

Explanatory Memorandum to the Local Authorities (Amendments Relating to Publication of Information) (Wales) Regulations 2022

This Explanatory Memorandum has been prepared by the Local Government Department of the Welsh 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 Authorities (Amendments Relating to Publication of Information) (Wales) Regulations 2022, and I am satisfied that the benefits justify the likely costs.

Rebecca Evans MS
Minister for Finance and Local Government

08 March 2022

PART 1

1. Description

- 1.1 Section 100(G)(1) of the Local Government Act 1972 ('the 1972 Act') requires a principal council to maintain a register stating the name and address of every member of the council. "Principal councils" in Wales include county and county borough councils, fire and rescue authorities, National Park authorities and joint boards or joint committees which discharge functions of two or more principal councils in Wales. Similar provision exists in respect of members of a committee or sub-committee. The 1972 Act requires the register referred to above to be open for inspection by the public at the offices of the council. In effect, this allows members of the public to find the names and addresses of members of the council and members of committees/sub-committees.
- 1.2 In order to provide a safe environment for those prepared to put themselves forward for elected office, one of the steps identified to achieve that aim is to remove the requirement for members' addresses to be included as part of the register that must be open to inspection by the public.
- 1.3 Regulation 12 of the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001 ("the 2001 Regulations") also places a duty on county and county borough councils to maintain a register stating the name and address of every member of their executive and of every member of a committee of the executive. The 2001 Regulations require the register to be open to inspection by the public at the principal office of the authority.
- 1.4 For consistency, and to facilitate the aims set out in paragraph 1.2 above, the Local Authorities (Amendments Relating to Publication of Information) (Wales) Regulations 2022 ("these Regulations") amend section 100G of the 1972 Act and regulation 12 of the 2001 Regulations to provide that the information open to inspection must not include a member's address included in the registers.

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

- 2.1 None.

3. Legislative background

- 3.1 Section 100G(1)(a) of the 1972 Act requires a principal council to maintain a register stating the name and address of every member of the council. As noted above, "principal councils" in Wales include county and county borough councils, fire and rescue authorities, National Park authorities and joint boards or joint committees, which discharge functions of two or more

principal councils in Wales. Similar provision exists in section 100G(1)(b) in respect of members of a committee or sub-committee. Section 100G(4) requires the register referred to above to be open for inspection by the public at the offices of the council. In effect, this allows members of the public to find the names and addresses of members of the council and members of committees/sub-committees.

- 3.2 Section 43 of the Local Government and Elections (Wales) Act 2021 (“the 2021 Act”) places a duty, on principal councils to publish an electronic and postal address for correspondence for each council member. This does not have to be a home address. This provision will come into force from 5 May 2022.
- 3.3 To deliver the existing commitment to replace the requirement for home addresses to be publicised in favour of an official address, it is proposed that section 100G of the 1972 Act in respect of principal councils in Wales be amended so that members’ addresses included in the register held under that section must not be open to inspection by the public. There is power to amend any enactment in relation to the publication and access to information in section 50(3)(a) of the 2021 Act.
- 3.4 Regulation 12(1)(a) of the 2001 Regulations states that a county and county borough council must maintain a register stating the name and address of every member of the council’s executive. A similar provision exists in regulation 12(1)(b) in respect of every member of a committee or sub-committee of the executive. Regulation 12(3) requires the register to be open to inspection by the public at the principal office of the council.
- 3.5 As noted above, there is power to amend any enactment in relation to the publication and access to information in section 50(3)(a) of the 2021 Act. There is a power to amend the 2001 Regulations in relation to the addresses of the members of the executive and members of the committees and sub-committees in section 22(6) and (7) of the Local Government Act 2000.
- 3.6 Section 174(4) and 5(f) of the 2021 Act provides that the draft affirmative procedure applies to regulations made under section 50(3)(a) and (4) of the 2021 Act. Section 105(5) of the 2000 Act provides that the negative resolution procedure will apply to regulations made under section 22 of the 2000 Act.
- 3.7 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 draft affirmative procedure. As a result, the draft affirmative procedure applies to these Regulations.

