

Explanatory Memorandum to the Local Authorities (Standing Orders) (Wales) Regulations (Amendment) Regulations 2014

This Explanatory Memorandum has been prepared by the Local Government Department of the Welsh Government and is laid before the National Assembly for Wales in accordance with Standing Order 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 (Standing Orders) (Wales) Regulations (Amendment) Regulations 2014. I am satisfied that the benefits outweigh any costs.

Lesley Griffiths AM

Minister for Local Government and Government Business, one of the Welsh Ministers

9 June 2014

1. Description

- 1.1 The Local Authorities (Standing Orders) (Amendment) (Wales) Regulations 2014 (“the 2014 Regulations”) make provision to amend the Local Authorities (Standing Orders) (Wales) Regulations 2006 (“the 2006 Regulations”) as a result, among other things, of changes introduced by the Local Government (Wales) Measure 2011 (“the 2011 Measure”).
- 1.2 The 2006 Regulations require Local Authorities to include within their standing orders provisions covering the appointment of Chief Officers, recording of votes and the signing of minutes, provisions related to staff in Local Authorities with different types of executive or alternative arrangements, and disciplinary action against certain senior post holders.
- 1.3 The 2014 Regulations amend the provisions of the 2006 Regulations relating to the process for appointing, dismissing and conducting disciplinary investigations of certain officers of authorities. They impose new requirements for procedures for determining the level of remuneration to be paid to chief officers.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

None

3. Legislative background

- 3.1 The Local Government and Housing Act 1989 (“the 1989 Act”) contained provisions concerning the appointment and management of certain Local Authority staff and also the adoption of procedural standing orders.
- 3.2 Section 8 of the 1989 Act contains provisions allowing regulations to be made to govern, among other things, whom within a Local Authority is responsible for appointing particular named posts and associated procedures, including those dealing with disciplinary proceedings and dismissals.
- 3.3 The Welsh Ministers have the power to make regulations requiring Local Authorities to include provisions within their standing orders in respect of these matters. This was done through the 2006 Regulations, approved by the National Assembly in May 2006 and brought into force in July of that year. These replaced the Local Authorities (Standing Orders) Regulations 1993 (“the 1993 Regulations”) which had previously applied in England and Wales. The 1993 Regulations still apply in relation to National Park Authorities in Wales.

- 3.4 Section 20 of the 1989 Act enables Welsh Ministers to also make regulations concerning the management of proceedings and business of a Local Authority.
- 3.5 The 2006 Regulations require Local Authorities to include within their standing orders provisions covering:
- the appointment of chief officers
 - the recording of votes and signing of minutes
 - provisions concerning staff in local authorities with different types of executive or operating under alternative arrangements
 - disciplinary action against certain senior post-holders in an authority.
- 3.6 The 2011 Measure, passed by the National Assembly in March 2011 and enacted in May 2011, included provisions intended to strengthen local democracy. Section 8 requires each local authority to designate one of its officers as “Head of Democratic Services”. This post cannot be filled by the Head of Paid Service, Monitoring Officer or Chief Finance Officer.
- 3.7 Section 11 of the 2011 Measure requires Local Authorities to establish a democratic services committee which has the role of carrying out this designation.
- 3.8 The 2011 Measure also removed the Mayor and Council Manager Executive and “alternative arrangements” models as options which could be adopted by Local Authorities.

4. Purpose & intended effect of the legislation

- 4.1 As a result of changes introduced by the 2011 Measure as detailed in section 3.6 to 3.8 of this Explanatory Memorandum, amendments to the 2006 Regulations are required.
- 4.2 In addition, other relevant amendments are required to the 2006 Regulations in response to events that have occurred since they were made.
- 4.3 The resulting proposed amendments to the 2006 Regulations as set out in the 2014 Regulations are as follows:
- 4.3.1 Due to the repeal of the Mayor and Council Manager Executive model by the 2011 Measure an amendment is required to remove all references to that model. This will amend regulations 5 and 9 concerning staff in Local Authorities operating executive arrangements, and remove Part 3 of Schedule 3, which relates to the same issues, from the 2006 Regulations.
- 4.3.2 The 2011 Measure also repealed the “alternative arrangements” model as an option which could be adopted by Local Authorities.

