

Senedd Cymru (Representation of the People) (Amendment) Order 2020      You are in the Our responses to consultations section Home Our responses to consultations On this page Forms Payments to Returning Officers (Part 6) Codes of Practice (Part 7) Other matters not included in the draft Order First published: 8 September 2020 Last updated: 8 September 2020 Summary This response sets out our views on the draft Senedd Cymru (Representation of the People) (Amendment) Order 2020. We further welcome the separate discussions that are taking place with Welsh Government and others to respond to the current COVID-19 crisis, and to ensure that the May 2021 elections can be delivered effectively in the interests of voters, campaigners and administrators. We recognise that these discussions may give rise to further legislation and, in this case, early clarification in regards to your intentions would be helpful in order that we take this into account in our planning. We have also included comments on a provision that has not been included in this draft Order, but we feel is an important requirement for all elections: digital imprints. We would be happy to discuss the points set out in this response with Welsh Government officials, if it would be helpful to do so. Forms From our review of the draft Order, we identified a number of technical inconsistencies in the drafting in relation to the home address form between regional party list candidates and constituency candidates. We have provided more detail on these technical inconsistencies separately to officials. As soon as practicable after the legislation comes into force we will make any amendments necessary to nomination and consent to nomination forms. These amendments will reflect the change in law relating to candidates being able to withhold their home address and the change of wording on the consent to nomination to reflect the disqualification amendments. Payments to Returning Officers (Part 6) We fully support and recognise the important and vital role that Returning Officers and Regional Returning Officers in Wales play in the democratic process. They are critical to delivering well-run elections and referendums which produce results in which voters and campaigners can have confidence. As a matter of principle, we believe that ROs should be independent from both local and national governments when delivering their statutory electoral administration duties. The independence of the RO is necessary to ensure that elections are effectively administered and conducted in voters' best interests. It also avoids any perception of bias and helps to promote public confidence and trust in the process. There is also a risk that confidence in the impartiality of ROs could be damaged, if their only payment for carrying out election duties is through their contract of employment by the local authority which appointed them to their substantive role. These were the views we expressed in December 2019 as part of our written evidence to the Equality, Local Government and Communities Committee on the Local Government and Elections (Wales) Bill , and in our earlier response to the Welsh Government's consultation document – Electoral Reform in Local Government in Wales in October 2017. Any changes to the current management framework for the delivery of elections in Wales, including to the current arrangements for funding elections and payments to ROs for their services, must not weaken the independence and accountability of those responsible for delivering polls, or the perception of this by voters and campaigners. The proposal to replace the RO fee with an amount payable to all electoral teams involved running the Senedd elections in 2021, could bring this independence into question, if paid to the local authority, as proposed. We think it is important to be clear that ROs are not employed by councils when they deliver official election or referendum

duties and that they are independent statutory office-holders, accountable to the courts for the delivery of their official duties. As is the case under the current system, a payment to ROs of some description helps to denote the different and independent status of the role. It is also important that an appropriate person with the right skill set should carry out the role of Returning Officer and Regional Returning Officer, and should be remunerated accordingly to ensure this. It is possible that removing a personal fee may discourage experienced and capable senior officers from willingly putting themselves forward to undertake the important role of Regional Returning Officer. Codes of Practice (Part 7) We are content with this provision. We have, however, identified what we believe is a minor drafting error where there may possibly be a closing bracket missing from new 13(1)(b) '.....(supplementing the definition in article 63(3)).....'. Other matters not included in the draft Order Presentation of political parties' identifiers on nomination and ballot papers As part of the consultation on the draft Senedd Cymru (Representation of the People) (Amendment) Order 2020, it has been proposed that candidates standing at Senedd elections be allowed to use the prefix "Welsh" (when using the language name), or the suffix "Cymru" (when using the Welsh language name), if they are standing on behalf of a registered political party. It is our understanding that the aim is to ensure that voters can easily recognise "devolved branches of UK-wide political parties" in order to avoid confusion for voters. We feel that the proposal requires further clarification, and in particular to demonstrate how it will help to avoid voter confusion. As you know, the requirements for registering a party name are outlined in section 28(4) and paragraph 2 of Schedule 4 of PPERA, and the requirements for descriptions are outlined in section 28A(2) of PPERA. We would welcome clarification on how the Welsh Government's proposal is likely to interact with these rules. For instance, as parties in Wales can be registered with a name in English and a name in Welsh, or just a single name, the conduct order would need to specify under what circumstances "Welsh" or "Cymru" could be prefixed to a party's name. This is especially the case where a party's name is expressed in neither English or Welsh (such as for a party named "Britannica"), or is expressed bilingually ("Llais Gwynedd - The Voice of Gwynedd"). A similar provision was made ahead of the Scottish Parliamentary elections in 2015, and Welsh Government may find it helpful to take into account how this change was made in developing its own provisions for the Senedd elections in 2021. For elections to the Scottish Parliament, where the word "Scottish" is not part of the registered party name, the party name on the nomination form can have the word "Scottish" included in front of it. If the registered party name starts with the word "the", the word "Scottish" can be inserted after the word "the" on the nomination form. This is the case for both constituency candidates and for party regional lists. Welsh Government may want to consider specifying something similar when prefixing the word "Welsh" to a party name in conjunction with the word "the". Imprints on non-printed campaign material Digital campaigning is an increasingly important aspect of election campaigns in the UK but, as you'll be aware, the imprint rules don't currently apply to digital election campaign material. This affects voters' ability to see who is behind the campaign material they see online, and it affects the ability of the Electoral Commission, police and prosecuting bodies to enforce the law. Therefore, extending the imprint rules to digital election campaign material should be a priority for all the Governments of the UK. We are disappointed that the draft Order does not make provision to extend the imprint rules to non-printed campaign material and that such requirements will not be in place for the Senedd elections in 2021. The Scottish Parliament passed the Referendums (Scotland) Act

(RSA) in January this year. This Act allows the Scottish Parliament to hold referendums on matters which have been devolved to Scotland. The RSA contains provisions for imprints on both printed and digital referendum material. Digital material that promotes a particular outcome in a Scottish referendum will need an imprint but individuals are exempt from the requirement to include imprints if they are expressing their personal opinions and publishing the material on their own behalf on a non-commercial basis. However, individuals with senior compliance or decision-making roles in registered referendum campaign organisations cannot benefit from this exemption. They will have to include imprints on digital material. The Scottish Government intends to introduce digital imprint rules for devolved Scottish elections, and in time for the 2021 May Scottish Parliament elections. We are discussing their proposals with them. On 12 August, the UK Government published a public consultation on its technical proposals for a digital imprints regime for the elections it has competence for. The consultation asks readers to answer a series of questions about the proposals. The deadline for responding is 11:45pm on 4 November. The Electoral Commission will be responding. We would encourage Welsh Government to take account of the provisions that have been put in place or are being considered by other UK legislatures and consider introducing similar provisions for elections in Wales in the future.