4. Purpose and intended effect of the legislation

- 4.1 Under section 43 of the 2021 Act, which comes into force on the 5 May 2022, there is a requirement for a principal council to publish an email and postal address for a member. This does not need to be a home address. The view is that the above requirement is sufficient for residents in the area as there is a clear way to contact a member and to determine which ward or division they represent.
- 4.2 We do not consider there is any reason why a member of the public would need to know about the home address of a member. If the person wishes to contact the member, they can find contact details by virtue of section 43 of the 2021 Act. If there were any conflict of interests relating to the home address and the business of the council, the member would continue to have to declare this interest.
- 4.3 The Jo Cox murder, while an extreme example, which did not involve an incident at her home, highlights the real security concerns facing politicians. There is also the more recent example with the incident that took the life of Sir David Amess MP. There have also been recent incidents in Wales where members (often in respect of female members) addresses are identified and targeted with vandalism to their home or other property, e.g. vehicles parked at their property, or other intimidating behaviour.
- 4.4 We therefore consider that the requirements in section 100G(4) of the 1972 Act and Regulation 12(3) of the 2001 Regulations should not apply to principal councils in Wales in respect of permitting members home addresses to be available for public inspection as part of the register.
- 4.5 For the avoidance of doubt, principal councils will still be required to record members home addresses in a register for their own communication with members, in order for principal councils to send correspondence to members, which cannot be sent electronically. The home addresses must not, however be open to inspection by the public.
- 4.6 If these Regulations are not made this may discourage candidates from putting themselves forward for elected office, and indeed may affect retaining existing members who have suffered harassment and abuse. The 2021 Act aims to encourage equality and diversity of candidates who wish to put themselves forward, and their safety is of paramount importance. This has consistently been a point raised by stakeholders as important in supporting diversity in democracy to enable members from all backgrounds to feel safe and undertake their role without threat to their home or family.
- 4.7 A number of workshops held across Wales as part of the development of Phase two of the Welsh Government's Diversity in Democracy programme highlighted a number of instances where members had experiences, which they considered to be harassment and abuse. This included several instances where the tyres of their cars had been slashed, other property

damaged and examples of verbal abuse towards themselves and on occasion family members.

- 4.8 While the legislative change proposed will not in itself resolve these issues, it is one component of a wider set of arrangements, which aims to re-inforce the importance of protecting members' rights to have a private life free from harm and harassment. This includes being able to live in a home which is not portrayed as simply an extension to the role itself, especially in circumstances where that home is shared with others who do not share the responsibilities of that civic role.

5. Consultation

- 5.1 No consultation has taken place specifically in relation to these Regulations. This is because the policy was subject to a comprehensive consultation undertaken for the (then) Local Government and Elections (Wales) Bill.
- 5.2 The Welsh Government issued the consultation document, 'Electoral Reform in Local Government in Wales' on 18 July 2017. The consultation period ran for twelve weeks to 10 October 2017. The consultation followed on from the White Paper, Reforming Local Government: Resilient and Renewed issued on 31 January 2017, and sought views on proposals to enhance engagement in democracy, voter eligibility and exercise of votes and how elections can be better organised.
- 5.3 In addition to the principal consultation document, the Welsh Government also produced a youth friendly, easy read and British Sign Language version of the consultation paper. These documents were available on the Welsh Government's website. The youth friendly and easy read documents were abridged to suit the target audience for these accessible versions. The previous Cabinet Secretary for Finance and Local Government also held two round table workshops with the Children's Commissioner for Wales and her young representatives, one in North Wales and one in South Wales.
- 5.4 Overall, there were 979 responses received from organisations and a large number of members of the public. A breakdown of the respondents by type is set out in the summary of comments document on pages 5-6, and all individual respondents listed alphabetically on pages 55 to 59.
- 5.5 Although the question in the consultation document was about candidates standing for election (section 6, page 24), the principle applies equally to those members already elected. A link to the consultation document is here:

https://gov.wales/sites/default/files/consultations/2018-01/consultation_document-en_0.pdf