Accordingly, regulation 6 of, and Part 4 of Schedule 3 to, the 2006 Regulations are to be omitted.

- 4.3.3 Under the 2014 Regulations, the role of Head of Democratic Services will be given the same status as the Head of Paid Service, Monitoring Officer and Chief Finance Officer as regards the process under which Local Authorities can take disciplinary action against them and how any allegation of misconduct is to be dealt with. The process will involve the establishment of an investigating committee, which can, if it feels there is a case to answer, appoint an independent person to investigate an allegation and make a recommendation as to the appropriate course of action for the authority to take. The addition of the post of Head of Democratic Services to the list of posts having this protection is important to protect the person holding it in the same way as other posts whose holders might be required to challenge the leadership of their authority in the course of fulfilling their duties.
- 4.3.4 Therefore the addition to regulation 8 of the 2006 Regulations (which lists the posts given this protection) of the post of Head of Democratic Services is required. An amendment would also be needed to regulation 9, which governs the procedure for dealing with allegations of misconduct against the postholders covered by regulation 8. Further amendments are required to Schedule 4 to the 2006 Regulations, which makes provision for disciplinary action against heads of paid services, monitoring officers and chief finance officers.
- 4.3.5 In response to concerns raised with officials, further amendments are made to the 2006 Regulations to extend the protections given by regulations 8 and 9 of the 2006 Regulations to officers in relation to whom disciplinary action is proposed where the officer was, but at the time of the proposed disciplinary action no longer is, an officer with protected status under those regulations and the alleged misconduct, or, as the case may be, the reason for the proposal for dismissal, occurred during the period when the officer was an officer with protected status.
- 4.3.6 The 2006 Regulations make provision relating to the process for recruiting and appointing chief officers. The 2006 Regulations currently enable Local Authorities, should they choose, to avoid the need to advertise a chief officer vacancy publicly if they wish to appoint an internal candidate. Under the 2014 Regulations this would be changed so that, where an authority proposes to appoint a chief officer and it is proposed to pay the chief officer annual remuneration of £100,000 or more, the post must be publicly advertised. The only exception to this requirement for public advertisement where annual remuneration for a chief officer role was £100,000 or more would be if an appointment were to be made for a period of no longer than 12 months. This exception will be useful in

emergencies or if there were unforeseen departures. The requirement for chief officer roles to be publicly advertised is intended to ensure that able candidates from outside the organisation have the opportunity to gain the position if found to be the most suitable. Schedule 1 paragraph 1 of the 2006 Regulations, which provides for the process of advertising and appointing a chief officer, would be replaced to make these changes.

4.3.7 In the 2014 Regulations the posts of Head of Democratic Services and Monitoring Officer are added to the list of those who are not subject to appointment or dismissal by the Head of Paid Service (or another officer designated by them). The posts already on this list are the Head of Paid Service; chief officers and deputy chief officers; assistants for political groups, a mayor's assistant (when there is an elected mayor); and teachers (and other school staff). Amendments to Parts 1 and 2 (paragraph 3) of Schedule 3 are needed to achieve this outcome. Similar protection in relation to dismissal and disciplinary action is extended to officers described in paragraph 4.3.5.

4.3.8 In the 2014 Regulations the posts of Head of Democratic Services and Monitoring Officer are also added to the list of those whose appointment or dismissal should be conducted by a committee, and that any committee or sub-committee of the authority charged with this responsibility must include at least one member of the executive in its membership. The posts already on this list are the Head of Paid Service, and a chief officer or deputy chief officer. Amendments to Parts 1 and 2 (paragraph 4) of Schedule 3 are needed to achieve this outcome. Decisions to dismiss officers described in paragraph 4.3.5 must be conducted by a committee and any committee or sub-committee of the authority charged with this responsibility must include at least one member of the executive in its membership.

