

The Explanatory Memorandum to the Local Authorities (Change to the Years of Ordinary Elections) (Wales) Order 2019

This Explanatory Memorandum has been prepared by the Department for Local Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Orders 27.1.

Minister's Declaration

In my view this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Local Authorities (Change to the Years of Ordinary Elections) (Wales) Order 2019. I am satisfied the benefits outweigh the costs.

Julie James

Minister for Housing and Local Government

20 September 2019

1. Description

The Local Authorities (Change to the Years of Ordinary Elections) (Wales) Order 2019 postpones the date of ordinary elections of councillors of county councils, county borough councils and community councils in Wales by one year, from 2021 to 2022.

2. Matters of Special Interest to the Constitutional and Legislative Affairs Committee

None

3. Legislative Background

This Order is made under sections 87, 105(2), (3), 4(c) and 106(1) of the Local Government Act 2000 (“the 2000 Act”).

Sections 26 and 35 of the Local Government Act 1972 provide for the ordinary elections of councillors to county councils, county borough councils and community councils to take place in 2017 and every four years thereafter and for councillors in office to retire on the fourth day after an ordinary election has taken place.

Sections 87 and 106(1) of the 2000 Act enables the Welsh Ministers, by order, to make provision to change the years in which the ordinary elections of councillors of any specified local authority are to be held. In Wales this means the election of councillors to a county council, county borough council or a community council. A local authority is specified if it is a local authority specified by name in the order or a local authority falling within any class or description of local authority specified in the order.

Section 105(2) and (3) of the 2000 Act sets out that orders under the 2000 Act may make different provision for different cases, authorities or descriptions of authority and may include provision which modifies an enactment. Section 105(4)(c) provides that the power to modify an enactment includes a power to revoke that enactment.

This Order follows the Negative Resolution procedure.

4. Purpose and Effect of the Legislation

The Order

This Order postpones the date of all local government elections by one year, from 2021 to 2022. Subsequent elections will take place every four years.

The ordinary day of elections for county, county borough and community councillors normally takes place on the first Thursday in May every four years.

Elections to town and community councils are held at the same time as elections to county and county borough councils.

This means the ordinary day of local government elections will move from the first Thursday in May 2021 to the first Thursday in May 2022.

Clash with Assembly elections

The next ordinary local government elections are scheduled for May 2021. This means that the next ordinary elections of councillors would ordinarily coincide with the election of members to the National Assembly for Wales, which moved from a four to a five year term under the Fixed Term Parliament Act 2011.

The Wales Act 2017 amended the Representation of the People Act 1983 and prevents the local government elections being taken on the same day as the National Assembly general election. Where both elections are scheduled to take place on the same day the Welsh Ministers must, by order, specify another day on which the ordinary local government elections are to be held.

Moving the year of the ordinary election of councillors in Wales will prevent the situation of local government elections being held on the same day as National Assembly elections.

However, moving the year of ordinary local government elections to May 2022 could coincide with the next scheduled UK Parliamentary General election. The Fixed Term Parliaments Act 2011 provides that the next election is due to be in May 2022.

The Welsh Ministers have previously postponed ordinary local government elections. The Local Authority Elections (Wales) Order 2014 postponed the local government elections from 2016 to 2017. As the ordinary elections in 2017 have taken place, the 2019 Order revokes the 2014 Order.

5. Consultation

The Welsh Ministers consulted on moving the date of the next local government elections from 2021 to 2022.

The White Paper – *Reforming Local Government - Power to Local People*, proposed that local government elections move to a fixed five year term with the electoral cycle arranged so that local government elections did not take place at the same time as UK Parliamentary or National Assembly elections.

The consultation paper asked: *Do you agree that the term of local government in Wales should be set at five years?* Of the 653 responses to the question 70% agreed and 29% disagree. Those in favour commented on aligning electoral terms for local government with those of the National Assembly and UK Government; giving administrations sufficient time to implement plans.

Conversely, those who disagreed felt that the current four-year cycles were appropriate and sufficiently lengthy. A number of respondents felt that three years would be more satisfactory, with shorter terms meaning that councillors were more accountable to the electorate.

The Welsh Ministers issued a statement in June 2016 indicating their intention to legislate for the term of office of councillors to change from four to five years.

Regulatory Impact Assessment

Options

Option 1: Do nothing. Ordinary elections of county, county borough and community councillors to take place in May 2021.

Option 2: Move the ordinary election of county, county borough and community councillors by one year to May 2022.

Costs and benefits

Option 1

The date of the next ordinary local government elections is presently May 2021. This clashes with the date for the next National Assembly elections.

Although there may be cost benefits to holding two elections on the same day (Assembly and ordinary local government elections). Holding these two elections on the same day is prohibited under section 37ZA(2) of the Representation of the People Act 1983. In such circumstances the Welsh Ministers must make an order to change the date of the ordinary local government election. Therefore if this Order is not approved and the year of election does not change, the Welsh Ministers must make an Order under section 37ZA(3) to move the day of elections to another time in 2021. There are no additional financial implications of having two elections close to each other. The costs of the elections will be the same regardless of when they are held. However, it would be undesirable to have the two elections in close proximity in order to minimise impact of electors themselves and electoral administrators.

Option 2

Postponing the year of the local government elections for county, county borough and community councils from May 2021 to May 2022 ahead of the passing of the Local Government and Elections (Wales) Bill will ensure that the next ordinary local government elections do not fall on the same day as elections to the National Assembly for Wales.

The consultation proposing to change the term of office of county, county borough and community councillors received strong support. Postponing the ordinary local government elections by one year will separate the local government election from National Assembly elections. The election of community councillors will continue to be held with the election of county and county borough councillors.

The cost of local government elections is the responsibility of the local authority.

Members of county and county borough councils receive a basic salary which is set by the Independent Remuneration Panel for Wales. The amount for 2018/19 is £13868.

In their annual report for 2018/19 the Independent Remuneration Panel for Wales determined that all town and community councils must make available to their members a sum of £150 to contribute to costs and expenses.

Altering the year of the ordinary local government election will extend the term of office of existing councillors by one year. Principal councils will be required to pay current members an extra year's basic salary. This amounts to £17,390,470 for the 1254 county and county borough councillors across the 22 principal councils.

Altering the year of the ordinary local government elections will not give rise to additional costs for members remuneration as the basic salary and pension would be payable to elected members if the election was held in May 2021. The only change is that the current members will benefit from the basic salary as opposed to any newly elected members.

The Welsh Ministers' preference is option 2.