

Q&A: What will change in the organisation of elections? status as of 12 January 2023.

Changes to the Electoral Code

Draft law: <https://www.sejm.gov.pl/sejm9.nsf/druk.xsp?nr=2897> as of 22 December 2022

Amended text after work in the Codification Committee:

<https://orka.sejm.gov.pl/Druki9ka.nsf/0/8A5D05B280F6447EC12589350069B782/%24File/2930.pdf>

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What do the draft amendments to the Electoral Code concern?

The draft amendments to the Electoral Code provide for a number of different changes to many aspects of the organisation of elections. Among other things, they envisage changes to:

- the rules governing election campaigning,
- the work of precinct election commissions,
- working arrangements for domestic observers and party representatives,
- the formation of polling precincts
- organisation of transport to polling stations.

Which laws and regulations are being changed by the amendment to the electoral law?

The main changes to the organisation of elections are included in:

- the draft law on amendments to the Electoral Code of 22 December 2022.

In addition to this amendment, proposals to amend the electoral law are included in two other bills:

- a draft law resulting from a bilateral agreement with the UK, allowing Polish citizens living in the UK to vote in local elections and, similarly, giving British citizens living in Poland the right to vote in municipal elections in the Republic of Poland
- a project to establish a centralized voter register.

At the stage of work in the Sejm Committee, all three projects were combined (see above).

What other laws are affected by this amendment?

In addition to the Electoral Code, the amendment in the parliamentary bill under discussion also concerns laws:

- on political parties,
- on restrictions on conducting business activities by persons holding public office,
- on the National Criminal Register,
- on local referenda,
- on the disclosure of information on documents of the state security bodies from the period 1944-1990.

What is the permissible timeframe for such changes?

According to the jurisprudence of the Constitutional Court, significant changes to the electoral law should be introduced no later than six months before the next election is ordered. This means that the latest amendments should be adopted by 14 February 2023 at the latest. However, even adopting them before this date, given the scope of the amendment, will,

according to local government representatives, leave too little time for institutions responsible for the organisation of elections to implement them.

What changes are envisaged in the organisation of the work of the electoral commissions?

For PECs: the division into two commissions in municipal elections (the first to open the polling station and conduct the voting, the second to count the votes) is to be abolished. An exception is to be allowed for the increase in the number of commission members in polling stations where a higher-than-usual turnout is to be expected.

At least half of the commission members (including the chairperson or deputy chairperson) are to be present at all times at the polling station - currently the requirement is that $\frac{2}{3}$ of the commission members are present.

Each ballot paper will have to be shown to all committee members present during the count. For district election commissions: The stipulation that only judges are allowed to serve as DEC members is to be removed.

How does this draft affect the conditions for domestic observers and party representatives?

In the version revised by the Sejm Codification commission, the process of appointing party representatives and domestic observers remains unchanged. Recording of the PECs activities is to be allowed also during voting. In addition, a system is to be set up whereby photos and recordings can be uploaded for use in the event of an electoral complaint (in which case the organisation/committee must register observers/trusted representatives in a dedicated system). However, it obliges the person who recorded the material to immediately remove it from their devices if it will not be used or has already been submitted through the system. It will still not be possible to record the conduct of election day at polling stations outside Poland.

Party representatives will be entitled to a per diem and leave days on the day of counting and the following day - the per diem is to be equal to 50% of the PEC member's salary and to be paid on the basis of a certificate issued by the PEC chairman, which creates room for conflicts of interest.

How does this project affect the size, number and distribution of polling stations?

The draft lowers the minimum number of inhabitants in a precinct to 200. In addition, new precincts may be created at the request of the mayor or 5% of the total number of voters in an existing precinct. According to the draft, new polling stations will be established mainly in rural municipalities (estimated 6 000 new polling stations, in addition to 27 000 existing ones). Urban municipalities will hardly be affected by these changes, despite the reality that it is these polling districts that suffer more from overburdening (too many voters per polling station). On the other hand, the liberalisation of requirements for the size of polling stations may paradoxically cause logistical difficulties, potential confusion for voters who will have to find their new polling station against their longstanding habits, and possible problems with recruiting and training members of additional PECs.

How does this draft change the rules on campaign financing?

The draft does not envisage any changes in this regard. The only change close to this matter is the confirmation of the right to electoral campaigning for every citizen, without the obligation of getting the approval of the electoral committee in question. As a consequence,

this could lead to campaign financing by citizens outside the electoral committee (and the framework of campaign finance legislation).

How does this project affect the accessibility of polling stations?

According to the draft, mayors are to be given new responsibilities (and funding) for ensuring transportation to and from polling stations for less well connected precincts. The envisaged changes include the right to apply for free election day transport for persons over 60 years of age, as well as for persons with disabilities. Such a need must be declared between the twentieth (the creation of the electoral roll) and the thirteenth day before election day. In addition, voters in rural or urban-rural municipalities may be provided with transportation if the nearest public transport stop is at least 1.5 km away from their polling station. The transport is to take place at least twice on election day, with transit through all villages inhabited by at least 5 voters. In practice, there may be problems with the availability of transport operators on election day for all municipalities concerned. A separate problem may become overcrowding of polling stations with many people arriving "in waves".

What does this draft change about the accessibility of voting for people living outside Poland?

The draft removes the possibility to be added to the electoral roll for people arriving from abroad on polling day. Poles living abroad, on the other hand, will only be able to be added to a given voters' list through the portal of the Ministry of Foreign Affairs or by email.

Are there any changes envisaged to the rules governing voting in closed medical centres?

For context, reference should be made to the previous presidential elections, when there were highly publicised cases of voting in nursing homes, which were affected by special changes to the electoral law introduced for the time of the pandemic. Under the one-off provisions - applied in the pandemic - nursing homes - as well as other closed medical facilities - were tasked with selecting election commission members from among the facility's staff, unlike in the case of ordinary polling stations to which permanent arrangements of the electoral code applied. The proposal does not envisage any changes with respect to the previous rules expressed in the Electoral Code: PEC members will be appointed from among the representatives of electoral committees. There will probably be more PEC members assigned to such special polling stations and their number will depend on the number of voters in the precinct. Restrictions on the conduct of election observation in such places have also not been maintained.

What are some of the other risks posed by this draft amendment to the electoral law?

The draft in question is formulated in highly imprecise language, leaving much ambiguity in its interpretation. The scope of the envisaged changes is quite wide, so much so that it is not easy to understand every detail of these changes, let alone explain them in an accessible way. It should be added that already now the envisaged changes are difficult to implement before the next election cycle, which will further contribute to undermining trust in the conduct of elections in Poland. This haste, combined with insufficiently clear language on the part of the legislator and inadequate justification of the draft changes, leads one to conclude that the submitted draft carries too many potential risks and should not be proceeded with in its present form.