to substantive consideration. In particular most arise as a result of changes to the franchise and disqualification arrangements made by the Senedd and Elections (Wales) Act 2020, specifically the extension to voters aged 16 and 17 and to qualifying foreign citizens, and some consequential amendments arising from the disqualification and naming provisions.

Other amendments are more significant and reflect changes made elsewhere in the United Kingdom to allow candidates the option of not publishing their home address at an election, along with the issue of payment to returning officers fees for services rendered, as well as other general updates reflecting changes since the last amending Order was made.

The main purpose of this consultation is to ensure we have identified the relevant issues and the resulting amendments are clear and workable. We are not consulting on the merits of policies which have already been subject to consultation and debate. Where policies were considered in the regulatory impact assessments for the Senedd and Elections (Wales) Act 2020 and the Local Government and Elections (Wales) Bill, in the absence of any additional or alternative evidence, we do not intend to carry out those assessments again. Links to the both the Senedd and Elections (Wales) Act 2020 and the Local Government and Elections (Wales) Bill (including the outcome of the consultations and the regulatory impact assessments) are included on the first page.

We would welcome comments on whether there are any additional aspects of the 2007 Order which require updating or amending as well as comments on the proposed amendments themselves.

### **Senedd change of name**

The draft Statutory Instrument (SI) uses the new name of Senedd Cymru where it amends the 2007 Order.

Not all references within the 2007 Order to the “National Assembly” or “Assembly” are specifically amended by the draft SI which we are consulting upon. This is because Part 2 of the Senedd Act is intended to work alongside section 150A of the Government of Wales Act 2006. This section (as amended by paragraph 2(7) of Schedule 1 to the 2020 Act), provides that references to Senedd Cymru, Acts of Senedd Cymru and the Senedd Commission by their old names include the new names given by Part 2 of the 2020 Act.

### **Extension of Senedd franchise to 16 and 17 year olds and associated provisions**

The draft SI amends the 2007 Order to reflect the extension of the franchise to 16 and 17 year olds by the Senedd and Elections (Wales) Act 2020 including provisions relating to proxy votes, the provision of assistance to vote, and restrictions on persons who enter a polling station. Amendments are also proposed to extend provisions relating to offences and penalties to cover 16 and 17 year olds. However, it is not proposed to amend the 2007 Order to extend all provisions to this category of voters where it is considered that it would be inappropriate to do so. For example, offences and penalties that previously applied to 16 and 17 year olds as attainders will not be extended to 14 and 15 year olds, as they are unlikely to have the means to pay any financial penalty.

The extension of the franchise requires amendments to bring 14 and 15 year olds within the scope of the annual canvass. Amendments have therefore also been made to provisions relating to the maintenance, use, and publication of records to ensure consistency with the restrictions introduced by the Senedd and Elections (Wales) Act 2020.

## **Extension of Senedd franchise to qualifying foreign citizens**

Similar amendments are also proposed to reflect provisions in the Senedd and Elections (Wales) Act 2020 extending the franchise to qualifying foreign citizens.

“Qualifying foreign citizens” for these purposes are those that persons who:

- (a) are not Commonwealth citizens, citizens of the Republic of Ireland or relevant citizens of the European Union, and
- (b) either-
  - a. are not persons who require leave under the Immigration Act 1971 to enter or remain in the United Kingdom, or
  - b. are such persons but for the time being have (or are, by virtue of any enactment, to be treated as having) any description of such leave.

## **Disqualification**

Section 16(1)(a) and (2) of the Government of Wales Act 2006 currently provide that a person is disqualified from membership of the Senedd if that person is disqualified from being a member of the House of Commons. Part 4 of the Senedd and Elections (Wales) Act 2020 repeals those provisions and amends the 2006 Act to include specific reference to the disqualifying circumstances that previously applied indirectly to membership of the Senedd by reference to disqualification from membership of the House of Commons.

Part 4 also amends the 2006 Act so that it distinguishes between the circumstances that are a bar to candidature for the Senedd and those offices that are a bar to taking up membership of the Senedd but not to candidature. The latter are those that are considered could give rise to a conflict of interest with membership of the Senedd, but where the conflicting office can be resigned before taking the oath, or making the affirmation, of allegiance.

The draft SI makes amendments to the 2007 Order to reflect these changes.

For example, references to disqualification under the Representation of the People Act 1981 are omitted on the basis that disqualification under this Act is no longer applicable to Senedd elections as a result of Part 4 of the 2020 Act.

## **Publication of candidates' addresses**

Electoral legislation for local elections in England and UK Parliamentary elections has recently been changed to prevent the publication of the addresses of candidates at an election. The Welsh Government believes that the rationale for doing so for those elections also applies to Senedd elections: to avoid capable individuals being deterred from standing for office because they believe the process risks their safety, or makes them vulnerable to abusive activity.

Amendments are therefore proposed to ensure candidates are able to withhold their home address from publication and also to ensure that where a candidate acts as his/her own agent their home addresses are not published.

### **Payments to Returning Officers**

The draft SI includes an amendment which would have the effect of removing “services rendered” from the provisions relating to payments by and to Returning Officers within the 2007 Order. In effect this would remove the right of constituency and regional Returning Officers to be paid personal fees for running Senedd elections. Their ability to recover expenses incurred for or in connection with a Senedd election would be unaffected.