A summary of the comments received in response to the consultation, published in April 2018 is here:

<https://gov.wales/sites/default/files/consultations/2018-04/180526-summary-of-responses.pdf>

- 5.6 Many of the responses in favour of not publishing candidates' home addresses noted that this provision is already in place for parliamentary candidates, and that this should be replicated in local government elections. The proposal was not considered controversial, and was widely supported including by the heads of democratic services within local government during the passage of the Bill, and in our broader discussions with local authorities. Given the comprehensive and effective consultation that has taken place, a further consultation exercise has not been undertaken.
- 5.7 There have also been more recent stakeholder workshops and discussions with local authorities undertaken as part of the development of Phase two of the Welsh Government's Diversity in Democracy programme where there was support expressed to us for not making members' home addresses public.
- 5.8 As a result of the consultation, we propose under these Regulations to remove the requirements for the address provided by members and included in the registers under both the 1972 Act and the 2001 Regulations to be available for inspection by the public.

PART 2

6. Regulatory Impact Assessment

Options:

A. Keeping the status quo i.e. business as usual

- 6.1 If legislation is not made to remove the requirement that the home addresses of members be made open to inspection by the public, it may discourage potential candidates from putting themselves forward for elected office, and indeed may affect the retention of existing members who have been subjected to harassment and abuse.
- 6.2 The Jo Cox murder, while an extreme example, which did not involve an incident at her home, highlights the real security concerns facing politicians. There is also the more recent example with the incident, which took the life of Sir David Amess MP.
- 6.3 There have also been reported incidents in Wales where members (often in respect of female members) addresses are identified and targeted with vandalism to their home or other property, e.g. vehicles parked at their property, or other intimidating behaviour.
- 6.4 The safety of members both potential and existing has consistently been a point raised by stakeholders as important in supporting diversity in democracy to enable members from all backgrounds to feel safe and undertake their role without threat to their home or family.
- 6.5 The concern about members' safety is well recognised. The UK Government is making separate provision to deal with abuse of local government candidates, agents and elected members.
- 6.6 This option has no additional costs but also does not address the highlighted problem.

B. Agree to the proposed legislation

- 6.7 If there is agreement to the proposed changes, this would be a positive action to address member safety concerns without affecting access to the members by the public. Section 43 of the 2021 Act, places a requirement on principal councils to publish an electronic and postal address for correspondence for each council member. This provision will come into force from 5 May 2022.
- 6.8 This option has no material additional costs to local authorities. Potentially, there may even be savings for local authorities in terms of staff time and making facilities available for members of the public to come in and inspect the registers under the current arrangements. There are significant non-

financial benefits in terms of increased safety and security for elected members, which are not being realised at the expense of openness and transparency for the public. They will still have access to a range of published and on line information, including who their elected member is, the ward they represent and the committees for which they are a member.

6.9 Many of the Local Government and Elections (Wales) Bill consultation responses in favour of not publishing candidates' home addresses noted that this provision is already in place for parliamentary candidates and that this should be replicated in local government elections.

6.10 A safe environment, which protects the health, welfare and wellbeing of those prepared to put themselves forward for elected office is fundamental to encourage others and expand the pipeline of those prepared to undertake important civic roles.

6.11 Under this option, these Regulations would be made and would prevent members' addresses being open to inspection by the public.

C. Allow individual members to decide whether the local authorities should publish their home address

6.12 If individual members were to decide whether their home addresses should be published, this would increase the level of administration for local authorities, and as such the costs involved and could cause confusion particularly for the public, as they may not understand that providing a home address was optional. Further, providing any choice for members could result in local pressure for members who would prefer not to publish their addresses to do so. This could result in unacceptable harms to the well-being of those members.