

### The Local Authorities (Allowances for Members of Fire Authorities) (Wales) Regulations 2004

These Regulations require fire authorities in Wales to make schemes for the payment of basic and special responsibility allowances, to be known as a “fire authority allowance” and “fire authority chairperson’s allowance” and “fire authority vice-chairperson’s allowance” respectively, to their Members.

The Regulations were made under the Executive procedure on 28<sup>th</sup> September 2004 and came into force on 29<sup>th</sup> September 2004.

#### Standing Order 11.7

The following points have been identified for reporting under SO 11.7.

The enabling powers cited include regulation 18(1) of the Local Government and Housing Act 1989 (“the 1989 Act”) which enable the making of regulations providing for the payment of basic allowances and special responsibility allowances to members of relevant authorities. Section 18(5) defines a “relevant authority” as including a fire authority.

Regulations 13 and 14 purport to provide for the payment and annual adjustment of care allowances. Section 18(2A) of the 1989 Act enables schemes made by district councils, county councils, county borough councils or London borough councils to include provision for the payment of care allowances. Section 18(2A) is therefore drafted in narrower terms than section 18(1) and does not permit the payment of care allowances to all relevant authorities and as such cannot be relied upon to enable the making of regulation 13 in its current form. However, section 100(1)(d) of the Local Government Act 2000 (“the 2000”) Act, enables the making of regulations providing for the reimbursement of expenses incurred by members of such relevant authorities and could be applied to the reimbursement of expenses incurred in arranging for the care of children and dependants. As drafted regulation 13 is outside the scope of the power conferred by section 100(1)(d) as it refers to care allowances rather than the reimbursement of expenses. However, the intent of the regulation could be achieved by amending the wording to refer to the reimbursement of expenses rather than the payment of a care allowance. Regulation 14, which provides for the annual adjustment of care allowances would not be required if this approach was adopted. It is considered that the forgoing points be corrected at the earliest opportunity.

The foregoing has been raised with the drafting lawyer in OCG. His response is set out below.

“I don't share your view that the payment of the care allowance is a fixed sum. A claim by a member of a fire authority for a payment of care allowance by the fire authority will relate to the expenses that the member has necessarily incurred. That seems to me to be the effect of regulations 13(1) and 17(2). A fire authority could not pay care allowance in respect of expenses that haven't been incurred or haven't been necessarily incurred.

The figures specified in e.g. regulations 13(3) and 13(4) show the maximum amounts of care allowance that may be paid in a year. If, say, a chairperson necessarily incurs more than £678 on childcare during the period 29 September 2004 - 31 March 2005, he or she will only be able to claim up to £678 in respect of that expenditure and no more. For future years the maximum amount that can be

paid in respect of expenditure necessarily incurred can be uprated. It seems to me that if a chairperson necessarily incurs, say, £500 on childcare during the period 29 September 2004 - 31 March 2005 a fire authority could not pay more than £500 in that period because the payment is made in respect of the expense that is necessarily incurred. It seems to me that all the figures in e.g. 13(3) and (4) do is set a limit on how much a member can claim in a year. In addition I would not agree with the argument that regulation 14 would not be required if the Regulations referred to reimbursement”

The following minor drafting errors have been identified.

There is an inconsistency between the English and Welsh texts of regulation 8(4)(a) and (b). Regulation 8(4) specifies the maximum allowance payable in the years commencing on or after 1<sup>st</sup> April 2006 and provides that this shall not, subject as provided therein, exceed the amount payable in the previous year. Consequently the words “ar gyfer y flwyddyn sy’n gorffen ar 31 Mawrth 2006” (which appear to have been imported erroneously from regulation 8(3)(a) and (b) are not required and the Welsh text should follow the pattern of regulation 7(4).

Regulations 8(6), 10(a), 13(7) and 16(a) refer to the withholding or recovery of allowances in the event of suspension or partial suspension of a member. The English text of these regulations refer to a member’s “responsibilities or duties”; the corresponding Welsh text makes reference to “cyfrifoldebau a’l ddyletysyddau” which translates as “responsibilities and duties”. Given that the Regulations provide for full or partial suspension, it is assumed that the English text is correct; it does appear logical that partial suspension from all responsibilities and duties could take place as is inferred from the Welsh text. The Welsh text should be amended to correspond with that of the English text.

The Welsh text of regulation 19(1) requires amendment; the word “tân” should be inserted after “bob awdurdod”.

The minor drafting errors would have been capable of correction by Memorandum of Correction. As the Regulations have been made, they should be corrected when the opportunity arises.

### **Observations**

It is noted that the definition of “fire authority” includes both a fire authority constituted by a combination scheme under the Fire Services Act 1947 and a fire and rescue authority constituted under section 2 of the Fire and Rescue Services Act 2004. The latter provision is not yet in force in relation to Wales and consequently this part of the definition can have no effect until such time as section 2 is commenced. It is understood that it is intended to commence section 2 in relation to Wales with effect from 10<sup>th</sup> November 2004.

Formatting points have been notified to the drafting lawyer.

**Glyn Davies AM**

Chair, Legislation Committee

**12 October 2004**