Every principal council is required to appoint an officer of the council to be the Returning Officer for the election of councillors to their principal council. The duties of the Returning Officer are separate from their duties as a local government officer. The Returning Officer of a principal council is usually, although not always, the principal council’s chief executive.

The 2007 Order provides that a constituency returning officer and regional returning officer will be the person who is appointed as the returning officer for elections of councillors of a county or county borough situated wholly or partly in the Senedd constituency or electoral region as the case may be. Unless there is more than one such person for this purpose in which case the officer will be the person who is for the time being designated by the Welsh Ministers.

Current practice means that Returning Officers often reclaim an amount for their services and expenses incurred in the running of an election from the body responsible for the funding of the elections. (For Welsh elections, this means the Welsh Government would be responsible for the funding of Senedd elections and individual principal councils for principal and community council elections. The costs associated with community councils elections can be reclaimed by the principal council from the community council).

In recent years, however, significant public attention has been paid to the level of salaries payable to senior public servants at a time of general restraint and limitations over pay more generally. This has included the issue of Returning Officers fees, which, in some cases, are claimed in multiples. (This is the case in Senedd elections, for instance, if a Returning Officer covers more than one constituency and/or is appointed as Regional Returning Officer for the purpose of the election of Regional Members). The negative view of senior salaries was confirmed by responses to the electoral reform consultation<sup>1</sup>.

Further information can be found in the Explanatory Memorandum (incorporating the Regulatory Impact Assessment and Explanatory Notes) to the Local Government and Elections (Wales) Bill<sup>2</sup>.

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<sup>1</sup><https://gov.wales/sites/default/files/consultations/2018-04/180526-summary-of-responses.pdf> (section 6 pg 45)

<sup>2</sup> <https://senedd.wales/laid%20documents/pri-ld12877-em/pri-ld12877-em-e.pdf>



The Welsh Government is aware of the additional burden the electoral reform programme has placed on electoral management teams across Wales. While we propose to remove the personal fee payable to Returning Officers, we are also proposing to replace this with an amount payable to all electoral teams for running the Senedd elections in 2021. This is likely to be an incremental lump sum paid directly to each electoral management team and would reflect the size of the electorate, the size of the constituency and whether or not the team dealt with cross boundary constituencies. An additional amount may be payable to those teams dealing with the regional administration aspects of the election and would reflect the remit of the Regional Returning Officer. We propose that it would be at the discretion of the RO/ RRO as to how this amount is spent. This proposal remains under consideration.

### **Codes of Practice**

The draft SI makes provision for the Electoral Commission to prepare a code of practice in relation to election expenses for candidates at Senedd Cymru elections. The code of practice must be submitted to the Welsh Ministers for approval and they may approve a draft Code prepared by the Commission with or without modifications. Previously, this power was exercised by the Secretary of State.

### **Other matters not included in the draft Order which are intended to be included in the final Order**

Work is continuing on two issues which, if appropriate, are intended to be addressed within the final Order but are not yet included in the draft Order. These are:

- provision to ensure that the rules in the Order for absent voters' records and the rules for the protection of information about 14 and 15 year old attainers in the Senedd and Elections (Wales) Act 2020 operate effectively together; and
- provision for political parties to use the term "Welsh" or "Cymru" on registration and ballot papers, as outlined below.

### **Presentation of Political Parties on Nomination and Ballot Papers**

Consideration is being given to the proposal for making an addition to the Conduct Order relating to how political parties are presented on nomination papers and on ballot papers. If this change were implemented it would allow parties to use the prefix "Welsh" (when using the English language name) or the suffix "Cymru" (when using the Welsh language name). This change was made in Scotland for Scottish Parliamentary elections in 2015. The Welsh Government believes this will ensure that the distinction can be made between devolved branches of UK-wide political parties and avoid confusion for voters. Consideration is also being given to making this change for local government candidates in Wales through the appropriate secondary legislation in time for the 2022 local government elections.

## **Exemptions from election expenses for disability and translation related costs – for inclusion in a separate Order in due course**

The Electoral Commission has recommended that the following costs should be exempted from political parties' and candidates' electoral spending limits:

- translation costs between Welsh and English; and
- reasonable costs attributable to an individual's disability.

As part of its Assembly Reform programme, the Senedd Commission (the body which is responsible for providing property, staff and services to the Senedd) consulted on the Electoral Commission's recommendations and found that there was significant support for their implementation.

The Welsh Government accepts these recommendations and intends to give effect to them in a separate Order ahead of the 2021 Senedd general elections.

## **Miscellaneous issues**

A small number of other miscellaneous amendments have also been made.

For example, numerous references to the Government of Wales Act 1998 are amended or omitted on the basis that these are no longer relevant.

## Consultation Response Form

Your name:

Organisation (if applicable):

email / telephone number:

Your address:

**Question 1:** We would like to know your views on the proposed amendments to the Conduct Order. Are the amendments workable? Do they have the effect intended by the changes to the primary legislation which gives rise to them? Are they clear and understandable?

**Question 2:** We would like to know whether there are any other aspects of the Order you think may require updating or amending? Have there been any developments since the Order was last amended which necessitate changes to the Order?

**Question 3:** We would like to know your views on the effects that the Order would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be? How positive effects could be increased, or negative effects be mitigated?

**Question 4:** Please also explain how you believe the Order could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

**Question 5 :** We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here: