

Explanatory Memorandum to the Local Government and Elections (Wales) Act 2021 (Consequential Amendments and Miscellaneous Provisions) Regulations 2021

This Explanatory Memorandum has been prepared by the Department for Local Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation and 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 Government and Elections (Wales) Act 2021 (Consequential Amendments and Miscellaneous Provisions) Regulations 2021. I am satisfied the benefits justify the likely costs.

Julie James MS
Minister for Housing and Local Government
23 February 2021

PART 1

1. Description

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.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

None.

3. Legislative background

The Regulations are made under sections 50 and 173 of the 2021 Act and sections 22 and 105 of the Local Government Act 2000.

Part 5A of the Local Government Act 1972 (the "1972 Act") makes provision in relation to access to meetings and documents of local authorities. The provisions of Part 5A are applied in other enactments to certain committees and proceedings of local authorities and to National Park authorities.

Section 47 of the Local Government and Elections (Wales) Act 2021 (the "2021 Act") requires local authorities to make and publish arrangements for the purpose of ensuring that local authority meetings are able to be held through remote means that enable persons who are not in the same place to attend meetings remotely, if certain conditions are met.

Schedule 4 to the 2021 Act amends, among other provisions, Part 5A of the 1972 Act to require electronic publication of certain local authority meeting documents to complement and to give effect to the requirements under section 47 of the 2021 Act and for connected purposes.

Section 50 of the 2021 Act enables the Welsh Ministers to make regulations to make provision for and in connection with requirements concerning notices and other documents relating to local authority meetings and concerning the conduct of such meetings.

Section 22 of the Local Government Act 2000 enables the Welsh Ministers to make provision by regulations relating to public access to meetings, decisions and documents of local authority executives and their committees. Where executive functions are delegated to individual members of the executive, those decisions are not taken in meetings of the executive. Section 22 enables the Welsh Ministers to make regulations relating to executive decisions that are not made in meetings of the executive.

Section 105(5) of the 2000 Act and paragraphs 30 and 34 of Schedule 11 to the Government of Wales Act 2006 provide that the negative resolution procedure will apply to Regulations made under section 22 of the 2000 Act.

Sections 174(4) and (5)(f) and (t) of the 2021 Act provide that the affirmative resolution procedure will apply to Regulations made under section 50 or section 173 of the 2021 Act.

Under section 40 of the Legislation (Wales) Act 2019, provision subject to the negative procedure may be combined in the same instrument as provision subject to the affirmative procedure. As a result, the affirmative procedure applies to these Regulations.

4. Purpose and intended effect of the legislation

Part 1

Regulation 1 sets out the title and commencement provisions.

Part 2

Regulation 2 amends provisions of the Public Audit (Wales) Act 2004 so, when considering a report in the public interest made by the Auditor General for Wales, a local authority must not exclude such a report from electronic publication or inspection or from rights of access and so the notice to be given of local authorities' meetings to consider such reports is consistent with the new requirements under the 2021 Act.

Regulation 3 amends section 49 of the Local Democracy, Economic Development and Construction Act 2009, so a local authority when considering a public interest report by the Auditor General for Wales on entities connected with that authority, must not exclude such a report from electronic publication or inspection or from rights of access.

Regulation 4 amends the Local Government Democracy (Wales) Act 2013 to repeal section 56 of that Act, which inserted subsection (1ZA) into section 232 of the 1972 Act; that subsection was itself omitted by provision made in Schedule 4 to the 2021 Act.

Regulation 5 amends 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, and thereby are privileged (unless publication is shown to be made with malice).

Part 3

Regulation 6 amends 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 summonses and notices.

Regulation 7 amends 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 are consequential on the changes made to Part 5A of the 1972 Act by Schedule 4 to the 2021 Act.

Regulation 8 amends the Licensing Act 2003 (Hearings) Regulations 2005 to apply to hearings of local authority licensing committees the amendments made to Part 5A of the 1972 Act, in particular relating to notices of hearings. Regulation 9 does the same in relation to the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-Committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007

Part 3

Part 3 makes provision relating to the Local Authorities (Coronavirus) Meetings (Wales) Regulations 2020 (the “2020 Regulations”).

The 2020 Regulations did not specify a retention period for certain documents published electronically relating to local authority meetings held between 22 April 2020 and 31 April 2021 under those regulations. Regulation 10 of these regulations specifies that such documents should remain accessible electronically for six years, a period which is the specified retention period for the documents required to be published electronically under the 2021 Act.

Regulation 11 makes transitional provision relating to notices or documents published or sent before 1 May 2021 relating to meetings held on or after that date.

5. Consultation

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

6. Regulatory Impact Assessment (RIA)

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to the Regulations.

Regulations 2 to 9 simply make consequential amendments to statute and regulation 11 makes transitional provision. Those provisions do not impose or reduce costs for business, charities or voluntary bodies or the public sector.

In respect of Regulation 10, two options have been considered:

- Option 1: Do Nothing
- Option 2: Introduce the regulations

Costs and benefits

Option 1

This is the baseline option and as such there are no additional costs or benefits associated with this option.

Option 2

No additional costs have been identified under this option.

Local authorities are already required to make certain documents relating to meetings held between 22 April 2020 and 31 April 2021 available electronically.

Regulation 10 specifies that those documents should remain accessible for a period of six years from the date of the meeting. Placing a time limit on how long the documents need to remain accessible for is not expected to result in additional costs.

It is considered that Regulation 10 strikes an appropriate balance between:

- (a) ensuring electronic records relating to local authority meetings remain available for public scrutiny for a reasonable period of time; and
- (b) not requiring local authorities to maintain those records indefinitely.

Competition assessment

The Regulations are not expected to impact on the level of competition within Wales or on the competitiveness of Welsh businesses.