

# SL(5)757 – Local Government and Elections (Wales) Act 2021 (Consequential Amendments and Miscellaneous Provisions) Regulations 2021

## Background and Purpose

The Local Government and Elections (Wales) Act 2021 (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (“the Regulations”) make amendments:

- which are consequential on amendments made by Schedule 4 to the Local Government and Elections (Wales) Act 2021 (“the 2021 Act”) to provisions in Part 5A of the Local Government Act 1972 (“the 1972 Act”); or
- give effect to provisions in section 47 of the 2021 Act relating to remote attendance.

The Regulations also make provision relating to the length of time certain local authority documents are required to be electronically accessible under the Local Authorities (Coronavirus) Meetings (Wales) Regulations 2020 (“the 2020 Regulations”).

In summary, the amendments made by the Regulations are to:

- The Public Audit (Wales) Act 2004 relating to consideration by local authorities of reports made by the Auditor General for Wales in the public interest. The amendments provide that powers of local authorities to exclude items from electronic publication or inspection or from rights of access do not apply to those reports. They also provide for the notices to be given of local authorities’ meetings to consider those reports to reflect requirements for notices to be given electronically and to reflect that meetings may be held through remote means.
- The Local Democracy, Economic Development and Construction Act 2009, which relates to consideration by local authorities of public interest reports by the Auditor General for Wales on entities connected with those authorities. The effect of the amendment is that powers of local authorities to exclude items from electronic publication or inspection or from rights of access do not apply to such public interest reports.
- The Local Government Democracy (Wales) Act 2013 to omit section 56 which inserted subsection (1ZA) into section 232 of the 1972 Act, relating to notices of meetings given by community councils. That subsection has been omitted by provision made in Schedule 4 to the 2021 Act.
- The 2021 Act to provide that documents relating to local authority meetings which are required to be published electronically are to be treated as documents required by law to be open to public inspection for the purposes of paragraph 5 of Schedule 1 to the Defamation Act 1996.



- The National Park Authorities (Wales) Order 1995 to give full effect to the provisions of the 2021 Act relating to remote attendance at meetings and the giving of electronic notices by making provision for notices of, and summonses, to meetings to be given electronically and for remote attendance.
- The Standards Committees (Wales) Regulations 2001. Those Regulations apply provisions of Part 5A of the 1972 Act to meetings of standards committees of local authorities, with modifications. The amendments made to those Regulations ensure those Regulations reflect the relevant changes made to the requirements of Part 5A of the 1972 Act by Schedule 4 to the 2021 Act.
- The Licensing Act 2003 (Hearings) Regulations 2005 and the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-Committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007 to apply to hearings of local authority licensing committees the amendments made to Part 5A of the 1972 Act relating to notices of hearings.
- The 2020 Regulations, to:
  - o specify a period of six years during which local authorities are required to ensure that certain documents remain accessible by the public. These are documents relating to meetings held, and executive decisions taken, between 22 April 2020 and the end of 30 April 2021 which were published under temporary provision under the 2020 Regulations, and
  - o make transitional provision relating to notices or other documents published or sent before 1 May 2021 in relation to meetings or hearings held on or after that date.

## Procedure

Draft Affirmative

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

## Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

**1. Standing Order 21.2(iv) – that it appears to have retrospective effect where the authorising enactment does not give express authority for this.**

Regulations 10 and 11 require notices or documents which have been published between 22 April 2020 and 30 April 2021 to remain accessible electronically for a period of six years. The Regulations are not due to come into force until 1 May 2021. Regulations 10 and 11 therefore appear to retrospectively change the law relating to documents published before the Regulations come into force. The enabling provisions for these Regulations in the 2021



Act and the Local Government Act 2000 do not provide express authority for the Regulations to have retrospective effect.

## Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

### **2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd**

No consultation was undertaken in relation to the Regulations. The Explanatory Memorandum states that:

*“No formal consultation has taken place as the Regulations make consequential technical amendments.”*

## Welsh Government response

**Technical Scrutiny point:** The Welsh Government does not agree that regulations 10 and 11 have retrospective legal effect. Retrospective provision is any provision that changes the relevant law so that it has effect from a time before that provision comes into force. It has an effect on acts done or rights acquired before that legislation comes into force or it creates or changes legal consequences for past actions or events.

### Regulation 10

Regulation 10 changes the law with regard to events that occur on or after the day the law is in force.

Local authorities are currently under a duty to publish documents which relate to a meeting held, or an executive decision taken, after the coming into force of the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020 (“the 2020 Regulations”) and to ensure that these documents remain accessible electronically by members of the public (section 100C of the Local Government Act 1972 as modified by regulation 21(4) of the 2020 Regulations and regulation 13 of the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001 as modified by regulation 23(8)(e) of the 2020 Regulations).

The Welsh Government does not agree that regulation 10 is retrospective because the provision does not change the law so that it has effect from a time before that provision comes into force. Regulation 10 inserts a specific period of time for which documents must remain accessible electronically, however, authorities will have already published these documents electronically under the 2020 Regulations and are under an existing duty to ensure that they remain accessible. Regulation 10 will not have an effect on any acts done before the provision comes into force. The effect is that local authorities may remove the documents from their websites six years after the date of the meeting or of the executive



decision made, which will, of course, take place after the coming into force of regulation 10. As such, the Welsh Government does not agree that the provision is retrospective.

### Regulation 11

The technical scrutiny point included in the draft report provides that “regulations 10 and 11 require notices or documents which have been published between 22 April and 30 April 2021 to remain accessible electronically for a period of six years.”

This is not the effect of regulation 11. Regulation 11 is a transitional provision which provides that any notice or document published or sent before 1 May 2021 (under the provisions as specified in regulation 11(2)(a)-(e)) is to be treated as having been published or sent in accordance with those provisions as amended by the Regulations. Regulation 11 is intended to apply to, for example, a notice relating to a meeting held on or after 1 May 2021 but has been published electronically before 1 May 2021. For the avoidance of doubt, the Welsh Government does not consider that regulation 11 is retrospective, as it does not change the law so that it has effect from a time before that provision comes into force.

## **Committee Consideration**

The Committee considered the instrument and Government response at its meeting on 15 March 2021 and reports to the Senedd in line with the reporting points above.