4.3.9 The 2014 Regulations make additional provision relating to remuneration of chief officers' pay. This is to ensure any decision to determine or vary the remuneration of chief officers (or those to be appointed as chief officers) must be made by full council, without the possibility of delegating it to a committee of the council. Regulation 7 of the 2006 Regulations will be replaced with a new provision to make the necessary changes.

5. Regulatory Impact Assessment (RIA)

5.1 Options for achieving the policy objectives in relation to the 2006 Regulations, discussed in Section 4, are:

Option 1 – Do nothing and do not amend the 2006 Regulations;

Option 2 – Make the amendments to the 2006 Regulations.

Option 1 – Costs and benefits

- 5.2 There would be no financial costs to the Welsh Government or local authorities as a result of failing to amend the 2006 Regulations. Doing nothing, however, would result in Local Authorities operating under out of date standing orders that are not in line with current legislation – in this case the reforms enacted in the 2011 Measure.

Option 2 - Costs and Benefits

A – Removal of the References to Mayor and Council Manager Executive and “Alternative Arrangements” Models

- 5.3 There would be no financial costs to Local Authorities as a result of removing these models as options which could be adopted by Welsh Local Authorities from the 2006 Regulations as this has already been given legal effect by the 2011 Measure. For the Welsh Government, there will be negligible administration costs in amending the Regulations, and these will be covered within existing budgets.
- 5.4 The benefits of this amendment will be to bring the 2006 Regulations into line with the 2011 Measure.

B – Addition of the Head of Democratic Services Post and certain other officers to those that Require a Committee and Independent Person to Decide on Disciplinary Action and Investigate Allegations of Misconduct

- 5.5 The costs to the Welsh Government for drafting these amendments will be negligible and will be covered within existing budgets. However, the possibility of establishing more committees and designating more independent persons as a result of adding these posts to the posts already covered by these procedures involve more significant costs for Local Authorities. The cost of establishing an investigation would be minimal. Councillors are paid a salary, not an attendance allowance. Further, it is unlikely that a room would need to be hired and the administration costs would form part of the budget for committee secretariats. Each meeting would probably cost an average of around £100 in travel and subsistence payments.
- 5.6 Should a case of disciplinary action against a Head of Democratic Services or an officer described in paragraph 4.3.5 be referred to an independent person for investigation, that would almost certainly take costs into thousands of pounds. The independent person’s fee plus the cost of paying a suspended officer would vary from case to case. Such cases are rarely clean cut and might mean expenditure of tens of thousands of pounds. Such costs would be borne by the local authority concerned, as is now the case with Heads of Paid Service, Chief Finance Officers and Monitoring Officers. Thankfully, such cases are relatively rare.

- 5.7 The post of Head of Democratic Services is a requirement under the 2011 Measure, and the benefits achieved by this amendment to the regulations derive from the security this proposal would give the post holder. It is important to protect this role in the same way as other posts that are required to scrutinise and report to council leaderships on areas internal to each Local Government organisation. For the same reasons, it is also important to extend similar protections to officers falling within the description in paragraph 4.3.5.

C – Public Advertisement of all Chief Officer Posts where Annual Remuneration is £100,000 or Greater

- 5.8 The costs to the Welsh Government for drafting these amendments will be negligible and will be covered within existing budgets.
- 5.9 For Local Authorities there will be cost implications of this provision as it will involve the additional costs of advertising relevant Chief Officer posts publicly which they may not have previously advertised. It cannot be known how often each Authority will be required to advertise these posts because it would be done on an “an as and when” basis. However, an estimated additional cost to an Authority for advertising relevant chief officer posts externally is given below. This estimate of course does not include the processes and costs that would be incurred for advertising posts either internally or externally. The actual cost would vary according to the extent of advertising used and the type of publication in which the advertisement was placed but we are aware that newspaper job advertisements can cost between £10,000 and £25,000.
- 5.10 The benefits of ensuring relevant chief officer posts are advertised publicly, subject to the exceptions referred to above, are that it would provide additional transparency of posts and salaries within Local Government, and also allow other, and possibly more suitable, candidates from outside the organisation to apply and possibly gain appointment to posts for which they would not otherwise have had an opportunity to apply. It will also enable Local Authorities to demonstrate that they are complying with their duty under section 7 of the Local Government and Housing Act 1989 to ensure that appointments are made on merit.
- 5.11 The provision exempting Local Authorities from the requirement to advertise relevant chief officer roles publicly where a person would be appointed to that post for no longer than 12 months would be of benefit as it would enable Local Authorities to fill the posts quickly in the event of an emergency or of unforeseen departures, without having to incur the costs and delays involved in publicly advertising the roles. However, the requirement to advertise publicly when seeking to make a permanent appointment to a chief officer role with annual remuneration of £100,000 or greater could be conducted at a later date, with a larger pool of applicants than if the authority were

permitted to appoint a relevant chief officer without publicly advertising the role.

D – Addition of the Head of Democratic Services and Monitoring Officer Posts to the list of those Not Subject to Appointment or Dismissal by the Head of Paid Services and those Whose Appointment or Dismissal Should be Conducted by Committee

5.12 There will be negligible costs for the Welsh Government for drafting these amendments, which will be covered within existing budgets. However, for Local Authorities there will be more significant costs of the possibility of establishing more committees to look into the appointment and dismissal of staff in these roles in addition to those already covered by these procedures. The same principle applies in relation to the process for dismissing officers falling within the description in paragraph 4.3.5.

5.13 See paragraphs 5.5 to 5.7 (above) for costs.

5.14 The benefits for ensuring these posts are listed as being subject to the requirement that their appointment or dismissal must be conducted by Committee (and not by the Head of Paid Services) derive from the security this proposal would provide to the post holder. It is important to protect this role in the same way as other posts that are required to scrutinise and report to council leaderships on areas internal to each Local Government organisation. Again, the same principle applies in relation to the process for dismissing officers falling within the description in paragraph 4.3.5.

E - Decisions to Determine or Vary the Remuneration of Chief Officers Made by Full Council

5.15 There will be negligible costs for the Welsh Government for drafting these amendments, which will be covered within existing budgets.

5.16 There will be additional costs to Local Authorities for this provision if a full council will be required to be convened for these decisions in addition to those normally convened. That would be unusual. It would be anticipated that this would normally be an agenda item in a routine council meeting and hence not impose an additional cost.

5.17 Requiring decisions concerning the remuneration of Chief Officers to be made by full Council will assist in providing transparency on these matters in the future. It will also support the provisions on chief executive's pay that are within the Local Government (Democracy) (Wales) Act 2013.

6. Consultation

- 6.1 The Welsh Government issued an electronic public consultation on the 2014 Regulations in draft. The consultation ran for 12 weeks from 8 March 2013 to 31 May 2013, and requested views on the content of the draft amendments to the 2006 Regulations.
- 6.2 The consultation was available on the Welsh Government website, and was sent directly to:
- Democratic Services of Welsh Principal Councils
 - Chief Executives of Welsh Principal Councils
 - Lawyers of Local Government
 - Welsh Local Government Association Chief Executive
 - Local Authority Monitoring Officers
 - The Welsh branch of the Society of Local Authority Chief Executives and Senior Managers (SOLACE)
- 6.3 A total of 12 responses were received to the consultation, and although the majority of responses were positive, a number were split between supportive and negative on some of the proposed amendments to the regulations as drafted.

A number of the negative responses related particularly to the proposed provision for local authorities to advertise all of their chief office posts publicly. In response to the comments received, an amendment was made to this proposed provision to provide that if an appointment were to be made for a period not exceeding 12 months, it would not be required to go through the external process. Further, the amendments to the 2014 Regulations made in response to the consultation provide that the requirement to advertise chief officer posts publicly applies only where the annual remuneration for the post is £100,000 or greater.

- 6.4 A published summary report of the consultation responses received is available on the Welsh Government website.

7. Competition Assessment

- 7.1 There are no market implications associated with the making of these Regulations. It has no impact on business, charities or the voluntary sector.